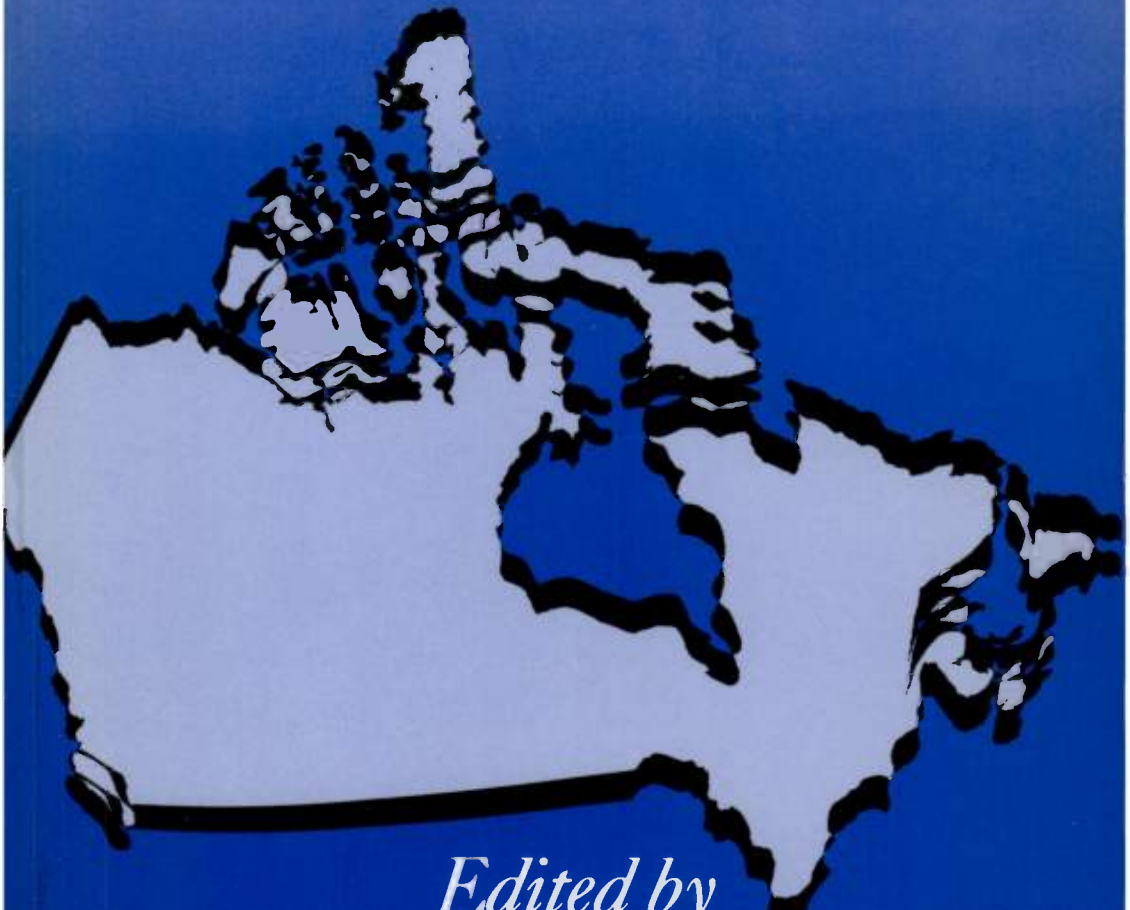
Documents of CANADIAN BROADCASTING



Edited by Roger Bird

Documents of Canadian Broadcasting

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Roger Bird

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Foreword

This collection of documents is intended to illustrate both the development of broadcasting in Canada and ideas about the role of broadcasting in national life. It is in four sections.

1 *The Pre-broadcasting Era* extends from the beginnings (a chain of stations for "the Marconi system of telegraphic communication" on the lower St. Lawrence River) down to the 1913 Radiotelegraph Act.
2 *The Radio Age* begins with the first regulations for broadcasting stations issued by the federal Department of Marine and Fisheries after the First World War and ends in 1950 on the eve of the Massey Royal Commission report.
3 *Television Arrives* opens with the Massey commission's observations about television and ends with the 1966 White Paper on broadcasting that preceded the Broadcasting Act of 1967–1968.
4 *The CRTC Years* begins with the 1968 Broadcasting Act and ends with excerpts from the report of the task force on broadcasting policy in September 1986.

Each document is introduced with remarks intended to illuminate the item's significance and to set the historical context. The documents are arranged chronologically and texts, with the exception of part of the 1931 Supreme Court decision (Document 14), are in English only. Some are produced in their entirety and others are edited to eliminate repetition. Original spelling and typographical errors usually stand uncorrected; significant errors are noted in the introduction to the document in question. The collection includes reports of royal commissions and government committees, acts of Parliament and some of their subsequent regulations, legal decisions, Parliamentary debates, and representative statements from broadcasters and regulators.

Debate about broadcasting has been extensive in Canada and the documentary record is consequently bulky. Two principles, utility and availability, have governed the editor's choices. The earlier part of the record is somewhat over-represented, particularly if the reader considers the vast amount of broadcasting activity and debate that has characterized the past 20 years compared to, say, the years from 1922 to 1942. But the older documents are not easily available. Library copies are few or missing or in bad repair, and so a disproportionate selection of such material is included here. On the other hand, some significant documents from the past 20 years are not included because of their wider availability in most libraries.

The book is intended as a reference tool for students of mass communication, broadcasting policy and media history, for broadcasters public and private, and for anyone in industry or the public service who has to deal with questions of broadcasting and culture.

Acknowledgements

The idea for this collection came from my colleague Peter Bruck and from the models provided by Peter Grant's Broadcasting and Cable Television Regulatory Handbook (1973) and Frank J. Kahn's Documents of American Broadcasting (4th edition, 1984). Much that appears here does so because of the generosity and knowledge of a number of people. They include Carol Duthie, formerly with the Canadian Marconi Company; Peter Grant of McCarthy & McCarthy Toronto ; James R. Finlay, West Vancouver ; Hector Lavoie of the House of Commons Committees and Private Legislation Branch ; Ghislain Mallette of the Public Archives of Canada ; and Frank Peers of the University of Toronto. Linda Burke of Supply and Services Canada helped me through the copyright jungle. Anne Weiser reproduced on computer disks the original appearance of the documents themselves. My wife Ann Bird provided an admirable model of diligence in research.

Introduction

Canada is a large country with a relatively small population. For it to function politically, culturally, and spiritually it requires efficient internal communication. Recognizing this, colonial officials and later the federal government have from the earliest times pursued such communication in the teeth of high costs and physical barriers. Something close to instantaneous long-distance communication began with the first Canadian telegraph line, between Hamilton and Toronto in 1846. By 1900 there were more than 56,000 kilometres of telegraph line in the country.

Radio entered Canada as a reinforcement for the weakest links in this telegraphic network. Variously called "wireless," "wireless telegraphy," "radio," or "the Marconi system of telegraphing" (after its inventor) communication by means of electromagnetic energy first occurred regularly in Canada in stations established by the federal Department of Public Works. In the late 1890s the department was building a telegraph line down the north shore of the St. Lawrence River and Gulf of St. Lawrence. The telegraph stations exchanged information with ships by means of visual semaphore. To cut costs and labour, some links in this telegraph line were constructed as underwater cable between headlands or from the mainland to islands like Anticosti and Belle Isle. The Department of Public Works saw radio stations as an answer to the threat posed by icebergs to these underwater cables. Icebergs brushed the bottom of the foggy straits frequently, and they could crush the most heavily armoured cables. Repairs were constant, and the country's frontier communication network often fell silent. Radio was invulnerable to icebergs—or bad weather—as the early operators discovered to their delight.

The stations allowed the transmission of information from ships off these coastal frontiers upriver to Quebec, Montreal and Toronto, or vice versa. Such communication was an exercise in sovereignty over a sparsely settled region, a tying together of national information and interest. The information was mostly about weather and ice conditions, but it included news about financial markets, police matters, war, and politics for those aboard the ships.

This exchange of information also tied Canada to the international world. A radio station at Belle Isle could give an inward-bound ship news of the world two whole days earlier than it could get it in Boston or New York. Such a service meant a great deal at a time when ships were condemned to a vast silence once out of sight of land. If Canadian radio stations in the Gulf of St. Lawrence could offer ships and their passengers and crew a two-day reduction in the silence imposed by the Atlantic, they might influence such ships to choose a Canadian rather than a US port for their first stop, to the benefit of Canadian prestige and commerce. To this

day, Canadian broadcasting serves to tie the country together, and at the same time to weave it thoroughly into an international web.

With the invention of wave modulation to allow the human voice and music to be transmitted, some people began to see the possibilities of sending out a signal from one point to an unknown mass audience owning cheap radio receivers. This "broadcasting" began just after the First World War. When broadcasting first came to Canadians, it often came to them from across the border with the United States. It still does.

The mass media of the United States, particularly the entertainment media, predominate in the world today. Despite differences in ideology and economy, geography and politics, people in countries as different as Vietnam, Poland, Mexico, and Brazil take what they can of the entertainments exported from the United States and often ask for more. Canadians were the first to be exposed to this wave of foreign culture, and they have had more of it than people in any other country. So Canadians have debated from the start whether, and how, broadcasters here can provide distinctly Canadian programs amidst the strong signals from the south.

Because of the difficulties of achieving coverage across a thinly populated country, and because of the opportunity and threat posed by the US signals, it began to appear by the end of the 1920s that Canadian broadcasting in Canada would most probably be public broadcasting, supported by tax money. "Free" broadcasting meant US-dominated broadcasting. Commercial sponsors paid cheap rates for good US shows and the private stations broadcast them. It was fun, it was cheap, and it was not Canadian. The questions of money and national identity that lie behind these two forms of broadcasting have provided energy for a debate that is still lively in this age of satellites and computers. In the last ten years there have been five major investigations of broadcasting and culture in Canada. In the years before that, there were a dozen others; the debate seems endless.

The best debates are grounded in facts. This is a body of documents that records the investigations, reports, recommendations, and actual development of broadcasting in Canada. Long documents have been edited down. Each is preceded by a short introduction to set the historical context and explain the significance of what follows.

Part I

The Pre-broadcasting Era

The Pre-broadcasting Era

1 Report of the Deputy Minister of Public Works, *Sessional Papers* No. 19 (1st session, 9th Parliament), 24 December 1900, 25–26.

2 Report of the Deputy Minister of Public Works, *Sessional Papers* No. 19 (2d session, 9th Parliament), 15 January 1902, 10–11.

3 Memorandum of agreement between Marconi companies and the Canadian government, *Sessional Papers* No. 51a (2d session, 9th Parliament), 17 March 1902, 1–3.

4 Report of the Deputy Minister of Marine and Fisheries, appendix No. 11, "Marconi Wireless Telegraph System," Sessional Papers No. 21 (1st session, 10th Parliament), 12 December 1904, 114–115.

5 The Wireless Telegraphy Act, July 1905.

6 The Radiotelegraph Act, June 1913.

Document 1

Radio developed in Canada, as in the rest of the world, as a supplement to the telegraph on land and as a miraculous safety device at sea. Turn of the century transmitters had a practical range of only about 200 kilometres, but this was enough for the crowded shipping lanes of the North Atlantic and for the offshore fishery. Naval officers and fishermen welcomed a device that could signal distress or a ship's location day or night and in fog or bad weather. So it is fitting that a member of Parliament from the Maritimes was the first person to put radio into the Canadian public record. On 19 March 1900, Bernard McLellan of West Prince Riding, Prince Edward Island, asked a question in the House of Commons. He was speaking on behalf of his colleague, John Bell of East Prince. "Has the government given consideration to the 'Marconi' system of telegraphic communication with a view to its being adopted in connection with any parts of the seacoast telegraphic service? If so, has any, and what conclusion has been reached?"

The Postmaster General replied that the Public Works department was indeed studying the new system.

The report of the Deputy Minister of Public Works for the 1899–1900 fiscal year outlines why radio was being considered. This report includes a comprehensive survey of telegraphic communication in Canada from its beginnings in 1847. By 1900, the only major construction of telegraph lines still occurring was in the Yukon and down the north shore of the St. Lawrence River from Murray Bay (today's Pointe-au-Pic) to Baie du Chateau, on the mainland opposite Belle Isle. A telegraph submarine cable was planned to cover the 35 kilometres from the coast to the island. Such a cable would be vulnerable to icebergs coming down the Labrador coast through the Strait of Belle Isle. Radio was iceberg-proof, as a submarine cable decidedly was not.

This difficult and expensive telegraph and radio project demonstrates the mix of national and international interest that was to mark electronic communication in Canada. The north shore radio service would provide Canadian fishermen and navigators information about weather and ice in the treacherous strait; at the same time it would reduce by two days the period of communications silence faced by ships crossing the north Atlantic. This Canadian project would enhance international communication. (A transposed line of type in the following document has been silently corrected.)

DOCUMENT 1: Report of the Deputy Minister of Public Works, *Sessional Papers* No. 19 (1st session, 9th Parliament), 24 December 1900, 25–26.

Three years ago, contracts were given for the supply of poles and for the construction of a portion of the 325 miles, forming the distance between Pointe aux Esquimaux and Baie du Chateau, it being from this latter point that the cable to the light-house at Belle Isle is to be laid. Year by year the line has been built, and it is now expected that by the middle of next summer the whole length shall be completed. The cable required to be laid between the mainland and Belle Isle has been purchased, but the unfortunate loss of our cable ship "Newfield" has prevented us from attempting to lay the same during last fall. The necessary preparations are however, made, and as soon as the required vessel shall be provided, this last length of most important telegraphic communication shall be laid. Practically, navigation between Europe and Canada will be reduced to 3 days, the oceanic distance being reckoned from land to land, and most passengers consider the oceanic passage at an end when they are able to receive news from the outside world and are again placed in instant communication with it. This will be effected when boats will be able to receive and send telegraphic despaches at Belle Isle, that is to say, 2 days before they are now able to be signalled after their entrance in the Gulf.

There is however one danger to be feared, in connection with the constancy of the telegraphic service, and this is the possible action of the icebergs upon the cable. It is well known that those enormous masses very often ground in very deep water, and it can be easily understood that their immense weight, when set again in motion, creates such a force that no human power is apparently able to resist it. The Minister will kindly remember that, in this connection, I have frequently recommended that an experiment be made with the system of wireless telegraphy. It is now a well known and well established fact that communications, by that system, are sent and received over distances theoretically assumed to be as great as 80 miles. Whether, in practice, communication over that distance would be constantly successful, is a question perhaps not yet absolutely settled, but there is no doubt whatever, from the number of experiments which have been made, of the successful working of the apparatus for a distance of say from 30 to 40 miles. The distance across the Strait from Bay du Chateau to Belle Isle is only 22 miles, and I would therefore strongly advise that steps be taken at once to establish of a wireless telegraph station at Baie du Chateau, so that should icebergs, etc., ever interfere with the working of the cable, the Department will have the alternative use of the cable and the wireless telegraph.

Document 2

The underwater telegraph cable between Baie du Chateau and Belle Isle was in place by July of 1901 and the Department of Public Works began testing radio equipment immediately, with happy results.

DOCUMENT 2: Report of the Deputy Minister of Public Works, *Sessional Papers* No.19 (2d session, 9th Parliament), 15 January 1902, 10–11.

In my report for the year 1899-1900, I referred at some length to the work done in constructing what is called the Yukon telegraph line, as well as to the completion of the line on the north shore of the coast of Labrador to connect with the island of Belle Isle.

The telegraph line on the Labrador coast was also completed during the month of July, and a cable was laid between Chateau bay on the north shore and the island of Belle Isle, a distance of 22 miles.

I suggested in my last report the establishment of the Marconi system of wireless telegraphy as an alternative in order to obviate the possible stoppage of communication by the crushing, or other disabling of the cable, by icebergs or other causes. A sample of the instruments used in connection with that system was, under your instructions, inspected on board the ss. *Lake Champlain*, of the Elder-Dempster line of steamers, and immediately an order was placed with the Marconi Company, in England, for two sets of those instruments, one to be placed on Belle Isle, the other on the main shore at Chateau bay. I am pleased to be able to state that the first attempt at a practical use of this system on this continent was made by this department, and I am proud to say with great success, owing to the ability and care of Mr. D. H. Keeley, the superintendent of the government telegraphs, who took the matter in charge and carried it to successful completion. The Marconi system of wireless telegraphy is now before the world attracting more attention than ever owing to the visit of the inventor himself to this continent.

The system under the charge of this department seems to have worked satisfactorily, and the improvements in progress will, I hope, ensure the greatest guarantee of success.

Document 3

Guglielmo Marconi visited Canada following his successful transmission of a radio signal across the Atlantic from Cornwall to Newfoundland in 1901. His success—a series of three faint clicks heard through the crash of static on a windy hill near St. John's—provoked threats of legal action by the Anglo-American Telegraph Company, which had a monopoly in Newfoundland of all trans-Atlantic communications. At that point the Canadian government of Sir Wilfrid Laurier made Marconi an extraordinary offer—an $80,000 grant to continue his transatlantic experiments from a station in Cape Breton. In return, Marconi promised cutrate transatlantic radio message rates, should such a service ever become possible.

This was an act of faith in Marconi and radio's future. Scientific opinion had concluded that transatlantic radio meant communication through or over a wall of water between Europe and North America that stood 300 kilometres high. Since radio travelled in straight lines, and since no known signal was strong enough to penetrate such a barrier, Marconi's goal was theoretically impossible. No one knew that radio waves could bounce off the ionosphere and return to earth for detection thousands of kilometres away. Marconi was operating on faith, augmented by $80,000 worth of Canadian commitment to international communication.

DOCUMENT 3: Memorandum of agreement between Marconi companies and the Canadian government, *Sessional Papers* No. 51a, (2d session, 9th Parliament), 17 March 1902, 1–3.

Memorandum of Agreement made the seventeenth day of March, A.D., 1902, between Marconi's Wireless Telegraph Company, Limited, a body corporate and politic, and The Marconi International Marine Communication Company, Limited, a body corporate and politic (hereinafter called "the companies"), of the first part: and His Majesty King Edward Seventh, represented herein by the Right Honourable Sir Wilfrid Laurier, G.C.M.G., President of the King's Privy Council for Canada, who, as well as his successor in office, for the time being is hereinafter referred to as "the Minister," His Majesty so represented being hereinafter called "the Government," of the second part.

Whereas the companies have represented that they believe that a material reduction in the rates for telegraph messages between Canada and other countries, especially the United Kingdom of Great Britain and Ireland, can

be attained by the use for their transmission of the companies' system of "wireless telegraphy," commonly known as "The Marconi System";

And whereas such a reduction would be of great advantage to Canada;

Now, this agreement witnesseth that the companies and the Government covenant and agree to and with each other in manner following, that is to say:—

1. The companies agree to erect two wireless telegraph stations, one in some part of the United Kingdom of Great Britain and Ireland, and the other in some part of Nova Scotia, in Canada, the object of which, should the undertaking prove to be successful, is to carry on communication on a commercial basis between Canada and the United Kingdom of Great Britain and Ireland and the continent of Europe.

2. The Government agrees to pay to the companies the sum of eighty thousand dollars ($80,000), or such lesser sum as may be required for the purpose of the erection of the said station in Nova Scotia, according to plans and specifications to be approved by Mr. G. Marconi. If the cost of the station should be greater than eighty thousand dollars ($80,000) the excess is to be paid by the companies, so that the cost to the Government shall not in any event exceed the said sum of eighty thousand dollars ($80,000).

3. The said payments so to be made by the Government to the companies shall be made monthly as the construction of the said station progresses, upon vouchers to be submitted by the companies to the Government of payments made and work done, and the Government shall be afforded every facility to satisfy itself that such payments represent only the fair and reasonable value of the work done. Such payments by the government shall be made to a banking account to be opened in the name of 'Marconi's Wireless Telegraph Company, Limited,' at the agency of the Bank of Nova Scotia at the town of North Sydney, Cape Breton.

4. The Government undertakes that all messages received by the companies or intended for transmission by the companies at or from the said station in Nova Scotia, or any other station or stations which may be established by the companies, or either of them, in Canada, shall be sent over all Government lines of telegraph in Canada now in operation or that may hereafter be constructed or operated by the Government at rates not higher than those charged to other telegraph companies from time to time for the transmission of ordinary commercial messages.

5. If the companies enter into any arrangement with companies operating telegraph lines in Canada respecting the division of rates on through messages, the companies will grant not less favourable terms for similar arrangements with the Government land lines now in operation or that may

hereafter be established.

6. In consideration of the payments to be made by the Government under the terms of this agreement the companies undertake, if their operations prove successful, to transmit general messages to and fro between any station or stations which they may establish on the Atlantic coast of Canada for that purpose and any corresponding station or stations which they may establish on the coast of the United Kingdom of Great Britain and Ireland, at rates which shall be fully sixty per cent less than the rates now charged for cablegrams between the Atlantic coast of Canada and the coast of the United Kingdom of Great Britain and Ireland, that is to say, that whereas the rate per word for such messages is now twenty-five cents, the companies undertake to charge not more than ten cents per word for such messages; the companies further agree that government messages and messages for the press shall be transmitted at a shore to shore rate not exceeding five cents per word, and further that the rates to be charged for messages between the Atlantic coast of Canada and the coast of the United Kingdom of Great Britain and Ireland shall not in any case exceed the rates charged for similar messages between the coast of the United Kingdom of Great Britain and Ireland and any other part of the Atlantic coast of the continent of North America.

7. The companies will, as far as possible, use Canadian machinery, material and labour in the construction of said station in Nova Scotia.

8. If the Government desires to use the Marconi system for communication with any of its lighthouses or life-saving stations on the coast, or between the mainland and any island within the jurisdiction of Canada, or with any ships passing to and fro, or in any way to assist in its operations for the protection of life and property on the sea coast or inland waters of Canada, or for the improvement or assistance of navigation, the Government shall be free to erect all such stations as it may require for such purpose, and the companies shall be bound to furnish all machinery and apparatus required for such stations at fair and reasonable prices, free from any charge for patent rights or royalties thereon, it being understood that the assistance hereby provided by the Government shall cover and include all charges for such patent rights or royalties.

9. Such station or stations, when established by the Government, shall receive all messages transmitted from ships equipped with the "Marconi System," and deliver them to the connecting land lines without any charge, and the tolls for all such messages shall be collected by the agents of the companies on board the ship or ships from which they are transmitted and shall belong to and be the property of the companies. The Government shall be entitled to receive for its own use all tolls collected at such station or stations so erected by it for messages transmitted to any ship or ships passing to and fro.

10. Whenever the Government requires a station or stations for any of the purposes specified in clause eight of this agreement, it shall before proceeding to erect the same notify the companies of its requirements and it shall thereupon be optional with the companies to erect, maintain and operate such station or stations at their own expense, if within one calendar month after being so notified, they notify the Government of their intention so to do, in which event the work of establishing such station or stations shall forthwith be put in hand and executed with all reasonable despatch, and the companies shall thereafter maintain and operate the same in an adequate and sufficient manner for the purposes for which the same are required.

11. Should the companies, after notifying the Government of their intention to exercise their option of erecting, maintaining and operating any such station, make default in establishing the same with reasonable despatch, or in maintaining and operating the same in an adequate and sufficient manner for the purposes for which it is required, the Government shall be at liberty upon one month's notice to the companies, to erect or complete the erection of such station themselves, or to take over, maintain and operate the same, in which case the Government shall pay to the companies the value of the property of the companies so taken over, such value in case of difference to be fixed by arbitration, an arbitrator to be named by each party, and a third by the two so named; and in every such case the provisions of clauses 8 and 9 of this agreement shall apply to such station and its erection and operation.

12. Such station or stations when established by the companies shall receive all messages transmitted from any ship or ships equipped with the " Marconi System, " and shall deliver them to the connecting land lines without charge, and the tolls for such message or messages shall be collected by the agents of the companies on board the ship or ships from which they have been transmitted and shall belong to and be the property of the companies. The companies shall furthermore be entitled to receive for their own use all tolls collected at such station or stations for messages transmitted from such station or stations to ships passing to and fro; provided that no such last mentioned tolls shall be levied or collected until the rates thereof have been approved by the Governor in Council.

13. Any lighthouse or station maintained by the Government on the coast of Newfoundland shall be deemed for the purpose of this agreement to be a part of Canada, and all privileges which the companies are bound to grant to the Government in Canada under the terms of this agreement, shall extend to such lighthouse, station or stations in so far as the companies have the power to grant the same at such places.

14. The companies shall not be bound to accept messages in the United Kingdom of Great Britain and Ireland for wireless transmission by " The

Marconi System" by way of Canada to destinations in the United States of America, or to any other part of the continent of America outside of Canada, to the prejudice of the interests of any government or company which may acquire the right to receive wireless messages by the "Marconi System" in the United States of America, or in such other part of the continent of America outside of Canada direct from the United Kingdom of Great Britain and Ireland.

In witness whereof these presents have been executed by the companies and on behalf of His Majesty by the Minister.

Marconi's Wireless Telegraph Company, Limited.
The Marconi International Marine Communication Company, Limited.

By G. MARCONI,
The Attorney of the said Companies

WILFRID LAURIER.

Signed and delivered in presence of witness to execution by the Companies.

E. L. NEWCOMBE.

Witness to Sir Wilfrid's signature,
E. L. NEWCOMBE.

Document 4

In 1904, construction and installation of radio sites on the north shore of the St. Lawrence and in Newfoundland were completed by the Department of Public Works. Responsibility for radio shifted to the Department of Marine and Fisheries. The commander of the Canadian Marine Service reported on a network of radio stations along the coast that kept in touch with the increasing numbers of ships equipped with Marconi's device.

This document stresses what that age would have called patriotism, the comings and goings of governors general and other national matters. But this Canadian content is balanced by an international dimension—those aboard ships from Europe can hear news of the world days before landfall, and outgoing ships can stay in touch with North America much longer. Perhaps because of this, Canada will provide a more congenial route across the Atlantic for international shipping.

Fame Point on the north shore of the Gaspé is now Pointe à la Renommée.

DOCUMENT 4: Report of the Deputy Minister of Marine and Fisheries, appendix 11, "Marconi wireless telegraph system," *Sessional Papers* No. 21 (1st session, 10th Parliament), 12 December 1904, 114–115.

To the Deputy Minister of Marine and Fisheries,
Ottawa.

Sir,—I have the honour to submit, herewith, the following report in connection with the Marconi stations erected in the river and gulf of St. Lawrence, during the present season.

These stations are situated at the following points:—

Fame Point, Quebec,	Belle Isle, Quebec,
Heath Point, Anticosti,	Cape Ray, Newfoundland,
Point Amour, Labrador,	Cape Race, Newfoundland,

They have all been working very successfully for some months before the close of navigation.

The station at Fame Point was finished on June 25th, and on that date held communication with the Allan Line R.M.S. *Parisian* outward

bound. A large number of messages were exchanged between this vessel and the land station.

In the official test made by the government, communication was held 130 miles to the eastward and 101 miles to the westward. The latter distance might have been improved upon, but it was deemed inexpedient to continue the test owing to the fact that the government steamer conducting the same was ordered elsewhere.

The Heath Point station was completed on July 21, and on that date held communication with royal mail steamers inward bound, for periods of six hours. The official test of this station showed it to have an efficient range of about 130 miles, but on several occasions it has held vessels even further.

The Point Amour station was completed on August 10, and on August 11 had its first communication with an outward bound steamer. This station in the official test made by one of the government steamers showed a range of 115 miles.

The Belle Isle station which was completed on September 1, has also shown by its official test that it is fully up to the standard of the other stations. It was in constant communication with the Point Amour station which is situated some 66 miles to the westward, from the time it was opened until the close of navigation.

The station at Cape Ray, Newfoundland, was completed on October 7. The official test of this station showed it to be entirely satisfactory, having an efficient range of about 100 miles.

The Cape Race station was completed on November 17, and the official test of this station was also most satisfactory. The range of communication was fully up to that of the Cape Ray station.

Both the Cape Ray and Cape Race stations were utilized by the late Governor General to send messages to the government and people of Canada on the occasion of his departure by the R.M.S.*Parisian*. The Cape Race station was also made use of by the Dominion government to communicate with the present Governor General upon the occasion of his comming to Canada by the same steamer.

All of the above stations have reported shipping and shipping intelligence to Lloyd's agent, at Quebec.

The Belle Isle and Point Amour stations have proved exceptionally valuable in communicating to steamers coming through the straits of Belle Isle news as to weather conditions prevailing in the straits.

In many instances vessels have been in communication with shore stations when enveloped in thick fog, and have found the Marconi system an invaluable supplementary aid to the fog signal service already existing.

News of current events have been furnished by the stations to all vessels equipped with the Marconi apparatus. This has not only proved a boon to the passengers, but will undoubtedly tend to popularize the St. Lawrence route with the travelling public.

The important aid to navigation rendered by the Dominion of Canada in the matter of wireless telegraphy, has been very greatly appreciated by the Shipping Federation of Canada and the shipping interests generally.

Stations at Sable island and on the mainland, probably in the neighbourhood of Canso, which are to be built under contract, will be commenced as soon as the weather conditions permit.

It was not intended in the first place to have these stations intercommunicate, but it has been pointed out by ship owners that the value of the system to shipping generally would be enormously increased if these stations were able to establish intercommunication. For this reason the government has decided to increase the power of the St. Lawrence stations and to establish two other stations so that communication may be had by means of the Marconi system from Fame Point to Belle Isle or Cape Ray.

The enormous advantage which will follow from having this system of intercommunication will be better understood when it is known that the captain of a steamer will be able to know just what weather conditions prevail along the entire St. Lawrence a few hours after leaving Quebec, and can direct his course accordingly,

Three government ships, the *Canada, Minto* and *Stanley*, are fitted with the Marconi apparatus.

I have the honour to be, sir,

Your obedient servant,

O.G.V.SPAIN,

Commander Canadian Marine Service.

OTTAWA, December 12, 1904.

Document 5

Three years after the installation of the first government radio stations around the Gulf of St. Lawrence, the first Canadian legislation on radio was passed. The Wireless Telegraphy Act of 1905 reflected the government's desire to investigate and license the new phenomenon. There is a recognition that the use of radio must henceforth be considered a privilege, not a right, because the electronic highway was vulnerable to crowding and interference. Government regulation of the increasing traffic of private and commercial radio operators was inevitable to prevent chaos. Licence fees are mentioned, but beyond that, ideas about regulation were sketchy. The act left all matters—licensing, fees, policing and penalties—to the undefined discretion of the Minister of Marine and Fisheries.

DOCUMENT 5: The Wireless Telegraphy Act, 20 July 1905, 4&5 Edw. 7, c. 49.

An Act to provide for the regulation of Wireless

Telegraphy in Canada.

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as *The Wireless Telegraphy Act*, 1905.

2. In this Act the expression "Minister" means the Minister of Marine and Fisheries.

3. No person shall establish any wireless telegraph station, or install or work any apparatus for wireless telegraphy, in any place or on board any ship registered in Canada except under and in accordance with a license granted in that behalf by the Minister with the consent of the Governor in Council.

2. Every such license shall be in such form and for such period as the Minister determines, and shall contain the terms, conditions and restrictions on and subject to which the license is granted; and any such license may include two or more stations, places or ships.

3. The Minister may make regulations for prescribing the form and manner in which applications for such licenses are to be made, and, with

the consent of the Governor in Council, the fees payable on the grant of any such license.

4. Every one who establishes a wireless telegraph station without a license in that behalf, or installs or works any apparatus for wireless telegraphy without a license in that behalf, shall be guilty of an offence and be liable, on summary conviction, to a penalty not exceeding fifty dollars, and on conviction on indictment to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding twelve months, and in either case shall be liable to forfeit any apparatus for wireless telegraphy installed or worked without a license; but no proceedings shall be taken against any person under this Act except by order of the Minister.

5. If a justice of the peace is satisfied by information on oath that there is reasonable ground for supposing that a wireless telegraph station has been established without license in that behalf, or that any apparatus for wireless telegraphy has been installed or worked in any place or on board any ship within his jurisdiction without a license in that behalf, he may grant a search warrant to any police officer or any officer appointed in that behalf by the Minister and named in the warrant; and a warrant so granted shall authorize the officer named therein to enter and inspect the station, place or ship and to seize any apparatus which appears to him to be used or intended to be used for wireless telegraphy therein.

6. Where the applicant for a license proves to the satisfaction of the Minister that the sole object of obtaining the license is to enable him to conduct experiments in wireless telegraphy, a license for that purpose shall be granted, subject to such special terms, conditions, and restrictions as the Minister thinks proper.

WRH

Document 6

The old terminology of "wireless telegraphy" was replaced by the new word "radio" in the next act of Parliament in 1913. With a European war looming, control of radio shifted to the Department of Naval Services, away from Marine and Fisheries. The new act reflects the stringent requirements of The London Convention and Regulations governing radio communication. The convention had been signed on 5 July 1912 and was to take effect on 1 July 1913. It was signed by 43 countries, ratified by 41 of them, and adhered to by almost 100. It continued to govern radio despite the First World War.

The London conference that led to the convention had been called a few months after the *Titanic* sank. Investigation showed many lapses in radio communication that dreadful night, lapses that doomed the ship. The nearby *Californian* tried for hours to warn the *Titanic* of the icebergs, but the *Titanic* operator was unwilling to break off his connection with Cape Race, Newfoundland to listen. When the *Titanic* went down, officers on the bridge of the *Californian* could see its rockets going off, but it occurred to no one to wake the radio operator to find out what was happening. Only the far-distant *Carpathia* heard the *Titanic's* sos. The conference was determined to end such irregularities and amateurism.

The Canadian act reflects the spirit of the London convention. It insists that most ships using Canadian ports be equipped with radio and that operators be trained and tested and submit to an oath of secrecy. Private radio operations would submit to censorship, control, and even temporary expropriation in the national interest. Sections 3, 11 and 13 of this act would in future bear most directly upon broadcasting. They deal with licensing and the powers of the minister (of the Department of Naval Service.)

DOCUMENT 6: The Radiotelegraph Act, 6 June 1913, 3&4 Geo. 5, c. 43.

An Act respecting Radiotelegraphy.

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. This Act may be cited as *The Radiotelegraph Act.*

2. In this Act, unless the context otherwise requires,—

(a) "Minister" means the Minister of the Naval Service;

(b) "radiotelegraph" includes any wireless system for conveying electric signals or messages including radiotelephones;

(c) "coast station" means any radiotelegraph station which is established on land or on board a ship permanently moored and which is used for the exchange of messages and electric signals with ships at sea;

(d) "land station" means any radiotelegraph station or installation of radiotelegraphic apparatus which is not a coast station or a ship station;

(e) "ship station" means any radiotelegraph station established on board a ship which is not permanently moored.

3. No person shall establish any radiotelegraph station or install or work any radiotelegraph apparatus in any place in Canada or on board any ship registered in Canada except under and in accordance with a license granted in that behalf by the Minister.

4. From and after the first day of January, nineteen hundred and fourteen, no passenger steamer, whether registered in Canada or not,—

(a) licensed to carry fifty or more persons, including passengers and crew, and going on any voyage which is or which includes a voyage of more than two hundred nautical miles from one port or place to another port or place; or,

(b) licensed to carry two hundred and fifty or more persons, including passengers and crew, and going on any voyage which is or which includes a voyage of more than ninety nautical miles from one port or place to another port or place; or,

(c) licensed to carry five hundred or more persons, including passengers and crew, and going on any voyage which is or which includes a voyage of more than twenty nautical miles from one port or place to another port or place

shall leave or attempt to leave any Canadian port unless such steamer is equipped with an efficient radiotelegraph apparatus, in good working order, capable of transmitting and receiving messages over a distance of at least one hundred nautical miles by night and by day, and in charge of a person fully qualified to take charge of and operate such apparatus.

2. The owner, master or other person in charge of any passenger steamer which leaves or attempts to leave any Canadian port contrary to the provisions of this section shall, on summary conviction, be liable to a fine

not exceeding one thousand dollars and costs, and such fine and costs shall constitute a lien upon such passenger steamer.

3. This section shall not apply to passenger steamers plying on the rivers of Canada, including the River St. Lawrence as far seaward as a line drawn from Father Point to Point Orient, or on the Northumberland Straits, or on the Georgian Bay, or on the lakes of Canada other than Lakes Ontario, Erie, Huron and Superior, and the provision of paragraph (c) of subsection 1 of this section shall not apply to steamers making voyages on Lakes Ontario, Erie, Huron and Superior, the regular route for which is not at any point more than seven miles from the shore.

4. This section shall not apply to steamers calling at Canadian ports solely for the purpose of obtaining bunker coal or provisions for the use of such steamer, or through stress of weather, or for repairs.

5. All persons operating land or cable telegraph lines shall transmit all messages destined to or coming from ship stations via coast stations under such rules as may be made by the Board of Railway Commissioners for Canada.

6. No one shall be employed as a radiotelegraph operator at any coast or land station unless he is a British subject, and all radiotelegraph operators at shore or land stations, or on ship stations on board any vessel registered in Canada, shall take and subscribe a Declaration of Secrecy in the form set forth in the Schedule to this Act, before a judge of any court, a notary public, a justice of the peace or a commissioner for taking affidavits, having authority or jurisdiction within the place where the oath is administered.

2. Every person who has made the Declaration of Secrecy and who, either directly or indirectly, divulges to any person, except when lawfully authorized or directed so to do, any information which he acquired by virtue of his employment, is guilty of an offence and shall be liable on summary conviction to a penalty not exceeding one hundred dollars and to imprisonment for a term not exceeding six months.

7. Any person who sends or transmits or causes to be sent or transmitted any false or fraudulent distress signal, message, call or radiogram of any kind, or who without lawful excuse interferes with or obstructs any radiocommunication, shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding five hundred dollars and costs or six months' imprisonment.

8. If a justice of the peace is satisfied by information on oath that there is reasonable ground for supposing that a radiotelegraph station has been established without license in that behalf, or that any apparatus for radio-

telegraphy has been installed or worked in any place or on board any ship registered in Canada within his jurisdiction without a license in that behalf, he may grant a search warrant to any police officer or any officer appointed in that behalf by the Minister and named in the warrant.

2. A warrant so granted shall authorize the officer named therein to enter and inspect the station, place or ship and to seize any radiotelegraph apparatus which appears to him to be there used or intended to be there used for radiotelegraphy.

9. Every one who establishes a radiotelegraph station or installs or works any radiotelegraph apparatus in violation of the provisions of this Act, or of any regulation made hereunder, shall be liable on summary conviction to a penalty not exceeding fifty dollars, and on conviction on indictment to a fine not exceeding five hundred dollars and to imprisonment for a term not exceeding twelve months, and in either case shall be liable to forfeit to His Majesty, any radiotelegraph apparatus installed or worked without a license.

2. No proceedings shall be taken against any person under this section, except by order of the Minister.

10. The Governor in Council may—

(a) prescribe the tariff of fees to be paid for licenses and for examination for certificates of proficiency held and issued under the provisions of this Act;

(b) accede to any international convention in connection with radiotelegraphy, and make such regulations as may be necessary to carry out and make effective the terms of such convention and prescribe penalties recoverable on summary conviction for the violation of such regulations; provided that such penalties shall not exceed five hundred dollars and costs;

(c) make regulations for the censorship and controlling of radiotelegraph signals and messages in case of actual or apprehended war, rebellion, riot or other emergency.

11. The Minister may make regulations—

(a) prescribing the form and manner in which applications for licenses under this Act are to be made;

(b) classifying ship, coast and land stations and prescribing the type and range of the regular equipment and the emergency equipment to be installed in the several classes of stations;

(c) defining the different kinds of licenses that may be issued, their respective forms and the several periods for which they shall continue in force;

(d) prescribing the conditions and restrictions to which the several licenses shall respectively be subject;

(e) prescribing the different classes of certificate of proficiency and the class of certificate necessary to qualify persons as operators for the several classes of ship, coast and land stations;

(f) for the examination of persons desiring to obtain certificates of proficiency as radiotelegraph operators and to determine the qualifications in respect of age, term of service, skill, character and otherwise to be required for such certificates;

(g) prescribing the watches to be kept by operators and the number of operators to be maintained and kept at the different classes of ship, coast and land stations;

(h) for the inspection of radiotelegraph stations;

(i) to provide how radiotelegraph apparatus installed upon any foreign or British ship (whether such British ship is registered in Canada or elsewhere) shall be operated while such ship is within the territorial waters of Canada;

(j) to compel all radiotelegraph stations to receive, accept, exchange and transmit signals and messages with such other radiotelegraph stations and in such manner as he may prescribe;

(k) for the effective carrying out of the provisions of this Act.

2. The Minister may, by regulation, authorize the imposition of a penalty not exceeding fifty dollars and costs or three months' imprisonment for the violation of any regulation made under this section, and any such penalty may be recovered upon summary conviction.

12. All regulations made under the provisions of the two sections immediately preceding shall be published in *The Canada Gazette*, and shall be laid before both Houses of Parliament within ten days after the publication thereof if Parliament is then sitting, and if Parliament is not then sitting, then within ten days after the next meeting thereof.

13. His Majesty may, at any time, assume, and for any length of time retain, possession of any radiograph station and of all things necessary to the sufficient working thereof, and may, for the same time, require the

exclusive service of the operators and other persons employed in working the same; and the person owning or controlling the station shall give up possession thereof, and the operators and other persons so employed shall, during the time of such possession, diligently and faithfully obey such orders, and transmit and receive such signals, calls and radiograms as they are required to receive and transmit by any duly authorized officer of the Government of Canada.

2. If the Minister and the person owning or controlling any radiotelegraph station taken possession of by the Crown under the provisions of this section cannot agree as to the compensation to be paid by the Crown for such taking possession, the Minister shall refer the matter to the Exchequer Court of Canada for adjudication.

14. Part IV. of *The Telegraphs Act* is repealed.

Part II

The Radio Age

The Radio Age

7 Radio Service, Department of Marine and Fisheries, "License to use Radio," 18 April 1923, Public Archives of Canada, RG 97, Vol. 149, 6206-72-1.

8 Department of Marine and Fisheries, form letter, 1924 (Frank Peers collection)

9 Report from the Minister of Marine and Fisheries, *Canada Gazette*, 1929, 2396.

10 Report of the Royal Commission on Radio Broadcasting, September 1929.

11 CFCF program schedule, 16 February 1931 (Canadian Marconi Company archives).

12 J.M. Gibbon, "Radio as a fine art," *Canadian Forum*, March 1931.

13 Graham Spry, "The Canadian Broadcasting Issue, " *Canadian Forum*, April 1931.

14 Supreme Court of Canada, "In the matter of a reference as to the jurisdiction of Parliament to regulate and control radio communication," June 1931.

15 Judicial committee of the Privy Council, Great Britain, "*In re* regulation and control of radio communication in Canada. On appeal from the Supreme Court of Canada," February 1932.

16 R.B. Bennett, speech in the House of Commons, 18 May 1932, *Debates*, 3035-3036.

17 An Act Respecting Radio Broadcasting, May 1932, as amended 1933.

18 CRBC, "Rules and Regulations, " 1 April 1933, PC535, 15 April 1933.

19 "Mr. Sage" broadcast, September 1935, House of Commons Committees and Private Legislation Branch, Ottawa.

20 The Canadian Broadcasting Act, 23 June 1936, as amended 1951.

21 Regulations for broadcasting stations, made under the Canadian Broadcasting Act, 1936, 8 September 1936, as amended 1953, 1955.

22 CBC, "Program schedule for December 25 Christmas 1937," leaflet, Communications Research Collection, Carleton University.

23 CBC, "Political and controversial broadcasting," 8 July 1939, as amended 1944.

24 CAB, "Control of radio, an urgent Canadian problem," June 1947, 23–31.

Document 7

Its inventor saw radio as a replacement for the telegraph, and it was as a telegraph substitute that it developed in Canada. But among the thousands of amateurs working with this device, some had other ideas. Among them was Reginald Fessenden, a Canadian professor of electrical engineering and once an employee of Thomas Edison. While working for the US. Department of Agriculture, Fessenden developed radio wave modulation to allow voice transmission. On Christmas Eve, 1906, Fessenden transmitted the first voice and music ever heard on radio, from an experimental station on the east coast of the US. Soon many experimenters were working on this technique, which would make broadcasting—transmission of the human voice, music and other sounds to anyone who happened to tune in—possible in future.

Before this happened, the First World War froze the development of radio by amateurs in most of the world. Military control was almost universal. When the war ended and controls were relaxed, broadcasting soon followed. In North America it began almost simultaneously in Montreal and Pittsburgh. Station XWA (later CFCF) received its license in 1919 and made the first broadcast intended for the public on 20 May 1920. It was a lecture on "Some Great War Inventions" to a meeting of the Royal Society of Canada. KDKA in Pittsburgh went on the air on 2 November 1920, broadcasting the returns from the US presidential elections. The stations broadcast news and music from phonograph records, and their aim was to encourage people to buy radio receiving sets—thus boosting sales for the owners of the stations, Westinghouse in Pittsburgh and the Canadian Marconi Company in Montreal.

The licensing agency for this activity was the radio service of the federal Department of Marine and Fisheries. Set up to prevent signal interference, promote safety at sea, and protect the privacy of radiotelegraph messages, the radio service soon found itself licensing receiving sets in homes and regulating the broadcasters. Form W–69, the licence for broadcasting stations, contains the first broadcasting regulations to be issued by the government. It is noteworthy that broadcasters were denied any opportunity to collect money for their services (regulation 4) and also required to provide a detailed record of what they broadcast (regulation 12). The commercial restriction would soon be lifted (see Document 8).

DOCUMENT 7: Department of Marine and Fisheries, "License to use Radio," 18 April 1923, Public Archives of Canada, RG 97, Vol.149, 6206–72–1.

This license is subject to the said Act and Regulations and to the following terms, conditions and restrictions:—

1. In this license, the following words and expressions shall have the several meanings hereinafter assigned to them unless there be something, either in the subject or context, repugnant to such construction, that is to say:—

The term "Minister" means the Minister or the Deputy Minister of the Department of Marine and Fisheries for the time being, the term "Radio" means and includes "Radiotelegraph" and "Radiotelephone," and the expression "Marine Signalling" means signalling by means of any system of radio between two or more ships, between ships and any coast station, or between two Government coast stations.

2. The licensee shall not establish, instal or work any apparatus for radio, except the apparatus hereinafter called "the licensed apparatus," specified in the said schedule hereto, nor shall wavelengths other than those mentioned therein be employed.

3. The working of the licensed station shall be limited to broadcasting.

4. No tolls, fees or other consideration shall be received, levied or collected by the licensee on account of any service performed by the licensed station.

5. (I) The licensee shall so work the licensed apparatus as not to interfere with the working of any other Radio station in Canada, or with marine signalling on the waters or territory of Canada or neighbouring waters or territory.

(II) With a view to preventing such interference as aforesaid, the licensee shall comply with all directions which shall be given to the licensee by the Minister and with all rules prescribed by the Minister for observance by his licensees:—

(a) With respect to all arrangements to be adopted for the purpose of syntony or enabling signals transmitted by means of the licensed apparatus to be distinguished from those emanating from any other radio station.

(b) With respect to any alternation of programmes which the Minister may think necessary, and

(c) Generally with respect to avoiding interference between one radio station and another.

6. The licensee shall, if so required by the Minister, cease to use the licensed apparatus for such period or periods in each day as may be specified by the Minister.

7. The equivalent logarithmic decrement of the emitted waves shall not exceed that prescribed in the schedule.

(a) The licensed station must be provided with an accurate wavemeter of approved type;

(b) The licensed station must be provided with a connection with the local wire telephone system.

9. The licensed apparatus shall not, without the consent of the Minister, be altered or modified in respect of any of the particulars mentioned in the schedule hereto.

10. (I) If and whenever any department of the Government shall require the licensee, his servants or agents to transmit by means of the licensed apparatus, any message on His Majesty's Service, such messages shall have priority over all other transmissions and the licensee, his servants and agents, shall, as soon as reasonably may be, transmit the same, and shall, until transmission thereof suspend all other transmission.

(II) The licensee shall not be entitled to claim any compensation in respect of the suspension of the transmission of messages as aforesaid.

11. The licensee shall not divulge to any person (other than properly authorized officials of the Government or a competent legal tribunal), or make any use whatever of any message coming to the knowledge of the licensee and not intended for receipt by means of the licensed apparatus nor shall he divulge to any person other than the addressee or his accredited agent the contents of any message coming to his knowledge intended for receipt by means of the licensed apparatus. The licensee shall exhibit at the said station a copy of Form No. W 40, issued by the Department of Marine and Fisheries.

12. A proces verbal of all signals transmitted, giving date, time and nature of such signals shall be kept by the licensee, also such further particulars as the Minister shall from time to time reasonably require. The licensee shall preserve all proces verbaux for such period as is from time

to time prescribed by the Minister, and such papers shall be open to the inspection of the Minister or his officers thereto authorized at the office of the licensee in ..... between the hours of 10 a.m. and 5 p.m. on every day except Sunday or a public holiday.

13. The Minister or his authorized officers may, from time to time and at all reasonable times, enter upon the herein licensed station, for the purpose of inspection, and may inspect any apparatus fixed or in use in such station, for the purpose of sending and receiving messages by radio and all other telegraphic instruments and apparatus fixed or being in such stations, and the working and user of such apparatus and telegraphic instruments.

14. All apparatus used or intended to be used by the licensee shall be so erected, fixed, placed and used as not, either directly or by reason of the working or user thereof, to interfere with the efficient or convenient maintenance, working or user of any telegraphic line.

15. The licensee shall observe at the said station the provisions of the "Radiotelegraph Act" and the detailed regulations from time to time made thereunder for carrying such provisions into effect; also such provisions of any International Radio Convention to which Canada subscribes, as are applicable to the operation of the station.

16. The licensee shall instal the apparatus at the station mentioned in the schedule and the said station shall be placed in operation within ..... months from the date of this license, and shall be kept in operation during the hours specified in the schedule until this license shall expire.

17. All operators at the said station shall be British subjects, and must be of such number and the holders of such Certificate of Proficiency as are specified in the schedule annexed hereto.

18. In case of any breach non-observance or non-performance by or on the part of the licensee, his servants or agents, of any of the terms or conditions herein contained and on the part of the licensee to be observed and performed then in any such case, the Minister may, by writing, revoke and determine these presents and the licenses, powers and authorities hereinbefore granted and thereupon these presents and the said licenses, powers and authorities and each and every of them shall absolutely cease, determine and become a void.

19. (a) Nothing in these presents contained shall prejudice or affect the right of the Minister, from time to time, to establish, extend, maintain and work any system or systems of radio communication (whether of a like nature to that hereby licensed or otherwise) in such manner as he shall in his discretion think fit, neither shall anything herein contained prejudice or affect the right of the Minister from time to time, to enter into agreements of

or to grant licenses relative to the working and user of radio (whether of a like nature to those hereby licensed or otherwise), or the transmission of messages in any part of Canada, by means of radio, with or to any person or persons whomsoever upon such terms as he shall in his discretion think fit.

(b) The allotment or the wavelengths specified in the schedule annexed hereto does not confer a monopoly of the use of such wavelength.

20. The licensee shall at all times indemnify the Minister against all actions, claims and demands which may be brought or made by any corporation, company or person in respect of any injury arising from any act licensed or permitted by these presents.

21. Except with the consent in writing of the Minister, the licensee shall not assign or sublet this license.

22. Any notice, request or consent (whether expressed to be in writing or not), to be given by the Minister, under these presents, may be under the hand of any authorized officer, for the time being, or the Department of Marine and Fisheries and may be served by sending the same by registered post letter to the ..... office of the licensee and any notice to be given by the licensee, under these presents, may be served by sending the same by registered post letter addressed to the Deputy Minister of the Department of Marine and Fisheries, Ottawa.

Document 8

The regulations embodied in form W 69 (Document 7) were soon modified to allow advertising. Commercial radio was in this way made possible. A 1924 form letter from the Deputy Minister of Marine and Fisheries indicates the change.

DOCUMENT 8: Department of Marine and Fisheries, form letter, 1924.

Ottawa, ... 1924.

Sir:—

With regard to the rental of broadcasting stations for advertising purposes, I am directed by my Minister to state that Section 4 of Form W.69, "Private Commercial Broadcasting License," has been amended to read as follows:—

"The licensee shall not, without the consent of the Minister in writing, receive or collect any tolls, fees or other consideration on account of any service performed by the licensed station."

This amendment will remain in effect until the 31st March 1924, and thereafter until specifically cancelled.

In future your station will be permitted to collect a toll for services rendered, provided the following instructions are carefully observed in regard to advertising:—

1. No direct advertising may be undertaken by any private commercial broadcasting station between the hours of 6.30 p.m. and 11 p.m., local time;

2. Indirect advertising shall be undertaken during any of the periods the station is licensed to operated.

Examples of the two classes of advertising would be:—

1. *Direct advertising*; An automobile firm renting the station for, say, ten minutes, for the purpose of extolling the virtues and merits of their particular make of machine;

2. *Indirect advertising*: A departmental store renting the station for a couple of hours and putting on a first class entertainment, with no advertising in it at all, the only connection between the store and the programme being the announcement of their name and the fact that they were contributing the concert, before and after every number.

It is further observed that in arranging hours of working for the different private broadcasting stations in any area, preference will be given to the requirements of private broadcasting stations which do not undertake advertising service.

I am, Sir,
Your obedient Servant,

A. Johnston,
DEPUTY MINISTER.

Document 9

In the early 1920s, the development of broadcasting was rapid and many-faceted. National corporations, churches, municipal governments, labor unions, and private individuals set up stations of varying technical expertise and programming quality, By 1923 there were 34 stations in Canada and more than 500 in the United States. By 1926, US network broadcasting began with the incorporation of the National Broadcasting Company. In 1927, Canadian National Railways set up a temporary coast-to-coast network to broadcast events marking the 60th anniversary of Confederation.

Early broadcasting was often controversial and propagandistic. The first of many public inquiries into broadcasting in Canada was provoked in 1928 by a mix of politics, religion, and radio. Among the radio stations operated by churches were four run by the International Bible Students Association, an organization affiliated with the Jehovah's Witnesses church. The Minister of Marine and Fisheries, P.J. Arthur Cardin, told the House of Commons that these stations had been the target of complaints about programs that were allegedly "unpatriotic and abusive of all our churches."

On 31 March 1928 the station licences of the Bible Students Association were revoked, and the House of Commons over the next few months found itself engaged in a sporadic debate over the nature of broadcasting and the rights and wrongs of government interference in what went out over the air waves. While the debate was going on, Cardin instructed his officials to prepare a report with recommendations about broadcasting policy. The report recommended that a royal commission carry out a public inquiry.

DOCUMENT 9: "Report... from the Minister of Marine and Fisheries," *Canada Gazette*, 19 January 1929, 2306.

The committee of the Privy Council have had before them a report dated 15th of November, 1928, from the Minister of Marine and Fisheries, submitting as follows:

1. That radio broadcasting, first established in Canada in 1921, has developed into a regular service demanded by the public.

2. That it is estimated that there are today approximately 400,000

receiving sets in Canada, divided approximatly in the ratio of 60 per cent urban and 40 per cent rural.

3. That service to these listeners is given by 68 broadcasting stations licensed by the Honourable the Minister of Marine and Fisheries under the Radiotelegraph Act.

4. That of the 68 stations, 32 provide an intermittent service or are of such very low power as to be purely local in character.

5. That the permanent service is mainly given by the remaining 36 stations all of comparatively low power, and with the exception of one owned by the Manitoba Provincial Government, are operated by the licensees for purposes of gain or for publicity in connection with the licensees' business.

6. That the 36 licensees alluded to in the previous paragraph may be classified under the following categories:

Radio manufacturers and dealers	13
Other manufacturers and retail stores	4
Newspapers	8
Government companies (C.N.R. and Manitoba)	4
Grain brokers	4
Miscellaneous	3
Total	36

7. That the estimated capital investment in the existing broadcasting stations in $1,104,500.

8. That a substantial number of Canadian listeners at the moment appear to be more interested in programs from the United States than in those from the Canadian stations, the reason ascribed for this being:

(a) the alleged better grade of program transmitted by United States stations;

(b) the limited range of the Canadian stations which prevent them from effectively covering the whole of our populated areas;

9. That in the opinion of the technical officers of the Department, the remedy for the above lies in the establishment of a number of high power stations throughout the country, and a greater expenditure on programs than the present licensees appear to be prepared to undertake.

10. That the desired end might be achieved in several ways, provided funds are available, viz:

(a) The establishment of one or more groups of stations operated by

private enterprise in receipt of a subsidy from the Government;

(b) The establishment and operation of stations by a government-owned and financed company.

(c) The establishment and operation of stations by provincial governments.

11. That the tendency of licensees is to make further capital expenditures on the installation of apparatus of increased power, and it is therefore considered that, before further investments of private capital are authorized, a definite determination of the policy to be adopted for the future operation of radio broadcasting stations, should be made.

12. That the number of channels available for broadcasting is limited and as a consequence licenses cannot be issued indefinitely. It is therefore desirable to consider the manner in which the available channels can be most effectively used in the interests of Canadian listeners and in the national interests of Canada.

13. That the foregoing will involve a detailed enquiry into the existing radio situation in Canada, and an examination of the different methods adopted in other countries, and in the opinion of the technical officers of the Department, concurred in by the Deputy Minister, this can most effectively be accomplished by a Royal Commission appointed for that purpose.

The Minister, concurring, recommends that a Royal Commission consisting of:
Sir John Aird, President of The Canadian Bank of Commerce, Toronto, Ont., chairman;
Charles A. Bowman, Esquire, Editor of The Citizen, Ottawa, Ont., and Augustin Frigon, Esquire, Director of the Polytechnic School of Montreal, Montreal, P.Q.

be appointed to examine into the broadcasting situation in the Dominion of Canada,and to make recommendations to the Government as to the future administration, management, control and financing thereof, the cost to be paid out of Vote No. 475, "Expenses of a Commission to enquire into radio broadcasting throughout Canada."

The Committee concur in the foregoing recommendation and submit the same for approval.

E. J. LEMAIRE,
Clerk of the Privy Council.

Document 10

The cabinet followed the Marine department's recommendation (Document 9) and appointed a Royal Commission on Radio Broadcasting, in December 1928.

The chairman was Sir John Aird, president of the Canadian Bank of Commerce and, at 73, a generation older than Marconi himself. The other members were Charles Bowman, editor of the Ottawa *Citizen* and an advocate of public broadcasting, and Dr. Augustin Frigon, an electrical engineer and director of l'École Polytechnique de Montreal. The government assigned Donald Manson, chief inspector of radio in the Marine department, as secretary. Parliament voted $25,000 for expenses and the commission got to work.

The appointments reveal the difficulties of staffing such an investigation in Canada. Governments then and since have tried for the impossible—commissions that combine technical expertise with a broad outlook on public affairs, that have political balance, regional representation, and a place for appointees from English and French Canada. The Aird Commission, as it would be known, satisfied many of these requirements. Aird was a Conservative and Bowman a close associate of the Liberal Prime Minister, Mackenzie King. Frigon provided both an engineering background and representation for French Canada. It lacked regional representation—the metropolitan east (Toronto, Ottawa and Montreal) produced the men who would advise on broadcasting in a huge country marked by sharp regional differences and provincial ambitions. And in those innocent times, the question of gender balance probably occurred to no one.

The commission had to deal with a world in which broadcasting had come to early maturity in very different ways in the two countries most likely to provide models for Canadians. In Britain, broadcasting was a government monopoly. The British Broadcasting Corporation had a limited number of stations, a small geographical area to serve, and linguistic and cultural safety. Few British listeners would stray from BBC offerings because most alternatives were in foreign languages.

South of the US—Canada border, broadcasting was a private industry with hundreds of stations and two "chains," as networks were then called, offering commercially sponsored entertainment that captivated millions of listeners, Canadian as well as American. The popular appeal of US programs combined with radio's disregard for international boundaries confronted the commission. So did Canada's vast area and thin population.

Whatever the challenges, the operations of the Royal Commission on Radio Broadcasting were marked by energy and dispatch. It visited the

headquarters of the BBC in London and NBC in New York. It invited the opinions of Canadians about their broadcasting future and travelled coast to coast to hear and record them. Then the commissioners wrote a 13-page report with 16 pages of appended background material and presented it to the government in less than a year, in September 1929.

DOCUMENT 10: Report of the Royal Commission on Radio Broadcasting, September 1929.

The Royal Commission on Radio Broadcasting

SIR JOHN AIRD,
President, Canadian Bank of Commerce (Chairman),
Toronto, Ontario.

CHARLES A. BOWMAN, Esq.,
Editor, "Citizen",
Ottawa, Ontario.

AUGUSTIN FRIGON, D.Sc.,
Director, "Ecole Polytechnique", Montreal, Quebec;
Director-General, Technical Education, Province
of Quebec, Montreal, Quebec.

Secretary:
DONALD MANSON, Esq.,
Chief Inspector of Radio,
Department of Marine,
Ottawa, Ontario.

TERMS OF REFERENCE

"To examine into the broadcasting situation in the Dominion of Canada and to make recommendations to the Government as to the future administration, management, control and financing thereof."

The Honourable P. J. A. CARDIN, Minister of Marine and Fisheries,
Ottawa, Ontario.

Sir,—We have the honour to submit the following report on the subject of Radio Broadcasting, in accordance with the requirements of Order in Council P.C. 2108:

Object of Commission

The Royal Commission on Radio Broadcasting was appointed by the Government to inquire into the existing situation in Canada and to examine the different methods adopted in other countries.

The purpose of the inquiry was to determine how radio broadcasting in Canada could be most effectively carried on in the interests of Canadian listeners and in the national interests of Canada.

According to the terms of reference of the Order in Council appointing the Commission, it was required:—

> "to examine into the broadcasting situation in the Dominion of Canada and to make recommendations to the Government as to the future administration, management, control and financing thereof."

Methods in Other Countries

Before setting out to hold meetings in Canada, we considered it wise to visit some of the countries abroad where broadcasting is well organized or is in process of organization, so that we would be in a position, if necessary, to discuss with the provincial authorities in Canada and others, the relative merits of the different methods employed. We found broadcasting especially well organized in Great Britain under the British Broadcasting Corporation, and in Germany where the radio service is also under a form of public ownership, control and operation. In France the situation has been studied by a government commission. No definite statement, however, can be made at the present time as to the recommendations of the Commission. Everywhere in Europe we found inquiries being conducted under government auspices for the purpose of organizing broadcasting on a nation-wide basis in the public interest. In addition to London, Berlin, Paris and Lille, we visited the Hague, Brussels, Geneva, Dublin and Belfast. A visit was also made to New York, where methods followed by the National Broadcasting Company were observed. We have also received information from "Union Internationale de Radiophonie" at Geneva, and other sources concerning broadcasting in countries which were not visited. A statement of methods followed in other countries is shown in Appendix I

Situation in Canada

We have held public sessions in twenty-five (25) Canadian cities, including the capitals of the nine provinces. One hundred and sixty-four persons submitted verbal statements at these sessions; in addition we have received 124 written statements (see Appendix II).

Conferences were held with the authorities of the nine provinces, who gave every assistance to the Commission and promised their co-operation in the organization of broadcasting. Written statements giving this assurance have been received from them (see Appendix III). Resolutions have also been received from numerous representative bodies, the large majority favouring the placing of broadcasting on a basis of public service.

In our survey of conditions in Canada, we have heard the present radio situation discussed from many angles with considerable diversity of opinion. There has, however, been unanimity on one fundamental question—Canadian radio listeners want Canadian broadcasting. This service is at present provided by stations owned by private enterprise and with the exception of two owned by the Government of the province of Manitoba, are operated by the licensees for purposes of gain or for publicity in connection with the licensees' business. We believe that private enterprise is to be commended for its effort to provide entertainment for the benefit of the public with no direct return of revenue. This lack of revenue has, however, tended more and more to force too much advertising upon the listener. It also would appear to result in the crowding of stations into urban centres and the consequent duplication of services in such places, leaving other large populated areas ineffectively served.

The potentialities of broadcasting as an instrument of education have been impressed upon us; education in the broad sense, not only as it is conducted in the schools and colleges, but in providing entertainment and of informing the public on questions of national interest. Many persons appearing before us have expressed the view that they would like to have an exchange of programs with the different parts of the country.

At present the majority of programs heard are from sources outside of Canada. It has been emphasized to us that the continued reception of these has a tendency to mould the minds of the young people in the home to ideals and opinions that are not Canadian. In a country of the vast geographical dimensions of Canada, broadcasting will undoubtedly become a great force in fostering a national spirit and interpreting national citizenship.

At the conclusion of our inquiries, it is our task, the importance of which we are deeply conscious, to suggest the means as to how broadcasting can

be carried on in the interests of Canadian listeners and in the national interest of Canada. The Order in Council appointing us to undertake this work contains the suggestion that the desired end might be achieved in several ways provided funds are available, viz:—

(a) the establishment of one or more groups of stations operated by private enterprise in receipt of a subsidy from the Government;

(b) the establishment and operation of stations by a Government-owned and financed company;

(c) the establishment and operation of stations by Provincial Governments.

We have examined and considered the facts and circumstances as they have come before us. As our foremost duty, we have concentrated our attention on the broader consideration of the interests of the listening public and of the nation. From what we have learned in our investigations and studies, we are impelled to the conclusion that these interests can be adequately served only by some form of public ownership, operation and control behind which is the national power and prestige of the whole public of the Dominion of Canada.

Proposed Organization

The system which we propose does not fall within the exact category of any of those suggested in the Order in Council, but is one which might be regarded as a modification of *(b)*, i.e., "the establishment and operation of stations by a Government-owned and financed company." As a fundamental principle, we believe that any broadcasting organization must be operated on a basis of public service. The stations providing a service of this kind should be owned and operated by on national company. Such a company should be vested with the full powers and authority of any private enterprise, its status and duties corresponding to those of a public utility. It is desirable, however, that provincial authorities should be in a position to exercise full control over the programs of the station or stations in their respective areas. Any recommendation which we offer is primarily made with this object in view. As to what extent the provinces should participate in effecting this control, of course, is a matter which could be decided between themselves and the Dominion Government authorities.

In order satisfactorily to meet these requirements which we have outlined, we recommend the following organization:—

(1) A national company which will own and operate all radio

broadcasting stations located in the Dominion of Canada, the company to be called the Canadian Radio Broadcasting Company (C.R.B.C.);

(2) A Provincial Radio Broadcasting Director for each province, who will have full control of the programs broadcast by the station or stations located within the boundaries of the province for which he is responsible. Some provinces might consider it desirable to place the control of broadcasting under a provincial commission. This is a matter to be determined by the provinces concerned;

(3) A Provincial Advisory Council on radio broadcasting for each province to act in an advisory capacity through the provincial authority.

Personnel

The Company.— It is important that the board or governing body or the company should be fully representative of the Dominion and provincial interests so that the closest co-operation among different parts of the country may be maintained. In order that this may be accomplished we would recommend that the governing body or board of the company should be composed of twelve members, three more particularly representing the Dominion and one representing each of the provinces; the mode of appointment of the provincial directors to be decided upon by agreement between the Dominion and provincial authorities.

Provincial Control,—The representative of the province on the Board of the National Company would be the Provincial Director. In the event of any province appointing a provincial commission, the Provincial Director should be the chairman of such commission.

Provincial Advisory Councils —We would suggest that each council should be composed of members representative of the responsible bodies interested in radio broadcasting.

Broadcasting Stations

Stations under Proposed Organization,—It is to be hoped that the system will eventually cover effectively and consistently that vast northern territory of Canada which at present has comparatively few inhabitants at remote and scattered points but which may come to be as densely populated as some European countries in the same latitude. The Company's immedi-

ate objective should be, however, to provide good reception over the entire settled region of the country during daylight or dark under normal conditions on a five-tube receiving set.* How this requirement can best be met will be a question with which the experts entrusted with the responsibility will have to deal. However, from our own observations and from information we have received, we believe it has been fairly well established in practice that high-power stations are needed to reach consistently with good results the maximum number of people. We would like, therefore, to recommend as a matter for consideration, the establishment of seven (7) stations, each having an aerial input of say 50,000 watts; one station to be suitably located in each province, except in New Brunswick, Nova Scotia, and Prince Edward Island, where one station could be centrally located to serve these three provinces. The proposed high-power stations could form the nucleus of the system and as each unit were brought into operation it could be ascertained what local areas, if any, were ineffectively served and stations of smaller power could accordingly be established to serve these places.

We would also suggest that the high-power stations might be so designed as to permit, in time, an increase of power to an economic maximum and of being so modelled as ultimately to provide for two programs being broadcast simultaneously on different wavelengths.

It is well, perhaps, to point out here the necessity of locating broadcasting stations at suitable distances from centres of population to obviate blanketing of reception from outside points. The need for this has been amply demonstrated to us.

We think it is important that, to provide the fullest scope for the proposed system and in the interests of the whole country, all facilities necessary for chain broadcasting be made available in order to permit simultaneous broadcasting by the entire group of stations from coast to coast or by such grouping in different regions as may be considered desirable from time to time.

We are of opinion that the question of the development of broadcasting far beyond its present state, which may include television, is one of great importance and should be closely kept pace with so that the service in Canada would continue equal to that in any other country.

Provisional Broadcasting Service.—While we believe that the proposed organization should be adopted and establishment of the high-power stations proceeded with as soon as possible, it seems necessary that provisional service be furnished. To do this, we recommend that one existing station in each

* Receiving sets employing less than five tubes are, in general, tending to go out of use.

area be taken over from private enterprise and continued in operation by the Canadian Radio Broadcasting Company until such time as the larger stations in the proposed scheme are placed in operation. The existing stations carrying on the provisional service could then be closed.

The stations selected for the provisional service should be so chosen from those at present in existence as to provide maximum possible coverage. All remaining stations located or giving a duplication of service in the same area should be closed down. We understand that under the provisions of the Radiotelegraph Act, the licenses now in effect may be allowed to expire at the end of the fiscal year or they may be terminated at any time at the pleasure of the licensing authority without legal obligation to pay compensation. We would recommend, nevertheless, that reasonable compensation be allowed such of the broadcasting stations at present in active operation for apparatus as may be decided by the Minister of Marine and Fisheries, the licensing authority.

The apparatus for which compensation is paid should, we think, become the property of the Canadian Radio Broadcasting Company. The more modern and efficient sets of such apparatus could then become available for re-erection as might be deemed necessary by the company.

Finance

Cost of Establishing Stations in Proposed Organization.—The stations forming the system in the proposed organization should be well and fully equipped. The cost of installing the seven high-power units would probably approximate $3,000,000. There would, however, be considerable salvage value in the plants taken over. Assuming that four smaller stations, three 5,000 watt and one 500 watt, would be needed to furnish a supplementary service in local areas not effectively reached by the high-power units, an additional amount of possibly $225,000 would have to be spent in re-erecting apparatus taken over from present station owners. These expenses would represent a capital expenditure of $3,225,000.

In addition to this, compensation would have to be paid to owners of existing stations which we think should be met out of an appropriation made by Parliament.

Cost of Operation.— The service provided would necessarily have to be of a high order. A total annual expenditure for operation of the entire organization proposed, including supplementary stations, would seem to require a minimum of approximately $2,500,000. In addition, the question of interest on capital and sinking fund would have to be considered.

Revenue.—Various methods have been suggested to us as to how revenue might be raised fully to meet the cost of a broadcasting system. If the general public as a whole were listeners, there might be no just reason why the full cost of carrying on a broadcasting service could not be met out of an appropriation made by Parliament from public funds. It is conceivable that that time will come, but under existing conditions, we would not feel justified in suggesting that the general public should be required to pay for the whole of the service which only those possessing radio receiving sets can enjoy. On the other hand, however, radio broadcasting is becoming more and more a public service and in view of its educative value, on broad lines and its importance as a medium for promoting national unity, it appears to us reasonable that a proportion of the expenses of the system should be met out of public funds.

Three sources from which revenue could be derived are suggested, viz:—

(1) License fees;

(2) Rental of time on broadcasting stations for programs employing indirect advertising;

(3) Subsidy from the Dominion Government.

License fees —A fee of $1 is at present charged for a receiving license. Fifty per cent of all license fees collected in Manitoba is paid over to the Government of that province towards the maintenance of the provincial-owned broadcasting stations at Winnipeg and Brandon. With this exception, no contribution to the cost of broadcast programs in Canada is made from fees collected, which revert to the revenue fund of the Dominion Government.

It should be pointed out, however, that the Marine Department, through its Radio Branch, maintains a service to broadcast listeners in suppressing extraneous noises interfering with radio reception, at an expenditure in proportion to the amount of revenue received from license fees.

The information we have received seems to indicate that listeners would not be averse to an increase in the license fee, if an improved Canadian broadcasting service could be provided. In Great Britain the fee is ten shillings (10/) per annum. In Germany and Japan, an amount approximating six dollars ($6) a year is collected. In Australia, the annual fee is twenty-four shillings (24/). We are of opinion, however, that while the present fee should be increased, the amount should not be so high as to prove burdensome for those of limited means. A fee of three dollars ($3) per year would seem reasonable and would at the same time yield a fair amount of revenue. We recommend that the fee be fixed at this amount.

On the basis of the number of licenses now in effect, approximately 300,000, a gross revenue of $900,000 per annum would be available from this source. The number of licenses may be expected to increase from year to year. We think that radio dealers should be required to collect the license fee whenever a receiving set is sold.

Rental of Time for Programs Employing Indirect Advertising.—The ideal program should probably have advertising, both direct and indirect, entirely eliminated. Direct advertising is used to considerable extent by broadcasting stations at the present time as a means of raising revenue to meet the expense of operation. In our survey of the situation in Canada, we have heard much criticism of this class of advertising. We think it should be entirely eliminated in any national scheme. Direct advertising is defined as extolling the merits of some particular article of merchandise or commercial service. Manufacturers and others interested in advertising have expressed the opinion that they should be allowed to continue advertising through the medium of broadcasting to meet the competition coming from the United States. We think that this can be satisfactorily met by allowing indirect advertising which properly handled has no very objectionable features, at the same time resulting in the collection of much revenue. An example of indirect advertising would be an announcement before and after a program that it was being given by a specified firm. Programs of this kind are often referred to as sponsored programs. Until such time as broadcasting can be put on a self-supporting basis, we would recommend that the stations' time be made available for programs employing a limited amount of indirect advertising at so much per hour per station.

It is rather difficult to estimate what revenue would be collected for rental of time, but we think that an amount of approximately $700,000 annually could be expected at the beginning.

Subsidy from the Dominion Government.—As compared with many of the European countries where the responsibility of broadcasting has been assumed by the Government, Canada has a comparatively small population, scattered over a vast tract of country. The large territory requires a greater number of stations while the relatively small population makes it obviously impossible to finance the entire scheme from license fees, if the same are to be kept at a moderate figure. Revenue from programs employing indirect advertising will, we believe, supplement the deficiency in license fees to a considerable extent. The most desirable means of meeting the additional expenditure required would seem to be by a subsidy from the Dominion Government. We would recommend that the proposed company be subsidized to the amount of $1,000,000 a year for a period of say five years renewable, subject to review, for a further period of five years after expiry of the first.

We believe that broadcasting should be considered of such importance in promoting the unity of the nation that a subsidy by the Dominion Government should be regarded as an essential aid to the general advantage of Canada rather than as an expedient to meet any deficit in the cost of maintenance or the service.

Programs

General.—The question of programs, we have no doubt, will be in capable hands if and when they come within the control of the representative bodies which we have suggested. The general composition of programs will need careful study.

Chain Broadcasting.—Chain broadcasting has been stressed as an important feature. We think that an interchange of programs among different parts of the country should be provided as often as may seem desirable, with coast to coast broadcasts of events or features of national interest, from time to time.

Programs from Other Countries. The possibility of taking programs from Great Britain has already been demonstrated. While the primary purpose of the service would be to give Canadian programs through Canadian Stations, we think that every avenue should be vigorously explored to give Canadian listeners the best programs available from sources at home and abroad.

Programs employing Indirect Advertising. Time should be made available on the various stations singly or for chain broadcasting for firms desiring to put on programs employing indirect advertising. We think that it is important that all such programs should be carefully checked to see that no direct advertising or any objectionable feature would be put on the air. We are strongly against any form of broadcasting employing direct advertising.

Education.—Certain specific hours should be made available for educational work both in connection with the schools and the general public as well as the so-called "adult education," under Provincial auspices.

Religion.—The representative bodies which we have suggested to advise upon the question of programs would be called upon to deal with the matter of religious services, and it would be for them to decide whatever course might be deemed expedient in this respect. We would emphasize, however, the importance of applying some regulation which would prohibit statements of a controversial nature and debar a speaker making an attack upon the leaders or doctrine of another religion.

Politics.—While we are of opinion that broadcasting of political matters should not be altogether banned, nevertheless, we consider that it should be very carefully restricted under arrangements mutually agreed upon by all political parties concerned.

Wavelengths.—We are aware that the question of wavelengths is not one with which we are called upon to deal. But in our survey of the situation in Canada, the inadequacy of wavelengths at present available for broadcasting in this country, namely six "exclusive" and eleven "shared" channels, has been persistently pointed out to us. This has been emphasized as one reason for the present unsatisfactory conditions of broadcasting in Canada. Many have expressed the feeling, with which we fully concur, that Canada's insistence upon a more equitable division of the broadcast band with the United States should not be relinquished.

Announcers.—It has been stressed to us and we strongly recommend the importance of having competent and cultured announcers (French and English) and the desirability of having special training and tests of capability for such persons.

Interference

Complaints of interference with radio reception, from electrical distribution lines, machinery and apparatus, have been brought to our attention in different parts of the country. It has been gratifying at public sessions to hear spontaneous tribute paid by disinterested persons to the efficient work of the Marine Department radio inspectors in removing much of the trouble caused in this way. Their work appears to be made more difficult, however, in that there is no law in effect compelling the users of interfering apparatus to correct faults which interfere with radio reception once such are pointed out by the inspector. The desirability of having legislation to meet such cases has been suggested to us. We recommend the earnest consideration of this suggestion.

Control

The Minister of Marine and fisheries under the Radiotelegraph Act is the licensing authority for all classes of Radio Stations, which includes Radio Broadcasting Stations and receiving sets. Direct control over such technical questions as wavelengths, power of stations and the collection of license fees should, we consider, remain with this authority. In order to promote good reception conditions, it is most desirable that the radio activities of other departments of the Government should conform to the regulations

and be subject to the authority of the Radiotelegraph Act. We are also of the opinion that the Radio Branch of the Marine Department should continue to carry on the service to broadcast listeners, which includes the suppression of inductive interference.

Summary of Recommendations

The following is a summary of our principal recommendations, viz:—

(a) That broadcasting should be placed on a basis of public service and that the stations providing a service of this kind should be owned and operated by one national company; that provincial authorities should have full control over the programs of the station or stations in their respective areas;

(b) That the company should be known as the Canadian Radio Broadcasting Company; that it should be vested with all the powers of private enterprise and that its status and duties should correspond to those of a public utility;

(c) that a Provincial Radio Broadcasting Director should be appointed for each province to have full control of the programs broadcast by the station or stations located within the boundaries of the province for which he is responsible;

(d) That a Provincial Advisory Council on radio broadcasting should be appointed for each province, to act in an advisory capacity through the provincial authority;

(e) That the Board of the company should be composed of twelve members, three more particularly representing the Dominion and one representing each of the provinces;

(f) That high-power stations should be erected across Canada to give good reception over the entire settled area of the country during daylight; that the nucleus of the system should possible be seven 50,000 watt stations; that supplementary stations of lower power should be erected in local areas, not effectively covered by the main stations, if found necessary and as experience indicates;

(g) That pending the inauguration and completion of the proposed system, a provisional service should be provided through certain of the existing stations which should be continued in operation by the Canadian Radio Broadcasting company; that the stations chosen for this provisional service should be those which will give the maximum

coverage without duplication; that all remaining stations not so needed should be closed down;

(h) that compensation should be allowed owners of existing stations for apparatus in use as may be decided by the Minister of Marine and Fisheries; that such apparatus should become the property of the Canadian Radio Broadcasting Company; that the more modern and efficient of these sets of apparatus should be held available for re-erection in local areas not effectively served by the high-power stations; that the cost of compensation should be met out of an appropriation made by Parliament;

(i) That expenditure necessary for the operation and maintenance of the proposed broadcasting service should be met out of revenue produced by license fees, rental of time on stations for programs employing indirect advertising, and a subsidy from the Dominion Government;

(j) That all facilities should be made to permit of chain broadcasting by all the stations or in groups; that while the primary purpose should be to produce programs of high standard from Canadian sources, programs of similar order should also be sought from other sources;

(k) that time should be made available for firms or others desiring to put on programs employing indirect advertising; that no direct advertising should be allowed; that specified time should be made available for educational work; that where religious broadcasting is allowed, there should be regulations prohibiting statements of a controversial nature or one religion making an attack upon the leaders or doctrine of another; that the broadcasting of political matters should be carefully restricted under arrangements mutually agreed upon by all political parties concerned; that competent and cultured announcers only should be employed.

(l) The consideration should be given to the question of introducing legislation which would compel users of electrical apparatus causing interference with broadcast reception to suppress or eliminate the same at their own expense;

(m) That the licensing of stations and such other matters prescribed in the Radiotelegraph Act and Regulations issued thereunder for the control of radio stations in general should remain within the jurisdiction of the Minister of Marine and Fisheries; that that authority should continue to be responsible for the collection of license fees and the suppression of inductive interference causing difficulties with radio reception.

This report would be incomplete without an expression of appreciation of the many courtesies extended to the commission in Canada and abroad. In Great Britain all the authorities concerned, and especially the executive officers of the British Broadcasting Corporation, were unremitting in responding to the requests of the commission for information and enlightenment. The national radio authorities in France, Germany, Belgium, Holland, the Irish Free State and the National Broadcasting Company of the United States similarly received the commission most cordially and helpfully. At Geneva, the commission met the officers of the Union Internationale de Radiophonie.

It has been greatly to the advantage of the commission that the Department of Marine has extended all available facilities for the gathering of information regarding the present radio situation in Canada.

The department most considerately acceded to the request of the commission to be allowed to have the service of the Chief Inspector of Radio, Mr. Donald Manson, as Secretary; his intimate knowledge of radio activities in Canada and abroad, combined with unremitting industry and foresight, has contributed much toward the satisfactory organization of the commission's tour.

JOHN AIRD *(Chairman).*

CHARLES A. BOWMAN.

AUGUSTIN FRIGON.

DONALD MANSON (Secretary).
September 11, 1929.

Document 11

There was no immediate action by the federal government on the report of the Aird commission (Document 10), and commercial radio continued to develop. There was no question that US sources provided a great deal of what Canadians were listening to. This is a typical daily schedule from Canada's premier radio station at the time, CFCF in Montreal.

DOCUMENT 11: CFCF program schedule, 16 February 1931, Canadian Marconi Company archives, Montreal.

CFCF MONTREAL, (291.3 metres, 1030 kilocycles.)

MONDAY, FEBRUARY 16, 1931.

	7.27 a.m.	Time announcement.
	7.30 a.m.	Northeastern Breakfast Entertainers.
	8.00 a.m.	The Quaker early Birds - Gene and Glenn. (NBC)
	8.15 a.m.	Northeastern Breakfast Entertainers.
*	9.00 a.m.	Parnassus Trio. (NBC)
	9.15 a.m.	Studio.
*	9.45 a.m.	Miracles of Magnolia. (NBC)
	10.00 a.m.	Sunshine Hour.
*	11.00 a.m.	Gloom Chasers. (NBC)
*	11.15 a.m.	Studio.
	11.30 a.m.	Organ Melodies. (NBC)
	12.00 noon	Shavers Musical Bits.
	12.15 p.m.	On Wings of Song. (NBC)
	1.00 p.m.	Stock Quotations.
	1.15 p.m.	Palais d'Or Orchestra. (NBC)
	1.30 p.m.	Hotel New Yorker Concert Ensemble. (NBC)
	2.00 p.m.	Wilder Radio Hour.
	3.00 p.m.	Ross Hall Feature.
	4.00 p.m.	Canadian Electrical Supplies.
	5.00 p.m.	Hartney's Eventide Music.
	5.55 p.m.	Weather Forecast - Program Resume - Time.
	6.00 p.m.	Twilight Hour.
	6.45 p.m.	Stock Quotations
	7.00 p.m.	Amos 'n Andy. (NBC)
	7.15 p.m.	Pepper & Salt - xylophone & piano popular music.
	7.30 p.m.	Phil Cook - The Quaker Man. (NBC)
	7.45 p.m.	Montreal Light Aeroplane Club - aviation chats.
	8.00 p.m.	Connor Washer Orchestra.

8.30 p.m.	Mount Royal Hotel Concert Orchestra.
9.00 p.m.	Melody Mike's Music Shop. (CPR Network)
10.00 p.m.	Stromberg Carlson. (NBC)
10.30 p.m.	Willard Robinson and His Deep River Orchestra. (NBC)
11.00 p.m.	Hotel Paramount Orchestra. (NBC)
11.30 p.m.	Time Announcement - Sign Off.

* Indicates Change in Program or New Feature

Documents 12 and 13

The report of the Aird Royal Commission ignited a debate about Canadian broadcasting that has continued ever since. The polarity became more acute between those supporting cultural sovereignty in radio and those who wanted commercial, US-style programs. Private broadcasters were threatened by the commission's recommendation that they be expropriated if necessary in the interests of a national radio system. They also wanted a cheap and easy source of popular programs that would draw commercial sponsors. There were vast disparities between the private broadcasters. Some were major corporations such as big-city newspapers, distilleries, even the Canadian Pacific Railway; others were sincere but shoestring operations in domestic living rooms or converted backyard sheds. By the time the Aird commission reported, both kinds of private broadcaster had won a large audience in Canada.

On the public side, there was the question of what was meant by "public" or "Canadian" broadcasting. One of the noteworthy lines in the Aird report is remarkably ambiguous: "Canadian radio listeners want Canadian broadcasting." For some, this simply meant more broadcasting in Canada, particularly in the west and the Maritimes where some people could receive no signals at all. For others, Canadian broadcasting meant Canadian programs, not those available across the border. These people wanted, in the language of the time, programs with "uplift." The Aird commission had tended to hear from the organized intellectual, social, or financial elite. By its very nature, a royal commission attracts the opinions of committed public spirits among citizens, corporations and clubs. Many not heard from by the commission were at home, happily listening to music and comedy shows on the US stations whose signals reached them, or on Canadian stations linked by land lines or recording to the US source.

Complicating everything was the Great Depression, severely limiting anyone—government or business—from extensive spending on broadcasting. Furthermore there was the costly, challenging, and purely Canadian question of how to serve both French- and English-speakers in an age not marked by linguistic or cultural toleration.

The debate soon became institutionalized. The Canadian Association of Broadcasters (CAB) had been formed in 1926 to advance the interests of the privately owned, commercial stations. In 1930, two Ottawa men, Graham Spry and Alan Plaunt, formed the Canadian Radio League (CRL) to lobby for a public network to serve broad, national, cultural purposes. The CAB attracted the support of many newspapers, politicians, and corporations enthusiastic about the usefulness of commercials. The League drew upon the social connections of Spry, national secretary of the As-

sociation of Canadian Clubs, and Plaunt. It soon mustered a national council of people prominent in law, education, and political life.

Each group promoted its views in pamphlets, newspaper and magazine articles, and radio broadcasts over the next few years. What follows are two out of this vast number. The first was written by the public relations manager of the CPR, John Murray Gibbon. It appeared in *Canadian Forum*. Gibbon, like his employer, strongly supported the views of the CAB. Spry's article appeared in the subsequent issue of the same magazine and (of course) supports the views of the League.

DOCUMENTS: **J. M. Gibbon, "Radio as a Fine Art," *Canadian Forum*, March 1931, 212–214.**

Graham Spry, "The Canadian broadcasting issue," *Canadian Forum*, April 1931, 246–249.

RADIO AS A FINE ART

BY JOHN MURRAY GIBBON

The so-called Aird Report on Radio Broadcasting was supposed to be dead and buried, but apparently it has left a posthumous child in the Canadian Radio League—quite a lusty infant too, judging from the noise it is making in the newspapers. The ideal of the Canadian Radio League inherited from the Aird Report is the "B.B.C." or British Broadcasting Corporation, established by the British Government as a means of keeping in its own hands during times of peace a machine for propaganda which would be invaluable in times of war. As no propaganda is necessary at present, it uses this machine for the enlightenment and entertainment of such of the people as care to listen in. One of the delusions of the Canadian Radio League is that this British Government monopoly has a monopoly of attention in Great Britain. A few months ago, I purchased an English portable radio set, and found in this a printed list of wave lengths of stations in Holland (two stations), Paris, Toulouse, Berlin, Langenberg, Stockholm, Budapest, Milan, Rome, and Oslo. I asked an English friend the reason for this, and was told that one got so much better programmes from the Continent that one hardly ever listened to the B.B.C. unless they had a good programme relayed from outside. He probably was exaggerating, but the point of view is interesting, as it indicates that the increase in sale of radio sets in Great Britain is due not entirely to the popularity of the B.B.C. but also to the knowledge that an up-to-date set provides reception for Continental programmes.

The contention of the Canadian Radio League that the B.B.C. does not countenance advertising is not borne out by the B.B.C. published programmes. In the five days from January 19th to 23rd, for instance, musical programmes are quoted by the official organ *The Radio Times*, as being provided by the orchestras of Lozell's Picture House, Piccadilly Hotel, the Prince of Wales' Playhouse, Ciro's Club, Frascati's Restaurant, Gleneagles Hotel, Shepherd's Bush Pavilion, Tony's Ballroom (Birmingham), Mayfair Café (Cardiff), Mayfair Hotel (London), Café de Paris and the Café Restaurant (Birmingham), the Commodore Theatre (Hammersmith), the Esplanade Hotel (Porthcawl), while other recitals are credited as being from the organ of the Beaufort Cinema (Birmingham) and the Regal, Marble Arch. All the places named are frankly commercial enterprises and are on the air for what they can get out of it. The Superior Persons who profess to scorn advertising evidently forget their scruples in their weakness for dance music, food, and moving pictures.

Moreover, while they profess a horror of polluting the ear with advertising, they do not hesitate to pollute the eye with advertising in their official organ *The Radio Times*. It is from the profits of this advertising sheet, printed on cheap paper with indifferent typography, that the B.B.C. secures a fair portion of its revenues. One is reminded of the old simile of robbing Peter to pay Paul.

The devastating effect of the B.B.C. on the musical profession in Great Britain is ascribed by its victims to the scale of fees paid to artists. One prominent English singer said to me, "You can get an engagement with the B.B.C. if you are a cousin of the janitor and will take a janitor's pay." He also may be exaggerating, but at any rate he has no difficulty in getting in the U.S.A. and Canada eight times the fee which the B.B.C. offers. The tragedy of the situation for the British musician is that the concert business is shot to pieces by the creation of twelve million radio listeners, and the performers have no escape from the B.B.C. except by emigration. The offices of the two network broadcasting systems in New York can tell of British singers clamouring for auditions. I have met quite a number here in Canada also.

The advisability or otherwise of Government monopoly or competitive privately-owned operation of radio in Canada hinges on the question of talent. The average cost of a radio set is $150.00, and the average person will invest that sum only if he expects to get equivalent value in entertainment. Under existing conditions in Canada, he can get a certain amount of network and local entertainment produced with Canadian talent plus a larger amount of entertainment from the United States, which includes an increasing number of trans-Atlantic broadcasts from Great Britain and Europe. My estimate of the present annual cost of entertainment produced in Canada and broadcast through Canadian stations (including talent, station time, and transmission charges) is approximately $2,000,000, while the cost of

American entertainment readily accessible to Canadian listeners might be estimated as $20,000,000, or one-third of the total cost of entertainment in the United States. That this is a conservative estimate may be realized when one reads that the gross revenues (covering station time and transmission charges only) received by the National Broadcasting Company in 1930 totalled $22,000,000 while the cost of talent provided by the various sponsors on N.B.C. network amounted to at least $8,000,000. If the advocates of Government monopoly of radio broadcasting in Canada hope to monopolize the attention of Canadian radio listeners, they will have to secure a much larger subsidy for talent than is allowed for in the recommendations of the Aird Commission. The seven high-power stations which were proposed by this Commission would become worse than a nuisance if they were to drown out with inferior talent some of the excellent programmes originating in the United States which we at present enjoy. A generous estimate of the cost of talent in North America that would be required for programmes equivalent to those of the B.B.C. would be $2,000,000. It is because the half million Canadian radio fans have access to over $20,000,000 worth of entertainment that the Canadian radio business has been fairly prosperous in a period of general financial depression.

Under private ownership radio entertainment is governed by the rules of demand and supply. The objective of the programme sponsor is to gain the goodwill of the unseen audience. Different types of programme are created by the realization of sponsors that it is impossible to please every one with one type of programme and that therefore it is advisable to please a specific type of audience with a specific type of programme. Competition on this continent has resulted in providing a great variety of programmes, far greater than is available through the B.B.C. or Continental European systems, and from the nature of things better adapted to North American mentality. In North America most of the newspapers and magazines are purchased for the advertisements as much as for the editorial contents, indeed the majority of readers (namely the women) read little else in a newspaper than the department store advertisements and the personal advertising printed as editorial matter in the social columns. The majority of the men on this continent are absorbed in business and find much to interest them in the advertising pages. One cannot seriously believe that many of the current popular magazines are bought for their editorial contents. When, therefore, anyone on this side of the Atlantic sets out to eliminate advertising from the air, he would deprive more than half the population of what they want, so as to provide intellectual solace for few.

The radio situation is parallel to that of newspaper and magazine publication. There are certain people who would like to eliminate the advertising columns, or as a concession would permit a bare announcement of the names of firms on the cover pages or at the end of the publication. There are publishers, on the other hand, who realise that the advertiser likes to see his message next to or facing reading matter, and arranges his layout ac-

cordingly. The publishers of, let us say, *Toronto Saturday Night*, might be able to carry on financially if they accepted a Government subsidy instead of advertising, but whether this would please the subscribers is another matter.

The danger of Government monopoly is the temptation it provides for political patronage. Take for instance the question of symphony orchestras. The B.B.C. can manage to do with one such orchestra because London is so pre-eminent as the Capital City that the provincial cities recognise it as the musical centre of England. But if we had Government monopoly in Canada, imagine the wires that would be pulled to support symphony orchestras in the larger political centres! For a symphony means the employment of sixty to eighty musicians (with votes). And so on in smaller quantities all along the line. The number of politicians who have musical relatives is surprising. Many of the legitimate artists would be pushed out by these relatives, willing to accept any kind of a fee, and we would very soon see an increase in the migration of the better Canadian musical talent to the United States.

I am ready to admit that some of the direct advertising permitted, particularly on the smaller local stations, is offensive, but with the modern selective radio set one can always turn the dial and get another station, just as in a newspaper or magazine one can turn the page. The sponsor of a radio programme which does not please the listener cuts his own throat, and the radio advertiser soon finds out the mistake of being too blatant. In the United States the programmes on the two networks of the N.B.C. and the Columbia are steadily improving in this respect, with the result that the sponsors who use the networks are getting attention from the radio listeners which they are quick to appreciate.

It is also true that Western Canada and the Maritimes enjoy a smaller percentage of good Canadian programmes than Ontario and Quebec, due to the cost of transmission of network programmes over territories less closely populated. Both Toronto and Montreal have stations linked up with N.B.C. and Columbia networks carrying good programmes, and the sustaining programmes provided by the stations themselves or by local hotel orchestras are of the quality one can expect in such cosmopolitan cities. One can understand why the West and the Maritimes should put up a demand for better radio programmes. In the West the situation is accentuated by a superfluity of small stations which split up the available wave lengths. The steady growth in the number of transcontinental broadcasts, due to the increased adoption of radio by national advertisers, is improving this situation so far as programmes are concerned, but a realignment of wave lengths and stations is badly needed.

The most practical proposal so far suggested is that of R. W. Ashcroft, of the Trans-Canada Broadcasting Company, who recommends the realignment of wave lengths so as to provide facilities for two Canadian broadcasting networks from Coast to Coast, thus giving the listener at any

point between Halifax and Victoria the option of listening in to either of two Canadian programmes, the one network to be purely privately owned and operated, the other to have Government support. The privately owned network would probably carry, for the most part, sponsored programmes with a reasonable proportion of commercial propaganda. The Government network would carry the educational and "uplift" programmes for which the Canadian Radio League is crying. My own conviction is that this other network would certainly need a subsidy, as it would receive only about ten per cent. of the listeners reached by the sponsored programmes. But it would satisfy those who like to be uplifted, and who are determined to secure this spiritual entertainment at the expense of the taxpayers.

If this spiritual entertainment is to be educational in character, the question arises whether the Federal Government can contribute the cost, since under the British North America Act education comes under the jurisdiction of the Provinces. The Provincial Governments, however, in some cases at least, appear to be interested in radio broadcasting, and with a little perservance something may be accomplished.

P.S. Since writing this article, I have received a copy of *The Radio Times* for January 30th, in which Miss Ursula Greville, the brilliant Editor of *The Sackbut*, voices the disquietude felt by the professional English musician in the face of Government monopoly. Among other things she says:

> There are far too many three guinea artists employed by the B.B.C., and each of these gets far too few engagements. They can only make their living by other work of some sort, and the easiest thing is to set about training other potential three guinea artists....We shall all gradually drop to the three-guineas-once-a-month-standard.

In a leading article which comments on Miss Greville's criticisms we read the following admission of the hopelessness of the situation in this Government-monopolistic paradise:

> Until a new set of circumstances arises, the majority of artists can only hope to find in broadcasting an added source of income; for only a very few can it provide a living wage.

(Another view of the Radio situation will be presented in the April number of *The Canadian Forum*.—Ed.)

THE CANADIAN BROADCASTING ISSUE

By GRAHAM SPRY

"It is from the profits of this advertising sheet (*The Radio Times,—a B.B.C. listener's weekly*) printed on cheap paper with indifferent typography, that the B.B.C. secures most of its revenues," wrote Mr. Gibbon in his article, "Radio as a Fine Art," published in the March issue of THE CANADIAN FORUM.

Here is a typical generalization, and in order to estimate the article's value, it is worth examination. The profits of the *Radio Times*, according to the last financial statement of the B.B.C., issued in June, 1930, amounted to $180,000. The total income of the B.B.C. for the same year was $5,486,685. The total profit was $704,715. Thus, the profit from the *Times* was about one twenty-sixth of the total expenditure of the B.B.C., and if it had not yielded five cent's profit, indeed if it had lost a few hundred thousand dollars, the B.B.C. would have operated without being influenced one iota. What Mr. Gibbon's enthusiastic inaccuracy has led him to say is that the B.B.C. operated twenty stations, employed several hundred people, subsidized orchestras, operas, and educational broadcasts, was on the air some 70,000 hours, completed two new stations, paid $60,000 in income tax, all for $180,000. This is a magnificent tribute to the economy and efficiency of a publicly-owned company, but Mr. Gibbon's other remarks—"a machine for propaganda...invaluable in times of war", "the devastating effects of the B.B.C. on the musical profession", and "You can get an engagement with the B.B.C. if you are a cousin of the janitor and will take a janitor's pay", lead to the belief that Mr. Gibbon meant no tribute.

It is not the intention of this present article to concern itself too much with Mr. Gibbon's absurdities. They need no examination; they condemn themselves by their tone and their palpable inaccuracy. The purpose of this article is to state the broadcasting issue as it concerns the Canadian people, to outline the proposal of the Canadian Radio League for a national system, and to analyze the only other proposal before the public—a dual railway system—one privately owned under the Canadian Pacific, and the other a public system under the Canadian National. The analysis of this proposal, first advanced by R. W. Ashcroft of CKGW— the key station of the C.P.R. network—and blessed by Mr. Gibbon, becomes particularly interesting because of Mr. Gibbon's conviction that the private system should carry advertising and would make money, while the public system, "would receive only about ten per cent. of the listeners" and "would certainly need a subsidy...at the expense of the taxpayer", an ingenuous comment, the meaning of which is that the C.P.R. system, shutting out all other private systems,

would make the profits, while the taxpayer held the bag for the public system.

* * *

What is the issue? It is this: shall the radio be subordinated to narrowly advertising purposes, or shall the Canadian people through their responsible instruments of government ensure that the fullest potentialities of this agency of communication be developed to serve the broadest Canadian purposes?

Two paramount considerations colour this issue. The first is the enormous national importance of radio to a sparsely settled, thinly scattered nation of such diverse racial and economic interests as Canada. Here is an agency which may be the final means of giving Canada a national public opinion, of providing a basis for public thought on a national basis, such as provincial school systems, local newspapers, theatres, motion pictures, and even our parliamentary system, reflecting as it must the conflict of sectional needs and feelings, have yet to give us. There is no agency of human communication which could so effectively unite Canadian to Canadian and realize the aspirations of Confederation, as radio broadcasting. It is the greatest Canadianizing instrument to our hands, and its cultural influence, so sarcastically dismissed by the erstwhile patron of Canadian folk-music, Mr. Gibbon, is equally important. The entertainment we now have would continue and would be the largest part of the programmes, but there would be more. With a national system economically and intelligently operated, a national symphony orchestra would become soon practicable. Already, through the work of the C.N.R. radio branch, a troupe of radio actors has been brought into being, and a national system would make possible the beginnings of a national theatre. Canadian musical and dramatic writing would be encouraged, as already in a promising way it has been encouraged by the radio. The time will come, even before television, when artists and orchestras of broadcasting will be used for sound motion pictures and when, under provincial control, educational broadcasts for children and for adults will be as much a regular part of Canadian life as the school bell and the luncheon club. Radio broadcasting is but ten years of age; its tremendous powers and possibilities begin only now to open up. It is a great entertaining, educational, artistic, and political power; too great, too valuable, too dangerous to be left in irresponsible hands and devoted to narrow purposes.

The second paramount consideration is the proximity of the United States and the fact that today only three out of five Canadian families can hear Canadian programmes, while every Canadian listener can hear American programmes; that today Canada has no station over 5,000 watts power, and only a total power of 33,000 watts, while the United States have at least ten stations with more power than all Canadian stations combined. And still more significant is this: one group of associates representing the dominant

financial group in North America control, through a variety of intricate financial devices, not only the Radio Corporation of America and the National Broadcasting Company, but the General Electric, the Westinghouse Electric, the General Motors Radio, The Radio Victor, the Radio-Keith-Orpheum Theatre Circuit, the Keith-Albe Circuit, the R.C.A. talking pictures, phonograph records, sheet music, news services, transoceanic communications, and an infinite number of other powerful interests capable of influencing public opinion and taste. The National Broadcasting Company will shortly occupy a citadel in New York City in which broadcasting, theatrical, phonograph, "talkies", sheet music, and news production will be organized. That citadel will cost $250,000,000. The revenue of the N.B.C. in 1930 was more than $20,000,000, and Mr. Gibbon estimates that $60,000,000 was spent on programmes by all stations in 1930. Such a situation, it seems, would be a sufficient and irrefutable demonstration of the necessity of establishing the most efficient Canadian system at the earliest possible moment, a system giving complete Canadian coverage at the least expense, and permitting the most possible revenue to be applied to Canadian programme purposes-not, of course, with any idea of shutting out American programmes, but of offering Canadians alternatives to American programmes, and drawing the attention of Canadians to our own talent, sports, musicians, and problems. The control of public opinion, it should not be necessary to remark, must remain in Canadian hands. The alternatives are, indeed, the State or the United States?

* * *

Which system most definitely ensures complete Canadian coverage, the greatest economy of operation, and the expenditure of the least part of the revenues on overhead, and the most on programmes? There are only two alternatives being publicly urged upon the Canadian people today. The one is the proposal made in the Report of the Royal Commission on Radio Broadcasting under the chairmanship of Sir John Aird, president of the Canadian Bank of Commerce and supported in principle by the Canadian Radio League. The second proposal, put forward by R. W. Ashcroft of CKGW, Toronto, and endorsed by Mr. Gibbon, provides for two national systems, one under each railway, with some undefined measure of government control. A third proposal has been the subject of rumour, but has not been made public. This proposal provides for the organization of a single Canadian Company in which the two railways, and perhaps the Bell Telephone Company and other telephone companies, would be associated under some form of government control. No other alternative has been proposed. No one except that staunch pro-British and public ownership paper, the *Toronto Telegram* and its gentle hand-maiden, the Globe, and their by no means Orange sister, *La Presse*, has arisen to defend the present system. Nor has anyone been so stupid as to advocate free, unrestricted competition. The fact remains, there are only two public proposals: that of Mr. Gibbon and Mr. Ashcroft, and that of the Canadian Radio League.

* * *

In examining the two principal alternatives placed before the public, it is important to observe that while the objectives and the attitudes are very different, the premises are similar. Both proposals recognize that the present situation is unsatisfactory, that there are too many small stations, too much advertising, and that there is need for government control, and for economy. The real difference lies in the question, is one national system under an independent company as satisfactory and as economical a solution as two systems, one private and one public?

The proposal of the Canadian Radio League is based upon the principle of the recommendations of the Aird Report, but the League has alterations in detail to propose with respect to the financing, to the number of 50,000 watt stations, and the question of local broadcasts. The League proposes that there should be a fundamental alteration in the basis of radio management, and that the principle of broadcasting administration should not be broadcasting for the purpose of advertising, but broadcasting as a public service, a utility subordinate to the popular will, and not operating primarily for the purpose of profits from advertising. To this end the League proposes that the government, or governments, if broadcasting is found to be jointly a federal and provincial subject, should establish a Canadian Radio Broadcasting Company by Act of Parliament or Royal Charter. The directors of the Canadian Radio Broadcasting Company would be twelve in number and would represent the Dominion and the provinces, and include both educational and business leaders. The directors would serve without remuneration, so that the posts would not be added to the party patronage rolls. This directorate would, as well, represent various political opinions, for it is unlikely that ten Canadian governments would be of the same party colour. The directorate of the company would formulate policy and supervise the professional and technical staff, under a general manager responsible to the directorate. The actual administration of the company would therefore be representative of varied Canadian interests and combine the benefits of independence from party or economic interests and some degree of public responsibility.

The company would own, operate and control all broadcasting in Canada. It would make a radio survey of the Dominion and ascertain anew the exact number and location of stations required to give complete Canadian coverage. The Aird Commission recommended seven 50,000 watt stations and four subsidiaries. It is admitted that this represents a large system, there are only ten or so 50,000 watt stations in the United States. Three or four 50,000 watt stations would temporarily suffice in Canada. The first principle, however, is satisfactory and complete coverage of the settled area of Canada. The initial capital expenditure to establish the Aird system of seven stations was $3,000,000 to purchase and erect equipment, and $225,000 to re-erect and adapt equipment appropriated. The cost of appropriation was,

of course, not stated, but Mr. Ashcroft, who says he should know costs, uses the figure of $1,000,000. The sum of $4,225,000 would, therefore, give Canada seven new 50,000 watt stations, buy out 70 stations, three of them of 5,000 watts, and pay for re-erecting at least four of them. Most of the stations as equipment, however, are valueless and well deserve the term "hay-wire". Obviously, however, if only three 50,000 watt stations are erected, there will be a saving of approximately $1,600,000 and the figure of the Aird Commission represents a greater amount than is now required. The annual charges of the seven 50,000 watt system were estimated at $2,500,000 by the Aird Commission. These charges would be met, today, from two sources of revenue, 500,000 licenses at $3.00 and indirect advertising revenue of at least $700,000, producing a minimum revenue of $2,200,000—some ten times the annual expenditure of the Canadian National Railways Network.

The programmes over the stations of the Canadian Radio Broadcasting Company would originate from several sources, and compete with one another: national programmes financed by the national company, provincial programmes, and business houses sponsoring programmes, just as they sponsor programmes today. And there would be relays of American, British, and European programmes. The result would be not exclusion, but addition. And as the Aird Report specifically remarked, stations would be located "at suitable distances from centres of population to obviate blanketing of reception from outside points". All that we hear direct from American stations would be still available. Such a national system would ensure Canadian control, complete Canadian coverage, and the most economical costs of operation and construction. It would enlarge, not decrease the element of competition.

* * *

The overhead of one national system would obviously be less than two systems. The revenue either from licenses or indirect advertising is limited, if increasing. Therefore, if the revenue is limited and two systems double the total Canadian radio overhead, the same amount of revenue will carry a double overhead, thereby greatly decreasing the amount of revenue remaining for programme purposes. A single national system is obviously cheaper and will leave greater revenue for programmes than a double national system.

The total revenue of $2,200,000 would have to carry, with a double system, the interest charges on $6,000,000, instead of $3,000,000, and the overhead, salaries, and annual costs of two systems instead of one, with the obvious result that there would be less revenue for programmes, a greater tendency to relay American programmes, to reduce the salaries of artists, and to cheapen programmes. Mr. Gibbon's proposal is really as business-like as proposing two telephone systems for one city. Mr. Gibbon's own

comment on the railway proposal, which he regards "as the most practical... so far suggested" is at once illuminating and ingenuous. "The privately-owned network would probably carry, for the most part, sponsored programmes with a reasonable amount of commercial propaganda", for, in Mr. Gibbon's opinion, to eliminate advertising from the air "would deprive more than half the population of what they want, to provide intellectual solace for the few....The government network would carry the educational and "uplift" programmes for which the Canadian Radio League is crying. My own conviction (Mr. Gibbon's own innocent words) is that this other network would certainly need a subsidy, as it would receive only about ten per cent. of the listeners reached by the sponsored programmes...at the expense of the taxpayers". When I first read Mr. Gibbon's article these statements seemed unbelievable. Think of what they mean. There is to be a private and public system. The public system will have to carry on the educational work. It will lose money. It will require aid from the taxpayer. It will secure either none or very little of the indirect advertising revenue. And while it is doing this, a private system, under the Canadian Pacific, with all other private stations shut down or absorbed, will be left to skim such cream as there is from the Canadian radio advertising business. Under C.P.R. control the present advertising basis will be perpetuated, with this difference, that the profits will go to the C.P.R., while the public carries the bag for a public system. Can Mr. Gibbon be serious in endorsing a proposal which will double the Canadian broadcasting overhead; which will give the C.P.R. a private monopoly; which will create deficits for the public system, and which will leave the public holding the bag?

Mr. Gibbon's proposal is hardly to be taken seriously. It is nothing less than a bare-faced plan to give the C.P.R. an advantage over the C.N.R., to reduce the competitive power of the latter, and to deprive the public system of revenues from indirect advertising. It means that Mr. Gibbon is as much opposed to the existing system as the Radio League, but that he opposes it for the purpose of strengthening the broadcasting position of the Canadian Pacific system, to the loss of the taxpayer. Does Mr. Gibbon imagine that the public will agree to any such manifestly self-interested suggestion? Does he hope that the Canadian National Railway would meekly accept such a policy? It is difficult to believe that Mr. Gibbon is serious. Perhaps after all, he is just pulling our leg.

Frankly, I cannot but regard Mr. Gibbon's proposal as absurd. For two railway systems, competing fairly and on equal terms under efficient government control, there are arguments, though to double our broadcasting costs unnecessarily is not the soundest policy at this time. For a single national system, under a composite directorate of both railways, there are still stronger arguments. But for two systems on the basis Mr. Gibbon endorses, there is almost nothing to be said,and it is quite clear that if there is anything to be said Mr. Gibbon has magnificently avoided saying it. In

deed, Mr. Gibbon's article is so exaggerated, limited, and ingenuous, that I cannot help regarding it as the best blow that has been so far struck for a single national system, under a governmental company. It surpasses the recent article in a contemporary by Mr. Ashcroft, in which he sadly stated that the initial capital expenditure and operation costs in the first year of the Aird system would amount to $25,000,000—a sum five times the capital expenditure and operation charges of the B.B.C. in 1929 and $10,000,000 in excess of the gross revenue of the National Broadcasting Company with 73 network stations in 1929.

So weak are the arguments of both Mr. Gibbon and Mr. Ashcroft, that there will shortly appear a pamphlet reprinting Mr. Gibbon's article and excerpts from Mr. Ashcroft's. It will be issued "with the compliments of the Canadian Radio League".

Document 14

The Aird commission reported in September 1929. Two events soon occurred which radically changed the whole context of the debate over the future of broadcasting in Canada. In New York, the stock market crashed and gave birth to the economic calamity known as the Great Depression; in the bleak years of the 1930s, the federal government could have found little money were it to attempt to build a national, publicly-owned radio network. Along with the economic, the political landscape changed during the summer of 1930. The Conservatives, led by R.B. Bennett, came to power in a federal general election. A further complication emerged when the government of Quebec moved to challenge the jurisdiction of the federal government over radio. Quebec contended that radio was a provincial responsibility according to the British North America Act of 1867. Although broadcasting was, of course, undreamed of by those who wrote that document, Quebec argued that subsections 13 and 16 of section 92 of the Act—those dealing with "property and civil rights" and "matters of a merely local or private nature in the province"—assigned broadcasting to the provinces. The federal (it was then the Dominion) government referred the question to the Supreme Court for a ruling before taking any action on the Aird report. On 30 June 1931 the Court decided 3–2 for the federal point of view. The first round of a long federal-provincial quarrel over broadcasting went to Ottawa.

DOCUMENT 14: Supreme Court of Canada, "In the matter of a reference as to the jurisdiction of Parliament to regulate and control radio communication," 30 June 1931, Supreme Court Reports 541 (1931).

IN THE MATTER OF A REFERENCE AS TO THE JURISDICTION OF PARLIAMENT TO REGULATE AND CONTROL RADIO COMMUNICATION.

Constitutional law—Radio communication—Dominion and provincial jurisdiction—B.N.A. Act, 1867, ss.91,92,132.

In the existing state of radio science and in the light of the knowledge and use of the art as actually understood and worked, radio communication is subject to the legislative jurisdiction of the Dominion Parliament. Rinfret and Lamont JJ. dissenting.

Per Rinfret and Lamont JJ. dissenting.—The dominion Parliament has not jurisdiction to legislate on the subject of radio communication *in every respect*. This subject falls within the primary legislative jurisdiction of the provinces either under no. 13 (property and civil rights) or under no. 10 (local works and undertakings - of section 92 of the B.N.A. Act, except in cases where the Dominion Parliament has superseding jurisdiction under some of the heads of section 91 and under section 132 (relating to treaties) of the B.N.A. Act.

REFERENCE by the Governor general in Council to the Supreme Court of Canada for hearing and consideration, pursuant to the authority of s. 55 of the *Supreme Court Act*, R.S.C., 1927, c. 35.

The facts and questions as stated in the Order in Council, are as follows:

The Committee of the Privy council have had before them a report, dated 17th February, 1931, from the Minister of Justice, submitting that His Majesty's Government of the province of Quebec has questioned the jurisdiction of the Parliament of Canada to regulate and control radio communication and has submitted questions to the Court of King's Bench (in appeal) of the province, whether the Radiotelegraph Act (R.S.C., 1927, chapter 195) in whole or in part, is within the jurisdiction of the Dominion to enact and whether a certain legislative scheme projected by the said Government of the Province for the regulation and control of certain radio communication, is within the jurisdiction of the Legislature of the Province to enact.

The Minister apprehends that the Radiotelegraph Act and Regulations made thereunder were enacted by reason of the expediency of making provision for the regulation of a service essentially important in itself as touching closely the national life and interest.

The Minister reports that on the 25th day of November, 1927, an international radiotelegraph convention was signed by the representatives of about eighty countries including the Dominion of Canada. The said convention was ratified by the Government of Canada and the instrument of ratification deposited pursuant to the convention at Washington on the 29th day of October, 1928. The convention went into effect on January 1, 1929. Legislation exists and is necessary to make provision for performing the obligation of Canada under the said convention.

The Minister further reports that a treaty which came into force on the 1st March, 1929, was effected by the exchange of notes between the United States, Canada, Cuba and Newfoundland relative to the division between the countries of channels of communication in that part of the spectrum represented by the range of frequencies from 1,500 kilocycles to 6,000 kilocycles.

The Minister further reports that negotiations have taken place between Canada and the United States with the object of dividing between the two countries the total number of channels (96) which exist in that part of the spectrum represented by frequencies of 550 kilocycles to 1,500 kilocycles, appropriated by the International Convention hereinbefore mentioned, to the service of broadcasting. No agreement has as yet been made, but at present Canada is making use of 17 channels of which 6 are being used exclusively by Canada and of which 11 are being used by both countries.

The Minister further reports that an informal arrangement was made in 1930 between Canada and the United States with reference to the use of radiotelegraphy by aircraft passing between the two countries.

The Minister further reports that on the 31st May, 1929, a treaty was entered into between the principal maritime nations of the world relating to the safety of life at sea. Provision was made for the compulsory fitting of wireless apparatus on board certain classes of vessels.

The Minister further reports that at the Imperial Conference 1930, a committee was set up to consider questions relating to imperial communications other than transport, which committee considered a scheme for the establishment of an empire broadcasting service and considered questions relating to the establishment of telephone and telegraph services for the broadcasting of weather maps.

In December, 1928, the Government appointed a royal commission on radio broadcasting to examine into the broadcasting situation in the Dominion of Canada and to make representations to the Government as to the future administration, management, control and financing thereof. On the 11th September, 1929, the said royal commission reported.

The Minister further reports that radio provides for various forms of communication which may be classified as follows—

(a) Radiotelegraph, which provides for the transmission of intelligence on the Morse telegraphic code;

(b) Radiotelephone, which provides for the transmission of spoken word, music and sounds of all kinds;

(c) Facsimile, which provides for the transmission of photographs, pictures, printed matter, handwriting, etc., in such a manner that they are reproduced in like form at point of reception;

(d) Television, which provides for the transmission of pictures of moving objects.

The Minister further reports that radio is used in Canada for the following purposes:—

(a) Coast stations are established to provide radio facilities whereby any ship within 500 miles of the Canadian coast can establish instant contact with the shore. Constant watch, 24 hours a day and 365 days a year, is maintained at practically all of the stations. The coast stations consist of three chains, one extending from Vancouver to Prince Rupert on the Pacific coast, another from Port Arthur at the head of the Great Lakes to Newfoundland and Labrador, and the third from Port Churchill to the eastern entrance to Hudson Straits. The 60 stations forming this system are owned by the Department of Marine. Of these, 41 are operated by the department itself while the remaining 19 are operated by the Canadian Marconi Company under contract.

In addition a long distance station owned and operated by the Canadian Marconi Company is maintained at Louisburg, N.S., for communication with ships at long range. This station can maintain communication with ships at a distance of 2,000 miles.

(b) Direction finding stations to the number of 17 are owned and operated by the Department of Marine on the Atlantic coast. There are 4 on Hudson Bay and Strait and one on the West coast. These stations give bearings upon request to any ship.

(c) Radio beacons to the number of 17 are owned and operated by the Department of Marine. There are 9 on the East coast, 5 on the Great Lakes and 3 on the West coast. Any ship fitted with direction finding apparatus can take her own bearings from stations of this class which transmit signals automatically once every hour day or night and continuously during foggy weather.

(d) Radiotelephone stations to the number of 8 are owned and operated by the Department of Marine on the Pacific coast for communication with small craft and for life saving purposes.

(e) Special services including weather forecasts, storm warnings and time signals are also transmitted by the above mentioned stations for the benefit of ships at sea.

(f) Ship stations. There are 319 ships of Canadian registry fitted with radio apparatus. The Radiotelegraph Act calls for the compulsory fitting of certain passenger vessels with such apparatus.

(g) Public commercial stations to the number of 46 are licensed, although 9 only are as yet established for operation. These are

designed for handling paid traffic between fixed points. The principal ones in operation are those operated by the Canadian Marconi Company for communication with New York, England and Australia.

(h) Private commercial stations to the number of 131 are licensed. These are established for communication with isolated points not reached by telegraph or telephone.

(i) Experimental and amateur experimental stations to the number of 700 are licensed.

(j) The Department of National Defence maintains 104 stations and in addition operates 10 stations in the Northwest Territories on behalf of the department of the Interior. It also operates 21 stations for airmail and forestry and has 20 aircraft fitted with radio.

(k) Broadcasting stations to the number of 67 physical stations are licensed in Canada having power rating from 50 to 5,000 watts. Owing to the limited number of frequencies or channels available for broadcasting in Canada (6 exclusive and 11 shared with the United States out of a total of 96 as explained above) 2 or 3 stations in the same centre may be required to share time and frequency. In assigning a channel to any station, the matter of geographical separation and power employed have to be considered. It is the practice, for example, not to assign the same frequency or channel to two 50 watt stations which are less than 200 miles apart or to two 500 watt stations which are less than 1,800 miles apart.

(l) Receiving sets to the number of 472,531 were licensed by the Dominion in the nine months ending December 31, 1930.

The Minister further reports that the Department of Marine maintains a service to detect and investigate interference with reception throughout Canada. Furthermore inspectors are maintained throughout Canada to administer and enforce the Radiotelegraph Act and Regulations with regard to compulsory equipment of ships, the licensing of stations and the inspection of stations to see that they maintain the frequency or channel assigned to them in order that interference may not occur.

The Minister further reports that operators' certificates of proficiency issued by the Minister of Marine are, under reciprocal arrangement with Great Britain and the other dominions and colonies, accepted.

The Minister further reports that during the fiscal year 1929-30 the

prosecution of 1,267 persons in various parts of Canada for operating receiving sets without licence was undertaken. In two cases, one at Regina and another at Summerside, where adverse decisions were rendered against the Department on the ground that the statute did not in terms apply to receiving sets, the decisions were appealed and the contention of the department upheld.

The Minister further reports that the revenue collected for licence fees in the fiscal year 1929-30 was $449,010.40 and for 1930-31 (9 months - the revenue was $479,488.20.

The Minister further reports that, as the use of Hertzian waves for transmission and reception of communications is a development of recent years, he has had prepared by Mr. J. W. Bain, radio engineer, Department of Marine, a memorandum of explanation of the principles underlying radio communication, which memorandum is annexed hereto.

The Minister recommends, in view of the fact that the jurisdiction of Parliament has been questioned, that the opinion of the highest judicial authority in Canada be obtained with the least possible delay and that, with this in view, the following questions be referred to the Supreme Court of Canada for hearing and consideration pursuant to the authority of section 55 of the Supreme Court Act:—

1. Has the Parliament of Canada jurisdiction to regulate and control radio communication, including the transmission and reception of sign, signals, pictures and sounds of all kinds by means of Hertzian waves, and including the right to determine the character, use and location of apparatus employed?

2. If not, in what particular or particulars or to what extent is the jurisdiction of Parliament limited?

The Committee concur in the foregoing, and advise that the said questions be referred to the Supreme Court of Canada for hearing and consideration, accordingly.

W. N. Tilley K.C. and *J. L. St. Jacques K.C.*, for the Attorney-General of Canada.

Charles Lanctôt K.C. and *Aimé Geoffrion K.C.* for the Attorney-General of Quebec.

Joseph Sedgwick for the Attorney-General for Ontario.

F. H. Chrysler K. C. for the Attorneys-General for Manitoba and Saskatchewan.

R. B. Hanson K.C. for the Attorney-General for New Brunswick.

Brooke Claxton for the Canadian Radio League.

Anglin C.J.C.—The Governor General in Council, under the authority of section 55 of the *Supreme Court Act*, has referred to this court the following questions:

1. Has the Parliament of Canada jurisdiction to regulate and control radio communication, including the transmission and reception of signs, signals, pictures and sounds of all kinds by means of Hertzian waves, and including the right to determine the character, use and location of apparatus employed?

2. If not, in what particular or particulars or to what extent is the jurisdiction of Parliament limited.?

Personally I should have preferred to withhold judgement on the present reference until the determination by the Privy Council of the Aviation Reference now pending before it on appeal from this court, especially in view of the insistence by counsel representing the province of Quebec that light would be thrown on the issues involved in the present reference by that decision. The majority of my colleagues, however, take the view that the public interest demands that judgment should be given during the present term, in order that the Government may be in a position to obtain the views of the Privy Council on the question involved in this reference in time to enable it to bring down legislation at the next session of the Dominion Parliament. I somewhat reluctantly defer to that view.

I have had the advantage of reading the carefully prepared opinions of by colleagues.

Dealing with the first question, the most important thing to observe would seem to be its subject matter. It does not concern the rights of property in the instruments used for communication, their ownership, or civil rights in regard to them, but has to do entirely with the effects produced by them. In other words, it is "radio communication" that is dealt with by this question, rather than the instruments employed in making it, which are alluded to merely incidentally.

After giving the matter such consideration as time and circumstances have permitted, I am of the opinion that question no. 1 should be answered generally in the affirmative. My reason for so concluding is largely that overwhelming convenience—under the circumstances amounting to necessity—dictates that answer. In dealing with this reference, however, I desire it to be clearly understood that I do so solely in the light of the

present knowledge of Hertzian waves and radio and upon the facts disclosed in the record. I fully accept the following paragraph from the judgment of my brother Newcombe:

> I interpret the reference as meant to submit the questions for consideration in the light of the existing situation and the knowledge and use of the art, as practically understood and worked, and, having regard to what is stated in the case, assumed as the basis for the hearing. Therefore I proceed upon the assumption that radio communication in Canada is practically dominion-wide; that the broadcasting of a message in a province, or in a territory of Canada, has its effect in making the message receivable as such, and is also effective by way of interference, not only within the local political area within which the transmission originates, but beyond, for distances exceeding the limits of a province, and that, consequently, if there is to be harmony or reasonable measure of utility or success in the service, it is desirable, if not essential, that the operations should be subject to prudent regulation and control.

Without entering into any lengthy discussion of the constitutional issues involved, it seems to be certain that Hertzian waves and radio were not only unknown to, but undreamt of by, the framers of the *British North America Act*. It is, therefore, not to be expected that language should be found in that Act explicitly covering the subject matter of the present reference. On the other hand, if the Act is to be viewed, as recently suggested by their Lordships of the Privy Council in *Edwards v. Attorney-General of Canada* (1).

> as a living tree, capable of growth and expansion within its natural limits,

and if it

> should be on all occasions interpreted in a large, liberal and comprehensive spirit, considering the magnitude of the subjects with which it purports to deal in very few words,

and bearing in mind that

> we are concerned with the interpretation of an Imperial Act, but an Imperial Act creating a constitution for a new country,

every effort should be made to find in the B.N.A. Act some head of legislative jurisdiction capable of including the subject matter of this reference. If, however, it should be found impossible to assign that subject matter to any specifically enumerated head of legislative jurisdiction, either in section 91 or in section 92 of the B.N.A. Act, it would seem to be one of the

subjects of residuary power under the general jurisdiction conferred on the Dominion by the opening paragraph of section 91.

It is also obvious that, for certain purposes and within certain limitations, there are several specific heads of legislative jurisdiction in section 91 broad enough to cover, in part at least, the subject of radio communication and that, in so far as the subject matter falls within those several heads, Dominion legislative jurisdiction as to it is exclusive. I refer to

> 5. Postal Service.
> 7. Militia, Military and Naval Service, and Defence.
> 9. Beacons, Buoys, Lighthouses, and Sable Island.
> 10. Navigation and Shipping, (and)
> 29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

It seems to me that, under this last head, which really brings the exceptions set out in subsection 10 of section 92 into section 91, as distinctive heads of Dominion legislative jurisdiction (*City of Toronto v. Bell Telephone Co.* (1)), more particularly under the word "telegraphs" in clause (a) thereof, giving to that word a reasonably broad construction of which it is susceptible (*ibid and Attorney-General* v. *Edison Telegraphs of London* (2)—we find a sound basis for holding that "radio communication" is subject to the exclusive legislative jurisdiction of the Dominion Parliament.

Reading through the various subsections of section 92, no one of them do I find broad enough to cover the subject matter of radio communication. The two subsections of section 92 relied on by counsel for the provinces were nos. 13 and 16. No doubt, in some aspects, radio communication has to do with "property and civil rights in the province"; but so have many other subjects which have been held to fall within some one of the enumerated heads of section 91, and as to which the concluding paragraph of that section establishes the exclusiveness of Dominion legislative jurisdiction over them. (*The Fisheries Case* (3); *Toronto Electric Commissioners v. Snider* (4)). Radio communication in this respect does not differ from any of such other subjects.

Bearing in mind what Lord Watson said in *Attorney-General of Ontario* v. *Attorney-General of Canada* (1), that legislation by the Dominion

> in regard to all matters not enumerated in s. 91, ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon provincial legislation with respect to any of the classes of subjects enumerated in s. 92.

and that it is not competent to the Dominion to make laws

> in relation to matters which in each province are substantially of local or private interest, upon the assumption that these matters also concern the peace, order, and good government of the Dominion.

I fail to find anything of a "local or private" nature in radio communication such as would exclude Dominion jurisdiction over it. I agree with Mr. Justice Newcombe that

> "radio communication," in the state of the science and development which it has attained, is not, substantially or otherwise, a local or private matter in the province.

Of course, it may some day become so, should radio science develop to such an extent that it will be possible so to control the effects of Hertzian waves, that those effects may be confined within the limits of a province, both as to their use and interference by them.

Subject to such possible further scientific development, I am, for the foregoing reasons, of the opinion that question no. 1 should be presently answered in the affirmative. It is, therefore, unnecessary to answer question no. 2, which is based on the assumption of a negative answer to no. 1.

My formal answers to the questions are,

Question no. 1. In view of the present state of radio science as submitted, Yes.

Question no. 2, No answer.

Newcombe J.—My trouble with this case is to know the facts. Although the narrative of the order of reference and the printed statement of principles were not at the hearing seriously disputed, one is apt to suspect that the knowledge of the art of radio, which we have derived from the submissions and what was said in the course of argument, is still incomplete and, perhaps, in some particulars, not free from error; that some accepted theories are still experimental or tentative, and that there may be possibilities of development and use, not only in the Dominion but also in a provincial field, which have not yet been fully ascertained or tested.

A difficulty also arises from the fact that the questions propounded do not apply themselves to actual legislation, but seek generally the definition of Dominion authority to "regulate and control radio communication," in, perhaps, its widest sense.

In these conditions, it is expedient to proceed with great care and certainty, or caution, and, in affirming or denying a legislative power, wise-

ly to say nothing which may be construed to express or imply an intention to extend a ruling upon the assumed or hypothetical case submitted to a state of actual facts that may prove to be materially different, and which, though at present no more than imaginary, may yet be realized.

I interpret the reference as meant to submit the questions for consideration in the light of the existing situation and the knowledge and use of the art, as practically understood and worked, and, having regard to what is stated in the case, assumed as the basis for the hearing. Therefore I must proceed upon the assumption that radio communication in Canada is practically Dominion-wide; that the broadcasting of a message in a province, or in a territory of Canada, has its effect in making the message receivable as such, and is also effective by way of interference, not only in the local political area within which the transmission originates, but beyond, for distances exceeding the limits of a province, and that, consequently, if there is to be harmony or reasonable measure of utility or success in the service, it is desirable, if not essential, that the operations should be subject to prudent regulation and control.

Now, the power of the Dominion to regulate or control is denied, upon two grounds, by the province of Quebec and other provinces which have associated themselves with the argument of Quebec; they say that the exercise of the power, as broadly suggested by the first question, would offend against the provincial enumeration of "Property and Civil Rights in the Province"; and, secondly, or, perhaps, alternatively, that it would be obnoxious to the concluding paragraph of section 92, "Generally all Matters of a merely local or private Nature in the Province." Exceptions are, however, conceded, and these may be introduced no better than by a quotation from Lord Herschell's great judgment in the first *Fisheries Case* (1), where, referring to section 91, he said

> The earlier part of this section read in connection with the words beginning "and for greater certainty," appears to amount to a legislative declaration that any legislation falling strictly within any of the classes specially enumerated in s. 91, is not within the legislative competence of the provincial legislatures under s. 92. In any view the enactment is express that laws in relation to matters falling within any of the classes enumerated in s. 91 are within the "exclusive" legislative authority of the Dominion Parliament. Whenever, therefore, a matter is within one of these specified classes, legislation in relation to it by a provincial legislature is in their Lordships' opinion incompetent. It has been suggested, and this view has been adopted by some of the judges of the Supreme Court, that although any Dominion legislation dealing with the subject would override provincial legislation, the latter is nevertheless valid, unless and until the Dominion Parliament so legislates. Their Lordships think that such a view does not give their due effect to the terms of s. 91, and in particular to the word

> "exclusively." It would authorize for example, the enactment of a bankruptcy law or a copyright law in any of the provinces unless and until the Dominion Parliament passed enactments dealing with those subjects. Their Lordships do not think this is consistent with the language and manifest intention of the *British North America Act*.

Now, referring to the text of section 91 for the enumerations that may, for present purposes, be invoked, it is enacted by the concluding words of the section that

> Any matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And it is, I would think, not doubtful that the regulation of radio communication has a Dominion aspect, or at least an overlapping relation, capable of being worked as incidental or ancillary, with respect to some of the subjects specially enumerated in section 91; for example: "2. The Regulation of Trade and Commerce: 5. Postal Service; 7. Military and Naval Service and Defence; 9. Beacons, Buoys, Lighthouses and Sable Island; 10. Navigation and Shipping; 11. Quarantine and the Establishment and Maintenance of Marine Hospitals, and 29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces." Most obviously is this true as applied to the three enumerations that are concerned with the safety of ships and navigation. It follows that a provincial legislature could not sanction or uphold any sort of radio communication which would interfere or conflict with competent Dominion regulations, enacted with relation to these enumerated subjects. It is expressly, and most justly, conceded by the factum of the Attorney-General of Quebec that

> Where any subject is under its exclusive legislative authority the Dominion Parliament has power to regulate by substantive and by ancillary and necessary incidental legislation.

Also, by section 132, which has been judicially considered in other cases,

> The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada, or of any province thereof as part of the British Empire towards foreign countries arising under treaties between the Empire and such foreign countries.

There is the International Radiotelegraph Convention, "Done at Washington, 27th November, 1927," between the Governments therein

mentioned, including Canada, Great Britain and the United States of America, and ratified on behalf of Canada, 12th June, 1928; also an agreement between Canada, the United States, Newfoundland and Cuba, relative to the assignment of "frequencies" on the North American continent, effective as from 1st March, 1929. These and other international agreements or regulations, to which Canada adheres, are printed in the appendix of the case; and, in so far as they answer the description of the last quoted section, the Parliament and Government of Canada have, by the express enactment, all powers necessary or proper for performing the obligations of Canada, or of any province thereof, arising thereunder.

But, while Mr. Geoffrion concedes that interference internationally may be avoided under the powers conferred by section 132, he suggests that, if it be necessary to provide against interprovincial interference, the objects should be attained by arrangement between the provinces, and he refers to *City of Montreal v. Montreal Street Railway* (1). That case is mentioned in the recent *Aviation Case* (2); and it is distinguishable upon all the points debated with relation to the questions now submitted. I refer to it here by way of reminder that, as shewn by Lord Atkinson's remark at the foot of page 345, the power of Parliament to acquire jurisdiction by the exercise of its authority to make a declaration under paragraph (c) of the 10th enumeration of section 92, was not without a persuasive influence in the result which His Lordship reached; and I think all are agreed that paragraph (c) has no application to the radio powers which are now in difference.

But while the Dominion has at least the authority to regulate and control radio activities, and to provide against confusion or interference, as affecting its own enumerated subjects, and for the performance of treaty obligation, it also has the comprehensive power involved in the declaration of its authority

> in relation to all matters not coming within the classes of subjects by the *British North America Act* assigned exclusively to the legislatures of the provinces;

and Quebec, in effect, contends that the classes so excepted include "radio communication," within the meaning of the first question submitted. As to this, the provincial case seems to depend upon the interpretation of the two provincial powers which I have quoted; and my view is that the subject in question has not the prescribed limitation of locality. It is said that "radio communication," as explained by the reference, is a matter of "Property and Civil Rights in the Province," or of a "merely local or private Nature in the Province"; and this I deny, because upon the assumptions involved in the case, the matter substantially extends beyond provincial limits.

The words "Matters of a merely local or private Nature" are also used

in the last paragraph of section 91, and Lord Watson interpreted them as meant to include and correctly to describe all the matters enumerated in the heads of section 92 as being, from a provincial point of view, of a local or private nature. *Attorney-General for Ontario v Attorney-General for the Dominion* (1); and on the next two pages of the same case His Lordship said, referring to the general authority of Parliament under the introductory enactments of section 91,

> But to those matters which are not specified among the enumerated subjects of legislation, the exception from s. 92, which is enacted by the concluding words of s. 91, has no application; and, in legislating with regard to such matters, the Dominion Parliament has no authority to encroach upon any class of subjects which is exclusively assigned to provincial legislatures by s. 92. These enactments appear to their Lordships to indicate that the exercise of legislative power of the Parliament of Canada in regard to all matters not enumerated in s. 91, ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon provincial legislation with respect to any of the classes of subjects enumerated in s. 92. To attach any other construction to the general power which, in supplement of its enumerated powers, is conferred upon the Parliament of Canada by s. 91, would , in their Lordships' opinion, not only be contrary to the intendment of the Act, but would practically destroy the autonomy of the provinces. If it were once conceded that the Parliament of Canada has authority to make laws applicable to the whole Dominion, in relation to matters which in each province are substantially of local or private interest, upon the assumption that these matters also concern the peace, order, and good government of the Dominion, there is hardly a subject enumerated in s. 92 upon which it might not legislate, to the exclusion of the provincial legislatures.

And, as I interpret the case submitted, "radio communication," in the state of the science and development which it has attained, is not, substantially or otherwise, a local or private matter in a province. In the course of discussion an attempt was made to distinguish between the transmission of a message and the reception of it; and it was said that the receiving instrument is property in a province, and that a message is received in a province when the instrument, being there, is adapted and worked for that purpose, But the question is directed, not to rights of property in goods or chattels situate within a province, but to "radio communication"—an effect which is not local, but interprovincial. There must be two parties to a communication; there may be many more; and, if the sender be in a foreign country, or in a province or territory of Canada, and the receiver be within another province, it is impossible, as I see it, to declare that the communication, is local, either to the transmitting or to the receiving province.

As usual, in cases where the validity of provincial legislation is attacked as engaged with a subject matter not local, the *Manitoba Liquor* case (1), is cited in support of the power. The passages are at pages 77-80 of Lord McNaghten's judgment, and the meaning is relieved of some obscurity when the reasons are considered. Manifestly, His Lordship's conclusion depends upon the text of the particular Act and he quoted and emphasized the recital and the 119th section by which there is introduced a legislative declaration that the object is to suppress the liquor traffic in Manitoba by prohibiting provincial transactions, and that, while the act is intended to prohibit transactions in liquor which take place wholly within the province, except as otherwise specially provided, and to restrict the consumption of liquor within the limits of the province.

> it shall not affect and is not intended to affect *bona fide* transactions in liquor between a person in the province of Manitoba and a person in another province or in a foreign country, and the provisions of this Act shall be construed accordingly.

That section, his Lordship said, was as much part of the Act as any other section contained in it, and must have its full effect in exempting from the operation of the Act the transactions which came within its terms. Their Lordships were not satisfied that the legislature of Manitoba had transgressed the limits of its jurisdiction in passing the *Liquor Act*. But provincial legislation for the regulation and control of radio communication is a much more expansive matter and cannot, upon present information, be constucted in a manner to qualify as relating to matters of a local or private nature in the province.

The subject is one which, undoubtedly, relates to the peace, order and good government of Canada; and I am not satisfied, for any of the reasons which have been submitted, or which I have been able to discover, that it falls within any of the classes of subjects assigned exclusively to the legislatures of the provinces.

For these reasons I certify to the Governor in Council, for his information, my opinion that the first question submitted should be answered in the affirmative; and, of course, in view of that conclusion, I am not required to answer the second question.

Rinfret J.—En donnant son opinion sur les questions déférées au sujet de la loi autorisant le contrôle de l'aéronautique (1), mon collègue, Monsieur le Juge Duff, avec qui j'ai concouru, commence son jugement par l'exposé suivant:

> The view presented by the Solicitor General of the questions raised by the interrogatories, which it is our duty to answer, was based primarily upon the proposition that the Dominion possesses authority to legis-

late upon the subject of aeronautics, in every respect, and that this authority is exclusive, or, at all events, overrides any law of a province.

This proposition is supported upon a variety of grounds. It is contended that, in their very nature, the matters embraced within that subject cannot be local, in the provincial sense, and that accordingly the subject is beyond the ambit of section 92; that in the alternative, it falls within one of the enumerated heads of section 91, no. 10 Navigation and Shipping; that, as a sort of further alternative, so many aspects and incidents of the subject fall within various enumerated heads of section 91, such as the regulation of trade and commerce, undertakings extending beyond the limits of a province, customs, aliens, beacons and lighthouses, postal service, defence, ferries, or under immigration (s. 95), that the subject must as a whole be treated as within Dominion jurisdiction, that being it is argued, the only interpretation under which the undoubted authority of the Dominion over the various aspects of the subject can be effectively exercised. Still again, it is said, the authority of the Dominion under section 132, to legislate for the performance of its obligations under the Convention relating to Aerial Navigation, 1919, extends over the whole field.

En substituant la radiocommunication à l'aviation, et en retranchant la mention relative au paragraphe 10 de l'article 91 de *l'Acte de l'Amérique Britannique du Nord* concernant "Navigation and Shipping", nous avons dans le passage cité un exact résumé de l'argumentation qui a été faite de la part du procureur général du Canada dans l'affaire qui nous est actuellement soumise.

D'autre part, les procureurs généraux des provinces, pour réclamer la juridiction en faveur des gouvernements qu'ils représentaient, dans cette cause de l'aviation comme dans la présente, se sont surtout appuyés sur le paragraphe 13 ("property and civil rights in the province") et sur le paragraphe 10 ("local works and undertakings") de l'article 92 de l'Acte constitutionnel.

Il en est résulté, entre la cause de l'aviation et la présente cause de la radiocommunication, une très grande analogie, au moins dans la manière dont la question nous a été présentée. On peut donc regretter que nous soyons appelés à nous prononcer sur les questions qui nous sont actuellement soumises avant d'avoir eu l'avantage de connaître la décision finale du Conseil Privé dans l'affaire de l'aviation, car il me paraît évident que cette décision nous aurait apporté une aide considérable dans la solution du problème que nous avons maintenant à trancher.

De même que dans la référence sur l'aviation, it nous faut ici adapter une loi constitutionnelle datant de 1867 à un sujet qui non seulement n'avait

aucune existence, mais dont on ne soupçonnait même pas la possibilité à cette époque. Il est exact de dire cependant que *l'Acte de l'Amérique Britannique du Nord* "is always speaking" et que ses dispositions doivent recevoir un sens de plus en plus étendu, au fur at à mesure que les inventions scientifiques et les développements de la vie nationale exigent de nouvelles solutions constitutionnelles (1).

A la question nouvelle soulevée par la découverte de l'aviation, cette cour a répondu que la juridiction primordiale appartenait aux provinces. Il me semble qu'il existe à l'égard de cette question nouvelle qui est maintenant soulevée par l'invention de la radio des raisons encore plus fortes pour décider dans le même sens.

La radiocommunication, telle qu'elle est connue et telle que la science nous la présente jusqu'à date, consiste dans un appareil émetteur, des ondes radioélectrique (que le dossier appelle "Hertzian waves") circulant dans l'éther, et un appareil récepteur.

En soi, l'appareil émetteur et l'appareil récepteur sont des objets de propriété "d'une nature locale" situés dans la province, au sens de l'article 92.

Qu'on les envisage comme objets de propriété purs et simples, ou comme des travaux couverts par le paragraphe 10 de l'article 92, ils tombent de prime abord sous la juridiction provinciale.

En plus, la personne qui opère un appareil émetteur ou la personne qui opère un récepteur, exerce un droit civil dans la province; et l'une ou l'autre opération, prise isolément, est indiscutablement matière a contrôle provinciale.

De ce point de vue, il existe sans doute une différence entre l'opération de l'appareil récepteur et l'opération de l'appareil émetteur. Alors que la réception ne peut d'aucune façon être envisagée comme étant autrement que d'une nature purement locale, il est exact de dire que, suivant les données actuelles de la science, l'émission ne peut pas être circonscrite dans un rayon précis et les ondes qui sont mises en mouvement par l'appareil émetteur se propagent dans toutes les directions, sans qu'on puisse les limiter aux frontières d'un territoire.

Je ne crois pas cependant que cette dernière particularité enlève à l'opération de l'appareil émetteur son caractère de droit civil dans la province, suivant la portée qu'il faut donner au paragraphe 13 de l'article 92. Un droit civil ne perd pas sa nature de droit civil contrôlable par la province simplement parce qu'il peut produire des effets au delà de la province. Un contrat passé dans une province produit des résultats en dehors de cette province, sans que pour cela il soit soustrait à l'autorité provinciale. Une

firme, à Montréal, qui fait avec un voyageur de commerce un contrat de louage de ses services, verra sa responsabilité engagée vis-à-vis d'une personne à Vancouver, dans la Colombie-Britannique, par l'acte de ce voyageur de commerce, et cette responsabilité résultant du contrat d'abord fait à Montréal continuera d'être régie par la loi provinciale.

Pour prendre un exemple encore plus frappant, un journal publié à Toronto et dont la circulation est répandue dans tout le Dominion ne cessera pas pour cela d'être de la part de ses propriétaires l'exercice d'un droit de propriété et d'un droit civil dans la province d'Ontario et d'être subordonné à la législation de la province.

Supposons encore une fanfare qui jouerait un concert dans une province, sur les bords de la frontière. Elle ne tomberait pas sous le contrôle fédéral parce que les sons de sa musique seraient entendus dans une autre province.

On pourrait donner ainsi des exemples presque à l'infini.

Si maintenant l'on traite l'appareil émetteur ou l'appareil récepteur comme des "travaux...d'une nature locale", je ne crois pas qu'on puisse prétendre que, par le seul fait que ces travaux ont une répercussion au delà des frontières d'une province, ils perdent leur caractère local.

Je suppose un phare qui serait érigé sur le territoire d'une province mais suffisamment près de la frontière pour que ses feux et sa lumière soient projetés sur le territoire d'une autre province. Il me semble que l'on ne pourrait en conclure que ce phare cesse d'être un ouvrage d'une nature locale au sens du paragraphe 10 de l'article 92.

J'écarte donc la prétention qui voudrait que par cela seul qu'un droit civil ou un ouvrage local produit des effets en dehors d'une province, it acquiert *ipso facto* un caractère qui a pour effet de le soustraire à la juridiction provinciale.

Mais on objecte que le sujet dont il s'agit n'est pas l'appareil émetteur ou l'appareil récepteur en soi, que la véritable question est la communication qui s'établit entre les deux appareils et que, comme il est impossible de restreindre cette communication aux limites d'une province, il en résulte qu'elle tombe dans le domaine fédéral.

Sur ce point, on invoque les sous-paragraphes du paragraphe 10 de l'article 92 qui sont des exceptions et qui, en vertu du paragraphe 29 de l'article 91, doivent être envisagés comme faisant partie des catégories de sujets réservés au pouvoir législatif fédéral.

Il y a là trois sous-paragraphes : (a), (b) et (c). (b) s'occupe des lignes

de bateaux à vapeur entre les provinces et les pays dépendant de l'Empire britannique ou tout autre pays étranger. Il n'a donc rien à voir avec la question actuelle. (c) traite des travaux qui, bien qu'entièrement situés dans la province, sont déclarés par le parlement du Canada être pour l'avantage général du Canada ou pour l'avantage de deux ou d'un plus grand nombre de provinces. Il ne s'agit pas d'une déclaration de ce genre dans la question qui nous est soumise.

Reste le sous-paragraphe (a). Il s'applique à "lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province".

L'interprétation souveraine qui doit nous guider dans la portée qu'il faut donner à ce sous-paragraphe a été donnée par le Conseil Privé dans la cause de *Montreal v. Montreal Street Railway* (1). Il y est dit, en référant aux travaux dont il s'agit dans ce sous-paragraphe: "These works are physical things, not services." Or, la distinction fondamentale entre la radiocommunication et la communication par télégraphe, téléphone ou autres travaux du même genre auxquels s'applique le sous-paragraphe (a) du paragraphe 10 est précisément que la radiocommunication peut être un "service", mais elle n'est pas un "physical thing".

En outre, il n'existe pas de connexion physique entre l'appareil émetteur et l'appareil récepteur, comme le fil qui, dans le télégraphe et le téléphone, relie l'endroit d'où sont émis les sons ou les signaux à l'endroit où ils sont reçus.

A la rigueur, une ligne de radiocommunication établie par une firme commerciale pour le service du public partant d'une ou de plusieurs stations d'émission fixes qu'elle possèderait dans une province et qui transmettrait des messages de toutes natures à l'aide des ondes hertziennes à des stations de réception fixes, dont la firme serait également propriétaire, et qui seraient situées dans d'autres provinces, constitueraient un "undertaking" tombant sous la juridiction fédérale. Il semblerait cependant que, dans ce cas le pouvoir fédéral procèderait non pas du sous-paragraphe (a) du paragraphe 10 de l'article 92, mais du paragraphe 2 de l'article 91 concernant "The regulation of trade and commerce".

Nous avons eu tout dernièrement un exemple de l'application de ce principe de juridiction dans l'arrêt de cette cour Re: *Lawson v. Interior Tree Fruit and Vegetable Committee of Direction* (1).

Il est juste toutefois de faire remarquer que même l'attribution de la juridiction fédérale sur une entreprise commerciale, comme celle dont nous venons de parler, reliant deux ou plusieurs provinces, laisserait quand même intacte la juridiction provinciale sur des entreprises du même genre

établies entre des stations fixes exclusivement à l'intérieur d'une province, et surtout sur tous les appareils opérés par des amateurs ou par des gouvernements locaux, ou de toute autre façon qui ne serait pas pour des fins de profit.

Mais tous les cas mentionnés au sous-paragraphe (a) du paragraphe 10 sont des cas où il s'agit d'une connexion physique continue dans les travaux ou l'entreprise (sauf peut-être les lignes de bateaux à vapeur ou autres bâtiments, avec lesquels la radiocommunication n'a aucune espèce d'analogie) et d'un "physical thing" tout entier sous le même contrôle, sinon de propriété, au moins d'opération. La plus récente décision sur ce point se trouve dans l'arrêt du Conseil Privé dans la cause de *Luscar Collieries* v. *McDonald* (2), où Lord Warrington of Clyffe, qui a prononcée le jugement, revient à deux reprises sur le caractère de continuité de la voie de chemin de fer dont il s'agissait dans cette cause et dit (p. 932):

> A part of a continuous system of railways operated together by the Canadian National Railways Company and connecting the province of Alberta with other provinces of the Dominion; (puis p. 933): There is a continuous connection by railway between the point of the Luscar Branch farthest from its junction with the Mountain Park Branch and parts of Canada outside the province of Alberta.

Ces expressions semblent bien marquer que, pour tomber sous l'effet du sous-paragraphe (a) du paragraphe 10, il faut le double caractère de continuité dans le "physical thing" et de propriéte, de contrôle, ou, au moins, d'opération par la même personne ou la même compagnie, sans quoi l'on ne se trouve plus en présence d'un seul "undertaking", mais l'on a plusieurs "undertakings" distincts.

Ces deux caractères manquent à la radiocommunication, dont la nature habituelle et la plus ordinaire est de procéder d'un appareil émetteur qui appartient à un propriétaire vers des appareils récepteurs qui appartiennent à d'autres propriétaires complètement indépendants, sans aucune espèce de relations avec le propriétaire de l'appareil émetteur, et que ce dernier ne connaît même pas. Du point de vue légal, il est difficile de voir la distinction qu'on peut faire entre la radiocommunication opérée dans ces conditions et la tranmission des sons de toute autre façon (comme, par exemple, par la fanfare dont nous parlions tout à l'heure) d'une province à l'autre. Et il est assez juste, sous ce rapport, d'assimiler l'appareil récepteur à une simple amplification de l'appareil auditif humain, puisque sa fonction n'est rien autre chose que de rendre perceptibles à l'oreille des sons ou des signaux transmis à travers l'éther par la propagation de vagues intangibles.

De toutes façons, par conséquent, et sauf les exceptions que j'ai mentionnées au cours de ce jugement jusqu'ici, le sujet de la radiocommunication me paraît tomber essentiellement dans la catégorie des sujets de

"Property and civil rights in the province" ou de "Local works and undertakings", tels que prévus au paragraphe 10 de l'article 92.

Dans ces conditions, la juridiction primordiale réside donc dans les provinces, et cette juridiction ne peut être entamée qu'en autant que l'on peut trouver dans l'article 91 des sujets de juridiction fédérale qui donneraient, dans les limites de leur application particulière, le pouvoir d'empiéter sur cette juridiction provinciale primordiale.

En effet, dès qu'un sujet tombe sous le contrôle provincial en vertu de l'une des clauses de l'article 92, il ne peut être transféré au domaine fédéral qu'à la condition de tomber expressément sous l'une des clauses de l'article 91 ; et il est absolument fallacieux de prétendre que, sauf dans un cas de "national emergency", le Dominion pourrait s'emparer de ce contrôle en vertu de la clause résiduaire et sous prétexte que l'autorité provinciale n'a pas l'ampleur voulue pour contrôler effectivement le sujet qui est attribué à sa juridiction.

Pour mieux exprimer ma pensée, je me permettrai de citer sur ce point un passage du jugement de notre collègue, Monsieur le juge Duff, dans la cause de *The King* v. *Eastern Terminal Elevator Company* (1):

> The other fallacy is (the two are, perhaps, different forms of the same error) that the Dominion has such power because no single province, nor, indeed, all the provinces acting together, could put into effect such a sweeping scheme. The authority arises, it is said, under tha residuary clause because of the necessary limits of the provincial authority. This is precisely the view which was advanced in the *Board of Commerce Case* (2), and indeed, is the view which was unsuccessfully put forward in the *Montreal Street Railway Case* (3), where it was pointed out that in a system involving a division of powers such as that set up by the *British North America Act*, it may often be that subsidiary legislation by the provinces or by the Dominion is required to give full effect to some beneficial and necessary scheme of legislation not entirely within the powers of either.

Cela m'amène à examiner de plus près la véritable base sur laquelle, de la part du procureur général du Canada, on a voulu placer l'argumentation en faveur de la juridiction fédérale.

L'on nous a dit que, à cause de sa nature même, la radiocommunication échappait au domaine provincial et qu'elle ne pouvait être contrôlée d'une façon efficace que par le pouvoir fédéral, parce qu'elle exige un contrôle central et unique.

A mon humble avis, c'est là porter la discussion exactement sur le terrain dont parle Monsieur le juge Duff dans le passage que je viens de citer,

et c'est nous ramener, une fois de plus, à cet argument si souvent offert et autant de fois rejeté par les tribunaux que, parce qu'il serait plus avantageux de concentrer toute la législation sur un sujet entre les mains du pouvoir central, c'est-à-dire, en l'espèce, du pouvoir fédéral, il en résulte que le fédéral devrait avoir juridiction. Il n'y a pas le moindre doute que s'il existait un seul parlement, tous ces conflits de juridiction seraient évités. Mais cet argument de "convenience" ou de "inconvenience" ne saurait évidemment constituer une règle d'interprétation. La constitution du Canada a créé une union fédérale en distribuant les pouvoirs législatifs entre un parlement central et des parlements provinciaux. C'est uniquement par l'interprétation du texte de cette constitution que l'on doit être guidé lorsqu'il s'agit d'attribuer un sujet à l'une ou l'autre juridiction. La question de savoir s'il serait plus avantageux que les choses fussent autrement ne saurait entrer en ligne de compte et, à tout événement, ne saurait trouver place devant une cour de justice. Le principe que, par suite du fait qu'une législation fédérale serait pour le plus grand avantage du Canada, ou rencontrerait d'une façon plus efficace les exigences de la situation, il en résulterait que le pouvoir central a la compétence pour l'adopter a reçu son coup de grâce dans le jugement de *Toronto Electric Commissioners* v. *Snider* (1).

L'autre point soulevé de la part de procureur général du Canada, et l'on peut dire sans doute le pivot de son argumentation, c'est que, dans l'état actuel de la science de la radio, il est absolument impossible d'empêcher les inconvénients résultant des interférences, et que, à moins d'une législation uniforme ayant pour but de répartir ce que j'appellerai les bandes de communication ("channels of communication"), il se produira une telle confusion que tous les bénéfices de la radiodiffusion seront absolument annihilés. On en conclut que cela nécessite le contrôle unique du parlement fédéral.

De la part des provinces, on a nié le danger de cette interférence et on a assuré, à tout événement, qu'il y avait exagération dans la prétention émise par le Dominion. En la prenant pour acquise, je ne vois pas comment ce fait peut venir modifier la question de juridiction.

Si j'ai bien compris le développement de cet argument, le brouillage peut avoir lieu à la source, c'est-à-dire au poste émetteur, ou au moment de la réception. De toutes manières, c'est le récepteur qui est empêché de recevoir utilement la radiocommunication. Si l'interférence provient d'une cause locale située dans la même province que l'appareil récepteur, la province qui a juridiction sur l'appareil récepteur peut également adopter la législation nécessaire pour empêcher cette interférence. Si la difficulté provient d'une répartition des "channels" entre les provinces, il m'est impossible de voir pourquoi la solution ne pourrait pas être trouvée dans une entente entre les provinces, ainsi qu'il est suggéré par le Conseil Privé dans la cause de *City of Montreal* v. *Montreal Street Railway* (1).

Mais il semble admis que l'interférence peut tout autant provenir d'une source extérieure non seulement à l'une des provinces, mais d'une source extérieure au pays lui-même. Je déduirais même de l'exposé scientifique qui est au dossier et de l'argumentation qui a été faite devant nous que la principale, pour ne pas dire l'unique, difficulté de toute la situation vient des Etats-Unis, pays voisin, et de l'exploitation du nombre considérable de postes émetteurs qui se trouvent dans ce pays. Or, l'on ne peut éviter de faire remarquer que s'il en est ainsi, ce n'est pas par une législation fédérale qu'on empêchera cette interférence. Le parlement du Canada sera tout aussi impuissant que n'importe quel parlement des provinces pour légiférer sur une situation de ce genre. Aucune loi du Canada ne pourrait empêcher les postes émetteurs des Etats-Unis de causer dans notre pays, ou dans chacune des provinces, toutes les interférences que la science prévoit.

La réponse à l'argument du Dominion serait donc :

1. Ce n'est pas parce qu'une personne située ailleurs dans le Dominion vient causer dans une province une interférence avec l'exercice d'un droit civil dans cette province que le Dominion acquerra de ce fait une juridiction sur ce droit civils. Cette interférence constitue un conflit entre deux droits civils. Un conflit de ce genre n'a pas pour résultat de soustraire les droits civils à la juridiction provincial et de les transférer au domaine fédéral.

2. Si la source de l'interférence est située dans le pays, bien que dans une autre province, la véritable manière pour les provinces de régler le conflit entre les droits civils qui sont respectivement de leur domaine, est par une entente entre les provinces. Le Dominion n'acquiert aucune juridiction comme conséquence d'un conflit de ce genre.

3. Si la source est située en dehors de pays, le Dominion, par sa propre législation, est tout aussi impuissant que n'importe laquelle des provinces pour mettre fin ; et la seule ressource en pareil cas : c'est le traité avec le ou les pays voisins.

Au point de vue pratique, je crois bien que, en donnant à l'objection fédérale la plus ample portée que l'on puisse lui attribuer, la vraie question qui résulte du danger de l'interférence est en réalité une question internationale. Or, du moment qu'on en arrive à cette conclusion, la difficulté de juridiction ne se présent plus. Une question internationale ne peut se régler que par un traité ; et, dans ce domaine, le parlement fédéral a toute la latitude nécessaire. L'article 132 de l'*Acte de l'Amérique Britannique du Nord* établit ses pouvoirs en pareil cas ; et, dans le jugement que cette cour a rendu sur la question d'aviation (1), nous avons défini les droits du parlement fédéral en matière de traités, tant dans leur adoption que dans leur exécution, de façon à ce qu'il n'y ait pas lieu d'y revenir, sujet naturellement à ce que pourra dire le Conseil Privé sur cette question.

Dans la cause actuelle, il est résulté de l'argumentation de part et d'autre que l'étendue des pouvoirs du parlement fédéral, agissant en vertu de l'article 132 de l'acte constitutionnel, ne faisait pas l'objet de la moindre discussion. Il suffit peut-être de faire remarquer, par conséquent, que c'est là, en définitive, que le parlement fédéral va trouver le remède à la principale difficulté qui semble le préoccuper à l'heure qu'il est, c'est-à-dire cette question d'interférence. Elle ne peut se régler que par traité ; et, en matière de traités, les pouvoirs fédéraux sont probablement illimités.

Et tout ce que je viens de dire au sujet de l'interférence provenant de l'étranger s'applique avec autant de force, au Canada, à la règlementation de la radiodiffusion et de la radiocommunication venant de l'étranger. Là encore, c'est une question de traité ; et sur ce point le fédéral est souverain.

Mais, si l'on se borne au domaine national, mon opinion est que, pour les raisons que j'ai exposées, la base de la juridiction en matière de radiocommunication est primordialement entre les mains des provinces.

Il reste évidemment que, nonobstant cette juridiction provinciale primordiale, le parlement fédéral conserve la juridiction prépondérante chaque fois qu'il s'agit d'un des sujets qui lui sont expressément attribués par l'article 91. Cela est admis dans le factum qui nous a été soumis de la part de la province de Québec :

> It may be at once conceded that where any subject is under its exclusive legislative authority the Dominion Parliament has power to legislate by substantive and by ancillary and necessarily incidental legislation.

Cela comprendrait, au moins, les sujets suivants :

1. "The regulation of Trade and Commerce", dans les limites qui ont été assignées à ce sujet dans les arrêts de *Citizens Insurance Company* v. *Parsons* (1) ; *The Insurance Reference* (2) ; *The Board of Commerce Act, 1919*, et *The Combines and Fair Prices Act, 1919* (3) ;

2. "Postal service" ;

3. "Militia, Military and Naval Service, and Defence" ;

4. "Beacons, buoys, lighthouses and Sable Island" ;

5. "Navigation and Shipping" ;

6. "Sea coast and inland fisheries" ;

7. Les catégories de sujets expressément exceptés dans l'énumération

des catégories de sujets exclusivement assignés par la loi constitutionnelle aux législatures des provinces, conformément au paragraphe 29 de l'article 91, dans les limites que j'ai expliquées au cours de ce jugement.

Ce que j'ai dit jusqu'ici me dispenserait de traiter plus amplement de la juridiction provinciale. Je crois cependant devoir ajouter que même si, contrairement à la conclusion à laquelle j'en arrive, le sujet de la radiocommunication appartient primordialement au domaine fédéral, l'on ne pourrait quand même dire que son contrôle est absolu, ou, pour employer une expression que nous avons adoptée lors de la référence sur l'aviation, que ce contrôle existe "in every respect".

Il me paraît certain que pour la réparation des dommages moraux et matériels qui pourraient être causés par la radiocommunication, pour la responsabilité civile en matière de radiodiffusion, il y aura lieu de recourir aux règles du droit civil, et, par conséquent, à la législation provinciale. Les droits des propriétaires de postes émetteurs, ou les droits des propriétaires d'appareils de réception devront quand même être régis par le droit civil. En plus, il y a, entre les divers émetteurs, ou entre les émetteurs et les compositeurs, écrivains, auteurs de tous genres, orateurs, conférenciers, artistes ou exécutants, fournisseurs d'information, annonceurs, toutes les personnes désireuses de transmettre des communications ou de faire de la réclame, des rapports éventuels de droit privé, civil ou commercial qui devront trouver leur solution dans le droit commun des provinces et dans la législation provinciale. (Voir Revue Juridique internationale de la radio-électricité, 1930, n° 24, p. 234.)

Enfin, toujours si le sujet de la radiodiffusion appartient de prime abord à la juridiction fédérale, je ne vois pas bien comment on pourrait empêcher les provinces d'exercer leur pouvoir de taxation directe en vertu du paragraphe 2 de l'article 92, et leur pouvoir de licence dans le but de prélever un revenu pour des objets provinciaux, locaux ou municipaux, en vertu du paragraphe 9 de l'article 92.

Comme conséquence de ce qui précède, je réponds comme suit aux questions qui nous ont été soumises :

J'interprète la première question comme impliquant de la part du gouvernement du Canada une juridiction absolue et sous tous les rapports ; et ma réponse est dans la négative.

Quant à la seconde question, les différents aspects sous lesquels, à mon avis, le parlement du Canada a juridiction en matière de radiocommunication sont exposés en détail dans le présent jugement.

Lamont J.—In this case I agree with my brother Rinfret that the jurisdiction of the Dominion Parliament over the subject of radio communication is not exclusive, although, in some particulars, a very large measure of control admittedly belongs to it.

When we consider the nature of radio communication and the fact that once the electro-magnetic waves are discharged from the transmitting stations they cannot be confined within the boundaries of a province, or even the limits of a country, it is evident that a provincial legislature, whose jurisdiction is only province wide is not in a position to control the transmissions of these waves, yet, without some control, radio communication would be impossible. So far, therefore, as the transmission of the waves is concerned, a very wide jurisdiction must, in the present state of the art, be conceded to the Dominion Parliament. It belongs to Parliament because the more important matters which must be regulated and controlled lie in the international field where control can only be assured by treaty, convention or agreement between nations.

As indicating the matters over which those who have been dealing with radio communication in a practical way have felt the necessity for control, reference may be made to the International Radiotelegraph Convention at Washington, in November, 1927, and also to the agreement between Canada, the United States, Newfoundland, Cuba, et. al. (effective since March 1, 1929), relating to the assignment of frequencies on the North American Continent. All parties to these agreements recognize that until the development of the art progresses to the stage where radio interference can be eliminated, special administrative arrangements are necessary to minimize this interference and promote standardization. To this end the contracting governments have agreed that all transmitting stations will, so far as possible, be established and operated in such manner as not to interfere with radio electric communication of other contracting governments, or persons authorized by them to conduct a public radio service; that no transmission station will be established or worked by an individual without a special licence issued by the government of the country to which the station is subject; that they will propose legislative measures to prevent the unauthorized transmission and reception of correspondence of a private nature, or the divulgence of messages received; and, further, that they will take necessary measures to connect the International Radio Service with the general communication system of each country.

The matters covered by these agreements shew the extent of the field in which control can only be secured by agreements between the nations. As to these matters jurisdiction lies with the Dominion Parliament under section 132 of the B.N.A. Act, 1867, which reads as follows:—

> The Parliament and Government of Canada shall have all powers necessary or proper for performing the Obligations of Canada or of

any Province thereof, as Part of the British Empire, towards Foreign Countries arising under Treaties between the Empire and such Foreign Countries.

Besides the transmission of electro-magnetic waves there are other matters in respect of which jurisdiction to regulate and control must exist in some authority. These are, for example, the capturing of these waves and the delivery of the messages they contain. These, to my mind, present a very different question from the transmission of the waves into space. According to Mr. Bain's report, which is printed with the case, the receiving apparatus performs two functions: it receives the transmitted wave, and converts it into an understandable signal. When electro-magnetic waves are thrown into space from one or more transmitting stations, they pass, by virtue of their potentially expanding force, not only over every parcel of land in the province in which the transmitter is situate, but over land far beyond the province. In the case of broadcasting they are not directed to any particular individual, but are left to be captured by anyone who can capture them. Where an owner of land in a province erects on his property a receiving antenna and to it attaches an apparatus which selects a given wave and delivers the message impressed upon it as an understandable signal to those who are within the limits of its varying power, I am unable to see why the receiving apparatus cannot properly be designated a "local work" under no. 10 of s. 92. The services it performs, first in capturing the wave and then in extracting and delivering its message, are all performed within the province and, therefore, localized. In my opinion such localized service and such an instrumentality constitute a "local work." If it is not a local work within no. 10 of s. 92, I should consider that it would then fall within no. 16 "Generally all matters of a merely local or private nature in the Province." *Prima facie*, therefore, legislation upon these subjects would come within the jurisdiction assigned to the provincial legislatures by s. 92.

The jurisdiction of the province, however, is subject to being overborne by competent legislation on the part of the Dominion Parliament, ancillary or incidental, to any of the enumerated heads of s. 91.

I would, therefore, answer the questions as follows:—

1. Has the Parliament of Canada jurisdiction to regulate and control radio communication, including the transmission and reception of signs, signals, pictures and sounds of all kinds by means of Hertzian waves, and including the right to determine the character, use and location of apparatus employed?

Answer: Not exclusive jurisdiction.

2. If not, in what particular or particulars or to what extent is the jurisdiction of Parliament limited?

Answer: The jurisdiction of Parliament is limited as set out above.

Smith J.—There are submitted, for the hearing and consideration of the court, pursuant to the authority of s. 55 of *The Supreme Court Act*, the following questions:—

1. Has the Parliament of Canada jurisdiction to regulate and control radio communication, including the transmission and reception of signs, signals, pictures and sounds of all kinds by means of Hertzian waves, and including the right to determine the character, use and location of apparatus employed?

2. If not, in what particular or particulars or to what extent is the jurisdiction of Parliament limited?

It becomes necessary in the first place to consider the nature of radio communication, how it is brought about, the extent of its effects, its usefulness to the inhabitants of the country at large, and the manner in which that usefulness may be made available.

The principles underlying radio communication are set out in an article compiled by J. W. Bain, radio engineer of the Marine Department, and printed in the case. This document is inserted for the convenience of the court, and it is stated that its accuracy may be verified by reference to the various standard textbooks on the subject. Its general accuracy was, I think, not controverted, and I therefore resort to this document for a brief general description of how radio communication is effected.

An alternating current is one which periodically changes direction in its circuit. For a certain time it flows in one direction, with varying strength, and then reverses and flows for an equal time in the opposite direction. The time in fractions of a second which elapses between two successive maximum values of current in the same direction is called a period or cycle, and the number of such periods or cycles per second is called the "frequency" of the alternating current. The maximum value to which the current rises in each half cycle is called the "amplitude" of the current. A high frequency alternating current is one of which the frequency is reckoned on tens of thousands.

By the use of alternate electric current in a transmitting apparatus, magnetic and electric fields are created, which expand and contract with the varying strength of the current, the energy being continually sent out into the surrounding medium and returned to the wire to be sent out again with a reversal of direction as the current increases from zero to maximum in one direction, and then decreases to zero, to increase again to a maximum in the opposite direction. If the frequency is very high, all the energy cannot

return to the wire after each half-cycle, and it remains in space, to be pushed further out by the next expansion of the field; and the energy so pushed out at each successive cycle forms an electro-magnetic wave, which is radiated out from the radio antenna.

It is formed of two fields, a magnetic and an electric field at right angles to each other and to the direction of propagation, varying in intensity in step with one another and at the frequency of the current which gave rise to them, and travelling through space at the speed of light, that is: three hundred million metres per second. This figure of three hundred million, when divided by the frequency in cycles per second, gives the wave length in metres, and, conversely, when divided by the wave length, gives the frequency.

Part of the energy is radiated in a direction parallel to the surface of the earth, and forms what is known as the direct or ground wave. Another part is radiated upwards into space, and there exists in the upper part of the atmosphere a conducting layer of electrified particles which possesses the property of reflecting radio waves back to earth, making them available, to a certain extent, for radio communication.

The electro-magnetic waves here referred to are energy waves sent out into surrounding space in the manner indicated, and are the means by which radio communication is carried on. This communication involves not only the production and radiation of electro-magnetic waves, but also their reception by suitable apparatus, which intercepts these waves by means of a receiving antenna. The passage of the waves across this antenna produces in it a voltage. The receiving apparatus, which is coupled to this antenna, must be capable of so amplifying the small voltage generated in the receiving antenna as to deliver at the output end a signal of suitable strength. Owing to the great number of electro-magnetic fields, due to the waves issuing from a corresponding number of transmitting stations engaged in the various services of radio communication, the receiving apparatus must also be able to discriminate between all these waves and select the desired one.

The fundamental method of arranging the receiving apparatus so as to select the desired wave is by tuning it to the frequency of the wave so desired. It follows that if more than one wave of the same or nearly the same frequency are coming to the receiving apparatus, one would interfere with the reception of the others and destroy the efficiency of all. In order to prevent this result, it is necessary that stations sending out these waves within certain distances of each other be limited to the use of frequencies sufficiently separated to avoid such interference.

By International Convention, frequencies from 550 kilocycles to 1,500 kilocycles have been appropriated to the service of broadcasting, and this band of 950 kilocycles is divided into 96 channels, giving approximately

a width of 10 kilocycles to each channel, deemed necessary to prevent a transmitting station operating on one of these channels from interfering with the station operating on an adjoining channel. The electro-magnetic waves sent out from a transmitting station ordinarily travel through space in all directions, and the distances at which they can be picked up by a receiver, and at which they may cause interference with other transmitting stations, vary with the electric power and the frequency used.

In "Elements of Radio Communication," by John H. Morecroft, page 98, there is a table shewing the variation according to power. It is there stated that a fifty-watt station will give good service at ten miles, poor service at 100 miles, and interference at 600 miles; a five hundred-watt station will give good service at 30 miles, poor service at 300 miles, and interference at 1,800 miles; and a five thousand-watt station will give good service at 100 miles, poor service at 1,000 miles, and interference at 6,000 miles. At page 76 of the same book it is stated that if frequency is increased, keeping the current constant, more and more energy is radiated until, when the frequency is a million or more, the radiated power may be detected at great distances; and that, for a given current, the power radiated from a given circuit varies as the square of its frequency.

It is scarcely necessary to give in detail the extent and importance of the service now rendered to the whole people of this and other countries by radio communication. The broadcasting service is the one most familiar to the masses of the people, and is useful to them as a means of enjoyment, of information and of education. The vast importance to the Dominion as a whole of the coast stations established throughout Canada, and the services that they render to shipping over great distances, as set out in the case, need not be enlarged upon. Of scarcely less importance to the people of all sections of the Dominion is the service by radio communication, which scatters everywhere daily the news of the world and the happenings of the various localities, in which people everywhere are interested; and the service which enables people everywhere to carry on expeditiously business affairs.

From what has been said above, and what further appears in the case, it is evident that all these services by radio communication would be rendered of little practical use to anybody if there were not regulation somewhere by which transmitting stations would be prevented from interfering with each other.

By the questions submitted, we are asked to determine whether or not the Dominion Parliament, under the *British North America Act*, is vested with the general power of dealing with the subject.

Section 91 of the *British North America Act* is as follows:

> 91. It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated. that is to say,—

Then follows a list of 29 classes of subjects.

Section 92 reads as follows:—

> 92. In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say,—

Then follow 10 enumerated classes of subjects, among which are:

> 13. Property and Civil Rights in the Province.

> 16. Generally all matters of a merely local or private nature in the province.

Many disputes have arisen as to the respective jurisdiction of the Dominion and the provinces by virtue of these sections, resulting in many appeals to the Privy Council, in which the construction to be put upon them has been authoritatively laid down. Lord Watson, in *Attorney-General for Ontario* v. *Attorney-General for the Dominion* (1), makes the following statement:—

> These enactments appear to their Lordships to indicate that the exercise of legislative power by the Parliament of Canada, in regard to all matters not enumerated in s. 91, ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon provincial legislation with respect to any of the classes of subjects enumerated in s. 92.

Viscount Haldane, in *Toronto Electric Commissioners* v. *Snider* (2), states the result of what has been laid down in previous decisions, as follows:

> The Dominion Parliament has, under the initial words of s. 91, a general power to make laws for Canada. But these laws are not to relate to the classes of subjects assigned to the provinces by s. 92, un-

> less their enactment falls under heads specifically assigned to the Dominion Parliament by the enumeration in s. 91. When there is a question as to which legislative authority has the power to pass an Act, the first question must therefore be whether the subject falls within s. 92. Even if it does, the further question must be answered, whether it falls also under an enumerated head in s. 91. If so, the Dominion has the paramount power of legislating in relation to it. If the subject falls within neither of the sets of enumerated heads, then the Dominion may have power to legislate under the general words at the beginning of s. 91.

Radio communication is, of course, not specifically mentioned in either of these sections, unless the word "Telegraphs" in s. 92-10 (a) includes it. It is, however, contended, on behalf of the provinces, that it falls within the class of subjects on s. 92 (13), "Property and Civil Rights in the Provinces,", or no. 16, "Generally all matters of a merely local or private nature in the Provinces."

It is, of course, conceded on behalf of the provinces that if general jurisdiction is vested in the provinces by virtue of these clauses, that jurisdiction is still subject to any Dominion legislation properly enacted in reference to the classes of subjects specifically assigned to the Dominion Parliament under s. 91 and for the performing of the obligations of Canada or of any province thereof arising under treaties, pursuant to s. 132 of the *British North America Act*.

Dealing firstly with class no. 16, is it possible, having in view the nature and effect of radio communication, as described, to say that, when carried on in a province, it is a matter of a merely local or private nature in the province? When a transmitter sends out into space these electro-magnetic waves, they are projected in all directions for the great distances referred to, and it is not possible for the transmitter to confine them within the bounds of a province. As already pointed out, a transmitter of only fifty-watt power—the power of an ordinary house lamp—will radiate these waves in all directions around it for a distance of 600 miles with sufficient energy at that distance to disturb and interfere with any radio communication passing through that field on the same or nearly the same channel or frequency.

Mr. Lanctôt, in his argument, pointed out that by the Beam system electro-magnetic waves can in a large measure be prevented from radiating in any but a given direction. This is accomplished by fencing the transmitter behind and at each side by certain apparatus, which results in limiting largely radiation of waves in these directions, with a consequent diminution of power and distance in those directions, and, apparently, increased power and distance in the remaining direction. He stated that it was possible that these waves so projected in one direction might travel around the

world, and in that way come back to the starting point. If his general argument is sound, then every resident of the province of Quebec, and of every other province, has a right at will to send out waves of this or any other character, on any or all channels or frequencies, without limitation or control, unless the province in which the sender resides sees fit by legislation to establish control. The result, if the practice were resorted to to any considerable extent by the residents of the various provinces, would be, as has been pointed out, to destroy the usefulness of radio communication, not only throughout all the provinces, but far beyond the bounds of the Dominion. This, Mr. Lanctôt argues, is a matter of a merely local or private nature in the province. I am of opinion that it is not a matter of that nature, and that radio communication does not fall within the class of subjects mentioned in this clause 16.

Is it, then, within the class of subjects described in clause 13, "Property and Civil Rights in the Province?" It is difficult to conceive of any legislation having a general effect that would not limit or affect in some way an individual's dominion over his property or over his actions; and if we are to hold that all legislation having this effect deals with property and civil rights in the province, within the meaning of clause 13, then that clause is all-embracing; and notwithstanding the general jurisdiction given to the Dominion Parliament in express terms by s. 91, the practical result would be that, by virtue of this clause 13 of s. 92, the province has general jurisdiction, limited only by the jurisdiction given to the Dominion in reference to the particular classes of subjects enumerated in s. 91.

Counsel for the provinces disclaimed any intention of arguing for any such extended interpretation of clause 13, and conceded that legislation merely affecting property and civil rights in the province would not necessarily be legislation in connection with that class of subjects. The argument is that a transmitting set and a receiving set are both pieces of property, and that the resident of a province has a right to use such property within the province, and that any legislation by the Dominion that presumes to control or limit his right to such user is legislation in respect of property and civil rights in the province. We are not, however, here dealing with a transmitter or a receiver simply as pieces of property, but are dealing with radio communication by means of these instruments; and it is shewn that the effects of that means of communication cannot be confined within the limits of the province.

It is clear that the provinces cannot, by legislation under clause 13, effectively deal with radio communication and so control it as to make that class of service available within the province to any degree of efficiency. No one province can prevent the entrance of these electro-magnetic waves from another province, or in any way eliminate the interference coming from outside the province. The subject can only be dealt with effectively by the Dominion Parliament. The various International conferences and

treaties that have been entered into, to which Great Britain and Canada are parties, for the regulation and control of radio communication, in order to make it available and useful to people of all these countries, and the negotiations on the subject still in progress, shew that even the Parliament of Canada is unable of itself to exercise the control and regulation necessary to secure to the Canadian people the full benefits of this recently discovered and marvellous means of communication.

A good deal has been said as to the importance, to provincial governments, of radio communication for maintaining easy connection with the large areas within their bounds, sparsely inhabited or uninhabited, but containing natural resources of great value, such as timber, requiring supervision, that is greatly facilitated by radio service. This, however, contributes little to the argument, because the object and effect of Dominion legislation on the subject is not to deprive provincial governments and residents of the provinces of radio service, but to secure it to them in a degree of efficiency otherwise unobtainable, by preventing disturbance from bringing about a condition of chaos that the provincial legislatures themselves have not jurisdiction to prevent.

Legislation by the Dominion Parliament on the subject no doubt affects the use that the resident of a province may make of a piece of property that he owns, namely, a transmitter or a receiver, and may affect what is claimed to be a civil right to use such property within the province, but it is not legislation directly dealing with property and civil rights in the province. It is legislation, in my opinion, dealing with a subject not included in the classes of subjects expressly mentioned in s. 91 or s. 92, which therefore falls within the general jurisdiction assigned to the Dominion Parliament by s. 91.

In view of what has just been stated, it becomes unnecessary to discuss the jurisdiction that may be conferred on the Dominion Parliament in reference to radio communication by s. 92-10 (a). It has been held that the word "Telegraphs" in that subsection includes telephones, though telephones were not invented until several years after the passage of the *British North America Act*. *Attorney-General* v. *Edison Telephone Company* (1). If this case is authority for holding that radio communications are telegrams, then the jurisdiction over that subject vested in the Dominion Parliament by virtue of this clause (a) may amount, practically, to general, or almost general, jurisdiction, because radio communication connecting a province with any other or others of the provinces, or extending beyond the limits of the province, could not be carried on with any degree of efficiency without controlling the disturbance that would otherwise arise from radio communication within the various provinces.

I am of opinion that question no. 1 should be answered in the affirmative.

It therefore becomes unnecessary to answer question no. 2

The official judgement of the court is as follows:

ANGLIN C.J.C.—Q. 1. In view of the present state of radio science as submitted, Yes.

Q. 2. No answer.

NEWCOMBE J.—Q. 1 should be answered in the affirmative.

Q. 2. No answer.

RINFRET J.—Q. 1. Construing it as meaning jurisdiction in every respect, the answer is in the negative.

Q. 2. The answer should be ascertained from the reasons certified by the learned judge.

LAMONT J.—Q. 1. Not exclusive jurisdiction.

Q. 2. The jurisdiction of Parliament is limited, as set out in the learned judge's reasons.

SMITH J.—Q. 1. Should be answered in the affirmative.

Q. 2. No answer.

Solicitor for the Attorney-General of Canada: *W. Stuart Edwards.*

Solicitor for the Attorney-General of Ontario: *E. Bayly.*

Solicitor for the Attorney-General of Quebec: *Charles Lanctôt.*

Solicitor for the Attorney-General of Manitoba: *W. J. Major.*

Solicitor for the Attorney-General of New Brunswick: *John B. M. Baxter.*

Solicitor for the Attorney-General of Saskatchewan: *M. A. MacPherson.*

Solicitor for the Canadian Radio League: *Brooke Claxton.*

Document 15

Quebec appealed the Supreme Court decision (Document 14) that supported federal jurisdiction over radio. Ontario supported its sister province, and the case moved to the judicial committee of the Privy Council of Great Britain. The British justices also found for the federal government. They read the British North America Act strictly and added the pragmatic notion that radio was akin to telegraphs, a federal responsibility.

DOCUMENT 15: Judicial committee of the Privy Council, "*Re* regulation and control of radio communication," 9 February 1932, *Dominion Law Reports* (1932) 2 D.L.R., 81–88.

Re REGULATION & CONTROL OF RADIO COMMUNICATION

A.-G. QUE. v. *A.-G. CAN. et al.*

The judgment of their Lordships was delivered by

VISCOUNT DUNEDIN:—This is an appeal from a judgment of the Supreme Court of Canada, answering questions referred to it by His Excellency the Governor-General in Council, for hearing and consideration, pursuant to the authority of s. 55 of the Supreme Court Act, R.S.C. 1927, c. 35, touching the jurisdiction of the Parliament of Canada to regulate and control radio communication. The questions so referred were as follows:—

"1. Has the Parliament of Canada jurisdiction to regulate and control radio communication, including the transmission and reception of signs, signals, pictures and sounds of all kinds by means of Hertzian waves, and including the right to determine the character, use and location of apparatus employed?

"2. If not, in what particular or particulars or to what extent is the jurisdiction of Parliament limited?"

The answers of the Chief Justice and the other Judges of whom the Court was composed were as follows:—

The Chief Justice:—"Q. 1. In view of the present state of radio science as submitted. Yes. Q. 2. No answer."

Newcombe , J. :—"Q. 1. Should be answered in the affirmative. Q. 2. No answer."

Rinfret, J. :—"Q. 1. Construing it as meaning "jurisdiction in every respect" the answer is in the negative." Q. 2. The answer should be ascertained from the reasons certified by the learned Judge.

Lamont, J. :—"Q. 1. Not exclusive jurisdiction. Q. 2. The jurisdiction of Parliament is limited as set out in the learned Judge's reasons."

Smith, J. :—"Q. 1. Should be answered in the affirmative. Q. 2. No answer."

The learned Chief Justice and Rinfret, J., expressed their regret that at the time of delivering judgment they had not had the advantage of knowing what was the conclusion reached by this Board on the question referred as to aviation. It is however unnecessary to speculate as to what would have been the result had the learned Judges known as we know now that the judgment of this Board (A.-G. *Can.* v. A.-G. *Ont.*, delivered on October 22, 1931; [1932] 1 D.L.R. 58, 39 C.R.C. 108) settled that the regulation of aviation was a matter for the Dominion. It would certainly only have confirmed the majority in their opinions. And as to the minority, though it is true that reference is made in their opinions to the fact that as the case then stood aviation had been decided not to fall within the exclusive jurisdiction of the Dominion, yet had they known the eventual judgment it is doubtful whether that fact would have altered their opinion. For this must at once be admitted; the leading consideration in the judgment of the Board was that the subject fell within the provisions of s. 132 of the B.N.A. Act, which is as follows:—

"The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as part of the British Empire towards Foreign Countries arising under Treaties between the Empire and such Foreign Countries."

And it is said with truth that, while as regards aviation there was a treaty, the Convention here is not a treaty between the Empire as such and foreign countries, for Great Britain does not sign as representing the Colonies and Dominions. She only confirms the assent which had been signified by the Colonies and Dominions who were separately represented at the meetings which drafted the Convention. But while this is so, the aviation case in their Lordships' judgment cannot be put on one side. Counsel for the Province felt this and sought to avoid any general deduction by admitting that many of the things provided by the Convention and the regulations thereof fell within various special heads of s. 91. For example, provisions as to beacon signals he would refer to art. 10 of s. 91—Navigation and Shipping.

It is unnecessary to multiply instances, because the real point to be considered is this manner of dealing with the subject. In other words the argument of the Province comes to this: Go through all the stipulations of the Convention and each one you can pick out which fairly falls within one of the enumerated heads of s. 91, that can be held to be appropriate for Dominion legislation; but the residue belongs to the Province under the head either of heading 13 of s. 92—Property and Civil Rights, or heading 16—Matters of a merely local or private nature in the Province. Their Lordships cannot agree that the matter should be so dealt with. Canada as a Dominion is one of the signatories to the Convention. In a question with foreign powers the persons who might infringe some of the stipulations in the Convention would not be the Dominion of Canada as a whole but would be individual persons residing in Canada. These persons must so to speak be kept in order by legislation and the only legislation that can deal with them all at once is Dominion legislation. This idea of Canada as a Dominion being bound by a convention equivalent to a treaty with foreign powers was quite unthought-of in 1867. It is the outcome of the gradual development of the position of Canada *vis-a-vis* to the mother country Great Britain, which is found in these later days expressed in the Statute of Westminister (1931 (Can.), p. v.). It is not therefore to be expected that such a matter should be dealt with in explicit words in either s. 91 or s. 92. The only class or treaty which would bind Canada was thought of as a treaty by Great Britain, and that was provided for by s. 132. Being therefore not mentioned explicitly in either s. 91 or s. 92, such legislation falls within the general words at the opening of s.91 which assign to the Government of the Dominion the power to make laws "for the Peace, Order and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces."

In fine, though agreeing that the Convention was not such a treaty as is defined in s. 132, their Lordships think that it comes to the same thing. On August 11, 1927, the Privy Council of Canada with the approval of the Governor-General chose a body to attend the meeting of all the powers to settle international agreements as to wireless. The Canadian body attended and took part in deliberations. The deliberations ended in the Convention with general regulations appended being signed at Washington on November 25, 1927, by the representatives of all the powers who had taken part in the conference and this Convention was ratified by the Canadian Government on July 12, 1928. The result is in their Lordships' opinion clear. It is Canada as a whole which is amenable to the other powers for the proper carrying out of the Convention: and to prevent individuals in Canada infringing the stipulations of the Convention it is necessary that the Dominion should pass legislation which should apply to all the dwellers in Canada.

At the same time, while this view is destructive of the view urged by the Province as to how the observance of the International Convention should be secured, it does not they say dispose of the whole of the question. They

say it does not touch the consideration of interprovincial broadcasting. Now, much the same might have been said as to aeronautics. It is quite possible to fly without going outside the Province, yet that was not thought to disturb the general view, and once you come to the conclusion that the Convention is binding on Canada as a Dominion, there are various sentences of the Board's judgment in the *Aviation* case which might be literally transcribed to this. The idea pervading that judgment is that the whole subject of aeronautics is so completely covered by the treaty ratifying the Convention between the nations, that there is not enough left to give a separate field to the Provinces as regards the subject. The same might at least very easily be said on this subject, but even supposing that it were possible to draw a rigid line between interprovincial and Dominion broadcasting, there is something more to be said.

It will be found that the argument for the Provinces really depends on a complete difference being established between the operations of the transmitting and the receiving instruments. The Province admits that an improper use of a transmitting instrument could by invasion of a wavelength not assigned by international agreement to Canada bring into effect a breach of a clause of the Convention. But it says this view does not apply to the operation of a receiving instrument. Now it is true that a dislocation of a receiving instrument will not in usual cases operate a disturbance beyond a comparatively limited circular area: although their Lordships understand that a receiving instrument could be so manipulated as to make its area of disturbance much larger than what is usually thought of. But the question does not end with the consideration of the Convention. Their Lordships draw special attention to the provisions of heading 10 of s. 92. These provisions as has been explained in several judgments of the Board have the effect of reading the excepted matters into the preferential place enjoyed by the enumerated subjects of s. 91 and the exception runs that the works or undertakings are to be other than such as are of the following classes:—

"(a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province.

"(b) Lines of Steam Ships between the Province and any British or Foreign Country.

"(c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces."

Now does broadcasting fall within the excepted matters? Their Lordships are of opinion that it does, falling in (a) within both the words "telegraphs" and the general words "undertakings connecting the Province

with any other or others of the Provinces or extending beyond the limits of the Province."

The argument of the Province really depends on making, as already said, a sharp distinction between the transmitting and the receiving instrument. In their Lordships' opinion this cannot be done. Once it is conceded, as it must be, keeping in view the duties under the Convention, that the transmitting instrument must be so to speak under the control of the Dominion, it follows in their Lordships' opinion that the receiving instrument must share its fate. Broadcasting as a system cannot exist without both a transmitter and a receiver. The receiver is indeed useless without a transmitter and can be reduced to a nonentity if the transmitter closes. The system cannot be divided into two parts, each independent of the other.

Their Lordships cannot but think that much of the argument depends on an unwarranted deduction taken from a sentence to be found in the judgment delivered by Lord Atkinson in the case of *Montreal* v. *Montreal Street R. Co.* (1912), 1 D.L.R. 681, at p. 685, 13 C.R.C. 541, at p. 551. His Lordship after saying, "The matters thus transferred are...," quotes the ss. (a) (b) and (c) and then adds "These works are physical things, not services." Cannon, J., in the *Aviation* case, [1931] 1 D.L.R. 13, at p. 50, assumed that this sentence applied not only to (c) which deals with "works" only, but also to (a) and (b), and this view has obviously influenced the conclusions of the minority in this case. Now in the first case their Lordships see no reason why the word "works" should not be referred to the same word standing alone in (c) and not be extended to (a) where it is conjoined with "undertaking," and to (b) where it is not used at all. But if their Lordships' surmise as to the view of the Board as expressed by Lord Atkinson is wrong, then they are not bound by and would not agree with the widened proposition. In the wider sense it was in no way necessary for the judgment in the case. What was being dealt with was a street railway which in itself formed no part of a through system and only became so by the legislation which was impugned. "Undertaking" is not a physical thing but is an arrangement under which of course physical things are used. Their Lordships have therefore no doubt that the undertaking of broadcasting is an undertaking "connecting the Province with other Provinces and extending beyond the limits of the Province."

But further, as already said, they think broadcasting falls within the description of "telegraphs". No doubt in everyday speech telegraph is almost exclusively used to denote the electrical instrument which by means of wire connecting that instrument with another instrument makes it possible to communicate signals or words of any kind. But the original meaning of the word "telegraph" as given in the Oxford Dictionary is:—

"An apparatus for transmitting messages to a distance, usually by signs of some kind."

Now a message to be transmitted must have a recipient as well as a transmitter. The message may fall on deaf ears, but at least it falls on ears. Further, the strict reading of the word "telegraph," making it identical with the ordinary use of it, has already been given up in *Toronto* v. *Bell telephone Co. of Canada*, [1905] A.C. 52. There are several words of Lord Macnaghten in delivering the judgment of the Board in that case which *mutatis mutandis* might well be applied to the argument of the Province here.

"It was argued," says he (p. 59) "that the company was formed to carry on, and was carrying on two separate and distinct businesses—a local business and a long-distance business. And it was contended that the local business and the undertaking of the company so far as it dealt with local business fell within the jurisdiction of the provincial legislature. But there, again, the facts do not support the contention of the appellants. The undertaking authorised by the Act of 1880 was one single undertaking, though for certain purposes its business may be regarded as falling under different branches or heads. The undertaking of the Bell Telephone Company was no more a collection of separate and distinct businesses than the undertaking of a telegraph company which has a long-distance line combined with local business, or the undertaking of a railway company which may have a large suburban traffic and miles of railway communicating with distant places."

Now it is true that that case was dealing with an established system, while the question here is as to the scope of legislation. But none the less the argument for the appellants there was that the legislation under which the system had been established was *ultra vires*. Consequently the words of Lord Macnaghten do carry a lesson as to the futility of trying to split what really is one undertaking into two.

As their Lordships' views are based on what may be called the pre-eminent claims of s. 91, it is unnecessary to discuss the question which was raised with great ability by Mr. Tilley, namely whether, if there had been no pre-eminent claims as such, broadcasting could have been held to fall either within "Property and Civil Rights," or within "Matters of a merely local or private nature."

Upon the whole matter therefore their Lordships have no hesitation in holding that the judgment of the majority of the Supreme Court was right and their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed. No costs will be awarded, this being a question to be decided between the Dominion and the Provinces.

Although the question had obviously to be decided on the terms of the statute, it is a matter of congratulation that the result arrived at seems consonant with common sense. A divided control between transmitter and receiver could only lead to confusion and inefficiency.

Appeal dismissed

Document 16

With control of radio established as a federal responsibility, the government of the day quickly brought in a bill. Although Prime Minister R.B. Bennett had only inherited the broadcasting question from the Liberals—and from the Aird commission appointed by the Liberals—the bill had his personal endorsement. The Prime Minister underlined the importance of broadcasting at a time when radio seemed a relatively inexpensive diversion, not something to grip the attention when substantial economic distress dominated news columns and cabinet meetings.

To the ordinary citizen, by now five or six years into listening habits formed by US programs, radio seemed inherently free—it came, unbidden, out of the air. The listener paid nobody for Amos "n" Andy or other US network shows heard on US stations from across the border or on private Canadian stations. The commercials seemed an annoyance at worst. On the other hand, many people admired some of Canada's isolated national radio experiences. There had been a temporary coast-to-coast network broadcasting on Dominion Day in 1927 followed by a more regular network service arranged by the radio division of Canadian National Railways. The new Prime Minister, Bennett, had taken to speaking to the nation by radio, and the novelty of a Canadian identity on the airwaves was attractive.

When Bennett spoke of his bill in the Commons, he assigned high national and cultural purposes to broadcasting and firmly supported the notion that the radio airwaves were a "natural resource" which had to be under public control. The speech contained assurances that the proposed radio system would in the end cost the treasury nothing, because it would be financed by radio listeners through licence fees and advertising. Bennett's assurances were not only sincere, but borne out by experience: operating costs and even loans for capital construction were repaid during this period—until the preparations for television in the early 1950s.

DOCUMENT 16: R.B. Bennett, "Speech in support of Bill 94, respecting radio broadcasting," 18 May 1932, *Debates*, 3035–3036.

In moving the second reading of the bill which stands in my name, I desire to intimate to the house that in a general way it follows the committee's report which was unanimously adopted a few days ago and it is based upon principles which the government believes should be adopted, because

they fulfil two essential requirements without which radio broadcasting in Canada must fail in service to the Canadian people.

First of all, this country must be assured of complete Canadian control of broadcasting from Canadian sources, free from foreign interference or influence. Without such control radio broadcasting can never become a great agency for the communication of matters of national concern and for the diffusion of national thought and ideals, and without such control it can never be the agency by which national consciousness may be fostered and sustained and national unity still further strengthened. Other and alternative systems may meet the requirements of other countries, and in any case it is not my purpose to comment unfavourably upon those systems. But it seems to me clear that in Canada the system we can most profitably employ is one which, in operation and control, responds most directly to the popular will and the national need. In this stage of our national development we have problems peculiar to ourselves and we must reach a solution of them through the employment of all available means. The radio has a place in the solution of all those problems. It becomes, then, the duty of parliament to safeguard it in such a way that its fullest benefits may be assured to the people as a whole.

Furthermore, radio broadcasting, controlled and operated in this way, can serve as a dependable link in a chain of empire communication by which we may be more closely united one with the other in that enduring fellowship which is founded on the clear and sympathetic understanding which grows out of closer mutual knowledge.

No other system of radio broadcasting can meet these national requirements and empire obligations. Therefore, the parliament of Canada is asked to support the principle embodied in this measure.

Secondly, no other scheme than that of public ownership can ensure to the people of this country, without regard to class or place, equal enjoyment of the benefits and pleasures of radio broadcasting. Private ownership must necessarily discriminate between densely and sparsely populated areas. This is not a correctable fault in private ownership; it is an inescapable and inherent demerit of that system. It does not seem right that in Canada the towns should be preferred to the countryside or the prosperous communities to those less fortunate. In fact, if no other course were possible, it might be fair to suggest that it should be the other way about. Happily, however, under this system, there is no need for discrimination; all may be served alike. Equality of service is assured by the plan which calls for a chain of high power stations throughout Canada. And furthermore, the particular requirements of any community may be met by the installation of low power stations by means of which local broadcasting service may be obtained.

Operation under the technical plan covered by the bill has been made

possible by an arrangement between this country and the government of the United States, by which the necessary channels when required will be made available for effective domestic use.

I desire to acknowledge the friendly spirit which is manifest in this arrangement. I believe that the plan now suggested when in operation will permit Canada to enjoy a scheme of radio broadcasting unexcelled in any other country in the world.

Then there is third reason to which I might refer, and one which I believe must commend itself to every hon. member in this chamber. The use of the air, or the air itself, whatever you may please to call it, that lies over the soil or land of Canada is a natural resource over which we have complete jurisdiction under the recent decision of the privy council. I believe that there is no government in Canada that does not regret to-day that it has parted with some of these natural resources for considerations wholly inadequate and on terms that do not reflect the principle under which the crown holds the natural resources in trust for all the people. In view of these circumstances and of the further fact that broadcasting is a science that is only yet in its infancy and about which we know little yet, I cannot think that any government would be warranted in leaving the air to private exploitation and not reserving it for development for the use of the people. It well may be that at some future time, when science has made greater achievements than we have yet a record of, it may be desirable to make other or diifferent arrangements in whole or in part, but no one at this moment in the infancy of this great science would, I think, be warranted in suggesting that we should part with the control of this natural resource. I think, Mr. Speaker, that that is a third and adequate reason why we should proceed with the bill.

The bill divides itself roughly into three parts. First, that part which provides for the appointment of a commission. We have been very careful to suggest no salaries for the members of the commission. Inasmuch as the report that came from the committee was a unanimous report, the government thought that it would be the proper thing for the house to consider the qualifications of commissioners and what would be a fair compensation for them to receive for the services rendered. The commission is clothed with wide powers and with large discretions, as in the very nature of things must be so. There are assistant commissioners in each of the provinces, nine in all, and provision is made for local advisory committees so that from the small unit up to the dominion there is effective democratic control of broadcasting.

In the second place, we have provided that no large expenditures shall be made, so that in the early stages of the development of this great enterprise the Canadian people might not be led into capital commitments the interest upon which would be too great a burden upon them. We therefore in

this measure for the present have provided that capital expenditures and all expenditures shall be within the income derived from the licence fees. That is, if there are five hundred thousand licences at two dollars per licence, the commission would have an income of one million dollars, which sum would not be more than expended by the commission in any one year. It is also provided that if the sum thus collected is not expended in any one year it shall be cumulative and the balance shall inure to the benefit of the commission during the next and succeeding years.

Then there follows, of course, the provision for the commission expropriating stations when it is in a position financially so to do, with the limitations to which I have referred, and those expropriations will be made at such time and under such circumstances as will enable the commission to discharge its duties without incurring large financial obligations.

It will be observed that there are sections in the bill other than those dealing with the salaries to be paid to the commission which have been left blank, in order that the committee of the house when we are in committee on the bill may by appropriate discussion indicate what is thought to be, not in the interests of one party nor of any party but of the people as a whole, the best method with which to deal with these particular matters.

I think that I can say in no boasting spirit that the measure at least endeavours to meet the recommendations of the committee without regard to political considerations of any kind, and we leave to the house at large the determination of the type and kind of service the country shall receive having regard to the compensation it is prepared to pay to those who will be responsible for the administration of the act.

Document 17

The 1932 Canadian Radio Broadcasting Act reveals a government overwhelmingly intent upon controlling the spending of the newly created Canadian Radio Broadcasting Commission in the unhappy context of the economic depression. It is not a visionary document. It fails to mention the purposes, if any, of the programs that are to be produced, purchased, or imported for Canadian listeners by the CRBC. Terms like "culture" and "national unity" do not occur.

The act defined a broadcasting system strikingly different from those in Britain and the United States. The Canadian way would have both private and public stations (private stations did not exist in Britain; private stations were all that existed in the United States). There was no doubt that broadcasting in Canada was to be firmly under public control. The CRBC was given considerable power over the private stations. It was to grant or refuse licenses, it could impose CRBC programs on them, even rent, buy, or expropriate them in the national interest. These powers generated considerable resentment and a long-term lobby by the private broadcasters for the next 25 years.

About four months after the act gained royal assent, the Bennett government appointed the three men who would form the CRBC. They were Hector Charlesworth, the editor of *Saturday Night*, from Toronto; Thomas Maher, an engineer with Conservative connections from Quebec City; and Col. William Arthur Steel of Ottawa. Steel had been one of the four Canadians to sign the 1929 Washington International Radio Telegraph Convention. He represented technical expertise on the CRBC.

The 1932 act was amended in May 1933. The amendments in part resulted from the frustrations faced by Charlesworth and his colleagues as they tried to begin national broadcasting under the thumb of a government that at times seemed indifferent and was always penurious, and a Parliament that was vulnerable to the lobbying of the private broadcasters. The brief amendments shifted some of Parliament's power over the CRBC to "the Governor in Council," or cabinet. They also partly freed the CRBC from the hiring restrictions of the Civil Service Act. And the commissioners gained slightly more control over their own revenues.

DOCUMENT 17: "An Act respecting radio broadcasting," 26 May 1932, 22&23 Geo. 5, c. 51. as amended, 23&24 Geo. 5, c. 35.

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as *The Canadian Radio Broadcasting Act*, 1932.

2. In this Act, unless the context otherwise requires,

(a) "broadcasting" means the dissemination of radioelectric communications intended to be received by the public, either directly or through the medium of relay stations;

(b) "channel" means a wave length or frequency in the broadcast band authorized to be used for broadcasting;

(c) "Commission" means the Canadian Radio Broadcasting Commission;

(d) "local programme" means a programme organized for the purpose of local broadcast;

(e) "Minister" means the Minister of Marine;

(f) "national programme" means a programme organized by the Commission for the purpose of general broadcast in Canada;

(g) "private station" means any station licensed to a person other than the Commission;

(h) "radio" means and includes radiotelegraph, radiotelephone and any other form of radioelectric communication including the wireless transmission of writing, signs, signals, pictures, and sounds of all kinds by means of Hertzian waves;

(i) "station" means a station licensed under the *Radiotelegraph Act* and regulations as a private commercial broadcasting station or as an amateur broadcasting station.

THE COMMISSION.

3. (1) A commission to be known as the Canadian Radio Broadcasting Commission is hereby constituted and shall consist of a chairman, a vice-chairman and a third commissioner who shall be appointed by the Governor in Council and who shall hold office for periods of ten, nine and eight years respectively.

(2) The Chief Commissioner shall be paid an annual salary of ten thousand dollars, and each of the other commissioners an annual salary of eight thousand dollars.

(3) Two members of the Commission shall constitute a quorum.

(4) In any proceedings of the Commission the votes of the majority shall govern, but in case there are only two members present the chairman or vice-chairman may cast an additional vote.

(5) The headquarters of the Commission shall be at Ottawa and the Commission may establish branch offices elsewhere.

4. The Commission may employ such technical, professional and other officers, and clerks and employees as may be necessary. Such officers, clerks and employees shall be appointed pursuant to the *Civil Service Act*.

5. (1) The Commission shall be a body corporate having capacity to contract and to sue and be sued in the name of the Commission.

(2) The Commission shall have power, for the purposes of this Act, to acquire, hold and dispose of real and personal property.

Provided, however, that the Commission shall not dispose of any real property without the approval of the Governor in Council.

(3) The Commission shall have power to enter into all ordinary commercial banking arrangements on its own credit but shall not be entitled to borrow either on its own credit or otherwise by issuing debentures or any other type of long term securities.

ASSISTANT COMMISSIONERS

6. (1) The Governor in Council may appoint not more than nine Assistant Commissioners who shall hold office during pleasure, and who shall not receive any salary but may be paid an annual amount by way of honorarium, to be fixed by the Governor in Council. There shall not be more than one Assistant Commissioner appointed in any province and the appointment shall be made after consultation with the Government of the province in which the Assistant Commissioner resides.

(2) It shall be the duty of the Assistant Commissioner to organize and to act as chairman of provincial or local advisory committees, and, at the request of any private station, to organize an Advisory Committee or Sub-Committee, for the purpose of co-operation with such station.

(3) The members of the advisory committee shall act without remuneration and shall be selected by the Assistant Commissioner after consul-

tation with the Government of the Province so as to represent the respective provincial or local communities.

GENERAL COUNCIL.

7. (1) The Commission shall from time to time convene meetings of a General Council which shall consist of the Commissioners and the Assistant Commissioners, and which may include representatives of the local advisory committees and of private stations.

(2) The functions of the General Council shall be to advise with regard to the general policy of the Commission, including the general composition, character and co-ordination of national and local programmes, the apportionment of time and any other matters which the Commission or the Minister may refer to the General Council.

POWERS OF THE COMMISSION.

8. The Commission shall, notwithstanding anything contained in the *Radiotelegraph Act*, chapter one hundred and ninety-five of the Revised Statutes of Canada, 1927, and in the regulations made thereunder, but subject to the power of the Minister to license stations, have power to regulate and control broadcasting in Canada carried on by any person whatever, including His Majesty in the right of the province or of the Dominion, and without restricting the generality of the foregoing, these powers shall extend to the following matters:

(a) The Commission shall determine the number, location and power of stations required in Canada;

(b) the Commission shall determine the proportion of time that is to be devoted by any station to national and local programmes respectively and the proportion of advertising that is to be authorized, which shall not unless by permission of the Commission, exceed five per cent of any programme period, and may prescribe the character of such advertising;

(c) the Commission may make recommendations to the Minister with regard to the issue, suspension or cancellation of private broadcasting licences, and notwithstanding anything contained in the *Radiotelegraph Act* or regulations, the Minister may issue, suspend or cancel such licences;

(d) notwithstanding anything contained in the *Radiotelegraph Act* or regulations, or in any licence heretofore issued thereunder, the Commission shall have power to allot channels to be used by stations in Cana-

da and may cancel any allotment and substitute any other therefor;

(e) The Commission may prescribe the periods to be reserved periodically by any station for national programmes;

(f) The Commission may prohibit the organization or operation of chains of privately operated stations in Canada;

(g) the Commission may, subject to the approval of the Minister, assist and encourage the construction of small private stations.

BROADCASTING BY THE COMMISSION.

9. The Commission shall have power to carry on the business of broadcasting in Canada and, without restricting the generality of the foregoing, may:

(a) make operating agreements with private stations for the broadcasting of national programmes;

(b) acquire existing private stations either by lease or, subject to the approval of Parliament, by purchase;

(c) subject to the approval of Parliament, construct such new stations as may be required;

(d) operate any station constructed or acquired under the provisions of paragraphs (b) and (c) of this section; provided that the time allotted to local programmes by the Commission in respect to any such station shall be subject to the management of the station director, or other officer in charge of such station, who shall, in respect to the local programmes, act in consultation with and in accordance with the policy formulated by the local Advisory Committee, or Sub-Committee thereof assigned to such station;

(e) originate programmes and secure programmes from within or outside Canada, by purchase or exchange, and make the arrangements necessary for their transmission;

(f) Make contracts with any person (or persons) in Canada or outside for the purpose of securing artists to perform in connection with programmes originated by the Commission;

(g) subject to the approval of Parliament, take over all broadcasting in Canada;

(h) do any other thing reasonably necessary for the performance of its functions and powers hereunder.

10. The Commission may, with the approval of the Governor in Council, make by-laws or regulations respecting any of the matters mentioned in the last two preceding sections and generally for the fulfilment of the purposes of the Commission.

EXPROPRIATION AND COMPENSATION.

11. (1) If the Commission is unable to agree with the owner of any property, which it is authorized to acquire, as to the price to be paid therefor, the Commission shall have the right to acquire the same without the consent of the owner and the provisions of the *Expropriation Act*, chapter sixty-four of the Revised Statutes of Canada, 1927, shall, *mutatis mutandis*, be applicable to the acquisition of such property by the Commission.

(2) Any plan and description deposited under the provisions of the *Expropriation Act* may be signed by the Chairman of the Commission or by one of the Commissioners on behalf of the Commission, and the property shown and described in such plan and description so deposited shall thereupon be and become vested in the Commission unless the plan and description indicates that the property taken is required for a limited time only, or that a limited estate or interest therein is taken; and by the deposit in such latter case, the right of possession for such limited time or such limited estate or interest shall be and become vested in the Commission.

12. The compensation payable in respect of the taking of any property so vested in the Commission or of any interest therein or of lands injuriously affected by the construction of the undertakings or works shall be ascertained in accordance with the provisions of the *Expropriation Act*, and for that purpose the Attorney-General of Canada may file an information in the Exchequer Court on behalf of the Commission to all intents and purposes as if such property had been expropriated by and vested in His Majesty under the provisions of the said Act. The amount of any judgment upon such proceedings shall be payable exclusively out of the funds of the Commission.

13. (1) In determining the compensation to be paid no allowance shall be made for the value of a licence terminated by the taking of any private station and no person shall be deemed to have any proprietary right in any channel heretofore or hereafter allotted, and no person shall be entitled to any compensation by reason of the cancellation of the allotment of a channel or by reason of the allotment of a new channel in substitution therefor.

(2) If the Commission recommends the cancellation of or refusal to renew any licence in the interest of broadcasting generally in Canada and certifies that such cancellation or refusal is not on account of any failure to comply with this Act or the *Radiotelegraph Act* or regulations thereunder, compensation may be paid to the extent of the depreciated value of radio equipment, together with an allowance for the cost of restoring the premises to a tenantable condition for ordinary purposes.

EXPENDITURE OF THE COMMISSION.

14. (1) The Commission may expend for the purposes of this Act the moneys appropriated by Parliament for such purposes.

(2) The moneys appropriated for such purposes shall not exceed the estimated revenue from receiving licences, private commercial broadcasting licences and amateur broadcasting licences and from the business of the Commission under this Act.

Provided that if at the end of any fiscal year there is a balance of appropriated moneys unexpended or if the revenue from the sources mentioned in the preceding subsection exceeds the amount appropriated, Parliament may appropriate any such balance or excess in addition to any appropriation permitted hereunder.

(3) The Minister of Finance shall from time to time pay into a chartered bank to the credit of the Commission moneys appropriated by Parliament for the purposes of the Commission.

15. All revenue received by the Commission arising out of its business under this Act shall be paid into a chartered bank to the credit of the Receiver General of Canada.

16. All revenue of and expenditures by the Commission shall be subject to the audit of the Auditor General in the same manner as other public moneys.

17. The Commission shall be subject to the provisions of *The Consolidated Revenue and Audit Act*, 1931.

18. The Commission shall, through the Minister, submit an annual report to Parliament in such form as the Minister may prescribe.

19. Each Commissioner shall devote the whole of his time to the performance of his duties under this Act and shall not accept or hold any other office or employment or have any pecuniary interest, direct or indirect, individually or as a shareholder or partner or otherwise, in broad-

casting or in the manufacture or distribution of radio apparatus.

20. Each Assistant Commissioner shall devote such time as may be necessary to the performance of his duties under this Act and shall not (except in respect of the compensation received by him as an officer or employee under the Commission) have any pecuniary interest, either direct or indirect, individually or as a shareholder, partner, officer or employee, in broadcasting or in the manufacture or distribution of radio apparatus.

21. Each Commissioner, Assistant Commissioner and Provincial Director shall, before acting as such, take and subscribe before a Superior or County Court judge, and cause to be filed with the Minister, an oath of office in the following form:

"I DO SOLEMNLY SWEAR that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of Chief Commissioner (or as the case may be) of the Canadian Radio Broadcasting Commission, and that, while I continue to hold such office, I will not accept or hold any other office or employment, (add in the case of an Assistant Commissioner, except as an officer or employees under the Commission) or have any pecuniary interest, direct or indirect, individually or as a shareholder or partner, or otherwise, in broadcasting or, in the manufacture or distribution of radio apparatus."

22. Every person who commits a breach of any provision of this Act or of any regulation made thereunder shall be guilty of an offence punishable on summary conviction by a fine not exceeding two hundred dollars or by imprisonment for a period not exceeding six months or by both fine and imprisonment.

An Act to amend The Canadian Radio Broadcasting Act, 1932,

23rd May 1933

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Section four of *The Canadian Radio Broadcasting Act*, 1932, is repealed and the following is substituted therefor:—

"**4.** The Commission may employ such technical, professional and other officers as the Commission may deem necessary or desirable,

and such persons shall receive such salaries or remuneration as may be fixed by the Commission, subject to the approval of the Governor in Council. Clerks and all other employees of the Commission shall be appointed pursuant to the *Civil service Act*."

2. Paragraphs (b) and (c) of section nine of the said Act are repealed, and the following paragraphs are substituted therefor:—

"(b) Subject to the approval of the Governor in Council, acquire existing private stations either by lease or by purchase;

(c) Subject to the approval of the Governor in Council, construct such new stations as may be required."

3. Section fourteen of the said Act is repealed and the following is substituted therefor:—

"**14.** (1) The Commission may expend for the purposes of this Act the moneys appropriated by Parliament for such purposes, together with such sums of money as may be received by the Commission from any business carried on by it under this Act.

(2) The moneys appropriated by Parliament for such purposes shall not exceed the estimated revenue from receiving licences, private commercial broadcasting licences and amateur broadcasting licences:

Provided that if at the end of any fiscal year there is a balance of appropriated moneys unexpended or if the revenue from the sources mentioned in the preceding subsection exceeds the amount appropriated, Parliament may appropriate any such balance or excess in addition to any appropriation permitted hereunder.

(3) The Commission shall present to the Minister of Finance annually an estimate of the expenditure proposed to be made by it during the fiscal year, and the Minister of Finance shall from time to time pay into a chartered bank to the credit of the Commission moneys appropriated by Parliament for the purposes of the Commission."

4. This Act shall expire on the thirtieth day of April, 1934.

Document 18

Within the framework of the Radio Broadcasting Act (Document 17), the newly formed Canadian Radio Broadcasting Commission set out regulations. Technical requirements have been omitted from the following excerpt.

DOCUMENT 18: CRBC, "Rules and Regulations," parts 1, 4, 5, PC 535, 15 April 1933.

PART 1—GENERAL RULES AND REGULATIONS

Section 1. Supervision and Licences

1. The legislation under which all broadcasting in Canada is controlled is known as the Canadian Radio Broadcasting Act, 1932. This Act is found in Chapter 51 of the Statutes of Canada, 1932, and became law on May 26th, 1932. In addition, certain regulations with regard to the issuing of licences for broadcast transmitters, broadcast receivers and other similar apparatus, will be found in the Radio Telegraph Act, Revised Statutes of Canada, 1927, Chapter 195.

2. These regulations are intended to ensure that all broadcast facilities in Canada, whether privately or publicly owned, shall be so designed, installed and operated as to take advantage of the latest scientific developments and improvements in physical plant and the methods of operation of broadcast systems, so that the maximum service area will be obtained for each station, and the best possible service rendered to Canadian listeners.

These regulations are subject to such modifications and changes as may be deemed necessary, from time to time, by the Canadian Radio Broadcasting Commission.

3. All broadcasting in Canada shall be under the supervision of the Canadian Radio Broadcasting Commission. For the purpose of supervising radio broadcasting, the Dominion of Canada is divided into the following regions:—

(a) The Maritime Provinces. This includes the provinces of New Brunswick, Nova Scotia and Prince Edward Island.

(b) Province of Quebec.

(c) Province of Ontario.

(d) The Western Provinces. This includes the provinces of Manitoba, Saskatchewan and Alberta.

(e) Province of British Columbia

4. The supervision of programs with regard to advertising contents, mechanical reproductions, quality, and all other matters covered by these regulations, shall be carried out by the regional directors of the Canadian Radio Broadcasting Commission, in collaboration with the Assistant Commissioners of each of the Provinces within the respective regions.

5. Applications for licences or for changes in licences or changes in existing apparatus are to be made in writing to the Canadian Radio Broadcasting Commission. This will cover the following types of licences:—

(a) Private commercial broadcasting station.

(b) Amateur broadcasting station.

All such applications must give full details with regard to the following points:—

(a) The proposed physical equipment which the applicant proposes to use.

(b) A map showing the exact proposed location of the new transmitter.

(c) The proposed location of the studio or studios.

(d) The maximum power and operating power of the proposed transmitting apparatus.

(e) Period of time during which the station is to be operated.

(f) A short description of the type of apparatus to be used in the studio.

6. The applicant shall state in his application the period of time likely to be required for the putting into operation of the station after the licence has been granted. In no case shall this period exceed one year, and construction shall be commenced within a period of six months from the granting of the licence. Licences will be automatically forfeited if either of these two conditions is not met by the licensee.

7. An application for the modification of a licence may be filed for change in frequency, change in operating power when no construction is necessary, change in hours of operation, change in location of main studio, or change in the nature of the authorized service. All such applications shall be filed not less than 90 days before the proposed change.

8. Each application for a renewal of licence shall be filed at least 60 days prior to the expiration date of the licence sought to be renewed.

9. The transfer of radio station licence without the consent of the Commission shall be sufficient grounds for a recommendation to the Minister for the revocation of such licence or a denial of any application for its renewal.

10. Insolvency of a licensee of a station shall be considered sufficient grounds for the revocation of the station licence and/or the refusal to renew it.

11. All broadcasting station licences will be issued for a period of six months, and will be issued so as to expire at the hour of 3 a.m. E.S.T. The normal licence periods and expiration dates will be as follows:—

For stations up to and including 100 watts carrier power, May 1st and November 1st.

For stations of 250 watts and above, April 1st and October 1st.

12. Any licensee receiving from the Canadian Radio Broadcasting Commission official notice of a violation of Dominion laws, Commission regulations, or the terms and conditions of the station licence, shall within three days from such receipt send written reply in triplicate to the Canadian Radio Broadcasting Commission. The answer to each notice shall be complete in itself and shall not be abbreviated by reference to other communications or answers to other notices.

Section 2. Location of stations

13. In general, no broadcast transmitting stations will be permitted within residential areas in Canada. Definite rules cannot be laid down to cover this requirement, but each station will be treated separately and the location fixed to the satisfaction of the Commission.

14. In the case of change of location or changes in apparatus, a complete description of the proposed change is to be included. This will include a map showing the exact location to which it is proposed that the transmitter should be moved.

Section 3. Chain Broadcasting.

15. Under Section 8, subsection (f) of the Canadian Radio Broadcasting Act of 1932, all chain broadcasting in Canada is under the control of the Broadcasting Commission.

Station owners or managers, advertising agents and all others interested in the organization of radio broadcasts and the operation of radio broadcasting stations in Canada, must obtain permission in writing from the Commission before any arrangements are made for the tieing up of two or more privately owned stations in Canada for purposes of chain broadcasting....

PART IV—STATION OPERATION

71. Except Sundays, the licensee of each broadcast station shall maintain a minimum regular operating schedule of two-thirds of the hours that it is authorized to operate during each broadcast day.

72. The licensee shall file with the Commission a schedule showing the exact hours to be occupied each day. All such periods selected for broadcasting are subject to the approval of the Commission.

73. If the minimum operating schedule herein required is not adhered to, the licensee may, after hearing, be required to share time with other stations, or be limited to operation during daytime or during specified hours.

74. Hours not assigned to any physical station must not be used until the Commission has been notified and its approval obtained.

75. A licensee of an unlimited time station may operate the station on any schedule of hours during the broadcast day and the experimental period, provided the minimum regular schedule is maintained during the broadcast day.

76. Upon the completion of the construction of a broadcast station in exact accordance with the terms of the licence, the licensee is authorized to test the equipment between the hours of 1 a.m. and 6 a.m. local standard time, for a period not to exceed ten days. However, the representatives of the Canadian Radio Broadcasting Commission in the region concerned must be notified two days in advance of the beginning of such equipment tests. The Commission may cancel or change the period and/or date of the beginning of such testing, if it appears to be in the public interest, convenience and necessity.

77. If local time is changed from standard time to daylight saving time at the location of all stations sharing time on the same frequency, the hours

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of operation of all such stations on that frequency shall be understood to refer to daylight saving time, and not standard time, as long as daylight saving time is observed. This provision shall govern when the time is changed by provision of law or general observance of daylight saving time by the various communities, and when the time of operation of such stations is specified in the licence or is mutually agreed upon by the licensees: Provided, however, That when the licence specifies average time of sunset, local standard time shall be used.

78. The time of operation of any broadcast station which does not share time with other stations on the same frequency shall be understood to have reference to local standard time unless modification of such licence with respect to hours of operation is made by the Commission.

79. The station licence shall be posted in a conspicuous place in the room in which the transmitter is located, and the licence of the radio operator shall be posted in a conspicuous place in a room occupied by the operator while on duty.

80. The licensee of each station shall keep a licensed operator or operators of the grade specified by the Canadian Radio Broadcasting Commission on duty during all periods of actual operation of the transmitter at the place where the transmitting equipment is located.

81. A licensed operator on duty and in charge of the transmitter may, at the discretion of the licensee, be employed for additional operator's duties commensurate with the grade of operator's licence which he holds.

82. The licensee of each broadcast station shall maintain program and operating logs and shall require entries to be made as follows:—

A. The Program Log

(a) Date, call letters, location, frequency.

(b) An entry of the time each station and call announcement is made, with an indication of the type of announcement.

(c) Entries briefly describing each program broadcast, such as "music", "drama", "speech", etc., with the time of the beginning and ending, so as to give a continuous record of each day's broadcast. If a mechanical reproduction is used, that fact shall be noted, together with an indication whether announcement thereof was made. If a speech is made by a political candidate, the name and political affiliation of such speaker shall be entered.

(d) The name, character, and origin of each program, and announcement, giving the time of commencement and termination of all programs and announcements.

(e) All those programs and announcements for which the licensee is paid.

B. The operating Log

(a) An entry of the time the station begins to supply power to the antenna, and time it stops.

(b) An entry of the time the program begins and ends.

(c) An entry of each interruption to the carrier wave, its cause and duration.

(d) An entry of the following each 30 minutes:

(1) Operating constants of last radio stage (total plate current and plate voltage).

(2) Antenna current.

(3) Frequency check.

(4) Temperature of crystal control chamber.

83. Each log shall be kept by the person or persons competent to do so, having actual knowledge of the facts required, and who shall sign the log when starting duty and again when going off duty. The logs shall be made available upon request by authorized Commission representatives.

84. The exact form of logs is not prescribed, but they shall be kept in an orderly manner, and in such detail that the information required is readily available. Key letters or abbreviations may be used if the explanation of each is given plainly in the log.

85. Each licensee of a broadcast station shall announce the call letters and location as frequently as practicable during the hours of operation, and in any event before or after each program being broadcast. In no event shall more than 30 minutes elapse between such announcements, and insofar as practicable these announcements shall be made on the hour and half hour. These requirements are waived when such announcements would interrupt a single consecutive speech; and in such cases the announcement of the call letters and location shall be made as soon as possible.

86. A mechanical reproduction shall be announced as such just before it is broadcast, except when its use is merely incidental, as for an identification or background. The exact form of announcement is not prescribed, but the language shall be clear and in terms commonly used and understood. The following are examples of statements sufficient for the purpose:—

(a) "This is a recorded program".

(b) "This is a player-piano record".

87. Each station licensee shall give absolute priority to radio communications or signals relating to ships or aircraft in distress and shall cease transmitting upon such frequencies, and at such times, when such transmissions may, in any way, interfere with the reception of radio distress signals or traffic relating thereto.

88. No station licensee shall resume operation until the need for distress traffic no longer exists, or it is determined that the station will not interfere with distress traffic as it is then being routed and the operation of the station shall again be discontinued if the routing of distress traffic is so changed that the station will interfere. The status of distress traffic may be ascertained by communication with Government and commercial stations. The Commission may hereafter require the licensees of certain stations to keep an effective continuous watch on the distress frequency, 500 kilocycles (410 kilocycles in the Great Lakes area).

PART V—PROGRAMS

Section 1. Control of Programs

89. In drawing up daily schedules Canadian broadcasting stations shall not exceed the following percentages for the several classes of program material mentioned:

Programs imported from foreign countries—40%.

A program of foreign origin which advertises goods manufactured in Canada, and names the address in this country where such goods are produced and distributed, shall be deemed a Canadian program.

90. No broadcasting station may broadcast any speech, printed matter, program or advertising matter containing abusive or defamatory statements with regard to individuals or institutions, or statements or suggestions contrary to the express purpose of any existing legislation; as for example, the Patent Medicine Act or any regulations promulgated thereunder.

91. The Commission reserves the right to prohibit the broadcasting of any matter until the continuity or record or transcription or both have been submitted to the Commission for examination and have been approved by them.

92. Broadcasting stations in Canada shall not mention or suggest prices in connection with any advertising programs or announcements transmitted by the said stations.

93. The licensee shall file with the Commission weekly an advance copy of the daily program schedule in such form as may be specified by the Commission.

94. Each station shall keep on file a copy of (a): the daily proces-verbal (b): the continuities of each paid program and announcement, originating at the said station.

The same shall be open to the inspection of the Commission, or its authorized officers, at the office of the licensee between the hours of 10.00 a.m. and 5.00 p.m., on each day, except Sundays or public holidays.

95. Licensees broadcasting sustaining programs originating outside Canada shall, when requested by the Commission, give priority to programs originating within Canada.

96. The licensee shall, upon request of the Commission give right-of-way to such programs as in the judgment of the Commission are of national interest. In such event neither the licensee nor the Commission shall incur any liability for compensation or damages.

97. The use of recorded programs whether by phonograph or gramophone records and so called electrical transcriptions shall be confined to such hours and subject to such restrictions as may be defined for each station upon written application to the Commission.

98. Electrical transcriptions or records designed for broadcast advertising and containing such advertising matter shall not be broadcast more than once from any one station.

99. Except where special permission has been given by the Commission, the amount of advertising matter of all kinds contained in programs broadcast from Canadian stations shall not exceed 5 % of the time of any program period, for example-in a quarter hour program, forty five seconds only may be given up to advertising matter.

100. No station shall broadcast advertising spot announcements between the hours of 7.30 p.m. and 11.00 p.m. No advertising spot announce-

ment shall exceed one hundred words. Spot announcements shall not total more than three minutes in any one hour.

Section 2. News Broadcasts

101. Canadian radio broadcasting stations shall not transmit any news or information of any kind published in any newspaper or obtained, collected, collated, or coordinated by any newspaper or association of newspapers or any news agency or service, except the following:—

(a) Such news bulletins as are released regularly from the various bureaus of Canadian Press for the express use of broadcasting stations in Canada.

(b) Local news under arrangements to be made by each station individually with its local newspaper or newspapers, or such news as it may collect through its own employees or through such collection agency or agencies as may be employed by the said station.

(c) Newspapers broadcasting false or misleading news shall be prohibited from further broadcasting unless extenuating circumstances can be shown.

102. The broadcasting of editorial opinions of a controversial nature is prohibited.

Document 19

During the 1935 federal election campaign, a radio series went out over a network of private stations. The series consisted of a series of conversations between "Mr. Sage" and a politically concerned citizen called Bill. The series was written by a Toronto advertising firm for the Conservative Party and produced in a studio of the CRBC station in Toronto. The early broadcasts in the series failed to identify the Conservative Party as the sponsor. All of this, plus the CRBC's permission for the special network, aroused fears in those who worried about propaganda from a broadcasting commission appointed by and responsible to the government of the day. Such fears were to ensure the end of the CRBC when the Liberals won the election.

DOCUMENT 19: Typescript of "Mr. Sage" broadcast, September 1935, House of Commons Committees and Private Legislation Branch, Ottawa.

Copy Department — J.J. Gibbons Limited

Announcer: In every town, village, and cross-road of Canada there is a political discussion going on to-night, for we are nearing the day of election, and friend argues with friend on the issues of the campaign. So we take you now to a typical home in a Canadian town, where Mr. Sage, the old political observer, is discussing politics with his younger friend, Bill.

(MUSIC UP AND FADE)

B. But what I can't understand, Mr. Sage, is why we don't get this election over with. Why didn't Bennett have it earlier?

S. Getting impatient, Bill?

B. Well, I think Bennett must have been stalling or playing for time — or something. I'm darned if I can see any reason for all this fooling about —

S. October 14th. isn't so far off — why all the excitement?

B. It's five weeks off yet — and the election could have been held last month — if Bennett had wanted.

S. Here, try some of this baccy, Bill. (pause). Want to disenfranchise half the voters in Canada?

B. Do I — What? What d'ye mean?

S. Bill, for a young man you're fairly reasonable. Listen to me (want a match?) Read the papers much?

B. Sure I do.

S. Then you know that the voters list couldn't be ready for all Canada before the first week in August —

B. I saw something about it —

S. I thought so — but it didn't register, eh, Bill?

B. What's that got to do with it? If the lists are ready now, why don't we have the election?

S. Well, for one thing, Bill, the farmers are right in the thick of their harvesting —

B. Oh — the farmers —

S. Not so fast, young man. Don't you know that over half the people of Canada are dependent on agriculture for their living, and —

B. Say, I didn't know that. That's a fact, eh?

S. A fact it is. And you know what harvesting is — those farmers have to take advantage of every daylight hour.

B. I realize that.

S. Well, don't you see that to hold an election now would affect the farmers pretty badly — they have a right to vote, you know.

B. Granted, but surely they could take half an hour off to vote.

S. It means a lot more than that, Bill. Polling stations in the country aren't just around the corner, you know. In many cases the farmer has to drive miles to cast his vote. And he has to arrange for his wife and sons and daughters, and hired men, to vote too. Polling day means a day lost on the farm, generally.

B. I never thought of that. But harvest is pretty nearly over now, isn't it?

S. No, sir — I don't suppose harvesting will be finished till the end of September — at all events, throughout Canada.

B. Then why not have the voting on October 1st?

S. Pass me that calendar, Bill. I thought so, October the first is a Tuesday —

B. What about that?

S. Polling in federal elections must be held on a Monday — it's law.

B. Gosh, I didn't know that —

S. There's a lot of people who don't know it either — but it sort of restricts the choice of dates, doesn't it?

B. Still, Bennett could have fixed it for October 7th — what's wrong with that day — it's a Monday.

S. I suppose he could have — wait a bit, though. Pass me that little book, there, by the side of the mantel. Thanks. (pause). I see. It's the very dickens of a job to pick a date to suit everybody.

B. Why, what's the matter?

S. Nothing at all, Bill, but October 7th. happens to be Yom Kippur of the Jews — their day of atonement and a solemn fast day — so tens of thousands of Jewish voters would be disenfranchised if the election were held that day.

B. Seems like we've got to consider everybody except —

S. Not so fast, Bill, not so fast. I guess we'd be the first to kick if the election were fixed for Christmas Day, or Good Friday, or some such day as that. We' ve got to be fair, Bill.

B. Teaching me to be tolerant, eh?

S. Well, I guess it doesn't hurt any to understand the other fellow's feelings, does it? It kind of helps things along, I reckon.

B. So Bennett had to pick the 14th —

S. Looks as though he hadn't such choice, 'spite of what Mr. Mackenzie King says. He just tried to please everybody —

B. And I guess he did, only they don't know it.

S. So oh, you're getting satisfied, eh? But, seriously, Bill, you see how easy it is to get a wrong slant on somebody else's actions. Take Bennett —

B. Oh, Bennett's all right — I just didn't understand. But there is something —

(phone rings)

S. Excuse me, Bill. (pause) Hello, hello (pause — hello Mary, my dear — how are you — How're the kiddies — fine, splendid — what? — war? — what war? — Oh, that — I wouldn't worry too much about that, my dear (pause) no, of course not — no, I guess he said it with his tongue in his cheek (pause) You're quite right — he ought to know better — yes — sure I'll be over soon — how's John — what, working full time now — fine, fine — good-night, my dear, good night.

S. (To Bill) That was Mary, my niece. You've met her —

B. Sure, I've met both her and her husband. Too bad he got so crocked up in the war —

S. He's a good lad, John. His leg bothers him at times, but he carries on — working hard, too.

B. Well, he's got a lovely little wife to help him on.

S. Yes, Mary's a fine girl. Seemed kind of frightened tonight though, Didn't like that — much.

B. (concerned) Why, anything the matter?

S. I guess Mary takes things too seriously, Bill. She's been hearing about Mackenzie King's war speech —

B. War — what war?

S. I mean his speech about the Ethiopian trouble with Italy.

B. What did he say about it?

S. (slowly) Why, he said that if Italy went to war, Canada would be drawn in.

B. What's he know about it?

S. Perhaps not as much as he wants to think he does. But where war's concerned it's always serious — too serious to be made an off-hand argument in an election speech, to my way of thinking.

B. But, Mr. Sage, we don't want war days back again in Canada.

S. We do not, my boy. And that's why I hate this attempt to stir up old war wounds.

B. I see what you mean: Too serious a thing to serve a party purpose.

S. Exactly — it looks to me like a deliberate attempt to frighten people — women and the younger —

B. (interrupting) Surely King wouldn't stoop to that —

S. No? He did it before — in 1930 — and there was no world crisis then like there is to-day. I happened to be staying with my brother-in-law in Quebec at the time. Mr. King's henchmen down there used to call up the farmers — and their wives — in the early hours of the morning and tell them their sons would be conscripted for war if they voted against King —

B. Gosh, that's kind of low-down stuff — I didn't think King would do a thing like that.

S. Well, he said the same thing in his speeches down there. And he said practically the same thing last month.

B. (reflectively) I don't wonder Mary got frightened, poor girl. I can't see why King has to bring that up.

S. Nor I. Especially when there's no need for it. Parliament has to be called together, in case of war, and it wouldn't matter if King or Bennett or anyone else were Prime Minister. It's the law of the land.

B. So King was taking credit for something he'd have to do anyhow, eh?

S. Sure! Seems to me he doesn't give people credit for much intelligence when he talks like that.

B. (suddenly) What about Bennett, Mr. Sage? What's he say about — about war?

S. War is a might small word, Bill, but it means an awful lot. I've read Bennett's speeches, lad — read them carefully — for years past, like I've read others — it's a hobby o'mine since I retired — and I can tell you

this: Bennett hates war.

B. I know, but can he keep us out of it, Mr. Sage?

S. If anybody can he will. That is certain — Didn't you hear what he said last night?

B. So King's just talking through his hat, eh? He must be kind of short on things to talk about.

S. No, just short of anything that means anything. So far he's been trying to blacken the other fellow's eye —

B. Not a bad policy — if you can get away with it.

S. Then it's about the only policy he's got. There's a book over there, Bill — see it — over by the piano — that's it, the one with the red covers. Thanks, Ah, here's what I want. Bill, did you listen to King's radio speeches —

B. No, I didn't, I forgot about them.

S. So did a lot of people. Never mind, I did. Here's the report of his first speech. Wait a minute. He said third parties are always born in times of depression, and never live to become serious factors in national life. What d'ye think of that, Bill?

B. I don't know — I don't know much about third parties, or fourth parties either, for that matter.

S. Well — It doesn't matter very much anyhow — except — well, how about Alberta?

B. Say, that was a sweep for you —

S. Sort of surprise for Mr. King, I reckon. He figured Alberta would complete the stranglehold of the Liberal party on the provincial governments.

B. And he got disappointed, eh?

S. I think it was more than a disappointment, Bill. It knocked his predictions all cock-eyed — about third parties, I mean.

B. Well, maybe he'll know better than to spring stuff like that — now.

S. Perhaps — but there's something more serious, I think. King ought to

get somebody to read his speeches over first -- before he delivers them. Save him a lot of worry afterwards. *He—forgets—too—much.*

B. Why, what's he forgotten now?

S. He says third parties never succeed. Well, over in England the Labour party was a pretty small "third party" in the nineties — had a couple of seats in Parliament. And I know that the Labour party is the official opposition right now. And the once great Liberal party of England is — where, Bill, where?

B. Darned if I know.

S. Dead, Bill, dead. Or darned nearly dead -- just five seats in Parliament. A sorry end to a great party, Bill.

B. How did that happen, Mr Sage.

S. Leadership — nothing but poor leadership. Might be a mighty good lesson for King — he led his party down into a valley not so long ago — he himself called it the Valley of Humiliation.

B. I remember that — but I guess most people have forgotten by now.

S. That's exactly what Mr. King is hoping for. He doesn't want that brought up. It wasn't such a creditable matter for his party —

B. Slush fund from Beauharnois, wasn't it?

S. Yes, Bill — over $700,000 — and that's the man who wants to be Prime Minister of Canada. Can you beat it?

B. Yet, they say he's got a good chance.

S. I don't know, Bill — I don't know. In the Old Country, Beauharnois would have finished him. In Canada — well, I guess people don't like that sort of thing any more than they do in over there. Canadians are pretty honest folk, Bill.

B. Yes — I guess they are —

S. And there's another thing. King's feeling too cock-sure of himself these days — He's figuring that the premiership of Canada will just naturally fall into his lap — without any effort at all on his part.

B. Maybe that's why he's so — well, so careless in what he says. I mean, like his war-talk, you know —

S. Shouldn't be surprised a bit, Bill. I guess he does kind of figure it doesn't matter — he'll be elected anyway. Well — I'm not so sure — I'm not so sure.

B. Who do you think will win, Mr. Sage?

S. Well, son, there's a lot of water to run under the bridge before polling day, and I kind of think Canada will remember a lot of things before then. (definitely) I think Bennett'll win:

B. (startled) You do — well, I hope he will — but —

S. Listen to me, Bill. It's just the times that made people think Bennett would be beaten. Just the times! And times are changing. Trade is better — more factories and plants are working to-day than for the past four years. People are beginning to see for themselves what Bennett's done for them — and for Canada. He's getting credit at last for bringing the country through the depression so well —

B. Wait a moment — What about King's statement that the Conservatives always bring depression, and the liberals always bring prosperity. Is that true?

S. Somehow, Bill, I'm glad you dropped in to-night. That's what you might call a real interesting question. But you're not the first who's asked it. Now let's see. King was in power from 1926 to 1930, wasn't he?

B. I think so — he got beaten in 1930, I know.

S. The depression struck the world in the fall of 1929, didn't it?

B. It sure did! And it hit me!

S. If anybody should have foreseen it, surely King, as prime minister, with every source of information at his hand, should have known the danger. Eh?

B. I should think so.

S. Yet so far from warning the country of the danger ahead, he actually denied, in October, 1929, that there was even the prospect of a depression —

B. (interrupting) He did?

S. He certainly did. In spite of the wild panic in that month, in spite of a

drop of $244,000,000 in Canada's visible exports, in spite of the warning from Mr. Bennett twelve months before that the economic situation of Canada was in grave danger, do you know what King said?

B. No, what did he say?

S. He said that economic conditions in Canada were never more sound, Fiddling while Rome burned, sort of thing. More than that, in spite of an unemployment situation which brought delegation after delegation to Ottawa to urge government action, he said there wasn't any unemployment problem! Talk about being blind to facts —

B. Was that when he said he wouldn't give a five cent piece for relieve unemployment to any Tory provincial government?

S. That was the very time. If King had been on his job, like Bennett's been these past five years, he would have paid proper attention to the advice of men who knew better than he did what was coming. But he did absolutely nothing to get the country ready for the storm — he ducked for cover, and left the clean-up job to Bennett.

B. Well, I'll be —

S. (quickly) You're on the air, Bill. And I'll tell you something more. All this talk about Bennett being responsible for the falling off in trade in just plain — plain chatter — to take the people's mind off King's own record, I guess.

B. Tell me, did every country suffer like Canada, in the depression?

S. You're telling me. I'll tell you. Between 1929 and 1932, the international trade of all the nations of the world fell away over 66 per cent.

B. Great Scott, I didn't know that — that's a lot —

S. Well, it did. Canada's trade fell by 65 per cent, and the United States trade by over 69 per cent.

B. What about Europe?

S. Over there, every country, except France, lost over 60 per cent of their trade — France lost 54 per cent.

B. Well, I guess even King can't blame Bennett for that! But, say, have we got any of our trade back?

S. Pass me that scrap-book again, will you? H'm — here we are. In the past

two years, Canada has regained over 34 per cent of the trade she lost in the world depression. And she's still sixth in the list of trading nations. Exports are up over 38 per and imports 29 per cent. How's that for recovery, Bill?

B. Pretty darn good, I'd say. What's KIng got to kick at, anyhow — he ought to be passing a bouquet to Bennett, I'd think.

S. Look, Bill, he must know Bennett is right — but of course he daren't say so —

B. Daren't? You mean he hasn't got the —

S. Well, I'd put it a bit milder, Bill. He has to talk like he does whatever he may think. But sooner or later the people'll find him out.

B. Case of giving him enough rope, eh?

S. Exactly, Bill exactly, I'll back the common sense of Canadians every time. Bill, the whole country's going to do a lot of mighty hard thinking — and soul-searching too — before polling day. And there'll be just one answer —

B. And that answer will be — ?

S. *Bennett*

MUSIC UP AND FADE

Announcer: We will visit Mr. Sage again next Saturday night over this same national net-work of Canadian stations.

Document 20

Controversy about the "Mr. Sage" broadcasts (Document 19) exacerbated general dissatisfaction with the performance of the Canadian Radio Broadcasting Commission. When the Liberals under Mackenzie King won the 1935 federal general election, the new government brought in a bill to change the shape of broadcasting in Canada.

Among other things, the 1936 Broadcasting Act created the Canadian Broadcasting Corporation. The terms of the act meant the CBC was to have more power to conduct its own affairs and a more reliable supply of money than the CRBC ever had. Licence fees would go directly to the new corporation, without Parliamentary review. The CBC would have a board of nine governors to set policy and deal with the government of the day. They would hire a general manager to run the network. The act carefully spelled out the relationship between the CBC and the private stations, another indication of how permanent a place the latter had achieved in the system. It banned dramatized political broadcasts, and thus precluded the kind of difficulty "Mr. Sage" had brought upon the CRBC. Like its 1932 predecessor, this act omits any reference to the purposes of broadcasting. It ignores the French fact, despite the grief encountered by the CRBC when it attempted bilingual broadcasting.

The act was amended six times over the next few years. In 1944 there were adjustments in payments to the CBC board, and in 1947 minor adjustments in funding. In 1950, amendments to the Regulations Act [and to the Statute Law] adjusted the legalities of the CBC. An amendment in 1951 revived the idea of Canadian content, first mentioned in section 89 of the CRBC regulations, gave legal rights to private stations to appeal CBC decisions in the courts, and provided millions of extra dollars to build CBC television. A 1953 amendment turned over some excise tax revenue (including that derived from TV sets) to the CBC to pay for television service. Only the 1951 amendment is printed with the act here.

DOCUMENT 20: The Canadian Broadcasting Act, 1936, 23 June 1936, 1 Edw 8, c. 24. as amended in 1951.

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as *The Canadian Broadcasting Act, 1936.*

2. In this Act, unless the context otherwise requires,

(a) "broadcasting" means the dissemination of any form of radioelectric communication, including radiotelegraph, radiotelephone, the wireless transmission of writing, signs, signals, pictures and sounds of all kinds by means of Hertzian waves, intended to be received by the public either directly or through the medium of relay stations.

(b) "channel" means a wavelength or frequency authorized to be used for broadcasting;

(c) "Corporation" means the Canadian Broadcasting Corporation;

(d) "Minister" means the Minister of Transport;

(e) "private station" means any broadcasting station licensed to a person other than the Corporation;

(f) "Corporation station" means any broadcasting station owned or operated by the Corporation;

(g) "station" means any station licensed under the *Radiotelegraph Act* as a broadcasting station.

3. (1) There shall be a Corporation to be known as the Canadian Broadcasting Corporation which shall consist of a board of nine governors appointed by the Governor in Council and chosen to give representation to the principal geographical divisions of Canada.

(2) The Governor in Council shall designate one of the Governors to be the Chairman and one to be the Vice-Chairman of the Corporation.

(3) The Governors shall hold office for three years, provided that of those first appointed one third shall be appointed to retire in one year, one third in two years and one third in three years.

(4) Retiring Governors shall be eligible for re-appointment.

(5) Each Governor shall hold office during good behaviour for the period of his appointment, but may be removed for cause at any time by the Governor in Council.

(6) In the event of a casual vacancy occurring on the board, the Governor in Council shall appoint a person to fill such vacancy for the balance of the term of the Governor replaced.

(7) The Chairman shall receive an honorarium of one thousand five hundred dollars per annum and if an executive committee is established by bylaw, each of the other Governors on such executive committee shall

receive an honorarium of one thousand dollars per annum; other Governors of the Corporation shall each receive fifty dollars for each meeting they attend, but shall not receive more than five hundred dollars in any one year.

(8) All Governors shall be entitled to receive and be paid their actual disbursements for expenses necessarily incurred by them in connection with the discharge of their duties under this Act.

(9) Four Governors shall constitute an quorum.

(10) Each Governor shall, before acting as such, take and subscribe before the Clerk of the Privy Council and shall file in the office of the said Clerk, an oath of office in the following form:

"I DO SOLEMNLY SWEAR that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of Governor of the Canadian Broadcasting Corporation, and that, while I continue to hold such office, I will not accept or hold any other office or employment, or have any pecuniary interest, direct or indirect, individually or as a shareholder or partner, or otherwise, in broadcasting or, in the manufacture or distribution of radio apparatus. So help me God."

4. The Corporation shall be a body corporate having capacity to contract and to sue and be sued in the name of the Corporation.

5. The head office of the Corporation shall be at Ottawa in the province of Ontario and the Corporation may establish branch offices elsewhere.

6. There shall be a general manager who shall be chief executive of the Corporation and who shall be appointed by the Governor in Council on the recommendation of the Corporation.

7. There shall be an assistant general manager of the Corporation who shall be appointed by the Governor in Council on the recommendation of the Corporation.

8. The Corporation shall carry on a national broadcasting service within the Dominion of Canada and for that purpose may:—

(a) maintain and operate broadcasting stations;

(b) establish, subject to approval of the Governor in Council, such stations as the Corporation may from time to time consider necessary to give effect to the provisions of the Act;

(c) equip stations with all such plant, machinery and other effects as may be requisite or convenient to permit of the same effectively

receiving and transmitting for broadcasting purposes;

(d) make operating agreements with private stations for the broadcasting of programmes;

(e) originate programmes and secure programmes, from within or outside Canada, by purchase or exchange and make arrangements necessary for their transmission;

(f) make contracts with any person or persons, in or outside Canada, in connection with the production or presentation of the programmes of the Corporation;

(g) make contracts with any person or persons, in or outside Canada, to perform in connection with the programmes of the Corporation;

(h) publish and distribute, whether gratis or otherwise, such papers, periodicals, and other literary matter as may seem conducive to any of the objects of the Corporation;

(i) collect news relating to current events in any part of the world and in any manner that may be thought fit and to establish and subscribe to news agencies;

(j) acquire copyrights in any literary, musical or artistic works, plays, songs, gramophone records, news and other matter;

(k) acquire and use any patent, or patent rights, brevets d'invention, licences or concessions which the Corporation may consider useful for the purpose of carrying out its object;

(l) make arrangements or agreements with any organization for the use of any rights, privileges or concessions which the Corporation may consider useful for the purpose of carrying out its object;

(m) establish and support a pension fund for the benefit of employees or ex-employees of the Corporation, or the dependents of such persons.

(n) acquire private stations either by lease or, subject to the approval of the Governor in Council, by purchase;

(o) subject to the provisions of sections ten and eleven hereof, purchase, lease, or otherwise acquire, any real or personal property which the Corporation may deem necessary or convenient for the purposes of its business;

(p) subject to the provisions of sections ten and eleven hereof, sell, lease, or otherwise dispose of, all or any part of the property of the Corporation;

(q) do all such other things as the Corporation may deem incidental or conducive to the attainment of any of the objects or the exercise of any of the powers of the Corporation.

9. The Corporation shall not seek any concession, right or privilege from, or enter into any negotiations or arrangement with any British or foreign government with regard thereto, without having first obtained the consent in writing of the Minister.

10. Notwithstanding anything contained in this Act, the Corporation shall not, unless the approval of the Governor in Council has first been obtained:—

(a) enter into any agreement involving any expenditure in excess of ten thousand dollars;

(b) enter into an agreement or lease for a period exceeding three years;

(c) acquire any personal property, the cost of acquisition of which exceeds the sum of ten thousand dollars, or in any manner dispose of any personal property having an original or book value exceeding the sum of ten thousand dollars.

11. (1) No real property or private station shall be purchased, acquired, sold, exchanged or mortgaged by the Corporation except with the previous consent of the Governor in Council, and if the Corporation is unable to agree with the owner of any real property or private station which it is so authorized to purchase, as to the price to be paid therefor, the Corporation shall have the right to acquire the same without the consent of the owner and the provisions of the *Expropriation Act*, chapter sixty-four of the Revised Statutes of Canada, 1927, shall *mutatis mutandis*, be applicable to the acquisition of such property by the Corporation.

(2) Any plan and description deposited under the provisions of the *Expropriation Act* may be signed by the Chairman or Vice Chairman of the Corporation or by one of the Governors and the property shown and described in such plan and description so deposited shall thereupon be and become vested in the Corporation for the purposes of the Corporation unless the plan and description indicates that the property taken is required for a limited time only, or that a limited estate or interest therein, is taken; and by the deposit in such latter case, the right of possession for such limited

time or such limited estate or interest shall be and become vested in the Corporation;

(3) The compensation payable in respect of the taking of any such real property or private station or of any interest therein, or of land injuriously affected by the construction of any undertaking or works shall be ascertained in accordance with the provisions of the *Expropriation Act*, and for that purpose the Attorney-General of Canada may file an information in the Exchequer Court on behalf of the Corporation to all intents and purposes as if such property had been expropriated by His Majesty under the provisions of the said Act. The amount of any judgment upon such proceedings shall be payable out of the funds of the Corporation.

(4) If the Minister decides that the cancellation or refusal to renew any licence in the interest of broadcasting generally in Canada is desirable, and if such cancellation or refusal is not on account of any failure to comply with this Act or any regulation hereunder or the *Radiotelegraph Act* or regulation thereunder, compensation may be paid to the extent of an amount not exceeding the depreciated value of the licensed radio equipment requisite for the efficient operation of the station together with a reasonable allowance to cover the cost of restoring the premises to a tenantable condition for ordinary purposes.

(5) In determining the compensation to be paid, no allowance shall be made for the value of a licence terminated by the taking over by the Corporation or the Minister of any private station, and no person shall be deemed to have any proprietary right in any channel heretofore or hereafter assigned, and no person shall be entitled to any compensation by reason of the cancellation of the assignment of a channel or by reason of the assignment of a new channel in substitution therefor.

12. (a) The Corporation may make such bylaws as may be necessary,

(i) to enable it to carry into effect the obligations imposed upon it by this Act;

(ii) to provide for an executive committee of the Board of Governors to exercise such powers as the bylaws may specify;

(iii) to provide for the appointment of advisory councils to advise it as to programmes;

(iv) to provide for the employment, dismissal, control and remuneration of such officers, clerks, and employees, technical or otherwise, as may be necessary for the transaction of the business of the Corporation.

(b) No such bylaws shall come into force or effect until approved by the Governor in Council, and no alteration, modification or repeal of any such bylaw shall have any force or effect until so approved.

13. (1) Notwithstanding anything in the *Civil Service Act*, chapter twenty-two of the Revised Statutes of Canada, 1927, the *Civil Service Superannuation Act*, chapter twenty-four of the Revised Statutes of Canada, 1927, or any other Act of the Parliament of Canada, a civil servant who, at the time of his appointment to the staff of the Corporation under authority in that behalf conferred by any Act of the Parliament of Canada, is a contributor under the provisions of the *Civil Service Superannuation Act*, shall continue to be a contributor under the said Act; his service on the staff of the Corporation, in virtue of an appointment as aforesaid, shall be counted as service in the civil service for the purposes of the *Civil Service Superannuation Act*, and he, his widow and children or other dependents, if any, shall be eligible to receive the respective allowances or gratuities provided by the said Act; and in the event of his being retired from his office or position on the staff of the Corporation for any reason other than that of misconduct, he shall be eligible, in accordance with the regulations made under the *Civil Service Act*, for assignment to a position in the civil service of the class from which he was so retired or to any other position for which he may have qualified or, in the alternative, to receive the same benefits under the *Civil Service Superannuation Act* as he would have been eligible to receive if he had been retired under like circumstances from the position in the civil service which he held immediately prior to his appointment to the staff of the Corporation.

(2) Any employee of the Corporation, who at the time of his appointment or employment under or pursuant to the provisions of this Act, holds a position in the "civil service," or is an "employee" within the meaning of the *Civil Service Act*, shall continue or retain and be eligible to receive all the benefits, except salary as a civil servant, that he would have been eligible to receive had he remained under that Act.

14. (1) The Minister of Finance shall deposit from time to time in the Bank of Canada or in a chartered bank to be designated by him to the credit of the Corporation:—

(a) The moneys received from licence fees in respect of private receiving licences and private station broadcasting licences, after deducting from the gross receipts the cost of collection and administration, such costs being determined by the Minister from time to time;

(b) any appropriation granted by Parliament for the purposes of the Corporation; and

(c) any advances or grants to the Corporation which are authorized to be made from Consolidated Revenue Fund.

(2) The Corporation shall retain for the purposes of this Act all moneys received by it arising out of its business.

15. The Corporation may administer all funds which may be placed to its credit in the Bank of Canada or in a chartered bank in accordance with the provisions of section fourteen hereof, and may administer all other sums and revenues which may be obtained by or given to the Corporation or derived from any other source, exclusively in furtherance of the purpose for which the Corporation is constituted.

16. The Governor in Council, on the recommendation of the Minister, may authorize the Minister of Finance to place to the credit of the Corporation working capital advances from any unappropriated moneys in the Consolidated Revenue Fund, but the aggregate amount of such advances outstanding at any one time shall not exceed one hundred thousand dollars, and such advances shall be repayable to the Minister of Finance on demand.

17. (1) The Governor in Council may authorize the construction, extension or improvement of capital works of the broadcasting facilities of the Corporation in Canada and, on the recommendation of the Minister, may authorize the Minister of Finance to place to the credit of the Corporation from any unappropriated moneys in the Consolidated Revenue Fund such sum or sums as may be necessary to carry out such construction, extension or improvement of capital works: provided that the total amount which may be so authorized for the said purposes shall not exceed five hundred thousand dollars.

(2) Such moneys so advanced shall bear such rate of interest and shall be amortized on such terms and conditions as may be fixed by the Governor in Council.

(3) The interest and amortization charges on the moneys so advanced shall be a first charge on the revenues of the Corporation.

18. For the fiscal year 1936–37 the Minister of Finance shall deposit to the credit of the Corporation the net amount collected in licence fees during such year in accordance with paragraph (a) of subsection one of section fourteen hereof, less an amount equal to the amount or amounts paid out of Appropriation No. 226, 1936–37, for the purposes of the Canadian Radio Broadcasting Commission.

19. The Corporation shall establish and maintain an accounting system satisfactory to the Minister and shall, whenever required by him, render detailed accounts of its receipts and expenditures for such period or to such

day as he designates, and all books of account, records, bank books and papers of the Corporation shall at all times be open to the inspection of the Minister or of such person as he may designate.

20. The accounts of the Corporation shall be audited by the Auditor General of Canada and a statement of such accounts shall be included in the annual report of the Corporation.

21. No private station shall operate in Canada as a part of a chain or network of stations except with the permission of, and in accordance with the regulations made by, the Corporation.

22. (1) The Corporation may make regulations:—

(a) to control the establishment and operation of chains or networks of stations in Canada;

(b) to prescribe the periods to be reserved periodically by any private station for the broadcasting of programmes of the Corporation;

(c) to control the character of any and all programmes broadcast by Corporation or private stations;

(d) to determine the proportion of time which may be devoted to advertising in any programmes broadcast by the stations of the Corporation or by private stations, and to control the character of such advertising;

(e) to prescribe the proportion of time which may be devoted to political broadcasts by the stations of the Corporation and by private stations, and to assign such time on an equitable basis to all parties and rival candidates.

(2) If the Corporation is unable to agree with the licensee of a private station as to the amount of compensation, if any, to be paid by the Corporation for the use of such station for the broadcasting of programmes of the Corporation, the Minister may fix an amount which, in his opinion, is fair and reasonable and such amount shall be paid by the Corporation to the licensee in full settlement of his claim to compensation.

(3) Dramatized political broadcasts are prohibited.

(4) The names of the sponsor or sponsors and the political party, if any, upon whose behalf any political speech or address is broadcast shall be announced immediately preceding and immediately after such broadcast.

(5) Political broadcasts on any dominion, provincial or municipal elec-

tion day and on the two days immediately preceding any such election day are prohibited.

(6) In case of any violation or non-observance by a private station of the regulations made by the Corporation under this section, the Corporation may order that the licence of such private station be suspended for a period not exceeding three months and any such order shall be forwarded to the Minister who shall forthwith communicate the same to the licensee of the station and shall take such steps as may be necessary to carry out the terms of such order.

(7) The Corporation shall take such action as may be necessary to ensure that stations affected by its regulations shall have reasonable notice thereof.

23. (1) The Governor in Council may make regulations prohibiting or regulating the use of any machinery, apparatus or equipment causing or liable to cause interference with radio reception and to prescribe penalties recoverable on summary conviction for the violation or non-observance of any such regulation, provided, however, that such penalties shall not exceed fifty dollars per day for each day during which such violation or non-observance continues.

(2) Such regulations shall be published in the *Canada Gazette*, and shall take effect from the date of such publication or from the date specified for such purpose in such regulations, and shall have the same force and effect as if enacted herein.

24. (1) The Minister shall, before dealing with any application for licence to establish a new private station or for increase in power, change of channel, or change of location of any existing private station, or making any regulations or changes in regulations governing the activities of private stations, refer such application or regulation to the Corporation, and the Corporation shall make such recommendations to the Minister as it may deem fit. The approval of the Governor in Council shall be obtained before any licence for any new private station is issued.

(2) The Corporation shall, each year, prior to the renewal or issue of the licences for private stations by the Minister review the activities of such private stations, and shall make such recommendations to the Minister in regard to their working, broadcasting or any other matter concerning such stations as it may deem desirable.

25. The Corporation shall, from the date of the coming into force of this Act, take possession of all property and assets and assume all the obligations and liabilities of the Canadian Radio Broadcasting Commission.

26. The Corporation shall through the Minister submit an annual report to Parliament in such form as the Minister may prescribe.

27. *The Canadian Radio Broadcasting Act*, 1932, chapter fifty-one of the statutes of 1932, is repealed.

28. This Act in whole or in part shall come into force on a date or dates to be fixed by proclamation of the Governor in Council.

Document 20A

DOCUMENT 20A: An Act to amend the Canadian broadcasting Act, 1936, 21 December 1951, 15&16 Geo. 6, c. 6.

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. (1) Paragraph (d) of section two of *The Canadian Broadcasting Act, 1936*, chapter twenty-four of the statutes of 1936, is repealed and the following substituted therefor:

"(d) "Minister" means the minister designated by the Governor in Council for the purposes of this Act;"

(2) Section two of the said Act is amended by adding thereto, immediately after paragraph (g) thereof, the following paragraph:

"(h) "programme" means any live or recorded programme or part thereof."

2. (1) Subsection one of section three of the said Act is repealed and the following substituted therefor:

"**3.** (1) There shall be a corporation to be known as the Canadian Broadcasting Corporation which shall consist of a board of eleven governors appointed by the Governor in Council and chosen to give representation to the principal geographical divisions of Canada."

(2) Subsection three of the said section three is repealed and the following substituted therefor:

"(3) The Chairman shall hold office during good behaviour for a period of ten years from the time of his designation as Chairman and the other Governors shall hold office during good behaviour for a period of three years, but the Chairman and the other Governors may be removed for cause at any time by the Governor in Council."

(3) Subsection five of the said section three is repealed.

(4) Subsection nine of the said section three is repealed and the following substituted therefor:

"(9) Five Governors constitute a quorum."

3. Paragraph (m) of section eight of the said Act is repealed and the following substituted therefor:

"(m) establish and support a pension fund for the benefit of employees or ex-employees of the Corporation and any member of the Corporation who is engaged full-time in the business of the Corporation and the dependents of such persons."

4. Section ten of the said Act is repealed and the following substituted therefor:

"**10.** Notwithstanding anything contained in this Act, the Corporation shall not, unless the approval of the Governor in Council has first been obtained,

(a) enter into any agreement involving any expenditure in excess of twenty-five thousand dollars;

(b) enter into an agreement or lease for a period exceeding three years;

(c) acquire any personal property, the cost of acquisition of which exceeds the sum of twenty-five thousand dollars; or

(d) in any manner dispose of any personal property having an original or book value exceeding the sum of twenty-five thousand dollars."

5. (1) Subsection four of section eleven of the said Act is repealed and the following substituted therefor:

"(4) If the Minister of Transport decides that the cancellation or refusal to renew any licence in the interest of broadcasting generally in Canada is desirable, and if such cancellation or refusal is not on account of any failure to comply with this Act or any regulation thereunder or *The Radio Act, 1938*, or regulation thereunder, compensation may be paid to the extent of an amount not exceeding the depreciated value of the licensed radio equipment requisite for the efficient operation of the station together with a reasonable allowance to cover the cost of restoring the premises to a tenantable condition for ordinary purposes."

(2) Subsection five of the said section eleven is repealed and the following substituted therefor:

"(5) In determining the compensation to be paid, no allowance shall be made for the value of a licence terminated by the taking over by the Corporation or the Minister of Transport of any private station, and no person

shall be deemed to have any proprietary right in any channel heretofore or hereafter assigned, and no person shall be entitled to any compensation by reason of the cancellation of the assignment of a channel or by reason of the assignment of a new channel in substitution therefor."

6. Section fourteen of the said Act is amended by adding thereto the following subsection:

"(3) The Minister of Finance shall grant to the Corporation out of the Consolidated Revenue Fund the sum of four million seven hundred and fifty thousand dollars in the fiscal year that began on the first day of April, nineteen hundred and fifty-one, and the sum of six million two hundred and fifty thousand dollars in each of the four next following fiscal years."

7. (1) Subsection one of section twenty-two of the said Act is amended by adding thereto, immediately after paragraph (e) thereof, the following paragraphs:

"(f) to promote and ensure the greater use of Canadian talent by Corporation and private stations; and

"(g) requiring licensees of private stations to furnish to the Corporation such information in regard to their programme activities as the Corporation considers necessary for the proper administration of this Act."

(2) Subsections six and seven of the said section twenty-two are repealed and the following substituted therefor:

"(6) In case of any alleged violation or non-observance by a private station of the regulations made by the Corporation under this section, the Corporation may, after notice has been given to the licensee of the alleged violation or non-observance and an opportunity afforded to the licensee to be heard, order that the licence of such private station be suspended for a period not exceeding three months, but such order shall not be effective until the expiration of ten days after the making thereof; and any such order shall be forwarded to the Minister of Transport who shall forthwith communicate the same to the licensee and shall take such steps as may be necessary to carry out the terms of such order.

"(7) Where the Corporation orders the suspension of the licence of a private station under subsection six, the licensee may by leave of a judge of the Exchequer Court of Canada appeal against such order to the said court on any question of law arising out of the making of such order and the said court may stay the operation of such order or suspension pending its final decision and may affirm, alter or rescind the order appealed against."

"(8) The Corporation, before making or amending a regulation that affects private stations, shall give notice of such intention in the *Canada Gazette* and shall give private stations a reasonable opportunity to be heard before such regulation or amendment comes into operation."

8. (1) Section twenty-three of the said Act is repealed.

(2) Subsection one shall come into force on a day to be fixed by proclamation of the Governor in Council.

9. Section twenty-four of the said Act is repealed and the following substituted therefor:

"**24.** (1) The Minister of Transport shall before dealing with any application for licence to establish a new private station or for increase in power, change of channel, or change of location of any existing private station, or making any regulations or changes in regulations governing the activities of private stations, refer such application or regulation to the Corporation and the Corporation shall give public notice thereof in the *Canada Gazette* and shall make such recommendation to the Minister of Transport as it may deem fit; the approval of the Governor in Council shall be obtained before any licence for a new private station is issued.

(2) The Corporation shall each year review the activities of all private stations and shall make such recommendations to the Minister of Transport in regard to their working, broadcasting or any matter concerning such stations as it may deem desirable."

Document 21

The 1936 Broadcasting Act and all the amendments that followed it were reflected in detailed regulations drawn up by the CBC and applicable to every broadcaster in the country. The regulations dealt with political broadcasts, advertising, the formation of networks, the use of "mechanical reproduction" of recorded programs, and many other matters in the realm of content. The regulations were certainly thorough, and private broadcasters said they were restrictive. Consequently, over the life of the act broadcasters were to pressure the CBC directly and through sympathetic MPs to relax some of the more severe restrictions, which they portrayed (with some justice) as the heavy hand of government censorship. Their ultimate goal was a separate regulatory agency, but that was not to come until the Conservatives brought in a new Broadcasting Act in 1958.

In the meantime, the amendments to the regulations reflected the changes occurring within the industry and also the continuing debate between the CBC and the private broadcasters over what was proper, and profitable, broadcasting. It should be noted that, although the CBC theoretically retained tight control throughout this period, private stations could evade sections of the regulations "with the consent in writing of a representative of the Corporation." This concession, in various wordings, appeared increasingly from 1937 to 1958, and it was used.

The original 1937 regulations below are followed by modifications that occurred in 1953 and 1955.

DOCUMENT 21: "Regulations for broadcasting stations made under the Canadian Broadcasting Act, 1936, Chap. 24, S. 22," CBC pamphlet, 1937.

FOREWORD

These regulations are designed to maintain and improve the standard of broadcasting in Canada.

These regulations are effective on and after November 1, 1937.

Regulations relating to technical matters which are under the jurisdiction of the Department of Transport are promulgated by the Department in accordance with the provisions of the Radiotelegraph Act, Chapter 195, R.S.C., 1927.

The attached regulations, numbered 1 to 23, were passed at a meeting of the Canadian Broadcasting Corporation held at Toronto, in the Province of Ontario, on the 8th day of September, 1937, as and for the regulations of the Canadian Broadcasting Corporation, and were made under authority of subsection one of section twenty-two of The Canadian Broadcasting Act, chapter twenty-four of the Statutes of 1936....

In these regulations, unless the context otherwise requires,

(a) The "Act" means The Canadian Broadcasting Act, chapter twenty-four of the Statutes of 1936;

(b) "Corporation" means the Canadian Broadcasting Corporation;

(c) "licence" means a licence issued to a broadcasting station under the Radiotelegraph Act; and "licensee" means the holder of such licence;

(d) "private station" means any broadcasting station licensed to a person other than the Corporation;

(e) "regulations" means these regulations;

(f) "representatives of the Corporation" means the General Manager of the Corporation, the Assistant General Manager of the Corporation or persons authorized in writing by the General Manager of the Corporation;

(g) "station" refers to stations owned or operated by the Corporation as well as by others and it may also refer to the owner or licensee of a station.

2. These regulations apply to all stations in Canada and to all matter broadcast by such stations.

3. (1) Each station shall maintain a program log in a form acceptable to the Corporation and shall cause entries to be made therein as follows:—

(a) date, call letters, location, frequency;

(b) the time at which each station identification announcement is made;

(c) the title and brief description of each program broadcast, with the time of the beginning and ending so as to give a continuous record of each day's broadcast. If a mechanical reproduction is used, that fact shall be noted, together with a statement whether

or not announcement thereof was made. In the case of a talk or speech, the name of the speaker and the auspices under which the talk or speech was given shall be entered. If the speech is made by a political candidate or on behalf of a political candidate or political party, the political affiliation of the candidate or party shall also be entered;

(d) the duration of each spot or other similar announcement and the broadcast hour during which it was transmitted;

(e) the name of the sponsor of any program or announcement for which the station is paid.

(2) Key letters or abbreviations may be used if the explanation of each is plainly given in the log. The logs shall be produced for the inspection of the representatives of the Corporation upon the request of such representatives.

(3) Each station shall keep on file a copy of

(a) the continuity used for any program;

(b) all program or other announcements containing advertising matter;

(c) the manuscript of addresses or talks.

(4) In the case of chain broadcasts these records shall be kept by the originating station.

(5) Such records shall be retained by the station for a period of one year and shall be open for inspection by representatives of the Corporation upon request of such representatives.

4. The time mentioned in all program logs and contracts used in connection with broadcasting shall be local standard time (or local daylight-saving time if that is in force) unless otherwise specified or agreed.

5. Each station shall, each week, file with the Corporation in a form acceptable to the Corporation an advance copy of its program schedule for the following week, showing the exact hours and how they are to be occupied each day.

6. Each station shall announce its call letters not less than once nor more than four times an hour, during hours of operation.

* 7. No one shall broadcast

(a) anything contrary to law;

(b) the actual proceeding at any trial in a Canadian Court;

(c) abusive comment on any race, religion or creed;

(d) obscene, indecent or profane language;

(e) malicious, scandalous, or defamatory matter;

(f) advertising matter containing false or deceptive statements;

(g) false or misleading news;

(h) upon the subject of birth control;

(i) upon the subject of venereal disease, or other subjects relating to public health which the Corporation may from time to time designate, unless such subjects be presented in a manner and at a time approved by the General Manager as appropriate to the medium of broadcasting;

(j) (i) programs presenting a person who claims supernatural or psychic powers, or a fortune-teller, character analyst, crystal-gazer or the like, or programs which lead or may lead the listening public to believe that the person presented claims to possess or possesses supernatural or psychic powers or is or claims to be a fortune-teller, character analyst, crystal-gazer or the like.

(ii) programs in which a person answers or solves or purports to answer or solve questions or problems submitted by listeners or members of the public unless such programs prior to being broadcast shall have been approved in writing by a representative of the Corporation.

8. (1) Political broadcasts are governed by subsections (3), (4) and (5) of section 22 of The Canadian Broadcasting Act, 1936, which read as follows:—

"(3) Dramatized political broadcasts are prohibited.

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* Note to Section 7. It is not the intention of the Corporation to restrict freedom of speech nor the fair presentation of controversial material. On the contrary, the policy of the Corporation is to encourage the fair presentation of controversial questions At the same time, it should be realized that the message of broadcasting is received at the fireside in the relatively unguarded atmosphere of the home, reaching old and young alike. Certain subjects, while meriting discussion elsewhere in the public interest are not necessarily suitable for this intimate medium.

"(4) The names of the sponsor or sponsors and the political party, if any, upon whose behalf any political speech or address is broadcast shall be announced immediately preceding and immediately after such broadcasts.

"(5) Political broadcasts on any Dominion, Provincial or Municipal election day and on the two days immediately preceding any such election day are prohibited."

(2) Each station shall allocate time for political broadcasts as fairly as possible between the different parties or candidates desiring to purchase or obtain time for such broadcasts.

9. (1) The advertising content of any program shall not exceed in time ten per cent of any program period.

(2) Notwithstanding the provisions of subsection (1) any station shall upon instruction in writing from the Corporation reduce the total daily advertising content of its programs if the said total daily advertising content in the opinion of the Corporation occupies an undue proportion of the daily broadcast time.

(3) Upon notice in writing from the Corporation any station shall change the quality or nature or its advertising broadcasts.

10. Notwithstanding the provisions of these regulations the Corporation may, upon satisfactory evidence being submitted to it of a contract or contracts for the use of mechanical reproductions outstanding on November 1, 1937, which contain more than the advertising content prescribed in section 9 (1) or which relate to the subjects mentioned in section 7 (j) permit the continued use of the said mechanical reproductions until, but not beyond December 31, 1937.

11. (1) In any program no one shall advertise

(a) any act or thing prohibited by law;

(b) the prices of goods or services, except the prices of publications auxiliary to the information services of the Corporation;

(c) any insurance corporation not registered to do business in Canada;

(d) bonds, shares ar other securities or mining or oil properties or royalties or other interests in mining or oil properties other than the securities of the Dominion or Provincial governments or municipalities or other public authorities, provided nothing here-

in shall prevent anyone from sponsoring a program giving quotations of market prices without comment;

(e) spirituous liquors;

(f) wine and beer in any province of Canada wherein the provincial law prohibits the direct advertisement of wine and beer, nor in any other province unless immediately prior to the coming into force of these Regulations wine and beer have in fact been directly advertised in such province through the facilities of radio.

(2) Whenever wine and beer are advertised through radio facilities, the following special regulations shall apply:—

(a) no spot announcements shall be used for the direct or indirect advertisement of wine or beer;

(b) all continuities in programs directly or indirectly advertising wine or beer shall, prior to their broadcast, be approved by the Corporation as to the continuity and the form, quantity and quality of the advertising content thereof.

12. (1) "Spot" announcements shall not exceed two minutes for each broadcasting hour, subject always to the provisions of subsection (2) of this regulation.

(2) No "spot" announcement shall be broadcast on week-days between 7.30 p.m. and 11 p.m. nor on Sundays at any time, provided that where exceptional conditions prevail owing to the geographical situation stations may be given permission by the Corporation to broadcast "spot" announcements on week-days during the hours prohibited in this section.

(3) Subsections (1) and (2) of this regulation shall not apply to time signals or weather reports, provided that no advertising other than the name of the sponsor is mentioned.

13. (1) No continuity advertising an article marketed under the Proprietary or Patent Medicine Act or the Food and Drugs Act may be broadcast until it has been approved by the Department of Pensions and National Health. Continuities submitted for approval shall be forwarded, in duplicate, to the Canadian Broadcasting Corporation, Ottawa, at least two weeks in advance of intended use. The formula for any article bearing a distinctive or trade name distinguishing it from any other product, and marketed under the Food and Drugs Act, shall be submitted with each pertinent continuity.

(2) No electrical transcription advertising an article marketed un-

der the Proprietary or Patent Medicine Act or the Food and Drugs Act shall be broadcast by any station unless certified by an affidavit that the advertising continuity has been approved by the Department of Pensions and National Health.

(3) No announcer may broadcast any statement concerning any article marketed under the Food and Drugs Act or the Proprietary or Patent Medicine Act that is not contained in the continuity approved by the Department of Pensions and National Health.

(4) Testimonials referring to an article marketed under the Proprietary or Patent Medicine Act or the Food and Drugs Act shall be regarded as constituting a part of the advertising continuity.

(5) No continuity recommending any treatment for any ailment shall be broadcast until it has been approved by the Department of Pensions and National Health.

(6) Inspectors of Food and Drugs, Department of Pensions and National Health, are authorized to act as representatives of the Corporation for the purpose of enforcing this regulation.

14. Stations shall not transmit any news or information of any kind published in any newspaper or obtained, collected, collated, or co-ordinated by any newspaper or association of newspapers or any news agency or service, except the following:—

(a) Such news bulletins as are released regularly from the various bureaus of The Canadian Press for the express use of broadcasting stations in Canada;

(b) Local news under arrangements to be made by each station individually with its local newspaper or newspapers, or such news as it may collect through its own employees;

(c) News from sources other than those provided for in subsections (a) and (b) herein, shall not be broadcast unless the express permission in writing of the Corporation through its General Manager is secured in advance.

15. Representatives of the Corporation may require the production of material to be broadcast before any broadcast is arranged to take place.

16. Time reserved for the broadcasting of Corporation programs shall be used only for such programs unless approval to the contrary has been received in writing from the Corporation in each specific case.

17. Stations shall upon request of the Corporation give right of way to such Corporation or other programs as the Corporation shall designate. In such event neither the station nor the Corporation shall incur any liability for compensation or damages.

18. No station shall "pick up" and re-broadcast any program unless permission in writing has first been obtained from the Corporation.

19. (1) No station shall use a mechanical reproduction (except when its use is merely incidental as for an identification or background) between the hours of 7.30 p.m. and 11.00 p.m. except with the previous consent of the Corporation in writing.

(2) A mechanical reproduction shall be announced as such immediately before and after the program concerned, except when its use is merely incidental as for an identification or background. The exact form of announcement is not prescribed, but the language shall be clear and in terms commonly used and understood. The following are examples of statements sufficient for the purpose:—

(a) "This is a recorded program."

(b) "This is a program of electrical transcription."

(3) No program of mechanical reproductions shall contain any reference to the name of any person, firm or corporation connected with the manufacture, sale, hire or ownership of the said mechanical reproductions used in the said program.

20. Unless permission in writing is first obtained from the Corporation

(a) no station shall continue to be a part or shall form a part of a chain or network originating outside of Canada;

(b) no chain or network of two or more stations shall continue to be operated within Canada or shall be set up or operated within Canada;

(c) no station shall continue to be or become an outlet for any station, chain or network existing or originating outside of Canada;

(d) no station shall continue to be or become an associate station of or with any station, chain or network existing or originating outside of Canada.

21. Every station shall file with the Corporation a copy of the forms

of contract used by it and a statement of its charges. Every such contract shall expressly make the enjoyment of the privilege to broadcast conditional upon the observance of these regulations. The licensee of each station shall see that a copy or these regulations is available at the station and that the station employees and persons broadcasting are familiar with them.

22. The Corporation may send a written or telegraph notice to the licensee of any station informing him of any alleged violation of these regulations and he shall have a delay of six days within which to answer in writing, giving in full his reply to the notice. The Corporation may make such investigation of the facts as it shall consider appropriate and for this purpose its representatives may examine the records and question the employees of any station.

23. These regulations shall have full force and effect as of the 1st day of November, 1937, and on and after that date all regulations inconsistent therewith shall be deemed to have been repealed.

NOTE: The penalty for violation of these regulations is provided for under section 22 (6) of the Act which reads:

"(6) In case of any violation or non-observance by a private station of the regulations made by the Corporation under this section, the Corporation may order that the licence of such private station be suspended for a period not exceeding three months and any such order shall be forwarded to the Minister who shall forthwith communicate the same to the licensee of the station and shall take such steps as may be necessary to carry out the terms of such order."

Document 21A

Starting in 1953, the regulations applied to television as well as radio. Although the inherent broadcasting philosophy remained basically the same, the regulations were thoroughly recast, making comparison with the previous versions awkward. Hence the entire document is reproduced below.

From the point of view of a private commercial station, the most important change was the deletion of the requirement in section 5 of the 1937 regulations to provide "an advance copy of its program schedule for the following week, showing the exact hours and how they are to be occupied each day."

DOCUMENT 21A: "CBC Regulations for Sound Broadcasting Stations," Statutory Orders and Regulations 53-235, *Canada Gazette*, Part 2, 24 June 1953, 569-574.

The following regulations have been made pursuant to section twenty-two of The Canadian Broadcasting Act, 1936, by the Canadian Broadcasting Corporation at a meeting of the Board of Governors of the Corporation held in Ottawa, May 27 to 29, 1953, in substitution for the CBC Regulations for Broadcasting Stations made by the Board of Governors of the Corporation on October 17, 1949.

THE CBC REGULATIONS FOR SOUND BROADCASTING STATIONS

Short Title

1. These regulations may be cited as the CBC Regulations for Sound Broadcasting Stations.

Interpretation

2. In these regulations,

(a) "Act" means The Canadian Broadcasting Act, 1936;

(b) "Corporation" means the Canadian Broadcasting Corporation;

(c) "private station" means any sound broadcasting station in Canada not operated by the Corporation;

(d) "representative of the Corporation" means the Chairman or the Vice-Chairman of the Corporation or any person authorized by the Chairman or by these regulations to represent the Corporation;

(e) "reproduce" means to record any broadcast material by any electrical or mechanical means; and

(f) "station" means any station licensed under The Radio Act, 1938, as a sound broadcasting station.

Application

3. These regulations apply to all sound broadcasting stations in Canada and to all matter broadcast by such stations.

Program logs

4. (1) Each station shall maintain a program log, in a form acceptable to the Corporation, and shall cause to be entered therein each day the following information:

(a) the date;

(b) the call letters, location and frequency of the station;

(c) the times at which station identification announcements were made;

(d) the title and brief description of each program broadcast, the name of the sponsor or sponsors if any, the time at which the program began and ended, and a notation whether an announcement was broadcast that the program was reproduced;

(e) the time and duration of every spot or flash announcement broadcast, and the name of the sponsor or sponsors, if any;

(f) the name of the speaker on any talks program and the auspices, if any, under which the talk was given;

(g) the name of any candidate for public office speaking on a political broadcast and his political affiliation if any; and

(h) the name of anyone speaking on a political broadcast on behalf of any political party or candidate together with the name of the party or candidate on whose behalf the talk was given.

(2) In making entries in the program log, key letters or abbreviations may be used if the explanation of each is given therein.

(3) All times mentioned in the program log shall be local time which shall be clearly identified on the log; for example, "Eastern Standard Time", "Central Daylight Time".

(4) Each station shall forward to the Corporation within seven days of the end of each week a true and accurate copy of its program log for that week.

(5) Each station shall have available for a period of one year and produce to a representative of the Corporation on request,

(a) the continuity used for any program or spot or flash announcement broadcast by that station, and

(b) the manuscript or reproduction of any broadcast of a talk or speech from that station.

Broadcasting generally

5. No station shall broadcast

(a) anything contrary to law,

(b) any abusive comment on any race, religion or creed,

(c) any obscene, indecent or profane language,

(d) any false or misleading news with the knowledge that it is false or misleading,

(e) any program on the subject of birth control, or venereal disease, unless such program is presented in a manner and at a time approved by a representative of the Corporation as appropriate to the medium of broadcasting,

(f) any advertising content in the body of a news broadcast,

(g) except with the consent in writing of a representative of the Corporation, an appeal for donations or subscriptions in money or kind on behalf of any person or organization other than

(i) churches or religious bodies permanently established in Canada and serving the area covered by the station,

(ii) recognized charitable institutions or organizations,

(iii) universities, or

(iv) musical or artistic organizations whose principal aim or object is other than that of monetary gain,

(h) any program involving a lottery, gift enterprise or similar scheme in which the contestant or competitor pays any sum of money in order to be eligible for a prize,

(i) any program reconstructing or simulating the direct description of any sport or other event through a description prepared from wired reports or other indirect sources of information until after the conclusion of such event if an actuality broadcast of the event is available in the area; a reconstructed broadcast shall be clearly identified at the beginning and end thereof as having been so prepared, and if it is more than fifteen minutes in length, it shall be clearly identified at the end of each fifteen minutes.

Political broadcasts

6. (1) Each station shall allocate time for political broadcasts as fairly as possible among all parties or candidates desiring to purchase or obtain time for such broadcasts.

(2) The identity of the speaker or speakers on any political broadcast and the names of the sponsor or sponsors or the political party, if any, upon whose behalf the broadcast is made shall be announced at the beginning and end thereof, but such announcement may, with the previous consent of a representative of the Corporation, be dispensed with in the case of a political spot or flash announcement.

(3) For the purposes of this regulation, a broadcast in respect of any by-law which is the subject of municipal balloting or any plebiscite or referendum which is the subject of national, provincial or municipal balloting is deemed to be a political broadcast.

Advertising content

7. (1) No station shall broadcast any program the advertising content of which exceeds in time the following:

Length of Program (Minutes)	*Length of Advertising Message* (Minutes and Seconds)	
	Midnight to 6.00 p.m.	*6.00 p.m. to Midnight*
5	1.15	1.00
10	2.10	2.00
15	3.00	2.30
20	3.30	2.40
25	4.00	2.50
30	4.15	3.00
40	5.00	3.45
45	5.45	4.30
60	7.00	6.00

(2) No station shall broadcast paid spot or flash advertisements that exceed four in number of three minutes in total time during any fifteen minute period, except that a station may, with the previous consent of a representative of the Corporation, arrange for special announcement programs exceeding these limits with a proportionate reduction in paid spot or flash announcements during other periods. This subsection shall not be operative during the period of a major emergency within the area served by the station.

(3) For the purposes of this section the time of a network program is, in all time zones in Canada, the time of the originating point or the Canadian control point.

Advertising generally

8. (1) No station shall broadcast any program or spot or flash announcement sponsored by any person for the purpose of promoting the sale or interests of

(a) any act or thing prohibited by the law of Canada or of the province in which the station is located,

(b) any insurance corporation not authorized by law to carry on business in Canada,

(c) any bonds, shares or other securities, except securities of the Government of Canada or of any province, municipality or other public authority, or

(d) any mining or oil property or any interest in any mining or oil property,

but the broadcasting of a sponsored program of general quotations of mar-

ket prices, presented without comment, is not by these regulations prohibited.

(2) The Corporation may, by notice in writing to any station, require that station to modify the character of any advertisement broadcast by that station, where, in the opinion of a representative of the Corporation, the advertisement is of an offensive or objectionable nature.

Spirituous liquors, beer and wine

9. No station shall broadcast any program or spot or flash announcement

(a) advertising directly or indirectly, any spirituous liquor or any beer or wine, or

(b) sponsored by or on behalf of any person or persons whose principal business is the manufacture or sale of spirituous liquor, beer or wine,

except that in any province where the advertising of beer and wine is permitted, a program of not less than fifteen minutes duration sponsored by a brewery or winery may be broadcast, subject to the following conditions:

(i) the program shall contain no advertising other than sponsorship announcements,

(ii) sponsorship announcements may be made only at the beginning and end of the program, but where the program is a program of more than fifteen minutes duration the name of the sponsor may be introduced at intervals of not less than fifteen minutes in program announcements,

(iii) the form of sponsorship announcements shall be in accordance with the following examples or approved variation thereof,

"This program is presented with the compliments of the ABC Brewery", or
"This program has been presented with the compliments of the ABC Brewery".

(iv) no other announcements shall be made or devices used in any such program to advertise directly or indirectly the product of the sponsor,

(v) the program format, the form of the sponsorship announce-

ments, and the continuity to be used must be approved in advance of the broadcast by a representative of the Corporation.

Foods and drugs; proprietary or patent medicines

10. (1) No station shall broadcast any advertisement or testimonial for any article to which the Proprietary or Patent Medicine Act or the Food and Drugs Act applies unless the continuity of the advertisement or testimonial has been approved by the Department of National Health and Welfare and by a representative of the Corporation and bears the registration number assigned by the Corporation.

(2) No station shall broadcast any recommendation for the prevention, treatment or cure of a disease or ailment unless the continuity thereof has been approved by the Department of National Health and Welfare and by a representative of the Corporation and bears the registration number assigned by the Corporation.

(3) Continuities submitted for approval pursuant to this regulation shall be forwarded to the Corporation in triplicate at least two weeks in advance of intended use.

(4) Inspectors of the Food and Drugs Division, Department of National Health and Welfare, are authorized to act as representatives of the Corporation for the purpose of the enforcement of this regulation.

Programs of the Corporation

11. (1) The periods to be reserved by a private station for the broadcast of programs of the Corporation are such as may be agreed on between the station and the Corporation, or as may be designated by the Corporation by notice in writing to a station.

(2) Any period required by subsection (1) to be reserved for the broadcast of programs of the Corporation shall, except with the consent of a representative of the Corporation, be used exclusively for programs of the Corporation.

Broadcasting

12. Except with the consent in writing of a representative of the Corporation, no station shall "pick up" and broadcast any program or portion thereof.

Reproduced programs

13. (1) No station shall use a reproduced program, except when its use is merely incidental as for an identification or background, between the hours of 7:30 and 11:00 p.m. except with the previous consent of the Corporation in writing.

(2) Each reproduced program of longer duration than one minute shall be identified by appropriate announcement at the beginning or end of the program, and where a reproduced item of more than one minute in length is used in any program, otherwise than merely incidentally as identification or background, it shall be identified as such at the beginning or end of the program or at the time the item is used.

(3) Programs produced by the station and delayed for presentation at a later hour and live network programs delayed because of time zones need not be specially identified.

(4) The identification of any reproduced program or item of longer duration than one minute shall be in language that is clear and in terms that are commonly used or understood; the following examples, or any suitable modification thereof, are suggested;

(a) "This is a recorded program."

(b) "This is/was a delayed broadcast."

(c) "Portions of this program were transcribed."

(d) "Portions of this program were recorded earlier."

(e) "Transcribed."

Chain broadcasting

14. (1) Except with the written consent of the Corporation no station shall operate as part of any established chain or network of stations inside or outside Canada.

(2) Except with the consent of a representative of the Corporation no station shall broadcast a program through network connection with another station or other stations inside or outside Canada.

(3) Except with the consent of a representative of the Corporation no station shall broadcast any reproduced program or speech which would have the effect of simulating a network of stations not authorized on behalf of the Corporation.

Program information

15. Each station shall furnish upon request of a representative of the Corporation such additional information in connection with its program activities as the Corporation considers necessary for the proper administration of the Act and these regulations.

Document 21B

Late in 1955, the CBC board of governors eased the restrictions on the frequency of commercials in the following amendment to the regulations. The previous rule was "four in number or three minutes in total time."

DOCUMENT 21B: "Amendment, CBC regulations for sound broadcasting stations," Statutory Orders and Regulations 55–458, *Canada Gazette*, Part 2, 28 December 1955, 1927.

The CBC Regulations for Sound Broadcasting Stations are hereby amended, effective December 1, 1955, by revoking paragraph (2) of section 7 thereof, and by substituting therefor the following new paragraph (2):

"7. (2) No station shall broadcast paid spot or flash advertisements that exceed five in number or four minutes in total time during any fifteen minute period, except that a station may, with the previous consent of a representative of the Corporation, arrange for special announcement programs exceeding these limits with a proportionate reduction in paid spot or flash announcements during other periods. This subsection shall not be operative during the period of a major emergency within the area served by the station."

Document 22

Canada's new radio network barely had a head office staff by the end of 1936. But within a year it was operating and in a position to put on a rather grand and highly cultured Christmas Day show in 1937. The schedule reads like a checklist of the country's roots and current traditions. It managed to represent the Vatican, Government House, the Cabinet, the Anglican Church, Indians and the fur trade, Toscanini, NHL hockey and the King. Was this really the country? Whether the CBC producers of all this were on target or out of touch, this Christmas show at least allowed listeners to ponder one version of themselves.

DOCUMENT 22: CBC, "Programme schedule for December 25 Christmas 1937," leaflet.

CANADIAN BROADCASTING CORPORATION

PROGRAMME SCHEDULE FOR DECEMBER 25

CHRISTMAS 1937

All Programmes Will be Carried Over the CBC National Network Unless Otherwise Designated

EASTERN STANDARD TIME USED THROUGHOUT

9.50 A.M. **Official Opening of the Ontario Regional Transmitter CBL**

Inaugural Message from the Honourable C. D. Howe, Minister of Transport.

10.00 A.M. **HIS MAJESTY THE KING.**

The Toronto Symphony Orchestra conducted by Sir Ernest Macmillan, and the Mendelssohn Choir conducted by Dr. H. A. Fricker.

11.00 A.M. **Christmas Morning Service from St. James Cathedral, Toronto**

Special Christmas Message by The Most Reverend Derwyn T. Owen, Archbishop of Toronto and Primate of All Canada, sermon by the Dean of Toronto, The Very Reverend C. E. Reilly.

12.00 Noon **"The Christmas Stocking"**

A children's fantasy produced by James Finlay. From Vancouver

1.00 P.M. **Special Christmas Day Programme from the Vatican**

Music by the Sistine Chapel Choir; Beniamino Gigli, tenor soloist; and the Pontifical Orchestra. Monseignor Lorenzo Perosi will conduct. NBC-CBC international exchange programme.

2.00 P.M. **METROPOLITAN OPERA COMPANY**

Gounod's "Romeo and Juliet" with Richard Crooks, tenor, and Bidu Sayao, soprano. Maurice de Abravanel. NBC-CBC international exchange programme.

5.00 P.M. **"Canadian Christmas"**

A panorama of Canadian Christmas scenes, produced by Laurence Gilliam.

This programme will be available to all stations in the service area of the CBC National Network.

6.30 P.M. **"The Animals' Christmas"**

A talk by Dan McCowan.

6.45 P.M. **Recital by Roberto Wood, Baritone**

From Winnipeg

7.00 P.M. **"From the Lyric Stage"**

Produced by Rooney Pelletier, with orchestra, soloists, and mixed chorus direction Giuseppe Agostini. From Montreal.

7.45 P.M. **"Moccasins and Furs—Christmas in the Forts"**

A talk by Douglas MacKay. From Winnipeg.

8.00 P.M. **"Reindeer Christmas"**

A play written by Her Excellency The Lady Tweedsmuir; adapted for radio, arranged, and produced by Rupert Lucas. From Toronto.

8.30 P.M. **"Yuletide Music"**

An orchestral programme directed by Percy Harvey. From Vancouver.

9.00 P.M. **NHL Hockey Broadcast—sponsored by Imperial Oil Limited.**

Toronto to CJCB CHNS CFCY CKCW CHSJ CFNB CBO CFRC CRCT CFRB CKCL CBW CKSO CFCH CJKL CKGB CKPR CKY CKX CKCK CHAB CFQC CKBI CJCA CFAC CFCN CJOC CKOV CFJC CJAT CBR

Split Network

Montreal to CBF CRCK CRCS CJBR CHNC

10.30 P.M. **NBC Symphony Orchestra with Arturo Toscanini conducting**

NBC-CBC international exchange programme.

11.30 P.M. **The News**

The Canadian Press news bulletin and Dominion Meteorological Bureau weather forecast.

11.45 P.M. **"Cradle Song"**

Orchestra directed by Howard Fogg with Marcelle Monette, mezzo-soprano. From Montreal.

12.00 Mid. **A Christmas Dramatization**

Presented by the University Players and directed by Sheila Marryat.

Edmonton to CBC Western Network

12.30 A.M. "Christmas On Parade"

Band concert directed by Lieut. J. P. O'Donnell

Winnipeg to CBC Western Network

1.00 A.M. "Did You Hear?"

A talk by Earle Kelley

Vancouver to CBC Pacific Network

1.15 A.M. The News

The Canadian Press news bulletin and Dominion Meteorological Bureau weather forecast.

Vancouver to CBC Pacific Network

1.30 to 2.00 A.M. Mark Kenney and his Western Gentlemen

Dance music from the Spanish Grill of Hotel Vancouver.

Vancouver to CBC Pacific Network

Document 23

During the 1930s, radio demonstrated its power to alter radically political and social reality. In Europe, democratic institutions were under attack by radicals of the right and the left. Charismatic leaders like Hitler discovered that radio broadcasts were an effective means of arousing patriotism, exacerbating racial pride and hatred, and generally submerging reason in a welter of passion and emotion. European examples illustrated the sad truth that a government with control over the mass media, a government willing to exclude opposing opinions from the radio, was a government likely to stay in power indefinitely. Viewed from this perspective, radio seemed a direct threat to democracy.

In Canada, the 1936 Broadcasting Act assigned the CBC the power to regulate radio. The CBC was barely established before it was propelled into producing a set of principles for broadcasting political propaganda and controversial opinions. In January 1939 the publisher of the *Globe and Mail* applied to buy time on a network of Ontario stations to promote one of his ideas—the need for strong but nonpolitical leadership in a time of economic distress and a looming war in Europe. The CBC turned him down, reasoning that such an action could lead to the public air being filled with propaganda of any sort from anyone rich enough to hire the time. The publisher thought he was being censored by a government monopoly. The CBC thought it was protecting the public from a marketplace of ideas in which the rich and powerful would inevitably prevail. The debate, which had been hovering in the background ever since the "Mr. Sage" episode (Document 19) destroyed the CRBC, continued in a House of Commons radio committee. CBC statements to that committee were reflected in a "Statement of policy with respect to controversial broadcasting" issued by the CBC on 8 July 1939. The document was revised slightly a number of times over the next ten years, but the principles remained the same. The first revision in February 1944, was a better organized version of the original, and it is this version which is reprinted here.

DOCUMENT 23: "Political and controversial broadcasting, policies and rulings," 21 February 1944.

POLITICAL AND CONTROVERSIAL BROADCASTING

POLICIES AND RULINGS

CANADIAN BROADCASTING CORPORATION

Issued by authority of The Board of Governors

February 21st, 1944

As revised to May 1, 1948.

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STATEMENT OF POLICY

POLITICAL BROADCASTING

For the proper functioning of representative and democratic government, it is essential that the public should be fully informed of the issues at stake in any election and of the position and policies of the various parties towards those issues. Broadcasting is to-day one of the most powerful means of disseminating information of this kind.

The Canadian Broadcasting Act 1936 gives to the Canadian Broadcasting Corporation full powers to guide and control all broadcasting, including political broadcasting. Section 22 of the statute states that the Corporation may make regulations "to prescribe the proportion of time which may be devoted to political broadcasts by the stations of the Corporation and by private stations, and to assign such time on an equitable basis to all parties and rival candidates."

The Corporation assumes this responsibility as a function of public service broadcasting. In accordance with its general policy of encouraging fair and adequate presentation of controversial questions of public interest and concern, the Corporation has instituted a general plan for party political broadcasting. This plan includes the provision of network time free of charge to recognized political parties during dominion and provincial elections, thus giving all parties the opportunity of speaking to a wide public irrespective of their capacity to buy time, and a limited amount of free network time to recognized party leaders or their representatives in the periods between elections.

In addition to free network time, provision is made for the purchase of time on privately-owned stations under such control as will ensure an equitable division of such purchased time, and secure the public against an excessive amount of political broadcasting to the exclusion of entertainment and other normal programme material.

It is important to note certain statutory provisions with regard to political broadcasting. Paragraphs (3), (4) and (5) of Section 22 of the Act of 1936 read as follows:—

"(3) Dramatized political broadcasts are prohibited.

(4) The names of the sponsor or sponsors and the political party, if any, upon whose behalf any political speech or address is broadcast shall be announced immediately preceding and immediately after such broadcast.

(5) Political broadcasts on any dominion, provincial or municipal election day and on the two days immediately preceding any such election day are prohibited."

These statutory provisions are included in Regulation 8 of the Corporation made under authority of the Canadian Broadcasting Act and approved by the Governor in Council. Regulation 8 also includes the following important provision:

> "each station shall allocate time for political broadcasts as fairly as possible between the different parties or candidates desiring to purchase or obtain time for such broadcasts."

The provision with regard to dramatized political broadcasts is held to prohibit all political broadcasts incorporating any device which could be considered theatrical, and to declare that political broadcasting must be restricted to strictly political addresses and announcements.

Political broadcasts presented as a performance in a dramatic manner and with theatrical effect would be construed as an infringement of paragraph (3) of Section 22 of the Act, such as:

1. "Questions and Answers" programmes conducted in the form of dialogue.

2. Dramatic skits or plays presented as a complete broadcast or part of a broadcast.

The prohibition of political broadcasting on election day and the two days immediately preceding it has been held to apply only to the election day immediately concerned. For instance, if polling for a provincial general election is being held on the 10th of the month, and polling for a federal by-election on the 15th, political broadcasts on behalf of the federal candidates may take place on the 8th, 9th and 10th, but in such case it is the responsibility of the station managements to ensure that candidates make no reference to purely provincial matters or to persons concerned in the provincial election.

During the three prohibited days up to the closing of the polls no political spot announcements or news items of a political nature may be broadcast.

All networks booked for political broadcasting must be arranged through the CBC. All political bookings on private stations must be registered at the CBC Broadcast Regulations Division prior to presentation of the broadcasts.

CBC-owned or operated stations are not available for purchase for political broadcasting except for certain stations which may be necessary to service areas not reached by private stations.

During the course of a dominion or provincial general election campaign, CBC stations will not broadcast addresses by political figures from Service Clubs or similar organizations.

CONTROVERSIAL BROADCASTING

The Corporation does not exercise censorship. It does not restrict the nature of material to be broadcast, except to see that such material conforms with its printed regulations.

The policy of the CBC, with regard to controversial broadcasting, is based on the following principles:

1. The air belongs to the people, who are entitled to hear the principal points of view on all questions of importance.

2. The air must not fall under the control of any individuals or groups influential by reason of their wealth or special position.

3. The right to answer is inherent in the democratic doctrine of free speech.

4. Freedom of speech and the full interchange of opinion are among the principal safeguards of free institutions.

In the view of the Corporation, these principles are not promoted by the sale of network time to individuals or commercial concerns for broadcasts of opinion or propaganda. The principles can be furthered by the provision of free time to competent speakers to present, without let or hindrance, varying points of view on questions of the day. The best safeguard of freedom of discussion is a policy which permits opportunity for the expression of varying points of view.

PART I

POLITICAL BROADCASTING

Section A:

DURING GENERAL ELECTION CAMPAIGNS

1. DOMINION ELECTIONS

(a) Commencement of Campaign:

For the purposes of broadcasting arrangements, the campaign will be held to begin on the date of dissolution of Parliament or, if the date of polling is announced before dissolution, on a day to be determined by the Corporation, but not later than the date of dissolution.

(b) National Political Parties:

The privilege of free network time for political broadcasting will be granted to *bona fide* parties which are national in extent and which reflect a substantial body of opinion throughout the country. While it is impossible to lay down an exact definition, it is suggested that such a party would meet all of the following requirements:

(i) Have policies on a wide range of national issues.

(ii) Have a recognized national leader.

(iii) Have a nation-wide organization established as the result of a national conference or convention.

(iv) Seek the election of candidates in at least three of the provinces and put into the field a minimum number of 61 officially nominated candidates (approximately one for every four constituencies).

(c) Distribution of Time:

The Corporation will set aside an amount of free time on a national network to permit of adequate presentation of the policies of the national political parties. The time set aside will be allotted among the existing parties in the House, in accordance with a ratio based on the following factors:

(i) The standing of the parties in the House of Commons at the time of dissolution.

(ii) The popular vote secured by each of the parties at the previous election.

(iii) The number of candidates officially nominated in accordance with the provisions of the Dominion Elections Act by each of the parties in the preceding campaign.

(iv) The standing of the parties in the House of Commons at the preceding dissolution.

The distribution resulting from this formula will be published at the beginning of the campaign; after publication there will be no revision as the campaign proceeds. Parties will be asked to use their time in uniform proportions, spread out evenly over the campaign.

The maximum of one hour for any single broadcast has been divided into hour, half-hour and quarter-hour periods. No broadcasts of less than fifteen minutes' duration are permitted on free network time.

To new national political parties the Corporation will allot an amount of free national network time to bring to listeners an adequate presentation of the party's programme and policies. The time so allotted will be over and above the amount given to the existing national political parties.

In the event of a new national party coming into being through a union of existing parties, the Corporation will decide the amount of time on its own responsibility and in the most equitable manner possible.

(d) Network Sustaining Broadcasts Over Private Stations:

The national networks which will be provided free to the parties will comprise stations owned by the Corporation and all stations "affiliated" with a CBC national network. In addition, other privately-owned stations will be invited to carry the national broadcasts on a sustaining basis, subject to the maintenance of network alternative service. The privately-owned stations which decide to carry the broadcasts do so without charge. The cost of any lines necessary to include such stations in the networks is borne by the CBC. Independent stations desiring to participate in the series have to indicate their intention in advance; in such a case the station is obligated to carry the whole series.

(e) Subsidiary Hookups within a Province:

In addition to the arrangement for free national networks for the national parties as set forth in sections (b) and (c), a further category of network broadcasting will be permitted. There will be available for purchase within

each province subsidiary hookups comprising such privately-owned stations as may wish to sell their facilities. CBC-owned stations will not be available for inclusion in subsidiary hookups. The hookups will be arranged by and through the Corporation in its capacity as the network authority. No subsidiary hookup will be authorized during a period for which a national network broadcast is scheduled, and stations carrying the free national broadcasts must maintain the one quarter-hour immediately preceding and following such broadcasts free of political broadcasting. No station will be released, for the purpose of inclusion in such hookups, from time reserved by the CBC for the broadcasting of its sustaining or commercial network programmes.

The purpose of these hookups is to permit the national parties to take care of regional campaign requirements. It is also to afford an opportunity to engage in network broadcasting on a limited scale to parties which have not attained national proportions, and which, on that account, would not be given time free on a national network. Such hookups will be restricted exclusively to stations located within the boundaries of the province in question, except that provision may be made for the inclusion of a station in an adjoining province where geographic conditions make it essential for adequate coverage of the province.

(f) Individual Stations:

Individual privately-owned stations will be at liberty to sell time to political candidates and parties for single-station broadcast only, subject to the terms of the Broadcasting Act and the Regulations thereunder. Individual CBC-owned stations will not be available for purchase. The only exceptions to this rule will be the Corporation's station at Chicoutimi and the station now under lease at Prince Rupert, in which districts there are no privately-owned stations which can provide facilities for local broadcasting.

No individual station may carry a local political broadcast at the same time as there may be a national political broadcast. If a station carries the CBC network political broadcasts, it must keep the quarter-hour immediately preceding and following the broadcasts free from other political broadcasts.

(g) French Network:

To meet the special requirements of the French network, arrangements may be made to allow the broadcast of a translation or a companion or parallel address in French to be carried in the Quebec region at the same time as, or within a reasonable time after, the national broadcast.

(h) Reserved Time:

No station will be granted release for political purposes from time reserved by the CBC for the broadcasting of its sustaining or commercial network programmes.

2. GENERAL ELECTIONS FOR PROVINCIAL LEGISLATURES

(a) Commencement of Campaign:

For the purposes of broadcasting arrangements, the campaign will be held to begin on the date of dissolution of the legislature, or, if the date of polling is announced before dissolution, on a day to be determined by the Corporation, but not later than the date of dissolution.

(b) Provincial Political Parties:

The privilege of free network time for political broadcasting will be granted to *bona fide* parties which are provincial in extent and which reflect a substantial body of opinion throughout the province. While it is impossible to lay down an exact definition it is suggested that such a party would meet all of the following requirements:

(i) Have policies on a wide range of provincial issues.

(ii) Have a recognized provincial leader.

(iii) Have a province-wide organization established as a result of a provincial conference or convention.

(iv) Put into the field at least one candidate for every four constituencies.

(c) Distribution of Time:

A designated amount of free time will be made available to the CBC on a provincial network in the province concerned by participating parties. The division of such time will be mutually agreed upon by the parties involved.

(d) Subsidiary Hookups of Privately-owned Stations:

Subsidiary hookups of privately-owned stations within the province concerned may be purchased by participating parties. Such hookups will be arranged by and through the Corporation in its capacity as the network authority. No subsidiary hookups will be authorized during a period for

which a provincial free political broadcast is scheduled, and stations carrying the free network broadcasts must maintain one quarter-hour immediately preceding and following such broadcasts free of political broadcasting. No station will be released, for the purpose of inclusion in such hookups, from time reserved by the CBC for the broadcasting of its sustaining or commercial network programmes.

(e) Individual Stations:

Individual privately-owned stations will be at liberty to sell time to political candidates and parties for single-station broadcasts only, subject to the terms of the Broadcasting Act and the Regulations thereunder. Individual CBC-owned stations will not be available for purchase. The only exceptions to this rule will be the Corporation's station at Chicoutimi and the station now under lease at Prince Rupert, in which districts there are no privately-owned stations which can provide facilities for local broadcasting.

No individual station may carry a local political broadcast at the same time as there may be a provincial political broadcast. If a station carries the CBC network political broadcasts, it must keep the quarter-hour immediately preceding and following the broadcasts free from other political broadcasts.

Section B:

IN THE PERIODS BETWEEN GENERAL ELECTION CAMPAIGNS (Dominion or Provincial)

(a) During periods between election campaigns free time will, on application in writing, be made available to national party leaders for political broadcasts on a national CBC network and to provincial party leaders on a regional CBC network as follows:

(i) One period of not more than fifteen minutes a week which will be made available for national political broadcasts and one for provincial political broadcasts.

(ii) In the event of there being only two political parties, the total time will be divided equally between the parties.

(iii) When there are more than two qualifying parties, time will be divided in the following ratio:

Two periods to the party in power;

Three periods to be divided among qualifying opposition parties

(iv) Subject to the foregoing, the leader of a qualifying party may nominate a substitute.

The status of national political parties will be determined by Part 1, Section A 1 (b) except that a party which has no representation in the House of Commons shall not be considered a "national political party" for the purposes of this section. The status of provincial political parties will similarly be determined by Section A 2 (b).

The content of such political broadcasts will be the full responsibility of party leaders, being subject only to the general rules and regulations of the Corporation.

(b) Only individual privately-owned stations are available for purchase for political broadcasting in the period between election campaigns provided, however, that permission may be granted for the simultaneous use of more than one station when such a hookup is necessary to cover the area of a riding in which a federal or provincial by-election is being held.

Section C:

MUNICIPAL OR CIVIC ELECTIONS

Single privately-owned stations are the only facilities available for broadcasting in connection with municipal or civic election campaigns. The only exceptions to this rule will be the Corporation's station at Chicoutimi and the station now under lease at Prince Rupert, in which districts there are no privately-owned stations which can provide facilities for local broadcasting.

SUMMARY

BROADCASTING FACILITIES AVAILABLE FOR POLITICAL BROADCASTING

(A) DURING THE PERIOD OF AN ELECTION CAMPAIGN:

DOMINION ELECTION CAMPAIGNS:

1. A designated amount of free time on a national network is available for the use of national parties in accordance with the formula set out in sub-section 1 (c) of Section A.

2. Subsidiary hookups of privately-owned stations may be purchased within the confines of a province by participating parties.

3. Single privately-owned stations are available for purchase by participating parties or candidates.

Provincial Election Campaigns:

1. A designated amount of free time will be made available on a CBC provincial network for use by participating provincial parties, the division of time to be mutually agreed upon between the political parties involved.

2. Subsidiary hookups of privately-owned stations may be purchased within the confines of the province by participating parties.

3. Single privately-owned stations are available for purchase by participating parties or candidates.

Municipal or Civic Elections:

Single privately-owned stations are the only facilities available for broadcasting in connection with municipal or civic election campaigns, with the exceptions of the Corporation's station at Chicoutimi and the station now under lease at Prince Rupert, in which districts there are no privately-owned stations which can provide for local broadcasting.

Availability of CBC Stations:

CBC-owned or operated stations are not available for purchase for political broadcasting during election campaigns, with the exceptions of the Corporation's station at Chicoutimi and the station now under lease at Prince Rupert, in which districts there are no privately-owned stations which can provide for local broadcasting.

(B) Between Election Campaigns:

Only individual privately-owned stations are available for purchase between election campaigns with the exception as indicated in paragraph (b) of Section B.

A designated amount of free time is available on a national CBC network and on a regional CBC network for national party leaders and provincial party leaders as set forth in paragraph (a) -(i) to (iv) of Section B.

PART II

CONTROVERSIAL BROADCASTING

POLICY GOVERNING PURCHASE OF TIME

1. No time will be sold on any CBC-owned or operated station, whether individually or as part of a subsidiary hookup, for the broadcasting of opinions.

2. There shall be no sale of time on any network to individuals or commercial organizations for the broadcasting of opinions.

3. Non-commercial organizations or societies interested in public affairs may purchase time on subsidiary hookups or individual private stations. Any such hookup must be arranged by and through the CBC.

4. For this purpose non-commercial organizations or societies are defined as those:

   (a) which are established for other than commercial or quasi-commercial purposes, whose objects are social, educational, economic, philanthropic or of a similar nature, and are of general public interest and concern;

   (b) which have been in existence for at least a year prior to the application for network facilities.

5. Societies or organizations desiring to purchase network time must accept responsibility for the broadcast and agree to indemnify the CBC against the possible consequences of libel or slander.

6. Each broadcast must be preceded and concluded by appropriate announcements making clear the nature and substance of the broadcast, and indicating that equal facilities are available on the same basis for the expression of opposing views.

7. Time purchased for controversial broadcasting must be limited so that it does not unduly interfere with normal programme requirements.

8. The broadcast must be of sufficient interest to the public to justify inclusion in the programme schedule.

9. During the period of an election societies and organizations have the same purchasing rights as political parties.

GENERAL

Freedom of Speech:

In accordance with its policy of resisting any attempts to regiment opinion or to throttle freedom of speech, the Corporation lays down no specific rulings covering controversial broadcasting. The Corporation itself supports the policy of the fullest use of the air for:

(a) Forthright discussion of all controversial questions;

(b) Equal and fair presentation of all main points of view;

(c) The discussion of current affairs and problems by informed, authoritative and competent speakers.

Broadcasting is a changing and expanding art and no fixed and permanent criterion can be set down for the best method of presenting controversial material.

These policies have been adopted in an effort to ensure that the medium of broadcasting may remain at the disposal of the nation, regardless of party, section, class or creed.

Document 24

In the years from the 1936 Broadcasting Act through the Second World War and up to the advent of television in 1952, the private broadcasters prospered and fretted. Private radio, particularly the big stations in big cities, was proving to be a lucrative affair. The worry arose from the Broadcasting Act, which defined the private stations as minor and probably temporary elements in a single system of Canadian broadcasting. They could be expropriated by the government on behalf of the CBC if they were needed for the national system.

Such was the law. In practice, a combination of lobbying, support from MPs and newspapers, popular taste, and propaganda from the Canadian Association of Broadcasters achieved the eventual recognition that private stations were here to stay.

In pursuing this goal—and in seeking greater liberty in programming—the CAB argued that CBC regulation was unfair, that a powerful, government-financed broadcaster should not be allowed to regulate its competition. According to the terms of the Broadcasting Act, of course, there could be no competition because all stations were involved in a single system of Canadian broadcasting. But in the real world, private broadcasters did compete for audience and advertisers with the CBC. On broader, more libertarian grounds, the CAB argued that diversity in broadcasting was the same as freedom of the press—a necessary bulwark of democracy.

This is an excerpt from a booklet setting out the CAB's presentation to the Commons broadcasting committee in 1947. The first part of the booklet attempts to demonstrate, via quotation from the Broadcasting Act, the notion that the government controlled the CBC . What follows is from the latter half of the CAB booklet, summarizing the CAB's political, philosophical and economic arguments.

DOCUMENT 24: CAB: "Control of radio, an urgent Canadian problem," June, 1947, 23–34.

POINT ONE:

THERE IS NO LEGAL RIGHT TO FREEDOM OF SPEECH ON THE AIR IN CANADA

As matters stand, the "government-of-the-day" could constitutionally, promptly, and without changing a word of present legislation - prevent expression of any opinion other than its own.

We concede that the present government has no such intention, but the danger is there. The situation arose because since the first radio act was passed there has never been an over-all survey of radio legislation and regulation, nor any attempt to determine its application to modern conditions. The wide powers of regulation that may have been necessary for ships at sea, have no relation to present day radio broadcasting.

We feel that the full implications of existing law have remained obscure because no government has so far attempted to interfere on a very large scale with freedom of speech on the air. The important point is that freedom of speech on the air is not in Canada a matter of established right. That it may be permitted in some measure by the indulgence or "grace" of existing regulatory bodies, is not good enough. It should be established as a matter of right , not a matter of "grace".

That the possibilities of radio's growth were not recognized when present regulations were passed, may be realized by even a casual examination of the Radio Act. This was originally devised as a "Mariner's aid"; intended to govern ship-to-ship and ship-to-shore operations. It was not then known that radio would ever develop beyond that stage. Yet the Act applies with full force to today's very wide radio operations. Some of the situations created as a result may be humorous; but without intent, some of them are dangerous to fundamental democratic rights.

POINT TWO:

ANY "GOVERNMENT-OF-THE-DAY" CAN EXERCISE ARBITRARY POWER OVER THE OPERATIONS OF ALL RADIO STATIONS IN CANADA. PARTICULARLY, IT CAN STIFLE PROGRESS, AND DEVELOPMENT OF THE MEDIUM ITSELF.

Progressive development of Canadian radio has been curtailed. Negotiations concerning allocation of broadcast channels between North American countries have been based on the advice of the Canadian Joint Technical Committee. This consists of representatives of the Department of Transport and the Canadian Broadcasting Corporation only. This collaboration between the C.B.C. and the Department of Transport has been carried so far that at international negotiations C.B.C. has in fact had representatives sit in on the deliberations advising the Department of Transport point by point, even though the Department of Transport is the actual negotiating representative appointed by the Department of External Affairs.

These negotiations were, we feel, always conducted with the primary interest of the C.B.C. in mind, rather than those of Canada generally. On all international negotiations of this kind, there is always a certain amount of give and take on both sides in order to reach agreement. It is the

opinion of many independent broadcasters that most of the "give" by the Canadian authorities has been on channels which are not of primary concern to the C.B.C. while the "take" has been on channels in which they are deeply concerned. Many of our members feel that Canada's position in any negotiations for power increases or frequency changes is not pushed with the same effort that the F.C.C. authorities give to American interests. This situation is aggravated by the fact negotiations are always completely public in the United States, so that there is never any question as to the attitude of those negotiating on any particular point. Our Association feels very strongly that our Industry's views should be given equal status to those of other North American broadcasters in any international negotiations.

The Power Freeze imposed upon independent broadcasting stations was protested vigorously by the Canadian Association of Broadcasters for some years. It was finally modified to some extent. But before this was done, much potential Canadian coverage was permanently lost by inaction. Under treaty terms, stations in other countries could and did take over certain coverage because Canadian stations had not been permitted to go to full treaty power. The independent stations concerned were willing and ready to increase. But they were prevented from doing so by C.B.C. regulations. The result was loss of valuable coverage to Canada forever.

It is significant that television and facsimile development has lagged in Canada. Experimental stations using both of these new broadcasting developments have existed for some time in the United States. Indeed, they are past the stage of experiment, and well into the state of daily use. C.B.C. is not even yet operating one experimental television or facsimile station. Unable or unwilling to do so itself, it has the power to prohibit the independent stations from doing so. For some time, at least a few independent stations have been willing to proceed with experimental television and facsimile stations, but cannot get permission to go ahead. Applications are on file; some of them for years past, and have simply not been acted upon.

POINT THREE:

PRESENT LEGISLATION RESULTS IN AN UNSOUND SITUATION — ACTUALLY "SUBSIDIZED COMPETITION" WITH POWER OF CONTROL AND REGULATION IN THE HANDS OF ONE OF THE "COMPETITORS."

We dealt with this matter in our brief last year, and will not go over it again. Suffice to say the C.B.C. is becoming increasingly commercial, increasingly and more aggressively competitive. We shall be glad to give concrete examples if the Committee so desires.

In addition to competition for advertising revenue, which is the only

source of revenue, life blood of independent radio stations, the Government's C.B.C. and the independent stations compete for audiences. The situation is similar to the C.N.R. and the C.P.R. competing for passengers and other business. No one would suggest that it would be either fair or in the public interest to place the power of regulating the C.P.R. into the hands of the C.N.R. Yet this is precisely the present situation in radio. With the railways there is an independent regulatory authority. There should be an independent regulatory authority for radio.

THE SOLUTION

We believe the solution is that there should be a *right* of freedom of speech on the air in Canada. We believe that the members of this Committee are as interested as ourselves in correcting this dangerous and undemocratic situation. This Committee is responsible to Parliament (not to the Government) and so should those who control radio be responsible.

We urge, therefore, that this Committee recommend immediate and complete overhaul of existing radio legislation with these principles in mind:

1. That freedom of speech on the air should be a matter of RIGHT.

2. That such freedom should be properly safeguarded by having the regulation of radio broadcasting in the hands of a licensing and regulatory body which should be as independent as possible of the "government-of-the-day," and which should be appointed directly by and responsible directly to, Parliament itself.

3. That the functions of such a body be clearly defined by Parliament, and that its funds should be supplied by Parliament.

4. That the C.B.C. be a Corporation operating a national broadcasting system, as was originally intended, but deprived of regulatory power over independent stations.

A former Director-General of the British Broadcasting Corporation sums up most clearly and concisely the urgent importance of civil liberties, freedom, and choice in radio. On June 26th, 1946, the London Times carried this letter from Sir F.W. Ogilvie, Director-General of the British Broadcasting Corporation for nearly four years, and now Principal of Jesus College at Oxford:

"TO THE EDITOR OF THE TIMES

Sir:—It is good to see that you, Sir, support the plea for an inquiry into broadcasting. And it is much to be hoped that the question of the B.B.C. charter, when it comes to be debated, will not be regarded, in Parliament or outside, as a mere trial of strength between the government-of-the-day and the opposition-of-the-day.

What is at stake in not a matter of politics, but of freedom. Is monopoly of broadcasting to be fastened on us for a further term? Is the future of this great public service to be settled without public inquiry, by Royal Commission or otherwise, into the many technical and other changes which have taken place in the last 10 years?

Freedom is choice. And monopoly of broadcasting is inevitably the negation of freedom, no matter how efficiently it is run, or how wise and kindly the boards or committees in charge of it. It denies freedom of choice to listeners. It denies freedom of employment to speaker, musician, writer, actor, and all who seek their chance on the air. The dangers of monopoly have long been recognized in the film industry and the press and the theatre, and active steps have been taken to prevent it. In tolerating monoply of broadcasting we are alone among the democratic countries of the world.

I was Director-General of the B.B.C. from the autumn of 1938 to the beginning of 1942. At the time of leaving I set down some of my impressions and experiences in a memorandum which Sir Alan Powell and his colleagues on the B.B.C. Board of Governors have had in their possession since the end of the war. My chief impressions were two: the evils of the monopoly system, and the gallant work of a very able and delightful executive staff in trying to overcome them. The B.B.C. itself, good as it is, would gain vastly by the abolition of monopoly and the introduction of competition. So would all the millions of listeners, who would still have the B.B.C. to listen to, but would have other programmes to enjoy as well. So would all would-be broadcasters gain. If rejected by the B.B.C., they would have other corporations to turn to.

The only possible losers would be the various "governments-of-the-day"—Labor, Tory, Coalition, or whatnot. Governments are thoroughly suited by the charter as it stands. What better could any government wish for than to have at the end of the street a powerful and efficient instrument which has all the appearance of independence, but which, by the existing provisions of the charter and license, it can control by will?

The present issue is not the patient and admirable B.B.C., its deeds or alleged misdeeds. The issue is the broadcasting system itself, and well-wishers of the government must hope that it will be very willing to institute

a full and open inquiry into it. Automatic nationalization of the infinitely precious things of the mind and the spirit—,this is no part of true socialism.

Yours very truly,

(Signed) F.W. OGILVIE,

(The Principal's Lodgings, Jesus College, Oxford)

Broadcasting involves expression of opinion, presentation of information, and choice of programming. Moreover, there is close connection between broadcasting and the conduct of elections. In view of these admittedly important functions, we suggest that a body similar to the Board of Transport Comissioners, possessed of the powers necessary to license and regulate radio in the public interest, convenience and necessity, appointed on joint address of parliament and removable only by that method, would be appropriate.

Such a Board would, we submit, be the proper custodian of the licensing and regulatory power (now exercised by the Board of Governors of C.B.C., and the "Minister" under the Broadcasting and Radio Acts.)

Such an arrangement would leave C.B.C. free to concentrate upon its broadcasting activities and its internal affairs. Examples of a publicly-owned enterprise and a privately-owned enterprise, both under the general control of a regulatory body are to be found in the case of the Canadian Railways, the Canadian Air Transport Companies, and the Australian Broadcasting System.

There is a strong body of public opinion which favours overhaul of existing radio legislation. Growing interest in civil rights and liberties is one evidence of this. The fact is more sharply pointed up in specific relation to radio by continuing and independent research on "Public Attitudes" conducted by the Elliott-Haynes research institute. These researches show, in relation to radio, a highly significant trend, and we have asked Mr. Walter Elliott, whose firm is responsible for these studies, to present his findings to you as a part of our brief.

We feel there is some reason to believe that this trend is to some extent at least, due to the type and scope of service daily given by our member stations. The 89 stations we represent play a vital part in Canadian broadcasting. They spend about $5,000,000 a year on the salaries of some 2,500 people—the largest single group of Canadians with the longest practical experience in every phase of radio broadcasting.

Their volume of programs is many times greater than that of the governmental system and in total commands larger audiences. They pay city,

provincial and federal taxes; and operate at no direct cost to the Canadian listener. Their revenues are obtained solely from advertisers, who receive full value.

They get no money from public funds or taxes; no money from home radio set license fees. In addition to the customary taxes of all types levied on business operations, they pay license fees which go to the Canadian Broadcasting Corporation.

CONTINUING PUBLIC SERVICE

Last year, we reported the public service activities of these stations; their activities in developing talent, personnel, and programming. This statement was an impressive record of accomplishment. But at best, it gave a glimpse only of the immense scope of public service activity performed daily by the independent commercial stations of Canada. In a report that took half-a-day to present, we could include activities of only a few stations. Time prevented many equally effective operations being reported.

Since then, these 89 stations all have continued to serve the people of their area in a very real and practical fashion. Over and above daily program schedules that attract and hold vast listening audiences (in itself an activity of public service)—these stations also have taken notable and leading parts in such services as protection and saving of life and property during emergencies. During tornado, flood, storms, blizzards, the independent commercial stations have been in the forefront of effort—in many cases, have been the very focal point of effort—turning their entire facilites and staffs towards the work of rescue and rehabilitation. (Examples available.)

TECHNICAL AND DEVELOPMENT REASONS

Other urgent reasons centre around new technical developments and the fact that only now are the full potentialities of radio as a medium of expression being realized.

Car-to-car and car-to-place radiotelephone is now practical. Telegraph and telephone companies in the United States are already employing radio transmission. It is probable that this method will largely if not entirely displace landlines. Under the regulatory system existing today in Canadian radio, the C.B.C. and any existing "government-of-the-day" have the right to demand copies of telegrams in advance when these new methods are used.

In some American cities, newspapers and radio stations now use facsimile distribution of newspapers. More and more of them are doing so. The

Government's C.B.C. has the power under present regulations to regulate editorial comment in the press, to demand advance submission of news stories, and to dictate from what sources these may be drawn when Canadian newspaper and radio stations adopt facsimile. *(See C.B.C. Regulations for Broadcasting Stations and extracts from Broadcasting Act 1936: Section 6 (b); Section 13, Paragraph 1, sub-paragraphs (a); (b) and (c); Paragraphs 14, 15, 16).*

How little certain possibilities were recognized may be realized if the Aird report is examined. It was the Aird Commission which examined radio systems then existing in the world, and upon its later recommendations our present system was largely based. It will be noted that the Commission was most favourably impressed by the German radio system. That was one year before Hitler took over. It is now generally recognized that the government dominated radio system of Germany helped Hitler to assume control of that country.

(From Page 5 of the Aird Report, we quote: "*We found broadcasting especially well organized in Great Britain...and in Germany where the radio service is also under a form of public ownership, control and operation.*" Extended reference is made to the German system (in favourable vein) on page 15, and the attention given to that system in the Aird report occupies more space than that given to any other system studied.)

To sum up: Radio Legislation, which has grown up haphazard, needs complete revision. The revision should be made in the light of our past experience and present knowledge; the revision should recognize the potentialities of radio and the essentiality of providing that it be free from interference and even the threat of interference, while subject to necessary regulation.

In such a revision recognition should be given to the fact that there has grown up in Canada—not one national system of broadcasting—but two separate and competing systems and each should be accorded its proper and rightful place in which it can fully serve the people of Canada.

It is desirable, in the interest of all our people, of all political parties, that so great a power should be removed from even the possibility of political control—and should be given a charter under which it can expand, prosper and serve.

For the reasons given we urge that the public interest requires—

1. **The firm establishment of the LEGAL RIGHT to freedom of expression on Radio similar to the legal right to freedom of expression in print.**

2. An Independent Radio Licensing and Regulatory body appointed directly by, financed by and responsible directly to Parliament with power to license and regulate all Radio in Canada.

DIGEST OF CAB BRIEF

The Brief presented by the Canadian Association of Broadcasters to the Parliamentary Radio Committee makes these recommendations) on behalf of 89 independent commercial radio broadcasting stations):

1. Overhaul of radio broadcasting legislation to establish a charter under which publicly-owned and independent commercial stations can expand, prosper and serve.

2. Appointment of an independent licensing and regulatory body appointed by and directly responsible to Parliament with power to license and regulate all radio in Canada.

3. Continuation of the C.B.C. as a national broadcasting system without power to regulate its competitors.

4. Establishment of freedom of speech on the air as a matter of RIGHT.

The Brief points to distinction between "government-of-the-day" and Parliament. The "government-of-the-day" consists of a prime minister and cabinet as the executive power with authority to issue "orders-in-council" with the full force of law without public discussion. Parliament, on the other hand, consists of all the people's elected and appointed representatives and it moves in the full light of publicity and cannot act without full discussion.

The Brief points out:

1. The government, by executive action and through its Canadian Broadcasting Corporation, has absolute control of everything broadcast over radio in Canada.

2. The government appoints the Board of Governors of the C.B.C. and its general manager, and must approve its bylaws before they become effective.

3. The legislation clearly shows the C.B.C. is not an independent body: is not responsible solely to Parliament, but for all intents and purposes is legally in the hands of the government and is a body in which

any government may exercise a proprietary position.

4. The existing legislation governing radio controls freédom of speech on the air, freedom of the press and even messages between private companies and friends when radio transmission is used.

The CAB presentation points out there is no *right* to freedom of expression on the air. Every discussion, expression of opinion, suggestion and criticism over radio is permitted as an act of "grace" only under rigid rules subject to alteration or termination without consultation, compensation or appeal. Radio enjoys an importance similar to the press, yet has not the established rights and safeguards associated with freedom of the press.

Legislative authority to control speech, news and other programs extends to the press when it uses facsimile (wireless transmission of the printed word and pictures) and to transmission of private commercial or personal messages where any form of radio transmission is used by telephone and telegraph companies. The Government's C.B.C. has power to demand advance submission of any matter when transmitted by any radio method. The Association underlined the existing power because of widening use of facsimile for transmission of news and distribution of newspapers.

The CAB Brief also points out:

1. The government can provide capital for works and facilities for C.B.C. up to $500,000 from any unappropriated moneys in the Consolidated Revenue Fund; provide funds for working capital or withdraw them on demand.

2. The government must approve all licenses for new stations; or it may renew them on confidential reports by the C.B.C for one year, or refuse to renew them at year end and without notice or compensation.

3. The Minister under the Radio Act may cancel licenses without cause, hearing or right of appeal if he deems there is cause; where no offence is committed, there may be compensation but only on depreciated value of physical equipment and no allowance for loss of license.

4. A license from the government is required not only for broadcasting but also for listening to any broadcast.

5. The Minister of Transport has the most complete power to control radio by creation and operation of regulations having the full force of law.

6. The licensee has no right to the exclusive use of the wavelength he is licensed to use, notwithstanding the fact that the use of the same

wavelength by others in his territory would make its value useless to him.

7. The government can take possession of any broadcasting station and operate it at any time, and the staff will have to work for the government.

8. Any department of government may require any station at any time to broadcast any message without compensation.

9. Network operation is prohibited except with explicit individual approval of the government's C.B.C. and, as a condition of approval, C.B.C. dictates the payments to be made to independent stations for network programs.

10. The Government's C.B.C has power of arbitrary limitation of, and control over, advertising to be carried on the radio, and thus controls revenue of stations employing directly 2,500 persons with a payroll of $5,000,000 annually, and indirectly many more.

11. Anything which can be described as news is placed by law absolutely and utterly within the control of the government, and the C.B.C. has authority to designate programs to be broadcast and controls the character of all programs.

12. The Government's C.B.C. has power to publish papers and periodicals, and either sell them or distribute them free.

13. The Government's C.B.C renders confidential advice to the Minister (government) with the result that the government appears before the public as merely acting on the advice of an independent body and not as a matter of government decided policy while the C.B.C.'s advice, being secret and confidential, it is a "fait accompli" which cannot be effectively discussed or considered.

In dealing with practices of the C.B.C., the independent stations declare the C.B.C. exercises its wide statutory powers and determines many matters of far-reaching importance to the public at meetings held without public notice of time or place or matters to be dealt with, and from which the public and press are excluded. The C.B.C. renders decisions without findings of fact or statement of reasons so that its decisions on occasions appear to be purely arbitrary.

Part III

Television Arrives

Television Arrives

25 *Report* of the Royal Commission on National Development in the Arts, Letters and Sciences, May 1951, Part 2, Chapter 18.

26 J. J. McCann, Minister of National Revenue, "Television, extension of service, applications for licences by private stations," *Debates*, 8 December 1952, 409–410.

27 "Broadcasting in Canada," *Canada Year Book 1956*, 887–889.

28 *Report* of the Royal Commission on Broadcasting, 15 March 1957, 7–13, 88–92, 247–253.

29 An Act Respecting Broadcasting, 6 September 1958.

30 BBG, "Radio (TV) broadcasting regulations," SOR 59–456, *Canada Gazette*, Part 2, 9 December 1959.

31 BBG, "Radio (TV) broadcasting regulations" dealing with commercial policy, as amended 1960–1965, 1967.

32 BBG, "Radio (TV) broadcasting regulations," dealing with Canadian content, as amended 1960, 1962–1964.

33 *Report* of the Royal Commission on Government Organization, Vol. 4, 21 January 1963, 21–32.

34 Special consultative committee on broadcasting policy (the "Troika"), "Combined statement," *Sessional Papers* No. 132B (2d session, 26th Parliament), 4–10.

35 *Report* of the committee on broadcasting, 1 September 1965, 87–120.

36 "Robert Fowler recommends broadcasting, dictatorship and censorship," and "A statement from the CAB," *Canadian Broadcaster*, 23 September 1965.

37 White paper on Broadcasting, 4 July 1966.

Document 25

After the end of the Second World War, the relative calm of the Canadian broadcasting system was disturbed by a second medium of communication over the air. Technically, television was not new. Successful experiments with visual communication via the electromagnetic spectrum went back decades. Both Britain and the United States had minor TV broadcasting in place before the outbreak of war in 1939 froze its development, just as the First World War had done to radio in 1914. In the United States, by 1948, technical improvements, industrial capacity, and capital resources combined to bring more than 50 TV stations on the air and thousands of receiving sets into people's homes. Canadians close to the border began to buy sets, and both the CBC and the government came under heavy pressure to license TV broadcasting in this country.

Television presented a daunting challenge. For the viewer it possessed awesome power and attraction; in the United States, its effect on the radio and movie industries was devastating, As an electronic phenomenon, it required a broader band of frequencies. In practical terms this meant a maximum of six VHF stations in any big city with fierce competition for those few channels. And television was expensive, about 10 times more expensive per hour than radio to produce and transmit.

As the clamour for television spread north from the border, the government responded in its usual way. In April 1949 it appointed a royal commission of inquiry on "the arts, letters and sciences," to examine Canadian culture generally and make recommendations on its future. Broadcasting would be a central part of the picture the report was to describe. The royal commission would soon be known by the name of its chairman, Vincent Massey, chancellor of the University of Toronto and a future Governor General. The other members were a Montreal engineer, Arthur Surveyer; the president of the University of British Colombia, Norman MacKenzie; the dean of social sciences at Laval University, Georges-Henri Levesque; and a professor of history from the University of Saskatchewan, Hilda Neatby.

The report was published in May 1951, after much research and public hearings in cities and towns across the country. It came out in one volume with two parts; a "companion volume" contained commissioned essays on various subjects the report was to deal with. The first part of the report was a survey of current Canadian cultural life, and the second recommended measures to sustain and strengthen that life. The chapter on broadcasting (part 2) focused on the question of the single system and the arguments of the Canadian Association of Broadcasters against that system. The writers of the report dismissed the CAB argument for more freedom, were almost scornful of the cultural level of commercial radio, and

supported the cautious introduction of television under the firm control of the CBC.

DOCUMENT 25: "Broadcasting," Report of the Royal Commission on National Development in Arts, Letters and Sciences, May 1951, Part 2, Chapter 18.

CHAPTER XVIII

BROADCASTING

RADIO BROADCASTING

Our Terms of Reference instruct us to consider the principles upon which the policies of radio and television broadcasting in Canada should be based. In Part I we have spoken in some detail of the the development of national radio in Canada and of the views both of the public and of the expert on the nature and quality of programmes from national networks and from local stations. We must now consider and recommend a public policy on radio broadcasting designed to ensure for Canadian listeners the best and most appropriate programmes from every point of view.

2. Radio broadcasting is akin to a monopoly. Any man who has the impulse and the means may produce a book, may publish a newspaper or may operate a motion picture theatre, but he may not in the same way operate a radio station. The air-channels are limited in number and normal competition in any air-channel is impossible. Throughout the world these channels are recognized as part of the public domain; and radio stations may operate only with the permission of the state.

3. The state, having the right and the duty of issuing licences, must impose certain conditions on radio broadcasting. There are, it seems to us, two alternative views between which every country must choose. First, radio may be regarded primarily as a means of entertainment, a by-product of the advertising business. Such a view does not imply that it may not be used for education, for enlightenment and for the cultivation of taste; all these bring entertainment to many people. On the other hand, radio, as one of the most powerful means of education, may be regarded as a social influence too potent and too perilous to be ignored by the state which, in modern times, increasingly has assumed responsibility for the welfare of its citizens. This second view of radio operation assumes that this medium of communication is a public trust to be used for the benefit of society, in the education

and the enlightenment as well as for the entertainment of its members.

4. The experience of other nations in the western world in choosing between these views, or in attempting to reconcile them, may be helpful; although the peculiarities of our radio problem, as explained in Part I, seem to preclude any ready-made solution for Canada.

5. The United States has accepted the first view mentioned above and has treated radio primarily as a means of entertainment open to commercial exploitation, limited by the public controls found necessary in all countries. Radio broadcasting in the United States is carried on entirely by private stations. More than half of these are allied with one or other of the four principal national networks. Radio broadcasting, maintained almost entirely by advertising revenue, has become an important industry supporting in 1950 more than three thousand stations and receiving more than $445 million in gross revenues from the sale of advertising time.

6. The Government of the United States, accepting the general principle that radio frequencies are within the public domain, in 1934 created the Federal Communication Commission, (F.C.C.), appointed by the President and responsible to Congress. The F.C.C. exercises control through its power to license which must be exercised with a view to the "public interest, convenience or necessity". It is specifically prevented from exercising any powers of censorship. A number of policies of the F.C.C. has provoked discussion and opposition in the United States. One consists of regulations designed to control network monopolies. These regulations were upheld by the United States Supreme Court in 1943. Another, at present a subject of controversy, lies in an effort to secure better programmes through the admonitions of the F.C.C. *Bluebook*. The *Bluebook* states in effect that the maintenance of balance through sustaining programmes, the use of local live talent, the discussion of public issues, and the elimination of advertising excesses are important factors in the public service, and that these will be considered when a licence to broadcast is to be issued or renewed. Stations and networks oppose this advice as a form of indirect programme control. The issue has yet to be decided by the Supreme Court of the United States, but it is reported that the *Bluebook* has had a salutary effect on certain radio programmes.

7. Broadcasting in Great Britain is not an advertising industry but a service provided by the British Broadcasting Corporation, a corporation of the state. "The purpose of the B.B.C. is to give the listener a great deal of what he wants and to give him a chance to want other things as well". This Public corporation operates under a licence from the Postmaster-General and is supported by licence fees which in 1949 yielded well over £12 million. Its publications provide an additional revenue of over £1 million. In practice there is no ministerial or governmental interference with programmes. The Charter of the Corporation is reviewed by a Special Committee appointed

for this purpose, and is granted for five year periods; the present Charter comes up for revision in 1951. As this Report goes to press, we have been interested to note that the Broadcasting Committee appointed by the British House of Commons in June of 1949 has in its Report which was made public in January of 1951 recommended in general a continuance of the existing system of broadcasting in Great Britain.

8. France, like Great Britain, has a state system of radio broadcasting. This system, however, is not conducted by a corporation but is directed by a General Manager under the authority of the Premier's office. The private stations in existence before the second world war were requisitioned after the liberation. The ultimate aim, apparantly not yet entirely practicable, is to provide alternative programmes over the whole of France, and an additional programme in Paris. There is no advertising over the French broadcasting system, and listeners pay licence fees, as in Great Britain.

9. The Australian system bears some resemblance to the Canadian in that there are both public and private stations. The Australian radio broadcasting system was initiated about 1924 when two types of stations were licensed, "B" stations which were purely commercial, and "A" stations which permitted only limited advertising but received support from licence fees. Since then the Postmaster General's Department has taken over all "A" stations. These do not now accept advertising, and broadcast programmes are prepared under the Australian Broadcasting Commission, a board of seven members appointed by the Governor-General. The Commission is supported by a parliamentary grant which is partially recovered through licence fees. Technical services are provided by the Postmaster-General's Department.

10. In 1948 there were in Australia thirty-nine public and one hundred and two private stations. The public stations have adequate service in the well-populated areas, but achieve only a partial coverage inland. In 1948 legislation was passed setting up the Australian Broadcasting Control Board which began its work in the following year. Operating within the Postmaster-General's Department the Board controls, under the Minister, all broadcasting, both programmes and technical matters. Its intended function appears to be to ensure adequate coverage and better programmes throughout the country. It may even, subject to the approval of the Minister, offer financial assistance to commercial stations for the improvement of their programmes. One of the methods by which this is to be done, it seems, is to arrange for programmes of the Australian Broadcasting Commission to be carried by private stations. So far as we have been able to determine, the Australian Broadcasting Control Board has not yet found it possible to exercise that measure of control over radio programmes in Australia for which it was originally established. It seems correct to say that the present Australian system is still in an experimental stage.

11. Thus, of four leading countries in the western world, the United States alone follows the view that radio broadcasting is primarily an industry; in Great Britain and France it is a public trust; Australia has hesitated between the two views and there the matter has been the occasion of considerable controversy.

12. In Canada, we conceive, the principle that radio broadcasting is a public trust has been followed consistently for twenty years. We have mentioned in Part I the principle advocated by the Aird Report of 1929, which, starting with the proposition that "Canadian radio listeners want Canadian broadcasting", stated that although the enterprise of private broadcasters was providing free entertainment for the benefit of the public, Canadian broadcasting showed an increasing tendency to excessive advertising, importing most of its programmes from outside the country and catering mainly to urban centres. The authors of the Report stressed the importance of complete coverage, of varied programmes including information and education as well as entertainment, of an exchange of programmes between different parts of the country, and in general emphasized the necessity of carrying on broadcasting "in the interests of Canadian listeners, and in the national interests of Canada".

13. This analysis of the situation and this statement of principle were followed by recommendations for a broadcasting system owned and controlled by the nation. These recommendations were adopted in the main, and the principles of Canada's system, established by legislation, have been confirmed year after year by ten Special Committees of the House of Commons and by the opinion of disinterested radio listeners. The system recommended by the Aird Commission to the nation has developed into the greatest single agency for national unity, understanding and enlightenment. But, after twenty years, the time has now come for a restatement of the principles of Canadian broadcasting, tacitly accepted for so many years, and also for some account of what it has done for the country.

14. We have already spoken in Part I of the very great importance of radio broadcasting in Canada and we have pointed out that the isolated areas of the country which need it most would not enjoy its benefits except under a national system. As we have suggested in Part I, we believe that the national system has fulfilled the expectations of those who planned it. We think that, despite the inevitable limitations and deficiencies of which we shall have something to say later, it has exceeded all reasonable expectations; it has become, we have found, a source of pride and gratification to the groups most representative of Canadian listeners; and we can state here that we fully share their feeling.

15. In the early days of broadcasting, Canada was in real danger of cultural annexation to the United States. Action taken on radio broadcasting by governments representing all parties made it possible for her to main-

tain her cultural identity. Through Canadian radio, however, much more than this has been done. Radio has opened the way to a mutual knowledge and understanding which would have seemed impossible a few years before. Canadians as a people have listened to news of their own country and of the world, have heard public topics discussed by national authorities, have listened to and have participated in discussion of Canadian problems, and have, through radio, been present at great national events. All these things are so obvious today that it is easy to forget what they have meant especially to the many Canadians who live in relative isolation lacking a daily newspaper and enjoying little contact with the outside world.

16. Canadian sectionalism is not yet a thing of the past, but it is certain that the energetic efforts of the Canadian Broadcasting Corporation in providing special regional programmes and informative talks, and in introducing a great variety of Canadians to their fellow-citizens, have done much to bring us nearer together. From Vancouver Island to Newfoundland and from the Mackenzie River to the border, Canadians have been given a new consciousness of their unity and of their diversity.

17. But national unity and knowledge of our country are not the only ends to be served. These important purposes are also a means to that "peaceful sharing of the things we cherish", in St. Augustine's phrase cited at the beginning of this volume. We are thus further concerned with radio broadcasting in that it can open to all Canadians new sources of delight in arts, letters, music and the drama. Through a fuller understanding and a heightened enjoyment of these things Canadians become better Canadians because their interests are broadened; they achieve greater unity because they enjoy in common more things, and worthier things.

18. This view of the principle or purpose of Canadian radio broadcasting, as we see it, dictates Canadian policy. Other countries may adopt the policy of licensing privately-owned radio stations which depend for revenue on advertising. That such a system may produce excellent programmes is undeniable and many of these from the United States are received and enjoyed by Canadians. But such a system may also produce many programmes which are trivial and commonplace and which debase public taste. In Canada, although not wishing to dispense with plenty of light entertainment, including American entertainment which we import freely, we have been forced by geography and by social and economic conditions to exploit deliberately the more serious possibilities of radio broadcasting in the interests of Canadian listeners and of the Canadian nation. For this purpose we have developed our own national system, which is different from that of the United States, or of any other country, and which this Commission believes to be admirably suited to our special needs.

19. This system has, however, a striking peculiarity in that it continues the existence within the national system of "private", "commercial" or

"community" stations as they are variously styled. The C.B.C. had and still has the right to take over all private stations, and for a time these led a somewhat uneasy existence. It soon appeared, however, that these pioneers in the field of radio broadcasting had made a place for themselves in their own communities and that they could perform important national services. It seemed therefore in the national interest that the C.B.C. should recommend the continuance of their licences and that they should be regarded as an integral part of the national system.

20. We have in Part I described in detail the intricacies of the "Basic" and "Supplementary" stations and the complications of "commercial" and "sustaining" programmes. It is necessary here only to refer to the functions of the privately-owned station. In this broad country we still have inadequate radio coverage; without the supplementary outlets of the private stations many more areas would be deprived of the national programmes of the C.B.C., and could be reached only at great additional public expenditure. Apart from this direct national service, the private stations perform community services which, as they rightly point out, are important to the nation: local advertising is in itself a service of value to the community; local news, information and the promotion of worthy causes are essential services, as many individuals and groups have testified. A third proper function of the local station is the encouragement and development of local talent. As we have stated in Part I, this third function has in general been neglected.

21. Most private stations have prospered within the national system. In addition to their private business many of them have benefited from C.B.C. programmes, both commercial and sustaining. That all have not benefited equally is certainly true. But that private stations have increased greatly in numbers, size and wealth since 1932 is undeniable; and that this increase is at least partly due to their incorporation in the national broadcasting system many of them are prepared to admit.

22. It is perhaps in part the growth in numbers and prosperity of the private stations which has led to their increasing protest about their status. During three years, 1946-48, the total operating revenues of the private stations increased from nearly ten to over fourteen million dollars; during the same period C.B.C. operating revenues rose from nearly six millions to seven and a half millions, little more than half the revenues of the private broadcasters. The total assets of the latter at the end of 1948 were twenty-seven millions. In three years the number of private stations rose from 88 to 109, and the total capital increased by seven millions, a large part of which appears to have been fresh investment. The assets of the private investors in 1948 were three times as great as the assets of the C.B.C.

23. A similarly increased prosperity no doubt was to some degree responsible for the representations made by the Canadian Association of Broad-

casters (C.A.B.) in 1943, 1944, 1946 and 1947, which asked for changes in the broadcasting regulations to recognize the position which the private broadcasters thought to be appropriate to their current role in Canadian radio broadcasting.

24. Later, in September 1949, and again in April 1950, representatives of the C.A.B., which then comprised ninety-three of the one hundred and nineteen private stations, appeared before this Commission to explain their views on Canadian radio broadcasting and on the status of the private stations. Their case briefly is as follows: seventy private stations existed before the establishment of a public system in 1932. They were not specifically abolished by that system; and many new stations have been licensed since. The representatives of the C.A.B. consider, therefore, that the Act may now fairly be interpreted as having established not one exclusive national system, but a new public system, while permitting the continued existence of the private one.

25. The C.A.B., on the basis of this interpretation, protests against the regulation of the private broadcasters by the Board of Governors of the C.B.C., a public corporation which is their commercial rival. Examples of competition were given: on one occasion cited, the C.B.C. is accused of spending $22,000 in a period of six months to secure local advertising in the district of Toronto. This aggressive competition, it is stated, is evidence at once of the existence in practice of two systems and of the injustice of allowing one of them to control and regulate the other.

26. Regulation of radio broadcasting is carried out chiefly through rules drawn up and enforced by the Board of Governors of the C.B.C. The regulations complained of include the control of network broadcasting, the right to require private station affiliates to reserve time for national programmes, the regulation of advertising practices, and limitations on the use of records and transcriptions. Exception is also taken to rules governing political broadcasts as prescribed by existing legislation. The principal complaint is that the C.B.C., "...is at one and the same time competitor, regulator, prosecutor, jury and judge". Even the benefits derived from C.B.C. commercial and sustaining programmes may be abruptly lost if the C.B.C. chooses to open a high power station in the vicinity.

27. The Canadian Association of Broadcasters states that its members do not complain of unjust or inconsiderate treatment, but on the contrary acknowledges cordial relations with the Board of Governors and with the officials of the C.B.C., but, they add, "a generous and benign master can scarcely take the place of equal or properly established right". They therefore express the wish that as the Broadcasting Act, in their view, lends itself to two conflicting interpretations (one national system of radio, as distinguished from a public system operating together with a number of privately-owned broadcasting stations) the Act should be clarified; further

that it should be re-written "to provide for the regulation of all radio broadcasting stations, whether C.B.C. owned or privately-owned, by a separate and completely impartial authority not associated in any way with the operation of the Canadian Broadcasting Corporation".

28. This general representation of ninety-three associated stations was supported by operators of twenty stations who appeared individually. Seven other private radio broadcasters supported the present system and advocated no change in principle, one of them remarking, "I am less afraid of the C.B.C. as it exists today than of an unbridled private radio—much less".

29. We wish to acknowledge here the frankness and clarity with which the private broadcasters have presented their views. It must, however, be obvious, from what has already been said, that we cannot agree with their conclusions. We believe that Canadian radio broadcasting legislation contemplates and effectively provides for one national system; that the private stations have been licensed only because they can play a useful part within that system; and that the C.B.C. control of network broadcasting, of the issue and renewal of licences, of advertising and of other matters related to radio broadcasting, is a proper expression of the power of the C.B.C. to exercise control over all radio broadcasting policies and programmes in Canada.

30. The principal grievance of the private broadcasters is based, it seems to us, on a false assumption that broadcasting in Canada is an industry. Broadcasting in Canada, in our view, is a public service directed and controlled in the public interest by a body responsible to Parliament. Private citizens are permitted to engage their capital and their energies in this service, subject to the regulations of this body. That these citizens should be assured of just and equal treatment, that they should enjoy adequate security or compensation for the actual monetary investments they are permitted to make, is apparent. We shall have recommendations to make on this matter later. But that they enjoy any vested right to engage in broadcasting as an industry, or that they have any status except as part of the national broadcasting system, is to us inadmissible.

31. Before 1919, there was in Canada no property interest in any aspect of radio broadcasting and no citizen's right with regard to broadcasting. From 1919 to 1932, some citizens enjoyed, under licence, the privilege of radio broadcasting. In 1932, the Parliament of Canada, with full jurisdiction over the whole legislative field of radio broadcasting communication, established a commission "to carry on the business of broadcasting" in Canada by a system which contemplated the subordination and final absorption of private stations. In 1936, the C.B.C. was constituted to "carry on a national broadcasting service within the Dominion of Canada". It was given for that purpose the very powers over private stations which are now the subject of complaint. The only status of private broadcasters is as part

of the national broadcasting system. They have no civil right to broadcast or any property rights in broadcasting. They have been granted in the national interest a privilege over their fellow-citizens, and they now base their claim for equality with their "business rival" on the abundant material rewards which they have been able to reap from this privilege. The statement that the Board of Governors of the Canadian Broadcasting Corporation is at once their judge and their business rival implies a view of the national system which has no foundation in law, and which has never been accepted by parliamentary committees or by the general public. The Board of Governors is the national authority under whose direction the private stations exercise their privileges and with whom their arrangements are made.

32. We wish to recognize fully the private stations as important elements within the framework of our national system. We shall be making recommendations designed to remove certain inconsistencies of which they have reasonably complained. But we are resolutely opposed to any compromise of the principle on which the system rests and should rest. Radio has been the greatest single factor in creating and in fostering a sense of national unity. It has enormous powers to debase and to elevate public understanding and public taste. Believing as we do that it is an essential instrument for the promotion of unity and of general education in the nation, we cannot accept any suggestions which would impair the principles on which our present national system is based.

33. This does not mean that we claim perfection for the system or that we are not impressed with the importance of taking every possible measure for the further improvement of programmes. We have had this matter in mind in framing the financial recommendations which follow, and in certain recommendations on programme production. We are, however, convinced that the policies advocated by the private stations must lead to an extension of the commercial tendencies in radio programmes which are already too strong, and which have been the subject of much complaint. We were particularly impressed by the fact that few of the representatives of private stations who appeared before us recognized any public responsibility beyond the provision of acceptable entertainment and community services. The general attitude was that the government might, if it chose, subsidize "cultural programmes" but that the private stations must be left free to pursue their business enterprise subject only to limitations imposed by decency and good taste. We offer no criticism of this frankly commercial attitude; we cite it only as evidence that those who honestly hold these views are not primarily concerned with the national function of radio. Indeed the improvement of national programmes was not urged by the Canadian Association of Broadcasters as a reason for the reorganization of the national system or for any concessions to commercial groups.

34. We have received representations on three important aspects of Canadian radio, and on each of these we have recommendations to make. The

first is the manner in which broadcasting in Canada should be controlled and directed. The second is the provision of adequate funds for the operations of the Canadian Broadcasting Corporation. The third is the production of programmes in the national interest and the means by which radio may best serve its national purpose in Canada.

CONTROL AND DIRECTION OF BROADCASTING IN CANADA

A Separate Regulatory Body

35. The chief demand of private broadcasters is that in place of the present system of control exercised by the Board of Governors of the C.B.C., a new and separate body should be set up to regulate all broadcasting in Canada. There is a difference of opinion on the powers which it should exercise. Some suggest that it should have powers equivalent to those of the present Board of Governors; others have in mind something like the Federal Communications Commission of the United States. Others again think that such control might be too irksome, an opinion shared by some American broadcasters.

36. We have considered these proposals and find that they would either divide and destroy, or merely duplicate the present system of national control. Legislation to set up a separate regulatory body would alter the present national system and would result in two independent groups of radio broadcasting stations, one public and one private. The C.B.C. would no longer have the control over all clear channels considered necessary to ensure national coverage. This matter might be arranged but the C.B.C. would still lose the outlets through private stations which are equally necessary for national coverage under existing conditions. Moreover, if the two groups of stations were to be considered as on a parity it would be impossible to refuse network privileges to private broadcasters, with consequences which we shall mention later. A completely separate body treating public and private radio broadcasting with judicial impartiality could not fail to destroy the present system upon which we depend for national coverage with national programmes.

37. But, it may be argued, such a body would have the power to improve, but not to destroy. It could concern itself with the programmes of public and of private stations and strive for the improvement of both in the public interest. The theory may sound plausible, but we doubt whether it would be effective in practice.

38. It is true, as we have observed, that the Federal Communications Commission in the United States is trying to raise the level of programmes by promulgating principles of good broadcasting. Three facts, however,

should be noticed. First, the principles themselves are fairly obvious and reflect the prevailing standards. Second, pressure is brought on stations to improve their own programmes, not by detailed instructions but by the implied threat of the non-renewal of their licence if the programmes do not reach a certain unspecified standard. Such a sanction obviously can be applied only in rather glaring cases. The present Canadian system allows and even encourages a House of Commons Committee to bring much more direct and effective pressure to bear on the C.B.C. every year or two. Third, the enforcement of minimum standards in the manner just explained, although it might improve the less desirable programmes of private stations, could do nothing for those of the C.B.C. The public quite properly requires a higher standard for public than for private programmes. But as the completely separate regulatory body contemplated must treat all alike, its activities might well have the effect of reconciling the C.B.C. to relatively low commercial standards rather than of raising the programmes of both the C.B.C. and of private stations to a higher level.

39. It is conceivable that some who might favour a separate regulatory body assume that such an authority would have the duty of securing the necessary channels and sufficient outlets for national sustaining programmes. Such an arrangement would be completely inconsistent with the notion of a separate regulatory body holding the balance between public and private stations. The regulatory power would then become merely an agent for the C.B.C. in securing coverage for national programmes. It would, in fact, parallel in power and responsibility the present Board of Governors of the C.B.C.

40. We must return then to the statement that a new regulatory body would either destroy or duplicate the present national system of control. If the national system were not to be destroyed, a separate body could do only what the present Board of Governors is supposed to do. If it did not mark the end of the national system it could not possibly be "the separate and completely impartial body not connected in any way with the C.B.C." which the C.A.B. has requested.

41. We have no evidence that the present Board of Governors has used its powers harshly or unjustly. If it had done so, the proper remedy would be an improved Board rather than a second one. However, we are strongly of the opinion that in view of the place occupied by radio broadcasting in the life of the nation, and particularly because of the new and even disturbing possibilities of television broadcasting, no effort should be spared to make the Board of Governors of the C.B.C. as effective as possible. It should be large enough to be fully representative of the country as a whole; and it should be composed of persons fully qualified by knowledge, experience and interests not only to maintain but to advance the present standards of radio broadcasting in Canada whether national or local. We feel very strongly the importance of retaining for the Board the services of qualified

persons who are free to devote the necessary time and thought to these grave responsibilities.

We therefore recommend:

a. *That the grant of the privilege of radio broadcasting in Canada continue to be under the control of the National Government; that the control of the national broadcasting system continue to be vested in a single body responsible to Parliament; that the Canadian Broadcasting Corporation as now constituted be that authority and continue to provide directly by its operations and indirectly by its control of the operations of others a national radio broadcasting service free from partisan influence.*

b. *That the present Board of Governors be enlarged in order to make it more widely representative.*

Private Networks

42. We have also received from individual broadcasters, and from the British Columbia Association of Broadcasters, a request for the removal of restrictions on private networks, a request not formally made by the national body, the Canadian Association of Broadcasters. At present, private stations may receive special permission to form local networks only, and a very few are permitted to have affiliations with American networks; but the general principle is maintained that the private station be operated only for local services and as an outlet for national programmes.

43. The private stations argue that unrestricted network privileges would avoid wasteful duplication of programmes; would promote regional unity, and would make possible better programmes and more use of local talent. Their reply to any suggestion that their programmes are inadequate has usually been that the denial of network privileges reduces their revenue and consequently impairs the quality of their programmes.

44. Obviously, the formation of networks leads to economy of operation, and therefore, in theory, to better programmes. We have observed, however, that some of the wealthiest of the private stations have the lowest standard in programmes, and show serious neglect of their obligations as parts of the national system. The representative of one station remarked that the best thing that could be done for Canadian culture would be to draw heavily on "the fastest rising culture in the world—that of the U.S.A." Although we cannot believe that this speaker represented the views of the owners of most private stations, we do believe that any networks of private stations in Canada would inevitably become small parts of American systems.

45. There are, however, two other important factors to be considered. One is that the formation of networks would involve the withdrawal of local stations as outlets for national programmes and would therefore (as we have just stated in another connection) disrupt the present system of national coverage. The second is that the formation of private-station networks would bring them into commercial competition with the C.B.C. in the national field with the same consequences as private broadcasters have found so objectionable in the local field.

46. The general effect of private network broadcasting would, we believe, be the same as that of a separate regulatory body. It would destroy the national system.

We therefore recommend:

c. That no private radio broadcasting station operate in Canada as part of a network without the permission of the Canadian Broadcasting Corporation.

Procedure of the Board of Governors and a Right of Appeal

47. In the interests of the national system and of the country as a whole, we recommend rejection of the demands by private broadcasters for a separate regulatory body and for the privilege of forming private networks. At the same time we recognize the important role of the private stations, both past and present, in Canadian broadcasting; and we consider it particularly desirable that persons engaged in an essential national service should have the full assurance of justice which, is indeed, the right of every Canadian citizen. At present, when the Board of Governors contemplates the recommendation of the suspension of a licence or a change in the regulations, the private stations receive notice of the matter and are given the opportunity to be heard in person or by counsel, and at a public session if they so desire. These concessions are granted as privileges. Considerations of justice suggest that they be recognized fully as rights.

48. Under the present legislation there is no provision for appeal from the decisions of the Board of Governors of the C.B.C. It is true that in some matters, the final decision rests with the Minister of Transport or with the Governor in Council and that in general the C.B.C. must report to Parliament and answer for its acts to Special Committees when established. But with these exceptions, there is no right or procedure of appeal and the decisions of the Board of Governors are final.

49. We think that there should be some right of appeal. On the one hand, the right should not disturb the C.B.C.'s control of and responsibility for

Canadian broadcasting. On the other, it should provide a means whereby substantial injustice could be redressed. We do not wish to limit the existing power of the C.B.C. to regulate broadcasting in Canada, but we feel that the honest and impartial administration of its regulations should be guaranteed by the right of appeal to a Federal Court by persons directly and adversely affected by final decisions of the Board of Governors under those regulations.

We therefore recommend:

d. That persons engaged in radio broadcasting in Canada be granted the right to notice of consideration by the Board of Governors of the Canadian Broadcasting Corporation of matters directly affecting them; the right to full opportunity to be heard in such matters in person or by counsel, and to a public hearing on request.

e. That persons engaged in radio broadcasting in Canada directly and adversely affected by a final decision of the Board of Governors of the Canadian Broadcasting Corporation on any matter in which this Board has final authority be granted the right of appeal to a Federal Court against substantial miscarriage of justice.

Security of Tenure

50. Apart from particular grievances which may arise, and for which there should be the right of appeal, the private stations complain of a permanent hardship in the uncertain tenure of their licences. This situation is a relic of the early period of national radio when it was thought desirable for the nation to assume as soon as possible direct control and ownership of all radio stations. At one time, in accordance with this policy, private commercial broadcasting licences ran for one year only. They now run for three years, subject to the observance of regulations. Canadian broadcasting acts and the regulations based upon them are not clear or consistent about the cancellation of licences; but there are certain provisions designed to give wide powers to the Minister to cancel licences and to the C.B.C. to suspend them for three months. The private stations complain of what seems to them a power unnecessarily absolute and arbitrary; but we have had no evidence of any positive hardship suffered.

51. It seems to us desirable that the licences of private stations should not be subject even in theory to the possibility of sudden and arbitrary cancellation. A longer term of these licences would be in the interests of good broadcasting. A licensee should feel that the licence confers a privilege which may be enjoyed for its full term by a law-abiding citizen.

We therefore recommend:

f. That licences for private commercial radio broadcasting stations continue to be non-transferable and to confer no property right but that in future they be granted for a term of five years subject to cancellation for non-observance of clearly defined conditions.

Local Advertising

52. The private stations have also brought to our attention the policy pursued by the Board of Governors in accepting and even in soliciting local commercial business for stations under its direct control. This policy has been dictated by the financial problems of the Canadian Broadcasting Corporation. The practice does however encroach on the field normally assigned to the private stations in the national system. Although we have shown that the statement that "the C.B.C. should not regulate its competitors" involves a misunderstanding of broadcasting in Canada, we are convinced that this kind of competition within the national system is not in the public interest.

We therefore recommend:

g. That in future the Canadian Broadcasting Corporation refuse all local commercial business for those stations which it operates directly, except in places where advertising service from private stations is not available.

National Advertising

53. The further suggestion has been made to us that the stations under the direct control of the C.B.C. should not accept commercial business at all. This proposal came not only from operators of private stations who feel that advertising is their business, but from listeners everywhere who dislike advertising and who take particular exception to certain C.B.C. commercial programmes which they think unworthy of a national broadcasting system.

54. There are, however, various reasons which make impracticable the entire elimination of advertising from the national networks. First, it would deprive the Canadian advertiser of his national audience. Second, more than two million dollars a year of advertising revenue which now helps to provide network broadcasting would be lost to the C.B.C, since it must not be forgotten that the C.B.C. is dependent in part on commercial revenue and hence sustaining programmes are partly financed from that source. To eliminate commercial programmes would necessitate additional expense to

provide sustaining programmes to replace them. Third, many commercial programmes are good in themselves and are popular with Canadian audiences. Moreover, through the goodwill created by commercial relations some excellent and irreplaceable American sustaining programmes are made available to Canadian listeners through the C.B.C.

55. It is to be feared that, desirable as it may be in theory to remove commercial broadcasting from the national networks, in practice the result would be not to raise but to lower the standard of programmes and to divert many Canadian listeners from Canadian to American stations. So long as Canada's neighbour maintains a commercial radio system, Canadian radio can never be completely non-commercial.

56. But the national system must not become dependent on commercial revenue. If the Board of Governors accepts certain programmes only or even chiefly for revenue, we are selling out our national system. It is not suggested that this has yet happened, but it is clear that lack of revenue is making it difficult for the Board of Governors to exercise effective control over the content of its programmes.

We therefore recommend:

h. That the Board of Governors of the Canadian Broadcasting Corporation refuse all commercial programmes not acceptable in content and that they consider the possibility of eliminating some of the less desirable commercial programmes now carried, and of replacing them by programmes more appropriate to Canadian listeners.

Revision of Regulations

57. We have heard many comments from the private stations on the regulations under which they operate. In order to understand clearly the method of control and direction now practised in the national system, we carefully investigated all existing regulations, and requested comments on them from the Board of Governors of the C.B.C., and from the organized private stations. This investigation revealed that some of the regulations are obsolete and that others are ignored with impunity by all stations, public and private.

We therefore recommend:

i. That the Board of governors of the Canadian Broadcasting Corporation make a careful study of its by-laws and regulations with

a view to rescinding or amending those no longer applicable to existing radio broadcasting conditions.

58. The questions of the control of radio broadcasting stations by newspapers, of multiple ownership of broadcasting stations and of the management of a number of stations by a single group of professional managers, have been discussed before us. While we think that these monopolistic practices may be potentially dangerous, we believe that so long as the integrity of the present national system of broadcasting is maintained any possible abuse could be effectively controlled. At present forty-one stations are owned in whole or in part by newspaper interests, but we have had no evidence of any abuse of power as a result.

59. A quite different aspect of the relations between newspapers and broadcasting was brought to our attention by a delegation from the Canadian Daily Newspapers Association at our sessions in Toronto. The Newspapers Association made vigorous representations to us on the new method of newspaper production known as facsimile. This new device, as we noticed earlier in Chapter V, makes it possible for the contents of a newspaper to be broadcast from a central point and printed by a radio-electronic device within the homes of subscribers. The delegates of the Newspapers Association stated that presumably this new method would come under the laws governing radio broadcasting in Canada; this would mean that publishers of newspapers in facsimile would be automatically subject to the regulations of the Canadian Broadcasting Corporation including, for example, the regulations imposing restrictions on political broadcasts, on advertising and on "programme" content. The possibility of such a situation, we gathered, is particularly odious to newspapermen who are deeply concerned with the traditional independence of the press. It seems apparent to us, nonetheless, that some regulation governing facsimile broadcasting might become necessary so that channels would be assigned in an orderly manner to avoid interference. The problem in our view can thus be stated: how can full liberty be assured to this new form of newspaper production without doing violence to the national broadcasting system? It seems evident that since facsimile would occupy certain channels of the broadcasting spectrum it must necessarily come under the technical authority of the appropriate government department. Even with the limited knowledge of this new device at our disposal, we can see many grave objections to imposing upon it the limitations necessary for radio broadcasting but inapplicable to the press. It would seem to us both desirable and practicable to ensure that the potential development of facsimile take place in an orderly manner and that at the same time the traditional freedom of the press be left unimpaired.

We therefore recommend:

j. That in any development of newspaper facsimile broadcasting in Canada, government control be limited to the technical control necessary to ensure that broadcasting channels for this purpose are equitably and efficiently assigned.

THE FINANCIAL PROBLEM

60. The Board of Governors of the C.B.C. have told us that they are faced with a financial crisis which threatens to disrupt the national broadcasting service. The only way to reconcile rising costs and a stationary income is to reduce expenditures through a reduction in the quantity or quality of service, or both. But the national radio broadcasting service needs expansion and improvement, as we have been informed not only by the C.B.C but by Canadians everywhere. There is need for more adequate coverage in several parts of the country, for a second French network and for a French station in the Maritimes, for a greater use of Canadian talent, for improved programmes, and, as we have recommended, for the elimination of local advertising and a more selective policy in national advertising.

61. The C.B.C has stated that in order to maintain services even at their present level it requires about $3,000,000 a year in addition to its current income of approximately $7,500,000. For the improvement and extension of its services, it requires another $2,200,000 making a total annual budget of about $12,700,000. If all the local and the less desirable national commercial programmes are dropped, the Corporation will require an additional $1,500,000—some $14,200,000 in all. This may seem to be a very large annual expenditure, but it represents less than a dollar a year for each Canadian, less than what is paid yearly in Canada for chewing gum. Canadians on an average spend $7 each year on moving pictures. We see no reason therefore to suppose that they will think that one dollar a year each is an excessive sum to pay for a national service which they greatly value; on the contrary, we have had many demands from listeners that the C.B.C. be granted all necessary funds to develop and improve its programmes and to increase their Canadian content.

62. We have received a number of specific suggestions on how this should be done. The C.B.C.'s own proposal to raise the licence fee to $5 is generally unpopular. It was claimed in our sessions that this increased fee would be a hardship to many listeners, and that it would not be readily accepted since there is a widespread impression that the present licence fee is not effectively collected.

63. Many witnesses and correspondents have suggested to us that an improved method of collecting the license fee would provide an immediate,

if partial, method of financial relief. The Department of Transport considers that the present method of collection is reasonable effective and thorough. However, if the figures of the Dominion Bureau of Statistics are to be accepted, Canada's three and a half million private receiving sets which should be licensed ought to yield over eight and a half millions a year in licence fees instead of something over five million.

64. Even this sum, however, would clearly fall short of what is needed. We see no solution to the financial problem of the C.B.C. except in additional support from public funds. Some witnesses have even proposed that because all Canadians benefit from the national radio system directly or indirectly, the licence fee be abolished and the entire cost be borne by the taxpayer. This proposal we cannot accept, since we think it proper for the listener to make a direct payment for services received and we believe that he appreciates these services the more for doing so. But we have come to the conclusion that because the C.B.C. serves the nation as a whole, it is reasonable that the revenue required over and above a moderate licence fee be provided from general taxation.

65. There are, however, serious objections to an annual grant to be voted by Parliament. Although other essential government services depend on an annual vote, it is so important to keep the national radio free from the possibility of political influence that its income should not depend annually on direct action by the government of the day. A statutory grant seems to us a more satisfactory method, because it enables the C.B.C. to formulate reasonably long range plans with the confidence that its income will not be decreased over a period of years. A convenient way of providing adequate revenue for the C.B.C. might be to set the necessary revenue for the C.B.C. at a total amount equal to one dollar per head of the Canadian population as determined decennially by the census and estimated each year by the Dominion Bureau of Statistics. This amount, which could be calculated annually, would be the total revenue of the C.B.C. for the year. It would be made up first of net receipts from licence fees, and of commercial and miscellaneous revenue. The balance would be paid to the C.B.C by the Federal Government out of public money on the authority of the statute. For example, in 1947-48 the statutory revenue on the basis of the population estimate would have been $13,549,000. This would have been received by the C.B.C as follows:

Net Licence Fees	$5,135,374.65
Commercial Broadcasting	2,217,129.91
Miscellaneous	200,709.24
	7,553,213.80
Statutory Grant	5,995,786.20
	13,549,000.00

We therefore recommend:

k. *That the annual licence fee for radio receiving sets be maintained at its present level, but that a more efficient method of collection be devised.*

l. *That the total annual income of the Canadian Broadcasting Corporation for all radio broadcasting purposes other than its International Service be set by statute for five years, and that this income be found from licence fees, from commercial and miscellaneous revenue, and from a payment out of public money sufficient to make up the total statutory income.*

PROGRAMMES

Programmes in the National Interest

66. We have in our hearings and in our deliberations spent many hours in discussing the proper methods of governing and of financing the national broadcasting system. These methods, however, are only the administrative and material basis for one of the great forces in our country in promoting Canadian unity and Canadian cultural life. Herein lies, as we see it, our main responsibility as a Royal Commission. We have received in our public hearings many and differing opinions and views on Canadian radio. We think it a particularly successful and useful part of our work that we have been able to elicit these comments on Canadian radio from so many of our fellow citizens.

67. We cannot state too forcefully that our primary interest in broadcasting lies in the kind and quality of programmes broadcast in Canada and in their influence on Canadian life. Our study of problems of control and of finance has been guided by our desire to see maintained and improved the standards of our national programmes. We have recommended that the present national system be continued because of its achievements in the past and its promise for the future. We do not take it to be our duty to make detailed recommendations for the development and improvement of programmes. Nevertheless it seems to us important to say something of the view suggested in Part I that the distinguished work of the C.B.C. in music and drama does not appear to be equalled in what are known as "talks". This is not surprising. Talks are as a rule less popular than music, drama, news reports and variety entertainment. They occupy a relatively small proportion of programme time, and may easily be dismissed as comparatively unimportant. This attitude, if it exists, seems to us regrettable.

68. Our concern with the radio as a means of national unity and general education has led us to make a somewhat detailed examination of the con-

tent of radio talks. We find that a number, including those on the *Wednesday Night* programmes given by distinguished Canadian authorities in their fields, fufils what seems to us the proper function of the talk on a national network. Of such programmes every Canadian may be proud. Other talks, even some given during important Sunday listening hours, seem to us to fall short of this high standard. On inquiry we learn that speakers with no special knowledge or reputation in their fields may be engaged because they have a natural facility for broadcasting and also, apparently, because the popular approach of the amateur is thought to have a special appeal to the average listener.

69. We think it important to express our dissent from this policy. Through the services of the C.B.C., Canadians have been privileged to listen to speakers on the B.B.C. distinguished in many fields of thought. It is the principle of the B.B.C. that the popular talk should be in quality and authority comparable to the scholarly. In this matter Britain shares the fine tradition of France where even philosophers are expected to make themselves comprehensible to *l'homme moyen raisonnable*. We cannot believe that it is impossible to find in Canada authorities in every field who are capable of living up to this great tradition. It should be a set principle with the C.B.C. that all its talks, even the most popular, should if published be acceptable to the expert and enjoyed by the layman. We see no reason why there should not be ultimately a Canadian equivalent to *The Listener* in Great Britain.

70. We have given serious consideration to possible measures for improvement. We realize that financial stringency may be responsible for the deficiencies which we have noticed. We cannot, however, accept the assumption already mentioned that a natural facility for broadcasting is more important to a radio speaker than recognized competence in his subject. It is possible that the C.B.C. might add to its staff more officials of experience and authority in intellectual matters to assume some direct responsibility for the planning of talks. Also, there should be, we think, a closer contact between C.B.C. officials and leading Canadians in all fields of intellectual interest.

We therefore recommend:

m. That the Canadian Broadcasting Corporation provide more adequately in its budget for the department or departments responsible for the talks programmes.

n. That the officials of the Canadian Broadcasting Corporation make greater efforts to secure for its talks programmes, popular as well as serious, representative persons of proven ability, knowledge and experience in the subject matter of the talk.

o. That the Board of Governors of the Canadian Broadcasting Corporation take into consideration the advisability of appointing national advisory councils on talks, in order that its officials may receive advice on programme policy, and information on programme material.

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Coverage and Programmes of French-Language Stations

71. It has been pointed out to us repeatedly in different parts of Canada that the French-speaking Canadian listener does not receive a broadcasting service equal to that intended for his English-speaking neighbour. Officials of the C.B.C. are aware of this fact and regret it, but they have explained that it is one of the consequences of their financial dilemma. One of the reasons prompting us to recommend greater financial resources for the C.B.C is the desirability of removing this inequality which is inconsistent with the conception of a national service.

We therefore recommend:

p. That the Canadian Broadcasting Corporation, as soon as funds are available, proceed with the organization of a second French network and the establishment of a French-speaking broadcasting station to serve French-speaking people in the Maritime Provinces; that it also initiate and carry out plans for a special programme on a French network comparable to the Wednesday Night programme of the Trans-Canada network.

q. That the Canadian Broadcasting Corporation take into serious consideration the use of existing French language stations in Western Canada as outlets for national French programmes, by transcription or by some other means.

Development of Canadian Talent

72. We have already shown in Part I the important part which the national broadcasting system has played and can play in the development of Canadian talent and in the encouragement of Canadian artists. We received many appreciative comments on the consistent work of the C.B.C in this field. We received also, however, protests against what was described as overcentralization of programme production. In 1948-49 expenditure on artists's fees for programmes produced in Toronto and Montreal amounted to $1,302,595. In all the rest of Canada it amounted to $593,236 of which $261,704 was spent in Vancouver. We are aware that this centralization

may be dictated by motives of economy, and therefore, on a limited budget, of good programming. We consider, however, that a national system must keep in mind considerations other than those of convenience or even of financial economy and might well give its own interpretation to the expression "good programming". We have heard with concern the representations of smaller centres that although help may be given to their local talent by invitations to appear on the national network, this aid hardly compensates for the continuous loss of their most promising performers to the two large cities of central Canada. It is presumed that the C.B.C's demands for television performers will accentuate this concentration of talent.

73. We have already shown that the development of local talent, which can be undertaken only very partially by the C.B.C, lies decidedly within the responsibilities of private broadcasters who have largely neglected it.

We therefore recommend:

r. That the Board of Governors of the Canadian Broadcasting Corporation take into serious consideration the further development of radio programmes in points of origination other than Toronto and Montreal.

s. That the Board of Governors of the Canadian Broadcasting Corporation investigate ways of ensuring that private radio broadcasters employ more Canadian talent.

Publicity and Information

74. We stated in Part I that the general ignorance of the Canadian public about the control, the finances and the network outlets of the C.B.C. is as surprising as it is undesirable. We are informed by officials of the C.B.C that they have hesitated to devote much time on the air to what might be regarded as self-advertisement. We understand their point of view, but we think that the public should be better informed about the operations of this important national service. The C.B.C. *Times (La Semaine à Radio-Canada)* is an excellent publication, but for various reasons its circulation is limited. A proper adherence in practice to the existing official policy of establishing and of working closely with regional advisory councils would serve the double purpose of keeping the public informed of the plans of the C.B.C. and of keeping the C.B.C aware of the needs and wishes of the public.

We therefore recommend:

t. That the Canadian Broadcasting Corporation proceed with the establishment of regional advisory councils to represent the views of listeners.

u. That the C.B.C. Times and La Semaine à Radio-Canada be developed and their distribution encouraged; and that the Canadian Broadcasting Corporation consider other methods including broadcasts of keeping the public informed of its plans and of its methods of operation.

75. As we have said, we must confine our recommendations to major questions of principle designed to give the C.B.C the necessary power to carry on its important work, and to those other problems on which specific and objective directives are possible. For the rest, we can state only in general terms, but with conviction, our conception of the function of our Canadian national radio, and the objectives which those responsible for programmes should keep constantly in view.

76. Radio in any democratic country has three main functions: to inform, to educate and to entertain. Information must be given not only with accuracy and impartiality; it must be adequate and interesting, that is, it must be clearly and appropriately presented. Educational programmes must be offered at many levels and for many purposes; to help those who are giving and receiving formal education; to carry on the intellectual development of those whose schooling is over; and to offer such compensation as is possible to those whose formal education was deficient or lacking. We fully believe in the educational importance of radio in a democratic state, where everything depends on the intelligent and well-informed co-operation of the ordinary citizen.

77. Entertainment also has an important place in national radio. Everyone seeks and needs pleasant relaxation; but many amusements are enervating rather than refreshing, and radio entertainment can all too easily fall within this category. It is, we think, the function of the national radio, by patient and bold experimentation, to open to the general public new and hitherto untried sources of enjoyment. Culture, it is true, cannot be forced on us from above, and nothing is more distasteful than prescribed and regimented amusement. But in an age when we call in the expert to advise us on everything, from the food we should eat to the person we should marry, there is surely no harm in accepting helpful suggestions about music we might enjoy and about plays we might like. And it is the function of national radio in a democratic state to offer helpful suggestions.

78. In Canada radio has a particularly important task. It must offer information, education and entertainment to a diverse and scattered population.

It must also develop a sense of national unity between our two main races, and among our various ethnic groups, in spite of a strongly developed regional sense and of the attractions of our engaging and influential southern neighbour.

79. Has our national system performed this function? It has done much; much yet remains to be done. We have already spoken of its contributions to national unity and understanding. We cannot praise too highly its clear, complete and impartial news and information services. We have reported and we agree with the praise given to its school broadcasts. In music and drama and particularly in the *Wednesday Night* experiments, we think that it has shown what may be done in developing new tastes and interests.

80. Obviously, Canadian radio has not yet achieved all that we hope for in a national system. It is still young. It has had to struggle against poverty, inexperience, and the physical obstacles of this difficult country. But, as we have suggested in Part I and have stated here in language as clear and unambiguous as we can command, we are convinced that the existing Canadian system of broadcasting has served the country well in the past and offers the greatest hope of national unity and enlightenment in the future. We urge that the national broadcasting system be given the power and resources sufficient for its great national responsibilities.

TELEVISION

1. We were given the grave responsibility of making recommendations on the principles upon which the policy of Canada should be based in the field of television, this new and unpredictable force in our society. Our recommendations, however, as well as the evidence we bring forward in support of them, can be short and simple. They follow from the fact that the considerations leading us to recommend the continuation of a national system of radio broadcasting seem to us to dictate much more strongly and urgently a similar system in television. Television, like radio, is akin to a monopoly, but its much more limited channels give added importance to a system of co-ordination and control. Like radio it is a valuable instrument of national unity, of education, and of entertainment; how much more valuable it is difficult to say at present, but it promises to be a more popular as well as a more persuasive medium.'

2. The position of private stations in Canadian television broadcasting requires special consideration. In radio broadcasting Canada has achieved maximum coverage for national programmes at minimum cost by using some commercial programmes, and by co-ordinating private stations within the national system under the control of the Canadian Broadcasting Corporation. We think the same principles of national control should be applied to television broadcasting but with certain special precautions. It

seems apparent that the most difficult problem of television in Canada will be to provide programmes in our remote and thinly populated areas; and television advertising will raise difficult questions. Even in radio broadcasting the programmes of all private stations are likely to suffer from excessive control by the advertising sponsor. Only to a limited degree can the private station operator determine the character of his own programmes. Because of greater capital investment and greater operating costs the unfortunate tendencies of radio broadcasting will be intensified in television. The pressure on uncontrolled private television operators to become mere channels for American commercial material will be almost irresistible. In radio broadcasting, Canada experimented with a purely commercial system before changing to a national system. Such an experiment with the more costly and powerful television would be dangerous. Once television were established in commercial north–south channels it would be almost impossible to make the expensive changes necessary to link the country by national programmes on east–west lines of communication. Canadians will welcome good American programmes in television as they now do in radio, but as we have been informed, they do not want them at the cost of a Canadian national system, provided that the C.B.C. can make attractive programmes available in the not too distant future. It seems desirable to use appropriate American television programmes, and to make suitable agreements with Canadian private stations. These arrangements, however, should follow and should depend on the organization of a national system of television production and control.

3. It has been stated in Part I that many Canadians believe that in view of the high costs of television, and since it is in a stage of rapid transition as a technique and of experiment as an art, Canada would do well for the next few years to move very slowly if at all. As has happened so often, however, our neighbour has set the pace. Some 25,000 Canadians now own television receiving sets and the number will no doubt increase very rapidly here just as it has in the United States. It seems necessary, therefore, in our interests, to provide Canadian television programmes with national coverage as soon as possible.

PRINCIPLES OF CONTROL

4. The interim policy of the Canadian government now leaves the Board of Governors of the C.B.C. in control of television broadcasting, authorizes it to open a production centre in Toronto and another in Montreal, to advise the licensing of one private station in any city or area of Canada, and to extend coverage by all practicable means as soon as possible.

5. The principles which underlie this general policy are well calculated to serve the needs and interests of the Canadian people. We do not propose

to make detailed recommendations on the policy of development which it is the duty of the Board of Governors with its special knowledge and experience to determine. We understand that the Board is proceeding with the plans laid down in the interim policy announced in March, 1949, and that coverage will be extended as rapidly as possible both through the C.B.C.'s own transmitting stations and by kinescope recordings provided to private stations which may come into being and serve as national outlets. We are, however, much concerned with three matters. One is that television development should not be precipitate, but should be carefully planned to avoid costly experiments which our country can scarcely afford. The second matter is related to the first. In the national interest, the Board of Governors should not yield to pressure to advise the licensing of any commercial station before it is ready with national programmes which all stations may carry. Finally, we also urge, that since this continent is predominantly English-speaking, such programmes in the French language be produced as will meet the needs and interests of French-speaking Canadians.

We therefore recommend:

a. *That direction and control of television broadcasting in Canada continue to be vested in the Canadian Broadcasting Corporation.*

b. *That the Canadian Broadcasting Corporation proceed with plans for the production of television programmes in French and English and for national coverage by kinescope recordings or by any other practicable means.*

c. *That no private television broadcasting stations be licensed until the Canadian Broadcasting Corporation has available national television programmes and that all private stations be required to serve as outlets for national programmes.*

d. *That recommendations previously made in connection with radio broadcasting, and numbered a., c., d., e., f., g., h., and p., apply to television broadcasting.*

FINANCES

6. We have said something in Part I of the cost of television coverage. As with radio, costs in Canada for coverage will certainly be unusually high, because of the size of the country and our limited population. Programme costs will also be very high, again for the same reasons. Television, like radio broadcasting, must be in two languages and must appeal to various interests.

7. In the United States the profits of commercial radio have helped to pay the large initial losses of television. Canada's national radio, as we have seen, shows no profits, and is indeed operating at a loss. If licence fees are charged, they may reasonably be higher for television than for radio. The Board of Governors of the C.B.C suggests ten dollars a year. But licence fees cannot be charged until Canadian programmes are being received; this will involve heavy capital expenditure for equipment as well as the initial programme costs. Under the interim policy, the Government provided a loan of $4,000,000 for the first year. The Board of Governors of the C.B.C had asked for a loan of $5,500,000. We attach the utmost importance to the establishment of a minimum national service as soon as possible. We do not think that the national system should be imperilled by any proposal that television be supported by commercial revenues alone. Nor do we think that radio programmes should be impoverished for the sake of the new development.

We therefore recommend:

e. That the finances of the radio and television broadcasting systems of the Canadian Broadcasting Corporation be kept separate.

f. That the capital costs of the national television broadcasting system be provided from public money by parliamentary grants.

g. That the costs of the national television broadcasting system for programmes and current needs be provided by licence fees on television receiving sets at rates recommended by the Board of Governors of the Canadian Broadcasting Corporation and approved by Parliament, by commercial revenues, and by such statutory grants as may be necessary.

PROGRAMMES

8. We do not propose to make recommendations on television programmes except in a general way. It has been suggested that television may eventually supersede radio; it this should happen, most of what we have said of radio programmes will apply to television. Again, television may develop and come to concentrate on its more immediately popular capacities such as variety shows, and sports and news actualities, leaving more serious programmes to radio and films. For such television programmes it will be essential to ensure the maintenance of good taste and a suitable and adequate use of Canadian material and Canadian talent. Finally, as many serious observers have suggested, there may and indeed should emerge from television's combined limitations and advantages an entirely new art essentially distinct from both radio and films. We do not

think it useful to speculate on these various possibilities; but if a new art is to develop, it seems to us apparent that television producers must have the greatest freedom for experiment in their work and the most favourable working conditions possible.

9. We do, however, consider it essential that the Board of Governors exercise the greatest care to control excessive commercialism and other possible abuses both in its own programmes and in the programmes of private stations. The element of control necessary and now exercised by governments and by producers in radio and the cinema will be far more important and far more difficult to achieve in the persuasive and subtle medium of television. We think it important also that, as with radio, the Board of Governors of the C.B.C. endeavour at once to import the best programmes from abroad, while developing so far as possible Canadian talent in Canadian programmes.

We therefore recommend:

h. That the Canadian Broadcasting Corporation exercise a strict control over all television stations in Canada in order to avoid excessive commercialism and to encourage Canadian content and the use of Canadian talent.

i. That the whole subject of television broadcasting in Canada be reconsidered by an independent investigating body not later than three years after the commencement of regular Canadian television broadcasting.

10. There is one additional point which should be noticed but upon which we do not propose to make recommendations. Since television programmes are costly and since national television networks in Canada cannot be expected for some time, it seems probable that extensive use will be made of films in television programmes. We understand that in the United States films occupy about twenty-five per cent of all television broadcasting time, and that this percentage will no doubt increase. It therefore seems apparent to us that in the interests of economy, and in accordance with the implications of accepted broadcasting and film policies in Canada, there must be close co-operation between the National Film Board and the C.B.C. in the production of films and in their diffusion by television. The National Film Board could not possibly produce all the films or even all the sorts of films which the C.B.C. will probably require, even if it were desirable for the Film Board to do so; and it would be regrettable if the Film Board were to become merely or principally a supplier of films for television purposes. But the Film Board can and should act as principal adviser to the C.B.C. on film matters, including their production by private commercial producers and their procurement from abroad, and the C.B.C. in turn,

through the use of a proper proportion of National Film Board films, will no doubt be able to extend very greatly the effectiveness of the Film Board's work and Canadian appreciation of it. We can also readily believe that in the broadcasting and filming of events of national importance, whether in politics, the arts or in Canadian life generally, there will be many opportunities for close collaboration between these two important governmental agencies.

Document 26

The government of Liberal Prime Minister Louis St. Laurent announced its television policy about 18 months after the Massey commission reported. It accepted the report's version of the "single system" of Canadian broadcasting. The private stations would remain subservient carriers of a full program schedule out of CBC studios, augmented by local production and maybe some imports from the United States.The government gave TV licences to private stations and the CBC, reaffirmed the CBC's control, and restricted television to one station per city until a national network was in place.

DOCUMENT 26: J.J. McCann, Minister of National Revenue, "Television, extension of service, applications for licenses from private stations," *Debates*, 8 December 1952, 409–410.

Mr. Speaker, I wish to make a statement of government policy on television.

For some time the government has been giving careful consideration to the development of television broadcasting in Canada. In its consideration it has had in mind the report of the royal commission on national development in the arts, letters and sciences. The commission recommended that the Canadian Broadcasting Corporation proceed with the production of television programs and with plans for national coverage. It spoke of extension of national coverage both through publicly and privately-owned stations. It said that no private station should be licensed until the C.B.C had available national television programs and that all private stations established should be required to serve as outlets for national programs. It emphasized the need for direction and control of television broadcasting in Canada to prevent Canadian stations from becoming mere channels for broadcasting material from outside Canada and to encourage Canadian content.

The government believes, with the royal commission, that television should be developed in Canada with the aim of benefiting our national life and that it should have the structure and the means required by Canadian conditions to ensure an adequate amount of suitable Canadian programs for Canadians as well as using some material from outside the country. Television will undoubtedly play a considerable part in the lives of many Canadian families. It is bound to have a strong effect on the growing minds of

young people watching it in their own homes. The government believes it should be so developed in Canada that it is capable of providing a sensible pattern of programming for Canadian homes with at least a good portion of Canadian content reflecting Canadian ideas and creative abilities of our own people and life in all parts of Canada.

The government knows also that, because of the nature of our country, there must be a wide integration of effort and resources if we are to have adequate television service suitable to our national needs and reaching at least a major part of the public in all regions. Now that national television service has started, the government believes that it should be extended as widely and as quickly as possible to other areas. Therefore, it is proposed to ask parliament to approve a loan to the Canadian Broadcasting Corporation for the purpose of building stations on the Pacific coast, in the prairie provinces, and in the Atlantic provinces. These would be established in the Vancouver, Winnipeg and Halifax areas. Thus, in addition to the stations at Montreal and Toronto, and that to be built at Ottawa, there would be publicly-owned stations with some production facilities at least in each of the main regions of the country.

In addition the government will now be ready to receive applications for licences for private stations to serve areas not now served or to be served by publicly-owned facilities already announced. The government has indicated to the Canadian Broadcasting Corporation that it is prepared to consider applications for such licences which may be recommended by the corporation after being made in the usual way to the Department of Transport.

The objective will be to make national television service available to as many Canadians as possible through co-operation between private and public enterprise. Under this plan the private stations licensed will carry national program service, besides having time for programming of their own. There will be plenty of opportunity for enterprise by private interests in television broadcasting, and at the same time provision for wide extension of the national service. Since the objective will be to extend services as widely throughout Canada as is practicable, no two stations will be licensed at the present to serve the same area. A television station can serve only a comparatively small area. Canada is very large and it will require a good many stations before television can be brought to the people in most parts of our country. It is desirable to have one station in as many areas as possible before there are two in any one area.

The government believes that the policy adopted will provide for the integration of effort and resources, both public and private, that is necessary for the development of our television broadcasting serving our family and national life, and reaching as great a number as possible of Canadians.

Document 27

In September 1952, television broadcasting began in Canada at CBC stations in Toronto and Montreal to an audience already habituated to US programs. Most Canadians could get at least one US station, but reception was often poor and there was pressure on MPs and the CBC to provide or allow more stations in Canada. Government policy (see Document 26) called for the licensing of both CBC and private stations to carry a basic core of national progamming, supplemented by local productions and some imports. As it turned out, it was easy to carry out the first step of the policy, and many stations received licences. But the costs attached to the rest of the scheme were daunting.

Despite the assertions of the policy, the government never provided the CBC with enough money to carry out its assigned mission to build a CBC TV network that would dominate in the new medium. Instead, the CBC got funds for a skeletal chain of stations: Halifax, Montreal, Ottawa, Toronto, Winnipeg, and Vancouver. Private stations soon dominated the system, giving it strong local qualities combined with a flow of profitable and popular US programs. By the end of 1956, the country had eight CBC TV stations and 22 privately owned ones.

DOCUMENT 27: "Broadcasting in Canada," *Canada Year Book 1956*, 887–889.

Broadcasting in Canada as it has developed over a period of more than thirty-five years is a combination of public and private enterprise. Under the Canadian Broadcasting Act (R.S.C. 1952, c.32) authority for broadcasting service is vested in a Board of eleven Governors, appointed by the Governor General in Council and chosen to give representation to the principal geographical divisions of Canada. The Board is directly responsible to Parliament for carrying on a national broadcasting service in Canada and for the policies of the Canadian Broadcasting Corporation. It also administers and supervises regulations pertaining to broadcasting which are observed by both the CBC and privately owned stations.

As of Nov. 1, 1955 there were 22 CBC radio stations and eight CBC television stations; 191 privately owned radio stations and 22 privately owned television stations. All the privately owned television stations and many of the privately owned radio stations operate in partnership with the CBC in helping to distribute national radio and television services over five networks: in radio, the Trans-Canada, Dominion and French networks, and in television, the English and French networks. The networks are operated by the CBC.

The privately owned stations are subject to licensing control by the Department of Transport and to CBC regulations authorized by Parliament. They serve, primarily, the locality in which they are situated with the general purpose of providing community service. Many such stations are located in relatively small urban centres and serve, as well, the larger population located in the surrounding rural areas. Others serve medium-sized and metropolitan cities together with the audiences located in the surrounding towns and rural areas, providing alternative programs to those of the CBC. In sparsely populated areas where privately owned stations would not be economical the CBC provides service through unattended, low-power relay transmitters. Many of the privately owned stations form an integral part of the national networks as outlets for national service programming.

The Chairman of the Board of Governors is required to devote the whole of his time to the performance of his duties under the Act. The Board, whose members are not paid and must take an oath of office disclaiming any personal interests in broadcasting, reviews broadcasting activities in Canada generally in the interests of the country as a whole. Policy is determined and supervised by the Board but day-to-day operations and executive direction of the CBC are conducted by the General Manager. Although the CBC is responsible for the regulations controlling the establishment of networks and the proportion of time that may be devoted to advertising in broadcast programs, it neither exercises, nor authorizes any private station to exercise on its behalf, censorship of any broadcast program. The responsibility of observing regulations rests with individual station management.

The general principles of this system, as established by Parliament, have been approved by 14 Parliamentary Committees and two Royal Commissions.

Radio Broadcasting Facilities.—As stated above, the CBC operates three networks: the Trans-Canada and Dominion networks serving English language audiences from the Atlantic to the Pacific, and the French language network extending from Moncton, N.B., to Edmonton, Alta. As at Nov. 1, 1955 the Trans-Canada network was made up of 26 basic stations—13 CBC owned and 13 privately owned. There were 18 supplementary stations, four of which were CBC owned Newfoundland stations. The Dominion network consisted of 31 basic stations of which 30 were privately owned. Nineteen supplementary privately owned stations also received Dominion network service. The French network had five basic stations, four of which were CBC owned and one privately owned, and 20 privately owned affiliated supplementary stations.

Table 5 presents the broadcasting stations of the Canadian broadcasting radio network.

5.—Broadcasting Stations of CBC Radio Networks as at Nov. 1, 1955

Note.—The stations marked with an asterisk (*) are CBC owned.

	Station	Location	Frequency	Power
	Trans-Canada Basic Network—		kc.	watts
*	CBI	Sydney	1,570	1,000
*	CBH	Halifax	1,330	100
*	CBA	Sackville	1,070	50,000
	CHSJ	Saint John	1,150	5,000
	CFNB	Fredericton	550	5,000
*	CBM	Montreal	940	50,000
*	CBO	Ottawa	910	5,000
	CKWS	Kingston	960	5,000
*	CBL	Toronto	740	50,000
	CFCH	North Bay	600	1,000
	CJKL	Kirkland Lake	560	5,000
	CKGB	Timmins	680	5,000
	CKSO	Sudbury	790	5,000
*	CBE	Windsor	1,550	10,000
	CJIC	Sault Ste. Marie	1,490	250
	CKPR	Fort William	580	1,000
*	CBW	Winnipeg	990	50,000
*	CBK	Watrous	540	50,000
*	CBX	Edmonton	1,010	50,000
*	CBXA	Edmonton	740	250
	CJCC	Lethbridge	1,220	5,000
	CFJC	Kamloops	910	1,000
	CKOV	Kelowna	630	1,000
	CJAT	Trail	610	1,000
*	CBU	Vancouver	690	10,000
*	CFPR	Prince Rupert	1,240	250
	Trans-Canada Supplementary—			
*	CBN	St. John's	640	10,000
*	CBY	Corner Brook	790	1,000
*	CBG	Gander	1,450	250
*	CBT	Grand Falls	1,350	1,000
	CKBW	Bridgewater	1,000	1,000

	CKMR	Newcastle	1,340	250
	CJQC	Quebec	1,340	250
	CKOC	Hamilton	1,150	5,000
	CHLO	St. Thomas	680	1,000
	CHOK	Sarnia	1,070	[1]
	CFAR	Flin Flon	590	1,000
	CFGP	Grande Prairie	1,050	1,000
	CKLN	Nelson	1,240	250
	CKPG	Prince George	550	250
	CJDC	Dawson Creek	1,350	1,000
	CJCA	Edmonton	930	5,000
	CKCK	Regina	620	5,000
	CFAC	Calgary	960	5,000

Dominion Basic Network

	CJCB	Sydney	1,270	[1]
	CHNS	Halifax	960	5,000
	CJFX	Antigonish	580	5,000
	CJLS	Yarmouth	1,340	250
	CFCY	Charlottetown	630	5,000
	CKCW	Moncton	1,220	10,000
	CFBC	Saint John	930	5,000
	CKNB	Campbellton	950	1,000
	CKTS	Sherbrooke	1,240	250
	CFCF	Montreal	600	5,000
	CKOY	Ottawa	1,310	[1]
	CHOV	Pembroke	1,350	1,000
	CFJR	Brockville	1,450	250
	CHEX	Peterborough	1,430	1,000
*	CJBC	Toronto	860	50,000
	CFPL	London	980	5,000
	CFCO	Chatham	630	1,000
	CFPA	Port Arthur	1,230	250
	CJRL	Kenora	1,220	1,000
	CKRC	Winnipeg	630	5,000
	CKX	Brandon	1,150	1,000
	CJGX	Yorkton	940	1,000
	CKBI	Prince Albert	900	5,000
	CFQC	Saskatoon	600	5,000
	CHAB	Moose jaw	800	5,000

[1] 5,000 watts during daytime; 1,000 watts at night.

	CKRM	Regina 980	5,000
	CFRN	Edmonton 1,260	5,000
	CFCN	Calgary 1,060	10,000
	CHWK	Chilliwack 1,270	1,000
	CJOR	Vancouver 600	5,000
	CJVI	Victoria 900	1,000

Dominion Supplementary

	CHML	Hamilton 900	5,000
	CKTB	St. Catharines 620	1,000
	CFOR	Orillia 1,570	[1]
	CHNO	Sudbury 1,440	1,000
	CHAT	Medicine Hat 1,270	1,000
	CJIB	Vernon 940	1,000
	CFOB	Fort Frances 800	[2]
	CKCV	Quebec 1,280	1,000
	CKSF	Cornwall 1,230	250
	CJBQ	Belleville 1,230	250
	CKCR	Kitchener 1,490	250
	CJCS	Stratford 1,240	250
	CKPC	Brantford 1,380	1,000
	CKNX	Wingham 920	1,000
	CFOS	Owen Sound 1,470	1,000
	CKLW	Windsor 800	50,000
	CKRD	Red Deer 850	1,000
	CKLC	Kingston 1,380	1,000
	CKOK	Penticton 800	1,000

French Basic Network—

*	CBJ	Chicoutimi 1,580	10,000
*	CBV	Quebec 980	1,000
*	CBF	Montreal 690	50,000
*	CBAF	Moncton 1,300	5,000
	CHNC	New Carlisle 610	5,000

French Supplementary—

	CJEM	Edmundston 1,380	1,000
	CJBR	Rimouski 900	5,000
	CHLT	Sherbrooke 900	1,000
	CHGB	Ste. Anne-de-la-Pocatière 1,350	[3]
	CKCH	Hull 970	5,000
	CJFP	Rivière-du-Loup 1,400	250
	CKVD	Val d'Or 1,230	250
	CHAD	Amos 1,340	250

[1] 5,000 watts during daytime; 1,000 watts at night.

[2] 1,000 watts during daytime; 250 watts at night.

CKRN	Rouyn	1,400	250
CKLS	La Sarre	1,240	250
CKLD	Thetford Mines	1,230	250
CFCL	Timmins	580	1,000
CKSB	St. Boniface	1,250	1,000
CHFA	Edmonton	680	5,000
CFNS	Saskatoon	1,170	1,000
CFRG	Gravelbourg	1,230	250
CHNO	Sudbury	1,440	1,000
CKBL	Matane	1,250	1,000
CKVM	Ville Marie	710	1,000
CKRB	Ville St. Georges	1,400	250

[3] 1,000 watts during daytime; 500 watts at night.

Television Broadcasting Facilities.—As at Nov. 1, 1955 there were 26 television broadcasting stations in operation on the English network (six of which were CBC owned) and four under construction. On the French network, four stations were in operation (two of which were CBC owned) and two were under construction. These stations were located and powered as follows:—

6.—Broadcasting Stations of CBC Television Networks as at Nov. 1, 1955

Note.—The stations marked with an asterisk (*) are CBC owned.

	Station	Location	Channel	Video Power	Audio Power
				kw.	kw.
	English Network—				
	CJON-TV	St. John's	2	1.06	0.634
	CJCB-TV	Sydney	4	100	60
*	CBHT	Halifax	3	56.5	33.8
	CHSJ-TV	Saint John	4	27.8	13.9
	CKCW-TV	Moncton	2	5	3
*	CBMT	Montreal	6	43.8	26.2
*	CBOT	Ottawa	4	50.1	26.7
	CHEX-TV	Peterborough	12	102	61.2
	CKWS-TV	Kingston	11	101	60.6
*	CBLT	Toronto	9	25.65	12.72
	CKVR-TV	Barrie	3	14	7
	CHCH-TV	Hamilton	11	16.9	10.05
	CKCO-TV	Kitchener	13	16.0	8.45
	CEPL-TV	London	10	117	59.6
	CKLW-TV	Windsor	9	178	107
	CKSO-TV	Sudbury	5	1.74	0.87
	CJIC-TV	Sault Ste. Marie	2	5.16	2.58
	CFPA-TV	Port Arthur	2	5.10	2.55
*	CBWT	Winnipeg	4	56.2	33.7
	CKX-TV	Brandon	5	19.3	9.65
	CFQC-TV	Saskatoon	8	100	60
	CKCK-TV	Regina	2	18.9	10.0
	CFRN-TV	Edmonton	3	27.4	13.7
	CHCT-TV	Calgary	2	100	50
*	CBUT	Vancouver	2	102	55.2
	CKNX-TV	Wingham	8	20	12

Under Construction					
	CFCY-TV	Charlottetown	13	21	12.5
	CKGN-TV	North Bay	10	28.5	14.25
	CFCL-TV	Timmins	6	18.5	9.25
	CJLH-TV	Lethbridge	7	102.8	57.5
French Network—					
	CJBR-TV	Rimouski	3	34.0	19.4
	CFCM-TV	Quebec	4	1.27	635
*	CBFT	Montreal	2	15.7	8.28
*	CBOFT	Ottawa	9	31	17
Under Construction—					
	CKRS-TV	Jonquières	12	20	10
	CHLT-TV	Sherbrooke	7	17.3	8.8

It was estimated that at the end of March 1955 more than 70 p.c. of all Canadians were within reach of the national television system. Although the linking of all Canadian television stations from coast to coast for instantaneous telecasting of programs may take several years because of the distances and difficult terrain involved, microwave facilities had reached Windsor, Ont., on the west and Quebec City on the east by July 1955.

When television broadcasting began in September 1952, 146,000 television sets were in use in Canada. One year later the number had tripled and by July 1955 more than 1,400,000 receivers were in use in Canadian homes.

Document 28

The costs and potential profits of television are much higher than those of radio, so it is hardly surprising that the private broadcasters continued their effort to escape some of the obligations placed on them by the Broadcasting Act. Despite the legal definitions, a station licence no longer seemed a privilege to be held only as long as the CBC board of governors approved of the station's programming. Licences granted as privileges had grown into valuable vested interests and were soon to be regarded by those who held them as private property.

At the same time, wealthy business groups were beating at the gates of the rich TV markets in Toronto and Montreal, where only CBC stations were on the air—a result of the policy which allowed only one TV station per city until a national service was established, coast to coast and south to north. But expectations fostered by the US example produced a growing demand for more than one station per city. To some people it appeared that national sovereignty required that television in Canada be essentially Canadian—as the Aird and Massey commissions had said. But both extra stations and Canadian content were much more expensive per capita in Canada than they were in the United States, for reasons of geography, population, and language. To resolve some of these conflicts and provide guidance for future TV policy, the Liberal government of Louis St. Laurent appointed a Royal Commission on Broadcasting in December, 1955.

It was the country's third such effort in fewer than 30 years, and this national habit would only grow stronger. The chairman of the 1955 commission was Robert Fowler, a lawyer, a Liberal, and a man with a record of public service on the Wartime Prices and Trade Board and the Rowell-Sirois commission on dominion-provincial relations. At the time of his appointment he was head of the Canadian Pulp and Paper Association. The second member was Edmonde Turcotte, also from the Wartime Prices and Trade Board, a newspaper editor, and, at the time of his appointment, Canadian ambassador to Colombia. James Stewart, the president of the Canadian Bank of Commerce (like Sir John Aird before him), completed the list. This was a much less academic group than the Massey commission had been.

The Fowler commission held hearings across the country, considered the arguments of the CBC and the briefly renamed Canadian Association of Radio and Television Broadcasters (CARTB), travelled to New York for confidential financial information from the US networks and published its report on 15 March 1957.

The report is leisurely and philosophical, idealistic about the single system, but attentive to the financial requirements for broadcasting in Canada. It provides no handy summary page of recommendations and, as Ezra

Pound said of poetry, it works in gists and piths. Several ideas stand out. This was the first such report to affirm explicitly the permanent place of private broadcasters in the Canadian system, but it underlined the view that the system was still a single one. Then it recommended ending the policy that restricted each city to a single TV station. This was a valiant attempt to have it both ways, but one which stretched the word "single" into a strange shape.

The commission also proposed a new body to regulate all broadcasting, a duty then performed by the board of governors of the CBC . Whatever the intentions of the commissioners, this recommendation came to mean different things to different readers. The CARTB thought it meant the new separate regulatory body the private broadcasters had promoted for years. Supporters of a single public system thought they detected a super-board, freed of the day-to-day administration of the CBC but able to direct the affairs of both the CBC and private stations with enhanced energy and firmness. In this was visible the strong Canadian conviction that dissatisfaction with broadcasting can be cured by changing the regulatory machinery.

The Fowler report dwarfs the efforts of both Aird and Massey. Volume 1 has 289 pages of report and 225 pages of appendices. There are 200 pages of program analysis in Volume 2.

DOCUMENT 28: *Report* of the Royal Commission on Broadcasting, 15 March 1957, Vol. 1, 7–13, 88–92, 247–253.

From Chapter I, "The Problem"

Special Problems of Radio and Television in Canada

Broadcasting is, for any country, a new and different medium of communication and it involves special problems of defining and executing policy. Broadcasting is not the same as publishing or movie making, not entirely an entertainment medium, not wholly a method of education, and not solely a vehicle for the sale of goods. It has some elements of all these and more besides. Analogy with other media of communication must be applied with great caution and, in general, it seems safer to treat the problems of broadcasting as unique.

Broadcasting in Canada is also unique. It is not the same as broadcasting in the United States, in England, or in Australia, and although we can study the experience in other countries, we cannot copy the patterns they

have applied. We must approach these problems afresh, as specific Canadian problems for which we must seek specific Canadian solutions.

One of the special factors affecting Canadian broadcasting is the sheer size of the country in relation to its population. We have today in Canada more than two million television receivers, each of which is within range of one of the thirty-eight Canadian television stations. In the Chicago area, in the United States, there are slightly more than two million receiving sets all within range of the four commercial television stations in Chicago. In New York there are 7 television stations whose signals can reach nearly four and a half million receiving sets. From a commercial standpoint, the market that can be reached by a single television station in Chicago is approximately the same size as all the markets within range of the thirty-eight television stations in Canada. Even though in some of the larger centres the market is substantial, the audience available to most Canadian stations is relatively small and the cost of transmitting signals over long distances to connect Canadian television stations is high. The substantially higher costs of television make the problem more difficult, but the same relative situation exists for radio. Add to these factors of space the further fact that the Canadian population is divided into about 11 million English-speaking and about 5 million French-speaking people, and the economic problem becomes still more difficult.

However, it is not our national size or sparse population that alone causes our difficulties in creating and maintaining a broadcasting system. The central, unique fact about Canadian broadcasting is that we are here in North America, a nation of 16 million people living beside a nation of 168 million which speaks the language of our majority and is rich, inventive, with a highly developed broadcasting system of its own. No other country is similarly helped and embarrassed by the close proximity of the United States. Much that is good and valuable can come from this closeness; there is an increasingly rich fare of programmes on both radio and television available at relatively low cost from the United States. Much of this we cannot hope to duplicate and we would be poorer if we did not have it available as part of our total programme supply.

But as a nation we cannot accept, in these powerful and persuasive media, the natural and complete flow of another nation's culture without danger to our national identity. Can we resist the tidal wave of American cultural activity? Can we retain a Canadian identity, art and culture—a Canadian nationhood? These questions do not imply a judgment on the values of the American broadcasting system; indeed, the dangers to Canadian national identity are much greater from the good American programmes than from their poor or clumsy productions. Assuming, as we must, that their broadcasting system is satisfactory and suitable for Americans, this is no basis for thinking it is desirable for Canadians. We may want, and may be better to have, a different system—something distinctive-

ly Canadian and not a copy of a system that may be good for Americans but may not be the best for us.

Nor is this attitude in Canada antagonistic to the United States—a form of anti-Americanism which most Canadians would resist and deplore. The same attitude would apply equally to the flooding of Canada by cultural influences from the United Kingdom or France. It is only the accident of geography and the technology of broadcasting that make the threat to our national identity greater from the United States. From all three countries, Canada has derived, and we hope will continue to derive, great benefits. But it is a healthy thing if we determine to take these outside benefits only on our own terms and insist on weaving them into a Canadian fabric of our own making.

We must necessarily look at this problem from a Canadian point of view. But we were interested when we visited the United States to find that there are thoughtful Americans who feel that the United States will be enriched by the preservation of a separate and distinct cultural identity in Canada. They believe that, in a troubled and difficult world, Canada has a role to play that will be more valuable and useful if we are something more than a carbon copy of American views and opinions and aspirations.

This is not a new problem for Canada. It has become familiar through many examples over the ninety years of our national history. The very creation of the Canadian confederation and the territorial expansion of the original union across the continent were, to some extent at least, responses to pressures from the United States. The building of the first Canadian transcontinental railway was only the first of many devices to pull together into a nation the vast expanse of Canadian territory. In different ways but with the same purpose we created a national financial structure through the chartered banking system and we sought to build up industry and trade through a protective tariff. At a later date we developed a national air-transportation system. There are many other examples of steps taken to make Canada a nation despite the forces of geography and the powerful attraction and influence of the United States. The natural flow of trade, travel and ideas runs north and south. We have tried to make some part, not all, of the flow run east and west. We have only done so at an added cost, borne nationally. There is no doubt that we could have had cheaper railway transportation, cheaper air service and cheaper consumer goods if we had simply tied ourselves into the American transportation and economic system. It is equally clear that we could have cheaper radio and television service if Canadian stations became outlets of American networks. However, if the less costly method is always chosen, is it possible to have a Canadian nation at all? The Canadian answer, irrespective of party or race, has been uniformly the same for nearly a century. We are prepared, by measures of assistance, financial aid and a conscious stimulation, to compensate for our disabilities of geography, sparse population and vast distances, and we have accepted this as a legitimate role of government in Canada.

To apply this principle to broadcasting in Canada, it is necessary to provide quite substantial amounts of money for the creation and distribution of radio and television services across Canada; and this requires a public agency to spend the money and administer the broadcasting system This is an undertaking of considerable difficulty. No one can fail to be concerned about the potential dangers of state control and elements of public monopoly in relation to these powerful media of communication. No politician in his sane mind could want to encounter the difficulties and criticisms and headaches of supervising a public broadcasting system if he could possible avoid it. The fact is that for Canada there is no choice.

We cannot choose between a Canadian broadcasting system controlled by the state and a Canadian competitive system in private hands. The choice is between a Canadian state-controlled system with some Canadian content and the development of a Canadian sense of identity, at a substantial public cost, and a privately owned system which the forces of economics will necessarily make predominantly dependent on imported American radio and television programmes.

Radio is not cheap, but television is an enormously expensive medium of communication. Whether the cost is paid directly out of the public treasury or indirectly out of the price of goods advertised, the public of any country must pay for the broadcasting services it gets. In the United States there are 168 million people; it has a wealthy, dynamic economy in which a private broadcasting system has developed supported by advertising revenues. From the free flow of economic forces, three national television networks and four national radio networks have been created. We were told by the American networks, and there is ample public evidence available to confirm it, that television network operations have only recently been able to show a small profit after many years of substantial losses and radio networks are showing little, if any, profits.

In Canada with a population of 16 million, of which 11 million are English-speaking and 5 million are French-speaking, we have two national television networks and three national radio networks. If the population and wealth and buying power of the United States can only support its existing network system, what hope is there that the much smaller Canadian economy can support almost as many national networks by means of commercial revenues?

We are satisfied that the volume of advertising revenue available in Canada is not, in itself, sufficient to pay for a Canadian broadcasting system which would substantially cover all of Canada, provide some amount of Canadian programmes and contribute to the development of a Canadian consciousness and sense of identity. To have such a system we must pay for it in other ways. If we are unwilling or unable to provide quite substantial amounts from public funds for such a broadcasting system there is

little point in having any public agency engaged in the broadcasting and distribution of radio and television programmes, and individual private stations will necessarily become outlets for American networks and programmes. This would result not because the private broadcasters are unpatriotic citizens or because they lack a sense of Canadian consciousness or responsibility; it would result from economic pressures on the private operator which make it easy and inexpensive to import American programmes and difficult and costly to produce any substantial volume of Canadian programmes.

Under our terms of reference, it was made a condition and basic assumption of our inquiry that "the broadcasting and distribution of Canadian programmes by a public agency shall continue to be the central feature of Canadian broadcasting policy". But even without such a limitation, the overwhelming weight of the evidence submitted to us would have compelled us to report that Canadians wish to have a Canadian broadcasting system, that they want to keep some part of their broadcasting fare Canadian, and that they are willing, within reason, to pay for it. This was the substance of the submissions from many groups who favoured our existing broadcasting system; it was also the opinion of most of those who were somewhat critical of the CBC and its operations, including many of the private broadcasters. There was virtual unanimity in favour of a Canadian broadcasting system, supported by moneys from the Federal treasury. We will have much to say in later chapters of this report as to the scope, method and procedure for accomplishing this objective. For present purposes, we accept it as a basic assumption of the whole inquiry.

Once it was decided to have a Canadian system supported by public funds, it was necessary to have a public agency responsible for developing and distributing programmes and for supervising the spending of these funds. In Chapter II and Appendix II, the detailed history of what actually happened in the development of the Canadian broadcasting system will be outlined. In retrospect, we can now see that it might have followed any one of several divergent courses, and perhaps for a number of years did in fact have no clear direction. It might, as the Aird Commission in 1929 recommended, have become a wholly public system with all broadcasting facilities owned by the state. It might, on the other hand, have taken the form of a complete national system, with enough publicly owned stations to distribute programmes across the whole country, and also having private stations operating independently on a commercial basis. This would have been similar to the policy adopted in Australia, but would have meant for Canada the erection and operation of a much larger and more expensive public system than we have today.

In fact, the choice made by Canada was between these two systems and followed a typical and traditional Canadian pattern of combining public and private ownership in one system. In broadcasting, as in earlier national

policies, we chose to have enough public ownership and control to maintain the country's identity and to assist its integration, and allowed in addition a substantial amount of private enterprise subject to public supervision and control. We accepted both public and private stations as part of the system. The national broadcasting service was provided to the Canadian people partly through publicly owned and operated stations and partly through privately owned stations. Both the public and private elements in the system were subjected to control of performance and programme.

This choice, however, has never been very clearly or specifically stated. It is not fully set forth in the governing statutes and it has been a subject of misunderstanding, considerable debate and some misrepresentation over the last twenty years. The Canadian broadcasting system has been called an accident, as in a sense it was, and a compromise which, by any definition in the dictionary, it was not. We believe it should be regarded as another of Canada's unique and positive achievements. It is, we believe, a better system for Canada than either a completely state owned system or an entirely privately owned system. In the combination of public and private enterprise, Canadian broadcasting has had variety and flexibility which an all-public or all-private system could not have achieved. There are things that the public agency can do that the private stations could not and would not do; there are other services that the private stations can provide that the public agency could only supply with difficulty and less effectively. If the union of public and private elements produces clashes of opinion and controversy within the system, it is all to the good in an institution engaged in public information and the formation of public opinion. Our broadcasting system is a distinctive and valuable achievement in which Canadians can take pride.

Perhaps because of the failure to state the objectives and purposes of our broadcasting system clearly and simply, the positive values of our achievement have not always been recognized. The governing statutes are far from clear and the fundamental nature of the system has remained open to endless controversy and debate. We will attempt to suggest statutory changes which will define and articulate the purposes of our Canadian broadcasting system. If these are accepted, the long argument as to the nature of our broadcasting system may perhaps come to an end and discussion might be concentrated on the essential problem of making it work efficiently and with maximum benefit to the Canadian people.

Specifically, if our recommendations are accepted, it should be recognized by everyone:

(1) that the mixed Canadian system of public and private ownership is here to stay;

(2) that the state agency may grow, as Canada grows, but its functions are not to be extended to do the whole job of providing radio and television services to Canadians;

(3) that private stations should individually be required to justify the continued grant of a valuable public franchise and that some may lose their licences because of a shabby performance, but private operators should stop worrying about the bogey of nationalization that has filled them with suspicion and fear in the past; and

(4) that, for the foreseeable future, we will continue to have a single broadcasting system in which all Canadian radio and television stations, public and private, present and future, will be integral parts, regulated and controlled by an agency representing the public interest and responsible to Parliament.

From Chapter IV, "The Regulation of Broadcasting"

How Should Regulation be Done?

In Chapter I we have attempted to explain the economic forces which influence Canadian broadcasting and which, in our opinion, make it impossible to have a broadcasting system based only on advertising revenues. If we are to have a Canadian broadcasting system, with some flow of programmes in an east–west direction across the country, with some Canadian content and with some contribution to a Canadian national consciousness, there must be a public broadcasting agency supported by substantial amounts of public money. We have also explained that this kind of problem is not new in Canadian experience. But because of the nature of broadcasting, the problem is peculiarly difficult.

The dilemma is between the danger of political interference with an agency of public information and communications and the need to retain sufficient supervision and control to ensure that public moneys are wisely spent. Obviously the public broadcasting system cannot be run by Parliament, except for general policy and supervision. There is danger in having it run by a department of government where partisan interests could have an influence or might be thought to have an influence. It is a case for delegation of authority to an agency or agencies of the state.

However, the term "delegated authority" is ambiguous and it is important to define the exact sense in which it is applied. There are times when the state wishes to delegate to an agency virtually sovereign powers, to place a function beyond parliamentary control except the ultimate control

that Parliament can always assert by abolishing the agency. In such cases, it is desired to take certain decisions away from Parliament for various reasons; possibly because a political impasse has been reached, perhaps because the subject-matter is highly technical or complicated and therefore cannot be dealt with in debate. For this kind of delegated authority the agency established needs to be a technically expert one and its task should be defined and handed over to it without continuing detailed supervision and direction by Parliament. Such an agency usually works best if it consists of a small group, residing in or near the centre of the agency's operations. The agency has a technical job to do and should be left to do it with only a minimum of parliamentary control to see that it performs its duties and looks after its financial affairs. An example of this type of delegated authority in Canada is the Board of Transport Commissioners.

A quite different kind of delegation is that where Parliament retains its full sovereignty but entrusts detailed day-to-day administration of an enterprise to a board or agency. Expert knowledge and specialized technical procedures may be required from such an agency, which Parliament has neither the time nor the technical skill to develop and apply. This type of agency may in fact exercise, by delegation, certain legislative authority and administrative power, but it does so under the continuing supervision and control of Parliament. Its authority should be clearly stipulated and its rights and duties defined in the governing statute. Its actions are subject at all times to challenge and review by Parliament. This type of board is an agent of Parliament, to do certain things and speak on behalf of Parliament, to give attention to a problem from day to day in a way that Parliament cannot do, but always subject to parliamentary control which is never surrendered or weakened. Such a board is likely to be effective and therefore to require relatively little actual control by Parliament, if it is fairly large in numbers and is made up of people with much the same diversity of skills, experience and geographical origin as Parliament itself. If such a board, in dealing with its delegated responsibilities, can accurately reflect public opinion it is likely to act as Parliament would itself act, and therefore intervention by Parliament will not often be needed. We believe that this type of delegation of parliamentary authority is the kind to be applied to Canadian broadcasting.

Both radio and television are powerful media of communications. They change rapidly both technically and artistically. They must be responsive to changing needs and subject to public scrutiny and public opinion. Because the Canadian broadcasting system is growing in size and cost it needs continuous supervision and direction which Parliament, with its many other responsibilities and pressures, cannot give. There is therefore a need for delegation by Parliament to a board or agency of the daily management and supervision of the broadcasting system. But such a board or agency must remain responsible to Parliament.

We believe that existing governing statutes were intended to maintain Parliament's control over broadcasting and to define the nature of the delegation of powers to an agency of the state. This original intention has been reaffirmed by numerous parliamentary committees and by one royal commission. It may, however, be possible to clarify the statute, which was originally passed in 1936 and has remained substantially unchanged for the past twenty years. It is not surprising that, with the major developments of television and the great expansion of the broadcasting system which have occurred, the original statutes are not as precise as they might be and some desirable distinctions have become blurred. Our suggestions for change in the legislation may make it easier to understand the precise nature of the Canadian broadcasting system and more difficult to misunderstand and misrepresent it. But we should make it clear that we are not recommending any fundamental change in the concepts that have applied to Canadian broadcasting for many years.

We think there have in fact been two public elements involved in radio and television broadcasting. This factual separation of powers should be more precisely defined in law. One of these elements should be an operating agency, engaged in the operation of publicly owned stations and national networks and in the production and distribution of a national programme service throughout Canada. We think that the phrase "national programme service" should, if possible, have a more detailed definition as to its geographical scope and intended purpose than has been given up to the present time. If this agency is given precise responsibilities it should also be given powers sufficient to discharge those responsibilities, and financial resources, on an assured basis, adequate to do the job that Parliament intends it to do. A Crown company seems to be the simplest and most familiar form for this agency to take. The existing Canadian Broadcasting Corporation, with minor changes in its statutory powers and organization, can be this agency. Many of the subsequent chapters of this report will deal in detail with the powers, organization, operation and finances of the CBC.

The other public agency in the Canadian broadcasting field should be a board created and authorized to act for Parliament, and responsible to Parliament, for the direction and supervision of the Canadian Broadcasting system. This board should have responsibility for all elements in Canadian broadcasting. It should not, we suggest, be part of the Canadian Broadcasting Corporation and its members should not, as in the present statute, comprise the Corporation. The provision in Section 3 of the Broadcasting Act of 1936, whereby the Corporation is made to consist of the Board of eleven governors was no doubt a familiar form of statutory provision and a natural method of applying the concepts of private company law to a Crown corporation. In other Crown companies it may not matter, but in broadcasting it has probably contributed to some public confusion as to the nature of relations between the governing Board and the operating Corporation.

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This Board is not part of the CBC and should not be referred to as "the Board of Governors of CBC". We suggest that a new Board, differently named, should be created by statute. The name we use in speaking of this agency is "The Board of Governors of Canadian Broadcasting" or "The Governors of the Canadian Broadcasting System" or any other name that does not identify it with the Canadian Broadcasting Corporation.

The CBC is responsible to the Board and is answerable to it for its performance and efficiency. Similarly private broadcasters are responsible to the Board for their performance. The degree of supervision and control by the Board may vary as between the public and private elements in the single Canadian broadcasting system, and may vary from time to time as between different units in the system, but the basic relationship between the broadcasters and the Board is the same for all stations. They are responsible to the Board, which in turn is responsible to Parliament for the whole Canadian broadcasting system....

From Chapter XI, "Finances"

We come now to the question of CBC finances which is, in many ways, the main objective and culminating point of this whole inquiry. It was clearly intended in our appointment that it should be so; five of the six specific headings in our terms of reference deal directly with matters of finance. This same emphasis, however, was not fully reflected in the evidence submitted to us at our public hearings across Canada. On the surface at least, we got little help on these major problems of finance from the witnesses who appeared before us. There were some supporters of the CBC who argued that it should have an adequate and assured income. Some of its critics viewed its mounting costs with genuine alarm. There were random comments about the need of economy and efficiency, and a nearly universal opposition to providing the money needed by the CBC by re-imposing licence fees on receiving sets. But beyond these general comments, there was little direct evidence on financial questions even from some of the experienced and influential business organizations that appeared before us.

Perhaps it was unrealistic for us to expect much direct evidence on these complicated financial matters at our public hearings. Perhaps had it been possible to get specific and detailed solutions from individuals and organizations throughout Canada, it would have been unnecessary to appoint a royal commission to make elaborate financial studies taking many months and costing many thousands of dollars. Perhaps, too, the basic evidence was really given in our hearings and has been readily available for years to anyone who chose to look for it.

What is it the Canadian people want from their broadcasting system?

What is it they are trying to buy? The answer has been a simple theme, played with few variations and an astonishing amount of repetition over the last thirty years. Whenever a group of diverse and disinterested Canadians have undertaken to study the problems of our broadcasting system they have come up with the same basic answers. It does not seem to have mattered whether they spoke French or English as their mother tongue, whether they were engineers or bankers or university professors or politicians, whether their studies were conducted in the austerity of a royal commission's hearings or the heat and turmoil of a parliamentary committee—the answer for thirty years, and without exception, has been the same.

Here are some of the voices that have spoken:

1929 Sir John Aird	"There, however, has been unanimity on one fundamental question—Canadian radio listeners want Canadian broadcasting...these interests (of the listening public and of the nation) can be adequately served only by some form of public ownership, operation and control behind which is the national power and prestige of the whole public of the Dominion of Canada."
1932 Sir John Aird	"It seemed plain in 1929, it is plainer still in 1932, that an adequate national broadcasting service in this country will need more revenue than private enterprise can raise from operating broadcasting stations for gain."
Feb. 16, 1932 Rt. Hon. R. B. Bennett	"Canadians have the right to a system of broadcasting from Canadian sources equal in all respects to that of any other country."
May 16, 1932 Rt. Hon. R. B. Bennett	"First of all, this country must be assured of complete Canadian control of broadcasting from Canadian sources, free from foreign interference or influence."

May 16, 1932 Rt. Hon. Ernest Lapointe	"I just wish to endorse the views expressed by my right honourable friend the Prime Minister..."
May 16, 1932 Mr. J. S. Woodsworth	"I should just like to associate myself with the last speaker (Mr. Lapointe) in congratulating the Prime Minister..."
1934 Parliamentary Committee	"...it has been made apparent to your committee that the establishing of national broadcasting in Canada presents many difficulties, for the correction of which time, experience and large expenditure of public money will be necessary."
June 15, 1936 Rt. Hon. C. D. Howe	"Radio broadcasting in Canada has been studied by one Royal Commission and three parliamentary Committees and these four reports agree on the broad principles that must govern us..."
1938 Parliamentary Committee	"...your Committee wishes to express its belief that the broadcasting system emerging in Canada is, and can increasingly be, an important factor in creating a sense of national unity..."
1939 Parliamentary Committee	"...Canada is in the happy position of having at her disposal a wide variety of material both from outside and inside the country. The Corporation's policy and practice appear to take advantage of this situation, while giving the maximum encouragement to Canadian talent."

1942 Parliamentary Committee	"The Corporation's aim must be not only to select the best programs available from other countries but also to broadcast the highest quality of programs the Canadian people can produce"
1944 Parliamentary Committee	"May your Committee point out that ever since 1928, every parliament, every political party, every parliamentary committee inquiring into the question has been in favour of a system similar to the one we now have." "The Canadian Broadcasting Corporation should keep up to date and be prepared to make effective any advances in modern radio. To meet this need your Corporation should have appropriated by Parliament to its use for these specific and other purposes sufficient moneys to meet their needs..."
1946 Parliamentary Committee	"Without any general review of the numerous declarations approving from time to time the said principles... of a nationally owned and operated radio system...your committee desires to reaffirm its belief in them and to express complete confidence in the frame work provided by the said Canadian Broadcasting Act."
March 28, 1949 Hon. J. J. McCann	"In making plans for television, the Government has been primarily concerned to provide that Canadians in various parts of Canada will have the opportunity to receive Canadian programmes."

1950 Parliamentary Committee	"Such a system linking together Canadians in all parts of the country and broadcasting a large volume of material produced by Canadians is of great importance to the people of Canada as a whole...It is obviously in the national interest that television in Canada should be essentially Canadian...and that it carry in large proportion Canadian material, produced by Canadians...Such a development will undoubtedly be more expensive..." "(Your Committee) does see the need for the establishment of some proper and adequate system of financing Canadian television development in the general national interest."
1951 Massey Commission	"...the existence of the nationally-controlled system of broadcasting was acknowledged as the only means whereby Canadian radio could have maintained a Canadian character." (P. 28) "If we in Canada are to have a more plentiful and better cultural fare, we must pay for it." (P. 272)
1951 Parliamentary Committee	"...the national broadcasting service carried on by the Canadian Broadcasting Corporation is essential in the development of our national life in Canada... Your committee is strongly impressed with the vital need for the development of a television system that is essentially Canadian and which gives expression...to Canadian ideas and aspirations."
Dec. 8, 1952 Hon. J. J. McCann	"The Government believes (television) should be so developed in Canada that it is capable of providing a sensible pattern of programming for Canadian homes with at least a good portion of Canadian content reflecting Canadian ideas and creative abilities of our own people and life in all parts of Canada."

1953 Parliamentary Committee	"Your committee is aware that production of adequate television programs in Canada is not easy from an economic point of view. It is also aware that the distribution nationally of such programs in this country is costly." "While (television) should naturally make available to Canadians suitable programs from outside Canada, it must in our national interest have a basis of programs produced by Canadians for Canadians."
1955 Parliamentary Committee	"Your Committee is mindful of the importance of television. It undoubtedly has a strong influence on people throughout the country, being a valuable medium for the promotion of national unity, and a source of education and entertainment. The evidence produced to your Committee confirms its views, however, that television is a costly and complicated medium of communication."

This rather long list, which is far from complete, seems to repeat two ideas clearly and without qualification: Canadians want Canadian broadcasting and they expect to have to pay for it.

One of the last-quoted statements—that of the Parliamentary Committee of 1953—must be one of the great understatements of modern Canadian history. Experience has proved beyond doubt that the production and distribution of television programmes in Canada "is not easy from an economic point of view." And it is going to get harder, rather than easier, in the years ahead. We see no escape either from the size of the present Canadian broadcasting bill or from the conviction that it should continue to increase for several years to come. In the current fiscal year, the net operating expenditure (after deducting commercial revenue) for CBC television and

radio combined will be over $38 million. If our estimates are correct, the net cost in 1963 of operating a *minimum* broadcasting service to achieve the stated national objectives of Canadian broadcasting policy, will be nearly $74 million.

These are very large sums. But to some extent at least, the attitude towards them depends on the point of view. To some, annual payments of this magnitude may remain staggering and impossible—the preservation of a distinctively Canadian broadcasting system is not, in their calculus of values, worth any such price. Some few, who are at heart social philosophers, may be able to adopt the attitude of Mr. Justice Holmes when he said "I like paying taxes—with taxes, I buy civilization"; and they may conclude that the taxes that go to pay for broadcasting services follow a peculiarly direct path to the market-place where humanizing and civilizing merchandise is offered for sale. Most of us, perhaps, may look upon these expenditures as a cooperative purchase of a daily service that we, as Canadians, want to buy; and we may be willing to set it beside the cost of other goods and services we jointly choose to buy, and try to measure what, in these enormous sums, we individually get and what we individually pay.

The current year's expenditure of over $38 million is made up approximately of $25.5 million for the net cost of television services and $12.5 million for radio services. This means that each household equipped with a television set will pay, on the average, 3 1/3 cents per day, and each radio-equipped household 9/10 of a cent per day. This, to a smoker, is almost the exact equivalent of the retail price of two cigarettes per day for each television household, and the price of one cigarette every two days for each radio household. Other comparisons suggest themselves, not in any sense as alternative choices for the taxpayer's expenditure, but as possible yardsticks by which an individual can measure his own share of public expenditures on broadcasting. If he is interested in news and public events, he may be impressed by the fact that the average cost of broadcasting to his household is almost exactly the same as the cost of a daily newspaper. If every householder who owns a television set in Canada takes his wife to a first run movie once every seven weeks throughout the year, the total expenditure on admission prices will equal net CBC expenditures on the television service.

Another method of weighing the cost of a widely used service is to look at the relation between the operating cost and the original capital investment. A man who buys a motor car for $3,000 and drives it 15,000 miles in a year pays over $300 for the gasoline required (apart from all other costs such as repairs, insurance and depreciation). This is over 10 per cent on the original investment. According to Dominion Bureau of Statistics figures, the Canadian people have chosen to invest a total of over $850 million in the purchase of television receiving sets. Some of these, perhaps, were purchased to view American programmes, but most were bought with the

intention of receiving Canadian programmes at least some of the time and, for over half of them, all the time. Under no compulsion, the Canadian people apparently decided to invest $850 million in their television sets. They are this year, collectively, paying out a little over $25 million in public money to put pictures on their television screens. This is about 3 per cent on the original investment, and we find it difficult to feel that this is an unreasonable annual rate.

One other yardstick for measuring our present and prospective public costs for the broadcasting service might be mentioned. It sometimes happens that the value we attach to something that is easily available is quite different from what we are prepared to pay for it if it is difficult to get. There are a number of places in Canada and the United States where, for a variety of reasons, it is impossible to receive reliable and satisfactory television signals. In many of these places, these difficulties have been overcome by the installation of community antenna systems. These systems pick up television signals by antennae placed on high hills or mountains and transmit the signals to the television sets of subscribers by coaxial cables. The general practice, in such systems, is for each subscriber to own his own receiving set and to pay an initial charge to have it connected to the coaxial cable and a monthly rental charge for the use of the system. Typical charges, we were told, are $100 to $125 for a connection to the system and $4 to $7 per month rental. Apparently some thousands of Canadians and tens of thousands of Americans place a value on television service, which they would not otherwise have been able to obtain, between three and six times what individual Canadian households are paying, on the average, today, through their public broadcasting system.

These comments on the size of our broadcasting bill are not made in order to minimize it or to suggest that Canada does not have to consider very carefully if expenditures of this magnitude are justified. They are only put forward in the hope that they will give a sense of proportion to the consideration that must be given to this problem. There are many voices readily available to raise a protest against the waste and unwisdom of any large public expenditure, and indeed we were ourselves startled when the financial picture of the CBC was first disclosed to us. We found it salutary to take a general view of the problem, and to relate these large sums to other services and activities in which the Canadian people have, in a tangible way, shown their interest....

Document 29

The Fowler Royal Commission on Broadcasting reported in March 1957 during the last months of the Liberal government of Louis St. Laurent. That government took no action on the report's recommendations because a general election was to occur in early summer. On 10 June the Progressive Conservatives under John Diefenbaker won a bare majority, and a second general election came within months. On 31 March 1958, 208 PCs were returned to form an overwhelming majority in the House of Commons. During the campaign the PCs had promised changes in broadcasting policy, and the speech from the throne outlined something that sounded a lot like the separate regulatory body long promoted by the private broadcasters.

In July 1958, while the government was preparing a new broadcasting act, the head of the CBC, Davidson Dunton, resigned. Intense lobbying by supporters of private and public broadcasting was followed by desultory debate in the Commons when the bill was presented in August; it soon passed. Part 1 of the new act defined a regulatory agency to which both the CBC and the private stations would be subservient. The new agency was to be called the Board of Broadcast Governors, the name suggested by the Fowler commission, but it revived debate about just what the Fowler-type board was, and whether this new board was it. Part 2 of this 1958 act redefined the corporate structure of the CBC. It would now be headed by a president, a vice president and nine other directors. The old CBC board of governors was gone, although the new CBC Board of Directors would still report directly to Parliament, despite the creation of the BBG with regulatory authority over both the CBC and the private stations.

DOCUMENT 29: Broadcasting Act, 6 September 1958, 7 Eliz. 2, c. 22.

An Act respecting Broadcasting

[*Assented to 6th September, 1958.*]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE.

1. This Act may be cited as the *Broadcasting Act.*

PART I.

BOARD OF BROADCAST GOVERNORS.

Interpretation.

2. In this Part,

(a) "Board" means the Board of Broadcast Governors established by this Part;

(b) "broadcasting" means the dissemination of any form of radioelectric communication, including radiotelegraph, radiotelephone, the wireless transmission of writing, signs, signals, pictures and sounds of all kinds by means of Hertzian waves, intended to be received by the public either directly or through the medium of relay stations;

(c) "Corporation" means the Canadian Broadcasting Corporation;

(d) "licence" means a licence issued under the *Radio Act* to establish a broadcasting station;

(e) "licensee" means a person licensed under the *Radio Act* to establish a broadcasting station; and

(f) "member" means a member of the Board.

Board Established

3. (1) There shall be a board, to be called the Board of Broadcast Governors, consisting of three full-time members and twelve part-time members to be appointed by the Governor in Council.

(2) Each full-time member shall be appointed to hold office during good behaviour for a period of seven years and each part-time member shall be appointed to hold office during good behaviour for a period of five years, except that any of the first three full-time members and any of the first twelve part-time members appointed after the coming into force of this Act may be appointed to hold office for a term less than the term of years prescribed in this subsection.

(3) Subject to subsections (5) and (6), a full-time member is eligible for re-appointment upon the expiration of his term of office, but a part-time member who has served two consecutive terms is not, during the twelve months following the completion of his second term, eligible for re-appointment.

(4) The Governor in Council shall designate one of the full-time members to be Chairman of the Board and one of the full-time members to be Vice-Chairman of the board.

(5) A member ceases to be a member of the Board upon attaining the age of seventy years.

(6) A person is not eligible to be appointed or to continue as a member of the Board if he is not a Canadian citizen, or if, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise, he is engaged in the business of broadcasting or has any pecuniary or proprietary interest in a broadcasting station or in the manufacture or distribution of radio apparatus.

(7) A member may be removed at any time by the Governor General on address of the Senate and House of Commons.

(8) A full-time member shall devote the whole of his time to the performance of his duties under this Part.

(9) Every member shall, before entering upon his duties as such, take and subscribe, before the Clerk of the Privy Council, an oath in the following form:

I DO SOLEMNLY SWEAR that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of a member of the Board of Broadcast Governors, and that, while I continue to hold such office, I will not, as owner, shareholder, director, officer, partner or otherwise, engage in the business of broadcasting or have any pecuniary or proprietary interest in a broadcasting station or in the manufacture or distribution of radio apparatus.

Head Office and Meetings.

4. (1) The head office of the Board shall be at Ottawa.

(2) The Board shall meet at least six times in each year.

(3) Nine members constitute a quorum of the Board.

(4) A vacancy in the membership of the Board does not impair the right of the remainder to act.

(5) The Board may make by-laws respecting the calling of meetings of the Board and the conduct of business thereat.

Chairman and Vice-Chairman.

5. (1) The Chairman is the chief executive officer of the Board, and has supervision over and direction of the work and the staff of the Board.

(2) If the Chairman is absent or is unable to act or the office is vacant, the Vice-Chairman has and may exercise all the powers and functions of the Chairman.

(3) The Board may authorize one or more of its members to act as Chairman for the time being in the event that the Chairman and Vice-Chairman are absent or unable to act or the offices are vacant.

Remuneration.

6. (1) The full-time members shall be paid a salary to be fixed by the Governor in Council, and the part-time members shall be paid a fee of one hundred dollars per day while attending a meeting of the Board or of a committee thereof.

(2) Each member is entitled to be paid reasonable travelling and other expenses incurred by him in the performance of his duties while away from his ordinary place of residence.

Staff

7. The officers and employees necessary for the proper conduct of the business of the Board shall be appointed under the provisions of the *Civil Service Act*.

Superannuation.

8. The full-time members of the Board and the persons appointed under section 7 shall be deemed to be persons employed in the Public Service for the purposes of the *Public Service Superannuation Act*.

Executive Committee.

9. (1) There shall be an Executive Committee of the Board consisting of the three full-time members and four part-time members appointed by the Board.

(2) The quorum of the Executive Committee is five.

(3) The Executive Committee shall exercise such of the powers and functions of the board as are delegated to it by the board, except the powers and functions of the board under sections 11 and 12 and the provisions of section 13 other than paragraph (b) of subsection (4) thereof.

(4) The Executive Committee shall submit at each meeting of the Board minutes of its proceedings since the last preceding meeting of the Board.

(5) The Board may appoint such other committees from among its members as the Board considers desirable.

Objects and Purposes.

10. The board shall, for the purpose of ensuring the continued existence and efficient operation of a national broadcasting system and the provision of a varied and comprehensive broadcasting service of a high standard that is basically Canadian in content and character, regulate the establishment and operation of networks of broadcasting stations, the activities of public and private broadcasting stations in Canada and the relationship between them and provide for the final determination of all matters and questions in relation thereto.

Regulations.

11. (1) The Board may make regulations for carrying out the purposes and provisions of this Part, and in particular, but without restricting the generality of the foregoing, may make regulations,

(a) respecting the minimum broadcasting times to be reserved for network programs by any broadcasting station operating as part of a network;

(b) respecting standards of programs;

(c) respecting the character of advertising and the amount of time that may be devoted to advertising;

(d) respecting the proportion of time that may be devoted to the broadcasting of programs, advertisements or announcements of a partisan political character and the assignment of such time on an equitable basis to all parties and rival candidates;

(e) for promoting and ensuring the greater use of Canadian talent by broadcasting stations;

(f) requiring licensees to broadcast network programs of public interest or significance;

(g) prescribing the terms and conditions for the operation of broadcasting stations as part of a network and the terms and conditions for the broadcasting of network programs;

(h) prescribing rules of procedure for making applications and representations to the Board and for the conduct of hearings before the Board; and

(i) requiring licensees to submit information to the Board regarding their programs, financial affairs and such other matters concerning their operations as the regulations may specify.

(2) The Board shall give notice in the *Canada Gazette* of its intention to make or amend a regulation that affects licensees and shall afford

licensees an opportunity of making representations to the Board with respect thereto.

Licences.

12. (1) The Minister of Transport shall,

(a) before dealing with an application under the *Radio Act* for

(i) the issue of a licence to establish a broadcasting station, or

(ii) an increase in power, a change of channel, or a change of location of a broadcasting station, or

(b) before making any regulations or changes in the regulations under the *Radio Act* governing the activities of broadcasting stations,

refer the application or regulation to the Board, and the Board shall give public notice thereof in the *Canada Gazette* and shall make such recommendation to the Minister of Transport as it deems fit.

(2) A licence for a new broadcasting station shall not be issued under the Radio Act without the approval of the Governor in Council.

(3) No recommendation shall be made by the board on any matter referred to it under subsection (1) unless it has held a public hearing at which the applicant, the Corporation and other interested licensees and applicants for licences have been given an opportunity of being heard.

(4) No recommendation to issue a licence shall be made unless, in the opinion of the Board, it would be consistent with the purposes of this Part and in the public interest to do so.

(5) Every licence issued before or after the coming into force of this Act is subject to the condition that the licensee will comply with the provisions of this Part and the regulations.

Networks.

13. (1) If pursuant to section 12 the Board recommends that a licence be issued, it may also recommend that the licence be issued subject to the condition that the licensee shall operate the broadcasting station to which the licence relates as part of a network operated by the Corporation, and, in such case, if the licence is issued, it shall be issued subject to such condition.

(2) The Board may, on the application of the Corporation, by order attach to a licence a condition that the licensee shall operate the broadcasting station to which the licence relates as part of a network operated by the Corporation, after a hearing at which the licensee has been given an opportunity of being heard.

(3) The Board may at any time, upon the application of a licensee who

holds a licence that is subject to a condition as described in subsection (1), or the Corporation, revoke or amend the condition after a hearing at which both the licensee and the Corporation have been given an opportunity of being heard.

(4) The Board may

(a) after it has held a public hearing at which the Corporation and other interested licensees have been given an opportunity of being heard, grant permission to a licensee to operate the broadcasting station to which his licence relates as part of a designated network other than one operated by the Corporation, or revoke any permission so granted; and

(b) grant or revoke permission to a licensee to operate the broadcasting station in respect of which his licence was issued as part of any network for the broadcasting of a particular program or a series of programs extending over a period not exceeding one month, but if the broadcasting station is operated as part of another network, no such permission shall be granted without the consent of the operator of such other network.

(5) The Board may, after it has held a public hearing at which the Corporation and other interested licensees have been given an opportunity of being heard, grant permission to any person to operate a network of broadcasting stations or revoke any permission so granted.

Non-Canadian Interests.

14. (1) The Board shall not recommend the issue of a licence or grant permission to operate a network of broadcasting stations unless the applicant therefor is

(a) a Canadian citizen, or

(b) a corporation incorporated under the laws of Canada or any province, the chairman or other presiding officer and at least two-thirds of the directors of which are Canadian citizens and at least three-fourths of the shares of which (having full voting rights under all circumstances) belong to

(i) Canadian citizens, or

(ii) a corporation other than a corporation controlled directly or indirectly by citizens or subjects of a country other than Canada.

(2) The Governor in Council may exempt from the operation of this section, upon such terms and conditions as the Governor in Council may prescribe, any person who, at the time of the coming into force of this Act, was the holder of a licence and was not a person described in paragraph (a) or (b) of subsection (1).

Suspension of Licences.

15. (1) Whenever in the opinion of the Board any licensee has violated or failed to comply with any condition to his licence as described in subsection (5) of section 12 or in subsection (1) of section 13, the Board may, after notice has been given to the licensee of the alleged violation or failure and an opportunity has been afforded to the licensee of being heard, order that the licence be suspended for a period not exceeding three months, but such order is not effective until the expiration of ten days after the making thereof.

(2) Any order made under subsection (1) shall be forwarded to the Minister of Transport who shall forthwith communicate the contents thereof to the licensee and shall take such steps as may be necessary to carry out the terms of the order.

(3) Where the Board orders the suspension of the licence under subsection (1), the licensee may by leave of a judge of the Exchequer Court of Canada appeal against the order to that Court on any question of law, and the Court may stay the operation of the order or suspension pending its final decision and may affirm, alter or rescind the order.

Prohibitions and Penalties.

16. (1) A licensee shall not operate a broadcasting station as part of a network unless

(a) it is a condition to the licence issued in respect of the station that he do so; or

(b) he has been granted permission by the Board under this Part to do so.

(2) A person shall not operate a network of broadcasting stations unless he has been granted permission by the board under this Part to do so.

17. (1) No licensee shall

(a) broadcast in dramatized form any program, advertisement or announcement of a partisan political character, or

(b) broadcast a program, advertisement or announcement of a partisan political character on any day that an election is held for the election of a member of the House of Commons, the legislature of a province or the council of a municipal corporation, or on the two days immediately preceding any such day.

(2) A licensee shall immediately preceding and immediately after broadcasting a program, advertisement or announcement of a partisan political character, identify the sponsor and the political party, if any, upon whose behalf the program, advertisement or announcement was broadcast.

18. Every person who violates any of the provisions of this Part or the regulations is guilty of an offence punishable on summary conviction as provided in the *Criminal Code*.

Report to Parliament.

19. The Board shall, within three months after the termination of each fiscal year, submit to the member of the Queen's Privy Council for Canada designated by the Governor in Council for the purpose a report on the activities of the Board under this Part for that fiscal year, and the member so designated shall cause the report to be laid before Parliament within fifteen days after the receipt thereof or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

Expenditures.

20. All expenditures for the purposes of this Part shall be paid out of money appropriated by Parliament therefor.

PART II.

CANADIAN BROADCASTING CORPORATION.

Interpretation.

21. In this Part,

(a) "broadcasting" means the dissemination of any form of radioelectric communication, including radiotelegraph, radiotelephone, the wireless transmission of writing, signs, signals, pictures and sounds of all kinds

by means of Hertzian waves, intended to be received by the public either directly or through the medium of relay stations;

(b) "Corporation" means the Canadian Broadcasting Corporation established by this Part;

(c) "director" means a director of the Corporation; and

(d) "Minister" means the member of the Queen's Privy Council for Canada who is designated by the Governor in Council as the Minister through whom the Corporation is to be accountable to Parliament for the conduct of its affairs.

Corporation Established.

22. (1) There shall be a corporation to be known as the Canadian Broadcasting Corporation consisting of a President, a Vice-President and nine other directors to be appointed by the Governor in Council.

(2) The President and Vice-President shall be appointed to hold office during good behaviour for a period of seven years, and the other directors shall be appointed to hold office during good behaviour for a period of three years, except that any of the first eleven directors appointed after the coming into force of this Act may be appointed to hold office for a term less than the term of years prescribed in this subsection.

(3) Subject to subsections (4) and (5), the President and Vice-President are eligible for re-appointment, but any other director who has served two consecutive terms is not, during the twelve months following the completion of his second term, eligible for re-appointment.

(4) A director ceases to be a director of the Corporation upon attaining the age of seventy years, and may be removed at any time, in the case of the President or Vice-President, by the Governor in Council for cause, and, in any other case, by the Governor General on address of the Senate and House of Commons.

(5) A person is not eligible to be appointed or to continue as a director of the Corporation if he is not a Canadian citizen, or if, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise, he is engaged in the business of broadcasting or has any pecuniary or proprietary interest in a broadcasting station or in the manufacture or distribution of radio apparatus.

(6) Every director shall, before entering upon his duties as such, take and subscribe, before the Clerk of the Privy Council, an oath in the following form:

I DO SOLEMNLY SWEAR that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of director of the Canadian Broadcasting Corporation, and that, while I continue to hold such office, I will not, as owner, shareholder, director officer, partner or otherwise, engage in the business of broadcasting or have any pecuniary or proprietary interest in a broadcasting station or in the manufacture or distribution of radio apparatus.

23. (1) The head office of the Corporation shall be at Ottawa.
(2) Seven directors constitute a quorum of the Corporation.
(3) A vacancy in the membership of the Corporation does not impair the right of the remainder to act.

President and Vice-President.

24. (1) The President is the chief executive officer of the Corporation, and has supervision over and direction of the work and the staff of the Corporation.
(2) If the President is absent or is unable to act or the office is vacant, the Vice-President has and may exercise all the powers and functions of the President.
(3) The Corporation may authorize one or more of its officers to act as President for the time being in the event that the President and Vice-President are absent or unable to act or the offices are vacant.

Remuneration.

25. (1) The President and Vice-President shall be paid a salary to be fixed by the Governor in Council, and the other directors shall be paid a fee of one hundred dollars per day while attending a meeting of the Corporation or a committee thereof.
(2) Each director is entitled to be paid reasonable travelling and other expenses incurred by him in the performance of his duties while away from his ordinary place of residence.

Staff.

26. (1) The Corporation may on its own behalf employ such officers and employees as it considers necessary for the conduct of its business, at such remuneration and upon such other terms and conditions as it deems fit, but the officers and employees so employed are not officers or servants of Her Majesty.
(2) The Corporation may by by-law establish a pension fund for the directors, officers and employees of the Corporation and their dependants and may contribute to it out of the money administered by the Corporation; and part of the pension fund may be invested in such manner as may be provided by by-law.
(3) Any director, officer or employee of the Canadian Broadcasting Corporation who, at the time of his appointment or employment under or

pursuant to this Part, held a position in the civil service, or was an employee within the meaning of the *Civil Service Act*, retains and is eligible to receive all the benefits, except salary as a civil servant, that he would have retained or been eligible to receive had he remained under that Act.

Agent of Her Majesty.

27. (1) Except as provided in subsection (1) of section 26, the Corporation is, for all purposes of this Act, an agent of Her Majesty, and its powers under this Act may be exercised only as an agent of Her Majesty.

(2) The Corporation may, on behalf of Her Majesty, enter into contracts in the name of Her Majesty or in the name of the Corporation.

(3) Property acquired by the Corporation is the property of Her Majesty and title thereto may be vested in the name of Her Majesty or in the name of the Corporation.

(4) Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the Corporation on behalf of Her Majesty, whether in its name or in the name of Her Majesty, may be brought or taken by or against the Corporation in the name of the Corporation in any court that would have jurisdiction if the Corporation were not an agent of Her Majesty.

Executive Committee.

28. The Corporation may from among its directors appoint an executive committee and delegate to it all or any of its powers under this Part, and the executive committee shall submit at each meeting of the Corporation minutes of its proceedings since the last preceding meeting of the Corporation.

Objects and Powers.

29. (1) The Corporation is established for the purpose of operating a national broadcasting service, and in particular, but without restricting the generality of the foregoing, has power to

(a) maintain and operate broadcasting stations and networks of broadcasting stations;

(b) establish, subject to approval of the Governor in Council, such broadcasting stations as the Corporation considers necessary or desirable;
(c) equip broadcasting stations with all such plant, machinery and other effects as it considers necessary or desirable;
(d) make operating agreements with broadcasting stations for the broadcasting of network programs;
(e) originate programs and secure programs, from within or outside Canada, by purchase or exchange and make arrangements necessary for their transmission;
(f) make contracts with any person, in or outside Canada, in connection with the production or presentation of the programs of the Corporation;
(g) make contracts with any person, in or outside Canada, to perform in connection with the programs of the Corporation;
(h) publish and distribute, whether gratis or otherwise, such papers, periodicals and other literary matter as may seem conducive to any of the objects of the Corporation;
(i) collect news relating to current events in any part of the world and in any manner that it deems fit and to establish and subscribe to news agencies;
(j) acquire copyrights and trade marks;
(k) acquire and use any patent, or patent rights, *brevets d'invention*, licences or concessions that the Corporation may consider useful for the purpose of carrying out its objects;
(l) make arrangements or agreements with any organization for the use of any rights, privileges or concessions that the Corporation may consider useful for the purpose of carrying out its objects;
(m) acquire broadcasting stations either by lease or, subject to the approval of the Governor in Council, by purchase, and
(n) do all such other things as the Corporation may deem incidental or conducive to the attainment of any of the objects or the exercise of any of the powers of the Corporation.

(2) The Corporation is bound by the provisions of Part I.

30. The Corporation may purchase, lease or otherwise acquire any real or personal property that the Corporation may deem necessary or convenient for the purposes of its business, and may sell, lease or otherwise dispose of all or any part of the property of the Corporation, but the Corporation shall not, without the approval of the Governor in Council, acquire or dispose of any real or personal property, other than program material or rights therein, for a consideration in excess of one hundred thousand dollars, or enter into a lease or other agreement relating to the use or occupation of real property for a consideration in excess of one hundred thousand dollars or enduring for a period in excess of five years.

31. The Corporation may make by-laws respecting the calling of meetings of the Corporation, the conduct of business thereat, the duties and conduct of the directors, for the management of the affairs of the Corporation, including the designation of one or more of its officers as vice-presidents in addition to the Vice-President appointed under section 22, but the expression "Vice-President" in this Part does not include any person so designated.

32. (1) The Corporation may, with the approval of the Governor in Council, take or acquire lands for the purposes of this Part without the consent of the owner, and, except as otherwise provided in this section, all the provisions of the *Expropriation Act*, with such modifications as circumstances require, are applicable to and in respect of the exercise of the powers conferred by this section and the lands so taken or acquired.

(2) For the purposes of section 9 of the *Expropriation Act* the plan and description may be signed by the President or Vice-President of the Corporation.

(3) The compensation for lands taken or acquired under this section, or for damage to lands injuriously affected by the construction of any work by the Corporation, shall be paid by the Corporation as though the lands were acquired under the other provisions of this Part, and all claims against the Corporation for such compensation of damages may be heard and determined in the Exchequer Court of Canada in accordance with sections 46 to 49 of the *Exchequer Court Act*; but nothing in this subsection shall be construed to affect the operation of section 34 of the *Expropriation Act*.

Financial Provisions.

33. (1) The Corporation shall maintain in its own name one or more accounts in the Bank of Canada, or in a chartered bank designated by the Minister of finance.

(2) All money received by the Corporation through the conduct of its operations or otherwise shall be deposited to the credit of the accounts established pursuant to subsection (1) and shall be administered by the Corporation exclusively in the exercise and performance of its powers, duties and functions.

(3) The Corporation may invest any money administered by it in bonds of or guaranteed by the Government of Canada.

(4) The Corporation shall in its books of account establish a Proprietor's Equity Account and shall credit thereto the amount of all money paid to the Corporation for capital purposes out of Parliamentary appropriations.

34. (1) The Corporation is a proprietary corporation within the meaning and for the purposes of the *Financial Administration Act*.

(2) The accounts and financial transactions of the Corporation shall be audited annually by the Auditor General of Canada.

35. (1) The Minister shall annually lay before Parliament a capital budget and an operating budget for the next ensuing financial year of the Corporation, approved by the Governor in Council on the recommendation of the Minister and the Minister of Finance.

(2) Within one year after the coming into force of this Act and every fifth year thereafter the Corporation shall submit to the Minister and the Minister of Finance for submission to the Governor in Council a five-year capital program proposed by the Corporation together with a forecast of the effect of the program on the Corporation's operating requirements.

Report to Parliament.

36. The Corporation shall, within three months after the termination of its financial year, submit to the Minister a report on the operations of the Corporation for that financial year, and the Minister shall cause the report to be laid before Parliament within fifteen days after the receipt thereof or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

PART III.

TRANSITIONAL AND REPEAL.

37. The regulations made under the *Canadian Broadcasting Act* and in force at the coming into force of this Act shall be deemed to have been made under Part I and shall continue in force until repealed or altered by the Board of Broadcast Governors under the authority of Part I.

38. The Corporation established by the *Canadian Broadcasting Act* and the Corporation established by Part II of this Act are hereby declared for all purposes to be one and the same Corporation.

39. (1) Upon the coming into force of this Act the Canadian Broadcasting Corporation shall pay to the Receiver General of Canada such part of the working capital of the Corporation as the Minister of Finance determines to be in excess of six million dollars, to be applied in reduction of the indebtedness of the Corporation to Her Majesty in respect

of loans made by or on behalf of Her majesty to the Corporation, and the remainder of such indebtedness is hereby extinguished.

(2) The amount of the indebtedness extinguished by virtue of subsection (1) and the amount of the capital surplus of the Corporation at the coming into force of this Act as determined by the Minister of Finance shall be credited to the Proprietor's Equity Account in the books of the Corporation.

40. Where at the coming into force of this Act a licensee is operating a broadcasting station as part of a network operated by the Canadian Broadcasting Corporation, the licence relating to that station shall be deemed to be subject to a condition to that effect as described in subsection (1) of section 13, and the Canadian Broadcasting Corporation shall be deemed to have been granted permission under Part I to operate the network.

41. (1) The *Canadian Broadcasting Act* is repealed.

(2) The repeal of the *Canadian Broadcasting Act* does not affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under section 13 of that Act prior to the coming into force of this Act.

42. The Act shall come into force on a day to be fixed by proclamation of the Governor in Council.

Document 30

The 1958 Broadcasting Act had been presented to the House by George Nowlan, the Minister of National Revenue. In November, he announced the members of the new Board of Broadcast Governors. The three full-time members were Andrew Stewart, president of the University of Alberta; Roger Duhamel, editor of *La Patrie* in Montreal; and Carlyle Allison, editor-in-chief of the Winnipeg Tribune.

There were 12 other members of the BBG, at least one from every province. None had a broadcasting background. They were Joseph F. Brown, a Vancouver florist; Dr. Mabel G. Connell, the Prime Minister's dentist from Prince Albert; Dr. Emlyn Davies, a Baptist minister from Toronto; Edward A. Dunlop, director of the Canadian Arthritis and Rheumatism Society; Dr. Eugene Forsey, the constitutional expert from Ottawa; Guy Hudon, Laval University's dean of law; Yvan Sabourin, a Montreal lawyer; Mrs. R. G. Gilbride, a Montreal volunteer organizer; University of New Brunswick president Colin B. Mackay; Roy Duchemin, managing director of the *Cape Breton Post*; Colonel J. David Stewart, president of the Canadian Federation of Mayors and Municipalities; and Robert S. Furlong, a lawyer from St. John's.

At the same time as the BBG appointments, Nowlan picked two long-time top CBC executives , Alphonse Ouimet and Ernest Bushnell, to be president and vice-president of the newly constituted CBC. The BBG years from 1958 to 1966 saw the creation of CTV, the Canadian Television Network, as well as jurisdictional disputes between the BBG and the CBC and a revised set of regulations for broadcasting stations of all kinds. The first revision in July 1959 was essentially the old CBC regulations with only minor changes and is not reproduced here. But in November 1959, a year after the new Broadcasting Act came into force, the BBG issued a set of regulations for TV stations. This was the first time television had acquired regulations separate from those governing radio. There were adjustments to acknowledge visual as well as audio signals and a more detailed section on network broadcasting. But a new section (6) requiring definite amounts of Canadian content, drew the most attention. These obligatory quotas were the first since the Canadian Radio Broadcasting Commission's 60-percent requirement in 1933 (Document 18). These regulations went into effect 1 July 1960, except subsection 2 of section 5, which went into effect 15 November 1959.

DOCUMENT 30: "Radio (TV) broadcasting regulations," Statutory Orders and Regulations 59–456, *Canada Gazette*, Part 2, 9 December 1959.

REGULATIONS RESPECTING RADIO (TV) BROADCASTING

Short Title

1. These Regulations may be cited as the *Radio (TV) Broadcasting Regulations*.

Interpretation

2. In these Regulations,
(a) "Act" means the Broadcasting Act;
(b) "affiliation" means a contract or commitment to carry a specified amount of programming provided by a network;
(c) "Board" means the Board of Broadcast Governors;
(d) "broadcast time" means total hours of broadcasting by any station in the twenty-four hour period;
(e) "Corporation" means the Canadian Broadcasting Corporation;
(f) "network" means an organization or arrangement employing or involving electronic connections (including connections by means of Hertzian waves and cables) between two or more stations for the presentation of programs, but does not include the operation of a licensed satellite station;
(g) "private station" means any television broadcasting station in Canada not operated by the Corporation;
(h) "representative of the Corporation" means the President or the Vice President of the Corporation or any person authorized by the President to represent the Corporation;
(i) "representative of the Board" means the Chairman or Vice Chairman of the board or any person authorized by the Chairman to represent the Board;
(j) "reproduction" means a recording of any broadcast material by electrical, optical or mechanical means;
(k) "stations" means any television station licensed under the Radio Act, as a private commercial broadcasting station, and includes stations owned by the Corporation; and
(l) "TV" means television.

Application

3. These Regulations apply to all stations and networks in Canada and to all matter broadcast by such stations and networks.

Program Logs

4. (1) Each station shall maintain a program log, in a form acceptable to the Board, and shall cause to be entered therein each day the following information:
   (a) the dates;
   (b) the call letters, location and channel of the station;
   (c) the times at which station identification announcements were made;
   (d) the title and brief description of each program broadcast, the name of the sponsor or sponsors if any, the time at which the program began and ended, a notation whether the program was reproduced or was a live origination and a designation indicating Canadian content classification;
   (e) The time and duration of every commercial spot or commercial flash announcement broadcast, and the name of the sponsor, if any;
   (f) the name of the speaker on any talks program and the auspices, if any, under which the talk was given;
   (g) the name of any candidate for public office speaking on a political broadcast and his political affiliation if any; and
   (h) the name of every person speaking on a political broadcast on behalf of a political party or candidate together with the name of the party or candidate on whose behalf the talk was given.

   (2) In making entries in the program log, key letters or abbreviations may be used if the explanation of each is given in the log.

   (3) All times mentioned in the program logs shall be local time and shall be clearly identified on the log; for example, "Eastern Standard Time", "Central Standard Time".

   (4) Each station shall present to the Board within seven days of the end of each week its program log for that week carrying the endorsation of the Manager of the station, or other officers authorized by the Board, in the following words:

"This is to certify that the undersigned has inspected the foregoing station log. According to the information supplied me and to the best of my knowledge, information and belief, this log represents a true and accurate picture of the station's operation for the week in question."

(5) Unless otherwise instructed by the Board, each station shall have available for a period of six months and produce to a representative of the Board on request;

(a) the continuity used for any program, spot or flash announcement broadcast by the station, and

(b) the manuscript or audio reproduction of any broadcast of a talk or speech from that station.

(6) Each station shall furnish upon request of a representative of the Board such additional information in connection with its activities as the Board considers necessary for the proper administration of the Act and these Regulations.

Broadcasting Generally

5. (1) No station or network shall broadcast:

(a) anything contrary to law;

(b) any abusive comment or abusive pictorial representation on any race, religion or creed;

(c) any obscene, indecent or profane language or pictorial presentation;

(d) any false or misleading news;

(e) any contest or program purporting to be a contest, the results of which are known in advance of or are known to have been determined in advance of such contest or program;

(f) any program on the subject of birth control, or venereal disease, unless that program is presented in a manner and at a time approved by a representative of the Board as appropriate to the medium of broadcasting;

(g) any advertising content in the body of a news broadcast, and for the purpose of this section a summary is deemed to be a part of the body of the broadcast;

(h) except with the consent in writing of a representative of the board, any appeal or donations or subscriptions in money or kind on behalf of any person or organization other than

(i) a church or religious body permanently established in Canada and serving the area covered by the station,

(ii) a recognized charitable institution or organization,

(iii) a university, or

(iv) a musical or artistic organization whose principal aim or object is not that of monetary gain; or

(i) any program involving a lottery, gift enterprise or similar scheme in which the contestant or competitor pays any sum of money in order to be eligible for a prize.

(2) No station shall extend its regular hours of broadcasting into or during the period from six o'clock in the forenoon until twelve o'clock noon, local time, without first submitting to the Board an outline of its proposed programming for the added period and satisfying the Board that it has facilities and resources to program effectively during the added period.

Canadian Content

6. (1) During any period of four weeks, not less than 55 % of the broadcast time of any station or network shall be devoted to programs that are basically Canadian in content and character.

(2) For the purposes of subsection (1), the first four week period shall commence on the first Sunday following or including April 1st in any year, and subsequently four week periods shall be measured consecutively from the end of the first such period.

(3) Not withstanding the provisions of this section, there shall be no specified minimum percentage of broadcast time of stations or networks devoted to programs that are basically Canadian in content and character prior to April 1st, 1961; and from April 1st, 1961 to March 31st, 1962 inclusive, the minimum percentage of broadcast time so devoted shall be 45 %.

(4) For the purposes of this section, "programs that are basically Canadian in content and character" shall, *inter alia*, include:

(a) any program produced by a licensee
  (i) in his studio, or using his remote facilities, and
  (ii) to be broadcast initially by the licensee;
(b) news broadcasts;
(c) news commentaries;
(d) broadcasts of events occurring outside Canada in which Canadians are participating;
(e) broadcasts of programs featuring special events outside Canada, and of general interest to Canadians;
(f) subject to subsection (5), programs produced outside Canada,
  (i) in Commonwealth countries, or
  (ii) in French language countries, and

(g) programs of films or other reproductions which have been made in Canada if

(i) the producing company is incorporated under the laws of Canada or any Province and has a majority of Canadian Directors,

(ii) an application has been submitted to the board presenting evidence of Canadian and non Canadian content in a form prescribed by the Board, and

(iii) the Board, after consideration of the balance of elements going into the production has approved a Canadian content classification.

(5) For the purposes of this section, in computing the portion of Canadian content of the broadcast time of any station or network, there may be included,

(a) programs produced outside Canada in Commonwealth countries, to the extent of one-half of the program time of such programs, but the total program time used for this purpose shall not exceed 1/3 of the broadcast time of a station or network; and

(b) programs produced outside Canada in French language countries, to the extent of one-half of the program time of such programs, but the total program time used for this purpose shall not exceed 1/4 of the broadcast time of the station or network.

(6) Where, in the opinion of the Board the objects and purposes of the Act would be more fully realized by requiring a licensee to make his facilities available at certain hours for programming by other parties, the Board, after hearing representations from the licensee at a public hearing, may require the licensee to enter into program contracts with other parties subject to such fair and equitable conditions as may be prescribed by the Board.

Political Broadcasts

7. (1) Each station shall allocate time from the broadcasting of programs, advertisements or announcements of a partisan political character on an equitable basis to all parties and rival candidates.

(2) Political programs, advertisements or announcements shall be broadcast by stations in accordance with the direction of the Board issued from time to time respecting:

(a) the proportion of time which may be devoted to the broadcasting of programs, advertisements or announcements of a partisan political character, and

(b) the assignment of time to all political parties and rival candidates.

Advertising Content

8. (1) No station shall broadcast any program of the length set out in column (1) the advertising content of which exceeds the time set out in column (2).

(1) Length of Program (Minutes)	(2) Length of Advertising Message (Minutes and Seconds)
5	1:15
10	2:10
15	3:00
20	3:30
25	4:00
30	4:15
40	5:00
45	5:45
60	7:00

(2) No station shall broadcast paid spot or flash advertisements that exceed five in number or four minutes in total time during any fifteen minute period, except that a station may average the above quotas over any one clock-hour period.

(3) Subsection (2) does not apply to a station during the period of a major emergency within the area served by the station.

Advertising Generally

9. (1) No station shall broadcast any program or any spot or flash announcement sponsored by any person for the purpose of promoting
   (a) any act or thing prohibited by the law of Canada or of the Province in which the station is located;
   (b) any insurance corporation not authorized by law to carry on business in Canada;
   (c) the sale of bonds, shares or other securities, except securities of the Government of Canada or of any Province, Municipality or other public authority; or
   (d) the sale of mining, oil or natural gas property or any interest in any mining, oil or natural gas property.

(2) Subsection (1) does not apply to the broadcasting of a sponsored program of general quotations of market prices, presented without comment.

(3) The Board may, by notice in writing to any station, require that station to modify the character of any advertisement broadcast by the station, where, in the opinion of a representative of the Board, the advertisement is of an offensive or objectionable nature.

Spirituous Liquors, Beer and Wine

10. (1) Subject to subsection (2) no station shall broadcast any program or spot or flash announcement,

(a) advertising directly or indirectly, any Spirituous Liquor or any Beer, or Wine; or

(b) sponsored by or on behalf of any person or persons whose principal business is the manufacture or sale of Spirituous Liquor, Beer or Wine.

(2) Where in any province, the advertising of Beer and Wine is permitted, a program of not less than ten minutes duration sponsored by a brewery or winery may be broadcast, subject to the following conditions:

(a) the program shall contain no advertising other than sponsorship announcements;

(b) sponsorship announcements may be made only at the beginning and end of the program, but where the program is a program of more than ten minutes duration the name of the sponsor may be introduced at intervals of not less than fifteen minutes in program announcements;

(c) the form of sponsorship announcements shall be in accordance with the following examples:

"This program is presented with the compliments of the ABC Brewery." or

"This program has been presented with the compliments of the ABC Brewery."

(d) no other announcements shall be made or devices used in any such program to advertise directly or indirectly the product of the sponsor; and

(e) the program format, the form of the sponsorship announcements, and the continuity to be used must be approved in advance of the broadcast by a representative of the Board.

Food and Drugs; Proprietary or Patent Medicines

11. (1) No station shall broadcast any advertisement or testimonial for any article to which the Proprietary or Patent Medicine Act or the Food and Drugs Act applies unless the continuity of the advertisement or testimonial has been approved by the Department of National Health and Welfare and by a representative of the Board and bears the registration number assigned by the Board.

(2) No station shall broadcast any recommendation for the prevention, treatment or cure of a disease or ailment unless the continuity thereof has been approved by the Department of National Health and Welfare and by a representative of the Board and bears the registration number assigned by the Board.

(3) Continuities submitted for approval pursuant to this Regulation shall be forwarded to the Board in triplicate at least two weeks in advance of intended use.

(4) Inspectors of the Food and Drugs Division, Department of National Health and Welfare, are authorized to act as representatives of the Board for the purposes of the enforcement of this section.

Programs of the Corporation

12. (1) Time to be reserved by a private station for broadcast of programs of the Corporation is such as may be agreed on between the station and the Corporation, or, failing agreement, by decision of the Board.

(2) Any time reserved for broadcast of programs of the Corporation shall, except with consent of a representative of the Board, be used exclusively for programs of the Corporation.

(3) Stations may be required to broadcast network programs of public interest or significance as determined by the Board.

Rebroadcasting

13. Except with the consent in writing of a representative of the Board no station shall pick up and rebroadcast any program or portion thereof.

Chain Broadcasting

14. (1) Except with the consent of a representative of the Board or in accordance with the licence of the station, no station shall operate as a part of a network inside or outside Canada, but this section shall not be construed so as to preclude a station without reference to the Board from entering into agreements from time to time to carry reproductions of particular programs or series of programs produced by networks or stations operating inside or outside Canada.

(2) Except with the consent of the Board or in accordance with the licence of the station, no station or network shall enter into an affiliation with any network or station operating outside or inside Canada but provided a minimum of Canadian content as required by these Regulations in its programming is being maintained by a station or network this subsection shall not be construed so as to preclude a station or network without reference to the Board, from entering into agreements from time to time to carry reproductions of particular programs or series of programs produced by networks or stations operating outside or inside Canada.

(3) Except with the consent of a representative of the Board, no station shall broadcast a reproduction of a program originating from a network outside of Canada and which has been carried by a network in Canada, during a period of one month after the original broadcast on the Canadian network.

(4) The Board may amend or revoke its approval of a network affiliation of any station given under section 13 of the Act if, in the opinion of a representative of the Board a broadcasting service which is basically Canadian in content and character is not being maintained.

Document 31

The following amendments by the Board of Broadcast Governors to the TV regulations deal with commercial policy. In 1962, the BBG began to allow more commercial time as a reward for Canadian content, as can be seen in SOR 62-179 below. Thus the two categories—commercial policy and Canadian content—are mixed here.

DOCUMENT 31: Radio (TV) Broadcasting Regulations, Statutory orders and regulations 59-456, *Canada Gazette*, Part 2, 9 December 1959, as amended 1960-1965, 1967.

SOR/60-470, 26 October 1960.

Radio (TV) Broadcasting Regulations, amended

5. (1) Subsection (1) of section 8 of the said Regulations is amended by revoking all that part thereof preceding the schedule set out therein and substituting therefor the following;

"8. (1) No station or network operator shall broadcast any program of the length set out in column (1) the advertising content of which exceeds the time set out in column (2)".

(2) Subsection (2) of the said section 8, is revoked and the following substituted therefor:

"(2) No station or network operator shall broadcast paid spot or flash advertisements that exceed five in number or four minutes in total time during any fifteen minute period, except that a station may average the above quotas over any one clock-hour period."

SOR/61-122, 12 April 1961:

Radio (TV) Broadcasting Regulations, amended

SCHEDULE

1. Paragraph (c) of subsection (2) of section 10 of the *Radio (TV) Broadcasting Regulations* is revoked and the following substituted therefor:

"(c) the form of sponsorship announcements shall be as follows:

(i) they shall consist of the fill, which may be of any length up to the limits determined by subsection (1) of section 8 and the announcements, which shall not exceed twelve seconds duration;

(ii) a three-second bridge in the video portion will be allowed between the fill and the announcement;

(iii) no other reference to the sponsor or his products will be allowed in either the audio or video parts of the fill;

(iv) in the sponsorship announcement, the audio portion shall, subject to subparagraph (v), be in accordance with one of the following examples, in whole or in part:

"This program is presented with the compliments of the ABC Brewery", or

"This program is presented with the compliments of the ABC Brewery, brewers of XYZ Ale", or

"This program is presented with the compliments of XYZ Ale";

(v) the video portion shall consist of

(A) a visual representation of the product label, or

(B) a visual representation of the product label together with a sponsorship announcement as set forth in subparagraph (iv), in whole or in part, superimposed, but where only part of the sponsorship announcement is in the video portion, the balance shall be in the audio portion."

SOR/62-179, 23 May 1962

Radio (TV) Broadcasting Regulations, amended

3. (1) Subsection (3) of section 6 of the said Regulations is revoked and the following substituted therefor:

"(3) During each period of four weeks commencing after September 30, 1962, between the hours of six o'clock in the afternoon and twelve o'clock midnight each station and network shall devote to programs that are basically Canadian in content and character an aggregate of at least forty per cent of its broadcast time."

(2) Subsection (5) of section 6 of the said Regulations is revoked and the following substituted therefor:

"(5) For the purposes of this section, in computing the portion of Canadian content of the broadcast time of any station or network, there may be included,

(a) in the case of programs produced outside Canada in Commonwealth countries, per four-week period

(i) the full program time of those programs to the extent of twenty-eight hours, and

(ii) one-half of the program time of those programs thereafter;

(b) in the case of programs produced outside Canada in French-language countries, one-half of the program time of those programs; and

(c) in the case of programs produced outside Canada in countries other than Commonwealth and French-language countries in which programs, the audio portion thereof that is converted to either English of French by a process of lip synchronization done in Canada, one-quarter of the program time of those programs,

except that the aggregate program hours included pursuant to paragraphs (a), (b) and (c) shall not exceed one-third of the broadcast time of a station or network in any four-week period."

4. Section 8 of the said Regulations is revoked and the following substituted therefor:

"8. (1) Subject to subsection (2), no station or network operator shall broadcast any sponsored program of the length set out in Column

I of the Schedule to this section, the advertising content of which exceeds the time set out opposite to the length of the program in Column II thereof.

(2) Where a station or network operator broadcasts any sponsored program that qualifies as Canadian in content and character under paragraph (a), (aa), (b), (c) or (g) of subsection (4) of section 6, the advertising content of that program may exceed the time set out opposite to the length of the program in Column II of the Schedule to this section but shall not exceed the time set out opposite to the length of that program in Column III thereof.

(3) No station or network operator shall, during any one-hour period, broadcast more than twenty commercial messages the aggregate duration of which shall not exceed sixteen minutes.

(4) Subsection (3) does not apply to a station during the period of a major emergency within the area served by the station.

SCHEDULE

COLUMN I Length of Program (Minutes)	COLUMN II Length of Advertising Message (Minutes and Seconds)	COLUMN III Length of Advertising Message (Minutes and Seconds)
5	1:15	1:25
10	2:10	2:30
15	3:00	3:30
20	3:30	4:10
25	4:00	4:50
30	4:15	5:15
40	5:00	6:20
45	5:45	7:15
60	7:00	9:00

SOR/63-346, 25 September 1963

Radio (TV) Broadcasting Regulations, amended

SCHEDULE

1. Subsection (1) of section 2 of the *Radio (TV) Broadcasting Regulations* is amended by adding thereto, immediately after paragraph (b) thereof, the following paragraph:

"(ba) "Billboard" means an announcement at the commencement or end of any program naming the sponsor, if any;"

2. Subsection (2) of section 10 of the said Regulations is revoked and the following substituted therefor:

"(2) Where in any province the advertising of beer and wine is permitted, a program or program segment of not less than ten minutes' duration, sponsored by a brewery or winery, may be broadcast subject to the following conditions:

(a) the advertising shall not be designed to promote the general use of beer or wine, but this prohibition shall not be construed so as to prevent industry, institutional, public service or brand preference advertising;

(b) spot and flash announcements are prohibited;

(c) no opening or closing billboard identifying the sponsor or his product or both by label, symbol, name, slogan or music shall exceed ten seconds in length;

(d) no commercial announcement shall exceed sixty seconds' duration;

(e) a program of a length set out in Column I of the Schedule to this subsection shall contain not more than two billboards and not more than

(i) the number of commercial announcements set out in respect of a non-Canadian program of that length in Column II of that Schedule, or

(ii) the number of commercial announcements set out in respect of a Canadian program of that length in column III of that Schedule;

(f) no announcements other than the commercials and billboards allowed under paragraph (e) shall be made or devices used in any program to advertise directly or indirectly the sponsor or his product, except that in programs sponsored alternately with another sponsor, one commercial position may be traded with that alternate sponsor; and

(g) no billboard or commercial announcement shall be broadcast unless it is approved by a representative of the Board prior to broadcast.

Schedule

Column I	Column II	Column III
Length of Program in Minutes	Number of Commercial Announcements Non-Canadian Programs	Number of Commercial Announcements Canadian Programs
10	2	2
15	2	2
30	3	4
45	4	5
60	6	7
90	9	10

SOR 64-248, 8 July 1964.

Radio (TV) Broadcasting Regulations, amended

2. (1) Subsection (3) of section 8 of the said Regulations is revoked and the following substituted therefor:

"(3) No station or network operator shall during any period of sixty minutes commencing on each hour and terminating immediately prior to the next hour following broadcast more than sixteen commercial messages, the aggregate duration of which shall not exceed twelve minutes".

(2) Section 8 of the said Regulations is further amended by adding thereto the following subsection:

"(5) For the purpose of this section, "commercial message" includes commercial announcements, station promotion announcements and program promotion announcements, but does not include public service announcements".

SOR/64-399, 14 October 1964

Radio (TV) Broadcasting Regulations, amended

SCHEDULE

1. Subsection (1) of section 2 of the *Radio (T.V.) Broadcasting Regulations* is amended by adding thereto, immediately after paragraph (e) thereof, the following paragraph:

> "(ea) "commercial message" means any commercial announcement;"

2. Paragraph (e) of subsection (1) of section 4 of the said Regulations is revoked and the following substituted therefor:

> "(e) the time, duration and name of the sponsor of every commercial message, except that in the case of sponsored programs only the total time of the commercial messages and the name of the sponsor is required to be entered;"

3. (1) Subsections (1) and (2) of section 8 of the said Regulations are revoked and the following substituted therefor:

> "8. (1) Subject to subsection (2), no station or network operator shall broadcast any sponsored program of a length set out in Column I of the Schedule to this section that includes commercial messages the aggregate length of which exceeds the period set out opposite to the length of the program in Column II of that Schedule.

(2) Where a station or network operator broadcasts any sponsored program that qualifies as Canadian in content and character under paragraphs (a), (b), (c), (d) or (h) of subsection (4) of section 6 the program may include commercial messages the aggregate length of which exceeds the period set out opposite to the length of the program in Column II of the Schedule to this section but those commercial messages shall not have an aggregate length in excess of the period set out opposite the length of the program in Column III of that Schedule."

(2) Subsection (5) of section 8 of the said Regulations is revoked.

(3) The headings of the Columns to the Schedule to section 8 of the said Regulations are revoked and the following substituted therefor:

COLUMN I	COLUMN II	COLUMN III
Length of Program	*Length of Commercial Messages*	*Length of Commercial Messages*
(Minutes)	*(Minutes and Seconds)*	*(Minutes and Seconds)*

SOR/65-533, 8 December 1965.

Radio (TV) Broadcasting Regulations, amended

SCHEDULE

1. Paragraph (e) of subsection (1) of section 2 of the *Radio (TV) Broadcasting Regulations* is revoked and the following substituted therefor:

"(da) "broadcast time" means the total hours of broadcasting by any station in a twenty-four hour period;

(e) "clock hour" means a period of sixty minutes commencing on each hour and to terminate immediately prior to the hour next following;"

2. Section 8 of the said Regulations is revoked and the following substituted therefor:

"8. (1) Subject to subsection (2), no station or network operator shall, during any clock hour, broadcast commercial messages the aggregate duration of which exceeds twelve minutes.

(2) A station or network operator may, during any clock hour, broadcast commercial messages the aggregate duration of which exceeds twelve minutes but does not exceed thirteen minutes if, during either the immediate preceding or succeeding clock hour, the aggregate duration of commercial messages is reduced by an amount equal to the excess time over twelve minutes which was broadcast."

SOR/67-102, 8 March 1967.

Radio (TV) Broadcasting Regulations, amended

SCHEDULE

1. (1) Subsection (1) of section 2 of the *Radio (TV) Broadcasting Regulations* is amended by adding thereto, immediately after paragraph (da) thereof, the following paragraph:

"(db) 'classified announcement' means an announcement respecting goods or services offered or sought by persons not normally engaged in business of dealing in those goods or services;"

(2) Paragraph (ea) of subsection (1) of section 2 of the said Regulations is revoked and the following substituted therefor:

"(ea) 'commercial message' means any commercial announcement and includes any announcement that mentions an advertiser, any product or service of an advertiser or any activity being promoted by an advertiser, including any such mention in a list of prizes, but does not include any classified announcement or any announcement made on behalf of a station or a network that does not contain the name of any other advertiser or his products;"

2. The said Regulations are further amended by adding thereto, immediately after section 7 thereof, the following heading and section:

"*Classified Announcement Programs.*

7A. A station operator may, on any day, broadcast one program consisting of classified announcements if the program

(a) has a duration of not less than fifteen minutes and not more than one hour;
(b) is broadcast after midnight and before four o'clock in the afternoon: and
(c) is identified as a classified announcement program in the log of the station."

Document 32

These amendments to the TV regulations deal with Canadian content. The absolute goal of 55 per cent was modified considerably.

DOCUMENT 32: Radio (TV) Broadcasting Regulations, statutory orders and regulations 59–456, as amended 1960, 1962–1964.

[SOR/60-172, 27 April 1960]

Radio (TV) Broadcasting Regulations, amended

SCHEDULE

1. Paragraph (g) of subsection (4) of section 6 of the *Radio (TV) Broadcasting Regulations* is revoked and the following substituted therefor:

"(g) programs of films or other reproductions which have been made in Canada, if

(i) the maker is a Canadian citizen, ordinarily resident in Canada or a company incorporated under the laws of Canada or of a province and a majority of its directors are Canadian citizens,

(ii) an application in a form prescribed by the Board has been submitted to the Board presenting evidence of Canadian and non-Canadian content, and

(iii) the Board, after considering the evidence contained in the application, has approved the production as one of Canadian content and character."

2. The said Regulations are further amended by adding thereto, immediately after section 9 thereof, the following section:

"9A (1) Where, in the opinion of a representative of the Board, a promotional program broadcast by a station is of an offensive or objectionable nature, or is likely to create or contribute to any public disturbance or disorder, that representative may, by notice in writing, require that station to show cause, in the manner and within the time indicated in the notice, why the character of that program should not be modified.

(2) If the Executive Committee of the Board is not satisfied that the station has shown cause in the manner and within the time prescribed by the notice described in subsection (1) as to why the character of the promotional program described in that subsection should not be modified, the Board may by written notice require that station to make such modifications to the program as the Board may deem necessary."

[SOR/62-225, 27 June 1962]

Radio (TV) Broadcasting Regulations, amended

SCHEDULE

1. Section 6 of the *Radio (TV) Broadcasting Regulations* is amended by adding thereto, immediately after subsection (3) thereof the following subsection:

"(3a) Notwithstanding subsection (1), during the period commencing on May 27, 1962, and terminating on October 13, 1962, both dates inclusive, the minimum percentage of broadcast time that each station and network shall devote to programs that are basically Canadian in content and character is forty-five per cent of that broadcast time."

SOR/63-198, 26 June 1963

Radio (TV) Broadcasting Regulations, amended

SCHEDULE

1. Subsection (3a) of section 6 of the *Radio (TV) Broadcasting Regulations* is revoked and the following substituted therefor:

"(3a) Notwithstanding subsection (1), during the period commencing May 26, 1963, and terminating October 12, 1963, both dates inclusive, the minimum percentage of broadcast time that each station and network shall devote to programs that are basically Canadian in content and character is forty-five per cent of that broadcast time.

(3b) Subsection (3) does not apply in respect of the period commencing May 26, 1963, and terminating October 12, 1963, both dates inclusive."

SOR/64-193, 27 May 1964

Radio (TV) Broadcasting Regulations, amended

SCHEDULE

1. Section 6 of the *Radio (TV) Broadcasting Regulations* is amended by adding thereto the following subsection:

"(7) Notwithstanding subsection (1), during the period commencing on June 21, 1964 and terminating on September 30, 1964, both dates inclusive, the minimum percentage of broadcast time that each station and network shall devote to programs that are basically Canadian in content and character is forty-five per cent of that broadcast time."

SOR/64-248, 8 July 1964.

Radio (TV) Broadcasting Regulations, amended

SCHEDULE

1. (1) Subsections (1) to (3) of section 6 of the *Radio (TV) Broadcasting Regulations* are revoked and the following substituted therefor:

"6. (1) During each calendar quarter every station or network shall devote at least fifty-five per cent of its broadcast time to programs that are basically Canadian in content and character.

(2) In this section "calendar quarter" means each of the following periods:

(a) the first day of January to the thirty-first day of March in each year, both dates inclusive;

(b) the first day of April to the thirtieth day of June in each year, both dates inclusive;
(c) the first day of July to the thirtieth day of September in each year, both dates inclusive;
(d) the first day of October to the thirty-first day of December in each year, both dates inclusive;

(3) During each calendar quarter, between the hours of six o'clock in the afternoon and twelve o'clock midnight, every station or network shall devote at least forty per cent of its broadcast time to programs that are basically Canadian in content and character".

(2) Subsection (5) of section 6 of the said Regulations is revoked and the following substituted therefor:

"(5) For the purpose of this section, in computing the portion of Canadian content of the broadcast time of any station or network, there may be included

(a) in the case of programs produced outside Canada in Commonwealth countries, per calendar quarter,

(i) the full program time of those programs to the extent of ninety hours, and
(ii) one-half of the program time of those programs thereafter;

(b) in the case of programs produced outside Canada in French-language countries, one-half of the program time of those programs; and

(c) in the case of programs produced outside Canada in countries other than Commonwealth and French-language countries in which programs, the audio portion thereof that is converted to either English or French by a process of synchronization done in Canada, one-quarter of the program time of those programs,

except that the aggregate program hours included pursuant to paragraphs (a), (b) and (c) shall not exceed one-third of the broadcast time of a station or network in any calendar quarter."

Document 33

On 1 October 1961, the Board of Broadcast Governors licensed the Canadian Television Network, or CTV. It was made up of private stations in nine major cities—Vancouver, Calgary, Edmonton, Winnipeg, Toronto, Ottawa, Montreal, and Halifax. At first linked partly by microwave tower and partly by videotape, the network had coast-to-coast live connection by the summer of 1963. Thus the BBG ran into the possibility of conflict between two networks, each seeking a national audience.

In 1962, the ideal of the "single system" of broadcasting ran headlong into reality over the Grey Cup football game. The CTV network owned the rights to broadcast the game in the west and the private Toronto station, CFTO, owned the rights in the east. But the private network lacked the facilities (land lines, microwave towers) to transmit the game to an audience large enough to satisfy the sponsors. The BBG ordered the CBC to carry the games on behalf of CTV and the CBC refused. Thus the ambiguities of the 1958 Broadcasting Act were revealed.

These ambiguities were to prove fatal to the BBG within five years, but not before considerable analysis had occurred. The first effort came soon after the Grey Cup dispute. On 21 January 1963, the Royal Commission on Government Organization published the fourth volume of its findings, including a chapter devoted to the CBC. It was the first detailed description of the workings of the CBC that Canadians had ever read.

The Glassco report (as it has come to be known after its chairman, J. Grant Glassco) revealed an administrative structure disturbing to any logical mind, and a policy vacuum that could only add to the confusion over which group—the CBC or the BBG—was in charge of a national broadcasting system. The CBC had a vague mandate to operate "a national broadcasting service" and had defined that mandate on its own in the absence of any political direction. The same politicians had a constant tendency to criticize the details of programming. As the Glassco report said, this meant a hostile atmosphere for CBC executives, who reacted with defensive activities that consumed the energies required for management and production. The CBC also had difficulty planning in the face of annual rather than long-term grants from Parliament. The report emphasized the illogic of the "single system" in a country where the private broadcasters collectively outweighed the CBC in numbers and wattage.

DOCUMENT 33: ***Report* of the Royal Commission on Government Organization, Vol. 4, "Special Areas of Administration," 21 January 1963, 25–32.**

1

INTRODUCTION

In Volume 5, your Commissioners deal at some length with the distinctions between departmental and non-departmental forms of organization within the public service, and suggest criteria which may make the departmental form appropriate for certain kinds of activity, the non-departmental form more appropriate for others. As a part of the investigations upon which their conclusions on this broad subject were based, your Commissioners studied in varying degrees of detail a number of agencies and Crown corporations. Certain aspects of the study made of the Canadian Broadcasting Corporation for this purpose seem to merit a special report.

The Corporation has been studied and appraised over recent years by a series of Parliamentary Committees and a Royal Commission. These inquiries have usually included the crucial question of the role of a Crown corporation responsible for providing "a national broadcasting service" as well as the effectiveness with which the CBC was discharging its role. Your Commissioners have been only incidentally concerned with the first of these questions, which is one of important national policy. The Commission's terms of reference direct attention chiefly to the suitability of the present form and organization of the CBC to its role, and to the quality of management it brings to its task. In assessing these major questions of organization and operation, your Commissioners necessarily touch on important questions of public policy, not to provide answers to them but to show their influence on the policies, organization, and performance of the Corporation.

During the early stages of your Commissioners' studies the Special Committee on Broadcasting, 1961, was holding hearings. Its report to the House of Commons, dated June 28, 1961, contains the following recommendation:

> That following a review of the Glassco Royal Commission's report consideration be given by the Board of Directors of the Canadian Broadcasting Corporation to the advisability of commissioning management consultants to inquire further into the operation of the Canadian Broadcasting Corporation.

Your Commissioners did not undertake the detailed investigation and appraisal which the above recommendation may have envisioned, but this report does propose guidelines and criteria which, subject to government decisions on policy, should permit the CBC to adjust its internal organization and operations to management and performance needs, with the aid of such advice, from within the government or elsewhere, as it may consider necessary.

This report is, then, concerned with three principal subjects:

The relationships between the Corporation, the Cabinet and Parliament, including the adequacy of the policy guidance and definition of task which the Corporation is given, as well as the clarity of the standards of performance upon which it is to be judged.

The kind of Board of Directors which its role and relationship to the Governor in Council suggest the CBC should have, as well as the appropriate relationships between the Board of Directors and the responsible Minister on one hand and the Board of Directors and the responsible management of the Corporation on the other.

The suitability of the Corporation's management and its organization for its present tasks, in light, particularly, of the fact that the very rapid growth following the development of television has subjected the Corporation and its senior management to immense new pressures and challenges to which it has had to respond quickly.

This report does not explore the current difficulties of the Corporation in meeting a second major adjustment—that arising from the emergence of large-scale competition from private television broadcasters. Beyond this are other decisions having major financial implications, involving, for example, the use of colour television; and technological advances are proceeding so rapidly that it would be unrealistic to assume that conditions will remain static. In such circumstances your Commissioners believe that the need is to state in unequivocal terms the nature and scope of the Corporation's responsibilities and to create the financial environment in which responsible management may properly plan and administer its affairs.

2

THE SETTING

The Corporation was created in 1936 as the successor to the Canadian Radio Broadcasting Commission and it is now operating on a scale that involves the expenditure of around $100 million a year. From 1936 to 1952,

when television services were inaugurated, the staff increased from 133 to 1, 565 and has multiplied more than five times since then. On September 30, 1961, when this survey was undertaken, the Corporation was employing 7.993 persons, of whom 824 were in headquarters (including 283 in the engineering headquarters in Montreal), 149 in the international service in Montreal, 2,552 in the French network and Quebec region headquarters, 2,306 in the English network and Toronto area headquarters, and 2,162 distributed among other regions and areas from coast to coast.

RELATIONS WITH PARLIAMENT AND MINISTERS

The legislative provisions which currently regulate the relationships and activities of the Corporation are set out in *The Broadcasting Act* enacted in 1958, following a comprehensive inquiry into broadcasting in Canada by a Royal Commission (the Fowler Commission). Part I establishes a Board of Broadcast Governors with broad regulatory powers, and Part II treats with organization and activities of the Canadian Broadcasting Corporation. The task of the corporation is stated this way:

> 29. (1) The Corporation is established for the purpose of operating a national broadcasting service, and in particular, but without restricting the generality of the foregoing, has power to
>
> (a) maintain and operate broadcasting stations and networks of broadcasting stations;
>
> (b) establish, subject to approval of the Governor in Council, such broadcasting stations as the Corporation considers necessary or desirable;
>
> (c) equip broadcasting stations with all such plant, machinery and other effects as it considers necessary or desirable;
>
> (d) make operating agreements with broadcasting stations for the broadcasting of network programs;
>
> (e) originate programs and secure programs, from within or outside Canada, by purchase or exchange and make arrangements necessary for their transmission;
>
> (f) make contracts with any person, in or outside Canada, in connection with the production or presentation of the programs of the Corporation;
>
> (g) make contracts with any person, in or outside Canada, to perform in connection with the programs of the Corporation;

(h) publish and distribute, whether gratis or otherwise, such papers, periodicals and other literary matter as may seem conducive to any of the objects of the corporation;

(i) collect news relating to current events in any part of the world and in any manner that it deems fit and to establish and subscribe to news agencies;

(j) acquire copyrights and trade marks;

(k) acquire and use any patent, or patent rights, *brevets d'invention*, licences or concessions that the Corporation may consider useful for the purpose of carrying out its objects;

(l) make arrangements or agreements with any organization for the use of any rights, privileges or concessions that the Corporation may consider useful for the purpose of carrying out its objects;

(m) acquire broadcasting stations either by lease or, subject to the approval of the Governor in Council, by purchase; and

(n) do all such other things as the Corporation may deem incidental or conducive to the attainment of any of the objects or the exercise of any of the powers of the Corporation.

(2) the Corporation is bound by the provisions of Part I.

The Corporation has a board of directors, comprising the President, Vice-President and nine other directors. The duties of the officers and board severally are not specified nor is statutory provision made for a presiding officer of the board. One of the nine directors has, however, been named (by the government) as Chairman of the Board. Responsibility is thus borne collectively by the members of the Board. The President and Vice-President are engaged full time on the Corporation's business; the Chairman of the Board—also Chairman of the Finance Committee —spends about half his time on Corporation affairs; the remaining directors attend board meetings.

The Corporation is required to report to Parliament through a minister designated by the Governor in Council, at present the Secretary of State. The statute does not make the Minister accountable for the policies of the Corporation nor is he required to give any directions with respect to programming or day-by-day activities of the Corporation. Questions asked in Parliament are referred to the Corporation and the answers prepared by it are presented by the Minister.

Both the operating and capital budgets of the Corporation must receive the approval of the responsible minister and the Minister of Finance and be annually laid before Parliament. In addition, once each five years a capital programme and financial forecast for the ensuing five years must be submitted to the Governor in Council. Property transactions involving more than $100,000 require the approval of the Governor in Council. In practice, the budgets of the Corporation and all contracts in excess of $100,000 are reviewed by the Treasury Board. The Auditor General of Canada is the auditor of the Corporation and reports annually thereon to Parliament.

In both 1959 and 1961 special committees of the House of Commons were formed to inquire into broadcasting in general and the Canadian Broadcasting Corporation in particular. The 1961 Committee held forty-two meetings over a period of several months and the transcript of evidence ran to approximately one thousand pages. Reviews by committees of Parliament necessarily place additional burdens on the administrative officers of the Corporation; but they may have a special value, in that they provide opportunity for policy guidance as well as assessment of performance.

DEFINITION OF THE TASK

Virtually the entire terms of reference to the Corporation have since its formation consisted of a simple direction: to carry on a "national broadcasting service". In the absence of any statutory or authoritative definition of that phrase, the Corporation has over the years made its own interpretations and then proceeded to create the sort of service which it considered appropriate.

In many fields compliance with a general direction of this nature would not be difficult. A direction, for example, to operate a ferry service would implicitly create boundaries for the activity in the form of the nature and volume of traffic and generally accepted practices in meeting the physical aspects of the task. But there are no such boundaries in a new and growing field such as broadcasting—a national broadcasting service can take a hundred forms, ranging in cost from a few million dollars to more than the hundred million now being spent.

The most fundamental policy change since the Corporation was established in 1936 was the decision to inaugurate television broadcasting. This was a formal government decision in 1949 and appears to be the only instance of guidance by government in defining the role of the Corporation.

Of the 77 television stations embraced by the English and French networks in 1961, only 13 were operated by the Corporation, the balance being privately owned. A limitation, such as contained in Section 29(1)(b) of *The Broadcasting Act*, with respect to establishing new stations is therefore of

little effect in controlling the scope of activities. The questions which really determine the scale of expenditures are:

The amount of broadcasting—how many hours per week?

The size of the audiences to be served, through networks and the Corporation's own stations.

The commercial policy—is advertising revenue to be sought, and if so, how aggressively?

The quality of programming and the scope of the Corporation's own production activities.

When television was inaugurated in Toronto and Montreal in September 1952, broadcasting was at the rate of twenty hours per week. Nine years later it has risen to between eighty and ninety hours weekly. Table 1 shows the growth in broadcast time on eight of the principal stations. No criticism is implied with respect to this development—it is cited merely as an example of a policy decision taken within the Corpoaration, which involves very large sums of money. The amount of broadcast time has a direct bearing on communications costs for network transmission as well as an important influence on production requirements.

The Corporation's interpretation of its obligation to provide a "national broadcasting service" has led to the development of English and French language television networks which together reach ninety per cent of the population. The remainder reside in more remote areas, to service all of which would entail a prohibitive cost. Simultaneous presentation of television programmes is now possible through microwave facilities from St. John's, Newfoundland, to Victoria, British Columbia. Radio broadcasting reaches an even larger proportion of the people and the Corporation's broadcasts are available to all but three per cent of Canadian residents.

In the absence of direction the commercial policy of the Corporation has developed in a haphazard manner. Advertising revenues of over $38 million annually were built up without any aggressive effort. The fact that private broadcasting is seriously threatening such revenue renders essential a firm decision on future policy.

Again, on the basis of the Corporation's own assessment of need, a production organization has been created which is one of the largest theatrical enterprises in the world. Policy has been to strive for superior quality and there is universal agreement that a very high standard has been reached. But no evidence exists of any weighing of cost against need and the impression gained is that, generally, the pursuit of high quality has been carried on without taking into consideration what the country can afford.

Table 1—CANADIAN BROADCASTING CORPORATION —TELEVISION BROADCASTING, HOURS PER WEEK

	CBLT Toronto	CBFT Montreal	CBOT Ottawa	CBUT Vancouver	CBMT Montreal	CBWT Winnipeg	CBRT Halifax	CBOFT Ottawa
September-1952	20.50	20.25						
March-1953 .	40.50	32.75						
October-1953	69.75	37.75	53.75					
March-1954 .	72.75	31.50	54.50	49.50	41.00			
October-1954	66.75	36.00	64.00	50.00	61.25	58.00		
March-1955 .	68.50	43.50	64.75	70.00	61.50	61.50	57.65	
October-1955	77.25	38.25	68.00	80.25	70.25	75.00	64.00	41.35
January-1956	75.00	54.50	66.25	68.50	67.00	73.25	63.50	53.00
January-1957	72.50	58.50	68.25	73.25	68.25	77.25	76.25	59.50
July-1957 ...	56.25	46.75	57.00	61.50	60.75	66.00	58.50	46.50
January-1958	72.25	64.75	67.00	73.75	68.75	76.50	75.00	64.25
July-1958 ...	61.00	46.25	59.25	65.75	63.00	68.75	62.50	46.50
January-1959	81.00	69.25	74.00	81.25	75.25	78.25	81.50	70.50
July-1959 ...	61.75	48.00	63.75	64.75	72.25	70.25	68.75	46.75
January-1960	86.00	74.25	86.00	86.50	85.75	87.00	85.00	75.00
July-1960 ...	58.50	51.50	64.00	64.00	70.25	68.50	66.25	51.00
January-1961	89.75	81.25	87.00	85.00	84.00	80.75	88.00	84.00

NOTE: (1) The above figures up to and including January 1956, were obtained from an analysis prepared by the Office of the Co-Ordinator of Television, dated February 16, 1956.

(2) Figures from July 1957 (representing Summer scheduling) and January 1958 (representing winter scheduling) were obtained from current statistical data maintained by the Office of the Director of Operations Control.

In a rapidly developing field such as television, it is probably unrealistic to expect that policy should be enunciated in detail in the governing legislation, but an unfortunate omission is the lack of provision for general guidance by the government with respect to major policy decisions.

FINANCING THE CORPORATION

Each year Parliament is asked to vote the funds necessary to bridge the gap between corporate income and outgo. The scrutiny of these budgets is

carried out by the staff of the Treasury Board, the outcome being usually an arbitrary reduction in the operating budget of three or four million dollars. No direction is given the Corporation concerning the control of either revenue or expenditure.

Parliament appropriated $70,418,000 for the operating requirements of the Corporation in the fiscal year 1961-62. The Corporation had, in addition, advertising revenue (gross) of $32,910,000 and other income of $410,000. Operating expense totalled $103,572,000 to which $4,039,000 has to be added for depreciation, or an over-all total of $107,611,000 operating cost. In addition, Parliament granted $9,600,000 for capital requirements, but actual expenditure amounted to $6,200,000. It is significant that advertising revenue was 12.5 per cent below that of the previous year, and uncertainties as to the future of commercial revenues indicate the possible need for substantial future increases in amounts voted by Parliament if activities continue at the present scale. In these circumstances, forward planning becomes extremely difficult. The Fowler Commission recommended that certainty of financing for five years ahead should be provided to permit an orderly development of activities and your commissioners agree that dependence on annual votes by Parliament seriously complicates the task of management. If, as appears quite possible, the Corporation is fated to lose much of its commercial revenue to private competition, management should know now whether or not it may count on increased appropriations of public funds so that it can plan accordingly.

3

THE BOARD OF DIRECTORS

The Corporation consists of the eleven individuals who form its Board of Directors. As already noted, they are the President and the Vice-President (individually appointed by Order in Council), and nine individuals, one of whom has been designated Chairman of the Board. It is on this group collectively that the responsibility rests for the operation of the Corporation. Attention is drawn earlier in this report to the need for a more precise definition of the responsibilities of the Corporation with regard to the provision of a national broadcasting service, and to the restrictive limitations imposed on the Board of Directors with regard to financial requirements. These handicaps are aggravated by certain other features of the present arrangements.

Of the eleven directors, only the President and the statutory Vice-President are required to devote their attention exclusively to the affairs of the Corporation. The Chairman (a non-statutory office) presides at meetings of the Board and is also Chairman of the Finance Committee. The

President, as statutory director, is prominent at Board meetings and is chairman of the statutory Executive Committee to which, by law, may be delegated all or any of the powers of the Corporation. Board meetings may extend over three or four days. No agenda are issued in advance, and at each meeting the part-time directors are confronted with a mass of financial and statistical data which neither they nor anyone else can digest and evaluate in the time available. The result is that, in fact, Corporation policy is largely dictated by management. This situation probably had its origin in the appointment of an entirely new Board in November, 1958, none of whom had any previous experience of the affairs of the Corporation. The appointments were for a term of three years and, with one exception, all the part-time directors were re-appointed in 1961. Moreover, the statute stipulates that, after serving two consecutive terms, they are ineligible for reappointment during the twelve months following the completion of the second term. Therefore an almost entirely new Board is in prospect within two years. The situation would be improved somewhat were a rotational system of appointment provided, and the Executive Committee composed of directors normally resident in or within easy reach of Ottawa.

Both the President and one Vice-President are appointed for a term of seven years. It is evident that, if smooth working relationships are to be achieved, these senior officers must be acceptable to the directors and to each other, and that their experience and qualifications should be mutually complementary. But at present there is no provision for consultation so as to ensure that these essential requirements are met. Responsibility for the effective management of an enterprise of this magnitude without the authority to select and, if necessary, dismiss the senior executives of the Corporation is a contradiction in terms.

Of the nine persons appointed to the Board in 1958, two were from the Maritimes, Quebec and Ontario, respectively, and one each from Manitoba, Alberta and British Columbia. The following is an analysis of their experience:

Active business executives—management level 3
Retired business executive 1
Writers, broadcasters 2
University professors 2
Labour and welfare 1

Two had previous broadcasting experience as announcers, commentators or free lances, the remainder none. The board is representative of the different regions of Canada and of certain segments of the population but, by residence, background and experience, it is better suited to the performance of advisory functions than to the heavy responsibility of administering this very large business.

Possible alternative arrangements to government by a board of directors would be to revert to a salaried Commission or to place the responsibility on a single officer, supported by an advisory committee of a representative nature. In fact, though not in form, the present arrangements accord closely to this pattern, since it is clear that the initiative lies with the President and the Board's authority is extremely circumscribed.

As in the case of other corporate agencies of the government, your Commissioners take the view that if a board of directors is appointed, they should, in fact, direct and be accountable for performance. The appointment and tenure of all management personnel, including the chief executive officer should be subject to the recommendations of the board of directors.

Having regard to the scale of the operations of this Corporation, the directors should be administrators and executives of proven competence and experienced in large-scale operation. They should be prepared to spend the time necessary properly to carry out their function and should be remunerated fairly for their services. To provide that the views and interests of various parts of the country and of the several professions and callings specially interested are properly represented, an advisory council might be appointed to consult with the Board periodically.

Unless communications with the government are channeled through a single spokesman for the Corporation there will be danger of misleading the responsible minister and disrupting the internal harmony of the corporation. Individual appointments as at present serve to encourage separate contacts, since they are interpreted as creating responsibility on an individual basis. A board of directors charged with responsibility should normally designate its chairman or president as the sole contact with senior government.

The nature of the Corporation's task demands that it possess great independence from the political process in the day-to-day conduct of its activities. But this does not mean that it must be handed a blank cheque. Thus, in matters of broad policy governing the shape and nature of the Corporation's development, there is an inescapable responsibility on the government to give guidance. An independent board of directors will normally welcome informal policy guidance and has an obligation to ascertain the views of the government before giving effect to any important change in policy. To make effective a minimal degree of essential control, the minister responsible should have the power to give formal direction to the board. A requirement that such power when exercised be made public would pinpoint responsibility. Experience elsewhere indicates that where such power exists, it is used sparingly, but the existence of the power serves to further a satisfactory relationship between those bearing different parts of the total responsibiliy.

No account is taken in the foregoing discussion of the future role of the Board of Broadcast Governors. Part I of *The Broadcasting Act* clothes the Board with broad regulatory powers, in the following terms:

> 10. The Board shall, for the purpose of ensuring the continued existence and efficient operation of a national broadcasting system and the provision of a varied and comprehensive broadcasting service of a high standard that is basically Canadian in content regulate the establishment and operation of networks of broadcasting stations...

And Section 29 declares that "The Corporation is bound by the provisions of Part I".

In light, particularly, of the emergence of a private television network actively competing with the Corporation, the possible conflict between the powers of the regulatory authority and the statutory terms of reference of the Corporation is assuming serious proportions. Because the resolution of such difference lies entirely within the field of public policy, your Commissioners abstain from comment.

Document 34

Confronted by the Glassco commission's analysis of the CBC's structure, management, and relations to the government, the government asked for still more analysis. The secretary of state in the recently elected Liberal government of Lester Pearson was J. W. Pickersgill, who was made responsible for broadcasting. On 1 May 1963, he appointed a special committee to give him advice: Andrew Stewart, chairman of the BBG; Alphonse Ouimet, the president of the CBC; and Don Jamieson, president of the CAB. The press called them the "Troika," a Russian word reflecting the tripartite sharing of power in the Soviet Union at that time. Pickersgill asked the Troika for "a statement of those areas of public policy on which all three are in full or substantial agreement and on those points on which there is a divergence of view."

On 25 May 1964, Pickersgill's successor, Maurice Lamontagne, presented the Troika's report to the House of Commons. The joint report consisted of 12 pages, and that was the extent of the unified view. Separately, Stewart filed 23 pages, Ouimet 47 pages, and Jamieson 89 pages—one illustration of how difficult it was for Parliament to decide who was to be the single boss of the "single system." In the following excerpt from the joint statement, the Troika pondered the "two-board policy," the two boards being those of the CBC and the BBG.

DOCUMENT 34 **Special consultative committee on broadcasting policy, "Combined statement," *Sessional Papers* No. 132B (2d session, 26th Parliament), 4–10.**

COMBINED STATEMENT

We have discussed the administrative arrangements under which the Canadian Broadcasting System operates including problems encountered within the two-board system during the last five years. We are agreed that the present general administrative arrangement could be made to work more efficiently through (a) clarification of the present Broadcasting Act and (b) periodic consultation between major components of the system.

We have concentrated our attention on the workings of a two-board system because of two firmly held and differing opinions with respect to a one-board system. One opinion is that a one-board system would be completely unacceptable to at least one component of the system. The other view is that, because of its far reaching effects, a major change of this nature should

be studied and recommended upon only by a body conducting a major public inquiry into broadcasting. This view also encompasses the belief that the possibility of a one-board system is a subject worthy of detailed study.

Because of these differing views, we have devoted our attention to suggesting what we believe to be improvements in the two-board system.

This approach has two advantages: (1) if the two-board system is to continue indefinitely, we believe our suggestions will contribute to its greater success and, (2) even if another system should be established eventually, it will be necessary to operate under the two-board arrangement for some time. Consequently, optimum conditions should be established as quickly as possible.

1. RESPONSIBILITY TO PARLIAMENT.

Radio frequencies and television channels are properly seen as national assets to be used to the fullest possible extent in the service of all of the public.

Parliament is the supreme broadcasting authority in Canada.

Parliament must, through and under legislation, delegate some of its authority. The delegated authority must extend to both public and private broadcasting. The delegated authority need not be exercised by the same agent of Parliament. However, whoever exercises the delegated responsibility must be held accountable by, and to, Parliament for their stewardship.

In reference to the "fixed points of public policy", we have indicated our unanimous and unequivocal support for the continuation and development of both public and private broadcasting. In this event the broadcasting system in Canada will include a public sector and a private sector. The Broadcasting Act gives formal recognition to the existence of the public sector, in Part II, which refers specifically to the provision of a national broadcasting service by the Canadian Broadcasting Corporation. There is, however, no section of the Act referring specifically to the provision of a service by private licensees. We recommend that formal recognition of the role and responsibilities of licensees operating in the private sector be incorporated in the Act.

Given the existence of a recognized public sector and a recognized private sector, and of two authorities, then, except and unless as otherwise clearly specified, the one authority must be seen as exercising unabridged delegated authority within the public sector of broadcasting and as directly responsible to Parliament for the performance of this sector; and the other authority must be seen as exercising unabridged delegated authority

within the private sector of broadcasting and as directly responsible to Parliament for the performance of this sector. Under these conditions the Corporation should report to Parliament, annually, on the performance of the public sector; and the Board should report, annually, on the performance of the private sector. The reports should, in each case, be designed to relate the actual performance to the expectations of Parliament, i.e. to the roles assigned to each sector.

We recommend that the roles of the public sector and the private sector, as well as being indicated in the legislation, should be amplified in a White Paper on Broadcasting.

Parliament should be in a position to draw from two reports—one on the public sector and the other on the private sector—an adequate view of the total broadcasting service. The expectations of Parliament should be such that if each sector performs its role in a satisfactory manner, the total public interest in broadcasting will be effectively served. If the reports established that broadcasters in each sector were meeting their responsibilities, this should be sufficient to assure Parliament with respect to the total broadcasting service.

II. THE OVERALL WELFARE AND EFFICIENCY OF THE CANADIAN BROADCASTING SYSTEM.

We have considered the terms of the Broadcasting Act, 1958, and particularly Section 10. We are agreed that the Act requires to be revised to clarify the areas in which delegated authority is to be exercised by the Canadian Broadcasting Corporation on the one hand and the Board of Broadcast Governors on the other.

It seems to us reasonable to assume that the two authorities—the BBG and the CBC—will persist for some time. This being the case, we are agreed that the effective functioning of the total broadcasting system would be promoted and the problems of jurisdiction would be eased by formal adoption and strengthening of the process of consultation.

Some arrangements for consultation, although not specifically provided for in the legislation, have already been established. We believe the machinery could be made to work more effectively; and we would welcome formal recognition of it at the earliest possible time.

We recommend the formal establishment of a Joint Committee on Broadcasting to consist of representatives of the board of Broadcast Governors and of the Canadian Broadcasting Corporation. It should be made clear that, although the Committee can have no authority to make decisions, its establishment is based on a recognition (i) that it is necessary to coordinate certain policies and procedures; (ii) that neither authority—the BBG and the CBC—can have the capacity to make decisions in its primary area of responsibility without regard to their effects on the other sector; and (iii) that the process of consultation can be expected to have positive results. We are unanimous in recommending that the operation of the Joint Committee be given a good trial.

We believe that the effective exercise of delegated authority requires that the experience of private broadcasters be brought to bear on the administrative process. Arrangements for consultation between the Board of Broadcast Governors and representatives of the Canadian Association of Broadcasters have already been made by the Board under the authority of the Broadcasting Act. We recommend formal recognition and approval of the Consultative Committee on Private Broadcasting.

The experience of the Chairman of the board, the President of the Corporation, and the President of the Canadian Association of Broadcasters over the past several months has convinced us of the considerable benefits which could accrue from meetings of representatives of the Board, the Corporation and the CAB. Periodic meetings to include the members of the Joint Committee and the representatives of the CAB on the Consultative Committee on Private Broadcasting would prove useful.

III. THE ADMINISTRATION OF BROADCASTING UNDER THE TWO-BOARD SYSTEM.

There are four areas in which difficulties have occurred since 1958, i.e. operating under the Broadcasting Act. These are:

(a) The licensing of new broadcasting stations;

(b) Affiliation agreements between privately-owned stations and the CBC;

(c) Interpretation of certain sections of the Act;

(d) Other problems.

We favour the direct approach to the elimination of the sources of these difficulties through amendment to the legislation and such additional steps as may be necessary.

(a) The Licensing of New Broadcasting Stations.

The difficulties have arisen mainly in relation to the licensing of new *television* stations.

In our interim report to the Secretary of State, dated September 24, 1963, we recommended "in principle, that the extension of alternative television service when it occurs should proceed through the extension of transmission facilities of the Canadian Broadcasting Corporation". We reaffirm this view. In our opinion the public interest in broadcasting can best be served when the audience has a choice between a full public service and a full private service.

The implementation of the principle recommended in our interim report requires that television channels and radio frequencies be reserved for use by the Corporation; and we recommend that further consideration be given to the channels and frequencies for which reservation is necessary.

Given the acceptance of the principle of extension of alternative television service through the extension of transmission facilities of the CBC, and the reservation of channels so as to make this possible, there are two other problems to consider; (i) procedures with respect to the disaffiliation of existing private stations; and (ii) where channels other than those reserved for the CBC are available, the possibility of private applications in advance of action by the CBC.

(i) The disaffiliation of the private station already serving the area, and the resulting competition for audience and revenues through facilities owned and operated by the Corporation, should not proceed under conditions which would make it impossible for the private station to offer the kind of service, with the emphasis on local service, expected of it.

Before the Corporation moves to install its own facilities it should initiate negotiations with the affiliate.

The Board responsible for the performance of private stations must be satisfied that the conditions will not be such as to create problems between the licensee and the Board. The agreement must, therefore, be subject to concurrence by the Board. We believe the principle of hearing all cases in public is sound.

(ii) In particular situations means of extending a second service, other than by installation of facilities by the Corporation, may be physically possible. Under these conditions the interests of the potential private applicant, and local demand for alternative service, may lead to a private application and a public hearing before the Corporation is prepared to move.

The key to the problem is the capacity of the existing local station to meet competition and to continue to provide the kind of service, with the emphasis on relatively costly local service, which is expected of it.

It can confidently be assumed that the impact on the local station of the licensing of a second private service would be more severe than if the facilities were installed, and second service provided, by the CBC. If a market is capable of supporting a private station it is certainly capable of supporting a CBC station. Subject to the provision of funds to enable the Corporation to proceed, the general policy "that the extension of alternative service when it occurs should proceed through the extension of transmission facilities of the Canadian Broadcasting Corporation" would therefore expedite the extension of alternative service.

The general policy would also eliminate the situation with which the Board has already been confronted. In the absence of a general policy, the Corporation has appeared at a hearing on a private application to submit that, if a second service is feasible, approval should be given to an application by the Corporation. The answer has been that a second service would appear to make it impossible for the existing local station to meet its obligations. However, the effect of the initial application has been to generate premature expectations of a second service in the community; and it seems difficult to convince the people of the community that the gain in terms of alternative service would be outweighed by the deteriorations of local service.

There are other elements in the problem which the people of particular localities may find it even more difficult to appreciate. First, the orderly use and development of scarce resources requires the adoption of procedures of general application. In the administration of a "national" policy it must be possible to assure people that the decision made in other situations will, under similar conditions, be applied in a case affecting them. The people of particular communities may be prepared to support exceptions in their own case. This seems to apply, for example, in the expenditure of public monies. There are undoubtedly many situations in which alternative service, introduced through the installation of facilities by the CBC, would be possible if there were no recognizable limit to the amount of public funds which could be expended to ensure second service. To resolve particular problems on the basis of any such assumption would be completely irresponsible. Second, where policy is concerned with the use of scarce resources, local interests can be competing and conflicting. The procedure supported in a particular locality may, through the utilization of a channel, deprive some other locality of the same consideration. This fact may be of little concern to the people of the particular locality immediately involved. Third, in commercial broadcasting action taken in a particular market may have repercussions on other markets; and these may have indirect, and unforeseen, consequences in the particular market itself. There is, at any time,

a total demand for commercial time on television. Proliferation of stations may cause national advertisers to re-distribute their dollars, rather than to increase them. This may hurt stations in other localities. It cannot always be assumed that national advertisers will continue to expend dollars in a market in which two stations are dividing the audience.

For these reasons we urge the implementation of public policy in a manner which will not create unwarranted expectations in particular situations.

We have studied the areas in which second service is not now available and have considered the possibilities over a period of five to seven years. The circumstances in particular situations differ appreciably; but it appears to us that, given the adoption of the principle of extension of service through CBC facilities and a policy of providing alternative service as rapidly as possible, alternative public and private service could be assured to the great majority of Canadians within this period without excessive cost to the the public treasury. Given a firm declaration of policy, and the assurance of funds to make it effective, a planned program of extension could be undertaken which would assure the ultimate desired pattern.

Elaboration of our views on some of these problems will be found in those sections of the individual memoranda dealing with "The Extension of Service".

(b) Affiliation Agreements Between Privately-Owned Stations and the CBC.

Under present arrangements, a public network service must be broadcast through the facilities of some private stations. As the Corporation extends its transmission facilities this "mixed" part of the system will become a decreasing part of the total system. We believe it would be unwise to permit this decreasing part of the whole to exercise any undue influence on the manner in which the rest of the system and service develops.

In areas in which the Corporation does not provide service through its own facilities, private stations should continue to be licensed subject to the condition that they distribute the public network service. No conditions should be imposed on the licence except by the licensing authority. Agreement may be reached through negotiations between the Corporation and the station. However, even if agreement is reached between the two parties, the Board, responsible for the performance of private stations, should be satisfied that the conditions will not be such as to create problems between the Board and the licensee. The agreement must, therefore, be subject to concurrence by the Board. If agreement between the corporation and a licensee is not reached, the matter of affiliation would have to be referred to the Board. We believe the principle of public hearings is sound.

Private stations affiliated with the Corporation are responsible for their operations through the board. They must, therefore, have the right of appeal to the Board. We, therefore, recommend that, in operating under an affiliation agreement, provision be made for reference by the affiliate to the Board of unresolved disputes; but that the Board refer these cases to the Joint committee for discussion. Similarly, the reference to the Joint Committee might be made by the Corporation....

Document 35

The government responded to the Troika report (Document 34) just as it had responded to the Glassco commission's report before it—it asked for more advice. Clearly it was not easy to decide who to put in charge of broadcasting and how to avoid the conflicts that had erupted between the CBC and the BBG. This time, the advice took the shape of a report by a "committee on broadcasting," less grand than a royal commission, with no public hearings and a tighter deadline. The chairman was Robert Fowler, the same Fowler who headed the Royal Commission on Broadcasting in 1957 (Document 28). The other members were Marc Lalonde, who was to spend much of the next 20 years as a federal Liberal cabinet minister, and G.G.E. Steele, a senior federal bureaucrat.

Their job, according to the terms of the appointment, was:

> To study, in the light of present and possible future conditions, the purposes and provisions of the Broadcasting Act and related statutes and to recommend what amendments, if any, should be made to the legislation; including an appraisal of the studies being made by the Canadian Broadcasting Corporation of its structural organization; and including an inquiry into the financing of the C.B.C., into C.B.C. consolidation projects, into the relationship between the government and the C.B.C. in so far as the administration and the financing of the corporation are concerned, into the international service of the C.B.C., and into the various means of providing alternative television services, excluding community antenna television systems; and to report their findings to the Secretary of State with their recommendations.

This was certainly a vast mission. The report took more than 400 pages including appendices. It covered programming, financing and administration. The excerpt printed below deals with the vexed question of how to run a "single system" of broadcasting that had such a diversity of elements and conflicting purposes. This passage is significant because it sketches, under the name of the "Canadian Broadcasting Authority," the prototype of the Canadian Radio-Television Commission, the CRTC.

DOCUMENT 35 ***Report* of the Committee on Broadcasting, 1 September 1965, 95–120.**

5

THE AGENCY OF CONTROL

Responsibility implies representation, efficiency expert knowledge; the two can scarcely be united in a single organ of government

R.M. MacIver (The Modern State)

CONTROL OF THE CANADIAN BROADCASTING SYSTEM

Whatever form of public control is applied to Canadian broadcasting, it must operate on the system as it exists today and as it may develop over the next few years. A brief description of the existing physical facilities for broadcasting in Canada was given in Chapter 1, and our recommendations for its future physical development appear in Chapter 3. To summarize briefly—all broadcasters operate under licences from the State to use television channels and radio frequencies allocated for Canadian use under international agreements. The grant of public assets to broadcasters distinguishes radio and television from other media of mass-communication and justifies the State in exercising control over the use made of these public assets.

The Canadian broadcasting system is composed of the public sector—the CBC—and the private sector—the so-called private broadcasters who own radio and television stations operated for profit, but receive responsibility to perform a public service. As they have developed, these two sectors are almost equal in the revenues they receive, and they employ in total about the same number of Canadians. Their structure is different, and neither is self-contained and separate; a large number of privately owned television and radio stations are affiliated for certain purposes and for a substantial part of each broadcast day with the publicly owned CBC networks. We are satisfied that the development of a completely separate publicly owned system with full national coverage cannot be economically justified. For as long as this report will have any relevance, the CBC must continue to depend substantially on privately owned affiliated stations for the distribution of its network program services.

The Canadian broadcasting system, as it has been developed over the last thirty years, is one vast and expanding structure in which public and private broadcasters are inextricably mixed. All of them depend for their existence on licences to use public assets, and all share a common purpose—to inform, enlighten, and entertain the Canadian people and promote their national unity. A single national purpose should, if it is to be effectively and economically achieved, be subject to integrated direction and control. To accomplish the purpose, we are convinced that the entire national broadcasting system, public and private, should be placed under the direction and control of a single agency of government.

The long Canadian debate about the relative merits of a single and a dual broadcasting system may be only a fruitless exercise in semantics. The notion of a single system does not imply that all its elements are identical. In both public and private sectors of Canadian life, there are many examples of organizations having different parts or branches for which some unification or coordination of control is desirable and even necessary. A railway company may also operate telegraphs, hotels, trucks, and steamships, and no one thinks it strange that these several and different aspects of physical communications are subject to unified corporate control. In manufacturing, there are many instances of a single company with separate branches dealing in quite different commodities, all of which are administered and coordinated by a common management and board of directors, so as to reconcile conflicts and effect the best overall results for the corporation as a whole.

Thus, the 1957 Royal Commission recommended that Canadian broadcasting, which has a single national purpose, should be under the control of a single board, but this recommendation was not implemented in the Broadcasting Act of 1958. Instead, two boards were created—one, the Board of Broadcast Governors, with broad objects and purposes ('ensuring the continued existence and efficient operation of a national broadcasting system...(to)...regulate the .....activities of public and private broadcasting stations in Canada and the relationship between them and provide for the final determination of all matter in relation thereto')—the other, a Board of Directors for the CBC ('for the purpose of operating a national broadcasting service').

The Royal Commission warned of the danger that two boards involved in the regulation of broadcasting, appointed by the same Government and with similar membership, would lead to duplication of expense and effort, undesirable friction, and a loss of efficiency. These predictions have been borne out to some extent in the experience of the last six years. There have been several instances of serious conflict between the BBG and the Board of Directors of the CBC, of which the most notorious was the disagreement over the Grey Cup broadcast in 1962, but there have been others that were less public. It seems clear, however, that these conflicts would have been more frequent and more public had it not been for the forbearance of the

Chairman of the BBG. This commendable desire to keep peace in a system fraught with potential discord may, on occasion, have resulted in an undesirable surrender by the BBG of its proper jurisdiction, and a less vigorous regulation of relations between public and private broadcasters than should have been exercised. In any case, it seems clear from the experience of recent years, that if there are two boards, each strongly led and dynamically directed, they are bound to come into frequent collision. These inevitable conflicts have to be settled and the only available arbiter of conflicting policies is the Government of the day. This immediately brings broadcasting problems into the political arena, exposing both the broadcasting system and the Government to charges of political interference.

However, the experience of the past six years indicates that a more serious defect of the two-board system is one that was not anticipated by the Royal Commission in 1957. It is that the two boards have tended to negate each other. Neither was looking at the broadcasting system as a whole. The BBG, wisely or unwisely, withdrew from responsibility for the CBC and confined itself mainly to licensing matters and some regulation of the private broadcasters. The board of directors of the CBC confined itself to the public sector and knew little or nothing about the other half of the system.

We do not believe it is possible to give adequate supervision and direction to the private sector without a detailed and intimate knowledge of what the other half of Canadian broadcasting is doing. Nor is it possible to give effective direction to the CBC without taking into account the activities, purposes, and problems of the private sector. Jurisdiction of a mixed and interrelated system cannot be divided between two boards without each of them being stultified. A single national purpose will not be achieved by entrusting it to two separate agencies. If you have two cooks for a single broth, they will either disagree violently over the recipe, or each will add his own ingredients without relation to those added by the other, and the result will be a tasteless and unpalatable brew.

We recommend, therefore, that Parliament should delegate authority over all Canadian broadcasting to a single board or agency. We suggest that it be named the Canadian Broadcasting Authority (Régie des Ondes) to distinguish it from previous boards.

POWERS AND FUNCTIONS OF A CANADIAN BROADCASTING AUTHORITY

The proposed Canadian Broadcasting Authority (CBA) should, we recommend, be the agency to which Parliament delegates full powers and authority to regulate, supervise, control and develop the Canadian broad-

casting system. Its powers should be clearly defined in the Broadcasting Act, for all of which it should be made responsible.

The basic job of the CBA is to develop a coordinated policy for the provision of broadcasting services to the Canadian people—to all the people, by all broadcasting stations publicly and privately owned. It should not be an operating agency. It should not itself produce programs. It should confine itself to laying down policy and seeing that its policy is implemented—by indication preferably, by enforcement if necessary—both by publicly owned and by privately owned broadcasting stations. A single authority entrusted with all aspects of Canadian broadcasting has many lesser tasks to do, but its main concern should be the quality, variety, and excellence of the radio and television programs that reach Canadian receiving sets.

We have already shown that the Canadian public has an investment in its broadcasting receivers far in excess of the investment of the broadcasters themselves. Canadians annually spend much more in maintaining their equipment to receive broadcasting signals that is spent in total by all broadcasters to provide programs for that equipment. We believe that the time has come to give less attention to the acquisition and maintenance of broadcasting equipment and more to the use that is made of it. In other words, it is the programs that are heard on radio sets, and seen and heard on television sets, that matter most.

The development of program policies by both public and private broadcasters should be the primary responsibility of the Canadian Broadcasting Authority. Obviously, the CBA should not, in determining program policy, become involved in the creation of particular programs or series of programs, or in the techniques of program production; these operational details must be left to the public and private broadcasters. But there is a need for broad direction as to the performance expected from the CBC and from private stations, and for coordination of the performance of both sectors to provide balanced, varied and excellent programming. Having defined program policies (which will not be the same for the private sector as for the public sector, and may not even be the same for all stations in either sector), the CBA should be responsible for ensuring that the policies are being carried out in practice by the broadcasters. It should receive performance reports at regular intervals from all broadcasting stations, and be equipped to examine these reports, able to call for explanations of deviations from the prescribed standards, and empowered to enforce compliance when necessary.

Secondly, in addition to its main task of direction and supervising program performance by all Canadian broadcasters, the CBA will have several other principal functions. It should be responsible for the licensing of broadcasting stations, and we make detailed suggestions about the licensing functions of the Authority in a later section of this chapter.

There is a need for greater knowledge of the social and human effects of broadcasting, which must be based on research. We know much too little about the impact of television and radio programs on the audience as a whole, and on particular groups. Until now, audience research has been largely confined to determining the number of sets tuned at a given time to a particular program—the so-called ratings system. This tells nothing about the intensity of attention given to a program or its continuing impact, and—even for the commercial purpose for which it is used—gives an incomplete picture of audience reaction. Some useful audience research has recently has been done by the CBC, but it could be extended and made more generally available, certainly to the CBA and perhaps to the public. Similarly, participation by the CBA in international broadcasting agencies would keep it in touch with new technical developments and also with the social research being done in other countries, the volume of which is increasing. We do not envisage any need for CBA to build up a large research staff; much can be commissioned from private researchers and universities. But we think that the CBA should be the focal point for broadcasting research in Canada, both for its own guidance in setting broadcasting policy, and for the information of the public.

Thirdly, the chairman and members of the proposed Canadian Broadcasting Authority should be responsible for explaining, defending and, where necessary, correcting defects in the whole broadcasting system. In the best sense of the phrase, it has an important public relations job to do. Public comment and criticism of broadcasting is inescapable, and if it did not come naturally we should have to take steps to promote it. A constant flow of comment from Members of Parliament, from interested groups, and from the public, is essential if broadcasting is to be responsive to Canadian needs and fulfil its national purpose. It should be a two-way flow, with comment and criticism coming in, and being answered by explanation, defence, and correction of valid complaints going out.

The outward flow should not only answer particular complaints, but should seek to develop public understanding, in all segments of the population, of the purposes and aspirations of the Canadian broadcasting system. Until now, the dialogue between the broadcasting system and the people it seeks to serve has been confused and muted. People with constructive suggestions and critical comments about broadcasting have not known where to go with them and their ideas have been little welcomed by the broadcasting agencies. Questions in the House of Commons by interested Members have been an ineffectual and unsatisfactory method of obtaining and bringing public opinion to bear on the broadcasting system. We think the Authority should become the recognized source for information about Canadian broadcasting; it should receive complaints, give explanations in response to complaints, and generally apply, when appropriate, views and information given by the public in developing its policies for Canadian broadcasting.

Finally, the Canadian Broadcasting Authority should report annually to Parliament, in considerable detail, on all aspects of the broadcasting system—for the private sector as well as the public sector. Parliament should be given a complete picture of the purpose and performance of the broadcasting system so that it can be viewed as a whole. The annual report should deal in detail with the year's program performances by both public and private broadcasters. It should assess performance against the standards laid down by the Authority, and against any undertakings that may have been given by broadcasters. It should also report on the financial position of all broadcasters. For the CBC, the Authority's annual report to Parliament will necessarily cover details of the financial results and administration of the CBC, but Parliament and the public also have the right to know about the financial health of the private broadcasters, since they are essential elements of the Canadian broadcasting system. There is a need to standardize the form of accounting by the CBC and the private stations, so that their achievements and their failures can be accurately compared by Parliament and the public.

LICENSING

Licensing procedures over the past six years have consumed a large part—perhaps as much as half—of the time of the BBG's full-time members, and a substantial amount of time for the full board. Licensing is an important part of the duties of the Broadcasting Authority but is not its prime function. It is clear that the pressures of licensing duties and the procedures adopted for dealing with licensing questions have deflected the time and energy of the full-time members of the BBG, and of the whole Board, from their more important tasks of regulating and directing the Canadian broadcasting system. We propose new and improved licensing procedures which will provide for the effective regulation and control of public and private broadcasters alike.

Licensing of the right to use radio frequencies and television channels is necessary because the number of these public assets is limited and decisions must be taken as to the technical and personal acceptability of applicants for them. The initial grant of a television or radio licence involves two questions for decision—first, is the proposal for the new station technically competent and in conformity with Canada's right under international agreements to use the radio frequency or television channel?—and second, is the applicant a suitable person to receive and use the right to broadcast over that frequency or channel? The former is a factual and technical question; the latter is a broadcasting question involving an assessment of the applicant's ability, reputation, and competence as a broadcaster.

The Department of Transport (DOT) is responsible for administering the use in Canada of the airwaves for various types of electronic signals.

It has a large and technically competent staff for the purpose. Broadcasting bands occupy only a part of the electronic spectrum under the jurisdiction of DOT. It must allocate frequencies or channels for many other purposes, including defence communications, control and aids to navigation in the air and at sea, local telephone and telegraph signals, and other uses of Hertzian waves, in accordance with international agreements. The DOT staff is technically qualified and well accustomed to pass upon the technical suitability of an application for a licence to broadcast. It is not, however, competent or experienced in determining whether the applicant will be a good and responsible broadcaster. In recent years an applicant for a broadcasting licence has had to satisfy DOT as to the technical feasibility of his proposal, and then go before the BBG in a public hearing to demonstrate his acceptability as a broadcaster.

No doubt such a division of responsibility between two government agencies is somewhat cumbersome, but avoidance seems impractical. Theoretically, the whole licensing function could be transferred to DOT, but this would entail the development of a staff to assess the broadcasting qualifications of the applicant. While a new station must be technically sound and perform in compliance with international agreements covering the use of the airwaves, the more important aspect of the licensing function is to decide the suitability of the applicant as a broadcaster. This can be done only by an agency that knows the broadcasting system and its purposes. Canada cannot have a good broadcasting system unless only suitable and responsible men are given the right to use the relatively small number of radio frequencies and television channels available.

Alternatively, jurisdiction over the whole electronic band assigned for broadcasting could be transferred to the Broadcasting Authority. This would create some problems of jurisdiction between the Authority and DOT at the fringes of the band. More important, it would require the Authority to build up a staff to assess the technical acceptability of new proposals, which would duplicate technical facilities already existing in DOT.

We believe that the jurisdiction on broadcast licences should continue to be divided between the Department of Transport and the Broadcasting Authority; the former should be responsible for all technical and engineering aspects of the licence, and the latter for all broadcasting aspects. To facilitate this, we suggest that radio and television licences in the future should be in two parts. First, a technical licence should be granted by DOT to determine the availability, scope, and method of operation of the radio frequency or television channel. Second, when technical feasibility has been determined by DOT, consideration should be given by the CBA to the acceptability of the applicant as a broadcaster. For new licences and the renewal of licences, there should be a public hearing, with public notice so as to permit all interested parties to appear. If, in the course of the hearing, further technical questions develop (as, for example, when an existing

station claims there will be interference with its signals), the application should be referred back to DOT for settlement of the technical dispute before further consideration by the CBA. This has not been the practice in the past; on occasion an application technically approved by DOT has been met by complaints at the BBG hearing that it is technically defective, and the BBG has proceeded to hear evidence and settle the technical dispute. This was a time-consuming task for a Board not staffed or qualified to deal with technical questions. It would be much better to have technical questions settled by the qualified experts in DOT, even if DOT had to establish a procedure for hearing contending technical claims, which does not now exist.

The division of licensing jurisdiction between DOT and the Broadcasting Authority applies to the administration of the existing broadcasting spectrum. The broader problem of periodic international determination of the spectrum has both technical and broadcasting aspects, and the Broadcasting Authority should, in future, participate in such international negotiations.

Undoubtedly, a two-part licence for broadcasting entails the risk of more difficulty and possibly more expense to an applicant. If he goes first to CBA to determine his acceptability as a broadcaster, he may later find in DOT that his proposal is technically defective. If he first gets technical approval from DOT, after considerable expense in preparing plans, he may later find that he is unacceptable to the CBA as a broadcaster. However, these risks are inherent in any application requiring two separate and distinct approvals, and the risks and costs are not significantly greater if the approvals are made by two agencies instead of by one. Clearly, the technical feasibility should be determined first, since without it the proposal will certainly be unacceptable.

We recommend that the broadcasting portion of the licence for a station should be issued by the Broadcasting Authority and not, as at present, by the Governor in Council (in effect, the Cabinet) on the recommendation of the BBG. It is true that the grant of a licence is the disposition of a public asset, for which normally the Government should accept responsibility, but the assignment of this responsibility to the Authority is clearly desirable. If it is to be an independent agency to supervise all Canadian broadcasting, it should choose the people entitled to broadcast; there is no decision more important for the creation of a sound broadcasting structure. The responsibility for the choice is less clear if the Authority may merely recommend, leaving the decision to the Cabinet. If, as has usually happened in the past, the recommendation is accepted by the Cabinet, consideration of the matter is a waste of the Cabinet's time. If occasionally the Cabinet were to reject a recommendation of a board that has seen the applicant and carefully considered his qualifications, the decision could be based only on inadequate evidence or partisan considerations. We recommend that responsibility for the grant of a broadcasting licence be placed where it belongs, on the Broad-

casting Authority and not on the Cabinet, and that the procedure for the licensing functions of the CBA should be clearly defined by statute.

For the primary function of supervising and developing excellent program performance, we believe that a representative board mainly composed of part-time members is appropriate and desirable. Licensing decisions are complicated matters requiring preparatory study of the applications and continuity of policy by the licensing agency. A large board made up mainly of part-time members is not well suited to the discharge of licensing functions, and if it seeks to do so, the detailed examination of licences is likely to consume an undue amount of time and energy, to the detriment of the more important task of defining policy and regulating the performance of the Canadian broadcasting system. However an overall knowledge of broadcasting policies and of the existing system is essential for sound decisions on licensing, and the solution does not consist in establishing a separate licensing agency.

Instead, we recommend that the broadcast licensing function should be kept within the CBA, but should not be handled by the full board. We suggest that all licensing functions should be dealt with by a licensing committee or panel of the CBA, and that a statutory basis for its creation by the Authority should be provided. This would permit the development of a group within the Authority with knowledge of licensing techniques, and would ensure continuity of licensing policy. We think that the size and constitution of the panel should be flexible and should be left for decision by the Authority itself. Presumably the chairman of the Authority and two or three of its part-time members would serve regularly on the panel. In addition, one or two of the other part-time members could be added for particular applications, preferably those from the region where the new station will be situated, to contribute knowledge of local conditions to the panel's deliberations.

Licensing procedure should be more fully defined than at present. The practices developed by the Federal Communications Commission in the United States could be examined and, where appropriate, applied in Canada. The FCC has stated its licensing policy, indicating the general standards of performance and the type of information it should receive on an application for licence. The application is given preliminary study by qualified members of the staff, who also gather other relevant information for the guidance of the Commission. A notice of the application is published in sufficient detail to permit public response. Applications are uniformly prepared, and supporting material is put together before the applications come to the Commission for consideration, thus reducing the time needed to reach a decision.

An application to the licensing panel of the CBA for the grant of a licence should have full publicity before the public hearing, and the decision

of the panel on behalf of the Authority should have publicity after it is made. Moreover there should be a right of appeal from any decision of the panel to the full Board, and the Board itself should be empowered to initiate a review of any decision by the panel.

In addition to the major task of considering applications for new licences and the renewal of existing licences, the Broadcasting Authority has a number of less important licensing functions to perform. These include authorizations for changes in the power of existing stations, approval for transfers of shares in private stations, and changes in the location of broadcasting stations. The procedure for dealing with licensing applications should vary according to the importance of the subject matter. For the issue of new licences and the renewal of existing licences, there should be a public hearing; the licensing authority should see the applicant, so as to judge his suitability to be entrusted with the right to broadcast and to permit public comment thereon. However, in minor cases, if after public notice there is no substantial objection, the licensing authority should be able to act on the merits of the application without public hearing, and should have power to determine whether an objection is substantial or merely frivolous. For example, a change in share ownership where there is no change in control should not require the licensing authority to spend time in a public hearing or the applicant to spend time and money in attending the hearing; the decision can be made on the written evidence.

Moreover licensing decisions of a routine nature need not go before the licensing panel; they should be delegated to a competent staff acting under general instructions from the panel. Such a procedure, drawing distinctions between more and less important decisions, was well developed during the period of wartime controls by the Wartime Prices & Trade Board and other agencies; major orders were issued formally by the Board; less important orders were issued by an administrative officer and countersigned by the Chairman; routine matters were dealt with in directives by an administrative officer. The present BBG practice of having all licensing decisions go before the full board is cumbersome, time-consuming and inefficient. Obviously, the Broadcasting Act should empower the Authority to adopt more flexible licensing procedures, including the delegation of routine decisions to members of the staff. Obviously also, the Authority should have a larger and more competent licensing staff than the BBG has had to assist it in its work.

By the establishment of general licensing procedures, by the use of a licensing committee or panel and by the improvement of staff assistance, the burden of licensing functions on the CBA can be substantially lightened. That burden is likely to diminish in any event. In the early years, following the 1958 Act when second television channels were opened to licence, the burden on the BBG was heavy. As coverage was extended to a point approaching saturation, the licensing functions of the BBG shrank in volume,

especially for the important and time-consuming consideration of new station applications. If our earlier recommendation is accepted that the Canadian broadcasting system should grow rather slowly in future, because it is already well developed physically, there will be fewer major licensing decisions and more chance to keep the licensing function from requiring an undue amount of attention from the Broadcasting Authority.

Our final recommendation concerning licensing is of considerable importance. We propose that a performance-undertaking should be made a specific condition of the licenses of all privately owned radio and television stations. Such a condition is unnecessary for CBC stations because, under our recommendations, general program policy for the CBC will be a responsibility of the Broadcasting Authority. But we think better means than those of the past should be found for defining and assuring the program performances of private stations.

When applications were made for licences of new stations—especially the so-called 'second TV stations'—the contestants for these valuable rights made detailed and glowing promises to the BBG about the performance they would give. These undertakings were assessed by the BBG and undoubtedly influenced the choice of the applicant to receive a licence. They were not, however, made a specific condition of the licence, because the Department of Transport was unable or unwilling to attach a performance-condition to the technical authority to operate. Licences are granted under the Radio Act, on the recommendation of the BBG to the Governor in Council under Section 12 of the Broadcasting Act, which requires a public hearing, and are issued on condition that the licensee comply with the provisions of the Broadcasting Act and the regulations passed thereunder. However, the performance promised by the applicant in the hearing before the BBG is not, and under the existing statutes probably cannot, be made a condition of a licence issued under the Radio Act, not can a breach of the performance-undertaking be made the basis for revoking the licence.

In fact, the program performance of the private stations—in particular the second television stations—bears very little relationship to the promises made to the BBG when the licences were recommended. Undertakings given to obtain the grant of a public asset have largely been ignored, and the program performance has generally fallen far short of the promises made. The BBG has been powerless to deal with this default, and has had to wait until the terms of the licences expired before raising in any effective way this failure of the private stations to live up to their undertakings. Now that the original licences are approaching the end of their terms, there is a considerable scurrying about by the operators, and some of them have announced their intention to produce some better programs of a public-service or cultural type.

A promise made by a broadcaster to obtain a licence to operate a radio or television station should be an enforceable undertaking, and not a theoretical exercise in imagination or a competitive bid in an auction of unrealistic enthusiasm. Promises made should be carried out or some good explanation given as to why they cannot be carried out. When performance is flagrantly below the level of the promises made, it should not be necessary to wait until the expiry of the licence to remedy the default.

There are some types of regulation that can, and should, apply to all broadcasters. These include general rules of a negative or prohibitory kind defining program practices that may not be followed—for example, the prohibition of certain kinds of subjects in programs, or of advertising messages that offend standards of morality and good taste. Generally applicable regulations can also deal with the number, length, and content of commercial announcements by establishing maximum limits beyond which advertising messages may not go on any station. These negative rules of broadcasting performance are necessary and important, and should be clearly laid down by the Broadcasting Authority. But they will not, in themselves, achieve acceptable program performance by all broadcasters. A body of negative rules can do no more than set minimum standards of performance at a rather low level of general application. To achieve something better, positive leadership and direction by the Broadcasting Authority are necessary.

A more positively excellent performance is difficult to enforce by regulations of general application to all broadcasters. Individual stations vary greatly in size, location, and wealth. A regulation setting a performance level adequate for a large metropolitan station will be intolerably burdensome on a small rural station. Conversely, a regulation setting program standards within the practical possibility of achievement by a small station is meaningless when applied to a large and wealthy station. Moreover, there is a great difference between the program performance that should be given by a station that is the only one in its community, and that required from each of half a dozen stations all serving a particular community. These differences between private stations, in their size and situation, indicate the need to set individual standards appropriate to each.

Admittedly the establishment of individual program standards for all privately owned radio and television stations in Canada is a large and difficult undertaking, but we think it can be done in the following way. First, the Broadcasting Authority should state in some detail its objectives for the program performance by private stations, outlining such requirements as a good news service, some discussion of public affairs, a reasonable content of music and drama, some development and use of Canadian talent, and the need for a varied and imaginative local service to the community coupled with some regional, national, and international activities. This general statement of objectives should make it clear that the CBA recognizes differences in the size, wealth, cultural resources, and local conditions of stations; that

it does not expect the same performance from each; and that program performance should be of the highest standard reasonably within the powers of each station, having due regard to its circumstances.

Secondly, the Broadcasting Authority should direct each station to develop a program schedule which it is prepared to undertake. Individual proposals would then be examined by the staff of the CBA and reviewed by the licensing panel, to determine whether each falls reasonably within the stated general objectives and is adequate having regard to the stations' circumstances. Individual stations, especially the smaller ones, should be permitted to develop programs in cooperation with one or more others to be included in their several schedules. There is an obvious need to develop more cooperative programming among the private stations; this should be not only permitted but encouraged by the CBA when it reviews their program proposals.

After review and acceptance by the CBA, the program performance proposed by each station should be made a condition of its licence to broadcast. Private broadcasters should be given clearly to understand that, this time, the Authority means business. There is no place for glowing promises that can be quickly ignored when the licence has been obtained and forgotten until its renewal date approaches. If a station can do little to improve its program performance, it should say so and give reasons why it cannot do more. The proposal should be a realistic promise of practical performance, which is intended to be carried out and enforced; it will become a condition of the station's right to broadcast, and if the condition is broken, the right can be suspended or withdrawn, or prosecution launched for the infraction.

Obviously, in a rapidly changing medium, the position of an individual station may be changed by circumstances beyond its control. Promises made today in good faith may become unrealistic or unduly burdensome tomorrow. Any station should be permitted to apply to the Authority for a review and revision of the performance-condition of its licence, and the condition could be amended in the light of changed circumstances. But unless and until this is done, the performance promised is obligatory and enforceable against each station.

No doubt this suggested procedure will not immediately result in an ideal program performance by the private stations, but it should quickly produce a much better result than in the past. With some notable exceptions, programming on the private stations has been trivial, unimaginative, and far short of the minimum level required from public broadcasting assets granted for their use. Attempts to improve this performance by general regulations have been largely unsuccessful; the general regulation of private television stations has been ineffective, and the regulation of private radio station performance is almost non-existent. The CBA should be able

to do better than this by establishing individual standards of performance that would result in an immediate improvement in the programs of the private stations, and provide a new base on which further improvement could be built.

We make this proposal because we believe that the majority of private broadcasters want to give a respectable and worthwhile performance in the use of the licences assigned to them. They have argued for years that they are a valuable and necessary part of the Canadian broadcasting system, and this proposition is now generally accepted and welcomed. Most of them recognize that, in addition to giving services to their local communities, they should share in the broader national purposes of the Canadian broadcasting system. To do this, they need some coordination and direction which has not been provided by attempts to devise performance regulations applicable to all private stations alike. The regulation attempted has either been so weak that it was meaningless, or so impossible to comply with that it was ignored. There are many responsible private broadcasters who would have liked to do better, but could not because their competitors were permitted to get away with inadequate and shabby performance.

The regulation and direction of a heterogeneous group of private stations—some strong and prosperous, others marginal and financially weak—cannot be done by general and mainly negative rules. All station performance is individual, and regulation and direction to be effective must also be individual and based on what each station should do and what it can do. We are convinced that Canadian private broadcasters will accept and even welcome individual standards of performance that are set with fairness and with their cooperation. For the broadcasters, this means a more satisfying and less regimented existence. For the Canadian people, whose interests should be the main objective of broadcasting policy, it should provide better, more varied, and more interesting programs on their radio and television sets.

CONSTITUTION AND MEMBERSHIP OF THE AUTHORITY

We believe that there should be unified and coordinated control of all Canadian broadcasting by a single authority. In a very real sense, it should be the trustee of the broadcasting system on behalf of the Canadian people, and the terms of its trust should be to ensure that excellent and distinguished broadcasting services are provided by all broadcasters, within the limits of their individual means. Parliament should define in detail the goals it wants for the broadcasting system, and delegate to the Authority the task of achieving them. The Authority should be accountable annually to Parliament, not for the method or details of its work, but for the results—for its success or failure in attaining the goals that Parliament has set.

The constitution, size, and membership of the public authority charged with the control, supervision and direction of the Canadian broadcasting system should be determined by the functions it must perform. As we conceive the Canadian Broadcasting Authority, its principal functions are—

to control, regulate and develop the program performance of all broadcasters;

to conduct and commission research into the social and human effects of the broadcasting media;

to explain, defend, and improve the Canadian broadcasting system;

to decide who should receive and hold broadcasting licences, and under what conditions;

to determine the broadcasting policy of the CBC, and to ensure that it is well led, well staffed, and well administered;

to regulate the activities of private broadcasters, and to encourage and stimulate their cooperation with a view to improving their broadcasting performance;

to report annually to Parliament on the performance of all public and private broadcasters, and on the state of the Canadian broadcasting system as a whole.

These important and diverse functions require a board of outstanding strength and ability, and each has a bearing on its appropriate size, constitution, and membership. One function might be better handled by a small board of full-time members; another may call for a large representative board, made up partly or wholly of part-time members. If there is to be unity in the Canadian broadcasting system, it must have unified control and direction by a single board. Whatever the different kinds of board that might best suit individual functions, all the requirements can be satisfied by the exercise of imagination and ingenuity in determining the constitution of the Authority and choosing its membership. If, in the result, the form chosen is unique, it should be no surprise, for a broadcasting system is a unique undertaking.

Thus the form of the Authority should be determined by the relative importance of its various functions. We regard the control, regulation, and development of program performance by all broadcasters as its primary and most important function. For this purpose, a fairly large board is necessary, representative of different parts of Canada and with varied experience and skills, and it should be composed mainly of part-time members. Such a board is also appropriate for the development of research policy, for inter-

preting the purposes and policies of the broadcasting system to Parliament and the public, and for reporting annually to Parliament on the performance of the system.

The licensing function might more suitably and conveniently be undertaken by a small number of full-time experts. However, while we recognize the importance of the licensing function, we believe it can be efficiently handled by a licensing panel or committee of the Authority with adequate staff assistance. For the supervision of the finances and administration of the CBC, or for the control and guidance of the private broadcasters, a relatively small number of experienced people working part-time might be appropriate. These duties can also be discharged by panels or committees of the Authority.

It is a familiar practice in corporate direction to have a large board, with committees of directors to look after particular functions. The members of committees know the overall policies of the organization from their membership of the main board, but specialize in particular aspects of corporate activities. We recommend the same practice for the special functions of the Broadcasting Authority—such as licensing, supervision of the CBC, and guidance of the private sector. The Authority should have statutory power to establish these committees, and to delegate responsibility to them under continuing control by the full board. Obviously, the membership of the Authority should be chosen so as to include people qualified to serve on the special committees. The only difference between the usual corporate arrangement and that proposed for the Broadcasting Authority is one of emphasis. In the former, service on committees of the board is usually intermittent and subsidiary to duties on the full board. In the Broadcasting Authority, service on the special committees will be more time-consuming.

We accordingly recommend that the Canadian Broadcasting Authority should consist of fifteen members—a full-time Chairman and fourteen part-time members. Their wise selection will largely determine the sound development and future value of the Canadian broadcasting system. We suggest that, since the choice is so important, the nomination of members of the Authority should be the prerogative of the Prime Minister; they should be formally appointed by the Governor in Council on his recommendation.

We urge that appointment to the Authority should not be on a rigid basis of provincial or regional representation. While the viewpoints of different regions should be represented, and a fair balance maintained between the two official languages and national cultures, the choice should be based essentially on individual excellence. The membership of the Authority should include diverse skills and experience in sufficient number to man the several special committees and discharge the various functions of the Authority. Thus there should be some members with financial and business experience

to supervise the CBC; others with knowledge of or familiar with private broadcasting; and still others prepared to develop a knowledge of, and devote the necessary time to, the licensing function. However, the essential qualification for all members is not suitability for this or that special function, but that each should have broad Canadian experience and extensive cultural interest, with a deep concern for and understanding of the national purposes that the broadcasting system should promote and serve. We believe that broadcasting is of such paramount importance to the development of Canada that it can attract to its service, as members of the Broadcasting Authority, Canadians of outstanding qualities, for whom few more important forms of public service are open.

The choice of the first chairman of the Broadcasting Authority is obviously of major importance. We recommend that he should devote substantially his full time to the position, although we would not think it necessary for him to give up other public and private activities that have no direct or indirect connection with broadcasting, for these associations could be valuable in keeping him in touch with the realities of Canadian life. He should be familiar with both languages.

This recommendation, that the chairmanship of the Authority should be a substantially full-time appointment, is at variance with the proposals of the 1957 Royal Commission for a part-time chairman of the BBG, as it conceived that agency. Whether or not that proposal was practical at the time, it is now clear that the responsibilities of the Chairman of the Authority responsible for the supervision of the whole Canadian broadcasting system cannot be discharged by a part-time appointee. We envisage a more comprehensive and extensive responsibility for the CBA than that of the BBG, and the system existing today is larger and more complex than that of eight years ago.

The full-time chairman should be appointed by the Governor in Council for a term of five or seven years, and should be adequately paid for his services, for this should be regarded as one of the most important positions in Canadian public life. He should be responsible for all the functions of the Authority, assisted by the fourteen part-time members and by an adequate staff and facilities. He should be primarily responsible for developing broadcasting policies for both publicly owned and privately owned stations and networks, and for ensuring their execution. Neither he nor the Authority itself should become involved in the detailed execution of broadcasting policies, which should be left to the CBC and the private operators for the public and private sectors respectively. Indeed one reason that led us to recommend only one full-time member for the Authority was our firm belief that the Authority should not become involved in the details of administration. If it is properly organized and adequately staffed, there should not be sufficient work for more than one full-time member to do. If there were several full-time members and they took their responsibilities seriously, the

great danger would be that they might interfere in details of administration and operation. The task of the Authority is to supervise, control, and direct; the task of the broadcasters, both public and private, is to produce and transmit radio and television programs. These two functions should be kept separate and distinct.

STAFF AND FACILITIES FOR THE AUTHORITY

It will be essential, for the successful operation of the Canadian Broadcasting Authority, to provide a competent and expert staff to analyze reports and prepare material for its consideration; to deal with procedures and routines on its behalf and in accordance with its general instructions; and to assist it generally in its work.

The experience of the BBG in the last six years suggests that it failed to provide itself with a sufficiently large and diverse staff and facilities. It has had several competent and dedicated staff members, but there have not been enough of them, and they have not had all the skills required to enable the Board to fulfil its responsibility under Section 10 of the Broadcasting Act to ensure "the continued existence and efficient operation of a national broadcasting system". The full-time members of the BBG seem to have spent much of their time on detailed work that could have been done by a better qualified and larger staff; in the result, they have had insufficient time to devote to the regulation of "the activities of public and private broadcasting stations in Canada and the relationship between them". Instead, the BBG seems to have tried to avoid conflict with the determined and at times belligerent Management and Board of the CBC. In this way the two agencies achieved agreement on at least one point—they both wanted the BBG to have as little to do with the CBC as possible. This does not seem to have been the result intended by Section 10 of the Broadcasting Act. In proposing the creation of the BBG, the 1957 Royal Commission respectfully advised Parliament to apply the maxim that there is no sense in keeping a dog and doing your own barking. A corollary of this proposition is that if you keep a dog and he does no effective barking, you are not getting the reliable protection you may need.

The facilities of the BBG also appear to have been inadequate for the discharge of it duties. It has received many performance reports from the private stations, but has not had sufficient staff and processing equipment to analyze them. Some members of the BBG complained that they lacked sufficient information to enable them to apply adequate control, stimulation, and direction to the private stations; clearly the responsibility for this rests with the BBG itself. It has quite extensive powers under the Broadcasting Act of 1958, and could have sought clarification and solution of jurisdictional difficulties arising out of the statutory two-board system. However, the main reason for the lack of real status is that the BBG did not choose to

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assert it. The BBG has not used the full powers it has undoubtedly been given under the present Broadcasting Act.

Whatever the shortcomings of the BBG in the last six years, it is essential that they should not be perpetuated by the proposed Canadian Broadcasting Authority. As the single board responsible for the entire broadcasting system, its many duties call for adequate staff and facilities to assist it in its work.

We suggest that the staff of the CBA should be headed by an Executive Director responsible for the entire staff. He should have a senior assistant responsible for all licensing functions, with a number of competent examiners to review supporting material and prepare applications for consideration by the licensing panel of the Authority. Certain licensing functions of a minor or routine nature should be handled by the Director of Licensing under general instructions from the Authority.

A second senior assistant, with knowledge and experience of the private sector, should be responsible for the development of individual station standards and their supervision, again acting under instructions from the Authority and in accordance with its policies for the regulation of program performance.

A third senior member of the staff should be responsible for the research activities of the Authority, to review, commission, and perhaps conduct research into broadcasting developments and the social effects of radio and television on Canadians generally and on particular groups.

There will be need of a secretary of the Authority, financial officers to analyze the financial reports of the CBC and private stations and develop standards for financial reporting, and a general counsel to supervise legal and enforcement activities. There should of course be the usual ancillary staff of librarians, secretaries, clerks, typists, and other assistants.

We recommend that the Broadcasting Authority should be situated in Ottawa, with adequate offices in the centre of the city to give easy access to Parliament. The present offices of the BBG would be quite inadequate for the agency to be responsible for the whole of the Canadian broadcasting system. The CBA offices should have access to modern facilities, such as computers, to assist in the analysis of performance reports and broadcasting surveys. There should be facilities for viewing television programs, such as a videotape viewer and a film projection room.

We recommend that the staff should not be under the jurisdiction of the Civil Service Commission, since the Authority will be a specialized agency requiring more flexible personnel procedures. Instead we suggest that the Chairman and Executive Director should prepare a proposal indicating staff

requirements by categories, with a salary range established for each category, to be approved by the Treasury Board. This procedure was used conveniently and effectively when the Economic Council of Canada was established. The staff of the Authority should, however, be eligible for superannuation and other benefits available generally to the public service.

ENFORCEMENT

It is to be hoped that the Canadian Broadcasting Authority will be able to enlist the willing cooperation and support of all public and private broadcasters in Canada, and that the performance of its duties will depend more on its qualities of leadership and direction than on enforcement of its orders. However, the independent agency charged with the control and supervision of the Canadian broadcasting system must have legal powers to enforce its directives. Willing cooperation from most broadcasters cannot be expected if a few recalcitrants may flout its orders with impunity.

The enforcement provisions in the present Broadcasting Act are not extensive. Section 18 provides that every person who violates any of the provisions of Part 1, or of the Regulations, is punishable on summary conviction under the provisions of the Criminal Code. In the past six years a few prosecutions under this section have been launched by the BBG. Coming before a police magistrate accustomed to dealing with minor offences of a routine nature, who has little knowledge of the broadcasting system or its purposes, the usual result has been a conviction and fine of $25 for a serious breach of the Act or the Regulations. This is no more than a licence fee.

In addition, Section 15 of the Act gives the BBG power to suspend a licence for a period not exceeding three months where the Board finds, after notice and a hearing, that the licensee has violated or failed to comply with any condition of his licence under Section 12(5) or Section 13(1). There is a right of appeal to the Exchequer Court on questions of law from an order of suspension by the BBG. There has been only one case in six years when the BBG ordered suspension of a licence, and that decision was overruled on appeal to the Exchequer Court on technical grounds. It may be that this somewhat restricted power to suspend licences could have been more extensively used by the BBG. Certainly it would have been a more effective power if the program performance of a station had been a condition of its licence to operate, as we recommend.

This is an enforcement dilemma frequently encountered by specialized agencies. The courts are not familiar with the administrative purposes of the legislation, and tend to regard an infraction of the regulations as a technical offence requiring only a nominal monetary penalty. As a result, a small fine imposed on summary conviction is no deterrent to the offender

nor any detriment to his local reputation. It is roughly equivalent to a fine for parking a car in a prohibited area. On the other hand, for many infractions under the Broadcasting Act, suspension of the licence is too severe a penalty; it punishes not only the licensee but the entire community depending on the station for broadcasting services. In neither case does the punishment fit the crime.

It may not be possible to devise a complete solution of this enforcement dilemma. However, we suggest first that, for minor infractions, monetary penalties should be imposed that bear some relationship to the gravity of the offence, and secondly that, for major infractions, remedy by suspension of the licence should be more frequently used.

No doubt the Broadcasting Authority would be better able than a police-court magistrate to assess the seriousness of an infraction. However we do not think the Authority should be given statutory power to impose monetary penalties on licensees for breaches of the legislation or regulations. Instead, the Act should provide for a system of minimum fines to be imposed on summary conviction, with steeply graduated minima for second and third offences, and for automatic suspension of the licence, for a period to be determined by the Authority, if an operator is convicted of any infraction three times within the term of his licence.

We recommend also that the Authority should have power to suspend and cancel licences, without waiting for a triple conviction in the courts, in cases it regards as sufficiently serious and flagrant. The statute should provide power to suspend or cancel a licence for a breach of the provisions of the Act, or of any general regulation of the Authority, or of a condition of the individual licence. If our proposal is accepted, that a system of individual station standards should be developed and the program standard for each station should become a condition of its licence, any breach of the condition should empower the Authority to suspend the licence. Instead of a suspension for breaches of general and complicated regulations, most cases would involve the simple proposition that the licensee has failed to carry out his promises. This is something that would be clear to him, and clear also to the community in which he operates, and therefore more likely to be accepted as fair and reasonable. In all cases involving suspension or cancellation of a licence, the Authority should hold a formal and public hearing, and there should be a right of appeal on questions of law to the Exchequer Court, similar to that provided by Section 15 (3) of the present Act.

FINANCING FOR THE AUTHORITY

The Canadian Broadcasting Authority will be a more costly agency than the BBG has been. To be effective, it must have a larger, better qualified, and more expert staff, and more adequate offices and facilities. Its

members, including the Chairman, should receive proper remuneration and sufficient travelling allowances.

We cannot estimate today the total cost of establishing the Authority on a sound financial basis. But whatever it may reasonably cost will be a justifiable price to pay for an independent agency to control the Canadian broadcasting system efficiently. We suggest that the estimated expenditure of the Authority should be submitted annually to Parliament by the designated minister with the approval of the Treasury Board.

RECOMMENDATIONS

We recommend: That responsibility for the direction, supervision, and control of the whole Canadian broadcasting system should be assigned to an independent agency to be called the Canadian Broadcasting Authority (Régie des Ondes).

To summarize our many detailed proposals and recommendations in this chapter:

- The first and principal duty of the Authority should be to develop a coordinated policy for the provision of broadcasting services to the Canadian people by public and private broadcasters; its main concern should be the balance, variety, and excellence of the programs that reach Canadian television and radio sets from Canadian broadcasting stations.

- The Authority should be the leader in Canadian research into technical and other developments of the broadcasting media, and into their social and human effects.

- The Authority should be responsible for improving, explaining, and defending the Canadian broadcasting system; it has an important public relations task.

- The Authority should determine the general broadcasting policy of the CBC, and ensure that the CBC is well led, well staffed and well administered.

- The Authority should regulate, supervise, and control the activities of private broadcasters, and encourage and stimulate their cooperation in improving their broadcasting performance.

- Broadcasting licences should be in two parts—the first, covering all technical and engineering aspects, from the Department of Transport—the second, confirming the suitability and acceptability of

- the applicant and prescribing the broadcasting conditions with which he must comply, from the Broadcasting Authority; licences to broadcast should be issued by the Authority, not granted by the Governor in Council.

- Licensing functions of the Authority should be handled by a licensing committee or panel; there should be statutory power to establish a flexible licensing procedure, including power to delegate routine licensing decisions to members the staff.

- An individual standard of program performance should be made a condition of the licence of each privately owned radio and television station; the method of setting these individual performance standards has been indicated in this chapter.

- The Authority should consist of fifteen members—a full-time chairman and fourteen part-time appointees, all of whom should be suitably paid for their services; the choice of the chairman and members of the Authority is crucial to its success, and we propose that they should be appointed by the Governor in Council on the recommendation of the Prime Minister.

- The Authority should have power to establish special committees to deal with various aspects of its business, and to delegate powers of decision to them.

- The Authority should be situated in Ottawa near the centre of the city, with adequate office equipment and facilities.

- The Authority should have a competent and expert staff, which should not be under the jurisdiction of the Civil Service Commission.

- The Authority should have adequate powers to enforce its regulations and directives and the provisions of the Broadcasting Act, including power to prosecute on summary conviction, with a prescribed and steeply graduated scale of minimum fines; on three convictions within the term of a licence, there should be automatic suspension of the licence for a period to be determined by the Authority.

- The Authority should have power to suspend or cancel a licence, without prior conviction, in cases of serious or flagrant offences, following a formal public hearing, with provision for appeal to the Exchequer Court on questions of law.

- The financial estimates of the Authority should be submitted annually to Parliament by the designated minister with the approval of the Treasury Board.

- The Authority should report annually to Parliament, in detail, on the program performance and financial record of the CBC and the private broadcasters, on the administration of the CBC, and on its own affairs.

Document 36

The Fowler committee report (Document 35) quite naturally raised the volume of the perpetual Canadian debate about broadcasting. Neither the CBC nor the Board of Broadcast Governors was happy with the report's recommendation that there be a supreme broadcasting authority; the CBC feared losing its autonomy and the BBG resented the implication that it hadn't been tough enough and would have to be replaced. The response of the Canadian Association of Broadcasters was consistent with its long-standing position on broadcasting policy—it saw a threat both to freedom and to profits. What follows is an editorial from the CAB magazine, *Canadian Broadcaster*, in response to Fowler's 1965 report, as well as a statement released to the press by the CAB on the same report.

DOCUMENT 36: "Robert Fowler recommends broadcasting, dictatorship and censorship," and "A statement from the CAB," *Canadian Broadcaster*, 23 September 1965.

Robert Fowler recommends...

...broadcasting, dictatorship and censorship

The Fowler Report has been read in the *Broadcaster office*. A tabulation of its main recommendations will be found on page 6 of this issue, and they will be found to be rough on the private broadcasters, but even more so on the CBC.

We are working on a thorough analysis of these recommendations, which we hope to have ready for our next issue. The only valid comment we can make at this time is that if they are acted upon, they will add considerably to the number of regulations to which the industry is subjected. Also, in the case of infractions, the report would have a long list of penalties applied to offenders.

The Committee would have the industry (both private and state-owned) regulated under a one-Board system in the place of a Board of Broadcast Governors and a separate Board of Directors of the CBC. This many people feel would be reversion to the days when all regulatory functions were performed by the CBC Board.

Also, the new authority, called tentatively The Canadian Broadcasting Authority (CBA), would, if it is ever constituted, enter into the realm of program control more deeply than has been the case in the past.

By a considerable increase of regulation, in terms of both numbers and stringency, Fowler has used the ability he gained in his original profession of law in building an ostensibly strong argument of an extremely weak case. Moreover he is stepping way beyond the terms of reference under which the committee was established.

While his recommendations bear individual examination, far and away the most harmful, and the one which should be resisted to the last ditch, is the establishment of this virtually one-man dictatorship (because the ineffectiveness of part time governors has been clearly demonstrated in the operation of the BBG) whose power would be unlimited even to the extent of himself appointing the Director-General of the CBC.

The suggested intrusion of the new "Authority" into the realm of programming is reminiscent of the ages-old struggle for freedom of speech.

Three rays of light filter through the dark and foreboding clouds this man has cast over the industry. First is the determination of the CAB to meet it head on. Second is the volume of unfavorable editorial comment the Report has received from broadcasting's keenest business competitors, the newspapers. Third is the fact that the report goes to such extremes that it is more than unlikely that it will be implemented by this government or any government that may succeed it.

Nearly 13 million radio sets and more than 4 3/4 million television receivers indicate that, in the minds of the Canadian public, there is a great deal that is good about broadcasting as it is.

A statement from the CAB

Following the release of the Report of the Fowler Committee on Broadcasting last week, the board of directors met to discuss the report, and after this meeting issued this statement:

The Canadian Association of Broadcasters is giving careful study to the recommendations of the Fowler Committee on Broadcasting. From initial study it appears that some of these are worthwhile and deserve careful consideration.

However the Canadian Association of Broadcasters is seriously concerned about the recommendation for a "Canadian Broadcasting Authority" to be made up of a full time chairman and fourteen part time members, and possessed of enormous powers.

It is clear from the report that the functions assigned this Board could make it in fact the equivalent of the CBC's Board of Directors. It is proposed that the executive head of the CBC be appointed by and report to the Authority and that the Authority be possessed of complete responsibility for policy making and direction of CBC organization programming and financial expenditures.

The Canadian Association of Broadcasters sees this as similar to and potentially more dangerous than the system that existed between 1936 and 1958. For more than a decade private broadcasters fought for correction of that unparalleled situation in which the CBC and its Board were at one and the same time competing with private stations for business and audience and were the judge and jury of their daily existence and ultimate fate.

Additionally the proposed Canadian Broadcasting Authority would be assigned sweeping powers of a nature we believe have never been assigned any administrative tribunal especially in the communications field. Its chairman would be virtually a broadcasting czar empowered to determine what Canadians would see and hear from Canadian broadcasting stations.

CAB will insist upon continuation of a separate regulatory body, a tribunal not involved in the operation of broadcasting stations either public or private. It is the CAB's opinion that this is the essence of the "impartial agency of control" proclaimed as government policy by the present Minister of Transport to an annual meeting of the CAB just two years ago.

CAB believes that creation of a Canadian Broadcasting Authority as visualized in the Fowler Committee Report especially if possessed of the wide powers that report contemplates would seriously damage the ability of Canadian broadcasters to provide programs Canadians have demonstrated they want; result in an inferior and less acceptable standard of programming; and drive a majority of Canadian listeners and viewers to U. S. stations.

Document 37

After receiving the report of the Fowler advisory committee on broadcasting, the Liberal government of Lester Pearson decided the 1958 Broadcasting Act was beyond tinkering with and set in motion the whole machinery to produce a new act, the country's fourth. It issued a "white paper on broadcasting," a formal statement of government objectives in an important piece of legislation.

The white paper entered a world that was paying a great deal of attention to television as a powerful force for social and even political change. In Canada, people were worried about national unity. The country's centennial was one year away, but Confederation was entering upon troubled times. Quebec appeared less and less happy with its constitutional relationship with the rest of the country, and articulate voices in the province were arguing for independence. The white paper therefore stressed what it said was the main purpose of broadcasting—the strengthening of national unity.

On the central recommendation of the Fowler committee, that the Board of Broadcast Governors be replaced by one super-board to run all Canadian broadcasting including the CBC, the white paper backed off. It rejected that idea, but failed to accept the idea of having two boards—one to run public broadcasting, the other to license and regulate the private stations. This document outlines a delicate compromise over what kind of authority should run broadcasting, and how it should do so.

DOCUMENT 37: "White paper on broadcasting," 4 July 1966.

I

INTRODUCTION

1. Objectives

The determination to develop and maintain a national system of radio and television broadcasting in Canada is an essential part of the continuing resolve for Canadian identity and Canadian unity. In this respect the situation in 1966 is no different from that at any other point in our history. Almost forty years ago the Royal Commission headed by Sir John Aird found unanimity in Canada on one fundamental question—Canadian radio listeners wanted Canadian broadcasting. This strong mandate did not arise from any narrow nationalism that sought to shut out the rest of the world

or, more appropriately, the rest of our continent, but rather from a clear conviction that the destiny of Canada depended on our ability and willingness to control and utilize our own internal communications for Canadian purposes.

What policies are therefore appropriate in a Canada that shares the common lot of all technologically advanced countries in the electronic age? The speed of personal movement has been far outstripped by the speed with which ideas and information of all kinds can now be transmitted over long distances and can reach into the homes and minds of the population at large. There is no insulation from these new forces, no iron curtains of the mind to permit a comfortably slow pace of adjustment to new forces. The era of the communications satellites is upon us, still further complicating the processes of adaptation which the essential goal of Canadian unity will demand.

Any statement of policy relating to broadcasting in Canada therefore starkly poses this question. How can the people of Canada retain a degree of collective control over the new techniques of electronic communication that will be sufficient to preserve and strengthen the political, social and economic fabric of Canada, which remains the most important objective of public policy?

2. The Advisory Committee

The report of the Advisory Committee on Broadcasting was submitted to the Government and published early in September, 1965, after some fifteen months of intensive study of the complex problems peculiar to Canadian broadcasting. Its far-reaching recommendations gave rise to an extraordinary volume of public comment and debate to which the Government has given careful attention, with special regard to the expressed opinions of the Canadian public at large. The Government has also received and given careful consideration to representations from the Board of Broadcast Governors, the Canadian Broadcasting Corporation, the Canadian Association of Broadcasters, the Canadian Broadcasting League, and other interested organizations.

Following these deliberations, the Government has concluded that the comments and criticisms made by the Advisory Committee within its terms of reference are in many respects soundly based and generally valid, and that many of its recommendations should be implemented as soon as possible, in effect but not necessarily in every detail. The Government accordingly proposes to introduce new legislation on the general lines set out herein.

II

PUBLIC CONTROL OF BROADCASTING

3. *General Principles*

Television channels and radio frequencies, the number of which is at present limited, are public property over which the public is entitled to exercise appropriate control, primarily by issuing broadcasting licences subject to special and enforceable conditions. Past experience has clearly demonstrated the necessity in Canada for a broadcasting system that includes public and private elements, in which the place of the public element should predominate in policy areas where a choice between the two is involved. Subject only to regulations applicable to all broadcasters and the conditions of individual licences, the right to freedom of expression should be unquestioned, but all broadcasters have a responsibility for the public effects of the powerful and pervasive influence which they exercise.

Much of the controversy about public control of broadcasting seems to arise from a failure to distinguish clearly between two quite separate elements—the physical structure of the system and the actual programs broadcast—which can and should be differently treated. It is almost universally recognized that the regulation of programming must be entirely and demonstrably free from improper influences and pressures, and can therefore best be delegated to an independently constituted authority which is not subject to any form of direction in that regard. But, since the coverage of the national broadcasting service must be provided by the public element, which is dependent on funds voted by Parliament, the physical structure of the system as a whole is a matter for the Government, which is responsible to Parliament, to decide.

Fears of hidden influences on program content have tended to obscure this legitimate right to direct the structure of the broadcasting system. These fears can best be dispelled by providing statutory machinery which distinguishes clearly between the total delegation of authority over programming on the one hand, and ultimate authority over the structure of the system on the other.

In the new legislation, Parliament will therefore be asked to authorize the Governor in Council to give formal directions to the regulatory authority, dealing with the structure of the system, which may then be put into effect after suitable public discussion. Matters affecting programming will not be subject to such directions, the scope of which is more fully described below.

4. *The Regulatory Authority*

The Canadian broadcasting system, comprising public and private sectors, must be regarded as a single system which should be regulated and controlled by a single independent authority. It is therefore proposed that the powers and authority of the Board of Broadcast Governors, which require extension and clarification, shall be applicable to all broadcasters alike, and that the Board itself shall be reconstituted. The Government does not concur in the recommendation of the Advisory Committee that the regulatory authority should be responsible for the management of the Canadian Broadcasting Corporation. However, the legislation will make it clear that the Corporation will be subject to the regulatory powers of the Board of Broadcast Governors in all matters affecting general broadcasting policy in Canada.

The Board of Broadcast Governors will have full power to issue broadcasting licences, subject only to technical evaluation and certification by the Department of Transport and to any formal direction that may have been issued under the new Act relating to the structure of the system. Licences will be issued on the authority of the Board itself, without reference, as at present, to the Governor in Council, but provision will be made for formal appeals to be made to the Governor in Council against the decisions of the Board in the exercise of this power. The necessary amendments to the Radio Act will be submitted to Parliament simultaneously with the new broadcasting legislation.

The Board will also have full power to regulate the constitution of and conditions of affiliation to all television and radio networks, both public and private.

The Board will be required to undertake, in collaboration with the Canadian Broadcasting Corporation, objective research into all matters bearing upon broadcasting in Canada. The need to keep abreast of the pace of technological change is quite apparent. It is also generally agreed that far too little is known about the specific effects on the public of new forms of communication, or about the views held by Canadians as to the objectives of public broadcasting.

The Board will be asked to consider the feasibility and desirability of setting up regional broadcasting councils to advise upon representations made by the general public with regard to programming.

The extended powers and responsibilities of the Board will, in the opinion of the Government, require the attention of more full-time members than at present, but there should continue to be a number of part-time members sufficient to provide a broad cross-section of Canadian opinion. The authority of the Board will reside in the full-time members, but there will

be an obligation to consult the whole Board before decisions are taken on matters of regulatory policy.

It is accordingly proposed that the Board shall comprise a Chairman, a Vice-Chairman, and three other full-time members, together with up to seven part-time members, all to be appointed by the Governor in Council. Normal terms of appointment will be seven years for the full-time members, but in both cases the terms of initial appointments will be adjusted so as to ensure a rotation of new appointments.

5. *The Structure of the Broadcasting System*

In ordinary circumstances, the Board of Broadcast Governors will have the unqualified right, subject to technical certification by the Department of Transport, to select one from a number of applicants for a broadcasting licence, and to issue and renew licences on a basis of merit. But, as noted, authority will rest with the Governor in Council to give formal directions to the Board on the overall pattern of coverage to be followed; on the reservation of particular channels and frequencies for the use of the Canadian Broadcasting Corporation; on the assignment of particular channels and frequencies for special purposes; on the eligibility of certain classes of applicants for licences; and on the pre-emption of broadcast time for special purposes or in an emergency.

All Canadians are entitled, subject only to practical considerations in the expenditure of public funds, to service in the Canadian official language that they habitually use. The Government intends to give the highest possible priority to the extension of radio and television coverage on this basis. Parliament will be asked to provide funds so that the Canadian Broadcasting Corporation can complete coverage, to the fullest extent that is feasible, with all possible speed.

The time has also come to consider full national network services in both official languages from coast to coast, and a detailed study of all aspects of this question will be undertaken forthwith.

Although prime coverage must have first priority, alternative television service is an amenity now regarded almost as a necessity of life, which is already available to some 75-80 % of Canadian television households. The Government has advised the Board of Broadcast Governors that, pending the enactment of new legislation, it is now prepared to consider issuing second-station television licences on the recommendation of the Board, subject to the reservation for the use of the Canadian Broadcasting Corporation of channels in Victoria, B.C.; Saskatoon, Sask.; Sudbury, Ont.; and the Saint John-Fredericton area in New Brunswick. The provision of television service by the Canadian Broadcasting Corporation in these reserved

locations will be inaugurated, by means of repeater stations at first, as funds permit. The effect of this decision will be to permit the Board to consider applications by private affiliates of the Canadian Broadcasting Corporation who may wish to disaffiliate and join the CTV network.

In recommending the issue of a second-station licence before the enactment of new legislation, the Board of Broadcast Governors will be required to satisfy the Government that the advertising revenue of a new station will be adequate to support a proper level of public-service programming.

6. *New Television Channels*

The Television channels now in regular use in Canada all lie within what is known as the very-high-frequency band (VHF). The number of these channels is limited, and most have already been assigned. Those that remain are too few to meet current and impending requirements for educational television stations and other special needs. For these purposes it will be necessary to make use of the additional channels available in the ultra-high-frequency band (UHF), which requires special transmitting and receiving equipment, and which is not yet in regular use. The Department of Transport was accordingly directed some time ago to study in detail and make recommendations, in collaboration with the Board of Broadcast Governors, on the pattern of assignment of ultra-high-frequency television channels to the public and private sectors, and for educational and other special uses.

7. *Programming*

Clearly there must be regulations, applicable to all broadcasters alike, establishing general standards of public acceptability and governing such matters as the length, frequency and nature of advertising announcements, but this is hardly enough. While the Canadian Broadcasting Corporation has a special place in the field of public-service programming, private broadcasters also have 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. This the Canadian people are fully entitled to demand in return for the grant of a valuable franchise. But standards of quality and public service should not be formulated on a universally applicable basis. Private broadcasters operating in the larger and more profitable markets can afford to provide a greater variety and higher quality of programming than those in less favoured areas, and it is therefore logical to relate regulatory requirements to the profit-potential of individual licences.

In programming, high quality is more a matter of general excellence

than of mere content. So called "high-brow" programs can be artistically or technically poor, while light entertainment can be excellent. High quality does not necessarily flow from high cost, and standards of quality cannot readily be made a condition of a 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.

Other important requirements of public policy can be measured in terms of time and money. In particular, the employment of Canadian talent of all kinds is something that public policy should require by demanding that all broadcasters include a substantial Canadian content in their programming, particularly in prime time. Events of national interest which originate abroad are important as public-service programming, but do not contribute to the utilization of Canadian talent and should not qualify as Canadian content.

Accordingly the new legislation will provide that minimum standards of public-service programming and Canadian content shall be determined by the Board of Broadcast Governors on an individual basis, taking account of the circumstances of the licensee or of groups of licensees, including the Canadian Broadcasting Corporation. These minimum standards will be incorporated into the conditions of the licence so as to be legally enforceable.

Thus, in future, a broadcasting licence will be granted after a public hearing and subject to technical certification, to the applicant who undertakes, as a condition of his licence, to comply with generally applicable regulations on program quality and advertising, and to provide the best texture of public-service programming and Canadian content. The renewal of an existing licence will be subject to the same considerations, and the past performance of the licensee will be taken fully into account. The Board will not, however, be empowered to give directions, other than by generally applicable regulations or in the conditions of a licence, to any broadcaster in respect of specific programs.

8. *Ownership of Canadian Facilities*

Another important aspect of licensing policy in the field of radio and television which requires attention is the ownership of broadcasting facilities. It has always been recognized that the control of Canadian communications facilities should remain in Canadian hands. There are already instances of foreign ownership and potential foreign control extending markedly into the field of Canadian communications facilities, particularly in the community-antenna television systems.

Within Canada, ownership or control of one medium of communication by another is equally a matter of concern if it tends to develop into a monopoly. There is a growing number of cases where either ownership or control extends to both the local newspapers and the local radio or television facilities. The Board of Broadcast Governors will be required to investigate and report on public complaints or representations about situations of this kind.

Parliament will be asked to authorize the Government to give guidance to the Board of Broadcast Governors aimed at preventing foreign control of broadcasting facilities, the domination of a local situation through multiple ownership, or the extension of ownership geographically in a manner that is not in the public interest.

9. *Educational Broadcasting*

A tremendous expansion in the use of television for educational purposes is to be expected in the next few years, and the operation of educational broadcasting stations or systems involves both federal and provincial responsibilities. The policy that has been followed for the past twenty years is that broadcasting licences should not be granted to other governments or to agencies under their direct control. The only exceptions have been some radio licences issued to educational institutions specifically for educational broadcasting. Provincial applications for licences for private television stations to be operated in connection with the educational system of the province are now being received, and more are to be expected in the near future.

Federal policies in the field of communications must not work to impede but must facilitate the proper discharge of provincial responsibilities for education. For this purpose, it will be necessary to work directly with the provinces to study the technical facilities required, and to plan and carry out the installation of educational broadcasting facilities throughout Canada.

The Government is prepared to give immediate consideration to the creation of a new federal organization licensed to operate public service broadcasting facilities. This organization would be empowered to enter into an agreement with any province to make such facilities available for the broadcasting within the province, during appropriate periods of the day, of programs designed to meet the needs of the provincial educational system as determined by the responsible provincial authorities. As a component of the Canadian broadcasting system, the new organization would be subject to the authority of the Board of Broadcast Governors in respect of the licensing of stations, the hours of broadcasting, the interpretation of its purposes, and generally the regulatory power of the Board in all matters affecting general broadcasting policy in Canada. Details of this arrangement will be deve-

loped after ample opportunity has been given for full discussion with all concerned.

It is the view of the Government that, since the imminent availability of ultra-high-frequency channels and facilities will be quite adequate for the needs of education, there is no need at this time to proceed with the recommendation of the Advisory Committee that the very-high-frequency channels now in use should be pre-empted for educational purposes in the forenoon.

10. *Community-Antenna Television Systems*

The new legislation will provide that community-antenna television systems shall be treated as components of the national broadcasting system, subject to licensing, regulation and control by the Board of Broadcast Governors.

The Board will be empowered to examine, at public hearings or otherwise, all applications for new licenses or the renewal of existing licences for such systems. Among the matters subject to regulation or incorporated in the conditions of a licence will be the inclusion of Canadian channels, the preservation of the integrity of the programs received and carried by the systems, the formation of networks, an adequate degree of Canadian control of corporate licensees, and—as already noted—questions of multiple ownership or control.

Study is being given to special problems of jurisdiction involved in the regulation of closed-circuit television operations and the reception of transmissions from antennae in the United States fed through a coaxial cable or microwave system to Canadian communities for local distribution over cable networks.

11. *Penalties and Appeal Procedures*

The Board of Broadcast Governors will be empowered to inflict monetary penalties for breaches of regulations or failure to comply with the conditions of a licence; in the latter case there will also be power to suspend or revoke a licence. The legislation will also provide for appeals to the courts, on questions of law but not of fact, against any decisions of the Board.

III

THE CANADIAN BROADCASTING CORPORATION

12. *The National Broadcasting Service*

The new legislation will establish that the Canadian Broadcasting Corporation, as the public component of the national broadcasting system, will be subject to regulation and control by the Board of Broadcast Governors, and that the standards of quality and the nature of the service provided will be a condition of the licences granted to the Corporation. Since monetary penalties would be ineffectual and the suspension of a licence impractical, the Corporation will necessarily be required to comply with specific directions by the Board in cases of breach of regulations or failure to comply with the conditions of a licence.

13. *The Mandate of the Corporation*

Under the present Broadcasting Act, responsibility is assigned to the Canadian Broadcasting Corporation for the operation of a national broadcasting service. The interpretation of this phrase has been left largely to the Corporation itself, and it has fulfilled its prime responsibility to provide broadcasting services to the Canadian people as a whole in a manner that is altogether praiseworthy.

The new legislation will confirm the objectives developed by the Corporation, which are to provide a complete and balanced service of information, enlightenment and entertainment for people of different ages, interests and tastes, including a high content of regional, national and international news, factual and interpretative reports, and programs devoted to all aspects of the arts, light entertainment, and sport. It should seek to use and develop Canadian artistic and cultural resources and talent, wherever situated, to the maximum extent consistent with high standards of program quality. It should serve the two official-language groups and the special needs of geographical regions, and it should actively contribute to the flow and exchange of information, entertainment and understanding between cultures and between regions.

14. *The Board of Directors*

The field of management and operational policy in the Canadian Broadcasting Corporation is so large that the Government is convinced this responsibility should not be entrusted to a panel of members of the Board of Broadcast Governors, as recommended by the Advisory Committee.

This is true even though, under the new legislation, some broad areas of broadcasting policy which may now be within the competence of the Board of Directors of the Corporation will henceforth be subject to regulation by the Board of Broadcast Governors. There seems to be no doubt that the Corporation will benefit from the advice and judgment of outstanding Canadians chosen mainly but not exclusively for their knowledge and experience of management matters.

It is accordingly proposed that the Board of Directors of the Corporation shall comprise a President and a sufficient number of other directors to provide adequate representation, all to be appointed by the Governor in Council. The President, who will be the chairman of the Board, will be appointed for a term of seven years, the other directors for five years, with suitable provision for the overlapping of initial terms. Subject to the approval of the Governor in Council, the Board of Directors will appoint a chief executive officer, who will be responsible to the Board for all the operations of the Corporation.

15. *Financial Provision*

The Government accepts the recommendation of the Advisory Committee that the Corporation should be financed by means of a statutory five-year grant based on a formula related to television households, with a suitable borrowing authority for capital requirements. The details of the actual amounts, which will require the exercise of a tight financial discipline by the Directors of the Corporation but will be adequate for reasonable requirements, will be submitted to Parliament by the Minister of Finance later in the year when financial requirements of all kinds for the next and ensuing fiscal years are under consideration.

16. *Commercial Activities*

The size of the statutory grant to the Corporation must necessarily take into account an estimate of revenue from advertising and other sources. The Government has given the most careful consideration to the question of commercial activities, and has concluded that the recommendations of the Advisory Committee on Broadcasting should be implemented. It is important both to the Corporation and to private broadcasters that definite limits be set to the amount of revenue to be derived from its commercial activities. The Corporation should not seek to increase its present volume of commercial programming.

Parliament will accordingly be asked to make financial provision for the Corporation on the basis that, while improving its programming, it should seek to retain but not to increase its present 25 % share of the television

advertising market and 4 % share of the corresponding radio market. It is hoped that, with improvements in sales techniques and growing opportunities for sales of programs abroad, this policy will enable the Corporation to provide a quality and diversity of programming that will not be unduly dependent on commercial resources.

17. *Headquarters and Consolidation Plans*

The Government considers that the headquarters of the Corporation should remain in Ottawa, but that the headquarters staff should be of the minimum size compatible with the effective general direction of the Corporation. So far as possible, operational and ancillary activities, particularly the control of programming, should be removed to the main production centres, where suitable adjustments to consolidation plans should be made as a matter of urgency.

Approval has already been given for the start of construction for the consolidation of Montreal operations, but until the peak of construction for Expo '67 has been passed expenditures are to be incurred only at a minimal pace; this will give the Corporation a final opportunity to review its plans in detail. Decisions about consolidation in other production centres must await further discussion with the Corporation and detailed consideration of proposed plans.

The recent difficulties in the relationship of management to production staff forcefully underline the necessity for significant improvements in internal communications. The Government therefore expects that action to effect the necessary organizational changes will be given high priority by the Corporation.

18. *Colour Television*

The Government has reviewed and confirmed its decision that the introduction of colour television, while necessary, must take a lower priority than other improvements in the public broadcasting service. The Corporation will therefore be required to limit its expenditures on conversion to colour through the fiscal year 1969-70 to plans already announced.

19. *The Northern Service and Armed Forces Service*

For Canadians living and serving in the north and other remote parts of the country, and for Canadian servicemen overseas, broadcasting service is of inestimable importance. Radio and, increasingly in the future, television provide vital links with the more populous parts of Canada by affording

an immediacy of communication that is essential to the preservation of a sense of Canadian unity. The Government therefore attaches high importance to the improvement of the present facilities for shortwave transmissions, which are far from adequate.

Parliament will accordingly be asked to provide funds so that the improvements in facilities and programming recommended by the Advisory Committee can be effected as quickly as possible. The present arrangements under which the Department of National Defence bears the main cost of the Armed Forces Service will be continued.

20. *The International Service*

The Government is convinced of the importance and value of the International Service, and is generally prepared to accept the recommendations of the Advisory Committee with regard to the necessary renewal of the physical plant and the extension and improvement of programming. The integration of the Service with the Corporation, which should be undertaken forthwith, will facilitate a rationalization of activities and operations abroad. Programming policy will be determined under the guidance of the Department of External Affairs. The cost of operating the International Service will continue to be met by a special Vote, and Parliament will be asked to provide for the early installation of new transmitting equipment, as well as for the programming improvements and extensions recommended by the Advisory Committee.

IV

CONCLUSION

21. *The Future of Canadian Broadcasting*

The new legislation that Parliament will be asked to enact will, the Government believes, have many beneficial effects. The responsibilities and authority of the Board of Broadcast Governors will be unequivocally established, in relation both to the private broadcasters and to the Canadian Broadcasting Corporation. Both sectors will be fully aware of what is expected of them, and will thus be able to plan confidently for the future. If their plans are soundly conceived and executed, as the Government is confident they will be, the Canadian public will continue to enjoy broadcasting services envied by the rest of the world.

In a policy statement such as this, much of the content is necessarily devoted to the details of the Canadian broadcasting system, and it is there-

fore necessary to recall the national objectives set out in the opening statement. There is no area of human endeavour that is more affected by the present pace of technological change than the means by which people communicate with each other through electronic devices. The Canadian system must be adaptable to change. It must have a ready capacity to adjust to new forces so that it may contribute powerfully in the future, as it has in the past, to the essential goal of Canadian unity.

Part IV

The CRTC Years

The CRTC Years

38 Broadcasting Act, 7 March 1968, 16-17 Eliz. 2, c. 25.

39 Cabinet directives to CRTC on Canadian ownership: Order-in-Council 1968–1809, *Canada Gazette*, Part 1, 5 October 1968, 2398, and amendments, 1969–1971.

40 CRTC, public announcement: "The Improvement and development of Canadian broadcasting and the extension of U.S. television coverage in Canada by CATV," 3 December 1969.

41 "Direction to the Canadian Radio-Television Commission re reservation of cable channels," SOR 70–113, *Canada Gazette*, Part 2, 8 April 1970.

42 CRTC, "Canadian broadcasting 'a single system'—policy statement on cable television," 16 July 1971.

43 CRTC, public announcement: "Regulations respecting broadcasting receiving undertakings (cable television)," 26 November 1975.

44 CRTC, press releases on Canadian content proposal for television and AM radio, and on commercial content for television, 12 February 1970.

45 "No Virginia, a Canadian is not free to decide what he will watch on television or listen to on radio," *Broadcaster*, March 1970, 22–23.

46 CRTC, press release, "Radio and television regulations—résumé," 22 May 1970.

47 CRTC, "Television broadcasting regulations," excerpt dealing with Canadian content and commercials, SOR 70–257, *Canada Gazette*, Part 2, 24 June 1970, as amended, 1972, 1982, 1984.

48 CRTC, "Radio (A.M.) broadcasting regulations, amended," excerpt dealing with Canadian content, SOR 70–256, *Canada Gazette*, Part 2, 24 June 1970.

49 CRTC, Report by the special committee appointed in connection with the CBC program "Air of Death," 9 July 1970.

50 Report of the special Senate Committee on the Mass Media, Vol. 1, *The Uncertain Mirror*, December 1970, 193–225.

51 CRTC, public announcement: Concerning an inquiry by the CRTC into a complaint against radio station CHNS, Halifax, by the Halifax-Dartmouth committee of Miles for Millions, 28 March 1972.

52 CRTC, public announcement: Programs produced under co-production or joint venture arrangements, 16 May 1972.

53 CRTC, "Radio frequencies are public property," public announcement and decision...on the applications for renewal of the CBC's television and radio licences," 31 March 1974, 32–34,43–44.

54 Department of Communications, "Communications: Some federal proposals," April 1975, 11–14.

55 Canadian Radio-television and Telecommunications Commission Act, 19 June 1975, 23 & 24 Eliz. 2, c. 49.

56 CRTC, public announcement: Controversial programming in the Canadian broadcasting system—report on issues raised by CFCF anti-Bill 22 campaign, 24 February 1977, 5–12, plus appended BBG statement of 18 December 1961.

57 Report of the CRTC Committee of Inquiry into the National Broadcasting Service, 20 July 1977, 17–31.

58 CBC, *Journalistic Policy*, July 1982, 1–38.

59 *Telecommunications and Canada*, Report of the Consultative Committee on the Implications of Telecommunications for Canadian Sovereignty, March 1979, 20–49.

60 CRTC committee on extension of service to northern and remote communities, *The 1980s: a decade of diversity: broadcasting, satellites and pay*-TV, July 1980, 21–22, 26–27, 89, 53–59.

61 CRTC decision 82-240 on pay TV, 18 March 1982, 638–656, 658–661.

62 *Report* of the Federal Cultural Policy Review Committee, November 1982, 288–311.

63 CRTC, "Pay television regulations," SOR 84-797, *Canada Gazette*, Part 2, 17 October 1984, 3923-3926.

64 *Report* of the Task Force on Broadcasting Policy, September 1986, 25-42, 133-168.

Document 38

The Broadcasting Act that gained royal assent in March of 1968 was the country's fourth, and it reflected the worries set out in the 1966 white paper. Lester Pearson's Liberal government was concerned about the continuing conflict between the CBC and the Board of Broadcast Governors, the pressure from all broadcasters for more licences in the lucrative markets, and the wave of technological change that was altering the whole shape of broadcasting. Behind all this was the public's growing conviction that television was having unpleasant and unpredictable social and political effects.

These were the sixties. The ability of television to report (among other things) an ugly and ambiguous war in Vietnam, to show young people smoking marijuana, holding love-ins and storming the bastions of respectability everywhere, exacerbated the tendency to shoot the messenger. TV station owners and producers, for their part, knew they had the power to garner vast audiences and make prodigious amounts of money, and they sometimes displayed an unbecoming arrogance.

American TV programs had been called "a vast wasteland" by no less than the chairman of the Federal Communications Commission, but they continued to dominate the Canadian broadcasting scene. Homegrown controversial programming was more controversial than ever. A CBC public affairs program called "This Hour Has Seven Days", presented in prime time on Sunday nights, drew an audience surpassed only by that for NHL hockey. It also drew heavy criticism from some MPs and was killed in 1966 by top CBC management. It was observed at the time that top management had its roots in the radio age and no one there had ever produced a TV show.

The new act reflected the power of television by giving increased powers to the Canadian Radio-Television Commission—the new regulatory agency that was to replace the BBG. The CRTC was to be the dominant presence in Canadian broadcasting, thus settling the disputes between the CBC and the BBG. As Secretary of State Judy LaMarsh told the House when she introduced the bill, "both the [CRTC] and the CBC will be governed by a common definition for the purposes of the national broadcasting service" (Debates, 1 November 1967, 3751), and the CRTC was to be given enough power to make sure those purposes were realized. Those who wrote the bill also recognized the future importance of cable as a means of delivering television signals and gave to the CRTC jurisdiction over this growing medium.

The only amendments to the act in the following years have been minor housekeeping adjustments brought about by amendments to other government acts. They are not reproduced here.

DOCUMENT 38: "Broadcasting Act," 7 March 1968, 16&17 Eliz. 2, c. 25.

An Act to implement a broadcasting policy for Canada, to amend the Radio Act in consequence thereof and to enact other consequential and related provisions.

[*Assented to 7th March, 1968*]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

1. This Act may be cited as the Broadcasting Act.

PART I

GENERAL

Broadcasting Policy for Canada

2. It is hereby declared that
   (a) broadcasting undertakings in Canada make use of radio frequencies that are public property and such undertakings constitute a single system, herein referred to as the Canadian broadcasting system, comprising public and private elements;
   (b) the Canadian broadcasting system should be effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada;
   (c) all persons licensed to carry on broadcasting undertakings have a responsibility for programs they broadcast but the right to freedom of expression and the right of persons to receive programs, subject only to generally applicable statutes and regulations, is unquestioned;
   (d) 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;

(e) all Canadians are entitled to broadcasting service in English and French as public funds become available;

(f) there should be provided, through a corporation established by Parliament for the purpose, a national broadcasting service that is predominantly Canadian in content and character;

(g) the national broadcasting service should

(i) be a balanced service of information, enlightenment and entertainment for people of different ages, interests and tastes covering the whole range of programming in fair proportion,

(ii) be extended to all parts of Canada, as public funds become available,

(iii) be in English and French, serving the special needs of geographic regions, and actively contributing to the flow and exchange of cultural and regional information and entertainment, and

(iv) contribute to the development of national unity and provide for a continuing expression of Canadian identity;

(h) where any conflict arises between the objectives of the national broadcasting service and the interests of the private element of the Canadian broadcasting system, it shall be resolved in the public interest but paramount consideration shall be given to the objectives of the national broadcasting service;

(i) facilities should be provided within the Canadian broadcasting system for educational broadcasting; and

(j) the regulation and supervision of the Canadian broadcasting system should be flexible and readily adaptable to scientific and technical advances;

and that the objectives of the broadcasting policy for Canada enunciated in this section can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.

Interpretation

3. In this Act,

(a) "broadcaster" means a person licensed by the Commission to carry on a broadcasting transmitting undertaking;

(b) "broadcasting" means any radiocommunication in which the transmissions are intended for direct reception by the general public;

(c) "broadcasting licence" or, in Parts II and III, "licence" means a licence to carry on a broadcasting undertaking issued under this Act;

(d) "broadcasting undertaking" includes a broadcasting transmitting undertaking, a broadcasting receiving undertaking and a network operation, located in whole or in part within Canada or on a ship or aircraft registered in Canada;
(e) "Corporation" means the Canadian Broadcasting Corporation established by Part III;
(f) "Commission" means the Canadian Radio-Television Commission established by Part II;
(g) "licensee" means a person licensed by the Commission to carry on a broadcasting undertaking;
(h) "Minister" in Parts II and III means the Secretary of State of Canada;
(i) "network" includes any operation involving two or more broadcasting undertakings whereby control over all or any part of the programs or program schedules of any of the broadcasting undertakings involved in the operation is delegated to a network operator;
(j) "radiocommunication" means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by means of electromagnetic waves of frequencies lower that 3,000 Gigacycles per second propagated in space without artificial guide; and
(k) "temporary network operation" means a network operation with respect to a particular program or series of programs extending over a period not exceeding one month.

PART II

CANADIAN RADIO-TELEVISION COMMISSION

Interpretation

4. In this Part,
(a) "Executive Committee" means the Executive Committee of the Commission established by this Part;
(b) "member" means a member of the Commission and includes a full-time member and part-time member; and
(c) "Chairman" and "Vice-Chairman" mean, respectively, the Chairman and Vice-Chairman of the Commission designated by the Governor in Council pursuant to subsection (1) of section 8.

Commission Established

5. (1) There shall be a commission to be known as the Canadian Radio-

Television Commission, consisting of five full-time members and ten part-time members to be appointed by the Governor in Council.

(2) Each full-time member shall be appointed to hold office during good behaviour for a term not exceeding seven years and each part-time member shall be appointed to hold office during good behaviour for a term not exceeding five years.

(3) Subject to subsection (4) and to section 7, a member is eligible for reappointment upon the expiration of his term of office but a part-time member who has served two consecutive terms is not, during the twelve months following the completion of his second term, eligible for reappointment as a part-time member.

(4) A member ceases to be a member of the Commission upon attaining the age of seventy years but may be removed at any time by the Governor General in Council for cause.

6. (1) A full-time member shall devote the whole of his time to the performance of his duties under this Part.

(2) Every member shall, before entering upon his duties as such, take and subscribe, before the Clerk of the Privy Council, an oath in the form set out in Schedule A.

7. (1) A person is not eligible to be appointed or to continue as a member of the Commission if he is not a Canadian citizen ordinarily resident in Canada or if, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise, he

(a) is engaged in a broadcasting undertaking; or

(b) has any pecuniary or proprietary interest in

(i) a broadcasting undertaking, or

(ii) the manufacture or distribution of radio apparatus except where such distribution is incidental to the general merchandising of goods by wholesale or by retail.

(2) Where any interest prohibited under subsection (1) vests in any member by will or succession for his own benefit, he shall, within three months thereafter, absolutely dispose of such interest.

Chairman and Vice-Chairman

8. (1) The Governor in Council shall designate one of the full-time members to be Chairman of the Commission and one of the full-time members to be Vice-Chairman of the Commission.

(2) The Chairman is the chief executive officer of the Commission, and has supervision over and direction of the work and the staff of the

Commission and the Chairman shall preside at meetings of the Commission.

(3) In the event of the absence or incapacity of the Chairman or if the office of Chairman is vacant, the Commission may authorize the Vice-Chairman to exercise all the powers and functions of the Chairman.

(4) The Commission may authorize one or more of its full-time members to act as Chairman for the time being in the event that the Chairman and Vice-Chairman are absent or unable to act or the offices are vacant.

Remuneration

9. (1) Each full-time member shall be paid a salary to be fixed by the Governor in Council and each part-time member shall be paid such fees for attendances at meetings of the Commission or any committee thereof or at any public hearing before the Commission that he is requested by the Chairman to attend as are fixed by by-law of the Commission.

(2) Each member is entitled to be paid such travelling and living expenses incurred by him in the performance of his duties as are fixed by by-law of the Commission.

Staff

10. The officers and employees necessary for the proper conduct of the business of the Commission shall be appointed in accordance with the Public Service Employment Act.

Superannuation

11. (1) The full-time members of the Commission and the persons appointed under section 10 shall be deemed to be persons employed in the Public Service for the purposes of the Public Service Superannuation Act.

(2) For the purposes of any regulations made pursuant to section 5 of the Aeronautics Act, the full-time members of the Commission and the persons appointed under section 10 shall be deemed to be employees in the public service of Canada.

Head Office and Meetings

12. (1) The head office of the Commission shall be at the City of Ottawa.

(2) The Commission shall meet at least six times in each year.

(3) Three full-time members and five part-time members constitute a quorum of the Commission.

By-Laws

13. The Commission may make by-laws

(a) respecting the calling of meetings of the Commission,
(b) respecting the conduct of business at meetings of the Commission and the establishment of special and standing committees of the Commission, the delegation of duties to such committees and the fixing of quorums for meetings thereof, and
(c) fixing the fees to be paid to part-time members of the Commission for attendances at meetings of the Commission or any committee thereof or at public hearings before the Commission that they are requested by the Chairman to attend, and the travelling and living expenses to be paid to members,

but no by-law made under paragraph (c) shall have any effect unless it has been approved by the Minister.

Executive Committee

14. (1) There shall be an Executive Committee of the Commission, consisting of the Chairman, the Vice-Chairman and the three other full-time members of the Commission, which shall exercise the powers conferred on it by this Part and shall submit to each meeting of the Commission minutes of its proceedings since the last preceding meeting of the Commission.

(2) Three full-time members of the Commission constitute a quorum of the Executive Committee.

(3) The Executive Committee may make rules respecting the calling of its meetings and the conduct of business thereat.

(4) For the purposes of this Act, any act or thing done by the Executive Committee in the exercise of the powers conferred on it by this Part shall be deemed to be an act or thing done by the Commission.

Objects of the Commission

15. Subject to this Act and the Radio Act and any directions to the commission issued from time to time by the Governor in Council under the authority of this Act, the Commission shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy enunciated in section 2 of this Act.

Powers of the Commission

16. (1) In furtherance of its objects, the Commission, on the recommendation of the executive committee, may

(a) prescribe classes of broadcasting licences;
(b) make regulations applicable to all persons holding broadcasting licences, or to all persons holding broadcasting licences of one or more classes,
  (i) respecting standards of programs and the allocation of broadcasting time for the purpose of giving effect to paragraph (d) of section 2,
  (ii) respecting the character of advertising and the amount of time that may be devoted to advertising,
  (iii) respecting the proportion of time that may be devoted to the broadcasting of programs, advertisements or announcements of a partisan political character and the assignment of such time on an equitable basis to political parties and candidates,
  (iv) respecting the use of dramatization in programs, advertisements or announcements of a partisan political character,
  (v) respecting the broadcasting times to be reserved for network programs by any broadcasting station operated as part of a network,
  (vi) prescribing the conditions for the operation of broadcasting stations as part of a network and the conditions for the broadcasting of network programs,
  (vii) with the approval of the Treasury Board, fixing the schedules of fees to be paid by licensees and providing for the payment thereof,
  (viii) requiring licensees to submit to the Commission such information regarding their programs and financial affairs or otherwise relating to the conduct and management of their affairs as the regulations may specify, and
  (ix) respecting such other matters as it deems necessary for the furtherance of its objects; and
(c) subject to the provisions of this Part, revoke any broadcasting licence other than a broadcasting licence issued to the Corporation.

(2) A copy of each regulation or amendment to a regulation that the Commission proposes to make under this section shall be published in the *Canada Gazette* and a reasonable opportunity shall be afforded to licensees and other interested persons to make representations with respect thereto.

17. (1) In furtherance of the objects of the Commission, the Executive Committee, after consultation with the part-time members in attendance at a meeting of the Commission, may

(a) issue broadcasting licences for such terms not exceeding five years and subject to such conditions related to the circumstances of the licensee
  (i) as the Executive Committee deems appropriate for the implementation of the broadcasting policy enunciated in section 2 of this Act, and
  (ii) in the case of broadcasting licences issued to the Corporation, as the Executive Committee deems consistent with the provision, through the Corporation, of the national broadcasting service contemplated by section 2 of this Act;
(b) upon application by a licensee, amend any conditions of a broadcasting licence issued to him;
(c) issue renewals of broadcasting licences for such terms not exceeding five years as the Executive Committee considers reasonable and subject to the conditions to which the renewed licences were previously subject or to such other conditions as comply with paragraph (a);
(d) subject to the provisions of this Part suspend any broadcasting licence other than a broadcasting licence issued to the Corporation;
(e) exempt persons carrying on broadcasting receiving undertakings of any class from the requirement that they hold broadcasting licences; and
(f) review and consider any technical matter relating to broadcasting referred to the Commission by the Minister of Transport and make recommendations to him with respect to any such matter.

(2) The Executive Committee and the Corporation shall, at the request of the Corporation, consult with regard to any conditions that the Executive Committee proposes to attach to any broadcasting licence issued or to be issued to the Corporation.

(3) If, notwithstanding the consultation provided for in subsection (2), the Executive Committee attaches any condition to a broadcasting licence described in subsection (2) that the Corporation is satisfied would unreasonably impede the provision, through the Corporation, of the national broadcasting service contemplated by section 2 of this Act, the Corporation

may refer the condition to the Minister for consideration and the Minister, after consultation with the Commission and the Corporation, may give to the Executive Committee a written directive with respect to the condition and the Executive Committee shall comply with such directive.

(4) A directive given by the Minister under subsection (3) shall be published forthwith in the Canada Gazette and shall be laid before Parliament within fifteen days after the making thereof, or if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

18. (1) The Executive Committee may undertake, sponsor, promote or assist in research relating to any aspect of broadcasting and in so doing it shall, wherever appropriate, utilize technical, economic and statistical information and advice from the Corporation or departments or agencies of the Government of Canada.

(2) The Executive Committee may from time to time and shall, in accordance with any direction to the Commission issued by the Governor in Council under the authority of this Act, by notice to all licensees throughout Canada or throughout any area of Canada specified in the notice, require such licensees to broadcast any program that the Executive Committee or the Governor in Council, as the case may be, deems to be of urgent importance to Canadians generally or to persons resident in the area to which the notice relates; and a copy of each notice given under this subsection shall, forthwith after the giving thereof, be published in the Canada Gazette.

Hearings and Procedure

19. (1) A public hearing shall be held by the Commission

(a) in connection with the issue of a broadcasting licence, other than a licence to carry on a temporary network operation; or

(b) where the Commission of the Executive Committee has under consideration the revocation or suspension of a broadcasting licence.

(2) A public hearing shall be held by the Commission, if the Executive Committee is satisfied that it would be in the public interest to hold such a hearing, in connection with

(a) the amendment of a broadcasting licence;

(b) the issue of a licence to carry on a temporary network operation; or

(c) a complaint by a person with respect to any matter within the powers of the Commission.

(3) A public hearing shall be held by the Commission in connection

with the renewal of a broadcasting licence unless the Commission is satisfied that such a hearing is not required and, notwithstanding subsection (2), a public hearing may be held by the Commission in connection with any other matter in respect of which the Commission deems such a hearing to be desirable.

(4) The Chairman may direct that a public hearing under this section be heard on behalf of the Commission by two or more members designated by him of whom at least one shall be a full-time member, and the members so designated have and may exercise for the purpose of such hearing the powers of the Commission set out in subsection (7).

(5) A full-time member designated under subsection (4) in respect of a public hearing may, at any stage thereof, refer the hearing to the Commission and the Commission shall then conduct the hearing.

(6) A public hearing under this section may be held at such place in Canada as the Commission, or the Chairman on behalf of the Commission, may designate.

(7) The Commission has, in respect of any public hearing under this section, as regards the attendance, swearing and examination of witnesses thereat, the production and inspection of documents, the enforcement of its orders, the entry of and inspection of property and other matters necessary or proper in relation to such hearing, all such powers, rights and privileges as are vested in a superior court of record.

20. (1) The Commission shall give notice in the *Canada Gazette* of any application received by it for the issue, amendment or renewal of a broadcasting licence, other than a licence to carry on a temporary network operation, of any public hearing to be held under section 19 and of the issue, amendment or renewal of any broadcasting licence.

(2) A copy of a notice given pursuant to subsection (1) shall be published by the Commission in one or more newspapers of general circulation within the area normally served or to be served by the broadcasting undertaking to which the application, public hearing or the issue, amendment or renewal of the broadcasting licence relates.

21. The Commission may make rules respecting the procedure for making applications, representations and complaints to the Commission and the conduct of hearings under section 19 and generally respecting the conduct of the business of the Commission in relation thereto.

Licences

22. (1) No broadcasting licence shall be issued, amended or renewed pursuant to this Part

(a) in contravention of any direction to the Commission issued by the Governor in Council under the authority of this Act respecting

(i) the maximum number of channels or frequencies for the use of which broadcasting licences may be issued within a geographical area designated in the direction,

(ii) the reservation of channels or frequencies for the use of the Corporation or for any special purpose designated in the direction, or

(iii) the classes of applicants to whom broadcasting licences may not be issued or to whom amendments or renewals thereof may not be granted and any such class may, notwithstanding section 2, be limited so as not to preclude the amendment or renewal of a broadcasting licence that is outstanding at the time this Act comes into force; and

(b) unless the Minister of Transport certifies to the Commission that the applicant has satisfied the requirements of the Radio Act and regulations thereunder and has been or will be issued a technical construction and operating certificate under that Act with respect to the radio apparatus that the applicant would be entitled to operate under the broadcasting licence applied for or sought to be amended or renewed;

and any broadcasting licence issued, amended or renewed in contravention of this section is of no force or effect.

(2) No broadcasting licence is of any force or effect during any period while the technical construction and operating certificate issued under the *Radio Act* with respect to the radio apparatus that the holder of the broadcasting licence is entitled to operate thereunder is suspended or revoked.

23. (1) The issue, amendment or renewal by the Commission of any broadcasting licence may be set aside, or may be referred back to the Commission for reconsideration and hearing by the Commission, by order of the Governor in Council made within sixty days after such issue, amendment or renewal, and subsection (4) of section 19 shall not apply in respect of any such hearing.

(2) An order of the Governor in Council made under subsection (1) that refers back to the Commission for reconsideration and hearing by it the issue, amendment or renewal of a licence shall set forth the details of any matter that, in the opinion of the Governor in Council, is material to the

application and that, in his opinion, the Commission failed to consider or to consider adequately.

(3) Where the issue, amendment or renewal of a broadcasting licence is referred back to the Commission under this section, the Commission shall reconsider the matter so referred back to it and, after a hearing as provided for by subsection (1), may

(a) rescind the issue of the licence;
(b) rescind the issue of the licence and issue a licence on the same or different conditions to any other person;
(c) rescind the amendment or renewal; or
(d) confirm, either with or without change, variation or alteration, the issue, amendment or renewal.

(4) The issue, amendment or renewal by the Commission of any broadcasting licence that has been referred back to the Commission pursuant to subsection (1) and confirmed pursuant to paragraph (d) of subsection (3) may be set aside by order of the Governor in Council made within sixty days after such confirmation.

Revocation or Suspension of Broadcasting Licences

24. (1) No broadcasting licence shall be revoked or suspended pursuant to this Part,

(a) except upon the application or with the consent of the holder thereof; or
(b) in any other case, unless, after a public hearing in accordance with section 19, the Commission in the case of the revocation of a licence or the Executive Committee in the case of the suspension of a licence, is satisfied that
    (i) the person to whom the broadcasting licence was issued has violated or failed to comply with any condition thereof or
    (ii) the licence was, at any time within the two years immediately preceding the date of publication in the Canada Gazette of the notice of such public hearing, held by any person to whom the licence could not have been issued at that time by virtue of a direction to the Commission issued by the governor in Council under the authority of this Act.

(2) A copy of a decision of the Commission, in the case of a decision relating to the revocation of a licence, or of the Executive Committee, in the case of a decision relating to the suspension of a licence, together with written reasons for such decision shall, forthwith after the making of such decision, be

(a) forwarded by prepaid registered mail to all persons who were heard at or made any representation in connection with the hearing held pursuant to paragraph (b) of subsection (1); and
(b) published in the *Canada Gazette* and in one or more newspapers of general circulation within the area normally served by the broadcasting undertaking to which the decision relates.

(3) Where the Commission, after affording to the Corporation an opportunity to be heard in connection therewith, is satisfied that the Corporation has violated or failed to comply with any condition of a broadcasting licence issued to it, the Commission shall forward to the Minister a report setting forth the circumstances of the alleged violation or failure, the findings of the Commission and any observations or recommendations of the Commission in connection therewith, and a copy of the report shall be laid by the Minister before Parliament within fifteen days after receipt thereof by him, or if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

Decisions and Orders

25. Except as provided in this Part, every decision or order of the Commission is final and conclusive.

26. (1) An appeal lies from a decision or order of the Commission to the Supreme Court of Canada upon a question of law, or a question of jurisdiction, upon leave therefor being obtained from the Supreme Court on application made within one month after the making of the decision or order sought to be appealed from or within such further time as the Supreme Court or a judge thereof under special circumstances allows.

(2) No appeal lies after leave therefor has been obtained under subsection (2) unless it is entered in the Supreme Court within sixty days from the making of the order granting leave to appeal.

(3) The Exchequer Court of Canada has exclusive original jurisdiction to hear and determine every application for a writ of *certiorari*, prohibition or *mandamus* or for an injunction in relation to any decision or order of the Commission or any proceedings before the Commission.

(4) A decision or order of the Commission is not subject to review or to be restrained, removed or set aside by *certiorari*, prohibition, *mandamus*, or injunction or any other process or proceeding in the Exchequer Court on the ground
(a) that a question of law or fact was erroneously decided by the Commission; or
(b) that the Commission had no jurisdiction to entertain the proceedings in which the decision or order was made or to make the decision or order.

(5) Any minute or other record of the Commission or any document issued by the Commission in the form of a decision or order shall, if it relates to the issue, amendment, renewal, revocation or suspension of a broadcasting licence, be deemed for the purposes of section 25 and this section to be a decision or order of the Commission.

Directions by the Governor in Council

27. (1) The Governor in Council may by order from time to time issue directions to the Commission as provided for by subsection (2) of section 18 and paragraph (a) of subsection (1) of section 22.

(2) An order made under this section shall be published forthwith in the Canada Gazette and shall be laid before Parliament within fifteen days after the making thereof, or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

Prohibitions and Offences

28. (1) No broadcaster shall broadcast, and no licensee of a broadcasting receiving undertaking shall receive a broadcast of a program, advertisement or announcement of a partisan character in relation to

(a) a referendum, or

(b) an election of a member of the House of Commons, the legislature of a province or the council of a municipal corporation

that is being held or is to be held within the area normally served by the broadcasting undertaking of the broadcaster or such licensee, on the day of any such referendum or election or on the one day immediately preceding the day of any such referendum or election.

(2) A licensee shall identify the sponsor and the political party, if any, on whose behalf a program, advertisement or announcement described in subsection (1) is broadcast or received, as the case may be,

(a) both immediately preceding and immediately after the broadcast thereof where the program, advertisement or announcement is of more than two minutes duration; and

(b) either immediately preceding or immediately after the broadcast thereof where the program, advertisement or announcement is of two minutes or less duration.

29. (1) Every licensee who violates the provisions of any regulation applicable to him made under this Part is guilty of an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars for a first offence and not exceeding fifty thousand dollars for each subsequent offence.

(2) Every licensee who violates the provisions of section 28 is guilty of an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

(3) Every person who carries on a broadcasting undertaking without a valid and subsisting broadcasting licence therefor, or who, being the holder of a broadcasting licence, operates a broadcasting undertaking as part of a network other than in accordance with the conditions of such licence, is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars for each day that the offence continues.

30. All fines imposed pursuant to this Act belong to Her Majesty in right of Canada and shall be paid to the Receiver General of Canada.

Report to Parliament

31. The Commission shall, within three months after the termination of each fiscal year, submit to the Minister a report in such form as the Minister may direct on the activities of the Commission for that fiscal year and the Minister shall cause the report to be laid before Parliament within fifteen days after the receipt thereof, or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

Expenditures

32. All expenditures for the purposes of this Part shall be paid out of moneys appropriated by Parliament therefor.

PART III

CANADIAN BROADCASTING CORPORATION

Interpretation

33. In this Part,

(a) "director" means a director of the Corporation;

(b) "Executive Vice-President" means the Executive Vice-President of the Corporation appointed under section 38; and

(c) "President" means the President of the Corporation appointed under section 34.

Corporation Established

34. (1) There shall be a corporation to be known as the Canadian Broadcasting Corporation, consisting of a President and fourteen other directors to be appointed by the Governor in Council.

(2) The President shall be appointed to hold office during good behaviour for a term not exceeding seven years and the other directors shall be appointed to hold office during good behaviour for a term not exceeding five years.

(3) Subject to subsection (4) and section 35, the President is eligible for reappointment upon the expiration of his term of office, but any other director who has served two consecutive terms is not, during the twelve months following the completion of his second term, eligible for appointment except as President.

(4) A director ceases to be a director of the Corporation upon attaining the age of seventy years but may be removed at any time by the Governor in Council for cause.

(5) Every director shall, before entering upon his duties as such, take and subscribe, before the Clerk of the Privy Council, an oath in the form set out in Schedule B.

35. (1) A person is not eligible to be appointed or to continue as a director of the Corporation if he is not a Canadian citizen ordinarily resident in Canada or if, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise, he

(a) is engaged in a broadcasting undertaking; or

(b) has any pecuniary or proprietary interest in

(i) a broadcasting undertaking,

(ii) the production or distribution of program material suitable for use by a broadcasting undertaking, or

(iii) the manufacture or distribution of radio apparatus except where such distribution is incidental to the general merchandising of goods by wholesale or by retail.

(2) Where any interest prohibited under subsection (1) vests in a director by will or succession for his own benefit, he shall, within three months thereafter, absolutely dispose of such interest.

President

36. (1) The President is the chief executive officer of the Corporation and shall preside at meetings of the Corporation.

(2) The President shall devote the whole of his time to the performance of his duties under this Part.

(3) In the event of the absence or incapacity of the President or, if the office of President is vacant, the Corporation shall authorize the Executive Vice-President or a director of the Corporation to act as the President for the time being, but no person so authorized by the Corporation has authority to act as President for a period exceeding sixty days without the approval of the Governor in Council.

Remuneration

37. (1) The President shall be paid by the Corporation a salary to be fixed by the Governor in Council and each director other than the President shall be paid by the Corporation such fees for attendances at meetings of the Corporation or any committee thereof as are fixed by by-law of the Corporation.

(2) Each director is entitled to be paid by the Corporation such travelling and living expenses incurred by him in the performance of his duties as are fixed by by-law of the Corporation.

Staff

38. (1) The Corporation, on the recommendation of the President and with the approval of the Governor in Council, shall appoint an Executive Vice-President of the Corporation who shall be responsible to the President for the management of broadcasting operations in accordance with policies prescribed by the Corporation and for such other duties as the President may assign to him from time to time.

(2) The Corporation may, on its own behalf, employ such officers and employees, in addition to the Executive Vice-President, as it considers necessary for the conduct of its business.

(3) The Executive Vice-President and the officers and employees employed by the Corporation pursuant to subsection (3) shall, subject to section 44, be employed on such terms and conditions and at such rates of remuneration as the Corporation deems fit and the Executive Vice-President and such officers and employees are not officers or servants of Her Majesty.

Objects and Powers

39. (1) The Corporation is established for the purpose of providing the national broadcasting service contemplated by section 2 of this Act, in accordance with the conditions of any licence or licences issued to it by the Commission and subject to any applicable regulations of the Commission, and for that purpose the Corporation has power to

(a) establish, equip, maintain and operate broadcasting undertakings;

(b) make operating agreements with licensees for the broadcasting of programs;

(c) originate programs, and secure programs from within or outside Canada by purchase, exchange or otherwise, and make arrangements necessary for their transmission;

(d) make contracts with any person, within or outside Canada, in connection with the production or presentation of programs originated or secured by the Corporation;

(e) make contracts with any person, within or outside Canada, for performances in connection with the programs of the Corporation;

(f) with the approval of the Minister, act as agent for or on behalf of any person in providing broadcasting service to any part of Canada not served by any other licensee;

(g) publish, distribute and preserve, whether for a consideration or otherwise, such audio-visual material, papers, periodicals and other literary matter as may seem conducive to the purposes of the corporation;

(h) collect news relating to current events in any part of the world and establish and subscribe to news agencies;

(i) acquire copyrights and trade marks;

(j) acquire and use any patent, or patent rights, licences or concessions that the Corporation considers useful for its purposes;

(k) make arrangements or agreements with any organization for the use of any rights, privileges or concessions that the Corporation considers useful for its purposes;

(l) acquire broadcasting undertakings either by lease or by purchase;

(m) subject to the approval of the Governor in Council, acquire, hold and dispose of shares of the capital stock of any company or corporation authorized to carry on any business that is incidental or conducive to the attainment of the objects of the Corporation; and

(n) do all such other things as the Corporation deems incidental or conducive to the attainment of the purposes of the Corporation.

(2) the Corporation may, within the conditions of any licence or licences issued to it by the Commission and subject to any applicable regu-

lations of the Commission, act as agent for or on behalf of any Minister of the Crown or as an agent of Her Majesty in right of Canada or of any province, in respect of any broadcasting operations that it may be directed by the Governor in Council to carry out, including the provision of an international service.

(3) The Corporation is bound by the provisions of Parts I and II.

Agent of Her Majesty

40. (1) Except as provided in subsection (3) of section 38, the Corporation is, for all purposes of this Act, an agent of Her Majesty, and its powers under this Act may be exercised only as an agent of Her Majesty.

(2) The Corporation may, on behalf of Her Majesty, enter into contracts in the name of Her Majesty or in the name of the Corporation.

(3) Property acquired by the Corporation is the property of Her Majesty and title thereto may be vested in the name of Her Majesty or in the name of the Corporation.

(4) Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the Corporation on behalf of Her Majesty, whether in its name or in the name of Her Majesty, may, subject to subsection (3) of section 42, be brought or taken by or against the Corporation in the name of the Corporation in any court that would have jurisdiction if the Corporation were not an agent of Her Majesty.

41. The Corporation may purchase, lease or otherwise acquire any real or personal property that the Corporation deems necessary or convenient for carrying out its objects and may sell, lease or otherwise dispose of all or any part of any property acquired by it, except that the Corporation shall not, without the approval of the Governor in Council, enter into any transaction for the acquisition of any real property or the disposition of any real or personal property, other than program material or rights therein, for a consideration in excess of two hundred and fifty thousand dollars, or enter into a lease or other agreement for the use or occupation of real property involving an expenditure in excess of two hundred and fifty thousand dollars.

42. (1) The Corporation may, with the approval of the Governor in Council, take or acquire lands without the consent of the owner for the purpose of carrying out its objects, and, except as otherwise provided in this section, all the provisions of the Expropriation Act, with such modifications as circumstances require, are applicable to and in respect of the exercise of the powers conferred by this section and the lands so taken or acquired.

(2) For the purposes of section 9 of the Expropriation Act, the plan and description may be signed by the President or the Executive Vice-President of the Corporation.

(3) The compensation for lands taken or acquired under this section, or for damage to lands injuriously affected by the construction of any work by the Corporation, shall be paid by the Corporation as though the lands were acquired under the other provisions of this Part, and all claims against the Corporation for such compensation or damages shall be heard and determined in the Exchequer Court of Canada in accordance with sections 46 to 49 of the Exchequer Court Act; but nothing in this subsection shall be construed to affect the operation of section 34 of the Expropriation Act.

Head Office and Meetings

43. (1) The head office of the Corporation shall be at the City of Ottawa or at such other place in Canada as the Governor in Council may prescribe.

(2) The Corporation shall meet at least six times in each year.

By-Laws

44. The Corporation may make by-laws

(a) respecting the calling of meetings of the Corporation,

(b) respecting the conduct of business at meetings of the Corporation and the establishment of special and standing committees of the Corporation, the delegation of duties to such committees and the fixing of quorums for meetings thereof,

(c) fixing the fees to be paid to directors, other than the President, for attendances at meetings of the Corporation or any committee thereof, and the travelling and living expenses to be paid to directors,

(d) respecting the duties and conduct of the directors, officers and employees of the Corporation and the terms and conditions of employment and of termination of employment of officers and employees of the Corporation including the payment of any gratuity to such officers and employees, or any one or more of them, whether by way of retirement allowance or otherwise,

(e) respecting the establishment, management and administration of a pension fund for the directors, officers and employees of the Corporation and their dependants, the contributions thereto to be made by the Corporation and the investment of the pension fund moneys thereof, and

(f) generally for the conduct and management of the affairs of the Corporation,

but no by-law made under paragraph (c) or (e), and no by-law made under paragraph (d) that provides for the payment of any gratuity as described in that paragraph, shall have any effect unless it has been approved by the Minister.

Financial Provisions

45. (1) The Corporation shall maintain in its own name one or more accounts in the Bank of Canada, or in a chartered bank designated by the Minister of Finance.

(2) All moneys received by the Corporation through the conduct of its operations or otherwise shall be deposited to the credit of the accounts established pursuant to subsection (1) and shall be administered by the Corporation exclusively in the exercise and performance of its powers, duties and functions.

(3) The Corporation may invest any moneys administered by it in bonds of or guaranteed by the Government of Canada.

(4) The Corporation shall in its books of account establish a Proprietor's Equity Account and shall credit thereto the amount of all moneys paid to the Corporation for capital purposes out of Parliamentary appropriations.

46. The accounts and financial transactions of the Corporation shall be audited annually by the Auditor General of Canada and a report of the audit shall be made to the Corporation and to the Minister.

Report to Parliament

47. The Corporation shall, within three months after the termination of its financial year, submit to the Minister a report, in such form as the Minister may direct, on the operations of the Corporation for that financial year, and the Minister shall cause the report to be laid before Parliament within fifteen days after the receipt thereof, or if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

PART IV

CONSEQUENTIAL AND RELATED AMENDMENTS

Radio Act

48. Section 2 of the *Radio Act* is repealed and the following substituted therefor:

"2. (1) In this Act,

(a) "broadcasting" means any radiocommunication in which the transmissions are intended for direct reception by the general public;

(b) "broadcasting undertaking" includes a broadcasting transmitting undertaking, a broadcasting receiving undertaking and a network operation located in whole or in part within Canada or on a ship or aircraft registered in Canada;

(c) "Minister" means the Minister of Transport;

(d) "network" includes any operation involving two or more broadcasting undertakings whereby control over all or any part of the programs or program schedules of any of the broadcasting undertakings involved in the operation is delegated to a network operator;

(e) "operator" means a person employed, engaged or authorized to operate or assist in the operation of any radio apparatus;

(f) "radio apparatus" means a reasonably complete and sufficient combination of distinct appliances intended for or capable of being used for radiocommunication;

(g) "radiocommunication" or "radio" means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by means of electromagnetic waves of frequencies lower than 3,000 Gigacycles per second propagated in space without artificial guide;

(h) "radio station" or "station" means a place wherein radio apparatus is located; and

(i) "telecommunication" means any transmission, emission or reception of signs, signals, writing, images or sounds or intelligence of any nature by wire, radio, visual or other electromagnetic system.

(2) Subject to subsection (3), Her Majesty in right of Canada and each province is bound by this Act but nothing herein provided shall be deemed to impose or authorize the imposition by regulation of a fee for any licence or certificate issued to Her Majesty in right of Canada or any province.

(3) The Governor in Council, on the recommendation of the Minister, may from time to time by order exempt Her Majesty in right of Canada from this Act in respect of any radio station or radio apparatus described in the order that is owned or operated on Her behalf.

2A. (1) Subject to subsections (2) and (3), no person shall

(a) establish a radio station, or

(b) install, operate or have in his possession a radio apparatus

at any place in Canada, on any aircraft registered in Canada or on any spacecraft under the direction or control of Her Majesty in right of Canada or a province, a citizen or resident of Canada or a corporation incorporated or resident in Canada, except under and in accordance with a licence and, to the extent that it is a broadcasting undertaking, except under and in accordance with a technical construction and operating certificate, issued by the Minister under this Act.

(2) The Minister may, by regulation, grant exemption from the requirements of subsection (1) in respect of any radio station or radio apparatus that

(a) is temporarily in Canada and is

(i) duly licensed by the country in which the owner thereof resides, and

(ii) owned by one or more persons each of whom is a resident and citizen of or a corporation incorporated and resident in a country that grants a reciprocal exemption in respect of Canada,

(b) is not capable of emitting electromagnetic waves of a field strength greater than that prescribed in the regulations, or

(c) is established, installed, operated or possessed as part of a broadcasting receiving undertaking of a class not required to be licensed under the *Broadcasting Act*,

and any such exemption may be subject to such terms and conditions as are set out in the regulations.

(3) Any radio station or radio apparatus that is capable only of receiving radiocommunications and that is not a broadcasting receiving undertaking is exempt from the requirements of subsection (1) if it is intended only for the reception of

(a) broadcasting; or

(b) broadcasting and any class of radiocommunication, other than broadcasting, prescribed by the Minister.

2B. (1) The Minister may,

(a) prescribe classes of licences and of technical construction and operating certificates;

(b) issue

(i) licences in respect of radio stations and radio apparatus to the extent that they are not broadcasting undertakings, and

(ii) technical construction and operating certificates in respect of radio stations and radio apparatus to the extent that they are broadcasting undertakings,

for such terms and subject to such conditions as he considers appropriate for ensuring the orderly development and operation of radiocommunication in Canada;

(c) amend the conditions of any licence or certificate issued under paragraph (b) where he considers such amendment necessary for the purpose for which the original conditions were provided; and

(d) subject to subsection (2), suspend or revoke any licence or certificate issued under paragraph (b) where he is satisfied that the holder thereof has wilfully failed to operate the radio station or radio apparatus in respect of which the licence or certificate was issued in accordance with the regulations or the conditions of his licence or certificate or that the licence or certificate was obtained by fraud.

(2) No licence or technical construction and operating certificate shall be revoked or suspended under this section

(a) except with the consent of the holder thereof; or

(b) in any other case, unless notice of intention to suspend or revoke the licence or certificate has been given to the holder and he has been given a reasonable opportunity to be heard.

2.C The Minister shall regulate and control all technical matters relating to the planning for and the construction and operation of broadcasting facilities and, without limiting the generality of the foregoing, he shall

(a) prescribe the form of application and the information to be submitted in connection with an application for a technical construction and operating certificate;

(b) determine the power, radio frequency and call letters to be used by broadcasting transmitting undertakings;

(c) approve of each site upon which radio apparatus, including antenna systems, for use in connection with broadcasting undertakings may be located and approve the erection of all masts, towers and other antenna supporting structures;

(d) prescribe the technical requirements in respect of radio apparatus used in broadcasting undertakings and the technical requirements in relation to its installation and operation; and

(e) regulate the installation and operation of radio apparatus used in broadcasting undertakings to prevent interference to radio reception."

49. (1) Paragraphs (b) and (c) of subsection (1) of section 3 of the said Act are repealed and the following substituted therefor:

"(b) make regulations prohibiting or regulating

(i) the sale or use of any machinery, apparatus or equipment causing or liable to cause interference to radio reception,

(ii) the offering for sale for use in Canada of radio apparatus, capable of receiving broadcasting, of any class described in the regulation that does not conform to technical requirements established by the Minister in relation to such class of apparatus,

and prescribing the penalties recoverable on summary conviction for the violation or non-observance of any such regulation, but such penalty shall not exceed one hundred dollars per day for each day during which such violation or non-observance continues;

(c) make regulations respecting the qualifications of persons

(i) to whom licences may be issued by the Minister, or

(ii) who may be employed as operators at radio stations; and"

(2) Subsection (2) of section 3 of the said Act is repealed and the following substituted therefor:

"(2) Any person who violates any regulation made under this section for which no penalty is provided is liable upon summary conviction to a penalty not exceeding one thousand dollars and costs or to imprisonment for a term not exceeding six months."

50. (1) Subsection (1) of section 4 of the said Act is repealed and the following substituted therefor:

"4. (1) The Minister may make regulations

(a) prescribing the form and manner in which applications for licences under this Act are to be made;

(b) classifying radio stations and prescribing with respect to each class of station

(i) the type of radio apparatus to be installed including the technical characteristics and the manner of installation of such radio apparatus,

(ii) the frequencies and power to be used, and

(iii) the nature of the service to be rendered except in the case of a broadcasting service;

(c) prescribing the general conditions and restrictions applicable to each class of licence and technical construction and operating certificate prescribed under paragraph (a) of subsection (1) of section 2B;

(d) to carry out and make effective the terms of any international agreement, convention or treaty respecting telecommunications to which Canada is a party;
(e) respecting the installation, erection, construction or repair of antennae for radio stations and the appointment of inspectors for the enforcement and administration of such regulations and for conferring on such inspectors the power of a peace officer;
(f) prescribing the different classes of certificate of proficiency of operators and the class of certificate, if any, necessary to qualify persons as operators at radio stations;
(g) for the examination of persons desiring to obtain certificates of proficiency as radio operators and to determine the qualifications in respect of age, term of service, skill, character and otherwise to be required by applicants for such certificates;
(h) establishing technical requirements in respect of any class of radio apparatus, capable of receiving broadcasting, described in regulations made by the Governor in Council pursuant to subparagraph (ii) of paragraph (b) of subsection (1) of section 3;
(i) prescribing the watches, if any, to be kept by operators and the number of operators, if any, to be maintained at radio stations;
(j) for the inspection of radio stations;
(k) to compel all radio stations to receive, accept, exchange and transmit signals and messages with such other radio stations and in such manner as he may prescribe;
(l) granting exemption from the requirements of subsection (1) of section 2A for any radio station or radio apparatus described in subsection (2) of that section on such terms and conditions, if any, as he considers appropriate;
(m) prescribing classes of radiocommunication for the purpose of subsection (3) of section 2A; and
(n) for the effective carrying out of the provisions of this Act."

(2) Subsection (2) of section 4 of the said Act is repealed and the following substituted therefor:

"(2) Any person who violates any regulation made under this section is liable upon summary conviction to a penalty not exceeding one thousand dollars and costs or to imprisonment for a term not exceeding six months."

51. Sections 5 to 7 of the said Act are repealed and the following substituted therefor:

"**5.** (1) The Minister shall take such action as may be necessary to secure, by international regulation or otherwise, the rights of Her Majesty in right of Canada in telecommunications matters and shall consult the Canadian Radio-Television Commission with respect to all such matters that, in his opinion, affect or concern broadcasting.

(2) The Minister shall

(a) undertake, sponsor, promote or assist in research relating to radiocommunication including the technical aspects of broadcasting, and

(b) encourage the development and more efficient operation of radiocommunication facilities in Canada,

for the purpose of improving the efficiency of radiocommunication services and increasing their usefulness and availability in the public interest."

52. Section 8 and subsection (1) of section 9 of the said Act are repealed and the following substituted therefor:

"8. (1) Any person who knowingly sends or transmits or causes to be sent or transmitted any false or fraudulent distress signal, message, call or radiogram of any kind, or who without lawful excuse interferes with or obstructs any radiocommunication, is guilty of an offence and is liable, on summary conviction, to a penalty not exceeding twenty-five hundred dollars and costs or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

(2) Except as provided in the regulations made by the Minister under this Act or in the regulations made under the *Canada Shipping Act*, every person who, having become acquainted with any radiocommunication transmitted otherwise than by a broadcasting undertaking, makes use of such communication or divulges it to any person is guilty of an offence and is liable on summary conviction to a fine not exceeding twenty-five hundred dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

9. (1) Where a magistrate or justice of the peace is satisfied by information on oath that there is reasonable ground for believing that a radio station has been established without a licence or technical construction and operating certificate, or that any radio apparatus has been installed, or is being operated, or is in possession of any person in any place in Canada within his jurisdiction without a licence or technical construction and operating certificate in that behalf, he may grant a search warrant to any police officer or any officer appointed in that behalf by the Minister and named in the warrant."

53. Subsections (1) and (2) of section 10 of the said Act are repealed and the following substituted therefor:

"10. (1) Any person who establishes a radio station or installs, operates or has in his possession a radio apparatus in violation of this Act is liable on summary conviction to a fine not exceeding twenty-five hundred dollars or to imprisonment for a term not exceeding twelve

months, and in the case of any conviction under this section the radio apparatus to which the offence relates may be forfeited to Her Majesty by order of the Minister for such disposition as the Minister may direct.

(1a). The provisions of section 64A of the *Fisheries Act* apply, *mutatis mutandis*, in respect of any radio apparatus forfeited under subsection (1) as though that apparatus were an article forfeited under subsection (5) of section 64 of the Act.

(2) Whenever any person is charged with an offence against section 2A, if he is proved to be the owner, tenant or person in control of the premises, place or vehicle where a radio station or radio apparatus is found, there shall be a presumption that he did establish the radio station or that he did install, operate or have the said apparatus in his possession."

54. The Schedule to the said Act is repealed.

Canada Shipping Act

55. Paragraph (76) of section 2 of the *Canada Shipping Act* is repealed.

56. Section 416 and subsection (1) of section 417 of the said Act are repealed and the following substituted therefor:

"416. No person shall
(a) establish a radio station, or
(b) install, operate or have in his possession a radio apparatus

on board any Canadian ship or any vessel licensed in Canada except under and in accordance with a licence and, to the extent that it is a broadcasting undertaking, except under and in accordance with a technical construction and operating certificate, issued by the Minister under this Act or the Radio Act.

417. (1) Any person who establishes a radio station or installs, operates or has in his possession a radio apparatus on any vessel in violation of this Act or of any regulations made hereunder, is liable on summary conviction to a fine not exceeding twenty-five hundred dollars or to imprisonment for a term not exceeding twelve months, and in the case of any conviction under this section the radio apparatus to which the offence relates may be forfeited to Her Majesty by order of the Minister for such disposition as the Minister may direct.

(1a) The provisions of section 64A of the *Fisheries Act apply, mutatis mutandis*, in respect of any radio apparatus forfeited under subsec-

tion (1) as though that apparatus were an article forfeited under subsection (5) of section 64 of that Act."

Corporations and Labour Unions Returns Act

57. Item 13 of the Schedule to the *Corporations and Labour Unions Returns Act* is repealed and the following substituted therefor:

"13. A corporation that is licensed under the Broadcasting Act to carry on a broadcasting undertaking."

Interpretation Act

58. (1) Paragraph (3) of section 28 of the *Interpretation Act* is repealed and the following substituted therefor:

"(3) "broadcasting" means any radiocommunication in which the transmissions are intended for direct reception by the general public;"

(2) Paragraph (30) of section 28 of the said Act is repealed and the following substituted therefor:

"(30) "radio" or "radiocommunication" means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by means of electromagnetic *waves* of frequencies lower than three thousand Gigacycles per second propagated in space without artificial guide;"

PART V

TRANSITIONAL AND REPEAL

59. In this Part, "former Act" means the *Broadcasting Act*, chapter 22 of the Statutes of Canada, 1958.

60. (1) Subject to subsection (3), the Board of Broadcast Governors established by the former Act and the Canadian Radio-Television Commission established by Part II of this Act are hereby declared for all purposes to be one and the same body.

(2) Whenever in any Act, order, rule or regulation, or any contract, lease or other document, the Board of Broadcast Governors or the Chairman, Vice-Chairman or a member of the Board of Broadcast Governors is

mentioned or referred to, there shall in each and every case unless the context otherwise requires be substituted the Canadian Radio-Television Commission or the Chairman, Vice-Chairman, or a member of the Canadian Radio-Television Commission or the Chairman, Vice-Chairman, or a member of the Canadian Radio-Television Commission, as the case may be.

(3) The members of the Board of Broadcast Governors, other than the Chairman, appointed under the former Act cease to hold office on the coming into force of this Act, and the Chairman shall continue as Chairman of the Commission with like effect as though he had been so appointed under Part II on the day that he was last appointed Chairman under the former Act.

61. (1) Subject to subsection (2), the Canadian Broadcasting Corporation established by the former Act and the Canadian Broadcasting Corporation established by Part III of this Act are hereby declared for all purposes to be one and the same corporation.

(2) The directors of the Canadian Broadcasting Corporation, other than the President and the Vice-President, appointed under section 22 of the former Act cease to hold office as directors of the Corporation on the coming into force of this Act, and the President shall continue as President of the Corporation with like effect as though he had been so appointed under Part III on the day that he was last appointed President under the former Act, and the vice-President shall cease to hold office as a director of the Corporation on the coming into force of this Act but shall become Executive Vice-President of the Corporation on that day with like effect as though he had been so appointed under Part III on the day that he was last appointed Vice-President under the former Act.

62. The regulations made by the Board of Broadcast Governors under the former Act and in force at the coming into force of this Act shall be deemed to have been made under Part II and shall continue in force until repealed or altered by the Commission under the authority of Part II.

63. (1) All licences to establish a broadcasting station issued by the Minister of Transport under the *Radio Act* before the coming into force of this Act shall, on the coming into force of this Act, be deemed to have been issued under Part II on the day that they were issued under the *Radio Act*, and may be amended, renewed, suspended or revoked in the manner provided in Part II.

(2) Where, at the coming into force of this Act, a person is carrying on a broadcasting undertaking within the meaning of this Act but does not have a licence to establish a broadcasting station issued under the Radio Act and did not require such a licence immediately before the coming into force of this Act, that person may, without a broadcasting licence, continue to

carry on the broadcasting undertaking that he carried on immediately before the coming into force of this Act until the ninetieth day after the coming into force of this Act or, if on or before that day he has filed an application for a broadcasting licence with the commission, until the day on which that application is finally disposed of by the Commission.

64. Where an application for

(a) the issue of a licence to establish a broadcasting station, or
(b) an amendment to or renewal of a licence to establish a broadcasting station

was received by the Minister of Transport before the coming into force of this Act and has not been disposed of on the coming into force of this Act, the application shall on that day be deemed to have been filed with the Commission as an application for a broadcasting licence or for the amendment or renewal of a broadcasting licence, as the case may be, and the Commission shall hear and determine the application in the manner provided in Part II.

65. (1) The former Act is repealed.

(2) The repeal of the former Act does not affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under section 13 of the *Canadian Broadcasting Act* prior to the coming into force of this Act.

66. This Act shall come into force on a day to be fixed by proclamation.

SCHEDULE A

I DO SOLEMNLY SWEAR that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of and that, while I continue to hold such office, I will not, as owner, shareholder, director, officer, partner or otherwise, engage in a broadcasting undertaking or have any pecuniary or proprietary interest in a broadcasting undertaking, or in the manufacture or distribution of radio apparatus except where such distribution is incidental to the general merchandising of goods by wholesale or by retail.

SCHEDULE B

I DO SOLEMNLY SWEAR that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of and that, while I continue to hold such office, I will not, as owner, shareholder, director, officer, partner or otherwise, engage in a broadcasting undertaking or have any pecuniary or proprietary interest in a broadcasting undertaking, in the production or distribution of program material suitable for use by a broadcasting undertaking, or in the manufacture or distribution of radio apparatus except where such distribution is incidental to the general merchandising of goods by wholesale or by retail.

Document 39

With the passage of the 1968 Broadcasting Act (Document 38) the government appointed five full-time and 10 part-time members to the CRTC. The chairman was Pierre Juneau, who had been appointed to the BBG in 1966 and who had also worked with the National Film Board. The vice-chairman was Harry Boyle, from the CBC in Toronto. The other three full-time members were Pat Pearce, a Montreal *Star* broadcasting columnist; Hal Dornan, who had worked as press secretary to Prime Minister Pearson; and Réal Therrien, a broadcasting consultant from Quebec City.

The members of the CRTC did not have total independence from the government of the day. The 1968 act permitted the Governor General in Council (meaning the federal cabinet) to instruct the CRTC as to "the classes of applicants to whom broadcasting licences may not be issued." In October 1968 the cabinet began a series of directives to the CRTC which defined with some precision the act's general notion that "the Canadian broadcasting system should be effectively owned and controlled by Canadians." It is worth recalling that the United States also limited alien interest in broadcasting stations, to 20 percent. But in the US, this restriction did not apply to cable systems, and Canadian companies have invested heavily there in the cable industry. In Canada, cable is subject to the same ownership restrictions as conventional broadcasters

DOCUMENT 39: Order-in-council 1968–1809, *Canada Gazette*, Part 1, 5 October 1968, 2398–2399.

1. The Canadian Radio-Television Commission is hereby directed that, on and after the 20th day of September, 1968, broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of the class described in paragraph 2.

2. The class referred to in paragraph 1 is as follows:

(a) persons who are not Canadian citizens or eligible Canadian corporations and are not persons who, on the 1st day of April, 1968, were carrying on broadcasting undertakings within the meaning of the Broadcasting Act but did not have licences to establish broadcasting stations issued under the Radio Act and did not require such licences immediately before the 1st day of April, 1968.

3. For the purposes of this direction, an "eligible Canadian corporation" is a corporation

(a) incorporated under the laws of Canada or a province, the chairman or other presiding officer and each of the directors of which are Canadian citizens,

(b) of which at least four-fifths of the issued shares, to which are attached at least four-fifths of the votes exercisable under any circumstances at a meeting of shareholders, are owned by

(i) one or more Canadian citizens, or

(ii) one or more corporations to which sub-paragraph (a) applies, of which at least four-fifths of the issued shares, to which are attached at least four-fifths of the votes exercisable under any circumstances at a meeting of shareholders, are owned by one or more Canadian citizens, and

(c) of which at least two-fifths of the combined paid-up capital, earned surplus and outstanding debt is represented by shares owned by, or obligations to, one or more persons described in clause (i) or (ii) of sub-paragraph (b);

except that in any case where it is made to appear to the Commission that, notwithstanding that the corporation is one to which sub-paragraphs (a), (b) and (c) apply, the corporation is controlled, either directly or indirectly and either through the holding of shares of the corporation or any other corporation or in any other manner whatever, by or on behalf of any person of the class described in paragraph 2, the corporation shall be deemed not to be an eligible Canadian corporation.

4. Notwithstanding paragraph 3, in applying that paragraph in the case of the amendment or renewal of a broadcasting licence at any time before the 1st day of September, 1969,

(a) there shall be substituted for the expression "each of the directors" where it appears in sub-paragraph (a) of paragraph 3, the expression "at least two-thirds of the directors"; and

(b) there shall be substituted for the expression "four-fifths" in each case where it appears in sub-paragraph (b) of paragraph 3, the expression "three-quarters".

5. An applicant for the amendment or renewal of a broadcasting licence that was outstanding on the 1st day of April, 1968, to whom, but for this paragraph, such amendment or renewal may not be granted by virtue of this

direction shall be deemed, for the purposes of that application only, not to be an applicant of the class described in paragraph 2 if

(a) the Commission is satisfied that it would not be contrary to the public interest to grant the amendment or renewal applied for by the applicant; and

(b) the Governor in Council, by order, approves of the grant of the amendment or renewal after submission to him by the Commission of the application, together with a statement of the Commission's reasons why it is satisfied that it would not be contrary to the public interest to grant the amendment or renewal.

6. Nothing in this direction shall be construed as limiting the power of the Governor in Council to direct that broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of classes other than the class referred to in paragraph 1 or as limiting the power of the Canadian Radio-Television Commission, in carrying out its objects, to refuse to issue a broadcasting licence to or to grant an amendment or renewal of a broadcasting licence to an applicant of a class other than the class referred to in paragraph 1.

Document 39A

In March 1969, the cabinet revoked the order-in-council of the previous year (Document 39) dealing with Canadian ownership and replaced it with the following directive.

DOCUMENT 39A: "Direction to the Canadian Radio-Television Commission," Statutory Orders and Regulations 69–140, *Canada Gazette*, Part 2, 9 April 1969, 504–506.

1. The Canadian Radio-Television Commission is hereby directed that,

(a) on and after the 27th day of March, 1969, broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of the classes described in paragraph 2; and

(b) on and after the 1st day of September, 1970, broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of the classes described in paragraph 3.

2. The classes referred to in subparagraph (a) of paragraph 1 are as follows:

(a) persons who are not Canadian citizens or eligible Canadian corporations, except any such person who, on the 1st day of April, 1968, was carrying on a broadcasting undertaking within the meaning of the Broadcasting Act but did not have a licence to establish a broadcasting station issued under the Radio Act and did not require such a licence immediately before the 1st day of April, 1968; and

(b) governments of countries other than Canada or of political subdivisions of countries other than Canada and agents of such governments.

3. The classes referred to in subparagraph (b) of paragraph 1 are as follows:

(a) persons who are not Canadian citizens or eligible Canadian corporations; and

(b) governments of countries other than Canada or of political subdivisions of countries other than Canada and agents of such governments.

4. For the purposes of this direction, an "eligible Canadian corporation" is a corporation

(a) incorporated under the laws of Canada or a province, the chairman or other presiding officer and each of the directors of which are Canadian citizens and

(b) of which at least four-fifths of the issued shares, to which are attached at least four-fifths of the votes exercisable under any circumstances at a meeting of shareholders, are owned by one or more

(i) Canadian citizens, or

(ii) corporations incorporated under the laws of Canada or a province, the chairman or other presiding officer and four-fifths of the directors of which are Canadian citizens and of which at least four-fifths of the issued shares, to which are attached at least four-fifths of the votes exercisable under any circumstances at a meeting of shareholders, are owned by one or more Canadian citizens or corporations incorporated under the laws of Canada or a province, the chairman or other presiding officer and four-fifths of the directors of which are Canadian citizens and of which at least four-fifths of the issued shares, to which are attached at least four-fifths of the votes exercisable under any circumstances at a meeting of shareholders, are owned by one or more Canadian citizens,

except that, in any case where in the opinion of the Commission, notwithstanding that the corporation is one to which subparagraphs (a) and (b) apply, the corporation is effectively owned or controlled either directly or indirectly and either through the holding of shares of the corporation or any other corporation or through the holding of a significant portion of the outstanding debt of the corporation or in any other manner whatever, by or on behalf of any person, body or authority of a class described in paragraph 2 or, on or after September 1, 1970, of a class described in paragraph 3, the corporation shall be deemed not to be an eligible Canadian corporation.

5. For the purposes of clause (ii) of subparagraph (b) of paragraph 4, a corporation

(a) that is a personal corporation within the meaning of section 68 of the Income Tax Act, and

(b) of which each of the shareholders is a Canadian citizen,

shall be deemed to be a Canadian citizen.

6. For the purpose of paragraph 4, where the Commission is satisfied that voting rights attached to any particular class or classes of shares of a corporation are exercisable only in circumstances such that those voting rights are not likely, during the term of the licence in question, to affect the control of the corporation by persons owning shares of another class or classes, the Commission may deem all or any of the shares of the particular class or classes not to have attached thereto voting rights exercisable under any circumstances at a meeting of shareholders.

7. Notwithstanding paragraph 4, in applying that paragraph in the case of the amendment or renewal of a broadcasting licence at any time before the 1st day of September, 1970, "eligible Canadian corporation" shall be deemed to include any corporation except a corporation in respect of which the Board of Broadcast Governors would have been precluded by section 14 of the Broadcasting Act, chapter 22 of the Statues of Canada, 1958, from recommending the issue of a licence to establish a broadcasting station, if that Act had been in force at the time of the application for the amendment or renewal.

8. An applicant for the amendment or renewal of a broadcasting licence that was outstanding on the 1st day of April, 1968, to whom, but for this paragraph, such amendment or renewal may not be granted by virtue of this direction shall be deemed, for the purposes of that application only, not to be an applicant of a class described in paragraph 2 or paragraph 3, as the case may be, if

(a) the Commission is satisfied that it would not be contrary to the public interest to grant the amendment or renewal applied for by the applicant; and

(b) the Governor in Council, by order, approves of the grant of the amendment or renewal after submission to him by the Commission of the application, together with a statement of the Commission's reasons why it is satisfied that it would not be contrary to the public interest to grant the amendment or renewal.

9. Nothing in the direction shall be construed as limiting the power of the Governor in Council to direct that broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of classes other than a class described in paragraph 2 or paragraph 3, as the case may be, or as limiting the power of the Canadian Radio-Television Commission, in carrying out its objects, to refuse to issue a broadcasting licence to or to grant an amendment or renewal of a broadcasting licence to an applicant of a class other than a class described in paragraph 2 or paragraph 3, as the case may be.

Document 39B

In November 1969, the cabinet revoked the directive of April 1969 (Document 39A) and replaced it with this modification.

DOCUMENT 39B: "Direction to the Canadian Radio-Television Commission," Statutory Orders and Regulations 69–590, *Canada Gazette*, Part 2, 10 December 1969, 1696–1698.

1. The Canadian Radio-Television Commission is hereby directed that,

(a) on and after the 24th day of November, 1969, broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of the classes described in paragraph 2; and

(b) on and after the 1st day of September, 1970, broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of the classes described in paragraph 3.

2. The classes referred to in subparagraph (a) of paragraph 1 are as follows:

(a) persons who are not Canadian citizens or eligible Canadian corporations, except any such person who, on the 1st day of April, 1968, was carrying on a broadcasting undertaking within the meaning of the *Broadcasting Act* but did not have a licence to establish a broadcasting station issued under the Radio Act and did not require such a licence immediately before the 1st day of April, 1968; and

(b) governments of countries other than Canada or of political subdivisions of countries other than Canada and agents of such governments.

3. The classes referred to in subparagraph (b) of paragraph 1 are as follows:

(a) person who are not Canadian citizens or eligible Canadian corporations; and

(b) governments of countries other than Canada or of political subdivisions of countries other than Canada and agents of such governments.

4. For the purposes of this direction, an "eligible Canadian corporation" is a corporation

(a) that is incorporated under the laws of Canada or a province;

(b) of which the chairman or other presiding officer and each of the directors or other similar officers are Canadian citizens; and

(c) of which, if it is a corporation having share capital, at least four-fifths of the shares having full voting rights under all circumstances, and shares representing in the aggregate at least four-fifths of the paid-up capital, are beneficially owned by Canadian citizens or by corporations other than corporations that are controlled directly or indirectly by citizens or subjects of a country other than Canada;

except that, in any case where in the opinion of the Commission, notwithstanding that the corporation is one to which subparagraphs (a), (b) and (c) apply, the corporation is effectively owned or controlled either directly or indirectly and either through the holding of shares of the corporation or any other corporation or through the holding of a significant portion of the outstanding debt of the corporation or in any other manner whatever, by or on behalf of any person, body or authority of a class described in paragraph 2 or, on or after September 1, 1970, of a class described in paragraph 3, the corporation shall be deemed not to be an eligible Canadian corporation.

5. With respect to any shares of a corporation of a particular class that, according to the relevant records that the corporation is required to keep under the law of the place of its incorporation, are held by individuals each of whom holds one per cent or less of the total number of issued shares of the corporation of that class, the Commission may, in the absence of any evidence to the contrary, accept as evidence that such shares are beneficially owned by Canadian citizens, a statement signed by the president, secretary or treasurer of the corporation, or by any other officer or person thereunto duly authorized by the board of directors or other governing body of the corporation, indicating

(a) that according to those records the individuals who hold the shares are individuals having addresses in Canada; and

(b) that the person by whom the statement is signed has no knowledge or reason to believe that the shares are not beneficially owned by Canadian citizens.

6. Notwithstanding paragraph 4, in applying that paragraph in the case of the amendment or renewal of a broadcasting licence ar any time before the 1st day of September, 1970, "eligible Canadian corporation" shall be deemed to include any corporation except a corporation in respect of which the Board of Broadcast Governors would have been precluded by section 14 of the *Broadcasting Act*, chapter 22 of the Statutes of Canada, 1958, from recommending the issue of a licence to establish a broadcasting station, if that Act had been in force at the time of the application for the amendment or renewal.

7. An applicant for the amendment or renewal of a broadcasting licence that was outstanding on the 1st day of April, 1968, to whom, but for this paragraph, such amendment or renewal may not be granted by virtue of this direction shall be deemed, for the purposes of that application only, not to be an applicant of a class described in paragraph 2 or paragraph 3, as the case may be, if

(a) the Commission is satisfied that it would not be contrary to the public interest to grant the amendment or renewal applied for by the applicant; and

(b) the Governor in Council, by order, approves of the grant of the amendment or renewal after submission to him by the Commission of the application, together with a statement of the Commission's reasons why it is satisfied that it would not be contrary to the public interest to grant the amendment or renewal.

8. Nothing in this direction shall be construed as limiting the power of the Governor in Council to direct that broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of classes other than a class described in paragraph 2 or paragraph 3, as the case may be, or as limiting the power of the Canadian Radio-Television Commission, in carrying out its objects, to refuse to issue a broadcasting licence to or to grant an amendment or renewal of a broadcasting licence to an applicant of a class other than a class described in paragraph 2 or paragraph 3, as the case may be.

Document 39C

In 1971, the cabinet amended the directive to the CRTC on Canadian ownership (Document 39B) which it had issued in November 1969.

DOCUMENT 39C: "Direction to the Canadian Radio-Television Commission, amended," Statutory Orders and Regulations 71-33, *Canada Gazette*, Part 2, 27 January 1971, 86-87.

1. Paragraphs 1, 2, and 3 of the Direction to the Canadian Radio-Television Commission made by Order in Council P.C. 1969-2229 of the 20th November, 1969 are revoked and the following substituted therefor:

"1. The Canadian Radio-Television Commission is hereby directed that on and after the twelfth day of January, 1971 broadcasting licences may not be issued and renewals of broadcasting licences may not be granted to applicants of the classes described in paragraph 2.

2. The classes referred to in paragraph 1 are as follows:

(a) persons who are not Canadian citizens or eligible Canadian corporations; and

(b) governments of countries other than Canada or of political subdivisions of countries other than Canada and agents of such governments"

2. All that portion of paragraph 4 of the said Direction following subparagraph (c) thereof is revoked and the following substituted therefor:

"except that, in any case where in the opinion of the Commission, notwithstanding that the corporation is one to which subparagraphs (a), (b) and (c) apply, the corporation is effectively owned or controlled either through the holding of shares of the corporation or any other corporation or through the holding of a significant portion of the outstanding debt of the corporation or in any other manner whatever, by or on behalf of any person, body or authority of a class described in paragraph 2, the corporation shall be deemed not to be an eligible Canadian corporation."

3. Paragraphs 6 to 8 of the said Direction are revoked and the following substituted therefor:

"6. An applicant for the renewal of a broadcasting licence that was outstanding on the 1st day of April, 1968 to whom, but for this paragraph, such renewal may not be granted by virtue of this direction shall be deemed, for the purposes of that application only, not to be an applicant of a class described in paragraph 2 if

(a) the Commission is satisfied that it would not be contrary to the public interest to grant the renewal applied for by the applicant and

(b) the Governor in Council, by order, approves of the grant of the renewal after submission to him by the commission of the application, together with a statement of the Commission's reasons why it is satisfied that it would not be contrary to the public interest to grant the renewal.

7. Nothing in this direction shall be construed as limiting (a) the power of the Governor in Council to direct that amendments of broadcasting licences may not be granted to applicants of a class described in paragraph 2 or that broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of classes other than a class described in paragraph 2, or

(b) the power of the Canadian Radio-Television Commission, in carrying out its objects, to refuse to grant an amendment of a broadcasting licence to an applicant of a class described in paragraph 2, or to refuse to issue a broadcasting licence to or to grant an amendment or renewal of a broadcasting licence to an applicant of a class other than a class described in paragraph 2."

Document 40

Among the many issues facing the CRTC as it began its work were the accelerating development of cable television and the uphill struggle to maintain or increase Canadian content. (For the growth of cable, see Document 50, the Davey committee's report.)

Cable delivered superior television signals to homes from a master antenna via coaxial cable strung on poles. The official phrase for cable was "community antenna television," or CATV. Despite the homey phrase, the majority of Canadians who paid for community antenna television did so not to see local stations better but to receive signals from US stations. From the start, the CRTC set itself against this tendency and tried to use the cable industry as a means of enhancing Canadian programming.

A natural ally for cable was the microwave tower, capable of carrying a number of distant signals to a cable company's receiver or "head end," to be then fed to local subscribers by coaxial cable. Microwave technology was a natural way of feeding US signals into Canada. The following document leans both ways, welcoming the inevitable invasion via microwave and resisting the threat this technology posed to the Canadian system. (The document is a CRTC "public announcement." Public announcements, rather than the more formal Statutory Orders and Regulations published in the *Canada Gazette*, have been the most common form of CRTC regulation.)

DOCUMENT 40: CRTC, public announcement: "The improvement and development of Canadian broadcasting and the extension of US television coverage in Canada by CATV," 3 December 1969.

On July 24, 1969, the Commission issued a public notice requesting briefs and opinions from interested groups and members of the public on the importation of broadcasting programs from distant foreign stations by the use of microwave. The Commission received briefs from a large number of interested parties. A list of those is attached in Appendix I.

On October 14, 1969, the Commission at its hearing in Vancouver also heard oral presentations on this matter from the parties whose names are attached in Appendix 2.

Finally the Commission also heard views on this subject at its November 25 hearing in Ottawa. A list of the parties concerned is attached in Appendix 3.

The problem facing the Commission is not whether the technology of microwave should be used to help the development of cable television. It is to decide whether the use of additional techniques should be authorized to enlarge the coverage area of U. S. networks and U. S. stations and therefore their advertising markets in Canada.

The rapid acceleration of such a process throughout Canada would represent the most serious threat to Canadian broadcasting since 1932 before Parliament decided to vote the first Broadcasting Act. In the opinion of the Commission, it could disrupt the Canadian broadcasting system within a few years.

The fact that through force of circumstances many U. S. stations now cover other parts of Canada, and that some of them seem to have been established mainly to reach Canadian audiences does not justify a decision of the Commission which would further accelerate this process.

In consequence the Commission will not licence broadcasting receiving undertakings (CATV) based on the use of microwave or other technical systems, for the wholesale importation of programs from distant U. S. stations and thereby the enlargement of the Canadian audience and market areas of U. S. networks or stations.

However, the Commission feels strongly that no part of the Canadian population should be penalized in order to preserve a theory or to protect vested interests: either financial interests of investors in private broadcasting or privileges accumulated by particular groups in public broadcasting. The Canadian broadcasting system is worth safeguarding only if it provides the Canadian population with essential services which could not be provided otherwise. It would not make sense to protect a Canadian system based essentially on the retailing of programs "using predominantly non-Canadian creative and other resources." Certainly Canadians should not be denied access to the best material available from other countries. Any broadcasting system must remain constantly open to ideas coming from other parts of the world. Nevertheless the efforts of Canadians to maintain an independent broadcasting system can be justified only if this system achieves the high expectations established by Parliament in the Broadcasting Act of 1968.

The Commission is of the opinion that the Canadian broadcasting system, whose development the Commission must regulate and supervise, must now improve rapidly or risk disappearing as a system. To ensure its survival it is more and more apparent that it must increase the extension of services which the population requires, and improve the quality and variety of these services.

Decisions concerning applications for second television service will be expedited by the Commission in the coming weeks. These will cover areas such as Kamloops, Kelowna and Sudbury.

Studies concerning all other areas will be accelerated. However, it is important to recall that there are still regions of the country where there is no first television service either in English or in French and that the Commission will give priority to such areas.

Where second television service already exists, the Commission will consider all plans which have been or will be brought to its attention in order to accelerate the development of Canadian broadcasting services including CATV. The Commission will also accelerate its planning studies and will consult with broadcasters, including cable broadcasters and other interested parties, to determine the most effective way of achieving continuing development of cable broadcasting in Canada in harmony with the rest of broadcasting. Such a development should include all regions of the country including those where cable broadcasting is not now available such as the interior of British Columbia, parts of the Prairies, Ontario and Quebec, and the Atlantic Provinces.

The Commission is of the opinion that this development along an East-West axis is imperative in the public interest.

On May 13, 1969, in its announcement on cable television, the Commission said:

> "Cable Television, which began as a service to remote communities with reception difficulties, has now become a major factor in the Canadian broadcasting system and has a potential for a wide range of services in all communities. These community programming services can be of a complementary rather than a competitive nature to those already provided by other broadcasting services".

It was also the view of the Commission that the present period in cable television development requires a flexible attitude on the part of the Commission and readiness to adapt its policies rapidly to changing situations.

Without limiting the scope of possible revisions to its CATV policy the Commission is of the opinion that in the consultations that will take place, particular attention should be given to the question of creating networks of cable systems to help develop original programming.

In conclusion, the Commission is convinced that acceleration of the present trend of extending coverage of U. S. networks & stations in Canada and importing programs wholesale from the U.S. networks and stations by using microwave or other techniques will, in a relatively short time, risk disrupting the Canadian broadcasting system as established by the Broadcasting Act of 1968 and as developed in Canada since the Aird Report of 1929 and the Broadcasting Act of 1932.

The implementation of the present decision will require a considerable effort to produce the programs required to achieve successful communication among Canadians. This decision rests on the conviction that there is in Canada the talent and the ability in the various fields of expression and knowledge to make effective use of a complex communication system. Broadcasting in Canada can and must express the originality of Canada and Canadians. The Commission is determined that the hope and spirit embodied in the Broadcasting Act of 1968 will be successfully achieved....

Document 41

In April 1970, the federal cabinet briefly entered the discussion of cable television with a directive to the CRTC requiring that any cable system reserve one channel for "educational broadcasting" by the provinces.

DOCUMENT 41: "Direction to the Canadian Radio-Television Commission re reservation of cable channels," Statutory Orders and Regulations 70-113, *Canada Gazette*, Part 2, 8 April 1970, 381–382.

1. The Canadian Radio-Television Commission is hereby directed that on or after the nineteenth day of March, 1970, a licence to operate a broadcasting receiving undertaking may not be issued or renewed in respect of any such undertaking situated in a province where the provincial authority of the province has given notice in writing to the Commission that it desires that cable transmission facilities of that undertaking be reserved for the use of the provincial authority for the purpose of broadcasting, at times stipulated in the notice, the types of progamming defined in Appendix A, and has satisfied the Commission that it has the present intention of using such facilities within a reasonable period of time, unless the Commission stipulates that at least one channel of the undertaking be reserved for the use of the provincial authority for that purpose.

2. In this direction "provincial authority" means a provincial authority as defined in Appendix A.

APPENDIX A

Definition for the Reservation of Educational Broadcasting Time and Facilities

Where, within its jurisdiction, the Canadian Radio-Television Commission, on the direction of the Governor in Council, stipulates that at least one channel of a cable transmission facility be set aside for the use of a provincial authority for educational broadcasting or where the Canadian Broadcasting Corporation acts as agent of Her Majesty in right of Canada in providing a transmission facility for the use of a provincial authority for educational broadcasting, the time reserved on such channel or transmission facility for the provincial authority shall be used for broadcasting the following types of programming:

1. programming designed to be presented in such a context as to provide a continuity of learning opportunity aimed at the acquisition or improvement of knowledge or the enlargement of understanding of members of the audience to whom such programming is directed and under circumstances such that the acquisition or improvement of such knowledge or the enlargement of such understanding is subject to supervision or assessment by the provincial authority by any appropriate means:

2. programming providing information on the available courses of instruction or involving the broadcasting of special education events within the educational system.

"Provincial authority" in relation to any province means such person, body or authority as may be designated by the Lieutenant -Governor in Council of that province as the provincial authority for that province for the purposes of this definition.

The intention of the above provision is to ensure that such programming, taken as a whole, shall be designed to furnish educational opportunities and shall be distinctly different from general broadcasting available on the public or private channels.

Document 42

In the early 1970s, the CRTC was struggling to square the circle of cable television. In a series of longer and longer documents it attempted to show how this technology, seemingly heaven-sent for Canadians seeking US stations, could instead be used to strengthen the Canadian broadcasting system. A public announcement of 26 February 1971 (not reprinted here) outlined, in more than 30 pages, the CRTC attitude toward cable before a public hearing on that subject that was held in Montreal in April 1971. This meeting was followed in July 1971 by a policy statement on cable almost 40 pages long. Much of this document—as the title indicates—reinforced the notion, embedded in the Broadcasting Act, that broadcasting in Canada is a single system. Although the natural tendency of cable is toward greater and greater fragmentation of program sources and audiences, the theory of the single system remained untouched.

The excerpt reprinted here outlines the CRTC's best attempt to contain the centrifugal forces of cable TV. The policy allowed the substitution of a local channel for a distant one on the cable service if both stations were carrying the same program. It also allowed the deletion of distant commercials and the substitution of local ones. Both measures were intended to protect local broadcasters from the competition posed by distant signals fed in by cable.

DOCUMENT 42: CRTC, "Canadian broadcasting 'a single system'—policy statement on cable television," 16 July 1971, excerpt, 26–29.

4. RESTORING THE LOGIC OF THE LOCAL LICENCE

In its first public announcement on cable television policy of May 13, 1969, the Commission accepted, for the time being, the long-standing Department of Transport policy that cable television systems should not alter the signals received from broadcasting stations. Since then, the Commission has carried out extensive studies which demonstrate that the unaltered carriage of some of these signals disrupts the ability of Canadian television stations to fulfill their mandate.

Where a cable television system carries several distant stations as well as the local service, it may well happen that the same programme is avail-

able on more than one channel at the same time. This is particularly likely when a distant station is affiliated with the same network as a local station.

Here, the cable television system is providing no additional programme choice to the viewer. But the audience of the station licensed to serve the cable system area is still diminished. Neither viewer nor broadcaster benefits.

The Commission is concerned to restore the licensing logic of the Canadian broadcasting system, and to strengthen Canadian television service, without reducing the choice and flexibility that cable television offers.

The policy which follows in no way diminishes the programme choice of the viewer, but eliminates harmful and needless duplication.

Programme Duplication Policy

When an identical programme or programme schedule is carried on a cable television system on more than one channel during the same time period, the station having higher priority may require the cable television system to delete the transmission of any lower priority or optional station(s) during this period. The cable television system may then elect to insert the transmission of the higher priority station on the channels normally occupied by the lower priority or optional stations(s) during this period.

In the same manner, any optional Canadian station carried may require the deletion of the transmission of any programme or programme schedule of a station not licensed in Canada, should there be no higher priority station willing and able to require this deletion.

Cable television systems will be required to comply with these requests and to provide facilities capable of this function according to the following schedule:

> Cable television systems fed by a head-end serving 3,000 or more subscribers with more than 40 subscribers per mile of trunk and distribution cable after September 1, 1972.

Any television station wishing to take advantage of this deletion provision must so inform the appropriate cable television system(s) in writing, at least seven days in advance of the required deletion, specifying programme name(s), time(s), date(s), and channel(s) from which the deletion is required. Should a television station require the deletion of two or more consecutive programmes, this deletion will be in effect from the

commencement of the first programme to the conclusion of the last. The responsibility for determining the stations, programmes and times shall be the television broadcaster's. Any late changes in schedules that would alter the previous written information should be indicated to the cable television operator by telephone with a following confirmation telegram.

Where a programme is transmitted at different times within one week, on two or more stations, the highest priority stations wishing to can provide the same programmes to the cable television system for substitution by the cable television operator on the channel(s) occupied by the lower priority station(s). The television station must bear all costs associated with this latter non-simultaneous substitution.

Deletion and Substitution of Commercials

At present, requiring cable television systems to delete the commercial messages in signals they distribute would be financially impossible for all but a few systems. Even these would suffer substantial financial damage. For this reason the Commission has not adopted this policy.

Instead, it has decided to withdraw the requirement that received broadcasting signals should not be altered. The Commission will permit the removal by cable television licensees of the commercial value contained in the signals of stations not licensed to serve Canada. While cable television licensees will not be permitted to sell replacement commercial messages themselves, they will be encouraged to make contractual arrangements with Canadian television stations in their areas to insert replacement signals carrying commercial messages sold by the Canadian television stations.

When a Canadian television station decides to undertake the negotiation of such an arrangement with a cable television system it must so advise the Commission. The Commission's approval of the subsequent contractual arrangement between the television station and the cable television system must be obtained.

In an area where there is more than one Canadian television station interested in participating in this activity, the Commission will ensure that sufficient and equitable opportunity be provided to the several stations. In all cases adequate provision will be made for any television station that might be licensed in the future. The Commission will also be concerned that marketing practices that develop shall not be detrimental to others.

The Commission is confident that where the commercial value is significant, both television stations and cable television systems will take advantage of this change in policy to help strengthen their ability to fulfill their obligations to the public.

The Commission expects these licensees to take the opportunity thus provided to strengthen the Canadian broadcasting system. If this does not happen, the Commission will consider further action.

Amendment to Section 12a of the Income Tax Act

Some of the commercial messages of value in Canada but transmitted by stations not licensed to serve Canada are paid for by companies located in this country. Therefore, the Commission has decided to request the Government of Canada to amend Section 12a of the Income Tax Act to include advertising purchased by Canadian advertisers on stations not licensed by the Commission.

Document 43

In November 1975, the CRTC issued formal regulations for cable television which codified the policies set out in the 1971 policy statement (Document 42). An explanatory public announcement, issued the same day as the regulations, is also reprinted below.

DOCUMENT 43: CRTC, public announcement: "Regulations respecting broadcasting receiving undertakings (cable television)," and "Cable television regulations," Statutory Orders and Regulations 75–665, *Canada Gazette*, Part 2, 26 November 1975, 3103–3111. As amended 1981, 1983.

Regulations Respecting Broadcasting Receiving Undertakings (Cable Television)

The Canadian Radio-Television Commission, on the recommendation of the Executive Committee, pursuant to section 16 of the Broadcasting Act, has enacted regulations respecting broadcasting receiving undertakings as set out in the attached schedule. These regulations are effective April 1, 1976.

The Commission published proposed regulations in the Canada Gazette, Part I on March 4, 1975, which were subsequently considered at a public hearing held on April 8 and 9, 1975.

The Regulations, in essence, constitute a codification of many aspects of the Commission's cable television policy enunciated in the Policy Statement of July 16, 1971.

Because the Regulations attached hereto are detailed and complex, the Commission believes that the following comments on certain sections of the Regulations may be helpful to the public.

Section 2: Interpretation

The Commission believes it is advisable to retain the use of official coverage contours, which are determined by statistical prediction under Department of Communications procedures, as the basis for defining local, regional, and extra-regional television stations and for local and regional FM stations. In the case of regional AM stations, however, the service contour described in the technical proof of performance will apply.

The use of statistical contours for the determination of a station's priority status for distribution on cable television systems is compatible with their use for over-the-air television and radio in domestic D.O.C. procedures and in international agreements. Cable television being an integral part of the Canadian Broadcasting System should make use of comparable technical standards. The statistical contour method readily lends itself to efficient and consistent administration by both the Department of Communications and the Commission.

Those contours determined by statistical prediction are considered to be the most appropriate means of denoting television service areas. The Commission is of the opinion that the requirements for television and FM signals distribution on the cable television system and the substitution of identical television signals can be established in a simple and expeditious manner only if the pertinent contours are determined by prediction, using well-established uniform procedures.

Section 3: Prescription of classes of Licence

The Commission has prescribed two classes of broadcasting receiving undertaking licences; namely, Class A cable television broadcasting licences for licensees having three thousand or more subscribers and Class B cable television broadcasting licences for licensees having less than three thousand subscribers. All aspects of the regulations will apply equally to both classes of licence except that Class B licensees need not adhere to the program duplication clause (Section 19) and need not supply FM radio service (Section 15).

Sections 6, 7, 8: Television Service Priorities

The order or priorities set out for the distribution of Canadian television services is generally similar to that enunciated in the Commission's 1971 Policy Statement. The distribution of all local television stations continues to be required and there are particular priorities for the Canadian Broadcasting Corporation ('the Corporation') and for provincial educational television stations. For the most part, the Grade A contour describes, reasonably accurately, the primary service area of a television station. Any Canadian television station must by guaranteed access to subscribers of cable television systems in its primary service area.

The Commission considers that it is advantageous to continue to require the distribution of any regional or extra-regional television station owned and operated by the Corporation that broadcasts in either official language unless there exists a higher priority station owned and operated by the Corporation that broadcasts in the same official language. The Commission

recognizes that all Canadians have a right to the full national broadcasting service of the Corporation wherever possible. Apart from this requirement, the regulations do not require the distribution of more than one regional or extra-regional television station of the same network.

Section 10: Allocation of Television Channels

The Commission will, in most cases, agree to the distribution of the signal of any priority television station on an unrestricted channel on which that station is licensed to transmit or on an unrestricted channel determined by the licensee, usually in consultation with the broadcaster. The Commission, however, retains the right to designate the distribution channel for any specific VHF or UHF television station, particularly in cases in which regional channel uniformity is considered to be advantageous or disagreement between cable television operators and broadcasters exists.

Sections 11, 12, 13, 14: Community Channel

The provision of a community channel is mandatory for all licensees. Furthermore, the nature of the permissible programming which may be carried on this channel is defined. Licensees are required to keep audio records and program logs of the programming carried on the community channel for a period of at least four weeks. No advertising is allowed.

If partisan political programming is provided, equitable time must be given to all parties and candidates.

The licensee must generally provide reasonable, balanced opportunity for the expression of differing views on matters of public concern.

Section 15: Radio Service Priorities

All class A cable television licensees must provide an FM cable television service which gives a priority to Canadian radio stations.

If class B cable television licensee elects to provide an FM cable television service, then it too must conform to the priorities set for a class A licensee.

Section 16: Provision of service

The Commission considers that the provision of cable television service should be mandatory only in residential areas where municipal water or

sewer service is available.

Section 19: Substitution of Identical Signals

It is felt that the requirement of substitution of higher priority signals for lower priority identical signals should be limited to local and regional television stations in order to ensure an adequate level of technical quality.

Cable Television Regulations

Whereas a copy of proposed regulations respecting broadcasting receiving undertakings substantially in the form annexed hereto was published in the *Canada Gazette* Part I, on March 4, 1975 and a reasonable opportunity was thereby afforded to licensees and other interested persons to make representations with respect thereto.

Now therefore, the Canadian Radio-Television Commission, on the recommendation of the Executive Committee, pursuant to section 16 of the Broadcasting Act, hereby makes the annexed Regulations respecting broadcasting receiving undertakings effective April 1, 1976.

Dated at Ottawa, this 14th day of November, 1975

REGULATIONS RESPECTING BROADCASTING RECEIVING UNDERTAKINGS

Short Title

1. These Regulations may be cited as the *Cable Television Regulations*.

Interpretation

2. For the purpose of these Regulations,

"advertising material" includes commercial messages, but does not include

(a) announcements promoting services that a licensee is licensed to provide,

(b) public service announcements,

(c) announcements promoting programs transmitted by Canadian stations, or

(d) channel identification announcements; (*matériel publicitaire*)

"augmented channel service" means the service provided by a licensee on channels other than those on which its basic service is provided; (*service de canaux supplémentaires*)

"basic service" means the service provided by a licensee on channels that a conventional 12 channel VHF television receiver is capable of receiving without the use of any device to increase its capacity to receive channels; (*service de base*)

"commercial message" means a commercial announcement and includes

(a) an announcement that mentions or displays the name of an advertiser, any product or service of an advertiser or any activity being promoted by an advertiser, and

(b) any mention or display in a list of prizes of a name, product, service or activity referred to in paragraph (a),other than in the course of and incidental to any sports or community events; (*message commercial*)

"Commission" means the Canadian Radio-Television Commission; (*Conseil*)

"community channel" means, in relation to a licensee, the television channel provided by the licensee on its undertaking for the distribution of community programming; (*canal communautaire*)

"community programming" means programming that is distributed by a licensee on its community channel and is produced

(a) by the licensee,

(b) with or without the assistance of the licensee, by members of the community or communities served by the licensee,

(c) by another licensee or by members of the community or communities served by another licensee if such programming is integrated into programming produced by the licensee or by members of the community or communities served by it, or

(d) by a network operator licensed by the Commission to provide community programming to the licensee,

and includes announcements promoting services that the licensee is licensed to provide, public service announcements, announcements promoting programs transmitted by Canadian stations and channel identification announcements; (*programmation communautaire*)

"Corporation" means the Canadian Broadcasting Corporation; (*Société*)

"educational authority" means a body that is

(a) an independent corporation as defined by Order in Council P.C. 1972-1569 of 13th July, 1972, or

(b) a provincial authority as defined by Order in Council P.C. 1970-496 of 19th March, 1970; (*autorité éducative*)

"educational programming" means the programming defined in Order in Council P.C. 1970-496 of 19th March, 1970 and in Order in Council P.C. 1972-1569 of 13th July, 1972; (*programmation éducative*)

"extra-regional television station", in relation to a licensee, means any television broadcasting station licensed by the Commission whose Grade A of Grade B official contour does not enclose any part of the licensed area but whose Grade B official contour's closest point is located twenty miles or less from the local head end of the licensee's undertaking; (*station de télévision éloignée*)

"feature motion picture" means a motion picture film in excess of sixty minutes duration that has been produced for exhibition in a commercial motion picture theatre; (*long-métrage*)

"identical signals" means signals in which not less than ninety-five per cent of the program matter is the same; (*signaux identiques*)

"licensed area" means, in relation to a licensee, the area described in the licence issued by the Commission to the licensee; (*territoire attribué*)

"licensee" means a person licensed by the Commission to carry on a broadcasting receiving undertaking; (*titulaire d'une licence*)

"local FM station" means, in relation to a licensee, any FM broadcasting station licensed by the Commission whose 500 microvolt per metre official contour encloses any part of the licensed area of the licensee; (*station MF locale*)

"local head end" means, in relation to a licensee, the location where signals transmitted by local television stations are received by the licensee's undertaking; (*tête de ligne locale*)

"local television station" means, in relation to a licensee, any television broadcasting station licensed by the Commission whose Grade A official contour encloses any part of the licensed area of the licensee; (*station de télévision locale*)

"official contour" means,

(a) in relation to any television broadcasting station licensed by the Commission, local FM station or regional FM station, the service contour described in the technical brief, and

(b) in relation to any regional AM station, the service contour described in the technical proof of performance, relating to the most recently approved application by the licensee of any such station for the issue, renewal or amendment of its licence; (*zone de rayonnement officielle*)

"optional radio station" means a radio broadcasting station other than a local FM station, regional FM station or regional AM station; (*station de radio facultative*)

"optional television station" means a television broadcasting station other than a local television station, regional television station or extra-regional television station; (*station de télévision facultative*)

"programming", "program" or "program matter" means any presentation of sound matter, visual matter or sound and visual matter designed to inform, enlighten or entertain, but does not include advertising material; (*programmation or émission or matière d'émission*)

"regional AM station" means, in relation to a licensee, any AM broadcasting station licensed by the Commission whose night-time interference-free official contour encloses any part of the licensed area of the licensee; (*station MA régionale*)

"regional FM station" means, in relation to a licensee, any FM broadcasting station licensed by the Commission whose 50 microvolt per metre official contour encloses any part of the licensed area of the licensee; (*station MF régionale*)

"regional television station" means, in relation to a licensee, any television broadcasting station licensed by the Commission whose Grade B official contour encloses any part of the licensed area of the licensee; (*station de télévision régionale)*

"restricted channel" means, in relation to any undertaking, any channel that is the same as a channel on which signals are transmitted by

(a) any television broadcasting station whose Grade A official contour encloses any part of the licensed area, or

(b) any FM radio station whose 3000 microvolt per metre official contour encloses any part of the licensed area; (*canal à usage limité*)

"signal" means any sign, writing, image, sound or intelligence of any nature transmitted or emitted as a radiocommunication; (*signal*)

"undertaking" means a broadcasting receiving undertaking carried on by a person licensed by the Commission to carry on that broadcasting receiving undertaking. (*entreprise*)

Prescription of Classes of Licence

3. (1) The following two classes of broadcasting receiving undertaking licences are prescribed, namely, Class A cable television broadcasting licences and Class B cable television broadcasting licences.

(2) Every licence issued to a person to operate an undertaking having three thousand or more subscribers is a Class A cable television broadcasting licence.

(3) Every licence issued to a person to operate an undertaking having less than three thousand subscribers is a Class B cable television broadcasting licence.

Application

4. These Regulations apply to all licensees, except as specifically provided herein.

Use of Undertakings

5. A licensee shall not use, or permit the use of, its undertaking or any channel of its undertaking except as required or authorized by its licence or these Regulations.

Television Service Priorities

6. (1) Subject to subsections (2) and (3) and any condition of a licence issued to it or amended or renewed after the coming into force of these Regulations, every licensee shall, in the following order or priority, distribute, on its basic service, to the extent of the channels available on that service,

(a) the signals of all local television stations owned and operated by the Corporation;

(b) the signals of all local television stations owned and operated by an educational authority and broadcasting educational programming;

(c) the signals of all local television stations other than those described in paragraphs (a) and (b);

(d) the signals of any regional television station owned and operated by the Corporation that broadcasts in either official language unless a television station owned and operated by the Corporation that broadcasts in that official language is a station described in paragraph (a);

(e) the signals of all regional television stations other than any such station that is an affiliate or member of a network of which any station described in paragraphs (a) to (d) is an affiliate or member;

(f) a community channel;

(g) the signals of any extra-regional television station owned and operated by the Corporation that broadcasts in either official language unless a television station owned and operated by the Corporation that broadcasts in that official language is a station described in paragraph (a) or (d);

(h) the signals of any extra-regional television station owned and operated by an educational authority and broadcasting educational programming, unless a station owned and operated by the educational authority is a station described in paragraph (b) or (e);

(i) the signals of any extra-regional television station other than a station affiliated with or a member of a network of which a station described in paragraph (a), (b), (c), (d), (e), (g) or (h) is an affiliate or member.

(2) Where the educational authority, the signals of whose television station are required to be distributed pursuant to paragraph (1) (b), (e), or (h)

is an educational authority of a province in which the licensee is not licensed to carry on its undertaking, that paragraph shall, as regards the signals of the television station of that educational authority, be deemed to be permissive and not mandatory.

(3) Where no signals described in paragraph (1) (b), (e) or (h) are available to the licensee from a television station owned and operated by an educational authority of the province in which the licensee is licensed to carry on its undertaking, the licensee shall reserve and provide on its basic service a channel for the distribution of the educational programming of such an educational authority.

7. Where two or more local television stations rank equally in the order of priority established by paragraphs 6(1)(a) to (c),

(a) the station whose studio is located in the same province as the licensee's undertaking shall have precedence; and

(b) where the studios of two or more of those stations are located in the same province as the licensee's undertaking, those stations shall have precedence in order of the proximity of their studios to the local head end of the licensee's undertaking.

8. Where two or more stations that are affiliates or members of the same network rank equally in the order or priority established by paragraphs 6(l)(d), (e), (g), (h) and (i),

(a) the stations whose studio is located in the same province as the licensee's undertaking shall have priority and the other station or stations shall be deemed to be optional television stations; and

(b) where the studios of two or more of those stations are located in the same province as the licensee's undertaking, the station whose studio is located closest to the local head end of the licensee's undertaking shall have priority and the other station or stations shall be deemed to be optional television stations.

9. (1) Where signals of stations that are required to be distributed by a licensee pursuant to sections 6 to 8 exceed the capacity of the licensee's basic service, those signals shall, where the licensee is licensed to provide an augmented channel service, be distributed on that augmented channel service according to the order of priority established by sections 6 to 8.

(2) Where a licensee satisfies the requirements of sections 6 to 8 and subsection (1), it may be licensed by the Commission to provide the signals of optional television stations.

Allocation of Television Channels

10. Subject to the order of priority established by sections 6 to 8, every licensee shall distribute each signal that it is required or authorized to distribute under sections 6 to 9 on

(a) such channel or channels as the Commission may designate; or

(b) where the Commission has not designated any channel pursuant to paragraph (a), on such channels as the licensee may determine, except that

(i) the signals of a station to which section 6 applies shall not be distributed on a restricted channel,

(ii) no community channel service shall be provided on a restricted channel,

(iii) the signals of each VHF station to which section 6 applies shall, subject to subparagraph (i) be distributed on the channel on which that station is licensed to transmit, and

(iv) the signals of an optional station shall not be distributed on more than one channel at the same time.

Community Channel

11. Subject to the conditions of its licence, no licensee shall distribute on its community channel

(a) any programming, other than community programming;

(b) any advertising material;

(c) any feature motion picture; or

(d) any signal or reproduction of any signal.

12. (1) Every licensee shall keep a program log, in a form acceptable to the Commission, and shall cause to be entered therein each day the following information;

(a) the date;

(b) the designation of its community channel;

(c) the title, the name of the producer, a brief description and the duration of each program distributed on its community channel; and

(d) the times at which

(i) announcements promoting services that the licensee is licensed to provide,

(ii) public service announcements,

(iii) announcements promoting programs transmitted by Canadian stations, and

(iv) channel identification announcements

are made and their duration.

(2) Subject to section (3), every licensee shall

(a) maintain for a period of four weeks from the date of distribution or, if required by the Commission pursuant to subsection (4), for a period of eight weeks from that date, and

(b) furnish to a representative of the Commission, on request,

the program logs required to be kept pursuant to subsection (1) and the audio reproduction of all programming distributed on its community channel.

(3) Where programming distributed by a licensee is produced by a network operator licensed to provide community programming, the network operator shall maintain and furnish the audio reproduction of such programming in accordance with subsection (2) and the licensee shall not be required to do so.

(4) The Commission may, where it considers it in the public interest that the material referred to in subsection (2) should be maintained for a period of eight weeks from the date of distribution, require the licensee or network operator, in writing, before the expiration of the period of four weeks from that date, to maintain the material for a period of eight weeks from that date.

13. (1) Where a licensee provides time on its community channel for the distribution of programming of a partisan political character, it shall allocate such time on an equitable basis to all political parties and rival candidates.

(2) Where a licensee and the political parties and candidates are unable to reach agreement as to what, in any particular circumstances, constitutes

an equitable allocation of time by the licensee, the licensee may refer the dispute to the Commission and the Commission shall allocate the time as it considers appropriate in the circumstances.

14. Where a licensee provides opportunity on its community channel for the expression of views on matters of public concern, it shall provide reasonable, balanced opportunity for the expression of differing views on such matters.

Radio Service Priorities

15. (1) Subject to subsection (4) and any condition of a licence issued to it or amended or renewed after the coming into force of these Regulations, every licensee shall, in the following order or priority, distribute on the FM channels of its undertaking

(a) the signals of all local FM stations;

(b) the signals of any regional AM or FM station owned and operated by the Corporation that broadcasts in one of the official languages unless the signals of a local FM station owned and operated by the Corporation are broadcast in the same language as the signals of any such regional station; and

(c) the signals of any regional AM or FM station that broadcasts in the other official language, where the signals of all stations required to be distributed pursuant to paragraphs (a) and (b) are broadcast in the same official language.

(2) Where a licensee satisfies the requirements of subsection (1), it may be licensed by the Commission to distribute the signals of optional radio stations.

(3) No signals of any station to which subsection (1) applies shall be distributed by a licensee on a restricted channel.

(4) this section applies to

(a) all Class A cable television broadcasting licensees; and

(b) all Class B cable television broadcasting licensees that elect to provide AM or FM radio services.

Provision of Service

16. (1) Every licensee shall, on receipt of the amount of the installation fee authorized by the Commission or, where applicable, the amount referred to in subsection (2), and in accordance with any applicable provincial laws, install equipment for the provision of service by the licensee in any premises situated in any residential area within its licensed area that are provided with water or sewer service.

(2) Where an installation of equipment requires a cable connection from the property line of the premises to be served to the point at which the cable enters those premises that

(a) is in excess of a distance of 150 feet,

(b) cannot be made directly and unimpeded overhead, or

(c) where underground services are provided in the area in which the premises are located, necessitates an underground connection the cost of which is not comparable to the connection for such other underground services,

the licensee may, in lieu of charging the installation fee authorized by the Commission, charge an amount equal to the expenses incurred by it in making the installation.

17. No licensee shall charge any fee or other sum of money for

(a) any service provided by its undertaking, or

(b) the use of its undertaking,

in excess of the amount authorized by the Commission.

Alteration or Curtailment of Signals

18. No licensee shall alter or curtail any signals in the course of their distribution, except as required or authorized by its licence or by these Regulations.

Substitution of Identical Signals

19.(1) Where identical signals are to be transmitted during the same period or periods by two or more stations whose signals a licensee is required or authorized to distribute, the operator of the local or regional

television station that has the higher or highest priority established by sections 6 to 8

(a) may, not less than seven days before the transmission of such an identical signal by another station, give written notice to the licensee to delete that signal,

(i) specifying the signal and the date and time of its scheduled transmission, and

(ii) designating the station that is to transmit the signal;

(b) shall, immediately before the transmission of the signal specified in a notice given pursuant to paragraph (a),

(i) verify the accuracy of the notice, and

(ii) where any change is required to be made in the notice, notify the licensee thereof forthwith, orally and in writing; and

(c) shall send to the Commission forthwith copies of any notices given pursuant to paragraphs (a) and (b).

(2) Where a licensee receives notice given in accordance with subsection (1) by the operator of a station having the higher or highest priority established by sections 6 to 8, it shall delete the signals specified and insert in place thereof the signals transmitted by that station.

(3) This section applies only to Class A cable television broadcasting licensees.

Document 43A

In December 1981 there were two amendments to the 1975 cable regulations. The first allowed distribution of FM radio signals on a community channel. It was at this time that the *Canada Gazette* began printing explanatory notes along with the regulations, and these are reproduced here.

DOCUMENT 43A: "Cable television regulations, amendment," Statutory Orders and Regulations 81-943, *Canada Gazette*, Part 2, 9 December 1981, 3507-3508.

1. Section 11 of the *Cable Television Regulations* is revoked and the following substituted therefor:

"11. (1) Except as authorized by this section or its licence, no licensee shall distribute on the community channel of its undertaking

(a) any programming, other than community programming;

(b) any advertising material;

(c) any feature motion picture; or

(d) any signal or reproduction of any signal.

(2) At times when a licensee is not distributing community programming on the community channel of its undertaking, the licensee may distribute on the community channel of its undertaking

(a) the signal of a local F.M. station;

(b) where a local F.M. station signal is not available, the signal of a regional F.M. station; and

(c) where a local F.M. station signal or a regional F.M. station signal is not available, the signal of any other F.M. station that is licensed by the Commission.

(3) Where the signal of more than one local F.M. station is available for distribution, the distribution of any local F.M. station signal on a community channel shall be subject to a suitable arrangement

between the licensee who distributes the signal of a local F.M. station and all the local F.M. broadcasters.

(4) A licensee shall notify the Commission of

(a) its intention to distribute an F.M. signal on the community channel of its undertaking; and

(b) any arrangement entered into pursuant to subsection (3)

(5) A licensee shall not curtail, cancel or pre-empt community programming or otherwise reduce the availability of the community channel for community programming for the purpose of distributing the signal of an F.M. station.

(6) Subsections (2) to (5) apply only to Class B cable television broadcasting licensees."

2. All that portion of subsection 12(2) of the said Regulations following paragraph (b) thereof is revoked and the following substituted therefor:

"the program logs required to be kept pursuant to subsection (1) and the audio reproduction of all community programming distributed on its community channel."

3. Paragraph 15(4)(a) of the said Regulations is revoked and the following substituted therefor:

"(a) all Class A and Class C cable television broadcasting licensees; and"

EXPLANATORY NOTE

(This note is not part of the Regulation, but is intended only for information purposes.)

This amendment

(a) permits the carriage of FM broadcasting signals on the community channels of cable television undertakings at times when community programming is not being distributed;

(b) redefines the requirement of cable operators to maintain tapes of programs distributed on the community channel; and

(c) adds one class of cable undertaking to which section 15 applies.

Document 43B

The second 1981 amendment to the 1975 cable regulations created three classes of cable operations and allowed a form of appeal against channel substitution.

DOCUMENT 43B: "Cable television regulations, amendment," Statutory Orders and Regulations 81-944, *Canada Gazette*, Part 2, 9 December 1981, 3509–3511.

1. Section 3 of the *Cable Television Regulations* is revoked and the following substituted therefor:

> "3. (1) The following three classes of broadcasting receiving undertaking licences are prescribed, namely, Class A cable television broadcasting licences, Class B cable television broadcasting licences and Class C cable television broadcasting licences.
>
> (2) Every licence issued to a person to operate an undertaking having six thousand or more subscribers is a Class A cable television broadcasting licence.
>
> (3) Every licence issued to a person to operate an undertaking having less than three thousand subscribers is a Class B cable television broadcasting licence.
>
> (4) Every licence issued to a person to operate an undertaking having three thousand or more subscribers but less than six thousand subscribers is a Class C cable television broadcasting licence."

2. Section 19 of the said Regulations is revoked and the following substituted therefor:

> "19.(1) Subject to section 19.1, where identical signals are to be transmitted during the same period or periods by two or more stations whose signals a licensee is required or authorized to distribute, the operator of the local television station or regional television station that has the higher or highest priority established by sections 6 to 8,
>
> (a) may, no less than seven days before the transmission of such an identical signal by another station, give written notice to the licensee to delete that signal

(i) specifying the signal and the date and time of its scheduled —transmission, and

(ii) designating the station that is to transmit the signal; and

(b) shall, immediately before the transmission of the signal specified in the notice given —pursuant to paragraph (a).

(i) verify the accuracy of the notice.

(ii) verify that the station or stations that were to transmit the identical —signal have not been exempted from the application of this —section, and

(iii) where any change is required to be made in the notice, forthwith inform the licensee in respect thereof both orally and in writing.

(2) Where a licensee receives a notice in accordance with subsection (1) by the operator of a station having the higher or highest priority established by section 6 to 8 he shall delete the signal specified and insert in place thereof the signal transmitted by that station.

(3) This section applies only to licensees holding Class A cable television broadcasting licences.

19.1 Where, after completion of a public hearing held on the application of the operator of a Canadian television station, the Commission is satisfied that an undue financial hardship would result to the operator of that station if signals to be transmitted by that station were to be replaced by identical signals transmitted by a local television station or regional television station that has the higher priority established by sections 6 to 8, the Commission may exempt the operator of the Canadian station from the application of subsection 19(1).''

EXPLANATORY NOTE

(This note is not part of the Regulation, but is intended only for information purposes.)

This amendment

(a) creates three classes of broadcast receiving undertaking licences, namely: classes ''A'', ''B'' and ''C'' where before there were only two;

(b) requires only class "A" broadcast receiving undertaking licensees to effect simultaneous substitution;

(c) allows a television station of a lesser priority to ask for relief against simultaneous substitution.

Document 43C

In October 1983, a further amendment to the cable regulations exempted licensees from signal substitution if the original signal carried services unavailable from the local replacement. These services (such as closed captioning for the deaf) fell under the CRTC rubric of " a subsidiary signal. "

DOCUMENT 43C: **"Cable television regulations, amendment," Statutory Orders and Regulations 83-782, *Canada Gazette*, Part 2, 26 October 1983, 3766.**

1. Section 19 of the *Cable Television Regulations* is amended by adding thereto, immediately after subsection (2) thereof, the following subsection:

"(2.1) Where a notice has been given under subsection (1) to delete a signal that contains a subsidiary signal designed to inform, enlighten or entertain and a similar subsidiary signal is not transmitted by the television station that gave the notice, the Commission may, on application by a licensee and on such terms and conditions as it considers appropriate, exempt the licensee from the application of subsection (2) where it is satisfied that the exemption would be in the public interest. "

EXPLANATORY NOTE

(This note is not part of the Regulation, but is intended only for information purposes.)

This amendment allows cable television licensees to apply to the Commission to be exempted from the requirement to carry out signal substitution where the signal to be deleted carries a subsidiary signal that is not available on the signal proposed to be substituted in its place.

Document 44

When the CRTC began its stewardship of Canadian broadcasting, it faced two major issues: cable television and the enhancement of Canadian content. Cable was a relatively new phenomenon, and, if the questions it posed were difficult, the CRTC could at least write its own history. Canadian content was a different matter. The words of the 1968 Broadcasting Act were uncompromising: "the programming provided by each broadcaster should be of high standard, using predominantly Canadian creative and other resources." This phrase did not describe the situation in 1970. Despite the requirement of 55-percent Canadian content demanded by the defunct Board of Broadcast Governors, it is arguable that, at least during prime time—when most people did most of their television viewing—US-produced programs had about 80 percent of the audience in English Canada.

Most of these US-produced programs were being transmitted from Canadian stations. A proliferation of new licences in the late 1960s, combined with efficient cable systems, meant easy access to television for most Canadians. The US programs cost less to buy than Canadian stations or networks would have to pay to produce them. They reflected the skills of the most sophisticated entertainment industry in the world; people liked them and advertisers were willing to pay for the big audiences they attracted.

The old 55-percent rule had mostly been observed, but its spirit was dead. Canadian content was tucked into those hours in the day and those summer months of the year when few people were watching, and it was produced with minimum cost and personnel. Even the BBG attempt to boost Canadian content in prime time to 40 percent was undercut by defining prime time as 6 p.m. to midnight, rather than the more realistic 7 p.m. to 10 p.m.

Despite the apparent contentment of a vast audience with this state of affairs, there were those who worried. Questions of the mass media and Canadian cultural sovereignty were in the air. A special committee of the Senate (see Document 50) was studying the effects of the mass media on Canadian society. Some people thought the country's ability to survive as a distinct nation was in jeopardy.

It was in this context that the CRTC released proposals for new, tougher rules for Canadian content, not just for television but for AM radio stations following the popular music "hit parade" format (as Top 40 was then called). Combined with the press releases announcing this move toward cultural sovereignty was another release proposing cutbacks in the amount of commercial time allowed on television. The protests from the private broadcasting industry were vigorous. Here are the proposals.

DOCUMENT 44: CRTC , press releases on Canadian content proposals for television and AM radio, and on commercial content for television, 12 February 1970.

A Summary

The proposed regulations announced today by the Canadian Radio-Television Commission cover:

— A substantial increase in Canadian programs on television, particularly in prime time, effective this Fall for the CBC and in a two season progression for private television —which would mean increased use of Canadian actors, writers, directors and technicians;

— A limit on the number of times television programs may be interrupted for advertising material and the clear separation of advertisements from the programs;

— The inclusion of virtually all material extraneous to a program as advertising material, and a limit of 12 minutes per hour to such material;

— Permission to include advertisements in television news programs, subject to precise safeguards on the spacing of interruptions, the use of news readers in advertisements, and the clear distinction of advertisements from news items;

— A 30 per cent Canadian content rule for the use of music by AM radio stations, to be implemented in two steps and to be fully operative by October 1, 1971.

Television Programs

The Canadian Radio-Television Commission today announced major new proposed regulations providing for more Canadian programs on television, particularly during the evening hours when viewing is at its peak.

Among the effects of these proposed regulations would be an increase by this Fall of about three hours a week of Canadian programs in the evening on CBC stations. Since private broadcasters would have until September of 1971 to comply with the same standards as the CBC, this would mean for many of them about four additional evening hours of Canadian programs a week by this Fall, and another three and a half hours by the start of the following September.

This would provide opportunities and work for many Canadian actors, writers, dancers, singers, newsreporters and analysts, directors, designers, and technical operators and experts of all sorts. The Commission hopes this will contribute to building a stronger, more vital and more attractive Canadian broadcasting system.

Under existing regulations, television broadcasters are required to fill 55 per cent of their schedules with Canadian programs. The figure is computed every three months by averaging the daily schedule over that time. Over the same three months, they must have 40 per cent of their evening schedules filled with Canadian programs.

A broadcasting system for Canadians should have Canadian programs as a matter of course, not as a special requirement. However, broadcasting is a system of communication, and should serve to help keep Canadians in touch with their neighbors in the world around them.

Therefore, the Commission proposes to permit broadcasters to use up to 40 per cent of their daily broadcast time for non-Canadian programs, but it also proposes to eliminate provisions by which certain programs of non-Canadian origin have been counted as Canadian.

To ensure further that television brings as wide a selection of the world's best programming as possible, the Commission proposes that programs from any country other than Canada be limited to 30 per cent of the schedule.

Except by individual decision of the Commission, programs of non-Canadian origin could not occupy, on the average, more than 40 per cent of a television station's schedule between 6 a.m. and midnight. Nor could such programs occupy, on the average, more than 40 per cent of the schedule between 6:30 p.m. and 11:30 p.m. The average would be computed over a four-week period, rather than the present three-month period.

The CBC, which has special responsibilities in broadcasting in Canada and is only partly dependent on advertising revenues to cover its expenses, would reduce its non-Canadian content to an average of up to 40 per cent during the specified time periods by September 1, 1970.

The Commission realizes that eliminating from the regulations those provisions under which programs obtained from non-Canadian sources were considered Canadian, would limit the use of certain traditional sources of supply for Canadian broadcasters. The Commission is aware that at present, during peak evening viewing hours, some major private stations have as little as 29 per cent of programs that would qualify as Canadian under its proposed regulations.

Accordingly, television broadcasters other than the CBC would reduce their programs of non-Canadian origin to an average of up to 50 per cent starting September 1, 1970, and further reduce their use of such programs to up to 40 per cent starting September 1, 1971.

The Commission invites comment and suggestions on these proposals by broadcasters and interested members of the public, and will hear discussion of them at its public hearing in Ottawa in April.

AM Radio Music

The Canadian Radio-Television Commission today announced proposed regulations for a two-stage increase in the amount of Canadian music broadcast by AM radio stations through most of the broadcast day.

Starting on October 1, a minimum of 30 per cent of the musical compositions played by such stations during certain specified time periods would have to meet at least one of these four conditions:

— the playing or singing (or both) of the composition must be principally by a Canadian;

— the music was written by a Canadian;

— the lyrics were written by a Canadian;

— the performance was recorded in Canada.

After one year, starting on October 1, 1971, a minimum of 30 per cent of the music selections played during the specified periods would have to meet at least two of the same four conditions.

This requirement for a Canadian element in AM radio programming would have to be met daily during each four-hour period between 7 a.m. and 11 p.m.

The Commission invites comment and suggestions on these proposals by broadcasters and interested members of the public, and will hear discussion of them at its public hearing in Ottawa in April 1970.

Television Commercials

The Canadian Radio-Television Commission today announced proposed new regulations governing the broadcasting of advertising on television.

The proposed regulations are designed to reduce interruptions in programs for advertising, to separate clearly advertising from programs, and to keep to a reasonable level the amount of material that is not directly relevant to the program being broadcast.

Regulations are also proposed to allow better editing of feature films to accommodate advertising, and to permit broadcasters greater use of natural breaks in the continuity of a live sports event for the insertion of commercials.

Broadcasters would be limited in the number of times they might interrupt a program for advertising once it begins. They might put four interruptions in the body of a one hour program, two in the body of a half hour program, and one in the body of a program of 15 minutes. These restrictions would apply to advertising interruptions only; news bulletins would not be considered interruptions.

Broadcasters would be allowed a maximum of 12 minutes of advertising in each hour. But a new definition of advertising would include anything not directly related to the program being broadcast, except station or network identification. Any material promoting the station or network or any program would be considered advertising material, and would have to be accommodated within the 12 minutes.

Since some television stations in Canada have sometimes reached 20 minutes or more of extraneous material in a broadcast hour, the Commission feels the proposed regulations will ensure that the television viewer will get as much program time as possible, consistent with the need of the television industry for advertising revenue.

The proposed regulations, like the present ones, would limit the number of minutes for advertising in a clock hour. (A clock hour is the 60 minute period that begins on the hour—8 a.m. for example—and ends just before the beginning of the next hour. A 60 minute program running from 7:30 a.m. to 8:30 a.m. occupies time in two clock hours). This has led to problems in editing longer programs, particularly feature films. Accordingly, the Commission proposes that where a program is more than an hour long, broadcasters may place advertising material as they wish, providing the rate of 12 advertising minutes an hour is observed, and providing that there are no more than four interruptions in each hour of the program.

Where a live sports event is being broadcast, there would be no limit on the number of interruptions, but the rate of 12 advertising minutes an hour would have to be observed. This would permit the frequent use of very short commercials during natural breaks in the action, and reduce the need for part of the action to be unseen while an advertisement is completed.

There is a trend to longer programs of news and public affairs, and such programs have improved significantly in recent times. The Commission recognizes the need for extra revenue to finance this form of public service, and proposes to allow broadcasters to sell advertising time during news programs, subject to precise restrictions.

Present regulations forbid the broadcast of commercials in newscasts. The Commission proposes to allow advertising messages, providing that there could be only one two-minute interruption after each 10 minutes of the news program. Advertisements in a news program would have to be clearly identified to distinguish them from the news program. The news reader would not be permitted to appear in the advertising material. No item of news might be interrupted for advertising material. Sponsorship of news programmes will be permitted providing the presentation of the sponsorship identification is in good taste.

News coverage is costly, and it is in recognition of the costs involved that the Commission proposes to permit advertising during news programs. However, the Commission expects that broadcasters who take advantage of this permission will improve their news service, in quality as well as quantity.

The Commission invites comment and suggestions on these proposals by broadcasters and interested members of the public, and will hear discussion of them at its public hearing in Ottawa in April.

Document 45

The CRTC's proposals of February 1970 for stiffening Canadian content requirements for TV stations and AM radio created quite a controversy. The title of the folowing document, an editorial in *Broadcaster* magazine (the adjective "Canadian" had been dropped from the magazine's title in 1969), summed up the dismay of much of the private industry. The broadcasters' outrage was reiterated when the CRTC hearings on Canadian content were held in April 1970. It should be mentioned that private industry—like the public—was not unanimous in its attitudes. The Canadian Association of Broadcasters' response to the CRTC proposals was so strong that two major stations—CFTO in Toronto and CJOH in Ottawa—resigned from the CAB at this time.

DOCUMENT 45: "No Virginia, a Canadian is not free to decide what he will watch on television or listen to on radio," *Broadcaster*, March 1970, 22–23.

Basing their actions on the line in the Broadcasting Act which calls for a broadcasting system which is "basically Canadian in content and character," it is apparent that the CRTC is determined to implement a new Canadian content regulation, come hell or high water.

While neither we nor the industry nor any Canadian can quarrel with their aims to develop Canadian identity, the way they are handling it is a shaft pointed right at the heart of the democratic system which is our national life blood.

Is it not ominously significant that its dogged determination to bring in this rule was arrived at without in any way consulting or even advising the people on whose behalf it was supposed to be introduced, which does not mean the talent, or the industry even, but the Canadian public?

That it was not disclosed to the people's representatives in the House of Commons, nor, as far as we can tell, in the Cabinet?

That the availability of talent and resources to achieve the proposed rules is being studied by John Reid and his house committee on broadcasting, with a report due to be presented in May, at least a month later than the public hearings, from which the Commission will undoubtedly arrive at its final decision—if it has not already done so?

While the chairman of the CRTC has stated that they are going into this with an open mind, certain facts indicate the CRTC's determination to ramrod the new regulation through. This is evidenced by the fact that it called the public hearing a few days prior to the date the Canadian Association of Broadcasters chose a year ago for its 1970 annual convention, in Halifax, thus preventing a full-dress industry discussion on the subject prior to the public hearing.

It was highly significant, we felt, that when the CAB asked the CRTC to postpone these hearings to avoid conflicting dates and to allow time for study and discussion, they met with a point blank refusal, indicating beyond doubt that the Commission was anxious to avoid organized opposition to its proposals on the part of the industry.

The CAB's action in moving its annual convention to Ottawa and dating it ahead of the CRTC hearings was an astute one provided it is courageously handled. This means it must speak as the voice of the private broadcasters and this voice has to be heard.

To accomplish this, it would be essential that it conduct open meetings, with the news media invited to attend and report, in order to let in the public on what has become a public matter. Failing this, it must, at the very least, pass and release forthright resolutions, emanating from these meetings, which clearly delineate where the industry stands and why. What it must *not* do is emulate the CRTC, which failed to apprise the public of its intentions, through Parliament, before announcing them as virtually accomplished fact.

Of course, the obvious answer to that, an answer which the CRTC is certain to use, is that through the power vested in it by the Broadcasting Act, the Commission is not obliged to seek prior permission, either from Parliament or the Cabinet for any of its actions. Technically they are right, but it does make one wonder why we bother with elections when more and more power is being handed to appointed bureaucrats.

Also, through the Act, it is left to the CRTC to determine first what is "basically Canadian in content and character" and as a result what Canadians shall look at and listen to, and more emphatically what they shall *not*.

The various implications of the proposed regulations and their practical feasibility we shall leave to the combined experience and expertise of the broadcasting industry. What to us, is of equal importance is a very basic question—

Why?

Why must there be more Canadian content? Why must there be a limited

number of program interruptions? Why must there be less American programming?

Can the CRTC or anybody for that matter point to any meaningful research or opinion poll that shows that the people of this country want more Canadian programming?

Can the CRTC provide documented proof that U.S. television programming has an adverse effect on the people of this country?

Have they had a team of sociologists and psychologists studying the effects of the so-called "garbage" programming on the minds of our population?

Before the Davey Senate Committee, Pierre Juneau expressed agreement with the statement of Professor Thomas L. McPhail of Loyola College, Montreal, that if Canadian content was not increased on Canadian television, "we won't have a Canada." If we look a little farther into the Canadian economy beyond television, we find that Mr. Juneau and the professor are both behind the times because, to this way of thinking, Canada is already non-existent.

This country has already been infiltrated by American movies, theatres, books, magazines, music, advertising and professional sports, to say nothing of refrigerators, soaps and patent medicines to mention a few.

In fact it is generally agreed that no less than seventy per cent of our purchases are for products which directly or indirectly stem from the States. It is hardly likely that the broadcasting system envisaged by Pierre Juneau can do very much, if anything, to bring any meaningful change to this situation.

Perhaps, having established his embargo on American programming, Mr. Juneau intends to aim his guns at movies and magazines as well.

Pierre Juneau, anticipating a negative reaction to the Commissions proposals, warned the industry to come to him with fact, not philosophy.

We throw the challenge right back at the Commission.

Let them prove that what they are proposing is desired by over 51 % of voting Canadians.

Let them prove, not only to broadcasters but to the Canadian people, that what they are proposing is anything more than the theoretical ideas of a handful of civil servants and some advisors, whose judgment based on practical experience is, to say the least, questionable.

The CRTC can hardly be described as a group of people who have had, through the course of their various careers, extensive contact with the mass of Canadians. Yet they and some of their senior advisors have been running around with such statements as "broadcasters have a responsibility to make the public more aware of the social ills confronting our nation—get them involved."

Has it ever occurred to them, secure as they are with their $25,000-a-year-with-expense-account jobs, that the average Canadian—the guy who sweats his guts out in some plant for eight hours a day—doesn't want to be bothered, not because he doesn't care, but simply because by the time he has worried about paying his taxes, feeding and clothing his wife and three children, making his mortgage and car payments and facing the myriad of other problems necessary just to survive—he does not want to go home and face a new set of problems. If he had to, he would probably go stark raving mad.

This is not to say broadcasters do not have a responsibility—they have and the majority of broadcasters willingly acknowledge it. But broadcasters have to operate under licences—often limited to two years—and the kind of forward thinking that is part and parcel of responsibility is impossible with the threat of non-renewal and excessive regulation constantly impeding their present and future planning.

On March 12, in his Toronto Star Column, Patrick Scott referred to a Commissioner who reportedly said there is not a single U.S program on television worth a second look and then in the next breath admitted many of them had never received a first look.

Is this the calibre of person who is responsible for determining what Canadians shall see on television?

If we may digress for a moment, consider the future.

If the Commission can make its awesome power stick, what happens when the new Federal Government toy, Information Canada, gets off the ground—will they, through the CRTC, be able to force all broadcasting stations to carry their missives. That can't happen here you say! Are you so sure? 1984 isn't that far away.

There can and must be only one arbiter to determine what the Canadian public shall look at and listen to, and that is the Canadian public.

If the broadcasters in this country have any responsibility it is this.

They must, by employing their own stations, make all Canadians of reasoning age aware of what is going on in Ottawa and impress on them that

the public and only the public has the power, if necessary, to bring it crashing down and replace it with a group of people who are there to carry out their wishes and not those of a group of fanatical idealists.

Document 46

As the previous document illustrates, the proposals by the CRTC for a higher level of Canadian content and a stricter limitation of commercials were hotly debated. The debate continued through the public hearings on these questions held in Hull, Quebec, in April 1970 and afterwards. By late May, some form of compromise had been reached and the CRTC announced the general outline of the new regulations for television and AM radio.

DOCUMENT 46: CRTC press release: radio and television regulations—résumé, 22 May 1970.

The regulations proposed by the Commission on February 12, 1970, covering television and AM radio are unchanged in their objectives: not more than 40 per cent of non-Canadian programmes on television, not more than 30 per cent of programmes to come from any one country outside of Canada, a 30 per cent Canadian content requirement for AM radio in two stages.

Some changes have been made as a result of the 111 briefs submitted by the public, and the representations made at the Public Hearing from April 14-22. Some of the changes are:

— A three-step progression in which private television broadcasters would meet the requirement for substantial increases in the amount of Canadian programmes, rather than a two-season progression as proposed;

— calculation of the average of non-Canadian television programmes over a calendar quarter, rather than four weeks;

— a maximum of five commercial interruptions in a one-hour television programme, rather than four as proposed. At present the number of interruptions is unregulated;

— provision for an extra 30 seconds per hour for unpaid public service announcements where a television broadcaster has sold all 12 commercial minutes in the hour;

— removal of as much as possible of the additional paperwork that would fall to AM radio broadcasters as a result of the proposed regulations;

— provision for AM radio broadcasters to arrive at their 30 per cent average of Canadian musical compositions over the whole day, rather than in four periods of four hours each, as proposed;

— a requirement that after the first two years of the AM radio Canadian music regulation, 5 per cent of musical compositions broadcast must be either written or composed by Canadians.

The date of implementation of the television regulations has been changed to October 1, and the date of implementation of the radio regulations has been changed to January 18, 1971.

Document 47

Reprinted below are those sections of the television broadcasting regulations dealing with commercials and with Canadian content, as they were first drawn up by the CRTC in 1970. Comparison with the equivalent regulations of the Board of Broadcast Governors (Documents 37 and 38) reveals that the "single system" of broadcasting required different things from its different parts. The 1970 regulations are the first to require different standards of performance from the CBC ("the Corporation") than from private broadcasters. Note also that the CRTC chose to define a maximum allowable level of non-Canadian programming rather than a minimum allowable level of Canadian content.

Following the 1970 regulations is the amended version which appeared in 1978 in *Consolidated Regulations of Canada*, a version that incorporated changes carried out in June 1972. Since 1978 there have been minor adjustments to commercial content and Canadian content regulations, and these are printed following the 1978 version.

DOCUMENT 47: CRTC, "Television broadcasting regulations, amended," Statutory Orders and Regulations 70–257, *Canada Gazette*, Part 2, 24 June 1970, 652–653. As amended 1972, 1982, 1984.

4. The said Regulations are further amended by adding thereto, immediately after section 6 thereof, the following section:

"Non-Canadian Programmes

6A. (1) Notwithtanding anything in ection 6, during the period from October 1, 1971 to September 30, 1972,

(a) during each calendar quarter, the average amount of broadcast time devoted by any station or network, other than the Corporation, to non-Canadian programs shall not exceed 50 per cent of the total broadcasting time of that station or network

(i) between the hours of 6.00 a.m. and midnight, and

(ii) between the hours of 6.30 p.m. and 11.30 p.m.; and

(b) not more than

(i) 35 per cent of the programs broadcast by any station or network, other than the Corporation, between the hours of 6.00 a.m. and midnight, and

(ii) 40 per cent of such programs broadcast between the hours of 6.30 p.m. and 11.30 p.m.

shall be programs produced in any one country outside of Canada.

(2) After October 1, 1972, during each calendar quarter, the average amount of broadcasting time devoted by any station or network to non-Canadian programs shall not exceed 40 per cent of the total broadcasting time of that station or network

(a) between the hours of 6.00 a.m. and midnight, and

(b) between the hours of 6.30 p.m. and 11.30 p.m.

(3) After October 1, 1972, not more than 30 per cent of the programs broadcast by any station or network during the period described in paragraphs (a) and (b) of subsection (2) shall be programs produced in any one country outside of Canada.

(4) Where a program is produced outside of Canada and the audio portion thereof is converted to either English or French by a process of lip synchronization done in Canada, one-quarter of the program time shall be deemed to be Canadian.

(5) The Commission may deem any program or series of programs, or any co-production, joint production or program involving agreements for the reciprocal broadcasting of programs some of which are Canadian, to be a Canadian program or series of programs.

(6) Notwithstanding anything in section 6, or in this section, subsections (2) to (5) shall apply to the Corporation from October 1, 1970.

(7) Subsections (4) and (5) shall apply to a station or network, other than the Corporation, on October 1, 1971.

(8) Where, in the calculation of the time devoted by a station to non-Canadian programs that are broadcast between the hours of 6.30 p.m. and 11.30 p.m., inequities arise among station operators as a result of their stations being located in differing time zones, the Commission may vary the application of this section.

(9) Where a station operator is able to demonstrate to the satisfaction of the Commission that the application of this section would result

in a significant reduction in the quality and diversity of program services within the area normally served by his station, the Commission may vary the application of subsections (1), (2) and (3).''

5. Section 8 of the said Regulations is revoked and the following substituted therefor:

''8. (1) Subject to this section, no station or network operator shall, during any clock hour, broadcast programming containing advertising material the aggregate duration of which exceeds 12 minutes.

(2) Where a program is more than one hour in duration, the duration of the advertising material in the body of the program may exceed 12 minutes during any clock hour if the number of minutes of advertising material during that part of the program that falls within another clock hour is reduced by an amount equal to such excess.

(3) Where a program is one hour or less in duration, but occupies time in two adjacent clock hours, the duration of the advertising material contained in one of those clock hours may exceed 12 minutes if the duration of the advertising material contained in the other clock hour is reduced by an amount equal to such excess.

(4) Where a station or network operator has broadcast 12 minutes of paid commercial announcements in one hour, he may broadcast in the same clock hour, an additional 30 seconds of unpaid public service announcements.

8A. Where a program other than a live sports program or live actuality would not otherwise give a clear indication of the beginning of an interruption for advertising material, such interruption shall be preceded by visual or sound material that clearly indicates the beginning of such advertising material.

8B. (1) Except in the case of a simultaneous broadcast in Canada originating outside of Canada or a live sports program, or a live actuality program, the number of interruptions for advertising material in a program shall not exceed

(a) five in every whole hour of the program; and

(b) one in every quarter hour of the program that is not a part of a whole hour of the program.

(2) For the purposes of this section,

(a) a program includes all programming between the beginning and the end of the program; and

(b) an interruption includes any matter other than a news bulletin that temporarily halts the sequence of the events in a program.

8C. (1) The first ten minutes of any news program shall not be interrupted by any advertising material.

(2) The news portion of any news program shall not be interrupted by any advertising material.

(3) The person reading or appearing in the advertising material within a news program or adjacent to it shall not be the same person as the news reader.

(4) For the purposes of this section,

(a) "news program" includes a sponsored news program; and

(b) "news portion" includes news headlines, reports of news events and summaries thereof."

6. The said Regulations are further amended by striking out the word "Board" wherever it occurs therein and substituting the word "Commission".

Document 47A

The 1972 changes in television regulations (reprinted here as they appeared in 1978) eased Canadian content requirements somewhat. There were no substantial changes to the rules about commercials.

DOCUMENT 47A: "Television broadcasting regulations," *Consolidated Regulations of Canada*, c. 381, 1978, 2607–2608.

Non-Canadian Programs

8. (1) Subject to subsection (5), during the 12-month period commencing October 1st in each year, the average amount of broadcast time devoted by any station or network to non-Canadian programs shall not,

(a) between the hours of six o'clock in the forenoon and twelve o'clock midnight, exceed 40 per cent of the total broadcast time of that station or network; or

(b) between the hours of six o'clock in the after noon and twelve o'clock midnight,

(i) in the case of a station or network operated by the holder of a public licence, exceed 40 percent of the total broadcast time of that station or network, or

(ii) in the case of a station or network operated by the holder of a private licence, exceed 50 percent of the total broadcast time of that station or network.

(2) Where a program is produced outside Canada and the audio portion thereof is converted to either English or French by a process of lip synchronization done in Canada, one-quarter of the program time shall be deemed to be Canadian.

(3) The Commission may deem any program or series of programs, or any co-production, joint production or program involving agreements for the reciprocal broadcasting of programs some of which are Canadian, to be a Canadian program or series of programs.

(4) Where, in the calculation of the time devoted by a station to non-Canadian programs that are broadcast between the hours of six o'clock in the afternoon to twelve o'clock midnight, inequities arise among station

operators as a result of their stations being located in differing time zones, the Commission may vary the application of this section.

(5) Where a station operator is able to demonstrate to the satisfaction of the Commission that the application of this section would result in a significant reduction in the quality and diversity of program services within the area normally served by his station, the Commission may vary the application of subsection (1).

(6) For the purposes of this section, the broadcast time devoted to a program shall be deemed to include any time devoted to advertising material that is

(a) included within the program;

(b) inserted in breaks within the program; or

(c) between the end of the program and the beginning of the following program....

Advertising Content

11. (1) Subject to this section, no station or network operator shall, during any clock hour, broadcast programming containing advertising material the aggregate duration of which exceeds 12 minutes.

(2) Where a program is more than 1 hour in duration, the duration of the advertising material in the body of the program may exceed 12 minutes during any clock hour if the number of minutes of advertising material during that part of the program that falls within another clock hour is reduced by an amount equal to such excess.

(3) Where a program is 1 hour or less in duration, but occupies time in two adjacent clock hours, the duration of the advertising material contained in one of those clock hours may exceed 12 minutes if the duration of the advertising material contained in the other clock hour is reduced by an amount equal to such excess.

(4) Where a station or network operator has broadcast 12 minutes of advertising material in 1 hour, he may broadcast in the same clock hour an additional 30 seconds of unpaid public service announcements.

12. Where a program other than a live sports program or live actuality would not otherwise give a clear indication of the beginning of advertising material, such advertising material shall be preceded by visual or sound material that clearly indicates the beginning of such advertising material.

13. (1) The first ten minutes of any newscast shall not be interrupted by any advertising material.

(2) The person reading or appearing in the advertising material within a news program or adjacent to it shall not be the same person as the news reader.

(3) For the purposes of this section,

(a) the news headlines, the reports of news events and the summary of the news are deemed to be part of the newscast; and

(b) the newscast does not include a billboard that mentions only the place of origin of the news items, the title of the program and the name of the news reader.

Document 47B

In April 1982, television regulations were amended to tighten up some legal definitions and relax slightly the time periods for calculating Canadian content.

DOCUMENT 47B: CRTC, "Television broadcasting regulations, amendment," Statutory Orders and Regulations 82–415, *Canada Gazette*, Part 2, 12 May 1983, 1564–1565.

3. Subsection 8(1) of the said Regulations is revoked and the following substituted therefor:

"8. (1) Subject to subsection (5), during the 12-month period commencing October 1st in each year, the amount of time devoted by any station or network to the broadcasting of non-Canadian programs shall not,

(a) between the hours of six o'clock in the forenoon and twelve o'clock midnight, exceed 40 per cent of the total time devoted to broadcasting by that station or network during those hours; or

(b) between the hours of six o'clock in the afternoon and twelve o'clock midnight,

(i) in the case of a station or network for which the Commission has issued a public licence, exceed 40 per cent of the total time devoted to broadcasting by that station or network during those hours, or

(ii) in the case of a station or network for which the Commission has issued a private licence, exceed 40 per cent of the total time devoted to broadcasting by that station or network during those hours."

EXPLANATORY NOTE

(This note is not part of the Regulation, but is intended only for information purposes.)

This amendment

(a) redefines "station" to indicate that the definition applies to a television broadcasting undertaking for the operation of which the Commission has issued a broadcasting licence;

(b) makes the regulations applicable to licensed persons as opposed to stations; and

(c) emphasizes that the time periods with respect to the Canadian content requirements apply only during the hours set out in paragraphs 8(1)(a) and (b).

Document 47C

In May 1984, the CRTC defined its notion of a "Canadian program," and went back to the old Board of Broadcast Governors' method of counting hours of Canadian content rather than maximums of non-Canadian programming. This document refers to criteria set out in "Recognition for Canadian programs." The latter document is reprinted immediately following this one.

DOCUMENT 47C: CRTC, "Television broadcasting regulations, amendment," Statutory Orders and Regulations 84–364, *Canada Gazette*, Part 2, 30 May 1984, 2006–2008.

1. Subsection 2(1) of the *Television Broadcasting Regulations* is amended by adding thereto, immediately after the definition "calendar quarter", the following definition:

> "'Canadian program" means a program that qualifies as a Canadian program in accordance with the criteria established by the Commission, in the appendix to a notice entitled "Recognition for Canadian Programs", dated 15 April, 1984 and published in the *Canada Gazette* Part I on April 28, 1984; *(émission canadienne)*"

2. Subsection 6(2) of the said Regulations is revoked.

3. The heading preceding section 8 and section 81 of the said Regulations are revoked and the following substituted therefor:

Canadian Programs

8. (1) Subject to subsection (2), during each 6 month period commencing October 1st and April 1st in each year, the total amount of time devoted by any station or network to the broadcasting of Canadian programs shall not,

> (a) during the hours in the broadcast days in that period, be less than 60 per cent of the total time devoted to the broadcasting of programs by that station or network during those hours; or
>
> (b) between the hours of six o'clock in the afternoon and midnight in that period

(i) in the case of the station or network for which the Commission has issued a public licence, be less than 60 per cent of the total time devoted to the broadcasting of programs by that station or network during those hours, or

(ii) in the case of the station or network for which the Commission has issued a private licence, be less than 50 per cent of the total time devoted to the broadcasting of programs by that station or network during those hours.

(2) Where, in the calculation of the time devoted by a station to Canadian programs that are broadcast during a broadcast day, inequities arise among station operators as a result of their stations being located in differing time zones, the Commission may vary the application of this section in order that stations receive equitable treatment in the calculation of their Canadian programs.

(3) For the purposes of this section, "broadcast day" means the period of up to 18 consectutive hours commencing each day not earlier than six o'clock in the forenoon and ending not later than one o'clock in the forenoon of the following day, as selected by the licensee and approved by the Commission.

(4) For the purposes of this section, the time devoted to the broadcasting of a program includes any time devoted to advertising material that is inserted

(a) within the program;

(b) in breaks within the program; or

(c) between the end of the program and the beginning of the following program."

4. Section 11 of the said Regulations is revoked and the following substituted therefor:

"11. (1) Subject to subsections (2) to (5), no station or network operator shall, during any clock hour, broadcast programming containing advertising material the aggregate duration of which exceeds 12 minutes.

(2) Between the hours of six o'clock in the forenoon and six o'clock in the afternoon, a station or network operator may, during any clock hour, broadcast two minutes of advertising material in addition to the 12 minutes referred to in subsection (1), if that additional material is made up entirely of advertisements for upcoming Canadian programs to be aired on its station or network.

(3) Where a program is more than 1 hour in duration, the duration of the advertising material inserted in the program may exceed 12 minutes during any clock hour, or 14 minutes, during any clock hour where subsection (2) applies, if the number of minutes of advertising material during that part of the program that falls within another clock hour of the program is reduced by an amount equal to the amount by which the number of minutes of advertising material in the clock hour first referred to exceeds 12 of 14 minutes, as the case may be.

(4) Where a program is 1 hour or less in duration, but occupies time in two adjacent clock hours, the duration of the advertising material in one of those clock hours may exceed 12 minutes, or 14 minutes, during any clock hour where subsection (2) applies, if the duration of the advertising material in the other clock hour is reduced by an amount equal to the amount by which the number of minutes of advertising material in the clock hour first referred to exceeds 12 or 14 minutes, as the case may be.

(5) Where a station or network operator has broadcast 12 minutes of advertising material in a clock hour, or 14 minutes in a clock hour where subsection (2) applies, it may broadcast in the same clock hour an additional 30 seconds of unpaid public service announcements."

EXPLANATORY NOTE

(This note is not part of the Regulation, but is intended only for information purposes.)

These amendments

(a) define "Canadian program";

(b) change the reporting period for the measurement of Canadian content from an annual to a semi-annual basis;

(c) change the method of measuring Canadian content to a percentage of Canadian programs as opposed to a maximum percentage of non-Canadian programs;

(d) permit broadcasters to select the start of their "broadcast day" for the purposes of section 8; and

(e) allow broadcasters up to 2 minutes of additional time per hour in their broadcast schedules prior to 6:00 p.m. to advise viewers of upcoming Canadian programs.

Document 47D

The CRTC used a highly bureaucratized definition of a "Canadian program," borrowed from the Department of Communications, for its purposes in this supplement to the previous amendment to the television regulations.

DOCUMENT 47D: CRTC public notice: "Recognition for Canadian programs," *Canada Gazette*, Part 1, 28 April 1984, 3494–3500.

In defining a Canadian program, the Commission has used as a basis the requirements of the point system and cost criteria currently used by the Canadian Film and Videotape Certification Office of the Department of Communications (CFVCO) for feature productions, and has provided variances in certain matters, only where appropriate.

1. *Basic Definition of a Canadian Program*

The Commission will recognize as a Canadian program, a live, videotape or film production of any length, that meets the following:

1. *Producer(s):* the producer, the individual who controls and is the central decision-maker of the visual production from beginning to end, must be Canadian. Additionally, all individuals fulfilling producer-related functions must be Canadian. Exemptions will be considered for non-Canadians to receive credits for producer-related functions as described in the CFVCO certification process booklet.

2. *The Point System:* a production must earn a minimum of six units of production or "points" based on the following key creative functions being performed by Canadians:

Director—2 points
Writer—2 points
Leading performer—1 point
Second leading performer—1 point
Head of art department—1 point
Director of photography—1 point
Music composer—1 point
Editor—1 point

3. Notwithstanding the above, at least one of the director or writer and at least one of the two leading performers must be Canadian. The points for writer may be obtained if all screenwriters are Canadian or if both the principal writer and the author of the original work on which the production is based are Canadian. Determination of leading performers may take into account billing, screen-time and payment; this determination could be changed after further discussions with the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), Union des artistes and other guilds, producers, CFVCO and the Canadian Film Development Corporation (CFDC).

4. Productions in which non-Canadians are the only leading performers will not be accepted as Canadian, and the addition of Canadians in minor roles will not be sufficient for a production to qualify.

5. Upon application, the Commission may recognize as a Canadian program, a production in which the positions of either:

(a) director and writer, or

(b) both leading performers

are filled by non-Canadians, as long as all other key creative functions are filled by Canadians.

6. Key creative functions could vary for different types of productions. Such variations will be taken into consideration by the Commission for the present purposes. (See attached Schedule.)

7. *Expenditures;* At least 75 % of total remuneration paid to individuals, other than the producer and key creative personnel as listed above or for post production work, must be paid to, or in respect of services provided by Canadians; and at least 75 % of processing and final preparation costs must also be paid for services provided in Canada.

8. The Commission may require audited statements and/or affidavits in support of an application.

9. *The Canadian content certification* given by the Minister of Communications upon recommendation by CFDC or, subject to section 4 above, CFVCO will also constitute recognition for Canadian programs by the Commission.

10. Established CFVCO forms and procedures are acceptable to the Commission, except where variances are outlined in this document. The descriptions and interpretations detailed in the CFVCO certification process booklet will be used by the Commission, unless or until the Commission develops its own definitions and interpretations, if need be.

11. *Interpretation Notes*

(a) *Producer*. The producer is expected, inter alia, to be involved in acquiring and developing the story, selecting and engaging the key creative personnel, budget preparation, financing, control of expenditures and distribution of the production.

(b) In productions where not all of the key creative positions are utilized, and there are fewer than six points possible, recognition will be granted if Canadians perform all key creative functions.

(c) Points will only be awarded in respect of a particular position if all persons sharing the duties of that position are Canadian.

(d) *Head of Art Department*. The Head of the Art Department will generally be the Production Designer. If there is no production designer the Art Director is considered Head of the Art Department.

(e) *Director of photography*—or Technical Producer/Director. The lighting director is not accepted as a technical director on videotape productions.

(f) *Music composer*. The point is awarded only if a Canadian has composed the original music and/or lyrics for the production. The rearrangement of existing music does not warrant a point. The position of music director is not accepted as a music composer.

(g) *Editor*. Means film or videotape editor. The positions of sound or music editor will not be acceptable.

(h) *Expenditures*. "Services" exclude goods. Payments for the purchase of goods such as film or videotape stock, supplies and equipment, and for the acquisition of music, story and copyrights, and non production-related fees, such as legal and accounting fees, are excluded from the 75 % calculations.

II. *Special recognition for co-ventures*

Co-ventures are defined as international co-productions not included under the treaties administered by the CFDC. They include all ventures with co-producers of any foreign country that does not have a film or television production treaty with Canada, and ventures with co-producers of any treaty country, where such ventures are not specifically covered by any treaty. The key function in these co-ventures is that of the producer.

Such co-ventures will qualify for special recognition and will be given 100 % Canadian program credit when broadcast or otherwise distributed by

any licensee of the CRTC, even though some of the producer functions are performed by non-Canadians, where co-venture agreements and other documentation substantiate that the Canadian production company:

> —has no less than an equal measure of decision-making responsibility with other co-venture partners on all creative elements of the production, and
>
> —is responsible for the administration of not less than the Canadian element of the production budget.

A "Canadian production company" is a licensee of the CRTC or is a Canadian company which carries on business in Canada with a Canadian business address, which is owned or controlled by Canadians and whose principal business is the production of film, videotape or live programs for distribution on television or in theatrical, industrial or educational markets.

The application for Canadian recognition must be made by the Canadian production company and must be accompanied or supported by signed agreements between the co-venture partners. Such co-venture agreements will be kept confidential.

The decision-making responsibility for the production will be deemed to be in the hands of a Canadian production company when that company:

> (a) has sole or co-signing authority on the production bank account: for co-ventures shot entirely in Canada, the production bank account must be in Canada; for those shop partially in Canada, a Canadian bank account would be required for that portion of the production shot in Canada; in the case of co-ventures shot entirely outside Canada, there must be a Canadian bank account for payment of the Canadian elements of the program;
>
> (b) has an equity position in the production and the entitlement to profit sharing;
>
> (c) is at financial risk and/or has budgetary responsibility;
>
> (d) has no less than an equal measure of approval over all elements of the production with the co-venture partners, regardless of the number of foreign persons fulfilling the functions of executive producer or producer.

With regard to points and expenditures, a co-venture with a co-producer from a Commonwealth or French-language country, or a country with which Canada has a film or television production treaty, will be considered as qualifying for Canadian program special recognition where,

in addition to meeting the foregoing requirements, it attains 5 points, and at least 50 % of the total remuneration paid to individuals, other than the producer and the key creative personnel listed above, or for post production work, is paid to, or in respect of services provided by, Canadians, and at least 50 % of processing and final preparation costs are paid for services provided in Canada. Notwithstanding the above, the director or the writer and at least one of the two leading performers must be Canadian. All other considerations for recognition of a Canadian program apply to such a co-venture.

Any other co-venture will be required to meet the same points and expenditure minimum requirements as a domestic production.

III. *Series*

Recognizing that the production elements of a series of programs may vary and that some of the episodes, if considered individually, could fall below the minimum requirements of the point system, the Commission will examine a series in its entirety and may grant it recognition if, on an overall average, it meets the minimum requirements.

For the present purposes, a "series" means two or more programs produced by the same production company, having a common theme, situation, or set of characters, and completed within a 12-month period.

A licensee will only be entitled to claim Canadian program recognition for any episodes in a series which might not meet the Canadian program recognition criteria when at least the same number of offsetting episodes which exceed such criteria are broadcast or otherwise distributed, at equitable times.

IV. *Production Packages*

For the present purposes, a "production package" means two or more coproductions or co-ventures, undertaken by a Canadian production company together with one or more non-Canadian production companies, where a production that qualifies as a Canadian production, with minor foreign involvement, is matched with a foreign production, with minor Canadian involvement.

The production packages may be accepted as Canadian, where a Canadian production company is involved and the co-production partners are the same for all the productions. The role of the Canadian production company is as defined for co-ventures. In assessing a production package, the Commission will examine it in its entirety and may qualify it if, on an overall average, the minimum requirements for co-ventures are met. Furthermore, a licensee will not receive credit for the production with fewer Canadian

elements unless it also carries the production with the larger number of Canadian elements, at equitable times.

All other considerations for recognition for Canadian programs apply.

The Commission will follow closely the extent to which licensees make use of co-venture productions or production packages to meet Canadian content requirements. It will review before April 1987 the suitability of continuing to accept production packages for the present purposes.

V. *Sports Actuality Productions*

Productions of sports events or tournaments will be considered Canadian where a Canadian licensee or Canadian production company has production control and provides the commentators, whether the event takes place inside or outside Canada; in the latter case, the production would qualify only where Canadian teams or athletes participate in these events or tournaments.

In the case of broadcasts of sports events originating outside Canada, involving non-Canadian teams or athletes and for which a French-language commentary is provided by a Canadian producer, one-quarter of the program time attached thereto shall be deemed to be Canadian.

VI. *Dubbing*

(1) Where a program is not a Canadian program and it produced in an official language of Canada or a native Canadian language, and the audio portion of that program is converted into the other official language of Canada or a native Canadian language by a process of lip synchronization done in Canada, using Canadian resources, one-quarter of the program time attached thereto shall be deemed to be Canadian.

(2) Where a program is not a Canadian program and is produced in a language other than an official language of Canada or a native Canadian language, and the audio portion of that program is converted into an official language of Canada or a native Canadian language by a process of lip synchronization done in Canada, using Canadian resources, one-half of the program time attached thereto, to a maximum of 50 hours during each six-month reporting period, shall be considered as Canadian.

VII. *Station and Network Productions*

To be recognized as Canadian, programs produced by licensees must meet the Canadian program recognition criteria stipulated in this notice. However, licensees need not apply for recognition or submit production information unless specifically requested to do so by the Commission. If no

such request is made by the Commission, programs produced by licensees shall be recognized as Canadian.

The criteria for the recognition for Canadian programs do not apply to news and public affairs programs produced by licensees. Such programs shall be recognized as Canadian.

VIII. *Music Videos*

Definition of a Canadian Music Video

Music videos, the short film or videotape productions or concert excerpts (clips) not produced primarily for the particular program in which they are presented, which normally contain one musical selection with visual material, will be recognized as Canadian where:

(1) at least two of the audio requirement (a) through (d) which follow, and three of the requirements (a) through (f) are met:

(a) instrumentation or lyrics are principally performed by a Canadian;

(b) music is composed by a Canadian;

(c) lyrics are written by a Canadian;

(d) performance is in Canada;

(e) video director or production company is Canadian;

(f) video production facilities are located in Canada; and

(2) as of 1 January 1986, at least one of the two video requirements (e) or (f) is met.

Music Video Programs

For programs consisting predominantly of music videos and in some cases including a host and other programming elements, Canadian program recognition will be awarded if all elements other than the music videos are Canadian, and a minimum of 30 % of the music videos are Canadian.

This last provision would not apply to music specialty services.

IX. *Dramatic Programming Credit*

The Commission will award a 150 % time credit for a drama carried by a licensee which meets the following criteria:

(a) is produced by a licensee or an independent production company after 15 April 1984;

(b) is recognized as a Canadian program and achieves 10 points; and

(c) is scheduled to commence

(i) between the hours of 7:00 p.m. and 10:00 p.m., or

(ii) in the case of a dramatic program intended for children, at an appropriate children's viewing time.

Each licensee will receive a dramatic programming credit for each showing of a drama occurring within a two-year period from the date of first showing.

Interim Measures

This new definition of a Canadian program comes into force *15 April 1984*. Canadian programs already certified by the Commission, CFDC or CFVCO will continue to be recognized. Other interim arrangements may be considered by the Commission to be acceptable for "work in development." For present purposes, the following definition of "work in development," similar to that used by CFVCO, will apply;

> Generally, when the property has been acquired, the screenplay completed, a preliminary budget has been prepared, financing started to be obtained and some of the key creative personnel have been retained.

As stated in Public Notice CRTC 1984-56, the Commission emphasizes that these criteria constitute minimum requirements and it expects to undertake periodic reviews with all parties concerned to evaluate their effectiveness and practical application.

Document 47E

In September 1984, an amendment to the television regulations changed the averaging period for Canadian content from six months to 12 months, this change to be effective during the next year. This allowed broadcasters greater flexibility in filling the slack summer viewing months with cheaper programs.

DOCUMENT 47E: CRTC, "Television broadcasting regulations, amendment," Statutory Orders and Regulations 84-780, *Canada Gazette*, Part 2, 17 October 1984, 3867.

1. As of its coming into force, all that portion of subsection 8(1) of the *Television Broadcasting Regulations* made by the Canadian Radio-television and Telecommunications Commission on May 8, 1984 and registered on that date as SOR/84-364, preceding paragraph (a) thereof is revoked and the following substituted therefor:

"8. (1) Subject to subsection (2), during the 12 month period commencing October 1, 1984 and thereafter during each subsequent six month period commencing October 1st and April 1st in each year, the total amount of time devoted by any station or network to the broadcasting of Canadian programs shall not,"

EXPLANATORY NOTE

(This note is not part of the Regulation, but is intended only for information purposes.)

This amendment will change the reporting period for the measurement of Canadian content from a semi-annual to an annual basis from October 1, 1984 until September 30, 1985 and reintroduces measurement on a semi-annual basis starting October 1, 1985.

Document 48

The AM radio regulations of 1970 were a radical departure from all previous attempts to encourage Canadian talent on Canadian radio. For the first time, stations using the almost universal format (popular music interspersed with news, weather, and sports) were required to meet a quota of Canadian music. This gave air time to many musicians previously denied it, and it became easier to make a living in the music business in Canada. Minor amendments to these regulations in 1972 and 1984 are not reproduced here. There were no Canadian content regulations for FM radio.

DOCUMENT 48: CRTC, "Radio AM broadcasting regulations, amended," excerpt dealing with Canadian content, Statutory Orders and Regulations 70–256, *Canada Gazette*, Part 2, 24 June 1970, 649–650.

4. Section 12 of the said Regulations is revoked and the following substituted therefor:

"12. (1) At least 30% of the musical compositions broadcast by a station or network operator between the hours of 6.00 a.m. and 12 midnight shall be by a Canadian and shall be scheduled in a reasonable manner throughout such period.

(2) From January 18, 1971 to January 17, 1972, a musical composition shall be deemed to be by a Canadian if it fulfils at least one of the conditions set out in subsection (5).

(3) After January 18, 1972, a musical composition shall be deemed to be by a Canadian if it fulfils at east two of the conditions set out in subsection (5)

(4) After January 18, 1973, at least 5 per cent of the musical compositions broadcast by a station or network operator between 6.00 a.m. and 12 midnight shall fulfil the condition set out in either (b) or (c) of subsection (5).

(5) The following are the conditions referred to in subsections (2), (3) and (4):

(a) the instrumentation or lyrics were principally performed by a Canadian;

(b) the music was composed by a Canadian;

(c) the lyrics were written by a Canadian; and

(d) the live performance was wholly recorded in Canada.

(6) A mechanical reproduction of a musical composition that is deemed at any time to be by a Canadian continues to be so deemed thereafter.

(7) If a station operator is able to demonstrate to the satisfaction of the Commission that the application of this section would result in a significant reduction in the quality and diversity of program service within the area normally served by his station, the Commission may vary the application of this section

(8) For the purposes of this section, a person shall be deemed to be a Canadian if

(a) he is a Canadian citizen;

(b) he is a landed immigrant as defined in the *Immigration Act*; or

(c) his ordinary place of residence was in Canada during the six months, immediately preceding his contribution to the musical composition in question."

5. The said Regulations are further amended by striking out the word "Board" wherever it occurs therein and by substituting therefor the word "Commission".

Document 49

During the late 1960s and the early 1970s, both the government and the public began to worry that the media had too much power—economic power, power to set the agenda for society, psychological power over children, the power to distort, to emphasize the wrong things in life. This worry focused most on television. At first, Canadians escaped the agonies faced by people in the United States as television forced a reappraisal of the war in Vietnam and of domestic politics. Then in October 1967 at the height of the frenzy over hippies, the drug culture, and the war, the CBC ran a TV documentary on pollution called "Air of Death."

This seemed not too disturbing a topic, given the regular news of the day, but some of the film was tough—terminal lung patients gasping for breath, smokestacks spewing ugly fumes, shrivelled, wilting plants. The narrator was Stanley Burke, a former CBC news reader (or anchorman as they were coming to be known) and Burke had lots of credibility.

The documentary dealt with 16 Canadian and US locations including the small town of Dunnville, Ont. It drew what appeared to be the inescapable conclusion that a local Dunnville industry was responsible, through fluoride emissions , for sickness in people, animals, and plants in the Dunnville area.

Reaction to the program was sharp. The Ontario Legislature created a special committee which concluded the program had been both untruthful and irresponsible. Reacting to this judgment, the CRTC announced it would hold a public hearing starting on 18 March 1969 to investigate the documentary. This was to be the first of several CRTC investigations that have gradually established the limits of acceptability for controversial broadcasting.

The investigators were CRTC vice-chairman Harry Boyle, executive committee member Réal Therrien, and part-time member Northrop Frye. What follows is the bulk of their 15-page report. It does not include the preliminary sections that explained why the investigation was in line with the Broadcasting Act and what the CBC's established policies were for controversial information programming.

DOCUMENT 49: CRTC, report by the special committee appointed in connection with the CBC program "Air of Death," 9 July 1970, 4–15.

The Hearing:

The hearing was divided into two portions, the first lasting for two-and-one half days commencing March 18, 1969, and concerned directly with the program and the second portion lasting four hours concerned with the making of what was loosely termed "documentaries," and was not related to the first portions of the hearing. With respect to Air of Death, three witnesses from the CBC were heard, together with eight other witnesses including participants in the program and representatives of concerned groups which had submitted briefs prior to the hearing. A total of twenty-seven briefs was received. The second portion of the hearing included testimony from representatives of the CBC and CTV television networks, and other persons interested in the field of informational programming. Testimony from the hearing amounted to 658 pages, and a total of one hundred and eighty-four exhibits were submitted by the CBC for the examination of the Committee, including entire files of information relating to alleged examples of pollution as it existed at the time of broadcast of the program. Unfortunately some of the exhibits did not bear any date and thus the Committee was unable to determine whether or not these materials related to matters available in October 1967.

The evidence submitted at the hearing reveals that over 200 persons were contacted in the course of the preparation of the program. Sixty-nine persons were filmed and 33 persons actually used in the final program, together with 3 studio interviews. Nineteen locations were visited by those producing the program, of which 9 were used in the broadcast. The ratio of film shot to that used in the program was approximately 30 to 1. The ratio of video tape recording obtained to that used in the program was approximately 11 to 1.

In location filming or discussion the program dealt in varying degrees, with alleged pollution in the world at large, with specific reference to the following cities and/or areas:

Montreal	Toronto	Sarnia
Windsor	Hamilton	Detroit, Mich.
Port Huron	London, Ont.	Guelph
Lansing, Mich.	Pittsburgh, Pa.	Port Alberni
Vancouver	Port Credit	Dunnville
New York		

The concern in these areas was primarily with the possible effect of pollution on human health, and the measures taken by public authorities and by private persons to combat pollution were described in some detail.

It is the opinion of the Committee that Air of Death may well have been one of the most thoroughly researched programs in the history of television broadcasting. The mere quantity of research, however, did not necessarily mean that each of the aspects dealt with by the program was covered with equal depth. The Committee reviewed all of the exhibits in order to determine the extent of the research on each of the major points made in the program.

With respect to the vast majority of the research submitted to the hearing, the Committee finds that the measures taken by the CBC in the preparation, production and broadcasting of the program were consistent with the "high standard" required of all broadcasters by the Broadcasting Act. In view of the charges with respect to the program made in other forums and media, the Committee gave particular attention to the issues raised by such charges and in general, found the statements in the program to be accurate and adequately researched. In particular, the Committee is of the opinion that the use of the term "Dunnville" to describe the area allegedly affected by fluoride emissions was reasonable and proper in this instance.

With respect to certain portions of the program, however, the Committee is not satisfied that the quality of research demonstrated as a whole in the preparation and production of the program, was maintained with the same consistency throughout. The Committee is well aware that detailed dissection, after the fact, of any program used as an example of programming in its field must of necessity accentuate the stronger and weaker points. It is submitted that such a study is, however, useful in illustrating typical problems raised in the course of the preparation, production and broadcasting of all informational programs.

The Committee, therefore, proposes to examine several areas of the preparation, production and broadcast of the program, which, in the opinion of the Committee, do not fully conform to the otherwise complete treatment of the subject matter.

The promotional materials which were distributed by the CBC prior to the program clearly indicated that the subject of air pollution was controversial. However, the portion of the program, dealing with the "human health issue" at Dunnville, Ontario, was not couched in such terms as to emphasize that the opinions expressed were subject to extreme controversy and that dispute existed as to whether or not human health was in fact adversely affected by conditions prevailing at the time. The program clearly stated that fluorine emissions were causing damage to plant and animal

life in the area. While making reference to the fact that there was no conclusive proof of danger to human health, the program, however, left the unmistakable impression that expert medical opinion considered the human health issue to exist and to be serious.

It is not this Committee's intention to attempt to determine the truth of the allegations with respect to human health. The Committee must point out, however, that such questions as, "What's going to happen to these people who have fluoride poisoning if something isn't done for them?" presuppose a conclusion. These questions do not impel the viewing audience to conclude that there may be another side to the issue. It should be noted that the medical expert who appeared on the program clearly indicated his view that at least two persons in the area were suffering from fluoride poisoning. On the other hand, the interview of the physician in the area who stated that "up to the present time, to the best of my knowledge, there have been no specific tests that have been done on human beings that have revealed any toxicity in the results of the present factory..." and that blood samples taken by the Department of Industrial Hygiene had revealed levels "within normal limits" was not used, due, according to the producer's testimony, to poor sound quality. The Committee recognizes that much of the material in the omitted interview corroborated the findings of the expert interviewed on the program as to damage to animal and crop life. The committee feels, however, that in dealing with a subject as important and urgent as danger to human health, no effort should be spared to bring to the attention of the public the fact that there are conflicting views amongst medical practitioners on a subject, particularly when the research upon which the statement in the program was based demonstrates no direct clinical evidence for the contention that human health or life was in danger. Persons involved in the production of the program contended that the views of the Minister of Health of the Province of Ontario, acting in his official capacity, were sufficient to constitute an adequate check and balance with respect to direct statements of a medical practitioner who had involved himself with persons allegedly suffering from fluoride poisoning. The contentions are not accepted by the Committee as being a sufficient balance between these views.

The Committee also notes that the expert featured prominently by the broadcast although on the face of his credentials, one of the world's leading experts on the effect of fluoride, was well known to hold sharply critical views on the effect of any fluoride emissions upon human health. Without in any way disputing the veracity of this expert's credentials or indeed the views which he held, the Committee is of the opinion that his view should have been identified in the context of his career and his involvement in meetings devoted to the elimination of fluoride emissions whenever and wherever they may occur.

As noted in CBC Program Policy No. 67-3 dated April 11, 1967:

> "It is recognized, of course, that most research for programs involves calling upon the resources of individuals and institutions outside the CBC. Sometimes these have a partisan interest in the subject, and the producer and researcher must exercise care not to be "captured" by the viewpoint of those who have special interests or axes to grind. Responsibility for the program, for its editorial focus and the context in which the facts are put forward, is solely the responsibility of the CBC. The distinction between what is ascertainable fact and the editorial purpose of thrust of the program should be made clear to any specialist consultants. The Corporation must be able to defend the accuracy of the information it presents, relying on journalistic traditions of impartiality and balance, or on legitimate dramatic license, to justify the program's treatment."

It is obvious that the motivation in the production of the program is epitomized in the closing statement, to the effect that "...in our society not much happens until the average citizen demands it." The program was unabashedly, and to its credit, an exhortation to Canadian viewers to become deeply concerned with the problems of air pollution. It is submitted, however, that in the relatively minor segment, in terms of time, but major in terms of impact, concerning human health in Dunnville there might have well been more consideration of the fact that at the time of the broadcast there was controversy as to whether or not a human health issue did exist in the Dunnville area.

Another area of the program which evoked some concern on the part of the Committee was the treatment of an interview of the then Minister of National Health and Welfare, the Honourable Allen J. MacEachen. This interview was, in the broadcast, a sequel to a rather complete interview with the Minister of Health of the Province of Ontario, Dr. Matthew Dymond. It was obvious from the unedited transcript of Dr. Dymond's interview that he had been privy to a screening of the interview with Mr. MacEachen but the hearing testimony indicated that Mr. MacEachen had not been accorded the reciprocal privilege of viewing Dr. Dymond's interview. Less than one-tenth of Mr. MacEachen's interview was used in the program and due to rather selective editing, the impressions created were that the Federal government was powerless to do very much about air pollution, considering other matters as having a higher priority, and had not really concerned itself with the problem.

While the Committee neither affirms nor dispute these impressions, it should be noted that in the course of Mr. MacEachen's unedited interview there were a number of statements of an extremely positive nature which indicated that the Federal Government was deeply concerned with the problem of air pollution, was conducting extensive research in the field, and was taking initiatives to establish itself in a co-ordinating rôle in order that provinces themselves might attack the air pollution problem. It

is perhaps not insignificant that Mr. MacEachen, when briefed by the interviewer on the general nature of the program which would include his interview, was not told that the name of the program would be Air of Death.

The Committee directed its attention to CBC Program Policy No. 65-3 dated June 28, 1965, a portion of which reads as follows:

> *"The 'Live Recording'*
>
> There are special risks involved in the use of recorded (tape or film) material as though it were live, especially when the material has been subjected to editing. Often nothing stands between the viewer and the broadcast message to indicate that the message is recorded, or incomplete, or perhaps in important respects outside the context in which it was originally given. Editing techniques enable us to compress and clarify, and to give greater point to, comments made by guests in statements or interviews; but they also involve an element of distortion, even when the object may be clarification. The public figure who hedges his comments around with qualifications and circumlocutions may suddenly find that a film editor has deprived him of the protection these devices afford while seeking only to improve his 'image', or perhaps to improve the pace of the show. In such cases, and especially when dealing with public figures whose words are 'on the record', producers and program supervisors should indicate in some way that the material is not live and therefore not necessarily complete. This information can be conveyed visually by a variety of devices, or by a carefully framed verbal introduction or closing. Except in exceptional circumstances, there should not be any need to label such material formally as having been recorded or edited."
>
> *"'Shooting to Time'*
>
> "In planning for any recording of a statement or interview, especially one by a public figure, producers should consider the possible advantages of carefully pre-planning the interview and then shooting to a fixed time established in consultation with the guest. 'Over shooting' is often necessary or desirable, or unavoidable if new aspects of a subject are revealed during an interview. But over shooting can be a luxury or an excuse for inadequate planning and control during the interview. It increases the possibility of misunderstanding between the guest and the producer or interviewer. Despite the most skilful editing, the guest is unlikely to be objective about the way his views have been presented, and may feel that important points or opinions have been removed from the finished broadcast.

> "As a matter of policy, interviews with persons in public life, whose views are 'on the record,' should be recorded at a pre-planned length for broadcast without deletion or editing, wherever it is possible to do so."

The Committee is of the opinion that this policy was not fully implemented in the case of Mr. MacEachen's interview. It is our view that in examining the responsibilities of governments, special care must be taken to assure equitable opportunity for a governmental representative to relate his position to previous statements in any particular program. Moreover, constructive statements should be given due prominence, for public responsibility may reside in attempting to show real operational impasses, sometimes due to constitutional difficulties, and to explain the complexity of arriving at solutions rather than the direction of blame by implication.

The Committee is of the opinion that notwithstanding the foregoing comments, which evolved from a most exhaustive examination of the program in the course of the Committee's research, Air of Death did achieve what clearly appeared as its avowed purpose, namely, to awaken the public to the very real dangers of air pollution.

The Committee also recognizes the increased awareness of the public to problems of pollution since the original broadcasting of the program Air of Death on Sunday, October 22, 1967.

The program adequately reflected the information reasonably available at the time of the broadcast and is well able to stand as an example of informational programming backed by a wealth of research and serving a useful purpose.

The second portion of the hearing dealt not with the program but rather with the general subject of the making of documentaries. The previously expressed hope of the Committee that this portion of the hearing would amplify knowledge and understanding of the television medium has, in the opinion of the Committee, been fulfilled.

It is difficult to summarize all the opinions given in this portion of the hearing but the following general statements represent a distillation of the views expressed.

1. Representatives of the Canadian Television Network Limited (CTV network) dealt with five areas of interest, which in large part, reflect the concerns of a number of other persons at the hearing, and certain of those persons or organizations submitting briefs. As set forth in their brief, the CTV network stated:

(i) The broadcaster has the right and the responsibility to examine and report on any aspect of today's society. One of his major purposes must be to stimulate public interest in the events and conflicts of our everyday life since, in so doing, he performs the communicating function which is absolutely essential to the developing Canadian consciousness.

(ii) This right to report on society has inherent within it the responsibility to use all reasonable care and all available professional skill in the examination and treatment of the subject matter.

(iii) This examination must strive for balanced objectivity in its appraisal of the subject matter as it exists, and as it exists within the prepared program, but because we are employing human resources, it must be understood that judgments as to the degree of objectivity exercised by the producers may not necessarily be shared by others.

(iv) The right to treat any subject within the body politic may include the right to be wrong, presuming that all reasonable efforts have been expended to examine all the relevant facts generally available.

(v) The broadcaster has the right--after all reasonable and zealous examination--to deal with any inequity, injustice or impropriety occurring in his society in what might be categorized as an "editorial" manner in which judgments are made and conclusions put forward. This right requires, however, that the broadcaster must include in his presentation a recognition of the "other side of the question."

The CTV network also voiced the opinion that any requirements by a government agency or authority for equality in the exposure of all points of fact or absolute objectivity will seriously mitigate against broadcasting fulfilling its full and proper rôle in stimulating public awareness and public involvement in controversial and other matters of public concern. (Page 527 - hearing transcript)

Another opinion expressed by representatives of the CTV network was that the concept of "total objectivity" was a myth in the sense that at best, only a "relatively dispassionate producer" could be obtained for any given program (Page 530), and that in dealing with controversial programming "total fairness" (to both sides of an issue) is not possible and in many instances is not desirable (Page 534).

Other persons testifying in this portion of the hearing reiterated the foregoing themes and made known the following views:

1. the protection of the public from mis-statements of fact or interpretation in informational programming lies "in a multitude of producers, agencies, networks and local stations doing their own

broadcasting in the other media so that the viewers are never subject to just one opinion or just one point of view" (Page 570);

2. "The whole area of what is a fact is a tricky one and a misunderstood one. It is so easy for us to sit here and talk about facts, let us get at the facts, let us get at the truth. Who is to define it? Where is the point at which research ceases?..." (Pages 578-579);

3. the broadcast journalist's function is, "to be aware of his biases and frequently make adjustments for them....So, if you begin with the fact that he has some, then you must rely in most cases on his training as a broadcast journalist or some other kind of journalist where he has learned to select the material which will not reflect his biases, but which will reflect his best judgment on what that story is. You are totally reliant on his background, training, judgment, integrity, honesty and courage." (Page 581);

4. "The interest of a society becomes endangered (when)...the natural cautions that are built into an organization become dominant and thus stifle the creative and enterprise and courage which is essential to cause us all to look at our society and to look for means of improving it." (Page 586);

5. we should assume that "the function of the television documentary (is) to increase knowledge and understanding, to increase sensitivity...." (Page 590);

6. "fairness" has been used as an excuse for a "kind of non-commitment, a kind of glorifying, a kind of lack of belief, lack of commitment, lack of feeling, lack of involvement" when "these are the things that the documentary can do best and that the documentary should do all of the time" (Page 595);

7. the documentary is thought of by some as a dramatizing of the news generally" (Page 627) as a function of mass education on a huge scale and as a service to both the nation and the public (Page 628);

8. the use of "stage management" is permissible "to reveal what is natural, to reveal what is true but not to give false witness (Page 643);

9. the CBC is aware of the benefits in terms of concerned programming of "pockets of creative anarchy within the institution" (Page 655) and is "trying'to "find ways to accommodate creative anarchy (Page 656).

The foregoing opinions expressed in the course of the second portion of the hearing indicate the very real belief that good informational programming is essential in the context of public awareness and mass education and that every effort must by made to encourage the qualitative aspects of such programs without unduly limiting the freedom of action of those who create them.

From the information received in the course of research prior to the hearing and at the hearing itself the Committee feels it useful and practical to submit for the consideration of the Canadian public in general and licensees in particular, the following thoughts in connection with aspects of informational programming hereinafter considered. The Committee hereby states its opinion as follows:

1. The concepts of "high standard" and "balance" expressed in Section 2 of the Broadcasting Act, and the CRTC's regulatory and supervisory responsibility in connection therewith must not, in the case of informational programming, result in a curb or limitation in the television medium's search for ways and means of describing those problems which are of common interest and concern to the public. All efforts of the CRTC to fulfil its functions under the Broadcasting Act should be performed with a view to encouraging management, producers, directors and all other participants in broadcasting organizations to exercise their talent and ingenuity in the making of such programs.

2. The Committee recognizes the need, of course, for honest, objective reporting. The Committee recognizes, however, that bias, in the sense of "a point of view" may well exist on the part of persons involved in the preparation and production of a program. This concept of "honest bias," which must not extend to the point of being malicious, to the point of distortion or to the point at which bias results in propaganda, appears to exist at every point in the making of practically any program on a matter of public concern. Persons producing informational programs, other than news programs, should be encouraged to approach such programming notwithstanding such honest bias provided the bias is honestly set forth, that the program is fairly and truthfully presented and the public is informed that there are other points of view on the subject. It should be noted, however, that even if complete objectivity may not be possible, it does not follow that differences in the degree of objectivity are not important. Such differences in degree are extremely significant, and the hard-to-determine boundary line between sufficient objectivity and unreasonable bias must be drawn between the giving of equal time to all sides of controversial issues and the choosing of one side only and misrepresenting the opposing view.

3. It should be clearly stated, in documentary programming, that the appearance of news personnel normally not viewed in connection with such programming does not lend to a program the authoritative quality of news but rather that such programming represents the opinions and judgments of the persons involved in the preparation and production.

4. It may well be that the present internal policies of broadcasting organizations do not deal adequately with the informational program which takes a "position" for or against an issue of public concern. Policy statements requiring fair treatment of all sides of an issue and requiring absolute balance within the ambit of a particular program do not contemplate a production decision to adopt a point of view in a particular program. It is suggested that broadcast organizations consider this possible gap in procedures and adopt their own directives and policies relating to the preparation, production and broadcast of such programs.

5. Broadcasting organizations, in their statements of policy, may not at present adequately distinguish between radio and television broadcasting. It is suggested that in view of the visual impact which is now generally acknowledged to flow from a television broadcast, that such organizations may wish to re-examine their internal supervision of television broadcasts which, in the main, appear to evoke a more immediate and emphatic response from the viewer.

6. It has been suggested that the role of the informational program in television, when dealing with matters of public concern, must be to introduce concern without inducing panic. In order to assure this, broadcasting organizations should design practical procedures for the exercise of internal checks and balances on the part of responsible officers, including the review of actual raw material available for use, by persons exercising such responsibility at the major turning points of production and before the program becomes a fait accompli and no changes are practical or possible. This is particularly important when a special informational program pre-empts regular broadcasting and as such gains additional impact and emphasis from the mere fact of pre-emption. Such supervision should be on a screening-room basis rather than a board-room basis. It is not sufficient for a broadcasting organization to satisfy the collective responsibility which it freely acknowledges it has with respect to all programming, unless, in the course of production of a program, senior officials are available to act in the dispassionate role of a referee, to balance the natural involvement of persons identified with a particular program.

7. The Committee does not interpret the requirement for "balance" in the Broadcasting Act as a directive that every program must, of necessity, describe all sides of an issue, provided that in the context

of total programming legitimately controversial issues are dealt with fairly and honestly. Nor does the Committee think that the concept of "balance" means that with respect to issues of public concern, all viewpoints opposing a program which takes a legitimate position must be accorded equal attention. For example, it would be patently ridiculous requiring a program attacking air pollution to be balanced with a program lauding such a condition. The committee is, however, concerned that controversy relating to the existence, extent or seriousness of a problem be dealt with fairly and be clearly represented and that a problem be clearly identified as controversial, if such is the case.

8. Broadcasting organizations must be constantly on guard to preserve their credibility. This does not mean that personal, subjective or honestly biased opinions should be eliminated but as a guarantee of such credibility such opinions should be clearly identified or labelled just as, in the print media, such opinions are often "by-lined."

9. Attention should be given to the means of inviting persons to appear on a program, particularly if such persons are subjected to criticism in the course of the program. The public should be informed of the extent of the measures taken to contact such persons. Such persons should be given adequate notice of the program or the filming in which they have been invited to participate and the nature and structure of such program should be explained to such persons in reasonable detail in order to permit them to judge whether they wish to accept the invitation to appear. While the use of an "empty chair" to demonstrate the unwillingness of a person to participate is a rather hackneyed television cliché, the broadcaster should not use this graphic technique lightly and without clear evidence that he who is absent has obviously rejected the chance to appear. Even then, the mere fact of a person's absence must not be used to establish that such a person's point of view, if he had chosen to appear, would have confirmed any particular bias, or lack of bias.

10. Statements made during the course of the hearing suggested that if a legitimate problem exists it is reasonable and fair to exaggerate the dangers inherent in such problem in order to impel the public to demand remedial or other action. While the Committee would encourage broadcasters to discover and identify problems of public concern and to bring such problems forcefully to the attention of television viewers, it cannot agree that "exaggeration for effect," even when allegedly in the public interest, is a sound precept which would fall within the concept of "high standard" set forth in the Broadcasting Act. The Committee acknowledges that the capacity to recall information communicated on television may well be less than that inherent in the print media and that special techniques may be required in

television to bring home to the viewer the fact that a problem exists. It is suggested, however, that the credibility of broadcasters cannot be maintained if exaggeration is accepted as a legitimate technique.

In summary, the Committee considers the interests of Canadian broadcasters and the Canadian public to be best served by fair and objective treatment of issues of public concern, by the expression of diverse points of view and by the assumption on the part of the broadcasters that at this stage in the evolution of informational programming, the public is sufficiently sophisticated to accept and to benefit by the expression of a variety of opinions and to make its own judgment thereupon. The quality of Canadian broadcasting will not be improved by over-regulation or restrictive interpretations of the Broadcasting Act. It is hoped by the Committee that as the CRTC is the entity responsible in Canada for the supervision of broadcasting, introduction of dialogue on the subjects dealt with in this report, will be useful in the continuing development of informational programming.

Document 50

In March 1969, the Canadian Senate set up a special committee to join in the national scrutiny of the mass media, including broadcasting. The committee's job was to "report upon the ownership and control of the major means of mass public communication in Canada... to examine and report upon the extent and nature of their impact and influence of the Canadian public..."

The committee consisted of 15 Senators under the chairmanship of Keith Davey, a former national organizer for the Liberal party who once worked as a salesman for radio advertising in Toronto. The committee met 43 times, listened to scores of witnesses, commissioned dozens of research studies and tabled its report in the Senate on 9 December 1970. There were three volumes: the main report, *The Uncertain Mirror* (260 pages); *Words, Music and Dollars*, "a study of the economics of publishing and broadcasting in Canada" (572 pages); and *Good, Bad or Simply Inevitable* (285 pages of selected research studies).

The report was inspired by the global obsession with media in the 1960s, and like all Canadian reports on broadcasting before it, it outlined Canada's peculiar position as neighbour to the United States: "The vigor and diversity of its popular culture—which is close to becoming a world culture—obsesses, alarms and amuses not just Canadians, but half the people of the world." The authors felt that questions about the media were by extension questions about "the survival of our nationhood" (*The Uncertain Mirror*, p. 11). Despite the solemnity of this latter notion and the gestation of the report in the upper nonelected chamber of Parliament, the tone of the report is lively, sharply and consistently witty, and even trendy. Considered simply as a piece of writing, it is astonishingly good. Reprinted below is the chapter on television. Its title, in character with the mood of the whole report, is taken from a song by the Rolling Stones.

DOCUMENT 50: "The beast of burden," chapter 10 of *The Uncertain Mirror*, Vol. 1 of the *Report* by the special Senate committee on the mass media, December 1970, 193–225.

Television is the most believed and most important medium for international news, and for Canadian news of national importance. Television commercials are believed by Canadians to be more influential than advertisements in other media. Radio is the most immediate medium, the medium to which Canadians would turn first in an emergency, but it is also a

soothing, relaxing background. Television is the medium for the whole family. And television is the most sensational of the media.

These are some of the things turned up in research done for this Committee, research aimed at discovering how Canadians perceive the elements in their lives that perceive them most: the mass media.

Broadcasters who came before the Committee made it clear that they were tired of being publicly scrutinized; that they had been royal-commissioned, special-committeed, and federally regulated to the edge of endurance and perhaps beyond. They were weary of being x-rayed, cross-examined, and prodded in sensitive areas, like charity patients in a teaching hospital populated by singularly tiresome medical students.

This Committee is not a royal commission on broadcasting, or even some adjunct to the Canadian Radio-Television Commission. It is an enquiry into Canada's mass media, and that enquiry would be incomplete if it did not seek to analyze the relationship of broadcasting to the rest of the mass media in this country.

The problems that trouble the mass media generally in this country also afflict broadcasting. The areas of concern — freedom of the press, training of personnel, credibility — are as much areas of concern in broadcasting as they are in other portions of the media spectrum. Some of the concerns, because of the special nature of broadcasting and the special demands made of it, are even more acute in radio and television than they are in newspapers and magazines.

Broadcasting, the most recent arrival on the mass-media scene, is held in many ways to be the most vital and effective form of communication. This is particularly true of television, which many Canadians feel is one of the greatest influences on their lives.

Great faith is put in broadcasting, by its practitioners as well as its audience, and consequently it is, in communications, the Beast of Burden. It must lighten our drab little lives, sell the soaps or instant puddings we manufacture, bring war into our living rooms, present politicians before us with unretouched warts, amuse the baby, enlighten the mother, show us the increasingly insane and violent world around us, and then reassure us that nothing like that could ever happen to us in our wonderful world of frozen dinners, aphrodisiac shampoos, and deodorant soaps.

Indeed, broadcasting is so much a beast of burden that we have saddled it with responsibility for holding the country and our Canadian culture intact. No other communications medium has this charge laid upon it by Act of Parliament: "to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada." We rely for this on the same medium that is the principal advertising mainstay of the soap industry.

We rely on it, and we expect broadcasters to shoulder the burden cheerfully. After all, the other shoulder is often employed in carrying quite heavy bags of money to the bank.

Cultural survival is perhaps the most critical problem our generation of Canadians will have to face, and it may be that it can be achieved only by using all the means at our command. It appears that it may have to be achieved in spite of frequent insistence that broadcasting is an industry and not a service, in spite of the belief that whoever produces Canadian television programmes, it should not be the private Canadian broadcaster.

Broadcasting began in this country more than fifty years ago. It began as private radio in Montreal, with the station that is now CFCF. It spread across the country, it grew into networks through the energy of the railways. And it was seen from the start as a powerful instrument for national unity, potentially a more binding force even than the railways.

There was, initially, a belief that all Canadian broadcasting should be nationalized, that the country should be blanketed with a series of powerful radio transmitters, and that where private stations existed they should be bought, and closed down. A start on this was even made.

But the economic circumstances of the 1930s and the determined resistance of private broadcasters put an end to this policy. Private and public broadcasting began to grow side by side, and a concept grew up which still persists: local service by a relatively large number of stations, rather than a few powerful nationally owned transmitters. That concept is now one of the cornerstones of Canadian broadcasting.

In the Canadian Broadcasting Corporation, from the late 1930s onward, Canada saw the development of a broadcasting agency unique in the world—publicly owned, broadcasting domestically in two languages, using the facilities of private broadcasters to transmit programmes beyond the ability of a small local broadcaster to produce. The CBC is still unique, although its founders had something very different in mind from what exists today.

In 1968, Canada had a new Broadcasting Act, which for the first time articulated clearly what Canadians had, over the decades, come to agree on: that broadcasters used public property in transmitting their signals through the air, and that Canadians had a right to expect that broadcasters would use that public property to strengthen our culture, rather than dilute it.

This Committee supports the Broadcasting Act. It supports the process by which the Canadian Radio-Television Commission has evolved from the regulatory agencies preceding it.

This Committee supports the Canadian broadcasting system, with its public and private elements in unique symbiosis. It knows that the strength of the system is more than equal to the burden.

THE PUBLIC SERVICE

Every consideration of Canadian broadcasting, every analysis of the mass media in this country, must contain a reference to the Canadian Broadcasting Corporation, because it is so great a factor in Canadian communications. And every time the CBC is scrutinized, faults will be noted, because it is a very large and complex organization, and it is not in the nature of such organizations to achieve perfection.

Unfortunately, sniping at the CBC has become a national pastime that ranks with watching National Hockey League games and thinking deeply about the reform of the Senate.

The CBC is a national communications medium in a country that has no national newspaper. It is the only truly national broadcasting enterprise in Canada, offering service to all but a tiny minority of Canadians in both official languages. It has striven to develop Canadian talent, to reveal Canadians to one another, to strengthen the fabric of Canadian society—and for all these things we can only be grateful to the CBC as an entity quite unlike any other in the world. But there are faults, and they have in some cases been noted before, and they have not all been remedied.

Fault-finders contemplating the CBC can usually be divided into professionals and those who still retain amateur status. It seems to be a characteristic of the professional that he considers commercial policy to be the CBC's principal vulnerability, while the amateur tends to feel that the CBC can most easily be faulted on programme policy. This Committee would not consider that it has become a body of professional fault-finders, but nevertheless we shall consider the CBC's commercial policy first.

The view of many private broadcasters (and of some public idealists) is that the CBC should not have a commercial policy at all. It should produce high-quality Canadian programmes, and perhaps be allowed to broadcast them, but the art of accepting money from advertisers should be left to those with a more natural bent for that kind of thing. Since the CBC primarily operates on public money, they say, let it operate entirely on public money, and stop being some kind of hybrid. Their position is that for a public broadcaster to take private money is somehow against nature.

Some 20 per cent of the CBC's operating budget derives from its advertising revenue. It is tempting to feel that if the CBC got out of the commercial business, we would all be better off. Television viewers could then find

at least one channel carrying programmes uncluttered by commercials. The cost of maintaining commercial sales and commercial acceptance departments would disappear. Perhaps there would be less tendency to purchase foreign programmes, more opportunity for television producers who wouldn't have to worry about structuring their works for the requisite number of commercial breaks.

There are certainly some attractive aspects to the idea, and the Committee gave the matter intensive thought. But there are other aspects that are not as attractive.

When the government produced the White Paper on broadcasting in 1966, it indicated that the CBC would be financed by five-year grants — an arrangement similar to that enjoyed by the British Broadcasting Corporation. This system has never been introduced, and the CBC still derives an operating grant from Parliament each year.

Not only does this prevent the CBC from doing any effective long-range planning, it throws the public broadcasting organization even more firmly into the arms of the advertiser. The CBC is like a housewife, obliged to pay the costs of running the home but never certain how much her husband will give her out of the pay packet each week. She knows that costs are always going up, but she does not know how or if she will be able to meet them. In such circumstances, she may be obliged to take in washing — to get her hands on revenue that may be small, in terms of her overall household needs, but at least is there, and is something the old man can't get his hands on.

The CBC made it plain in its appearance before this Committee that the year-to-year reliance on Parliament for operating grants leads to difficulties. For one thing, as the CBC points out, it has to repay capital loans from the government out of its operating grant from Parliament — an unusual, possibly unique situation which in the 1970–71 fiscal year will take $14,700,000 of the CBC's operations budget. The current freeze on the CBC's operating budget therefore means that allocations of funds within that budget must be changed, and the viewer is not necessarily better off for it. Also, the CBC has collective agreements with many trade unions. It has other commitments which extend over several years, and must be met regardless of a frozen budget.

In its appearance before the Committee, the CBC did not indicate where the money would be made up, but clearly the cuts have to be made in areas where exact sums are not committed, and it would be surprising if programming were not one of them; perhaps the major one.

There are other possible consequences. The CBC is required by Canadian Radio-Television Commission regulations to increase its Canadian

programming, both over the whole day and during prime time. Canadian programming costs more than procured programming, in much the way that it would cost more to build your own car from the ground up than to purchase one that just rolled off the assembly line.

In its 1970–71 English-network schedule, the CBC has several new Canadian programmes, and it is to be commended for having found the resources, despite a budget freeze, to produce them. Among them are *Luncheon Date*, *55 North Maple*, *Theatre Canada*, the *Mike Neun Show*, and *Zut*.

These programmes, however, are not for the most part in what the CBC refers to somewhat cryptically as its *option* or *available* programming; rather, they are designated as *metronet* programs. Briefly, option programmes are those that the CBC's private affiliates are required to broadcast, and available programmes are those that the affiliates can add to their schedules without paying programme costs. Metronet programmes are for sale, and they are sold through United Program Purchasing, an organization set up to serve the CBC and its private affiliates by obtaining programmes at group rates.

Many of the new programmes that the CBC has designated as metronet programmes are designed to carry commercials. A private broadcaster striving to build up his Canadian content is attracted to them, because of the possibility of deriving some revenue. Since he must increase his own local production if he is to comply with the Canadian Radio-Television Commission's requirements, he has a greater need for revenue.

But when the private broadcaster knows that U.P.P. takes a commission on each sale, though it does not even arrange for distribution (since the private broadcaster simply plugs into the CBC microwave feed for the programme), he tends to feel the price is too high, and he therefore resists buying. Besides, there is a feeling that programming produced with the taxpayers' money should not be disposed of in quite the same way as commercially produced programming.

The end effect is that the CBC and U.P.P. realize some income, that the private broadcaster feels he pays too much (and that, possibly, he should not pay at all), and that even while relations between the CBC and its private affiliates are weakened, the service to audiences of those private affiliates is diminished.

Undoubtedly, one of the sources of pressure upon the CBC comes about because of the Corporation's record in collective bargaining. The CBC seems to have been rather less successful than other employers in resisting wage demands, with the result that it faces an unavoidable and rising bill for labour costs. The relationship between the CBC and the unions with

which it has agreements should be carefully examined, we believe, and the collective agreements involved should be compared with agreements between the same organizations and other employers. This would, we believe, give the CBC some indications of where it should resist firmly further wage demands beyond the levels suggested by the federal government.

Again, we urge strongly that the CBC be financed by five-year grants. Its commercial revenue is a needed buffer between it and Parliament, but responsible planning is rendered enormously difficult under the current system of an annual dole.

In considering whether the CBC should stay in the commercial field, the Committee was particularly struck by an argument put forward by the CBC's president, Dr. George F. Davidson, who had himself expressed misgivings abut the effects upon programming of relying too heavily on commercial revenue. Dr. Davidson told us:

> I would myself not wish to see the Corporation entirely remove itself from the commercial side to the operation partly because I think it helps to keep us in touch with the real world in a way we might not if we were off on cloud nine programming without any regard whatever to the community and the practical tastes and interests of the community which we are supposed to be serving...

The CBC, he argued, was driven into the commercial field by "the sheer necessity of receiving additional funds to meet the obligations we feel we have to meet." Dr. Davidson said his personal preference would be for a more limited participation in the commercial field, and he made a comment we found most significant: "My personal belief is that we are excessively dependent on commercial advertising now. It is showing signs of affecting the quality and nature of our programming in prime time."

Possible no more ominous words could be spoken about a public broadcasting agency. They were spoken by its chief, who can hardly have been pleased about having to voice them.

We repeat: the CBC, whatever its faults, performs a unique public service, and has special obligations laid upon it by the Broadcasting Act. It must be financed in such a way that the head of the CBC need never say something like that again.

At the time of the 1966 White Paper on broadcasting, the government instructed the CBC to undertake no increase in commercial programming. Further, it instructed the CBC to seek to maintain its 25 per cent share of Canada's television advertising revenue, and its four per cent share of the country's radio advertising revenue.

The CBC has been unable to maintain these percentages levels, although it has attempted a more vigorous sales policy. Its share of television advertising revenue had slipped to 23.9 per cent by 1968, and its share of radio advertising revenue — 1.8 per cent — was so small that Dr. Davidson admitted he had considered taking CBC radio out of the commercial field entirely.

It is worth noting that the instructions described above were exactly counter to the thinking and recommendations of the CBC management of the day. While the two top officers of the CBC have changed, and while Dr. Davidson told us that he had received extensive co-operation since becoming head of the CBC, it is interesting to speculate whether the government's instructions could be wholeheartedly carried out if substantial numbers of upper and middle management disagreed with them.

We may also note with curiosity that the value of programme time available for advertising but unused for that purpose was $26,935,000 in 1965, but had increased to $31,177,000 by 1969. This, too, may reflect the diligence with which the CBC sought to abide by the government's instructions.

Our impression of the effectiveness of the CBC's commercial sales department is that there is considerable potential for improvement. We also feel that the commercial acceptance department has not succeeded in substantially reducing the offensiveness of commercials, although it appears to have held back the CBC's sales efforts to some extent. However, we were pleased to note that the CBC had managed in 1969–70 to increase its advertising revenue by some 20 per cent while holding the increase in selling expense to some 12 per cent.

Various representations were made to the Committee about the CBC's commercial rates, the private broadcaster generally holding that they were too low, and in effect constituted a subsidy to the advertiser and unfair competition for the private broadcasters. This view, not unnaturally, was denied by Dr. Davidson.

One instance, however, is memorable. The Committee was informed that at a point when the 60-second commercial rate for CFTM was $700, the equivalent rate for CBFT was $350. Both these stations serve the metropolitan Montreal area, with very similar coverage patterns; both broadcast in the French language. While CFTM's audience is very large indeed, it is clearly not so immense as to justify this relative difference between this private station's commercial rate and that of the CBC's French-language owned-and-operated station in Montreal. Serious consideration must be given to the charge, made publicly by CFTM, that something akin to economic warfare may be going on here, a thing quite different from the competition between private and public broadcaster which exists elsewhere in this country.

We note, however, that this gap has been partly closed, at least to the extent that the CBFT/CFTM 60-second commercial ratio is now $425/$750. Neither this, nor the $290/$500 ratio for CBMT/CFCF, seems to us to reflect fairly the CBC's competitive position in Montreal against the private broadcasters. In Toronto, for example, comparative CBLT/CFTO ratio is $475/$550. In Vancouver, CBUT and CHAN are equal, at $300/$300.

Certain measures have been taken by the CBC to increase its level of commercial revenue, including an increase in the number of commercial minutes per hour it is willing to sell, and some slight movement towards selling spot advertising time, rather than what it is pleased to call participating sponsorships.

A sponsor in the classical sense paid all the costs of producing a programme, and then paid a broadcaster for the time it took to have the programme delivered through the airwaves to the public. Where it was a network programme, he also paid the transmission costs. This concept of sponsorship has virtually disappeared in North America, except for National Hockey League game broadcasts in Canada, and certain specials. The CBC does not seek to recover all (or even most of) the programme costs for Canadian programmes. It does specify a charge for connecting its stations for network advertisers.

A participating sponsor is one who, with other advertisers, shares in the available commercial time in the programme. He might as well be buying time by the minute, since this is the way he normally buys time; but the CBC insists on its own terminology. The CBC's reluctance to abandon the sponsorship concept is most difficult to understand, considering that every other major broadcasting system in North America has found it worthwhile to concentrate instead on the sale of spot time.

We feel that the CBC should consider carefully its rate structure with a view to upward adjustment where warranted; that the commercial sales department could be improved, and that the function and philosophy of the commercial acceptance department needs careful examination.

Our consideration of the CBC's commercial activities deals, in Fowler's celebrated phrase, with the housekeeping aspects of the Corporation. We also have some few words to say about the programme aspects. Dr. Davidson summed up one area of concern very nicely:

> I believe Canadians are getting a disproportionately small amount of Canadian programming to balance off against the very rich variety of American programming that is available to them, and I think that this should require the Canadian Broadcasting Corporation to review the extent to which it is carrying American programming in its programme schedules, and this is what we are doing at the present time.

His explanation for the CBC's seeming preoccupation with United States news — indeed, all aspects of life in the United Stats — was similarly forthright: "When you stand in the shadow of a giant, you become preoccupied with the shadow of the giant, if not with the giant himself, and I have offered the same criticism to the Corporation."

Sadly, it seems inevitable that until advertisers can be convinced that United States programmes are not necessarily always the best buy on Canadian television, Canadian broadcasters will rely on these programmes for an important part of their revenue.

While we reject the Canadian Association of Broadcasters' position that the CBC should get out of broadcasting and instead produce Canadian programmes for free supply to private broadcasters, we feel that the CBC has a special role to play in developing new and better Canadian programmes that can attract and hold large audiences. This is congruent with our view that Canadians do not have true alternative service when what they are offered is the same kind of programming on two different Canadian channels.

Alternative television service in Canada really means alternative *programme* service — something like a genuine choice. It is encouraging that the CBC seems to feel somewhat the same way, even if the *Ed Sullivan Show* is still a fixture in its Sunday-night schedule. When the two English-language Canadian television networks, and what we hope will soon be the two French-language Canadian television networks, can offer equal but complementary service, Canadian television audiences can be said to have genuinely alternative television service.

It should not be construed from this that we feel that Canadian television broadcasters should schedule nothing but Canadian programmes. Our view is that we are 100 per cent behind Canadian content, but that we do not favour 100 per cent *of* Canadian content. We have been pleased by the efforts of Canadian broadcasters to obtain the best in television programming from the rest or the world. We accept the argument of E. S. Hallman, head of the CBC's English service, that television productions from the rest of the world may merit broadcast in Canada, and that the CBC may have to provide for such broadcasting where the programme material is not suitable as an advertising medium — as with Sir Kenneth Clark's series on Civilization.

Mr. Hallman told us: "I think to make us exclusively and narrowly Canadian would really be detrimental to the services we should provide to the Canadian people." And we agree. The CBC should become a great two-way showcase, displaying to Canadians and to the world just how great is the potential of this most involving of media.

If the CBC is to do this, it will have to overcome two difficulties which we simply note briefly here in passing. One is its dollar efficiency in producing programmes; the other is its preoccupation with the major production centres in Toronto and Montreal.

Because so many of the Canadians served by the CBC's French network are in the Montreal area, it is perhaps inevitable that the network's programme should reflect the Montreal scene to a great extent. But there *are* French-speaking Canadians living elsewhere in this country, even though this fact is hardly apparent from French-network programming. We must, however, acknowledge the excellent work of the CBC's French network in developing Canadian programmes that draw very large audiences indeed. The fact that the four most popular television programmes — *Moi et L'Autre, Quelle Famille, Rue des Pignons*, and *Les Belles Histoires* — are all produced by the network is a tribute to the energy and imagination of those involved.

We do not feel that the success of these Canadian programmes is entirely due to their serving a French-speaking population surrounded by Anglophones, a view frequently expressed by private broadcasters. It was interesting that when the Canadian Association of Broadcasters appeared before this Committee, its president, Raymond Crépault, also felt that the ghetto theory for explaining the success of Canadian broadcasting in Quebec was inadequate.

The situation is rather less excusable when it comes to the English network's Toronto orientation, because there are very large English-speaking centres in this country other than Toronto. It is heartening to know that, as a result of the increased emphasis on Canadian programmes, the CBC is turning to some of these other centres for programme ideas and programme production. This process must continue, and production centres must be developed outside Toronto, if the rest of the country is not to be continually drained of its television talent.

For one thing, we must face the reality that if the most talented Canadians are drawn to Toronto, there is also a flow in the other direction; and the misfits and obstructionists of head office are likely to be shipped out to the regional centres — which, being devoid of creative production anyway, are all too likely to be thought of as punishment camps.

We are aware that certain television programmes are produced by the CBC at very low cost. Some benefit by economy, and look pleasantly taut; others just look cheap. When Pierre Berton appeared before this Committee, he made the point that editing videotape is time-consuming and expensive, as well as being often unnecessary if appropriate preparation is done. It is not our intention to instruct broadcasters in the details of their business, but we accept the view of Mr. Berton and others that some economies might

well be considered, and that the kind of editing practices he described are harmful to the production, misleading to the viewer, and ultimately expensive to the taxpayer.

Out of an operating budget of approximately $200 million, programme expenses — radio, television, and international service — account for some $108 million, or about 54 per cent. While the overhead costs of operating a 9,000-person organization must necessarily be high, we wonder about the cost efficiency of a broadcasting organization which needs a dollar of input to produce 54 cents worth of programme.

This Committee feels strongly that the CBC can take most pride in its radio service. It has, we know, been called the Ugly Service by cynics within the Corporation who assert that the beautiful people go to television. It has been suggested that AM radio is the orphan of the CBC, and that the FM service is the one broadcasting organization in Canada to which one can tune in and know at once that it is Canadian, and that it is public broadcasting.

There is a tendency in radio today to become community-involved, to narrow the programming focus. We welcome this trend among private broadcasters, as a relief from their years of regarding radio as some species of perpetual Wurlitzer. But we would hesitate to endorse a similar approach on the part of the CBC.

Network radio, as a private concept, is largely dead. Its passing, if the result is community service where little existed before, is not much to be mourned. Public network radio is, we feel, still a vital element of the Canadian broadcasting system, and we urge the CBC not to be hasty to abandon it. The success of the news programmes *The World at Six* and *The World at Eight* are examples of fine network radio service.

We know the audiences are small, the commercial revenue is pitiful. But network radio permits experimentation where network television, because of the higher costs and the higher risks in terms of public reaction, permits far less innovation. Some steps could be taken to remedy the audience situation, and perhaps the revenue situation, as a consequence. It seems incredible that the CBC uses its television service so sparingly to promote its radio service, and that indeed the money available to promote radio through any means is so niggardly.

As we have noted before, the CBC is a national institution in a country that lacks national institutions, a national medium in a country unable to support a truly national press. CBC radio may have been called the Ugly Service; but it has been a needed counterweight to television, which has all too often been the empty-headed service. Considering how much it gives for its relatively small slice of the CBC budget, we feel it should not be

tampered with wantonly because of the trend among private broadcasters. The CBC need not play their game.

Dennis Braithwaite, a Toronto journalist who used to strike terror into the hearts of CBC executives in the days when he wrote a television column, once said that he had heard for years of people who planned to reform the CBC into the great institution it could be, and that none of them had ever achieved it. His conclusion, upon reflection, was that the CBC is fundamentally unfixable. Our view is that it needs some work here and there, and these few halting words have been prepared in the hope that the work can be done.

One thing that stays firmly in our minds as a result of our explorations of Canada's mass media is that the CBC is so fundamentally a part of Canada's communications that it could not be removed or substantially weakened without a very wide ring of repercussions through the rest of the media, and through our society.

We are faced with the fact that if the CBC did not exist, we would have to invent it.

THE PRIVATE INDUSTRY

For many years, the Canadian Association of Broadcasters has been the voice of private broadcasting in Canada, and we were particularly interested in what this organization had to contribute to our study of broadcasting and its place in the fabric of Canada's mass media. With reluctance, we were driven to conclude that the private broadcasters, no matter how sophisticated their individual thought, seem by group interaction to achieve a level perhaps best described as neanderthal.

The C.A.B.'s appearance in front of this Committee was a truly remarkable performance. Equally remarkable was the C.A.B.'s action in sending the Committee a telegram reproving us for hearing Nicholas Johnson, Federal Communications Commissioner, a student of broadcasting whose refreshing views have done much to strengthen the concept of broadcasting as something other than a form of strip-mining.

There was a certain irony in being chastised by the C.A.B. for listening to a citizen of the United States, considering the extent to which private broadcasters have procured programming for Canadian stations from the United States, and the frequency with which they have held up the American broadcasting as a model.

We might consider four of the positions taken by the C.A.B. before this Committee.

On the question of concentration of ownership of broadcasting media, we were told by the C.A.B. that this is inevitable, that broadcasting in this country will be in the hands of a dozen or so groups within five years, because of the operational efficiency of this kind of ownership. One is struck in considering this position that it reflects a belief we have encountered before: the belief that operational efficiency must be served at all costs, that the system must be strengthened and perpetuated regardless of human needs or values, that the machine's needs must be satisfied. The idea that the public might not be best served by having all Canadian broadcasting owned by about a dozen groups seems simply to be considered irrelevant. The notion that some regulatory agency might refuse to allow this to happen is apparently held to be no more than proof that regulatory agencies are hopelessly out of touch with reality.

No less remarkable is the C.A.B.'s considered opinion of the Canadian Broadcasting Corporation. In the C.A.B.'s view, the CBC should get out of broadcasting — which it presumably does not understand — and instead become a production agency which would supply the private broadcasters with Canadian programmes, thereby relieving them of the responsibilities of production.

A certain proportion of these Canadian programmes would be carried by the private broadcasters — who, indeed, would be the only broadcasters — as a condition of licence. This basic service apparently would be available to the private broadcasters at no cost, since the question of their somehow paying for this Canadian content is only raised in connection with obtaining *additional* programme material.

This position is held to be the basis of Canada's having both public and private elements in its broadcasting structure, a truly unusual view expressed by the C.A.B.'s president, Raymond Crépault, to the Committee as follows:

> This is why we are one of the very few countries, perhaps the only one maybe, that has this kind of double structure, precisely in order to ensure that our cultural heritage would be safeguarded, maintained and encouraged and developed through public funds.

The notion that a private broadcaster might spend some of his *own* funds for these purposes just doesn't seem to be even thinkable.

Much as the C.A.B. likes this idea that the CBC would cease competing with the private broadcasters and simply donate programmes to them instead, it seems resigned to this not happening, and it has a fall-back

position. The position the C.A.B. would accept, albeit under protest as unfair, is that the CBC stop selling commercial time, and therefore stop competing with the private broadcasters for advertising revenue.

The idea that the CBC should get out of commercial activities has some appeal at first glance. We have considered it, and it is discussed at length elsewhere. Suffice it to say that while it would undoubtedly represent an improved financial situation for private broadcasters, it would harm the CBC, and we do not recommend it.

The C.A.B.'s opinion of the Canadian-content regulations governing the broadcasting service is that the levels set are impossible and unobtainable, that they will result in bad programming, and that they are ill thought out, since they are what the C.A.B. calls "tonnage" requirements rather than requirements that high-quality programmes be made.

This Committee accepts the goals of the C.R.T.C. and its regulations. We feel there is simply not a shred of evidence to support the C.A.B.'s protestation that the private broadcasters, if left to their own devices, would produce plenty of high-quality Canadian programmes. Some private broadcasters have produced high-quality Canadian programmes. We feel this country should recognize them for what they are: persons so exceptional in the private broadcasting world as to be virtually of another species.

In private television, we have seen the accomplishments of such stations as CJOH in Ottawa, CFTO in Toronto, CFTM in Montreal, and CFPL in London, Ontario. Private radio has seen CKNW in Vancouver develop a very strong news service, CFRB in Toronto its news and public affairs, CJAD in Montreal its news service, and CFPL its general programming.

But the fact is that the vast majority of private broadcasters have done the minimum required of them by law, and no more. They have been content to let the networks fill the prime-time hours with imported programmes; they have been happy to take whatever the networks would supply free; they have filled the rest of their hours with as much syndicated material as possible, producing themselves as little as possible. They have been content, as one of the exceptions once noted, to "sit at the end of the pipe and suck."

Private broadcasting is, for the most part, quite profitable in this country. Some sections of private broadcasting are immensely profitable. One reason it is so profitable is that broadcasters have been protected by successive regulatory agencies against competition. Mr. Crépault told us of three United States television stations that went bankrupt in one month, because of the rather different licensing policy of the Federal Communications Commission. He did not tell us of any Canadian television station going bankrupt; the fact is that none ever has.

The C.A.B. was unable to convince this Committee that there is any reason at all why some of the healthy profits of private broadcasting might not be turned into something more than the legal minimum of Canadian programmes.

The C.A.B. was unable to convince this Committee that there is any reason at all why private broadcasting's profits should be made even larger by removing the commercial competition, or the broadcasting competition, of the CBC.

The C.A.B. was unable to convince this Committee of the validity of a fourth position taken by the Association: that private broadcasters have done more for Canadian talent than the CBC. And a comparative glance at the schedules for a private television station and a CBC owned and operated station make it clear that this alleged superior aid to Canadian performers is not reflected in programmes.

Perhaps the C.A.B. feels genuinely that commercials, which earn extra income for performers, represent the finest flowering of the television art — it would be consistent with another of their representations to us. But we don't feel many performers would agree, and we are sure that almost all viewers would disagree.

The matter of commercials was the subject of a curious remark during the C.A.B.'s appearance before this Committee, a remark so odd that it was diligently pursued in the discussion since at first blush it was hard to believe that it was seriously meant. The C.A.B. believes that the more commercials there are in a programme, the more the audience likes it. This is quite distinct from the notion that a station with popular programmes will have many commercials, because it attracts audience and therefore advertisers. The C.A.B. seemed to hold that the presence or absence of commercials has a direct effect on the number of viewers.

W. D. McGregor, who since the C.A.B. appeared before us has become its president, articulated the idea. 'When the station quite deliberately removes all commercials from a programme, the audience goes down,'' he told the Committee. Asked to produce figures to back this up, he answered by making another assertion. 'What we have done, and a number of stations have done this and among them my own, is quite deliberately to put additional commercials into a programme — that is a programme that wasn't carrying or didn't have the popularity to attract advertisers, we have put commercials into those programmes in an effort to see what would happen, and the audience went up.''

The Committee has research indicating something rather different: that the primary public complaint about television is about the commercials, both their content and their timing. The commercials are seen by the

public as irritating interruptions in the programmes, and it is quite difficult to understand why the majority of television viewers would consider them in any other way, when they fall within a programme.

Perhaps the view expressed by Mr. McGregor is, for private broadcasters, an article of faith. Is it a closed equation? If freed of regulation, would they fill an entire programme hour with commercials, and thus achieve the most popular programme of all time? Mercifully, we may never know.

We may reflect, however, that if commercials are not the finest flowering of the television art, they at least represent one kind of pinnacle. They are, for the most part, the ultimate in presenting a totally false picture of reality. We are all familiar with examples: the toothpaste that makes people blow kisses to you; the hair oil that makes the gals pursue you; the tonic that transforms your wife from apathetic drudge to a hot-eyed temptress; the constantly screamed message that if you will only *consume* something, your pimples will vanish, your stomach and head and feet and back will cease to ache, your sexual life would be the envy of Haroun al-Raschid.

All our ills are *not* cured by consuming. Our lives are not, by consuming, transformed into a single uninterrupted flow of bliss. We have had it painfully brought home to us in recent years — and the signs were there long before that — that consumption of some things may be very bad for us; and for all our neighbours and all our descendants. The social consequences of advertising, particularly on radio and television, deserve some thoughtful study, and it may well be that the Canadian Association of Broadcasters would be a logical group to do such a study, or at least to sponsor it.

For we believe the the C.A.B., despite its current state, is potentially a most useful organization — and in ways beyond its function as a lobbyist. There is nothing wrong with the C.A.B.'s acting as a lobbyist, although its spectacular lack of success in this function of late has much to do with the organization's dwindled and depressing condition today.

Its inept attempt to bully the Canadian Radio-Television Commission led directly to the C.A.B.'s losing the membership of two of this country's most powerful and respected broadcasters, and also to its losing the support of a third private broadcaster, who decided to retain membership in the C.A.B. while dissenting from the organization's campaign against the Canadian Radio-Television Commission.

It may be that in making its attack on the regulatory agency, the C.A.B. was reflecting a belief that this Committee certainly noted among small private broadcasters: the notion that every broadcaster's licence is in jeopardy every day from the whims of an all-powerful Canadian Radio-Television Commission. We were told — by the officers of Countryside Holdings

Limited, for example, and by others — that no broadcaster would dare criticize publicly the policies or proposed regulations of the C.R.T.C., because of the risk of losing his broadcasting licence. That intelligent men could be under this delusion is proof in itself that the C.A.B. has failed in its duties towards its own membership.

The lot of the small private broadcaster may be a difficult one, as he sees the best of his staff leaving for larger cities, as he realizes that the ability of his station to generate profits cannot possibly match that of the larger stations to which the best talent tends to be drawn.

We have noted, in studying Canada's newspaper world, that the small newspapers do a poorer journalistic job than the large papers. We have also noted that their relative performance is not simply proportionate to size, and that the smaller newspapers do a poorer job than one could expect, even taking their relative smallness into account. In broadcasting, this phenomenon is even more pronounced. The smaller stations offer a much lower level of service than seems reasonable, even granted that they find good staff hard to keep.

We found in our research that while broadcasting in Canada is highly profitable, profitability and size are closely related. It matters little what measure of profit is used: the bigger the station, the higher the rate of profit. In 1968, for example, there were 221 radio stations operating in Canada independently of television stations, and only 22 of these (8..4 per cent) had gross revenues of one million dollars or more. But these same 22 stations accounted for just over 68 per cent of the total net operating revenue for all 221 stations.

In television, the size-profitability relationship is even more striking. In that same year, 1968, there were 29 television stations operating independently of radio stations. Eight of them — 27.6 per cent of the total — had gross revenues of $1.5 million or more, but these eight accounted for 92 per cent of the total net operating revenue of the 29 stations in the group.

One reason why larger stations are more profitable is that they tend to be located in larger communities, where the absolute demand for advertising time is higher than in the smaller centres. Also, the larger audiences enable the big stations to maintain very high advertising rates while simultaneously offering advertisers a relatively low cost-per-thousand; so that an advertising rate that would discourage advertisers from utilizing a small station would not discourage them from buying commercial time from a very large one.

Particularly with television, the demand for advertising time on the very large stations is so strong as to constitute a forceful argument for the legal restriction of the number of advertising minutes a station may schedule in

its day. Otherwise, the temptation to satisfy the demand for advertising time might lead to a sharply decreased level of service to the viewer, as programme minutes yielded to advertising minutes.

Legally limiting commercial time, however, leads in turn to an argument for licensing second and third stations, as necessary, in major centres. The consequence of not licensing such second or third stations, while at the same time limiting commercial time, is to encourage the first station to set a very high advertising rate, since he can be certain of selling all his time. The consequent revenue will not necessarily be reflected in the quality of service to the viewer, and the less affluent advertiser will be driven away.

It is noteworthy in all this discussion, however, that profitability in broadcasting is generally higher than profitability in manufacturing, which in turn is higher than the business average.

There is one area in which we feel some financial inequity is being worked upon Canadian broadcasters. It will be recalled that Section 12A of the Income Tax Act provides that Canadian advertisers may not write off as a business expense any money spent on buying space in U.S.-owned publications, a provision designed to give a measure of protection to Canadian magazines faced with the dumping of editorial material in "Canadian editions" of American magazines.

Canadian broadcasters, particularly television broadcasters, are also faced with competition from across the border. In some fairly notorious cases, the competition comes from stations deliberately created to live off Canadian advertising, and not designed to provide any service to the United States communities in which they are nominally licensed. It has been argued, and we believe correctly, that without the existence of KVOS in Bellingham, Washington, Vancouver could support a third television station. The situation with KCND in Pembina, North Dakota (population: 600) which covers the Winnipeg area is less clear; its proprietors profess to be losing money. There is also substantial penetration of the Hamilton–Toronto area by the three commercial Buffalo stations — WGR, WBEN, and WKBW — as well as the situation in Windsor, Ontario, where there are five commercial U.S. television signals available — WJBK, WKBD, WWJ, WXON, and WXYZ — from transmitters directly across the river, in Detroit.

It seems, in any case, that the growth of Canadian television service in areas penetrated by U.S. television signals is likely to be impeded unless Canadian advertisers are given some motivation to keep their money in Canada. Also, it may be noted that certain Canadian laws or regulations — those dealing with food, drugs and alcoholic beverages, for example — may be avoided if advertisements are placed with American rather than Canadian stations, a practice we feel is not in the public interest. We recommend

the extension of Section 12 A to cover Canadian advertising placed with American broadcasting stations.

We do no consider that, as the head of one group of radio stations told us, owning a radio station is merely a way of getting into the advertising business. We do not consider that television viewers derive pleasure and comfort from knowing that a programme contains commercials. We do believe that private broadcasters and public broadcasters alike have an interest in knowing more about the commercials that help pay for programme service, and that they are entitled to reasonable income tax provision, and we believe the C.A.B. could be an effective instrument in research and in responsible lobbying.

This will not take place while the C.A.B. has its present constitution and its present structure. The organization needs to be overhauled. It needs to stop thinking of its role as simply that of staving off regulation, and to start developing a positive, creative policy of information and research. It will not be able to do this without the participation of the major broadcasters, because an association of small broadcasters cannot generate the funds or the influence needed.

There can be no doubt of the need for an organization to do some intelligent research in broadcasting, to help the small broadcaster keep abreast of developments, to make the large broadcaster aware of his position in the national broadcasting system. Research aimed at something other than inducing advertisers to buy time might not only yield valuable information, it might persuade broadcasters to start thinking of the audiences they serve as people or communities, rather than as "markets" — the term invariably used by broadcasters appearing before us in describing their operations.

It will be a pity if the C.A.B. declines this opportunity.

AIRING THE NEWS

People are not consistent in their ideas about the mass media. This is one of the more obvious conclusions to be drawn from our studies.

Their relationship with the media is an emotional thing, shifting, unresting, sometimes uncertain. Their attitudes to news broadcasting point this up very well. Canadians, we found, put a great deal of faith in television for national and international news, but they feel television is more likely to reflect government ideas than any other mass medium. Many feel the television camera can distort reality, but this does not much concern them; they feel they can trust the integrity of the broadcasters.

Despite this widespread faith in the integrity of broadcasters, about half the people seem to feel that television may contribute to a breakdown in moral standards and a disrespect for religion — although no one seems to feel that radio contributes to these ends.

Indeed, although radio is held to be the most immediate medium — the natural place to turn during time of crisis — it seems to be considered for the most part as simply background sound, a non-involving interior decorating for the mind, best suited to housewives and teenagers.

It is tempting to conclude from our studies that the one thing people fear most about television is that it might report news so accurately as to shake their beliefs about their lives. They recognize its ability to present news clearly, to bring stories to life — and they fear the stories it might bring, and the new reality it might expose.

For the most part, people do not seem to realize how news broadcasting comes about. It would be harder for them to hold some of the opinions they do if they knew more about it.

Radio and television really occupy opposite ends of the news spectrum. Radio can bring news faster than any other mass communications medium, while television — except in the most fortuitous or the most planned circumstances — brings it very slowly.

Many radio stations in Canada have found in recent years that they can build an audience by providing thorough local news coverage, and some stations have built well-deserved reputations for their news-gathering ability. CKNW, CJAD, CFRB are examples. Oddly, despite the enormous followings built by Gordon Sinclair, Jack Dennett, and a few other highly individual newscasters, the public seems unimpressed, preferring newspapers for local news and television for national and international news.

The key perhaps lies in the presentation of material that the public does not necessarily think of as local news — weather reports, traffic conditions — but which it seeks through radio.

Television's technology, and the curious consequences of living in a country 4,000 miles wide, lead to television being a relatively slow way of discovering the news of the day. Television news without some kind of pictures to support it — film, or at least graphics — is considered by the broadcasters an unworthy use of the medium. But film takes hours to process and edit, and in many cases is quite impossible to obtain, due to the persistent habit of news events to take place without prior warning.

Where news events occur *with* prior warning, there is a suspicion that they have been staged especially for the benefit of the television cameras, as indeed they often are.

Professor Daniel Boorstin, and others, have suggested that in this case they are pseudo-events; although it seems illogical to conclude that something that happens simply because its perpetrators wish to attract attention should therefore go unreported. Rather, the attention-seeking aspect should be made clear, and the occurrence described simply for its news value, where it has any.

Although some broadcasters have been very diligent and very successful in developing their news-gathering techniques, news remains for both radio and television a sideline. Their principal activity is not to purvey information; no matter how one considers it, their principal activity is entertaining.

It can be argued that a newspaper's principal activity is making money through advertising, but newspapers, however far from the high journalistic standard we might wish, cling to the tradition of filling the space between the advertisements mostly with news.

The CTV television network, which mounts a very creditable national news programme every evening, devotes a little over four per cent of its schedule to news. On its owned-and-operated stations, the CBC broadcasts more news, but the total amount of time involved is not an impressive portion of its schedule. Most local stations produce one or two news wrap-ups a day, and some — like the Victoria station, CHEK,which has been mentioned elsewhere — do rather less than that.

Because news is for the most part a sideline for broadcasters, the great bulk of news-gathering in this country is done by newspapers, and the bulk of distribution of news is undertaken by their co-operative wire service, the Canadian Press. CP has a division, Broadcast News, which supplies a wire service to broadcasters. Much of it is rewritten from the newspaper wire, although CP and BN buy stories from radio stations as well. The BN wire carries a handy summary of the news every hour, regional as well as national and international, and this is the standard fare for many news broadcasts.

When Charles B. Edwards, the general manager of Broadcast News, appeared before this Committee, mention was made to him of two stations in the same town which broadcast exactly the same news stories, word for word. "I would regret that that is the case if it is so," he said, "but we don't encourage them to do that."

It is hard to know what BN can do about it, if the broadcasters are satisfied simply to tear stories off the wire and read them in their summarized

form without exercising even a minimum of enterprise. The remedy must lie with the broadcasters, not with BN.

For the work of Broadcast News, we have mostly respect. It provides a good basic service at modest cost, and every news broadcasting operation relies upon it at least to some extent.

We have noted with interest the development in recent times of Canadian news services other than BN, which distribute voice reports on a group basis. Contemporary News and Standard Broadcast News are examples. These services contribute to a diversity of viewpoint that is most welcome in news broadcasts and is equally welcome in the related area of public-affairs features of the Berton–Templeton discussion type. They help in the cross-fertilization of radio information programming.

They also represent a different kind of networking, a silent kind (since the broadcast takes place after the actual transmission) which may well be the way of the future for private radio in Canada.

But we repeat: Broadcast News is the basic service, and Broadcast News is largely built on the news stories turned up by newspapers rather than by broadcasters. By the time a local news story has been transmitted from one end of the country to the other, or even to the middle, it has become a national news story. People seem to feel that television is a more reliable source of national news, yet the chances are that the television station and the local newspaper both obtained that story from the same place, CP/BN, and it is not inconceivable that the same CP man wrote them both.

The CBC is able to maintain correspondents in major centres in Canada, and in some international bureaux, and it can draw upon the resources of its owned-and-operated stations for news coverage. CTV has rather less to work with, relying on staff in Ottawa and Toronto, and also drawing upon the news operations of its affiliated stations.

Both mount creditable news broadcasts, although the CBC's overseas staff seems to contribute relatively little considering the numbers involved. Both rely on the very large news operations of the American networks to supply actuality footage that can be edited into the appropriate form for Canadian consumption. We feel that the news service of both organizations could be improved. Network news broadcasts have to be prepared in Toronto or Montreal, where the best facilities are. There are problems, necessarily, with time zones and sheer distance in trying to cover adequately a country as large as Canada.

The news and public-affairs function of these networks, however, is one of their most important functions. It should be considered as being at least as important as entertaining the population.

While no broadcaster has said he considers news unimportant — although few seemed to feel it was a primary function — we are left feeling that many broadcasters wish they did not have to be concerned with it.

Both CBC and CTV have their news operations in the hands of competent and respected newsmen, but there can be no question that there are conflicting pressures. We believe both networks should consider carefully how best to ensure that the news function is not sacrificed to something that may be more profitable but less in the public interest.

THE CABLE CONUNDRUM

Perhaps no area of Canadian broadcasting is as confusing, as variously represented, as devoid of real data, as the peculiar world of cable television. It is represented as the destroyer and as the saviour of conventional television; as the force that splits audiences while enlarging them; as the bringer-in of distant television stations and the last hope for local television programming. What makes consideration of cable television so exhausting is that all these ideas, and many more, have an element of truth to them.

In considering radio and television, we are dealing with technologies that are fairly well known and understood. We are dealing with social effects which, if not understood, have at least been described over a period of years. There is a body of knowledge upon which we can draw, even if we wish there were more research, more information. When the technology is known, and the goals are more or less clear, and the abilities of the medium — well, the basic abilities, at least — are defined, consideration of policy and performance is relatively simple.

So many things are possible with cable, so many ends could be effectively pursued by its use, so many methods involving cable can be adopted, so many levels of service could arbitrarily be declared to be basic, that cable policy has to considered in terms of picking a way through many possible interweaving paths, rather than as finding the correct highway and then following it.

The situation in Canada has not been helped by the reluctance of government before the Broadcasting Act of 1968 to attempt realistic regulation of cable television. Nor can we look to the United States for guidance, since the Federal Communications Commission has been even more reluctant to regulate cable, has entered the field more recently, and has had to deal with an industry in a less developed stage. We realize that the Canadian Radio-Television Commission and the Department of Communications, whose jurisdiction in cable is contiguous with the bulk of responsibility being the Commission's, have had difficulties in their work to date; and we will discuss it at some length later in this section.

More than one million Canadian households are connected to co-axial cable. The rate of growth continues to be high, with a single British Columbia enterprise wiring up new subscribers at the rate of 400 per week. Relatively to population, Canada seems to be the most wired-up nation in the world.

There are insufficient data to make authoritative statements, but it seems clear that where cable television systems have been established for some years, they are (except for the smallest systems) very profitable, even though the entrepreneur must normally expect to go without much revenue while laying out substantial amounts during the initial period of wiring.

It seems fair to suggest that cable television damages the operation of a television station to the extent that it offers viewers more channels than they can receive off the air, and in so doing fragments the audience. Equally, it is fair to suggest that where cable television artificially extends the reach of a television signal beyond the station's local market, it tends to increase the size of the audience, and therefore is a benefit to the broadcaster and the advertiser. One of the major problems of cable television policy has its solution in the discovery of the extent to which these effects neutralize each other.

Another puzzling area involves the possible uses of cable television, other than as a means of delivering clear, steady television signals taken from the air. Many uses have been proposed: home computer terminals; newspaper delivery; electronic mail delivery; security surveillance; shopping by cable as a step along the road to a cashless society; dial-a-program; machine-aided teaching; and a great many others. It has been suggested that only the cautious policies of the federal agencies stand between the Canadian public and some sort of cable-assisted information millennium.

It might, in this context, be worthwhile to recall the somewhat despairing remark made before this Committee by Israel Switzer, chief technical officer of Maclean-Hunter Cable TV Limited, a major group in Canadian cable television. He told us plaintively: "I am the person in this organization who actually has to go out and do these things that other people dream of and speculate on." He went on to tell us:

> I do not see the large-scale implementation of many of the technical developments of which cable television is possible, things like 20-channel systems and switch systems which use cable for access to computers.
>
> I could have a computer terminal in my home right now. I could call up General Electric — they have a time-sharing among other users there — the Bell has a line into my house and I could run a computer right from my house from my telephone line right now. But I don't feel

> the need for a computer in my home. I frankly don't, and I think the marketability of many of these services has been drastically overrated.

It seems a fair question to ask whether any of us really want a computer terminal nestled next to the telephone table, desirable as some of the other services might be.

However, at a time when Toronto cable systems are undergoing a distinct feeling of crowding because of the number of television signals they must try to distribute through existing twelve-channel systems, it is difficult to understand how the current limitation to twelve channels can last much longer; we urge that it should not.

Cable policy in Canada, as it has evolved to date, seems to have five major elements: the widest possible direct community ownership; a ban on networks; a ban on advertising; a requirement that cable systems provide community and educational channels; and protection of the conventional broadcasters.

We agree strongly with the principle of the widest possible direct community ownership, but we are concerned that it does not seem to be fully working out in practice. Too many licences are being granted to major groups which already control several cable television systems or have interests in other media. Granted that the licensing agency, the Canadian Radio-Television Commission, must feel an obligation to ensure that a licensee will provide continuous service, it still seems to us that granting licences to newcomers is in the interest of building cable television into what we feel it should be: a new medium.

We are pleased that the Canadian Radio-Television Commission has, for the most part, moved to keep television broadcasters out of cable (as when it curbed the imperial dream of Bushnell Communications Limited), although one can wonder about the extent to which the Maclean-Hunter interests are involved in all phases of broadcasting. But we feel the Canadian Radio-Television Commission must be willing to give imaginative newcomers more of a chance. And they should be genuine representatives of the community, not carpetbaggers who have managed to rent a token local citizen specially to front for them during their licence application.

The question of networking, like so many aspects of cable television, is not simple. But we feel that networking has a place in cable television, particular where a large urban area is divided among several cable systems; and we are pleased that the C.R.T.C. has made some provision for networking in such cases, even if the cable operators themselves have not been swift to take up the idea.

We agree, too, with the ban on advertising. The cable television operator obtains the bulk of his programming by taking it from the air, paying no one for it. He has an obligation to provide a community channel, but there is no reason to believe that its costs cannot be convered (at least in the case of medium-to-large systems) by subscribers' payments — and the benefit of the community channel, after all, is to the system's subscribers, not to the public at large.

The development of community programmes on cable television strikes us as a most welcome addition to the mass media in Canada, a new dimension that can dramatically improve the quality of life in our country.

One of the obstructions to true public access to the broadcasting media has been the reluctance of the broadcaster to turn over, if only very briefly, his one signal to any member of the public, except under conditions of very strict control. He has, after all, only one frequency; granting too free an access could cost him his audience, his income, and his licence.

The cable operator is in quite a different situation. He has not entered just a single horse in the race and staked his life savings on it; rather, he owns the race track, and it is the only one in town. A television viewer who is bored or irritated with his community channel can watch a variety programme or a drama instead, but he is still using the cable system, and the system's subscribers have not diminished if some of them elect not to watch the community channel. The subscriber is unlikely to cancel simply because he doesn't like the community channel. He would, after all, be losing all those other channels, and in any case it is a much greater effort to cancel the service than it is just to turn the switch.

The cable operator may be in legal difficulty, or in difficulty with the C.R.T.C., if he is wantonly perverse in his method of granting community access to the community channel; but in granting public access, he is in a much safer position than the conventional broadcaster.

Two groups have developed ideas for easing the cable operator of some of his responsibility in this matter. Town Talk, in Thunder Bay, Ontario and Intercom, in Toronto, have suggested that responsibility for at least part of the programming on community channels might be taken over by community-based production groups, of which they are the prototypes. Intercom has suggested that, since it would link up adjacent cable systems in Toronto, it would be licensed by the C.R.T.C. as a cable network, and would therefore be answerable to the regulatory agency for the programming is distributed. These proposals are open to several objections but they seem to us to be at least worthy of study, and we urge the Commission to consider them.

It seems to us that two things are needed in connection with community programmes on cable. One is some form of regulation to encourage the cautious cable operator to grant access fairly freely — some indication that his responsibility to grant access should not be overshadowed by his responsibility for every word that is uttered on the channel. The other is some indication of the size of system that is expected to originate community programmes.

Systems in Canada vary greatly in size, from those with a few dozen subscribers to those with many thousands — the largest, Canadian Wirevision of Vancouver, having more than 100,000. To attempt to equate the financial ability of the cable giants with that of tiny operations is futile, even though the Canadian Radio-Television Commission's policy on the matter at present is simply that each system must have a channel available for community programmes.

When one considers that the minimum annual cost of community programming is in the order of $20,000, that setting up the most basic studio is in the order of $10,000, the inability of systems with a hundred or so subscribers to undertake these ventures is obvious.

Again, the cable giants tend to operate in the very large urban centres where the need for more than one community channel is clear. The C.R.T.C. has provided for this to the extent that it may require a second community channel if there is a need for programming in both official languages, but it would seem reasonable that where profitability is high and profits are substantial, a higher level of community programming — both in quality and quantity — should be demanded.

The Federal Communications Commission has established that cable systems of 3,500 subscribers or more must originate a channel, but there is not the same emphasis on community programmes with the consequent production costs. We feel that the Canadian Radio-Television Commission should state the point at which a cable system is large enough that community programming may be expected.

The whole question of protecting the conventional broadcaster seems to us an exceptionally difficult problem with which the C.R.T.C. has not, to date, been successful in dealing. For one thing, as noted earlier, it is unclear to what extent the broadcaster really needs protection. The Canadian Association of Broadcasters, following its customary solipsist philosophy, feels that the broadcaster needs protection so greatly that he should own the cable system. The Committee, considering what it has learned of concentration of ownership, has no difficulty in rejecting that idea.

There are no instances of television stations in Canada going bankrupt because of cable systems, or indeed for any other reason, although some

cetrainly are losing money. Further, a recent study in the London market by the Television Bureau of Canada Inc., a creature of the private broadcasters themselves, indicated that the effects of cable television are not necessarily lethal.

The report presents four conclusions: that cable television does not significantly impair the ability of the home station to provide advertisers with total coverage of the market; that the homes lost by the home stations are partially recovered by other Canadian stations; that the reach of most schedules purchased on the home station will be higher than usually anticipated; and that the audience to a community channel is not large enough to be a factor that the advertiser should consider. This report has been challenged, but so far it has not been refuted.

We feel also that even if the danger to conventional broadcasters were clear and undisputed, the techniques indicated by the Canadian Radio-Television Commission in its cable television guidelines of April 10, 1969, are not necessarily the best ones, and indeed that they contain inconsistencies and anomalies that make their effectiveness doubtful.

The Commission has chosen to suggest a restriction on the number of commercial United States signals which might be carried by a cable system, and also a requirement that a cable operator must black out on the American channel any program that is carried by a Canadian channel either at the same time, or within seven days before or after.

The difficulties for a cable operator in administering these guidelines appear to us to be considerable, and it is not surprising that the cable operators themselves, while agreeing that nothing should be done to destroy conventional broadcasting, have said they will resist these restrictions with all the means at their command.

If, as the C.R.T.C. has indicated, a primary factor in its consideration was the ability of cable television to lengthen the commercial reach of American television stations and networks, perhaps some thought might be given to blacking out the commercials rather than the programmes. This is simple to do and our research indicates that the public, despite the Canadian Association Broadcasters' opinion to the contrary, is not fundamentally in love with commercials.

As suggested earlier, we feel there are many possible ways and combinations of ways to deal with this problem, and we urge the C.R.T.C. to continue to explore as many of these paths as possible. In particular, we would deplore the imposition of blackouts. Blacking out a programme on an American channel simply because it is also on a Canadian channel only guarantees that when the Canadian channel is broadcasting American programmes, those programmes will get all the audience; but when the

Canadian channel is carrying Canadian programmes, the audience will have an alternative, non-Canadian channel to watch. We can't see how this benefits anyone.

Some thought might be given to requiring the cable system to black out programmes only at the request of the local station which claims to be affected — which would put at least some of the onus on the protected party to ascertain just what programmes really damage his position.

We have noted also the proposal that cable operators be prevented from relaying non-Canadian television signals containing programmes or commercials that are contrary to Canadian law or regulation. In off-prime time, U.S. stations carry up to sixteen minutes per hour of advertising, as well as additional messages — public service announcements or promotional announcements — which under Canadian regulations are classed as advertisements. Does the C.R.T.C. seriously expect the cable operator to monitor his non-Canadian signals constantly to make them conform with the Commission's regulation of not more than twelve minutes per hour of all such material? Is the cable operator to monitor also for possible infractions in commercials of provincial laws on alcoholic beverages, or federal regulations regarding food and drugs? This would be a massive and necessarily constant editing job.

Again, we feel that the C.R.T.C. is evolving policy as it goes along, and that its task has been very difficult. But we also feel that it must strive to make its cable television policy rather more realistic. And it must move to do this soon, because development of cable television in Canada cannot be delayed.

We must emphasize that we believe the Commission has tried very hard to bring order out of chaos. We simply feel that the cable television situation can be dealt with better, and we trust that the C.R.T.C. has not decided that it need develop its policy no further.

An aspect of cable television that has much vexed this Committee is the extent to which telephone companies are entangled in it. The vast majority of cable television operations involve leasing a portion of cable from the telephone companies. Some few cable operators have been able to make arrangements with electric utilities companies or local public utilities commissions, but most of them have had to deal with telephone companies which have stipulated that the cable operators may not own the main cable, but must simply lease a portion of it from the telephone companies.

We are uneasy about the possible effects of this. For one thing, it means that far too much of the physical plant of Canada's cable television systems is owned by one giant company: Bell Canada.

But there are other implications, complex and far-reaching, of the involvement with common carriers that give cause for concern, and at the risk of appearing to pile Ossa on Pelion we propose to consider them at some length. For some of the decisions still to be made, and urgently required, are crucial to the whole future pattern of Canadian communications.

To begin with the basics: common carriers are regulated by the Department of Communications and have been assigned the responsibility of providing, for compensation, telecommunications services to those who seek them by means of any appropriate facility or apparatus. The federal government has favoured ownership of such facilities by the common carriers because it has recognized the need for a high standard of telecommunications equipment and because systems so owned may be rented to more than one user without unnecessary duplication.

This is a reasonable philosophy, but in practice it is causing problems, and in some cases hardship, to the broadcasting system of Canada. It works this way:

Microwave systems which connect cities or span long distances are installed, maintained, and owned by the common carrier. If a broadcaster wishes to use part of an *existing* service, usually an equitable rental can be established. But if no microwave service exists, problems can arise.

Technical standards set by the Department of Communications require the installation of an elaborate system, with duplicate service in case of breakdown, with excess capacity for rent to potential future customers, and capable of delivering a very high quality signal at the receiving end. The system far exceeds the needs of most broadcasters and cablecasters, but they are compelled to use it if they wish to extend their service or to receive distant signals at their head ends. As we will explain, the broadcaster often ends by paying a rent for his use of part of the system which resembles a gift of capital to the common carrier.

Involvement with the common carrier is not confined to inter-city communication. Cable operators must hang their coaxial cables on poles or insert them in conduits owned by telephone or public utilities companies. In most provinces (there is no general rule because the carriers have not established a standard policy) the common carriers insist on owning the coaxial cable. Contracts between cable operators and common carriers call for payment of a large initial fee — often equal to the full cost of materials and construction — and then an annual rental for use of the poles or conduits.

Let us consider an imaginary but representative example, with figures based on actual experience. A cable system requires 100 miles of coaxial cable. The initial payment to the common carrier will be in the neighbourhood of $450,000, and the annual rental approximately $20,000. The

service contract is for ten years, with means the cable operator's total expenditure will be $650,000. But the increase in his tangible assets will be zero. The cable operator has paid for the system, but the common carrier owns it.

If there is any kind of logic in this arrangement, it can only be in the Pickwickian sense. What makes it even more difficult to construe is that the cable operator could purchase and install the coaxial cable himself for about $350,000. He would still have to pay rental for poles or conduits, but he would own the cable and he would have a physical asset on which he could borrow money.

As we have suggested, we think the common carriers ought by now to have established a standard policy on ownership and rates for cable systems. Equally, we question the rigidity of the Department of Communications' regulations. For one thing, we wonder if it is really essential in all cases to insist on "gold-plated" systems. The likelihood of multiple requests for microwave service in northern Ontario, for example, or between Halifax and Sydney, is remote. Shouldn't the need of the public for broadcasting service in such areas override the technical equipment standards currently laid down? In these cases less costly equipment would suffice. If the common carriers and the Department of Communications find it difficult to accept responsibility for lower standards, there is an alternative. The broadcasters undoubtedly would by happy to install and maintain the system, and the Canadian Radio-Television Commission through its licensing power is able to govern the quality of signal reception.

Even if, in the end, the common carriers must own the facilities, we suggest that broadcasters and cable operators should not be charged for what they do not need and do not use. They should be charged for the share of capacity which they use, and on the basis of the value of a system which would be adequate to their needs.

One of the reasons this problem has not yet been resolved is that it lies in the hazy area of overlapping jurisdictions. We therefor recommend the creation of a joint committee, equally representative of the Department of Communications and the Canadian Radio-Television Commission but chaired by a D.O.C. member, before which the responsible common carrier and the broadcaster or cablecaster would appear. The committee's responsibility would be to recommend to the Department of Communications who should own the facilities required and, if the common carrier should be directed to own the equipment, to establish an equitable rental charge.

In the case of cable systems, we see no reason why rate standards cannot be set for head end antennas, coaxial cables, amplifiers, poles, tap units, and drop wires. This matter also could be referred to the joint committee,

since the interests of both the carriers and the broadcasters must be considered.

We support the concept, which appears to be also the C.R.T.C. 's concept that cable operators should own at least part of their systems. Otherwise the common carrier could rent out spare channels for use by closed-circuit systems. We are concerned about the total lack of regulation over the kind of programming that may be used on closed-circuit systems. We would oppose, for example, the use of cable as a data retrieval system if the operator's selection of data sources was not regulated as to variety, quality, and Canadian content.

The Committee is aware, for example, of a theatre in Toronto which, by using films that have been converted onto videotape and then displaying these productions on television monitors, has successfully avoided regulation by the Ontario film censor. Since the theatre cannot be said to be a broadcasting undertaking — having neither transmitter nor head end, and being limited to paying customers — it is not regulated by the Canadian Radio-Television Commission, either.

Another example is the educational information retrieval system for schools that has been developed in Ottawa as an undertaking among the school boards, Bell Canada, and the Ontario Institute for Studies in Education. It involves a central library of some 2,500 films and videotapes, upon which the classroom teacher can draw either by spontaneous request or advance booking. These are displayed on classroom television monitors.

While education is, of course, within the jurisdiction of the provinces, it seems to us that there is an unregulated area here. It is our belief that this unregulated area should be regulated, and that this should be done through the C.R.T.C. The necessary jurisdiction could be established through an amendment to the Broadcasting Act.

We feel that the future for cable television in Canada is a bright one. We do not agree with the broadcaster who told us he considers that cable will be obsolete before long. We repeat that it will be difficult to pick the correct path from the interweaving possibilities presented by cable television, but we feel that this matter must be pursued, and that although finding a solution may be difficult, it is nonetheless possible.

THE REGULATOR

This is a report on the Canadian mass media, not on the agencies of government which deal with them. The operation of the Canadian Radio-Television Commission therefore lies in a sense outside the Committee's

terms of reference. But it is patently impossible to consider the role and performance of broadcasting in this country apart from the powerful influence of the C.R.T.C., and we therefore venture some few brief comments on the part the Commission plays.

It was established by the Broadcasting Act of 1968 and given sweeping new powers to license and regulate all Canadian broadcasting, public and private. Its mandate was simple in concept — to carry out the intent of Parliament that the national broadcasting system should serve the national purpose — but frighteningly complex in interpretation and execution. (Example: the same act which gave the Commission its total authority to regulate, laid down in law the principle that "the right to freedom of expression....is unquestioned.") The new agency inherited some thorny problems of jurisdiction, of earlier conflicts unresolved, and of urgently needed policy decisions which had remained undetermined while Parliament pondered its own action. This was particularly true in the burgeoning business of cablecasting, which proliferated without regulation before the regulatory body was established.

Let us say at the outset that while we have some suggestions to offer in the hope that they will prove helpful, our admiration for the Commission's performance is almost unbounded and our agreement with the principles it has enunciated for Canadian broadcasting is total. In little more than two years, grappling with issues of a complexity which few laymen (and not even all newspaper critics) can appreciate, the C.R.T.C. has produced considerable order out of considerable chaos. It has enunciated clear, consistent, coherent goals. Using suasion by preference and constraint when necessary, it has begun to move the broadcasting system into the channels defined by Parliament. With the exception of a few areas where the limiting factor has been time to research and formulate policy, broadcasters know where they stand.

The Commission could still be assisted by a little help from above in the form of more explicit legislative direction. The Committee has noted three areas in which this applies. One is the question of concentration of ownership, where the trend toward larger and larger economic groupings has already been noted. The C.R.T.C. in our view has been dealing with the pressures intelligently and properly, but it would undoubtedly be more certain and comfortable in its decisions if it had clearer guidelines to follow. This Committee would not recommend the adoption of any rigid mathematical formula; the American practice here is not applicable to Canadian conditions. Each case should be dealt with separately. Elsewhere in this report we have described the guidelines we would apply to media ownership generally (above all, the preservation of the public interest). We believe it would be useful to incorporate these guidelines in the Broadcasting Act.

A second area where clarification would be helpful is that of jurisdic-

tion. The C.R.T.C. authority is now clear over cable systems which take signals from the air, but it is not clear that any supervision is currently possible over closed-circuit systems and information retrieval systems which select and distribute programmes. This is touchy ground (such systems do not use the public airwaves) and the Committee does not propose to tread it; but we believe the competent authorities should study first, whether these operations should come under regulation, and second whether they should, as programmers, be under the wing of the C.R.T.C.

There is also the question of where authority should be divided between the C.R.T.C. and the Department of Communications, when the interests of broadcasters collide with those of the common carriers. This subject has been touched on in the previous section; it needs to be resolved.

Finally, there is the tangled jungle of copyright law which currently bewilders and distresses everyone involved — broadcasters, writers, composers, performers, and inevitably the C.R.T.C. The Committee is aware of certain options in connection with cable policy which were considered closed because of uncertainty over copyright. We did not attempt to enter this highly technical maze because a governmental study is already under way.

Given the additional tools just outlined, we believe the C.R.T.C. will be fully equipped to discharge its mandate. It is already admirably constituted with a dedicated, firm and resourceful chairman; a vice-chairman long recognized as one of Canada's most imaginative broadcasters; a group of commissioners who contribute wide experience and varied talents; and an able staff. The Commission is notorious in Ottawa for its 16-hour working days and for the economy of its operation (less than $3,000,000 in 1969–70).

Having said this we proceed with some temerity to suggest where it might do better.

We think the C.R.T.C. would be advised to establish, on a personal basis, closer relationships with the country's broadcasters — by which we do not mean the owners of broadcasting enterprises. (The owners are constantly on the Commission's doorstep now; it is interesting to note that many of those who complain most loudly of the C.R.T.C.'s interference in their affairs are to be seen most frequently visiting its offices unsummoned.) Whatever the owners may decree, it is the producers and directors who give us the programmes we see and hear. It is our impression that these programmers are generally sympathetic to the C.R.T.C. 's thinking, and would be most encouraged to have the Commission listen to *them*. Since the Commission chooses to work by persuasion rather than by fiat, cultivation of these people should be fruitful. What we are really urging, then, is a cunning kind of counter-lobby.

Which is not to decry consultation with the broadcast owners. We have already said that individually the broadcasters are mainly sincere and public-spirited; it is only in their collective groupings that they display the woolly-minded irrationality of the herd. We think the Commission would do well to include in its inner councils a representation of people with a background in the business of private broadcasting.

We think the Commission could improve its public relations on several fronts. In the first place, it could do more to bring the public into discussions of policy. While it protests that concerned citizens are invited, and indeed welcomed, to participate in its various hearings, that word is not really abroad and something more active will have to be done to promote public attendance. We concede that a deterrent until now has been sheer pressure of business, but as the Commission clears its decks we hope it will make room for the people.

Second, we think the C.R.T.C. could explain its decisions better, and at the same time improve the machinery by which it makes those decisions known. If some of the public debate on C.R.T.C. policies has been ill-informed, a share of the responsibility must lie with the Commission itself. There is probably no need to labour this; in the wake of the fiasco of the CHIN and CKPM announcements, we would be surprised if the subject were not already high on the C.R.T.C. agenda.

We think the C.R.T.C. could expand its research more widely into the social implications of all phases of broadcasting. This, after all, is or should be the basis of all policy. We mention two examples of the kind of research we mean. First: it would be immediately valuable to have a determination, using tested sociological methods, of the readiness of community groups (especially minority-interest groups) to engage in programming on local cable channels, of the kinds of programming that might win acceptance in the community, and of the material and human resources which the cable operators are able and ready to commit. This is at least as important as the economic considerations involved, which are what we chiefly hear about. Second: What are the effects on children of TV violence generally, and of consumption-oriented children's programming? We were told by several organizations — the Canadian Association of Consumers, the Canadian Home and School and Parent-Teachers Federation — that this information is urgently needed. No one is assembling it; we are left to the usual resort of importing American studies and hoping that they will apply in Canada.

We are aware of one small piece of volunteer research. A group of concerned people from two church congregations in Montreal monitored CBC, CTV, and CBS programmes over a 64-hour period. They found that on all channels, the prime time for killing is 10:30 a.m. to 12:30 p.m. on Saturday — the Children's Hour. In that period, there was a killing every 11.4 minutes and an act of violence every 3.4 minutes. What is *that* doing to the kids?

It may be that the C.R.T.C. has done, or is doing, research in both these areas. If so, it reinforces our conclusion that its public relations could be improved.

These are incidental criticisms. The Commission is already aware of some weaknesses in its administrative structure and is dealing with them. We endorse its interpretation of its mandate, and the combination of toughness and understanding with which it seeks to carry it out. In particular, we support its developing policy on ownership concentration and its determination to forge a broadcasting system with a truly Canadian character. We quote the eloquent words of the chairman, Pierre Juneau, when he spoke to us on March 5, 1970:

> It is like an individual, how he sees his life, how he imagines what he is driving at, where he is going.... It is the image he has of himself, the image he develops as to what he wants to make of himself....
>
> Unless you decide what you are going to do, unless you have a somewhat precise image of what you want to do, it is no use thinking that you are going to get up in the morning and do something. To get up in the morning and just do what you did the morning before, continue in a sort of pragmatic down-to-earth way — I am not saying that you are not achieving things this way; you are, but you have no hope of going very far....
>
> If a country doesn't have a lively, vital and active communications system, if all the talk, all the movement of views, ideas and opinions, and all the images come from outside, then I suggest that after a while you have no common purpose, and if you have no common purpose it is like an individual who has no personal purpose...
>
> Of course, if we think of broadcasting as a pipe system to transport goods, that is another matter altogether.... But that is not why my colleagues and myself have accepted the responsibility of this Commission, and I don't think that is why Parliament has taken all the trouble of developing this Act. If you read it carefully there are much broader and fortunately much more intelligent expectations in this Act than just providing canned entertainment.

In the view of the Committee, we can safely entrust the development of the Canadian broadcasting system to a Commission with that kind of vision.

Document 51

During the fall of 1970, Canadians went through what came to be known as the October Crisis. A small number of militant Quebec separatists formed a clandestine revolutionary group, the Front de libération du Québec. During the 1960s, the FLQ was involved in more than 200 bombings. Then in October 1970, the group kidnapped first James Cross, the British trade commissioner in Montreal, and then Pierre Laporte, the Québec minister of labour. Laporte's body was found on 17 October, a day after the federal government proclaimed the War Measures Act.

It was during this volatile time, when cabinet ministers and ordinary citizens feared armed revolution, that CHNS, a Halifax radio station, attacked a local charity, Miles for Millions. The station said one of the recipients of the charity's funds was a group like the FLQ. The editorial was repeated throughout the day.

Not surprisingly, the Miles for Millions committee complained to the CRTC. About 18 months later, the CRTC commented on the affair, but the station retained its licence.

DOCUMENT 51: CRTC public announcement: Concerning an inquiry by the Canadian Radio-Television Commission into a complaint against radio station CHNS, Halifax, by the Halifax—Dartmouth committee of Miles for Millions, 28 March 1972.

On October 8, 1970 the Halifax-Dartmouth Committee of Miles for Millions issued a press release dated October 7, 1970 outlining the projects to be supported by it with funds to be raised from a March to be held in the Halifax-Dartmouth area on October 24, 1970.

On October 22, 1970, at approximately 8:10 a.m. Mr. Clive Schaefer, news editor of radio station CHNS Halifax, broadcast a five-minute editorial commentary based on the press release in which he compared one of the organizations he said was to be supported by the funds to the FLQ, suggested that some of the funds raised would wind up in the hands of Castro supporters and concluded that Miles for Millions has apparently "gone political".

At 8:20 a.m. on the same day, the General Manager of the station, Mr. H.E. Blackadar, called the Executive Director of the March, Mr. J. DeLaurier, informed him that Mr. Schaefer had taken exception to the press release and asked him to discuss the matter with Mr. Schaefer on an Open Mike program beginning at 8:30 a.m..

Mr. DeLaurier had not heard the commentary made by Mr. Schaefer but agreed nevertheless to participate in the program. It was while on the air at the beginning of the program that Mr. DeLaurier was informed by Mr. Schaefer of the nature of the issues raised by him in his commentary. Mr. DeLaurier's participation in the program continued until 9:15 a.m..

The normal schedule of this Open Mike program was extended by an additional half hour during which two organizers of the March called and attempted to explain their point of view.

Mr. Schaefer's editorial commentary was repeated four times during October 22. Excerpts from Mr. De Laurier's conversations with Mr. Schaefer were, according to Mr. Schaefer, presented in later newscasts read by Mr. Schaefer and other members of the news staff.

On October 23, 1970 Mr. Schaefer broadcast a further editorial commentary in which he repeated his charge that the projects to be supported by the March were politically oriented. Mr. DeLaurier refused to participate in a further Open Mike program following this commentary.

On October 24, the March took place.

In these circumstances, the Commission received a complaint against radio station CHNS from the Halifax-Dartmouth Committee of Miles for Millions and a written brief in late December 1970. A written reply to this brief from the station and Mr. Schaefer was received by the Commission at the beginning of June 1971. A supplementary brief from the Miles for Millions Committee was thereafter received by the Commission at the end of July 1971. Many letters from citizens in the area have also been received by the Commission. All have now been reviewed by it.

The Commission takes particular note of the following:

(1) that no advance warning of the broadcast of the commentary by Mr. Schaefer was given to any member of the Miles for Millions Committee;

(2) that the issues raised in the commentary were not discussed with any member of the Committee before the commentary was made;

(3) that the Committee had made details of the projects it intended to support available to the media on October 8, fourteen days before the commentary was first broadcast;

(4) that the commentary was broadcast on October 22, two days prior to the day set for the March and four days after the murder of Pierre Laporte by members of the FLQ;

(5) that one of the organizations said to be going to be supported by funds to be collected from the March was compared, in the commentary, to the FLQ;

(6) that the first knowledge of the commentary was given to the executive director of the March by telephone at 8:20 a.m. of the morning it was first broadcast at which time the director was advised that Mr. Schaefer had taken exception to the Miles for Millions press release and asked whether he would be willing to go on the air ten minutes later to discuss the matter; and

(7) that the executive director was actually on the air when the substance of Mr. Schaefer's commentary was reported to him by Mr. Schaefer who thereupon questioned the executive director on the matters raised in the commentary.

The Broadcasting Act imposes on all licensees of broadcasting undertakings a responsibility for the programs they broadcast and a duty to provide equitable opportunity for the expression of differing views on matters of public concern. Whether a breach of this duty has occurred will depend upon the circumstances of each case. However, where a broadcast commentary constitutes an attack on an organization which will have an immediate and profound effect on the plans or objectives of the organization, exceptional care will be required to ensure that the organization is given an equitable opportunity to present its views.

The Commission considers that Mr. Schaefer's commentary broadcast over station CHNS on October 22, 1970 constituted an attack on the purpose of the March to be held by the Miles for Millions Committee in the Halifax-Dartmouth area on October 24.

In the circumstances in which the commentary was broadcast and having regard to the allegations contained in it, particularly the allegation that Miles for Millions was intending to allocate part of its funds to an organization "something like our FLQ", CHNS was under obligation to take exceptional care to permit equitable opportunity for the Miles for Millions Committee to consider and reply. Specifically, in addition to granting Miles for Millions equitable air time, there should have been delivered to it, prior to the broadcast by Mr. Schaefer, a copy of the material to be broadcast and a notice of the times it was to be aired.

In failing to take these or similar measures, CHNS breached its duty to provide equitable opportunity for the expression of differing views on a matter of public concern. While there is no specific penalty provided for a breach of this nature, it is one of the matters for consideration by the Commission in determining whether a licensee should continue to be licensed.

The Commission issues this public announcement in the particular circumstances of this case as a form of censure against the licensee, Maritime Broadcasting Company Limited, and for the information of all licensees. Since this is the first time the Commission has dealt with a matter of this nature, it does not intend to re-open this incident for consideration in connection with any application by the licensee for the renewal of its licence. However, the Commission will be particularly interested in the course of action the licensee follows in dealing with any matters of a similar nature in the future.

Document 52

In May 1972, the CRTC defined its ideas about TV programs produced by Canadians in partnership with foreigners. Such joint ventures could serve at least two purposes: they could provide a cheaper route toward at least partial Canadian content; and they could provide a boost for Canadian producers into the international (meaning mainly US) market.

DOCUMENT 52: CRTC public announcement: "Programs produced under co-production or joint venture arrangements", 16 May 1972.

The Canadian Radio-Television Commission issues the attached guidelines for evaluation of the elements required in programmes produced as co-productions or joint ventures among Canadian and foreign producers to qualify these programmes as Canadian for the purposes of Section 6A(5) of the Television Broadcast Regulations.

These programmes will be called "Special Category Programmes".

The reasons for creating this category are:

(1) To recognize the participation of Canadian television producers in co-productions and joint ventures; and

(2) To ensure the maximum possible involvement of Canadian talent in the resultant productions.

In developing these guidelines, the Commission has taken into consideration views frequently expressed to the Commission,

(1) that the prime responsibility of the Canadian television industry is the production of programmes by Canadians which are relevant to Canadians; and

(2) that a proportion of programmes relevant to Canadians can have an international appeal without limiting their national interest.

The CRTC has also benefitted from the opinions of many people in the television industry on the relative merits of high-budget and low-budget programmes. The conclusion is that a healthy Canadian television production industry should not be limited to relatively low budget productions, important as they are, but must include a reasonable proportion of high budget

programmes. International participation in the financing and distribution of Canadian co-productions can help develop the television industry in Canada. It will help to illustrate the abilities of our creative people on a world-wide basis.

The guidelines on "Special Category Programmes" are designed to acquaint all participants in co-productions and joint ventures with the qualifications necessary to obtain such classification.

The CRTC recognizes that the factors to be taken into consideration may differ from one project to another. It will at the request of Canadian producers, discuss the proposed elements of co-productions and joint ventures to ensure the necessary degree of Canadian involvement.

The commission invites the co-operation of all those involved in the production of programmes in the continuing development of policies which will foster a television programme resource of Canadian and international importance.

GUIDELINES FOR SUBSECTION 6A(5) OF THE TELEVISION BROADCASTING REGULATIONS

I — DEFINITION

1) In these guidelines:

i. "Co-production or joint venture" means any arrangement among Canadian and foreign producers to produce, on film or video tape, one or a series of programmes for television viewing.

ii. "Talent" means all persons involved in a television production.

iii. "Canadian participation" means that portion of the total cost of the co-production or joint venture spent to employ Canadian talent and utilize Canadian facilities for each of the following:

a) Artistic control — those functions directly involved in determining the form and content of a programme including but not limited to concept and writing;

b) Principal performers — any person playing a major role;

c) Administration and finance — the business arrangement for a programme;

d) Technical — the contribution of camera men, lighting technicians and other technical personnel to the creations of the programme;

e) Production — the physical efforts, trades and the facilities involved in creating the programme;

f) Post production — finishing processes by which the basic programme is prepared for broadcast;

g) Additional talent — performers of less importance than principal performers and off camera performers; and

h) Music — the contribution of composers, conductors and musicians.

iv. "Special category programme" means a programme or series of programmes which have been produced under a co-production or joint venture arrangement as defined, and which are recognized as such by the Commission. Such programmes will be assigned an S.R. (SPECIAL RECOGNITION/SPECIALEMENT RECONNU) number. Programmes recognized as such will be deemed Canadian under Section 6A(5) of the Television Broadcasting Regulations

II — COUNTRIES OTHER THAN COMMONWEALTH AND FRENCH LANGUAGE COUNTRIES

2) A single programme or series of programmes produced under a co-production or a joint venture arrangement among Canadian producers and producers of countries other than Commonwealth or French language countries will be considered special category programmes where 50 % or more of the total cost of the programme or programmes is spent in Canada on Canadian participation.

3) Special category programme recognition will not be given to a part of any single programme.

III — COMMONWEALTH AND FRENCH LANGUAGE COUNTRIES

4) A single programme or series of programmes produced under a co-production or a joint venture arrangement among Canadian producers

and producers of Commonwealth or French language countries will be considered special category programmes where 30 % or more of the total cost of the programme or programmes is spent on Canadian participation.

5) Where a series as a whole does not meet the requirements set out in paragraph 4, certain programmes in the series may be considered special category programmes on the following basis:

   a) In a series of 13 programmes, 8 programmes will be considered special category programmes where 20 % or more of the total cost of the series is spent on Canadian participation,

   b) In a series of 13 programmes, 4 programmes will be considered special category programmes where 10 % or more of the total cost of the series is spent on Canadian participation.

IV — GENERAL

6) In all cases special category programme recognition will only be given where, in addition to the required proportion of Canadian participation, there is a significant involvement by Canadians in the artistic control of the co-production and among its principal performers.

7) A single programme or series of programmes produced under a co-production or joint venture arrangement to which the Government of Canada is a party will be considered special category programmes.

8) A single programme or series of programmes produced for or on behalf of any department or agency of the government of Canada or the Government of any Province will be considered special category programmes.

Document 53

The CRTC used the 1974 renewal of all the CBC's radio and television licences as an opportunity to suggest a less commercial future for the public broadcaster. The shift in policy followed a week of public hearings in February that functioned as a miniature royal commission. About thirty individuals and special-interest groups representing consumers, labour, women, advertisers, native people, and other groups ventilated their dissatisfactions with contemporary broadcasting and their hopes that the CBC could make things better.

The CRTC response was a 92-page report with recommendations. A summary of the public hearings took another 145 pages. Reprinted below are the CRTC's conclusions on "expression of Canada" (a novel phrase for Canadian content) and other conclusions on "the commercial context." This was the document that heralded the end of commercials on CBC radio and some significant limitations for commercials on CBC TV.

DOCUMENT 53: CRTC, "Radio frequencies are public property," public announcement and decision of the Commission on the applications for renewal of the CBC's television and radio licences, 31 March 1974, 32–34, 43–44.

CONCLUSIONS [on "expression of Canada."]

1. Everyone interested in the national broadcasting service should be encouraged by the undertaking of the management of the CBC to:

- increase the proportion of Canadian programming to 75% for nine months of the year, if resources are available
- increase regional participation in network programming
- increase regional and local programming
- increase considerably the programming of Canadian films
- seek ways of making further use of Canadian programs, perhaps through cable television, and through educational and other channels, but not at the expense of creators
- find ways to preserve the best programs so that the work of talented Canadians produced for television or radio does not disappear.

2. While the Commission welcomes these undertakings, it also encourages the Corporation to develop and enunciate clear and precise policy to ensure that:

- the national broadcasting service safeguards, enriches and strengthens the cultural, political, social and economic fabric of Canada
- its programming, in every category is predominantly Canadian in content and character
- it serves the special needs of geographic regions and contributes to the flow and exchange of cultural and regional information and entertainment
- the national broadcasting service contributes to the development of national unity and the expression of Canadian identity.

The Commission recommends that the following approaches be considered:

a. create, by decision of the Board, a special fund within the budget of the Corporation to finance special programs or series of programs, and to fund exchanges of staff and program participants designed to help reflect English-speaking Canada to French-speaking Canada and vice-versa

b. use a similar technique to finance programs produced by regions for the networks and programs reflecting the multicultural diversity of the country

c. re-assess events, which traditional or conventional evaluations and practices have classified as regional or local, in the light of their interest for national audiences

d. derive the maximum benefit from the instantaneous transmission and switching capabilities which exist from British Columbia to Newfoundland, rather than using them as a carrier of pre-recorded material only

e. develop new formats for more regular and attractive programming of events and developments in the fields of Canadian literature, art, film and the theatre

f. make provision to acquire, at the outset, the necessary rights to permit the further use of CBC programs by schools, educational organizations and possibly cable television

g. undertake to find ways to ensure that the best CBC radio and television programs are preserved so that the works of talented Canadians do not disappear.

3. The Commission urges the CBC to play a strong role in the development of the Canadian feature film industry both by participation in the financing of films, and by their regular scheduling on the French and English television networks. Specifically in this regard, the Commission strongly recommends that the CBC present on each network, not less than 12 times per year, the first television showing of a Canadian feature film.

It is further recommended that where the CBC has the opportunity to do so it seriously investigate the use of its considerable purchasing power of foreign made feature films as a lever to effect the distribution of Canadian features in other countries.

4. The Commission recognizes that the CBC exceeds the proportion of 60 % of Canadian programming required by the CRTC and that it intends to increase this proportion if adequate resources are made available.

The Commission notes, however, that during the portion of the evenings when the largest number of viewers are watching television, from 8:00 to 9:00 p.m., most of the programming on the English television network, namely 72 %, is foreign entertainment. Only 28 % is Canadian, including hockey.

The Commission proposes to attach a condition to the CBC's television licences requiring that 50 % of the programs broadcast between the hours of 8:00 and 9:00 p.m. during the fall and winter program period be Canadian in content. This percentage may averaged over four week periods. All such programs will be required to be broadcast on CBC affiliates as part of the network's reserve time requirement. This condition will be in addition to the Corporation's responsibility under the existing CRTC regulations affecting Canadian content.

CONCLUSIONS [on "the commercial context']

1. At the hearing, the President announced the intention of the Corporation to effect the following changes in the commercial activities of the CBC:

a. By the end of 1974 commercials would be eliminated entirely from programs on CBC radio other than those programs which are available only on a sponsored basis.

b. Provided public funds are made available to offset the lost revenue, commercials would be eliminated from CBC children's television programs by the end of 1974.

The Commission proposes to attach to the appropriate CBC licences conditions requiring implementation of these intentions.

2. The President also stated that, in television, CBC intends to maintain its policy that certain classes of programs should be free of commercial interruptions, including news and public affairs, and to extend the classes of programs to be exempt from internal interruptions to include other programs of special public interest and artistic merit, including high quality dramatic productions. The Commission welcomes this initiative and offers as a suggestion derived, from the many complaints it has received with regard to these matters, the following scheduling guidelines:

a. Interruptions for advertising material should only be permitted if the flow or mood of the program will not be disturbed.

b. The number of interruptions, and the number of commercial or other messages in an interruption, should vary according to the nature of the program. Several interruptions should only occur in programs constructed to accommodate them such as variety programs, situation comedies and sports actualities.

3. The Commission points out to the Corporation that it is a Commission requirement that, unless otherwise clearly indicated, advertising material in any television program other than a live sports program or live actuality must be preceded by visual or sound material clearly indicating the beginning and the end of the advertising material. The Commission expects the Corporation to ensure strict adherence to this requirement at all times.

4. The Commission proposes to attach a condition to the CBC's television licences requiring that the total amount of time permitted for any non-program material, including commercial messages, network or station promotional messages and public service messages, in any clock hour be reduced. Effective 1 October 1975, the total number of minutes occupied by such material in any clock hour must not exceed eight minutes. Effective 1 October 1976, the total must not exceed seven minutes, effective 1 October 1977, six minutes and effective 1 October 1978, five minutes. Thus, in five years' time, the duration of the CBC's television network licences, the total amount of time allowed for such advertising material will have been reduced by fifty per cent from the present level, which generally is a maximum of ten minutes on a CBC station.

5. The CBC should undertake a thorough review of its scale of rates for the sale of television network and station advertising time. The Commission considers that the CBC should, in establishing such rates avoid any tendency to take advantage of its subsidized position.

6. The Commission recognizes that the necessary changes in the CBC's commercial operations will have a very substantial impact on its arrangements with its private television affiliates. The Commission considers the revision of these arrangements to be a priority matter and will be prepared to assist in negotiating the required new affiliation agreements.

7. The commission was informed that the CBC is negotiating new affiliation agreements with its English and French radio network affiliates. The Commission expects that these negotiations will be completed without delay and that the resulting agreements will require each affiliate to carry no less than 35 hours per week of CBC network service.

8. In summary, the Commission considers that every effort must be made to remove all constraints which handicap the Corporation in achieving the objectives for which it exists. Commercial activity deflects the CBC from its purpose and influences its philosophy of programming and scheduling. It must, in the Commission's considered opinion, be reduced or even eliminated entirely.

During the next five years, every effort should be made by the CBC to eliminate as many as possible of the excesses and undesirable effects of commercials on its television service. The CBC should also, during this period, assist advertisers and advertising agencies who have expressed a desire to improve advertising practices in order to make them more responsive to the values and concerns of a changing society.

Document 54

By the early 1970s, broadcasting was being overshadowed by the wider concerns of telecommunication. Broadcasters now used not only the telephone companies' land lines and microwave towers, but satellites, computers, videotext software, and coaxial and laser cable—technologies that had been developed to serve many users besides radio and TV stations. This led to jurisdictional confusion. The CRTC regulated broadcasters, and the telecommunication committee of the Canadian Transport Commission regulated telephone and telegraph companies, but the two sides were increasingly using the same equipment. A further complication was rivalry between the provinces and the federal government over how telecommunications could be controlled.

In November 1973, there was a federal-provincial conference on communications in Ottawa, followed by meetings between Gérard Pelletier, the federal Minister of Communications, and his provincial counterparts. In April 1975, the federal side published proposals for rationalizing the control of all telecommunications. This was an early indication of the new powers and new name that would soon (see Document 55) be given to the CRTC . The excerpt which follows is an outline of the legislative process which the federal government intended to use to put telecommunications under one roof.

DOCUMENT 54: Department of Communications, "Communications: some federal proposals," April 1975, 11–14.

III.
Federal Legislation

Parliament will be asked to enact measures to revise and consolidate existing federal legislation governing communications. One of the principal effects will be to permit the establishment of more effective arrangements for cooperation with the Provinces. The new legislation is being introduced in two stages.

1. *First Stage*

The first stage, for which legislation has already been introduced, is limited to the establishment of a single regulatory body to exercise the

powers and functions of the Canadian Radio-Television Commission and the Telecommunications Committee of the Canadian Transport Commission. The body, to be known as the Canadian Radio-television and Telecommunications Commission, will consist of nine full-time members, including a Chairman and two Vice-Chairmen, and ten part-time members. No provision would be made at this stage for any change in the powers to be exercised under the *Broadcasting Act*, the *Railway Act*, or other relevant federal statutes.

2. *Second Stage*

The second-stage legislation would entail a complete revision of existing statutes with a view to clarifying their application to contemporary and future modes of telecommunication, to rationalizing the respective roles of the Federal Government and the regulatory body, to providing for more effective collaboration with the Provinces, and generally to establishing a coherent body of federal law on communications.

It is the intention that the Governor in Council should be authorized to give formal directions to the Commission on the interpretation of statutory objectives and the means for their implementation. Matters not subject to such direction would be specified in the statute, the most important being matters of broadcast programming. The purpose of this provision would be to ensure that the development of policy would be, and would be clearly seen to be, under the control of elected representatives of the people. It would also afford opportunity, from time to time, for the views of the Governments of the Provinces to be made applicable to the decisions of the federal Commission.

An example that may be cited is the question of inter-carrier competition, about which several provinces have expressed concern. Under this provision, it would be possible to ensure that, within federal jurisdiction, no entry into the provision of telecommunications services by a new carrier would be permitted without the approval of the Governor in Council, which would also be required for new facilities, or extension of existing facilities, of a major character by the existing federally-regulated carriers. Subject to reciprocal undertakings by the Provinces with regard to provincially-regulated companies, such approval would be given only after consultation in the proposed *Committee on Communications Policy* or direct discussion with the provincial government or governments concerned.

The new statute would embody a statement of objectives which would govern the Minister of Communications and the federal Commission in the exercise of their powers and functions.

Subject to the enactment of the second-phase legislation, the Government would seek the concurrence of each provincial government in the nomination of one of the ten part-time members to be appointed for a term to the new Commission by the Governor in Council. These part-time members would participate in public hearings and private deliberations on broadcasting matters, with the same responsibilities and powers that the part-time members of the CRTC have today under the *Broadcasting Act*.

The enactment of the proposed second-phase legislation would enable the Commission to make use of new provisions designed to facilitate cooperative arrangements with the Provinces, to ensure adequate public access to efficient services, to achieve more effective economic regulation of the telecommunications carriers subject to federal regulation, and to rationalize the relationships between carriers and cable-television undertakings.

The principal features of the second-phase legislation may be summarized under the following headings:

(a) regulation of carriers subject to federal jurisdiction;

(b) radiocommunication;

(c) broadcasting (general);

(d) broadcasting (cable).

A.
Regulation of Carriers Subject to Federal Jurisdiction

1. *General*

In taking steps to clarify the powers of the federal regulatory body with regard to telecommunications carriers, the intention is to provide a statutory framework in which the Commission could establish mechanisms, based on an adequate understanding of a carrier's financial position and prospects, so as to ensure that the rate structure is not only just and reasonable for the public but also compatible with the ability of the carrier to raise the new capital required for extensions and improvements, and for the introduction of new technological developments that would improve service to the public.

The Commission would be responsible, as the Canadian Transport Commission is at present, for ensuring that rates for telecommunications subject to federal jurisdiction are just, reasonable, and non-discriminatory,

while providing an adequate return on investment. Where there is any incompatibility between the new statute and the special act of incorporation of a carrier, the former would prevail.

In order to ensure proper service to the public, it is proposed that, subject to enactment of the second-phase legislation, the Commission would be empowered to order a federally-regulated carrier to provide basic services in areas where they are not available, taking the cost of doing so into account in the determination of the carrier's general tariffs. The Commission would also be empowered to enforce standards of quality in the services provided by the carriers, and to authorize limited trials of new services or equipment so that their value to the public may be determined. To ensure room for competition in the provision of services that might better be provided competitively, it would be possible, subject to the approval of the Minister, to exempt the provision of specified services from rate regulation, provided that the Commission is satisfied that this can be done without detriment to the effective regulation of the general service to the public.

It is the intention that the new Commission would be empowered (within the limits of federal jurisdiction) to determine whether any proposed interconnection of apparatus or equipment that is compatible with technical standards would be in the public interest, having regard to economic and other considerations, and to order interconnection subject to appropriate conditions.

Complex considerations also arise with regard to interconnection of systems. The interconnection of public carrier systems with each other has an important bearing on some aspects of inter-carrier competition, to which the Government is giving close attention. Interconnection of private systems with the public switched networks may raise economic problems for the latter, which would be left for consideration by the new federal Commission in making decisions as to whether, and on what conditions, such interconnection should be allowed within the area of federal jurisdiction.

It is also proposed that the second-phase legislation should embody a number of provisions, some of which are included in existing legislation, designed to facilitate the more effective economic regulation of the telecommunications carriers subject to federal authority. The carriers would be required to submit annually a five-year program of investment and construction, and the Commission would be empowered to exclude from the carrier's rate-base any capital or other expenditures not deemed to conform to the public interest, to approve all equity issues, and to approve or prohibit the incorporation, acquisition, or disposal of subsidiary companies.

In order to implement any consensus reached by the proposed *Association of Communications Regulatory Bodies* with regard to uniform procedures and criteria, the Commission would be empowered to prescribe, for

example, the form and frequency of returns accounting for operating and capital expenditures both by the federally-regulated carriers and their subsidiary and associated companies, to prescribe uniform methods of cost accounting and rates of depreciation that it will use, and to establish the cost separation formulae it will use in its determination of the rate-base for all services.

2. *Carriers and Cable-television Undertakings*

The proposed second-phase legislation would contain provisions to rationalize the relationships between federally-regulated carriers and community-antenna television (CATV) undertakings. The regulatory body would thus be empowered to approve all agreements between federally-regulated carriers and CATV operators covering the use of facilities and, as appropriate, to order federally-regulated carriers to furnish access to facilities at reasonable rates and without unreasonably restrictive conditions.

3. *Provincial Participation in Federal Regulation of Carriers*

Bell Canada operates in two provinces and in the North-West Territories—a sufficient reason in itself for the exercise of federal regulatory authority. It is recognized, however, that the Provinces of Ontario and Quebec are thereby placed in a position different from that of the provinces that have jurisdiction over the main carriers operating within the province. Subject to the enactment of second-stage legislation, the Government would accordingly be willing to enter into an agreement to meet the concerns of the Provinces of Ontario and Quebec. Under such an agreement, in public hearings and private deliberations on matters related to Bell Canada, representatives of the regulatory bodies of Ontario and Quebec could be entitled to participate in the proceedings of the federal Commission before its decisions are made. Similarly, the agreement could provide that a representative of the federal Commission should be invited to participate in hearings by the regulatory bodies of Ontario and Quebec on matters that have extra-provincial aspects.

The Government is engaged in bilateral discussions with the Governments of British Columbia and Newfoundland with regard to future arrangements for the regulation, respectively, of the British Columbia Telephone Company and the telephone service provided in Newfoundland by Canadian National Telecommunications.

It is also proposed that the federal Commission be authorized to ask the appropriate provincial regulatory body or bodies for advice on certain matters within federal jurisdiction if they have significant intra-provincial aspects. The Commission would be empowered to consult a provincial

regulatory body in advance of a rate hearing that could have important intra-provincial implications.

The introduction, under powers to be provided in the second-phase legislation, of these arrangements for participation in the federal regulatory process by representatives of provincial regulatory bodies would entail no obstacle to the continuation of the existing right of a provincial government to be represented as an intervenor in federal public hearings.

B.
Radiocommunication

Since Hertzian waves recognize no boundaries, provincial or national, the management of the radio-frequency spectrum is necessarily subject to international agreements and constraints in which only the Federal Government can represent Canada. Policy and planning for the utilization and allocation of the spectrum must therefore be administered on a national basis. This does not, however, preclude the participation of the Provinces (either through the *Committee on Communications Policy* or through individual bilateral arrangements with the Federal Government) in the identification of provincial and regional requirements to be accommodated in national spectrum planning.

Under the proposed legislation, the Minister of Communications would retain his responsibility for the orderly development of radiocommunication, with authority over the management of the radio-frequency spectrum and exclusive authority to issue radio licences. However, he would additionally be empowered to invite a provincial government or governments to make recommendations on any matter within his jurisdiction which is specifically related to that province or which has implications for more than one province. The Minister would also be entitled to call upon the federal regulatory body, or (through the responsible provincial Minister) invite a provincial regulatory body, to advise him, perhaps after a public hearing, on any matter within his jurisdiction.

C.
Broadcasting (General)

The Parliament of Canada has exclusive legislative authority over all forms of broadcasting, and the Government is determine to ensure that Canada shall continue to have a broadcasting system that preserves and strengthens the social, cultural, political, and economic fabric of Canada, and that is predominantly Canadian in content and character. Furthermore, it is essential that broadcasters, whether in the public or the private sector, shall be free from partisan political influences, being subject only to general

standards as to the origin, quality, balance, and language of their programming; this is the basis of the relationship between the Federal Government, the CRTC, and the CBC.

There is a distinction to be drawn between the responsibility of the Government for the structure and balance of the broadcasting system itself, and the delegation by Parliament to an independent regulatory body of responsibility for supervising the balance and quality of the programming carried by the system. As has been stated, it is proposed that under the new legislation the Governor in Council would be empowered to give formal directions to the Canadian Radio-television and Telecommunications Commission on matters affecting the structure and balance of the broadcasting system. It should be stated clearly, however, that the exercise of this new power would not be applicable to the content of programming by the CBC or private broadcasters, a subject that would be specifically exempted from governmental direction by the proposed statute.

This new provision would enable the Government to give effect to the concerns of the Governments of the Provinces with respect to broadcasting coverage and service. Accordingly, an undertaking would be given to discuss broadcasting priorities with provincial governments, in advance of major decisions on coverage and service priorities, at meetings to be held at regular intervals.

Subject to the foregoing provisions, the Canadian Radio-television and Telecommunications Commission would be charged with the supervision and regulation of the Canadian broadcasting system in accordance with the statutory objectives.

With regard to the licensing and regulation of broadcasters, the part-time members of the new regulatory body would participate in its proceedings as the part-time members of the CRTC do today. As stated above, the Government intends, subject to the enactment of the second phase of legislation, to seek the concurrence of each provincial government in the nomination of one of the ten part-time members to be appointed for a term by the Governor in Council, thus ensuring the infusion of local and regional sensitivity into deliberations on licensing and regulatory matters.

D.
Broadcasting (Cable)

The Government has given long and earnest consideration to the representations of the Governments of the Provinces on the subject of regulatory authority over cable-television systems. A cable system that receives broadcasting transmissions from a community antenna and distributes them to subscribers has been designated as a 'broadcasting receiving

undertaking' and, as such, is subject to the exclusive legislative authority of Parliament. However, the coaxial cables that distribute the broadcast signals have the potential capacity, subject to modification of their ancillary equipment, to carry a wide variety of telecommunications services that are not necessarily related to broadcasting. Coaxial-cable systems providing general telecommunications services are already being installed by the carriers, and it is therefore arguable that the development of separate cable systems to distribute broadcast programs may be unnecessary. Several provincial governments are especially concerned with the overall development of carrier and cable facilities, which they regard as vital elements in regional and local development planning within their borders.

Nevertheless, whatever the future potential of coaxial-cable systems, the predominant function of those that have a broadcast receiving antenna is at present, and will remain for some time, to extend the range of broadcast transmissions and improve the quality of their reception. There is therefore no practical alternative at present to regarding them primarily as essential elements in the structure of the Canadian broadcasting system as a whole. The problem, as a result, is to find some means of accommodating provincial concerns without opening the way to a damaging impact on the capacity of Canadian broadcasters to provide the kind of programming that is needed if the broadcasting system is to remain, as it must, predominantly Canadian in content and character.

The Government has therefore given careful consideration to means of associating the appropriate provincial authorities with the federal regulatory body when the licensing of 'broadcast receiving undertakings' is under consideration. The second phase of the new federal legislation would provide that a representative of the appropriate provincial regulatory body will be entitled to take part in the public hearings and the private discussions of the federal regulatory body in advance of decisions taken with regard to the issue, amendment, renewal, suspension, or cancellation of a licence for a broadcast receiving undertaking.

Furthermore, the Government would be willing to discuss any practicable arrangements that the Provinces might suggest in order to give them a greater share in the process of licensing and regulating broadcast receiving undertakings. An essential prerequisite for any such arrangements would be an agreement explicitly accepting federal authority to impose criteria or conditions on any undertaking offering any form of 'programming' for distribution on coaxial-cable systems, in addition to the technical certification of any radio-receiving apparatus used by such systems. Subject to this guarantee for the protection of the Canadian broadcasting system, it would also be possible to negotiate arrangements with regard to the common use of coaxial cable and other facilities so as to ensure the orderly and economical development of broadband-cable systems throughout Canada. The Government would therefore welcome a discussion on any proposals for practicable arrangements for this purpose.

Document 55

By early 1975, federal ideas about the future of telecommunications (including broadcasting), outlined in the previous document, had been translated into a bill that was being debated in the House of Commons. The new act created a larger CRTC, with nine full-time members rather than five, and with jurisdiction over telecommunications as well as broadcasting. The acronym CRTC remained the same, though the body's name was changed to reflect its increased powers. The act came into force on 1 April 1976.

DOCUMENT 55: "Canadian Radio-television and Telecommunications Commission Act," 19 June 1975, 23&24 Eliz. 2, c. 49.

SHORT TITLE

1. This Act may be cited as the *Canadian Radio-television and Telecommunications Commission Act.*

INTERPRETATION

2. In this Act,

"broadcasting" means any radiocommunication in which the transmissions are intended for direct reception by the general public;

"Chairman" and "Vice-Chairman" mean the Chairman and any Vice-Chairman of the Commission designated by the Governor in Council pursuant to subsection 6(1);

"Commission" means the Canadian Radio-television and Telecommunications Commission;

"Executive Committee" means the Executive Committee of the Commission established by subsection 12(1);

"member" means a member of the Commission and includes a full-time member and a part-time member;

"Minister" means the Minister of Communications;

"radiocommunication" means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by means of electromagnetic waves of frequencies lower than 3,000 Gigacycles per second propagated in space without artificial guide;

"telecommunication" means any transmission, emission or reception of signs, signals, writing, images or sounds or intelligence of any nature by wire, radio visual or other electromagnetic system;

"telecommunications undertaking" means an undertaking in the field of telecommunication that is carried on in whole or in part within Canada or on a ship or aircraft registered in Canada.

PART I

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Commission Established

3. (1) There shall be a Commission to be known as the Canadian Radio-television and Telecommunications Commission consisting of not more than nine full-time members and not more than ten part-time members to be appointed by the Governor in Council.

(2) Each full-time member shall be appointed to hold office during good behaviour for a term not exceeding seven years and each part-time member shall be appointed to hold office during good behaviour for a term not exceeding five years.

(3) Subject to subsection (4) and section 5, a member is eligible for re-appointment upon the expiration of his term of office but a part-time member who has served two consecutive terms is not, during the twelve months following the completion of his second term, eligible for re-appointment as a part-time member.

(4) A member ceases to be a member of the Commission upon attaining the age of seventy years but may be removed at any time by the Governor in Council for cause.

4. A full-time member shall devote the whole of his time to the performance of this duties under this Part.

5. (1) A person is not eligible to be appointed or to continue as a member of the Commission if he is not a Canadian citizen ordinarily resident in

Canada or if, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise, he

(a) is engaged in a telecommunications undertaking; or

(b) has any pecuniary or proprietary interest in

(i) a telecommunications undertaking, or

(ii) the manufacture or distribution of telecommunication apparatus except where such distribution is incidental to the general merchandising of goods by wholesale or retail.

(2) Where any interest prohibited by subsection (1) vests in any member by will or succession for his own benefit, he shall, within three months thereafter, absolutely dispose of such interest.

Chairman and Vice-Chairman

6. (1) The Governor in Council shall designate one of the full-time members to be Chairman of the Commission and two of the full-time members to be Vice-Chairmen of the Commission.

(2) The Chairman is the chief executive officer of the Commission, and has supervision over and direction of the work and the staff of the Commission and the Chairman shall preside at meetings of the Commission.

(3) In the event of the absence or incapacity of the Chairman or if the office of Chairman is vacant, the Commission may authorize one of the Vice-Chairmen to exercise the powers and to perform the duties and functions of the Chairman.

(4) The Commission may authorize one or more of its full-time members to act as Chairman for the time being in the event that the Chairman and both Vice-Chairmen are absent or unable to act or if the offices are vacant.

Remuneration

7. (1) Each full-time member shall be paid a salary to be fixed by the Governor in Council and each part-time member shall be paid such fees for attendances at meetings of the Commission or any committee thereof or at any public hearing before the Commission that he is requested by the Chairman to attend as are fixed by by-law of the Commission.

(2) Each member is entitled to be paid such travelling and living expenses incurred by him in the performance of his duties as are fixed by by-law of the Commission.

Staff

8. The officers and employees necessary for the proper conduct of the business of the Commission shall be appointed in the manner authorized by law.

Superannuation

9. (1) The full-time members of the Commission shall be deemed to be persons employed in the Public Service for the purposes of the *Public Service Superannuation Act*.

(2) For the purposes of any regulations made pursuant to section 7 of the *Aeronautics Act*, the full-time members of the Commission shall be deemed to be persons employed in the public service of Canada.

Head Office and Meetings

10. (1) The head office of the Commission shall be in the National Capital Region described in the schedule to the *National Capital Act* or at such other place within Canada as may be designated by the Governor in Council.

(2) The Commission shall meet at least six times in each year.

(3) A majority of the full-time members from time to time in office and a majority of the part-time members from time to time in office constitute a quorum of the Commission.

By-laws

11. The Commission may make by-laws

(a) respecting the calling of meetings of the Commission,

(b) respecting the conduct of business at meetings of the Commission and the establishment of special and standing committees of the Commission, the delegation of duties to such committees and the fixing of quorums for meetings thereof, and

(c) fixing the fees to be paid to part-time members of the Commission for attendances at meetings of the Commission or any committee thereof or at public hearings before the Commission that they are requested by the Chairman to attend, and the travelling and living expenses to be paid to members,

but no by-law made under paragraph (c) has any effect unless it has been approved by the Minister.

Executive Committee

12. (1) There shall be an Executive Committee of the Commission, consisting of the full-time members of the Commission from time to time in office, which shall exercise the powers and perform the duties and functions conferred on it by this Part and the *Broadcasting Act* and shall submit to each meeting of the Commission minutes of its proceedings since the last preceding meeting of the Commission.

(2) A majority of the full-time members from time to time in office constitute a quorum of the Executive Committee.

(3) The Executive Committee may make rules respecting the calling of its meetings and the conduct of business thereat.

(4) Any act or thing done or deemed to be done by the Executive Committee in the exercise of the powers or the performance of the duties and functions conferred on it by this Part and the *Broadcasting Act* shall be deemed to be an act or thing done by the Commission.

13. The Executive Committee may make by-laws respecting the establishment of special and standing committees of the Executive Committee, the delegation of the powers, duties and functions of the Executive Committee to such committees and the fixing of quorums for meetings thereof and may, by any such by-law, provide that any act or thing done by any such committee in the exercise of the powers or the performance of the duties and functions so delegated to it shall be deemed to be an act or thing done by the Executive Committee.

Objects, Powers, Duties and Functions

14. (1) The objects and powers of the Commission and the Executive Committee in relation to broadcasting are as set forth in the *Broadcasting Act*.

(2) The Executive Committee and Chairman shall exercise the powers and perform the duties and functions in relation to telecommunication, other than broadcasting, vested by the *Railway Act*, the *National Transportation Act* or any other Act of Parliament in the Canadian Transport Commission and the President thereof, respectively, and references in any such Act to the Commission or to the President or Vice-President thereof to the extent that such references relate to any matter, the powers, duties and functions in relation to which are by this section vested in the Executive Committee and Chairman, respectively, shall be deemed to be references to the Executive Committee established by this Act or to the Chairman, as the case may be.

(3) For greater certainty but without limiting the generality of subsection (2), sections 17 to 19 and 43 to 82 of the *National Transportation Act* apply, with such modifications as the circumstances require, in the case of every inquiry, complaint, application or other proceeding to or before the Executive Committee of the Canadian Radio-television and Telecommunications Commission under the *Railway Act* or any other Act of Parliament other than the *Broadcasting Act* and, in the event of any conflict between those sections of the *National Transportation Act* and the provisions of the *Railway Act* or any other such Act in relation to any such inquiry, complaint, application or other proceeding to or before the Executive Committee of the Canadian Radio-television and Telecommunications Commission, those sections of the *National Transportation Act* prevail.

PART II

TRANSITIONAL PROVISIONS, CONSEQUENTIAL AND RELATED AMENDMENTS AND COMMENCEMENT

Canadian Radio-Television Commission

15. (1) Upon the coming into force of this Act, a person who, immediately before the coming into force of this Act, was a member of the Canadian Radio-Television Commission becomes a member of the Canadian Radio-television and Telecommunications Commission with like effect as though he had been appointed thereto under this Act on the day that he was last appointed to the Canadian Radio-Television Commission.

(2) Upon the coming into force of this Act, the officers and employees of the Canadian Radio-Television Commission are transferred to the Canadian Radio-television and Telecommunications Commission.

(3) Whenever under any order, rule or regulation or any contract, lease or other document, any power, duty or function is vested in or exercisable by the Canadian Radio-Television Commission, the Chairman or any other member thereof or any officer thereof, that power, duty or function is vested in and shall or may be exercised or performed by the Canadian Radio-television and Telecommunications Commission, the Chairman or other member or officer thereof, unless the Governor in Council by order designates a Minister of the Crown or a person holding the rank of deputy head as defined in the *Public Service Employment Act* to exercise or perform any such power, duty or function.

Matters Pending

16. (1) Where on the day this Act comes into force any proceedings relating to any telecommunication matter have been initiated before the Canadian Transport Commission or any proceedings have been initiated before the Canadian Radio-Television Commission, which Commissions are in this section referred to as the "former authority", the proceedings shall be taken up and continued before the Canadian Radio-television and Telecommunications Commission; but where on the coming into force of this Act any such matter is in the course of being heard or investigated by the former authority or had been heard or investigated by the former authority but no order or decision had been rendered thereon, the former authority shall, subject to subsection (2) but otherwise notwithstanding this Act, complete the hearing or investigation and make an order or render a decision, as the case may be, in connection with the matter and for such purposes only, the Canadian Radio-Television Commission shall continue to exist.

(2) The Governor in Council may, by order, direct that any matter specified in the order that is in the course of being heard or investigated by the former authority on the day this Act comes into force but on which no order or decision has been rendered shall, notwithstanding subsection (1), be taken up and continued before the Canadian Radio-television and Telecommunications Commission on such terms and conditions as are specified in the order for the protection and preservation of the rights and interests of the parties to the matter and of the general public.

(3) For the purposes of completing any hearing or investigation before it, or making an order or rendering a decision on a matter heard or investigated before the coming into force of this Act, the former authority shall complete the hearing or investigation in accordance with the authority vested in it immediately before the coming into force of this Act and make such order, rule or direction as it could have made under the authority vested in it immediately before the coming into force of this Act.

(4) Any order, rule or direction made or given by a former authority pursuant to this section shall be entered as an order, a rule or a direction of the Canadian Radio-television and Telecommunications Commission and have the same force and effect as if it had been made or given by that Commission pursuant to the authority vested therein under this Act.

Regulations, Rules, Orders and Directions

17. All orders, rules, regulations and directions relating to telecommunication made under the provisions of any Act of Parliament by the Canadian Transport Commission, all tariffs filed with and approved by the Commission and all regulations, rules, orders and directions made under the provisions of any Act of Parliament by the Canadian Radio-Television Commission and in force on the coming into force of this Act continue in force until repealed, replaced, rescinded, suspended or disallowed by, or continue in force as amended, revised or varied by, the Canadian Radio-television and Telecommunications Commission under the provisions of this Act, or any other Act of Parliament.

AMENDMENTS AND REPEALS

18. The Acts and portions of Acts set out in the schedule are amended or repealed in the manner and to the extent indicated in the schedule.

COMMENCEMENT

19. This Act shall come into force on a day to be fixed by proclamation.

SCHEDULE

Item	Act Affected	Amendment or Repeal
1	Broadcasting Act R.S., c. B-11	(1) The definition "Commission" in section 2 is repealed and the following substituted therefor: " "Commission" means the Canadian Radio-television and Telecommunications Commission established by the *Canadian Radio-television and Telecommunications Commission Act*;" (2) The definition "Minister" in section 2 is repealed and the following substituted therefor: " "Minister" means, in Part II, the Minister of Communications, and in Part III, the Secretary of State of Canada;" (3) The headings preceding section 4 and section 4 are repealed and the following substituted therefor: "PART II OBJECTS AND POWERS OF THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION IN RELATION TO BROADCASTING *Interpretation* **4.** In this Part, "Chairman" and "Vice-Chairman" mean the Chairman and any Vice-Chairman of the Commission designated by the Governor in Council pursuant to subsection 6(1) of the *Canadian Radio-television and Telecommunications Commission Act*;

SCHEDULE (continued)

Item	Act Affected	Amendment or Repeal
		"Executive Committee" means the Executive Committee of the Commission established by subsection 12(1) of the *Canadian Radio-television and Telecommunications Commission Act*;
		"member" means a member of the Commission and includes a full-time member and part-time member"
		(4) Sections 5 to 14 are repealed.
		(5) Schedule 1 is repealed
2.	National Transportation Act R.S., c. N–17	The definition "Commission" in section 2 is repealed and the following substituted therefor:
		" "Commission" means the Canadian Transport Commission established by this Act except that in relation to telegraphs or telephones "Commission" means the Canadian Radio-television and Telecommunications Commission;"
3.	Public Service Staff Relations Act R.S., c. R–35	Part I of Schedule I is amended by striking out the "Canadian Radio-Television Commission" and substituting the "Canadian Radio-television and Telecommunications Commission."

SCHEDULE (concluded)

Item	Act Affected	Amendment or Repeal
4.	Radio Act R.S., c. R-1	Subsection 8(1) is repealed and the following substituted therefor: "**8.** (1) The Minister shall take such action as may be necessary to secure, by international regulation or otherwise, the rights of Her Majesty in right of Canada in telecommunications matters and shall consult the Canadian Radio-television and Telecommunications Commission with respect to all such matters that, in his opinion..affect or concern broadcasting."
5.	Railway Act R.S., c. R-2	The definition "Commission" in section 2 is repealed and the following substituted therefor: " "Commission" means the Canadian Transport Commission or the Canadian Radio-television and Telecommunications Commission established by the *Canadian Radio-television and Telecommunications Commission Act* when used with reference to telegraphs or telephones;"
6.	Telegraphs Act R.S., c. T-3	The expression " Canadian Radio-television and Telecommunications Commission" is substituted for the expression "Canadian Transport Commission" wherever that expression occurs in subsection 31(1), section 32 and subsection 33(2).

Document 56

From about 1975 to 1980, Canada passed through a period of political tension which centred on the possible rejection of confederation by Quebec. On 15 November 1976, a Parti Québecois government was elected and proceeded, as promised, to set the stage for a referendum on the question of independence. The referendum was held in May 1980 and the PQ side lost narrowly. During these years, questions of language and nationhood were fiercely debated. René Lévesque went to the United States to assure the business community that a separate destiny for his province was not only reasonable but definitely no threat to investment. Liberal Prime Minister Pierre Trudeau, on the other hand, visited Washington and warned the US Congress about the dangers of Quebec separation. Federal cabinet ministers made sweeping allegations of pro-separatist bias in Radio-Canada, the French-language side of the CBC (see Document 57).

It was into this charged atmosphere that the CRTC released a report on radio station CFCF in Montreal. The CRTC had held a public hearing on 31 March 1976 to investigate complaints about the station's campaign against Bill 22, the Quebec government's Language Act. The act was passed by the Liberal government of Premier Robert Bourassa just before its defeat by the PQ. It was perceived by some English-speaking citizens of Quebec as an attack upon their language and culture.

The CFCF campaign against the bill combined on-air editorials, open-line shows, music, and promotion. The CRTC was critical of CFCF, though it took no action against the station. The report alludes to CRTC reports on other controversial programs (see Documents 49 and 51) and appends a statement on controversial programming by the Board of Broadcast Governors. This "statement on political and controversial broadcasting policies" bears a strong resemblance to the latter sections of the CBC Board of Governors' statement on the same subject (Document 23). The CBC document had first been written in 1939 and amended in 1944 and 1948. This demonstrates considerable continuity—a CBC document fashioned during the Second World War was still being employed by the CRTC in 1977.

At the time, this report was either buried or ignored by many newspapers because it was released immediately following Trudeau's trip to Washington, a story that crowded many others out of the papers.

DOCUMENT 56: CRTC, public announcement: "Controversial programming in the Canadian broadcasting system—report on issues raised by CFCF's anti-Bill 22 campaign," 24 February 1977, 5–12 plus appendix, BBG statement of 18 December 1961.

...FINDINGS

Based on the discussions which took place at the public hearing and the Commission's analysis of the licensee's programming from the usable tapes provided by CFCF, the Commission has found, with regard to the licensee's programming during the period September 3 to 16, 1975, inclusive, that:

1. not less than 25 % of the total broadcast time between 6 o'clock a.m. and midnight of the 14 days of the campaign was devoted to the campaign. On a daily basis, the time so devoted ranged from a low of 13 % to a high of 55 %;

2. the broadcast time devoted to the campaign and analyzed by the Commission can be categorized as follows:

promotion of the campaign	— 40 %
editorializing (by station personnel or guests)	— 28 %
"open-line" program conversation between host and callers	— 20 %
supporting music	— 8 %
news items	— 4 %

3. the licensee at no time broadcast to its listeners the actual text of those regulations of Bill 22 which were the subject of the campaign;

4. in the words of the licensee: "There is no question but that the views expressed on CFCF during the campaign were substantially on one side of the question only." Of the broadcast time analyzed by the Commission, viewpoints favourable to Bill 22 totalled 1 1/2 hours while viewpoints against Bill 22 totalled 40 hours; and

5. the licensee during the campaign invited comments from both sides of the issue and the Commission has found no evidence that the licensee refused access to persons who favoured Bill 22 and/or opposed the station's campaign.

The Commission therefore has concluded that the licensee dealt with a controversial matter of public interest in the form of a campaign in which it espoused principally one side of the issue. In doing so the

licensee adopted the view that an informational balance on the question would be provided by other community media. The Commission considers as a consequence that the licensee failed to provide adequately in its own programming for a reasoned and responsible discussion of the subject.

QUESTIONS RAISED

The hearing of this case did raise certain questions which have broader implications that extend beyond the findings of this particular hearing and which the Commission draws to the attention of all broadcasters. Among others, the Commission is concerned with the following:

1. Is the open line format the proper one for promoting the discussion of a controversial subject? More specifically, is there a danger that the uncontrolled use of this format could provoke a mob-type reaction in the community? Do the pressures of hosting an open line program require a licensee to plan his public affairs discussions so as to minimize the host's possibilities of making errors? Should special precautions be taken on an open line program by a broadcaster when programming an especially controversial issue?

2. Should a distinction be drawn between public service campaigns and informational programming of a controversial nature? When a station becomes so identified with one position on an issue, is its objectivity compromised when it attempts to program public affairs shows generally? Do controversial public service campaigns damage the credibility of all of a station's public service massages?

3. Does the lack of "arm's length" involved in a station both promoting a campaign and reporting on it not pose certain journalistic contradictions? When a station itself becomes the news, to what extent does the controversy flow through from the individual program to the total programming, and how is balance to be judged in such a case?

4. What is the extent of the licensee's responsibility to offer different views on controversial issues? Is simply affording opportunity sufficient? What if the invited spokesmen decline to appear or object to appearing in the particular format offered? To what extent should the licensee go in order to place an opposing view fully before its listeners?

5. Is it a question of the right of a person or group to make a reply or of the right of the public to receive programming which deals fairly and adequately with matters of public concern?

FUNDAMENTAL PRINCIPLES:

The Commission here recalls some of the fundamental principles on controversial programming which must be considered when looking at questions such as those above:

1. Radio frequencies are public property. Accordingly, the operation of a broadcasting undertaking constitutes a public trust that must be used in the public interest and on behalf of the public which the undertaking is licensed to serve. One of the main benefits the public expects to receive in conferring this public trust is full information on matters of public concern.

The broadcaster's duty which flows from this is twofold: to devote a reasonable amount of broadcast time to the coverage of public issues; and to cover controversial issues of public importance fairly by providing an opportunity for the presentation of contrasting points of view. The proper exercise of this duty is critical to the democratic process.

This principle has been constantly repeated in Canadian broadcasting history, from the days of the Aird Committee Report in 1929, the 1939 CBC Statement of Policy with respect to Controversial Broadcasting, the 1957 Fowler Commission Report, the 1961 White Paper on Political and Controversial Broadcasting Policies (BBG Circular 51), the 1965 Fowler Paper on Broadcasting, the 1966 White Paper on Broadcasting, to the most recent court decisions and CRTC reports.

2. The licensee's right to freedom of expression must not supersede the public's right to receive programming which provides a reasonable balanced opportunity for the expression of differing views on matters of public concern.

Moreover, the determination of what is reasonable, of what constitutes balance, which are the matters of public concern, which views merit to be aired, is the broadcaster's responsibility, subject to possible public evaluation by the authority charged with issuing broadcasting licences.

The Commission may require reconsideration on the basis of the public's right to receive programming which deals fairly and adequately with controversial issues. It is the denial of this right by a broadcaster which is a form of censorship.

3. In this day of intense competition in radio for audience loyalty to stations rather than to programs, the broadcaster has a heightened responsibility to provide a diversity of points of view on matters of public concern in his programming. The greater the controversy, the greater the need for balance.

It is a matter of editorial judgment on the part of each broadcaster to determine the gravity of the controversy. The statement that "broadcasting is a changing and evolving art and no fixed permanent criteria can be set down the best method of presenting controversial material" is as true today as it was in 1961 (see BBG Circular 51 of 18 December 1961 appended).

4. Concerning the specific issues of access and the right to reply, the Commission reiterates its statement made in its Public Announcement of 28 March 1972 on the complaint against radio station CHNS, Halifax, by the Halifax-Dartmouth Committee for Miles for Millions that a breach of the broadcaster's responsibility to provide balance and the concommitant provision of access and the right to reply depend on the circumstances of each case.

5. The Fowler Commission Report also reminded us that the concept of balance "rejects the notion that broadcasters can limit themselves to 'giving the public what it wants' defining the public as being 'the majority' or 'the average viewer or listener' (which is a very useful myth)." (p. 18)

On this point the 1960 Pilkington Report, which studied British Broadcasting stated:

"to give the public what it wants seems at first sight unexceptionable. But when it is applied to broadcasting it is difficult to analyze. The public is not an amorphous uniform mass; however much it is counted and classified under this or that heading, it is composed of individual people;... 'Those who say they give the public what it wants begin by underestimating public taste, and end by debauching it'." (Pilkington Report, pp.16–18)

6. A final point in this enumeration of some of the fundamental principles on controversial programming that have emerged during the history of broadcasting in Canada can be found in the summary of the CRTC Special Committee Report on "Air of Death":

"...the interests of Canadian broadcasters and the Canadian public (are) best served by fair and objective treatment of issues of public concern, by the expression of diverse points of view and by the assumption on the part of broadcasters that at this stage in the evolution of informational programming, the public is sufficiently sophisticated to accept and to benefit by the expression of a variety of opinions and to make its own judgment thereupon. The quality of Canadian broadcasting will not be improved by over-regulation or restrictive interpretations of the Broadcasting Act."

EXAMINATION OF THE BALANCE QUESTION

In order to enquire more fully into this matter of balanced programming as it affects the Canadian broadcasting system, the Commission has formed a Task Force on Freedom of Broadcast Information in mid 1976 which is at work preparing plans and background material for a Public Hearing on this subject which will take place in the fall of 1977. All interested parties — members of the public, elected representatives, broadcasters and cable television licensees, organisations — will be invited to submit their views.

Balance in dealing with controversial subjects, and many related questions in the field of freedom of broadcast information, will be explored. It is the view of the Commission that these matters, of such sensitive and fundamental importance in a democratic society, must be examined openly at regular intervals, in view of the constant changes that take place in broadcasting, technological changes, as well as social, economic, political and institutional changes.

Appendix: Board of Broadcast Governors, "Political and controversial broadcasting policies," Part 2, 18 December 1961.

I. POLICY

The Board does not exercise censorship. It does not restrict the nature of material to be broadcast, except that such material must conform with its printed regulations.

The policy of the Board, with regard to controversial broadcasting, is based on the following principles:

1. The air belongs to the people, who are entitled to hear the principal points of view on all questions of importance.

2. The air must not fall under the control of any individual or groups influenced by reason of their wealth or special position.

3. The right to answer is inherent in the doctrine of free speech.

4. The full interchange of opinion is one of the principal safeguards of free institutions.

In the view of the Board, these principles are not promoted by the sale of network time to individuals or commercial concerns for broadcasts of their opinions or propaganda. The principles can be furthered by the provision of free time to competent speakers to present, without let or hindrance, varying points of view on questions of the day. The best safeguard of freedom of discussion is a policy which permits opportunity for the expression of varying points of view.

In accordance with its policy of resisting any attempts to regiment opinion or to abuse freedom of speech, the Board lays down no specific rulings covering controversial broadcasting. The Board itself supports the policy of the fullest use of the air for:

(a) Forthright discussion of all controversial questions;

(b) Equal and fair presentation of all main points of view;

(c) The discussion of current affairs and problems by informed authoritative and competent speakers.

Broadcasting is a changing and evolving art and no fixed and permanent criteria can be set down for the best method of presenting controversial material.

These policies have been adopted in an effort to ensure that the medium of broadcasting may remain at the disposal of the nation, regardless of party, section, class or religion.

II POLICY GOVERNING PURCHASE OF TIME

1. There shall be no sale of time on any network to individuals or commercial organizations for the broadcasting of their opinions.

2. Non-commercial organizations or societies interested in public affairs may purchase time on subsidiary hookups or individual stations. Any such hookup must be arranged by and through the Board.

3. For this purpose, non-commercial organizations or societies are defined as those:

   (a) which are established for other than political, commercial or quasi-commercial purposes whose objects are social, educational, economic, philanthropic or of a similar nature, and are of general public interest and concern;

   (b) which have been in existence for at least a year prior to the application for subsidiary hookup facilities.

4. Societies or organizations desiring to purchase subsidiary hookup time must accept full responsibility for the broadcast.

5. Each broadcast must be preceded and concluded by appropriate announcements making clear the nature and substance of the broadcast, and indicating that equal facilities are available on the same basis for the expression of opposing views.

6. Time purchased for controversial broadcasting must be limited so that it does not unduly interfere with normal program requirements.

7. Political parties are governed by Part I of this paper.

III RULINGS

The Board is of the opinion that discussion of controversial issues could be prevented where one side will not take the opportunity to present its views. Therefore, any station wishing to broadcast controversial material, whether as a program or as a station editorial, may do so, subject only to the condition that persons desiring to express views contrary to those contained the controversial program or editorial must be given an opportunity to do so. If, however, no person comes forward to make use of the facilities which are offered, the station is not bound to seek out persons holding contrary views. Nevertheless, the station should ensure that, in the broadcast of the controversial material or editorials, persons having a different view will be given an opportunity to express that view over the station, and that advice of this fact is presented to the public at the time of the original broadcast. Stations may comply with this ruling by reading, without comment, representative letters written by those holding opposite views.

Network operators are not permitted to broadcast editorials as such. This prohibition does not apply to commentaries or background telecasts.

All controversial broadcasts are subject to the Board's Regulations.

Document 57

By 1977, the national concern about Quebec's place in confederation was manifest. It is not surprising that broadcasters both expressed strong views (see Document 56) and were also the target of strong views. At the federal level, cabinet ministers from Quebec ridings accused Radio-Canada not only of harbouring separatists, but also of allowing them to distort news and public affairs programs to support a separatist point of view.

Whatever the truth of these allegations, there is no question that the debate over Quebec's possible separation presented broadcasters with a dilemma. The Broadcasting Act, in one sentence, required the CBC and Radio-Canada to "contribute to the development of national unity and provide for a continuing expression of Canadian identity." The act appeared not to consider the possibility that the Canadian identity might at any time be less than unified. So a broadcaster who reported even in the most objective way on the separatist movement could fairly be accused of failing to contribute to national unity.

The government asked the CRTC to investigate. A seven-person committee was appointed from within the CRTC on 14 March 1977; it reported just over four months later, something of a record for such an inquiry.

The report was 114 pages long, including 37 pages of bibliography, a list of the 21 CRTC-commissioned research studies, a list of CBC–Radio-Canada documents, and the CRTC March announcements calling for public input. It contained little condemnation of separatist influence and instead called for a better balance in news from the different regions of Canada—more efforts to explain the two (or more) solitudes to each other.

Reprinted here is chapter two of the report.

DOCUMENT 57: ***Report*** **of the CRTC committee of inquiry into the national broadcasting service, 20 July 1977, 17–31.**

CHAPTER TWO

NEWS, INFORMATION, PUBLIC AFFAIRS

1. Introduction

A considerable body of writing has developed around the question of professional standards in journalism. Communications scholars, broadcasting and press organizations, regulatory agencies, have all devoted attention to such matters as balance between different points of view, impartiality in

attitude, and fairness in the choice of information. Professional journalists and broadcasters distinguish between news and other forms of information broadcasting. News is supposed to be free of comment and to be presented as objectively as possible, while other forms of information broadcasting, called "current affairs" in the CBC, include comment, opinion, and even personal commitment. Such programs are intended to stimulate public debate over important issues, and expressions of opinion may provoke such debate better than a detached presentation.

This chapter deals with (A) news and (B) information and public affairs programming. Part A will present a content analysis of CBC news, discussed in the light of the information environment in Canada; the constraints in presenting news programs; and professional standards in news at the CBC. Part B will look at current affairs programming and at the CBC's policy on controversial programs.

A NEWS

2. Content Analysis*

A study prepared by Professor Arthur Siegel for this Committee has made an analysis of the content of newscasts on the CBC. One of the questions examined was the degree of common ground between English and French newscasts. It was found that of 1,785 stories examined, 259 appeared in both French and English, over half of which had an international content. A realistic estimate of common ground in French-English newscasts would be about 15 per cent.

The differences in French and English treatments of Canadian content news are striking. The main thrust of French television newscasts is Québec, almost half of the newscast time being devoted to Québec stories. Then again, at least a third of the national Canadian stories have a marked Québec point or view, and much of the news classified as "other Canadian provinces" involves reactions to developments in Québec. The time chosen for analysis was a ten-day period in May 1977, and during that time French television newscasts made 130 specific references to Québec, an average of 13 Québec mentions per newscast.

Excluding Premier Lévesque, Québec ministers were mentioned 153 times in the ten-day period. Of these mentions, 145 were on French newscasts (82 television, 63 radio), and 8 were on English newscasts (6 television, 2

* Based on Arthur Siegel, "A Content Analysis, the Canadian Broadcasting Corporation: Similarities and Differences in French and English News," a report prepared for the CRTC Committee of Inquiry, 1977.

radio). Obviously these ministers are readily identifiable personalities in Québec, whereas in English-speaking Canada they are almost unknown. In English newscasts, federal cabinet ministers are featured less than Québec ministers in French newscasts, and in English newscasts, again, provincial cabinet ministers receive hardly any attention. English newscasts have a low coverage of Québec, considering its importance: about 12 per cent of their content, or 17 per cent in terms of time. On the other hand, English newscasts have more intensive national news coverage out of Ottawa than the French news, with reaction stories from other parts of the country to national news developments. French news has virtually no reaction stories from other regions than Québec.

In an examination of English and French national evening radio newsscripts during the four-month period from September through December of 1976, it was found that only 3 per cent of the CBC French newscasts dealt with any part of Canada other than Québec. The CBC English newscasts devoted 18 per cent of their coverage to part of Canada other than Québec, and 9 per cent to Québec stories, and this at a time when a general election campaign was taking place in that province. The extremities of the country, British Columbia and the Atlantic Provinces, fared worst. In the ten-day May period, these regions rated less that 1 per cent of the French newscast interest and less than 2 per cent of the English one. (There happened by accident to be an unusually large number of stories regarded as interesting from the Prairies during that period, otherwise the figures might well have been equally low there.) Four Canadian cities, Ottawa, Québec, Montréal, and Toronto, are the sources for 73 per cent of the news disseminated by radio and television. In radio, French-English differences were even stronger; the differences were of the same general type as in television, but a fair estimate of the common ground in radio would be about 12 per cent, and in television, about 18 per cent.

In dealing with international news, French and English newscasts were somewhat more uniform. But English news devotes more than twice the time that French news does to the United States, and French news gives greater emphasis to western Europe. The degree of common ground in international news is about 25 per cent.

SELECTED THEME EMPHASIS, BY LANGUAGE

Theme	Themes of stronger emphasis in English newscasts	Themes of stronger emphasis in French newscasts	Similar French—English emphasis
Political	Native affairs Human rights Armed Forces Municipal news	PQ in union Separatism (Québec) provincial politics (Québec) provincial economy Language — political International relations	Summit conference War and peace Federal by-elections
Economic/ Environment	Energy Pollution Consumer affairs Disasters Obituaries Sports Entertainment	Labor strikes Labor demands Labor settlements	Inflation Unemployment Prices and wages

Further fragmentation is created by the variety of networks being watched. A three-day analysis of the content of five television networks showed that CBC English, CTV, CBC French, TVA, and Global averaged one story in common, in a newscast that was carried on all five networks on the same night, with about 25 stories per program.

Certain differences in treatment became apparent: French newscasts feature personalities much more than English ones do, for instance. The general conclusion of the analysis is that newscasts play a very limited role in shaping common values and norms, and tend to reinforce differences along linguistic lines. It is not so much what the newscasts contain that creates problems from the point of view of national unity, but rather what they leave out.

3. The Information Environment

The North American news agency field has always been dominated by the American Associated Press (AP), which is a central part of the Canadian Press (CP) foreign wire sent to newspapers and broadcasting outlets in Canada. It reflects the centralizing tendency of news-gathering already mentioned. Canada is a comparatively ignored part of North America; the provinces are a comparatively ignored part of Canada; the outlying areas and districts are a comparatively ignored part of the provinces.

The Canadian Press service provides four main services: (1) an "A wire" in English to all subscribers carrying national and international news; (2) a number of regional wires based on provincial news supplied by member newspapers within three regions and distributed from the major regional cities; (3) a "B wire," which is an overflow service; (4) a French-language service prepared in Montréal and sent to all subscribers in the French language.

The international basis of the "A wire" in English is CP's own foreign bureau reports, and the gathering of information from AP and, to a lesser extent, the British-based Reuters, which is either collected in New York and transmitted to Toronto, or handled directly in Toronto. As far as national news is concerned, there is a preponderance of Ottawa and Toronto datelines, and other cities, even major ones, are poorly represented. The French-language service shows a preponderance of news from Agence France-Presse (AFP) and, in translation, Reuters. Canadian news is concentrated on Québec, the rest of Canada virtually disappears except for Toronto and Ottawa stories. Within Québec, there is a concentration on Montréal, with very little exchange of news between, say, Sherbrooke and Sept-Iles, and with some areas of the province completely ignored.

To estimate the effects of this unbalanced information flow, a Committee study queried Members of Parliament to learn how news in their regions was reported. It also commissioned six journalists in Vancouver, Calgary, Regina, Peterborough, Québec City, and Moncton to describe the information received there.

The Committee study asked 17 Members of Parliament whether the work they do in Ottawa is adequately reported in their home media. Thirteen said it was not, and commented that the press practically ignores the activities of the ordinary MP. Among the reporters covering Parliament, almost none are oriented toward local or regional stories, and though local weeklies are co-operative, some MPs said that they themselves had to arrange to write columns about their activities, or else buy television advertising time. They felt that news about their ridings was poorly covered by national media, and were disturbed about the stereotyping of attitudes to the regions; for example, Westerners are often described in "rough-neck" stereotypes. Six

named independent radio stations as doing the best job of regional coverage, three named newspapers, six named no medium as outstanding, and one named CBC radio and television. Québec federal Members, whose activities go virtually unreported, felt wholly isolated from their constituents through the media.

These feelings are more or less confirmed by the information profiles provided by the six journalists reporting from the regions listed above. They felt that while the CBC does a good job in trying to link the various parts of the country they do not allow for the fact that Canadians tend to view things from a regional perspective, and that the issues that generate most passion are largely regional and local ones.

4. The Constraints

Although television promised to bring the world into our homes, its limitations and technical constraints were at the beginning enormous. Cable, vans, bulky cameras, connecting lines to the studio, made live coverage of news events impracticable, except for sports and other staged events. Hence television at first had to adopt many practices from radio and cinema, and as the newsreader read bulletins against the background of a rear-screen projection of a photograph to "illustrate" his story, the disparaging term "talking heads" entered the language. Eventually the television newsreel settled into a format of a series of thirty- to sixty-second items, many of them "light" and entertaining, and Canadian broadcasters became locked into using American newsfilms. In 1958, Ampex perfected the videotape recorder, which allowed a direct signal from a studio camera to be recorded and played back instantaneously without any developing or processing. With this, news and information programming could use edited interviews in which the producer could mould the shape of the interview. Immediacy increased with electronic news-gathering, that is, the development of lightweight video cameras and recorders. An electronically controlled machine can even be used to photograph people in the dark. With the help of satellites and microwave networks, television technology can now go almost anywhere that it can gain admission. Yet the formulas of television news remain relatively unchanged, and the evening news bulletin, in particular, remains essentially a visual headline service.

The CBC, which is at the top of the news-gathering pyramid in Canada, distributes programs to the public through 60 television and 130 radio stations. The national news is fed to the stations from the newsrooms in Toronto and Montréal, which service the English and French systems respectively. News of local or regional events must be fed to the network for inclusion in the national news.

The CBC uses wire, video, and audio services. Most common of these is Canadian Press and its subsidiary, Broadcast News, but they also have available video feeds direct from the newrooms of the American networks. Stations owned and operated by the CBC are obliged to take all national newscasts, but the affiliates may choose, and normally carry only the major newscasts. Regional coverage is provided by the news bureaus and correspondents located in most cities where the CBC owns stations. Foreign stories originate from several points: first, from the CBC's own foreign bureaus in Washington, New York, London, and Paris, or from stringers in the Middle East, Europe, Africa, and Japan; second, from voice and video coverage provided by NBC and CBS; third, from news services (Associated Press, United Press International, American Federated Press, Visnews).

As a television reporter has to be accompanied by a camera crew, the expectation of a big story requires planning and some advance decisions, for example, whether it is worthwhile to rent expensive satellite capacities. The fixed costs allocated to the news department determine the size of the news processing establishment, and the producer's own budget determines how much news he can cover of a special nature. Funds must also be reserved for special events. The CBC reported a cost of $750,000 to cover the last Conservative Party leadership convention.

Although the news organization is on the job around the clock, putting a specific news bulletin together for the late evening usually begins in the early morning, with the arrival of the assignment editor. He scans the morning newspaper, reads the wire service stories accumulated during the night, and makes the first assignment decisions. He decides whether a story is to be covered by a film crew, and as film has to be shot, processed, and edited, film assignments have to be made early in the day.

The line-up editor works closely throughout the day with the assignment editor. The assignment editor sends out the crews to get the material, and the line-up editor eventually gets to know about each individual item and puts them together. He is the man to whom all the material flows before broadcast — reporters' stories, wire copy, information on film and video documents. He chooses stories, corrects them, has them rewritten and timed. He reorganizes the material in order of priority from first item to last. On the average there are 15 to 20 or more stories in a 20-minute newscast. The producer or director looks at the visuals, and throughout the day works closely with the line-up editor, the news reader, and the technical crews. The availability of film often determines the tone of the newscast, and the format is a major constraint on what can be done. A newspaper may add pages, but a television news producer cannot, in the present situation at least, add minutes.

A CBC English services document* on evaluation of news programs states that the 11 pm national news, which emerges daily from this complex process, is monitored on air by the director of news and current affairs and the assistant-director, and they discuss the program the next day. There is also a 10 am screening every morning of the previous night's news. At 4 pm a daily editorial meeting is held by the executive producer and the editors and writers of the program, when the editorial, quality, and production values of the previous day's program are discussed. Out of the evaluation process a "feedback memorandum" is sent to every reporter appraising the content of every item. In addition to this, there are long-term evaluations: a weekly meeting of a senior editorial group, and meetings of editors three of four times a year. Detailed statistical analysis of content are also made several times a year in which the news is compared with that of competing networks, and the balance among international, national, and regional stories is checked.

News executives in the CBC expressed to the Committee their feeling that the administration of broadcasting is becoming more and more difficult to control, especially in newscasting. Administrators are remote from the handling of the news: they do not make the line-up, do the research, direct the crews, edit the scripts, or produce the programs. They said it was impossible to control a news operation in a manner that did not respect the complexity of the operation, the fragmenting of functions, the proliferation of jurisdiction, and the competence, judgment, honesty, and maturity of the journalists themselves. The best control, they felt, lay in the integrity of the journalist, though the administrators remained responsible for the overall pattern established, the orientation followed, and the use of resources, as well as the evaluation of news.

5. Professional Standards in the CBC

There has been in recent years a growing emphasis on the subjectivity involved in the selection and treatment of news, and many journalists say that they should stop pretending to objectivity altogether. One such journalist from a private network told the Committee that he had ceased to make a distinction between news and comment. The CBC management, on the other hand, reflected to the Committee much the same point of view that was described in a 1971 policy document:

> In the Corporation's view, its role in the field of news gathering and news dissemination is not affected in any essential way by the fact that it receives the bulk of its operating funds from the public treasury.

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* CBC English Services Division, "The News and Current Affairs Evaluation Process," 12 April 1977.

> Admittedly its position is unlike that of a newspaper publisher in one respect: it has or should have no editorial position on news events or public issues. However, in matters relating to "hard" news, its judgements as to the selection of items, the amount of attention to be given to various items, the order of presentation, etc., should be essentially the same as those which would be exercised by private news or broadcast media. While its status as a publicly-supported agency imposes on it a special obligation to be neutral and impartial in its presentation of news and public issues as well as a special requirement to excel in the depth and quality of its research and reporting, it cannot be considered to have any particular obligation to publicize governmental agencies or activities, arising directly or indirectly out of its receipt of public funds....The Corporation's personnel in the field of broadcast journalism will be drawn from essentially the same source as personnel employed by private publishers and broadcasters, and should be required to apply no different criteria to the reporting of new events than they would if employed as professional journalists by a responsible privately owned newspaper or broadcaster.

A slight refinement of this doctrine is to be found in a guidance booklet, also written in 1971, and handed to CBC trainee journalists:

> The policy which guides the operations of the CBC News Service is based on the primary conception that the service is in the nature of a public trust; to present by radio and television all the significant news of the day's happenings in Canada and abroad factually, without bias or distortion, without tendentious comment, and in a clear and unambiguous style.

Further, under a section headed "News that might cause international friction':

> In a young and growing country like Canada, there are bound to be certain stresses which are, in normal times, an indication of healthy development, and which are not dangerous when counter-balanced by tolerance and understanding. But such incipient antagonisms should always be viewed as having dangerous potentialities. With this in mind, the greatest discretion and good judgement should be used in handling any news item that might exacerbate the feelings of any particular group in this country. The CBC News Service, like the CBC as a whole, has an important function in helping Canadians achieve mutual tolerance and understanding in the interests of national unity. English-speaking vs French-speaking, Gentile vs Jew, native-born vs foreign-born, employee vs employer, East vs West, all these and other potential antagonisms can, if permitted to develop, threaten Canada's future as a nation. It is most important that the presentation of news should not in any way encourage such antagonisms. It is not suggested

> that anything of real news interest should be suppressed or modified, but it should always be remembered that an injudicious turn of phrase may make a news item unnecessarily offensive to some Canadians.

The Committee makes no comment on this, but emphasizes only that the significance of the news, not its brightness, interest, humor, or other entertainment value should be the CBC's primary concern. We have previously mentioned the importance of the evening news bulletin as a unifying element in Canadian life. This is now given at 11 pm on the English network and at 10:30 pm on the French network, after half the viewers have gone to bed. This is in order to preserve the prime time of 10 pm for entertainment programs, and so guard against a loss of viewers and a decline in ratings. Again, peak viewing hours often have sports feature. European television carries soccer matches live that are scheduled so that the half-time break may be filled with a newscast, and something similar might well be done in Canada.

B. INFORMATION AND PUBLIC AFFAIRS

6. Current Affairs Broadcasting

There is a blurred edge between news and comment, but a sharper one between news and current affairs. News, even though supposed to be free of comment or opinion, must be placed within a context that makes it meaningful to the audience. As a news journalist cannot take for granted too much knowledge on the part of his audience, he must explain the background. Such exposition approaches comment, but if it does not lead up directly to the news, news ends and current affairs programming begins. Here the striking of a balance, though not easily achieved, does take place within clearly defined rules, at least in theory. According to the 1971 policy document, the CBC does not editorialize, but tries to inform and enlighten through exposing diverse points of view. The same policy document, however, goes on to outline a more positive role than that of a mere transmitter of other people's opinions:

> The Corporation cannot, of course, be merely a neuter element in contemporary society: It must do more than reflect in passive fashion the elements of change in the world around us. It has a responsibility to help interpret, integrate and rationalize those changes.
>
> As modern industrial society moves towards the post-industrial state, the forces determining public policy undergo significant alteration. Society becomes increasingly rich in human and technological resources. The very weight of these resources, enhanced by the democratization of education, the increase in living standards, and the rising expectations which accompany these developments, tends to acquire an in-

> fluence and importance of its own in the formulation of public policies. The critical mass of these resources, both human and technological, becomes in itself a powerful factor in the influencing of public policy development, and creates new sources of tension, new expectations and demands, new conflicting interests which are also agents of change in an increasingly pluralist society. It would appear that Canada, and particularly the province of Québec, is experiencing such changes today.... In such a context what is the role of the publicly-supported broadcasting agency, responsible for providing programming in the fields of information and englightenment? In the Corporation's view its role as a purveyor of information becomes more and more that of a middle-man, an interpreter, a catalyzing agent whose function is to discover and reveal, or to assist in creating at least a minimal consensus on critical questions affecting our national life. It cannot assume a leadership role in the sense of guiding or directing public opinion towards a specific solution which it has determined in advance to be in the public's best interest. Its responsibility is rather to help through its information programming to interpret, integrate and rationalize the changes resulting from the interplay of these dynamic forces within society.

The CBC, then, is a catalyst for change. It goes on, however, to insist that it cannot be expected to and should not try to take a stand "as between the wide range of political opinions under active discussion in Canada today." That includes "anti-centralist, anti-federalist policies" such as those advocated by Québec separatists: "The view which the Corporation takes is that its national unity mandate does not require it to take any particular political position in this vexed area of federal-provincial constitutional relations; nor indeed would it be wise or proper for it to do so."

This characterization of the current political situation in Canada as a more or less routine federal-provincial constitutional argument certainly suggests an extraordinary coolness in the CBC's attitude. One cannot help wondering, however, whether the coolness is located in the head or in the feet.

7. Controversial Programming

In this area the CRTC, as the regulatory agency, has since 1968 tried to provide guidelines for broadcasters that will combine the maximum possible freedom of expression and liveliness of programming with fairness, balance, and impartiality. In 1969 the CRTC made one of the most detailed analyses ever undertaken of a controversial program when it conducted a hearing into the documentary CBC program "Air of Death," broadcast in November 1967. This hearing posed, for the first time in Canada, major questions arising from the responsibility placed on broadcasters to provide balanced information. The program alleged that a fertilizer plant in Ontario

emitted fluoride, allegedly killing cattle, ruining crops, and endangering human lives. The CRTC heard evidence from broadcasters, film-makers, and journalists on the principles which should direct such programs.

The broadcasters held that they had a right to deal with social inequities, injustices, or improprieties editorially: they accepted the obligations of balance and objectivity, but said that "judgments as to the degree of objectivity exercised by the producers may not necessarily be shared by others." Some of them argued that notions of fairness and objectivity had been used as an excuse for non-commitment, a lack of belief, and a lack of feeling and involvement, and they warned against building into an organization a caution that would stifle creativity, enterprise, and courage.

The CRTC Committee, in their report of July 1970, responded with three main opinions:

> Concepts of standards and balance laid down in the Broadcasting Act must not be used to curb or limit television's search for ways and means of describing problems of common interest and concern to the public.
>
> The Committee recognizes the concept of "honest bias," as it appears to exist at every point in the making of practically any program on a matter of public concern. This bias should not be malicious, distorting, or taken to the point of propaganda. Such bias should be honestly set forth, and the public informed that there are other points of view. Even if complete objectivity may not be possible, it does not follow that differences in the degree of objectivity are not important.
>
> Informational programs in television should introduce concern without inducing panic. Practical procedures are needed for the exercise of checks and balances on the part of the responsible officers.
>
> In summary the Committee considers the interests of Canadian broadcasters and the Canadian public to be best served by fair and objective treatment of issues of public concern, by the expression of diverse points of view, and by the assumption on the part of broadcasters that at this stage in the evolution of information programming the public is sufficiently sophisticated to accept and to benefit by the expression of a variety of opinions and to make its own judgment thereupon. The quality of Canadian broadcasting will not be improved by over-regulation or restrictive interpretations of the Broadcasting Act.

8. The Question of Objectivity

Everybody has his own point of view, and is committed to it if he is a serious person. In a totalitarian state the public expression of a point of view may be confined to the two categories of orthodoxy, which is right, and heresy, which is wrong; but in a democracy, the expression of various points of view, including dissenting opinion, is regarded as essential. So far as there is orthodoxy in a democracy, or a general consensus, it takes the form of a belief that open debate and conflict of opinion should go on, and the right to take part in it safeguarded. As Pierre Juneau remarked when he was Chairman of the CRTC, "Broadcasting should serve not to make us all alike, but to celebrate our differences—to reflect the social, cultural, and political diversity of this country, and to allow us to share it among ourselves wherever we come from."

Complete objectivity is not possible, nor is it in the least desirable. It would be a very strange religion which would regard God as objective about evil, nor can there be any human objectivity about, for example, preferring freedom to slavery or a clean to a polluted environment. At the same time, as the "Air of Death" judgment remarked, there are areas where degrees of objectivity are of great importance. A point of view, however sincere, is always limited by a lack of information and a distortion in perspective. That is why news, in particular, is expected to confine itself to providing, so far as is possible with its human limitations, both the essential information on which opinions have to be based and some indication of what a reasonable perspective or attitude toward it could be. This latter is what is meant by "balance." We have bias whenever anyone attempts to cut off essential information or balance from someone else, and so tries to force the listener's opinions into line with his or her own interests. Such bias, which runs counter to the principles of democratic debate is a form of journalistic malpractice. The expression of an opinion or point of view is sometimes, as above, called "honest bias," but it is confusing to use the same word in both an approving and pejorative sense.

If this definition of bias seems reasonable, the damning statistics that emerge from Professor Siegel's study, in particular, indicate that the electronic news media in Canada, English as well as French, are biased to the point of subversiveness. They are biased because, so far as they are able, they prevent Canadians from getting enough balanced information about Canada to make informed decisions regarding the country's future. They are biased by their assumptions about what is newsworthy and what their audiences want to hear. These assumptions really amount to two. First, only Canadians living along the St. Lawrence axis, from Québec to Hamilton, belong in the news; all others are some kind of Canadian fauna living in the "boondocks," to be noticed only when they do something picturesque. The second assumption is that English Canadians could not care less about what

happens to French Canadians, and vice versa. These assumptions are intolerable. They are also extremely stupid.

The exhaustive analysis of the "Air of Death" program, by the CRTC's Research Branch, cannot be gone into here, but it brought out something that has not been mentioned so far. Television presents images as well as words, and along with radio, presents words in an oral context. In such communication there is an element which may be called the "raised eyebrow" factor, the influence of gestures and body language, of pauses and emphases in speech, of the mood suggested by a musical background, of the directing or distracting of attention by the choice of visual material. The science of content analysis knows relatively little about this, but it is obviously a powerful element in the transmitting of information, and, if used unscrupulously, can be a very dangerous form of bias, that is, of cutting off democratic debate by suggesting that broadcaster and viewer are confidentially linked in a common cause. It is dangerous because it is very difficult to pin down. When it is pinned down, it can readily be explained away as a *boutade* or casual improvisation designed to "lighten" the program, that is, assimilate it to the dominant convention of entertainment.

Television in particular suggests a passive response from the viewer. Most viewers realize that they are being manipulated by commercials and advertising, and build up some resistance accordingly. But it may not occur to them that the same techniques may be used elsewhere. In default of substantial information about the non-verbal devices of television, we have to leave the subject here, with the remark that television-watching by a concerned and mature citizen is not a passive process, but a highly skilled occupation, requiring constant practice, discipline, and vigilance.

Document 58

Following the CRTC's report in July 1977 (Document 57), the CBC, no doubt for its own protection, began analyzing and revising its policy statements on journalistic practices. CBC news staff were constantly aware that many MPs, and especially cabinet ministers, were suspicious of any CBC news reporting that affected them. (The editor, at the time an employee in the Toronto newsroom of "The National," recalls the wall of the executive producer's office lined with video cassettes of each show—for protection against Parliamentary complaints.)

The results of the revisions appeared in a new booklet issued by the CBC Board of Directors.

DOCUMENT 58: CBC, *Journalistic Policy*, July 1982, 1–38.

JOURNALISTIC POLICY

INTRODUCTION

The Canadian Broadcasting Corporation is the national broadcasting service. It belongs to all Canadians and is accountable to them through Parliament. Its mandate is defined in the Broadcasting Act; by that mandate it is judged.

The Corporation enjoys administrative and programming independence of political or governmental direction to permit it to discharge the role assigned to it within the Canadian broadcasting system. The autonomy of the Corporation is assured through the authority conferred by Parliament upon its Board of Directors who act as Parliament's 'trustees' on behalf of the public to define and to guard the public interest and to ensure the CBC's mandate is fulfilled. This principle of 'arm's length' relationship between the CBC and government is critical to the Corporation's independence. But there can never be autonomy without responsibility, freedom without restraint.

In order to meet the broad objectives in the mandate the Board of Directors formulates Corporate objectives and policies. Program Policy is a means by which the Corporation's broad program objectives are attained. It ensures that CBC programming, regardless of language of service or location, meets recognized standards. It also protects the broadcaster against external pressures if the program meets these standards, i.e., policies, interpreted

in accordance with common sense and fundamental journalistic principles.

This volume contains the journalistic program policies of the CBC; they relate to all programs dealing in information. It follows that everyone in any way responsible for program planning, production and presentation must have the policy statements readily available.

CBC MANDATE

The Introduction to this volume referred to the mandate of the CBC, the legislated objectives by which the Corporation is governed.

The Broadcasting Act (1968) states that all Canadian broadcasting enterprises — public and private — form a single system regulated and supervised by an independent public authority, the Canadian Radio-television and Telecommunications Commission.

The Act provides a mandate for all broadcasters, including the CBC. It declares in Section 3:

(b) the Canadian broadcasting system should be effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada;

(c) all persons licensed to carry on broadcasting undertakings have a responsiblity for programs they broadcast but the right to freedom of expression and the right of persons to receive programs, subject only to generally applicable statutes and regulations, is unquestioned;

(d) 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;

(e) all Canadians are entitled to broadcasting service in English and French as public funds become available;

(f) there should be provided, through a corporation established by Parliament for the purpose, a national broadcasting service that is predominantly Canadian in content and character."

This "National broadcasting service" is the Canadian Broadcasting Corporation and there follows the imposition on it of special responsibilities:

(g) the national broadcasting service should:

(i) be a balanced service of information, enlightenment and entertainment for people of different ages, interests and tastes covering the whole range of programming in fair proportion,

(ii) be extended to all parts of Canada, as public funds become available,

(iii) be in English and French, serving the special needs of geographic regions, and actively contributing to the flow and exchange of cultural and regional information and entertainment, and

(iv) contribute to the development of national unity and provide for a continuing expression of Canadian identity."

There are no comparable legislative objectives for any other Canadian institution in radio, television or print.

The CBC will be governed and judged by these criteria.

Reference:

— CBC Programming and National Unity

SECTION I

PRINCIPLES AND STANDARDS

JOURNALISTIC PRINCIPLES

The policies in this volume concern information programs, that is programs of a journalistic nature designed to impart information in its various forms. These programs comprise news and all aspects of public affairs (political, economic, social) and include science, arts, agriculture, religion, sports, and all other areas when they deal with matters of controversy.

This is the programming through which the CBC provides the balanced and comprehensive service of information in English and French integral to its mandate from Parliament. It must embrace the wide range of subjects of interest and consequence to Canadians — whether local, regional, national or international.

The CBC would inhibit itself seriously if, in the attempt to upset no one, to disturb no institution, it undertook to limit the comprehensiveness of its

reporting of contemporary society. Equally, it is important to examine and keep before the public those positive aspects of our society as well as those which are being called into question, those trends or events which are important but may not be spectacular.

Policies are based on the premises and principles which follow these comments. They have arisen out of the Corporation's interpretation of its responsibilities under broadcast legislation as well as the wide experience and basic practices of our information programming staff for nearly half a century. Together with the integrity of staff they comprise the framework for CBC journalistic programs.

Policies are intended to be flexible enough to avoid unnecessary rigidity while stating clear lines of demarcation between the acceptable and unacceptable. Should uncertainty arise as to the application of any policy, the matter is to be referred to immediate supervisors. They may take the responsiblity for issuing directives, or interpretations, or may refer the matter upwards for decision.

CBC journalistic policy rests on certain premises, which distinguish the Corporation's philosophy:

(a) The air belongs to the people, who are entitled to hear the principal points of view on all questions of importance;

(b) The air must not fall under the control of any individuals or groups influential because of their special position;

(c) The full interchange of opinion is one of the principal safeguards of free institutions;

(d) The Corporation takes no editorial position in its programming.

These premises underlie all the policies of the Corporation relating to information programs. The programs must also reflect established journalistic principles.

Journalistic Principles

— Accuracy: the information conforms with reality and is not in any way misleading or false. This demands not only careful research but a disciplined use of language and production techniques, including visuals.

— Integrity: the information is truthful, not distorted to justify a conclusion. Broadcasters do not take advantage of their position of control to in any way present a personal bias.

— Fairness: the information reports or reflects equitably the relevant facts and significant points of view; it deals fairly and ethically with persons, institutions, issues and events.

— Thoroughness: the information is the result of complete and rigorous research in which no aspect of consequence is overlooked.

Application of these principles will achieve the optimum objectivity and balance which must characterize CBC's information programs. The ensuing policy statements demonstrate how the principles are applied in CBC information programming.

BALANCE

CBC programs dealing with matters of public interest on which differing views are held must supplement the exposition of one point of view with an equitable treatment of other relevant points of view. Otherwise, the information given would not be fair and comprehensive. Fairness is not simply achieved by a rigid neutrality or mathematical balance. Equitable in this context means fair and reasonable, taking into consideration the weight of opinion behind a point of view, as well as its significance or potential significance.

There are two kinds of balance and fairness in the handling of information programming, one provided by the journalists and the other provided by the CBC as a journalistic organization.

Journalists will have opinions and attitudes of their own. But the proper application of professional standards will prevent these opinions and attitudes from leading them into bias or prejudice. It is essential that their reporting is done in a judicious and fair manner.

Also, the CBC as a journalistic organization must ensure that its programming is fair and balanced. Program balance should be achieved, where appropriate, within a single program or otherwise within an identifiable series of programs.

Balance is not to be confused with the concept of "right of reply." The CBC must itself accept the responsibility for determining when a significant imbalance has occurred, and what remedial action must be taken.

Programs dealing with an issue of substantial controversy on a one-time basis should give adequate recognition to the range of opinion on the subject. Fairness must be the guiding principle in presentation, so that the audience is enabled to make a judgment on the matter in question based on the facts.

A program series must not adopt an editorial position supporting one side or another on a major controversial question, (for example, the question of "conservation" versus "technology"); although individual programs within the series may reflect a particular view, the series itself must give adequate consideration to differing views on such subjects.

Continuing news and current affairs programs must present a balanced overall view on controversial matters, so as to avoid the appearance of promoting particular opinions or being manipulated into doing so by events. Journalists, editors and supervisors must be aware of the necessity for balance in their ongoing presentation of controversial matters.

Such continuing news and current affairs programs, particularly magazine programs, are expected to present the general flow of ideas prevalent in our society. This will entail, at times, broadcasting the views of a single author, scientist, thinker, expert, artist or citizen, whose thoughts merit airing on their own account. In performing this role, those responsible for journalistic programming must avoid a cumulative bias or slant over a period of time and must be mindful of the CBC's responsibility to present the widest possible range of ideas.

Particular care must be given to information programs during election or referendum campaigns. These series require close and meticulous attention to overall political balance. Quantitative checks are normally employed for guidance during election or referendum campaigns. Such quantitative checks must be supplemented by the exercise of qualitative judgments also, so that imbalance does not occur through the manipulation of events. The use of quantitative checks together with professional journalistic judgments should result in actual and perceived fairness.

Occasionally a program will be based on the personal view of an individual. When that occurs, the audience must be made aware of the personal character of the program. The personal view must be that of a responsible program-maker with demonstrable expertise, for example, Kenneth Galbraith's economic study "Age of Uncertainty."

Reference:

— Investigative Journalism

GOOD TASTE

CBC programs should be in good taste, that is to say, they should respect and reflect the generally accepted values in society regarding such matters as vulgarity, profanity, or sexual behaviour.

The audience for broadcast information is composed of differing groups, and notions of good taste vary substantially between them. The broadcaster therefore cannot expect to enjoy the same complete freedom of expression of vocabulary or of visual presentation as is enjoyed by the book publisher, in live theatre or in the movie, whose readers and viewers by and large make conscious choices about what they read and see. Where matters of taste are concerned, therefore, care must be taken not to cause gratuitous offence to the audience.

However, there will be occasions when in reflecting reality it would be inappropriate to excise certain uses of language or depictions of violence or sexuality which normally would be avoided. To do so would be to deny CBC audiences access to certain events which may contribute materially to an understanding of the world in which they live. The following sections are intended to illustrate when and how such occasions might occur.

Language

As a general rule profanity or expressions which would give offense to a considerable number of the audience must not be used. It is not practicable to prescribe a list of words and phrases which could not be broadcast in any circumstances, as public acceptance in this area is always changing. However, shock value is not a permissible criterion.

There are occasions when the broadcast of an expression normally considered offensive may be justified. The validity of such language within the context of the program must be evaluated. Furthermore, it must be apparent that editing out of the expression would impair the integrity and significance of the information which is in itself important enough to justify broadcast.

Sex and Nudity

Explicit scenes of nudity or eroticism must not normally be used. They are acceptable only if it is clear that they are essential to the information being conveyed in the program and that such information is itself important enough to warrant broadcast.

Such scenes must never be emphasized nor used primarily for shock or sensation.

Cautionary announcements

Should a program contain material which may be disturbing to some segments of the audience — and particularly children — because of scenes of violence, sexual behaviour, or language, cautionary announcements before or during the program should be used.

Grief and suffering

Scenes of suffering are to be used only when necessary to an understanding of information important to the public. Discretion is necessary in showing harrowing sights and they should not be prolonged unnecessarily. Private grief may sometimes have a legitimate program purpose but must not be exploited for sensational effect and personal privacy must be respected.

Applicable Law and Regulations

Attention is drawn to the applicable laws on blasphemy and obscenity in the legal section of this manual.

The Broadcast Regulations prohibit among other things "any abusive comment on any race or religion" and the broadcasting of "any obscene, indecent or profane language or pictorial presentation."

Reference:

— Hate Propaganda and Blasphemy
— Portrayal of Women in CBC Programming
— Right to Privacy
— Stereotypes in CBC Programs

VIOLENCE

Violence must not be exploited on radio and television. The CBC as a matter of general policy does not portray violence, except where its depiction is an essential fact of the reality being portrayed.

The presentation of violent scenes or events must be an accurate reflection of reality and appropriate to the context of the program. There must be a balance between respect for the audience and the obligation to respect reality. Violence should not be dwelled upon in a way that would distort its validity or overemphasize its importance. In all cases, the presentation of violence should be warranted and should not be undertaken for shock effect or for trivial reasons.

Civil Disorder

The intrusion of cameras and microphones into a scene of riot or civil disorder raises complex problems and places heavy responsibility on the broadcaster. It is clear that in some cases the presence of cameras has been a provocation to violence. There is also evidence that in other situations the presence of television cameras has had a moderating effect on violent in

cidents. When plans are being made for coverage of events where civil violence may be expected, every precaution should be taken to ensure that the presence of CBC reporters, cameras or microphones is not a provocation.

To this end, CBC journalists and producers should:

— cease using cameras and conceal the microphones, if their presence is evidently inspiring a potentially dangerous situation;

— be wary of persons and groups who are clearly performing for the cameras or microphones;

— avoid making suggestions or requests to participants which would lead to any form of "staging."

Reference:

— Clandestine Methods
— Direct Manipulation of Public Opinion
— Violence in Television Programming (Children's Programs)

ON-AIR PERSONNEL

On-air personnel have privileged access to an opinion-making medium and their performance therefore is of critical importance for the maintenance of journalistic principles and the CBC's policies in relation to these principles. In order to maintain their credibility, they must avoid publicly identifying themselves in any way with partisan statements or actions on controversial matters.

Reporters

The role of the CBC reporter is to convey news to the audience, with maximum fairness, accuracy and integrity.

In the interests of comprehensiveness, it is legitimate for reporters to place news events in a valid context. To this end, they may present an explanation of the background of the news based on careful research. They must not, however, express or reflect their personal opinion or bias. In other words, they must be able to abstract themselves from their personal views. The objective in providing explanation and analysis is to ensure that the audience, which relies on broadcast journalism as the primary source of information, is given as clear as possible an explanation of news events and issues and their significance.

Hosts and Interviewers

Hosts and interviewers must treat their guests fairly. They should not be critical or demanding of some, while conciliatory and sympathetic to others.

It is also essential for the maintenance of their credibility that they refrain from personal advocacy in their handling of discussions and their selection of questions.

Guest Commentators

The guest commentator is by definition engaged to pass judgment on public affairs. Because of its character as a publicly-owned institution the CBC does not adopt as its own the opinions of those commentators whom it invites to articulate the various shades of current opinion on a given subject. The CBC's concern is to ensure the presentation of a wide spectrum of opinion, particularly when the matter is sharply controversial and, where relevant, to reflect the different regions of the country. CBC therefore seeks to select commentators whose background qualifies them to give expert opinion based on accurate information.

Any relevant aspects of a commentator's credentials must be clearly summarized so that the audience may have a perspective by which to appraise the speaker's view. For example, the position and affiliation of a journalist or the particular qualifications of an academic or any other type of speaker should be stated. The descriptions "freelance broadcaster" or "freelance writer" do not meet this requirement.

MANIPULATION OF PUBLIC OPINION

The audience must not be incited by CBC program personnel to express itself in the form of communications to elected representatives, institutions, commercial enterprises or individuals, or by attendance at meetings and demonstrations with a view to exerting pressure to seek changes in public policy or to support a particular point of view.

Such actions would in effect make the Corporation a party to controversy and would be contrary to the premise that the Corporation takes no editorial position in its programming.

CORRECTIONS AND RETRACTIONS

The CBC will not hesitate to admit a material error when it has been established that one has been made.

To do otherwise or to seek to defend program content of unacceptable taste or ethics or containing errors would lead inevitably to loss of credibility by the CBC.

Errors of fact must be corrected clearly and promptly in order to maintain the principles of accuracy and fairness. The senior divisional officer in information programs must be consulted to determine the nature and time of the correction. Retractions may have legal implications; therefore the Legal Department must be consulted before they are made.

Reference:

— Complaints with Legal Implications
— Defences Against Allegations of Defamation — Retractions and Apologies (Legal Section)
— Legal assistance
— Rights of Reply

SECTION II

METHOD

EDITING

The editing process must result in a true reflection of what was originally seen and heard and any terms agreed upon during the preparation of the program.

Editing, the abbreviation of recorded visual, sound or written material, is an essential technique and one of the most demanding in journalism because of the time limitations imposed by radio and television production and the need to be concise and clear. It would be impractical to expect the whole of reality in an edited program. What in fact results from selection and editing is a compression of reality, a slice of reality — which must nonetheless reflect the essential truth without distortion.

The following are important guidelines:

— Questions and answers must not be edited so as to change the original meaning, or distort the sense of the original interview as a whole;

— Answers to a question given in one context must not be edited into another;

— An answer to a question must not be placed in a program so that it purports to be an answer to a question other than that actually posed;

— In cases where the editing process requires re-asks, reactions or cutaways, the nature and intent of the original response must be preserved;

— the listeners and viewers must not be misled into thinking a discussion is taking place between people when no such discussion was recorded.

Reference:

— Balance
— Journalistic Principles
— Rights of Invited Participants and Interviewees

EDITORIAL USE OF TECHNOLOGY

Production techniques may not be used to distort reality nor to have the effect of producing editorial comment.

Accuracy and integrity can be compromised by abuse of the technology of radio and television, which offers a wide variety of visual and sound effects, to modify what is being broadcast. Music is perhaps the most obvious of these effects, but they include such things as lighting, camera angles and sound effects.

Reference:

— Mixture of Production Forms

INTERVIEWS

Interviews are to be conducted in accordance with journalistic policies in general, but particular attention is drawn to policies on: On-air Personnel — Hosts and Interviewers; Anonymous Program Participants; Clandestine Methods; Editing; Requests to CBC to Withhold Material; Right to Privacy; Rights of Invited Participants and Interviewees; Veto of Program Material by Invited Program Participants; Protection of Sources.

Care should be exercised not to take unfair advantage of uninitiated members of the general public who may be ignorant of certain journalistic practices e.g., the difference between on- and off-the-record interviews, or the attribution of particular comments or opinions.

RESEARCH

CBC requires a high standard of program research, which is subject to careful editorial supervision and attention. A minor error in fact can damage the credibility of a whole program.

Any research in the social sciences (the area of almost all public affairs) involves explicitly or implicitly the development and testing of an hypothesis. The original hypothesis of a program project must meet the test of research because if it is not verified or called into question, the project has a built-in editorial bias.

Research in areas where specialized knowledge is required should utilize the resources of institutions and experts outside the CBC. It should be recognized, however, that sometimes these have a partisan concern in the subject and that there must accordingly be a balance in the outside resources which are used.

Responsibility for the program, for its editorial focus and the context in which the facts are put forward rests solely with the CBC.

Reference:

— Balance
— CBC Program Content Responsibility
— On-air Personnel (Guest Commentators)

CLANDESTINE METHODS

As a general rule, journalism should be conducted in the open. The credibility and trust placed in the CBC's journalistic programming by the public depends largely on confidence in the ethical and professional standards of its practitioners.

Covert methods, such as are referred to in this policy, should only be employed with due regard to their legality, to considerations such as fairness and invasion of privacy and whether the information to be obtained is of such significance as to warrant being made public but is unavailable by other means.

Misrepresentation

Deception must not be used to gain information. CBC employees, therefore, should not misrepresent themselves or their purposes to gain it.

There may be occasions when it would serve a legitimate program purpose for a journalist not to declare his or her profession but to seek information as an ordinary member of the public. Occasions of this sort might occur, for example, during investigations into such matters as the perpetration of frauds on the public or similar antisocial behaviour. These investigations would usually be carried out in places to which the general public has access, such as retail stores, art galleries and public meeting halls. If it is considered important and in the public interest to seek information, without disclosing a journalistic purpose, from places to which the public normally does not have access, approval of the senior divisional information officer must be obtained.

Hidden Cameras and Microphones

As a general rule hidden cameras and microphones must not be employed in the gathering of information.

Their use raises serious ethical considerations and may entail criminal and civil liability. It is a crime to listen in on or record a private communication by using an electromagnetic, acoustic, mechanical or other device without the consent of at least one of the participants in the communication.

There may be occasions, however, when the use of devices does not infringe the law and when such use could be regarded as being in the public interest. The information gained must serve an important purpose, must be indispensable to that purpose and must be unobtainable by more open means. Occasions of this sort could include reporting on antisocial behaviour such as the selling of drugs to minors, or public situations such as a demonstration on the streets, which may be readily seen or heard by others, but where the appearance of cameras or recording equipment, while proper, may prevent the normal evolution of the situation.

On these occasions permission of the divisional Vice-President or by his or her authorized delegate is required after consultation with the Legal Department.

Telephone Interviews

When the telephone is used to obtain comment from a person for use in a broadcast and the conversation is recorded with the intention of using the actual voice of the person being interviewed, it is necessary to obtain the express permission of the other party. Failure to do so is unethical and the use of such a recording for broadcast may be illegal in certain circumstances.

Attention is also drawn to the requirement imposed by the AM Regulations of the CRTC. Regulation 5(1)(k) prohibits the broadcasting of "any tele-

phone interview or conversation or any part thereof, with any person unless:

1) the person's oral or written consent to the interview or conversation being broadcast was obtained prior to such broadcast, or

2) the person telephones the station for the purpose of participating in a broadcast."

ANONYMOUS PROGRAM PARTICIPANTS

Accuracy and integrity in journalism require that the identity and credentials of an interviewee be evident to the audience.

If an interviewee or any program participant is anonymous, face or identity concealed or voice distorted, it is tantamount to concealing from the audience pertinent information required to judge his or her comments, and might further the chance of irresponsible statements by the participant.

There are occasions when the value of the information (measured in terms of the importance of bringing it to the attention of the public) which can be conveyed by an anonymous interviewee or participant outweighs the objections and the technique may be used. For example, where the public identification of the interviewee may cause personal hardship, or where the interviewee is a person whose personal safety may be jeopardized by identification, anonymity may be justified.

In cases where an anonymous interview is believed to be warranted:

— the approval of the senior divisional officer in information programs or that of his or her delegate is required;

CBC must obtain and keep the name and address and be satisfied as to the bona fides of the guest.

Reference:

— Protection of Sources

MIXTURE OF PRODUCTION FORMS

Mixture of Actuality and Dramatization

Journalistic programs must not as a general principle mix actuality (visual and audio of actual events and of real people) with a dramatized portrayal of people or events.

The audience must be able to judge the nature of the information received. The mixture of forms renders such a judgment difficult because it may lend the appearance of reality to hypothesis.

Should a situation arise in which such a mixture of forms is the only adequate method to convey the necessary information, the dramatized portion must be well identified.

Reconstruction and simulation

Any reconstruction or simulation must coincide as closely as possible with the event which it purports to portray.

Reconstruction or simulation can be the most effective means of conveying certain types of information such as space exploration or description of an accident. If an event or portion of an event is reconstructed or simulated in the course of a program, that fact must be made clear to the audience by audio or visual means.

PROTECTION OF SOURCES

The corporation strongly upholds the principle of freedom of information and considers the protection of a journalist's sources to be an important element of this principle.

Information which the public should know about is sometimes only available through a confidential source. 'Off-the-record'' discussions with journalists, for example, are often held by public figures and others. If the confidentiality of sources were not respected as a matter of principle, this would inhibit the free flow of information which is essential to the vitality of a democratic society.

Information from sources who do not wish to be publicly identified may be used if the source is known to the journalist and has a prima facie credibility. However, to avoid the possibility of being manipulated to advance inaccurate or biased information, the journalist must carefully check the reliability of the source and must obtain corroborative evidence from other pertinent sources.

The identity of a confidential source must be made known to at least one other person in the senior editorial line acceptable to the journalistic or regional management. Disclosure of sources within the journalistic line of responsibility should not be confused with public disclosure of sources. Protection of sources is not a legal right and, especially when public safety or crime is concerned the courts and other judicial bodies authorized to do so may require a person to reveal his sources of information.

In such cases the Corporation will not advise an employee to refuse to obey an order of a court. The Corporation's legal counsel, however, would be available for advice and could take such action as urging the court to weigh the public interest carefully before enforcing an order to break journalistic confidence or, if the order were insisted upon, requesting that the hearing be in camera.

In cases involving clear danger to public safety, the Corporation itself would require that the proper authorities should immediately be notified through its legal counsel.

Reference:

— Anonymous Program Participants
— Investigative Journalism

PAYMENT OF FEES

As a general rule, the CBC does not pay news sources; the journalist's task is to gather information freely given.

This rule should not be confused with the quite different requirement in broadcasting, in certain circumstances, to make legitimate payments to persons participating in information programming. The fixing of such payments should be guided by existing performers' scales.

Excessive fees should not be paid for access or exclusive rights to material for information programming. It would be undesirable, for instance, to engage in competitive bidding for a sensational item. Situations might arise where, because of the importance of the material, it might be justified to make unusual payments for access or exclusive rights to it, provided it could not otherwise be obtained. If exceptional payments of this type should be contemplated, approval of the senior divisional officer in charge of information programs must be sought.

Reference:

— Payments to M.P.s, Senators, Members of Provincial Legislatures and Other Public Bodies

FREE TRAVEL

Production personnel will not accept offers of free travel or accommodation from outside organizations or individuals to facilitate the gathering of program, news or research material.

CBC programs must be protected from improper external influence or the suspicion of such influence. Travel and accommodation costs are a form of program expense and are not to be absorbed by outside agencies.

PAYMENTS TO M.P.S, SENATORS, MEMBERS OF PROVINCIAL LEGISLATURES AND OTHER PUBLIC BODIES

The CBC will not make any payment of any kind for any purpose to a Member of Parliament or the Senate. This prohibition applies to all payments, including performing fees, script rights, travel or living costs, or other out-of-pocket expenses.

Sections 10 and 17 of the Senate and House of Commons Act prohibit Members of Parliament and Senators from accepting payment or remuneration from agencies of the Government of Canada or of the Crown. The penalty for Members of Parliament is disqualification as a Member.

The Justice Department has given its opinion that a Member of Parliament who accepts any payment from the CBC would jeopardize his or her seat, and that a Member of the Senate in like circumstances would be laid open to other penalties as prescribed by law.

Members of Provincial Legislatures or of Civic or Municipal Elected Public Bodies

There is no legislation prohibiting elected members of provincial legislatures or of municipal or civic governments as a class from receiving payments from the CBC.

Such elected members should not be paid for services relating to news and current affairs, and having a clearly political nature.

Nor should members be paid for broadcast appearances on behalf of a political party.

Provincial Legislation Re Corrupt Practices

Producers who deal with members of provincial legislatures should be aware that in most provinces there is legislation aimed at the suppression of corrupt practices, which could conceivably be invoked to the detriment of a provincial legislator who accepts payment from the CBC in return for explaining or defending a political point of view on a broadcast. Such a possibility is probably very remote, but there may be cases where producers may find it prudent to draw to the attention of provincial legislators the existence of these provincial statutes.

The Legal Department should be consulted for further information.

OPINION POLLS

CBC-conducted opinion polls must be as efficient as possible, of maximum accuracy and reliability and the results correctly used or interpreted. To this end, all survey or polling initiatives must be authorized by the senior divisional information officer or by his or her delegate; all survey or polling procedures must be authorized by the CBC Research Department, which will also give guidance as to their use.

The gathering and interpretation of information, obtained through sample surveys, on the public's opinions, attitudes, knowledge and related behaviour on various social issues has become an important function in modern society. Broadcasters frequently use information of this kind as an aid to the planning, production and on-air presentation of programs.

It should be noted that:

— surveys and polls of various kinds are often so badly conducted through lack of professional research, planning and supervision that the statistics they produce are largely meaningless;

— even where a survey has been conducted by an independent professional organization, the latter's standards of professional competence may be lower than those required by the Corporation;

— a survey may be quite properly conducted, yet the results which it produces can often be grossly misleading unless correctly interpreted;

— in those cases where it is an advantage to the Corporation to commission a survey from an independent research organization, the Research Department is best qualified to judge the qualifications of the organization concerned and the quality and relevance of the service to be provided;

— there may well be occasions where information that is required for program purposes and which it is felt can only be obtained from a special survey, is in fact already available to Research or can readily be procured by non-survey means.

On-Air Reporting of Survey Data

Special knowledge is often required in commenting on or discussing the results of what appear to be even the simplest types of polls and surveys. Where these are the results of special research conducted by or for the

Corporation, the Research Department will provide the necessary guidance as to on-air treatment. In the case of on-air reports or comments on the results of other surveys and polls, while it is neither feasible nor desirable to attempt to make policy provision for all eventualities, it is strongly advised that program staff avail themselves of the specialized services in this area that the Research Department is able to provide.

Election Polls

CBC will not commission or conduct polls for broadcast during the last 10 or 14 days of an election or referendum campaign, depending on the length of the campaign.

Document 59

By the late 1970s , the idea of the "single system" of broadcasting was under increasing strain. In reality, a single system, rationally controlled to carry out national cultural purposes, was simply not happening. Not only had the CBC become a less important part of the Canadian broadcasting picture, but even private broadcasters were threatened by the breakup of the mass audience.

In the United States, pay TV was presenting first-run movies, sports, and everything from pornography to nonstop religious programs for specialized audiences. Some Canadians bought backyard or rooftop receiving dishes and aimed them at the US pay-TV satellites, in effect making themselves their own unlicensed cable service. Despite the obvious discomfort of the federal Department of Communications, little action was taken against such "broadcasting receiving undertakings," as they were in the eyes of the law. Coupled with this do-it-yourself reception, there was considerable pressure from the cable television companies for legal pay TV in Canada, a service that would (they thought) boost profits in areas where basic cable was already in place.

In the midst of growing debate, the federal Minister of Communications, Jeanne Sauvé, appointed a committee. It was to produce "a strategy to restructure the Canadian telecommunications system to contribute more effectively to the safeguarding of Canada's sovereignty." This statement still echoes the old notion of the single system. The committee was unusual, composed in part of big players in the very business under investigation; it included Beland Honderich of Torstar Corp. and Alphonse Ouimet, the former president of the CBC and in 1979 chairman of Telesat Canada. The head of the eight-member committee was J.V. Clyne, chairman of MacMillan-Bloedel and chancellor of the University of British Columbia. Sauvé at the time acknowledged the possible conflicts of interest but pointed out the dilemma: to get informed advice it was necessary to consult people with knowledge of the field.

It is a reflection of how fast things were changing that the committee worked without public hearings, although it invited formal submissions from the provinces, the industries involved in telecommunications, and any other interested groups or individuals. The 98-page report was published in March 1979. Reprinted here are the chapters on broadcasting, "foreign and Canadian programming," and pay TV. The recommendations about pay TV received the most attention at the time. The committee's opinion was that pay TV in Canada should be on a pay-per-program basis, something consumers would dearly love but which existed almost nowhere in North America except in motel rooms—and the motel owners were buying the whole channel. The notion that pay TV be introduced

"as soon as the technology for pay-per-program is developed," seemed to some people to be one way of saying "never."

(The report refers to "Bill C-16," a new telecommunications act which received first reading on 9 November 1978. It was never debated before the end of the 30th Parliament.)

DOCUMENT 59: ***Telecommunications and Canada,*** **the report of the consultative committee on the implications of telecommunications for Canadian sovereignty, March 1979, 29–49.**

6

Broadcasting

RADIOCOMMUNICATION OR *RADIO* MEANS ANY TRANSMISSION, EMISSION OR RECEPTION OF SIGNS, SIGNALS, WRITING, IMAGES, SOUNDS OR INTELLIGENCE OF ANY NATURE BY MEANS OF ELECTROMAGNETIC WAVES PROPAGATED IN SPACE WITHOUT ARTIFICIAL GUIDE. Bill C-16, S.2(1).

BROADCASTING MEANS ANY RADIOCOMMUNICATION IN WHICH THE TRANSMISSIONS ARE INTENDED FOR DIRECT RECEPTION BY THE GENERAL PUBLIC. Bill C-16, S.2(1).

Apart from networks, there are two main classes of broadcasting undertaking: the broadcasters, known as "broadcasting transmitting undertakings"; and the cable companies distributing signals received off the air or programs they have themselves produced, known as "broadcasting receiving undertakings." It is of great importance to keep in mind that television is not exclusively broadcasting, for programs can be fed directly from the place of production into the cable distribution system without having been transmitted by Hertzian waves. A company that does not have a receiving antenna and feeds programming directly into a cable distribution system is not a "broadcasting receiving undertaking" and is not subject to the Broadcasting Act or, indeed, to federal jurisdiction at all.

The Canadian broadcasting system is declared by the Broadcasting Act to be "a single system...comprising public and private elements." The public element consists of the CBC and the provincially owned broadcasting operations, at present carried on only in Quebec, Ontario, and Alberta.

It is generally accepted that television is the most powerful medium yet

devised for influencing public opinion and social habits. And it may be said that the "culture" of any group of people is built on their opinions and ways of life. It follows that, while many aspects of foreign cultures should be welcomed, exclusive or even excessive exposure to foreign television has an attenuating effect on the culture of a country. This is why the decision was taken nearly fifty years ago to establish the national broadcasting service now operated by the CBC.

We came to a general agreement that the Canadian broadcasting system as a whole is not fulfilling our expectations, and not achieving the broad policy objectives set forth in the Broadcasting Act. We have asked ourselves and others why this should be: do the causes lie in the wording of the Act, in the policies of the federal government, in the regulatory and administrative policies of the CRTC, in the organization and policies of the CBC? These questions have been approached separately for the public sector and the private sector.

The Canadian Broadcasting Corporation

The Committee is unanimous in its belief that the CBC is an absolutely essential factor in the development and maintenance of a Canadian identity, and in the fostering of a regional and national Canadian culture that is the principal defence of the social and cultural sovereignty of Canada. Leaving aside any reservations we may have on certain aspects of the CBC to which we revert later, we believe it is an institution that should be supported to the fullest possible extent by Canadian governments and citizens alike. It is obvious that the corporation, even if impeccably managed and administered, can fulfil its mandate only to the extent that it is given the resources to do so. The programming budget of the CBC represents by far the largest single item of federal expenditure in support of cultural objectives; the administrative infrastructure and facilities of the CBC must be maintained at a cost that is not immediately related to the volume of programming, and it follows that any reduction [in constant dollars] of its total operating budget falls mostly on either the quantity or quality of program production, or both.

The foregoing statement is broadly true whether the CBC is administratively top-heavy, as some say, or whether it is managed with the utmost efficiency. In the past, the CBC has often been accused of spending too much money on buildings and technical facilities and too little on programming. In defence, it has to be stressed that for many years past the federal government has given first priority to the extension of CBC television and radio coverage to as many Canadians as possible, and has been more easily tapped for funds for that purpose than for programming; what the CBC has achieved in that regard is remarkable and full credit must be given. But this does not alter the fact that there has to be a certain level of administrative infrastructure that cannot easily be reduced at short notice. It is for this

reason that every official inquiry in the past twenty-five years has strongly recommended the provision of long-term, usually five-year, financing, but no federal administration has been willing to take the legislative action that would make long-term financing a statutory obligation. There has been, we understand, some informal agreement in recent years, but this has not deterred the government from making sharp budget reductions at short notice. We are unable to understand how a corporation the size of the CBC can be expected to plan and manage rationally without any reliable knowledge of how much money is to be available for some years ahead.

Recommendation 5:

The broadcasting services provided by the CBC are the main national instruments for the preservation of Canadian social and cultural sovereignty, and should be recognized as such. The CBC should be afforded whatever means may be required to reinforce its function in that regard.

Section 3(g)(i) of the Broadcasting Act provides that the national broadcasting service should:

> be a balanced service of information, enlightenment and entertainment for people of different ages, interests and tastes covering the whole range of programming in fair proportion.

In response to our enquiry, the President of the CBC said he did not think this requirement constituted an undue burden. His opinion was that, given the wide coverage of Canada by private TV, and its heavy emphasis on variety and sports programming, it will become possible for the CBC to make a gradual reduction in the volume of its programming devoted to those types of programs and devote more of its resources to programs that may have great appeal for audiences other than the mass audience. The Under-Secretary of State supported this view, inferentially, by saying that the law may be being too strictly interpreted. We believe that there will be a gradual trend towards more specialized television, enabling the CBC to give more attention to special-interest programs that may individually attract relatively small audiences but taken together may constitute a significant contribution. The CBC-II proposal is a move in that direction.

The CBC is a perennial object of attack. It is accused variously of being too highbrow, too lowbrow, and too centralized, of doing little or nothing to bridge the gap between English-speaking and French-speaking Canadians, of having an undesirably introvert approach to program production, of being too commercial in its programming, and of being inefficiently managed and administered. We are not in a position to express detailed opinions about the justification for such accusations, but of one thing we are convinced: the cumulative impact of all these accusations and attacks is

more than the facts would warrant. Obviously the time constraint under which we have been working would not have permitted us to delve into all these problems and build up a reasoned defence and guidance for improvement in the future, but we believe that this is a job that must be done with the least possible delay.

We are, therefore, proposing that a bilingual task force of not more than eight members be appointed to look at the national broadcasting service, to advise the CBC on any major aspects of its responsibilities, and to make its views public within 12 months or less.

The task force should comprise two CBC representatives, one from the English-language and the other from the French-language network. For that purpose the President of the CBC should be invited to designate three persons from the highest management levels of each network and the selection should be made from these two lists. Other members should be chosen from among professionals associated with the public broadcasting community, who would be prohibited from engaging in work for the CBC while they remain members.

The task force should concentrate its attention on the great public service challenges facing the CBC at this time of major and rapid change in the general television context in Canada. It should invite and accept briefs and submissions from any interested parties but should not be required to hold public hearings. During the course of its work, the task force should arrange for discussions and working sessions with representative groups involved in the activities of the CBC, and it should work closely with experts in the various disciplines concerned with national broadcasting.

The task force should have only one objective, to ensure that the CBC provides Canadians at all times with the best national broadcasting service which our cultural and financial resources can support.

Recommendation 6:

A task force should be appointed by the Governor-in-Council under the Inquiries Act to report on and make recommendations with regard to the management, programming, and funding policies of the Canadian Broadcasting Corporation, with particular but not exclusive reference to:

quality and diversity of programming;

"make-or-buy" policy for program production;

the reflection to each other of the two principal linguistic communities in Canada, and the promotion of exchanges between the English-language and French-language networks;

the proportion of the operational budget being devoted to program production;

the decreasing audience-share of the CBC network, in particular the English-language television network;

responsiveness to the public;

the financial resources necessary to carry out the CBC's responsibilities under the Broadcasting Act;

additional channels [off-air or on cable] to be used for CBC programming.

Broadcasting Financed by Provincial Governments

For many years, it was a firm policy of the federal government that broadcasting licences should not be issued to provincial governments or their creatures; when licensing authority was transferred to the Executive Committee of the CRTC in 1968, a formal direction in that sense was given. In 1972, a new direction was given permitting the issue of broadcasting licences to arm's length corporations established by provincial governments for the purpose of broadcasting educational programs. The CRTC must satisfy itself as to the independence of the corporation from the government of the province concerned, and the definition of educational programming is so broad that both TV-Ontario and Radio-Québec are able to fill most of the evening hours with entertainment of a very general nature. The provincial governments are a source of funds for program production which should be welcomed when funds for that purpose are in such short supply, and we believe it is time that the fiction about education programming be abandoned.

Recommendation 7:

The CRTC should be authorized to issue broadcasting licences to independent corporations established by provincial governments to operate broadcasting facilities and broadcast programs of a general character, subject to the provisions of the Broadcasting Act and the Radio Act.

The Private Sector

It is not altogether easy to define the private television sector in Canada, for more than half the private stations are affiliates of the CBC networks. But they also produce local programming for non-network time, and we therefore treat them as components of the private sector in this context. For the rest, there are the CTV network, the Global chain operating in

Ontario, and a few independent English-language stations, as well as the French-language TVA network in Quebec.

Taking this group as a whole, while recognizing individual differences in markets and programming performance, we do not believe that they are doing all they could and ought to do in the way of Canadian program production. Later in Chapter 7, we suggest some ways of encouraging or requiring them to do more. We also believe that the mandate for the private sector in the Broadcasting Act is inadequate; all that is said is this:

> The programming provided by the Canadian broadcasting system [i.e., the public and private sectors together] 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.

During the debate in the House of Commons on the Bill for the Broadcasting Act, there was strong pressure to impose on the private sector, as well as the CBC, a responsibility to contribute to the development of national unity, but this pressure was resisted on the ground that this was a job for the CBC and to impose it on the private broadcasters as well might restrict the opportunities for "the expression of differing views on matters of public concern." The same argument would not apply, however, to the imposition of responsibility to "provide for a continuing expression of Canadian identity" and an active contribution "to the flow and exchange of cultural and regional information and entertainment."

Recommendation 8:

Bill C-16 should be amended so as to require private broadcasters to provide, inter alia, for a continuing expression of Canadian identity and to contribute actively to the flow and exchange of cultural and regional information and entertainment, as is already the case with the CBC.

The Future of Off-Air Broadcasting

Today, more than half the homes in Canada subscribe to cable systems. The proportion is much higher in such cities as Toronto and its neighbours in south-western Ontario, and is thought to be more than 90 per cent in Vancouver. It is by no means improbable that, within a few years, a broadcaster in Vancouver, for instance, finding that his transmissions are being received, for almost all practical purposes, only by the antennas of the cable companies in the city and its suburbs, may decide to save money by giving up the use of a transmitter and feeding his programming directly into the

cable systems by terrestrial connections; another advantage of doing so would be that he would no longer be subject to CRTC regulations on such matters as Canadian content and could distribute whatever programs would bring in the most money. Should action of this kind gradually spread to all heavily populated centres, there would be no programming left to be carried by the private networks, and none but that provided by the CBC to be viewed in less well populated areas, not only in those that are remote or in the north. Nobody is recommending that off-air television broadcasting be abandoned or prohibited, but the possibility that broadcasters might one day find it more profitable to distribute their programs directly by cable is a factor that must be taken into account.

7

Canadian and Foreign Programming

The Broadcasting Act directs that our broadcasting system should be "predominantly Canadian in content and character," and the CRTC imposes Canadian-content rules for Canadian broadcasters. Nevertheless, a very high proportion of the Canadian evening audience for television watches programming that is predominantly foreign in origin. This comes about in two ways. The Canadian private broadcasters and to a lesser extent the CBC include many foreign programs in their evening schedules, and about 25 per cent of the total Canadian audience watches U.S. stations received either off the air or by cable distribution. The effect is that, in English-speaking Canada, more than 70[1] per cent of the audience from six p.m. to midnight is viewing foreign programs and films. The figure for Quebec, almost 52 per cent, is naturally much lower, but there are two interesting factors to be observed: much of the foreign programming aired on French-language stations does not derive from France but is U.S. programming dubbed into French; and it appears that French-language stations have been losing part of their share of the evening audience while the English-language stations in Quebec have maintained theirs and the U.S. stations have gained almost precisely the share that the French-language stations have lost. This has implications for the preservation of an indigenous French-language culture in Quebec, especially as there is a growing trend among young Quebeckers towards the viewing of U.S. stations.

1 Canadian Radio-television and Telecommunications Commission—Special Report on Broadcasting in Canada 1968-1978. Ottawa, 1979.

For the broadcasters, of course, the advantages of showing U.S. programs are very substantial; they can be acquired at a fraction of the cost of producing similar Canadian programs, and higher rates can be charged for the associated commercials.

This predilection for watching U.S. entertainment can be explained simply. The pool of creative and performing talent in the United States may be presumed to be about ten times as large as that in Canada. It follows that, in any class of entertainment but particularly in variety, U.S. programs are likely to have that much more audience appeal than Canadian programs; this statement must be qualified, however, by a clear recognition that over the years there have been Canadian programs of such high quality as to attract a predominant share of the Canadian audience. We therefore strongly support the view that, with increased support, the audience for Canadian programming will increase as its quality continues to improve. We also believe that Canadian culture cannot be effectively protected by restrictions on access to manifestations of foreign cultures and that the best way to support Canadian culture lies in the pursuit of superior quality and the promotion of opportunity to view and appreciate the best we have.

Before dealing with these issues in detail, it is necessary to draw a distinction between foreign programs aired by Canadian broadcasters, which we shall call *imports*, and the distribution of all the programming of U.S. stations by cable, which we shall call *transplants*.

Imports of Foreign Programming

The Canadian-content rules for television and radio are complex, both in their definition of what is or is not Canadian content and in the varying times of day when they are to apply. Briefly, the CBC is required to do more than the private broadcasters and does more than is required, and the rules for both require only an average over a fixed period. There is more foreign content in prime time than at other times. The net result is that the content rules are effective only in the sense that they achieve compliance with the statutory requirement by ensuring that about 51 per cent of all programming is of Canadian origin. The fact remains that in one way or another programming viewed in the evening hours is predominantly foreign. There seem to be two main ways to deal with this phenomenon: a new approach to the Canadian-content rules; and measures to promote a larger volume of high-quality Canadian production and its programming and marketing.

Until now, Canadian-content rules have been only quantitative, expressed only in percentages and related to different periods of the broadcasting day and week. [It is to be noted that they are now much less stringent than those imposed in European countries, particularly the United Kingdom.] It is understood that the CRTC has been giving consideration

to the feasibility of amending the content rules so as to give proportionately increased credit for quality. A possible model, generally but not necessarily in detail, might be the points system adopted four or five years ago by the Australian Broadcasting Control Board.

Recommendation 9:

The CRTC should introduce a points system for measuring Canadian content combining qualitative, quantitative, and prime-time aspects, without relinquishing the present concept of a minimum quantity, but with strong emphasis on quality.

We have also given some thought to the possible desirability of applying differential standards for broadcasters in highly profitable areas and those whose profit margins are little more than marginal. This subject was addressed by the Fowler Committee in 1965 in the following terms:[2]

> The plain fact of the matter is that Canadian content cannot be measured in terms of strict adherence to the law, for there is bad Canadian content as well as good Canadian content. A half-our program of excellent quality may cost more than several hours of quiz-shows and the like, and will undoubtedly be worth more in this context, but will still only be chalked up as half an hour of Canadian content. We believe that, taking all these considerations into account, enforcement of Canadian content by universally applicable regulations is impractical. The individual capacity of each broadcaster should be reviewed from every angle at the time the licence is issued, and appropriate requirements for Canadian content should be made a contractual engagement as a condition of the licence itself.

The committee went on to recommend:[3]

> ...the establishment of individual station standards of program performance, which are to be made a condition of each station's licence and enforceable as such.

We appreciate that the implementation of the Fowler Committee's recommendation would entail a great deal of research and administrative work for the CRTC, and therefore do not think we are sufficiently well informed to support it in the words quoted above. We do believe, however, that the CRTC should establish classes of broadcasting stations for this purpose [under Section 16(1)(a) of the Broadcasting Act], to be used as a base for determining obligations with regard to the production of Canadian programs.

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2 Report of the Advisory Committee on Broadcasting: Queen's Printer, Ottawa, 1965; p. 49.
3 *Op. cit.*, p. 64.

Recommendation 10:

The CRTC should establish classes of broadcasting stations as a base for determining the percentage of revenue, in each class, that should be devoted to program production.

The cable companies have put forward proposals for using a greater part of their revenues for program production, and there are several ways in which this could be effected. One would be to impose a levy of some kind, the proceeds to be paid into some fund from which subsidies would be paid out to program producers. A levy of $1 a month, to be added to the subscription rates, would now produce about $42 million a year to be used for Canadian program production. We are not in a position to determine the exact figure that might be appropriate.

We also considered what should be done with the money raised in this way. Our conclusion is that it should be paid into a central fund to be administered by the Canadian Film Development Corporation [CFDC] or a similar new agency, the use of which would be restricted to program productions to be viewed on television.

Our proposal may not be welcomed by the cable industry, but we would point out that a cable company wishing to invest in a production by an arm's length affiliate would be just as well placed as any independent producer in approaching the CFDC for assistance.

Recommendation 11:

a] Some of the revenues from cable subscription fees should be paid into a fund to be used for the production in Canada of programs to be viewed on television. All subscribers should contribute to this fund; it should be noted, however, that rate-of-return regulation for cable will mean in the case of many systems that a levy can be made for the purpose of the programming fund without increasing the present subscription fees. In some cases, the amount of the levy may have to be added to the subscription fee.

b] The Canadian Film Development Corporation [CFDC], or a new agency created for the purpose, should be empowered to receive and administer the proceeds of the levies recommended in [a] for the purpose of promoting Canadian production of programs to be viewed on television [including films], following the procedures now authorized and in use for the promotion of film production by the CFDC.

The incentives discussed so far have related only to program production, but there is room, too, for assistance in the programming and marketing of Canadian productions. There is a variety of tax measures that the govern-

ment could use as incentives to promote the production, programming, and marketing of Canadian television productions.

Recommendation 12:

The federal and provincial governments should take action, as a matter of urgency, to introduce incentives to promote corporate sponsorship of Canadian television programming and to assist the production, programming, and marketing of Canadian programs and films to be shown on television. Governments should consider the possibility of tax rebates for advertising on Canadian programs.

Transplants

From the earliest days of radio broadcasting, Canada has been vulnerable to the intrusion of broadcast signals emanating from the United States. Until 1968, when strict Canadian-ownership rules were enforced, some Canadian stations were owned by U.S. interests, notably in Windsor, Ontario, which has wide off-air coverage south of the border; there were also intrusions, not in contravention of international agreements, in such places as Bellingham, Washington, covering Vancouver, Victoria and other parts of British Columbia, and Pembina, North Dakota, beaming at high power into Winnipeg. It is useful to bear in mind, before examining the impact of cable, that more than half the people of Canada can receive programming from U.S. stations directly off the air, but the quality of the signal is much improved if it is distributed by cable.

The rapid penetration of cable systems has led to the position today that over 75 per cent of Canadian homes lie in areas licensed for cable; more than 70 per cent are actually passed by cable and two-thirds of these, or well over 50 per cent of all the homes in Canada, are cable subscribers. As we have seen, a large proportion of prime-time programming by Canadian stations is of foreign origin, and of course virtually all that of U.S. stations. But despite the enormous spread of cable in the past decade, the share of the Canadian audience in the evenings that view U.S. stations has increased only from about 21 to 25 per cent in the past decade. What has happened is that ability to view U.S. stations has been carried by cable into communities many hundreds of miles from the border; penetration by Buffalo stations, for instance, reaches far up into Ontario by microwave connections, not just to Sudbury but as far as Kapuskasing and Hearst. The same thing has been happening in other parts of Canada, with odd results in distant and smaller communities; many of them have a choice of only two Canadian sources of programming, the CBC and a private station [probably a CTV affiliate], while they have a choice of four or more U.S. stations if they have cable. The cable problem is a matter of encroachment on Canadian cultural sovereignty, and also on Canadian commercial sovereignty.

There may be ways to control the amount of foreign programming shown on Canadian stations, but practically all the programming of U.S. stations is foreign. In Chapter 1 we quoted a definition of *sovereignty* which, restricted for the moment to culture, would read, "Cultural sovereignty for Canada means the ability of Canadians to exercise control over the direction of cultural change." The presence of broadcasts by U.S. stations in most parts of Canada detracts from Canadian sovereignty in those terms, and that is the reason for attempts to achieve control; and it is those attempts that have aroused the complaints of the U.S. border stations.

There is something repugnant to us in the notion that, whatever the legal niceties, it is permissible to pick up someone else's property off the air and tamper with it for profit. In this regard, we think the U.S. border stations have cause to believe they are being unfairly treated. By saying this we do not mean to support the case they are making for remedial action: what has happened is that they have been deprived, in one way or another, of part of the commercial value of what they regard as their property. They argue that the Canadian cable industry has been developed largely at their expense, and assert that their present grievances are due to the failure of the federal government or the CRTC to formulate a coherent policy and, in consequence, the imposition of one defensive mechanism after another, some of them indefensible on ethical grounds.

First, we may approach the effect of S.19[1] of the Income Tax Act, which disallows advertising on U.S. stations as a deductible business expense [when the advertising is directed primarily to Canadian audiences]. The U.S. border stations assert that, as a result, they lost $9.7 million in advertising revenues from 1975 to 1977.[4] As a frame of reference, we note that in 1975, total U.S. TV advertising revenues amounted to $6.8 billion, while total Canadian TV advertising revenues amounted to only $376 million.[5]

The purpose of Bill C-58, in relation to broadcasting, was to divert advertising revenue from U.S. to Canadian stations, and it is not possible to measure precisely how successful it has been in that regard. Canadian broadcasters point out that there are too many variables in the equation [rising costs, different programming, and so on] and for this reason the estimated loss of $9.7 million in two years by the U.S. stations must be treated with some reserve.

Taking careful account of all the arguments put before us, we do not feel moved to recommend any change in the sense of S.19.[1] of the Income Tax Act.

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4 Source: Brief submitted by the Licensees of 14 States Border Television Stations [referred to hereafter as 'U.S. Border Brief'].

5 Source: Brief submitted by the Canadian Association of Broadcasters [CAB].

Different considerations apply to the actions taken by the CRTC, which include random deletion of commercials and simultaneous substitution. The CRTC has power to order cable companies to delete commercials, at random and without notice, from the programming they distribute from U.S. stations; generally speaking, the vacant slots are filled only with public service announcements. This action is believed to be a deterrent to advertising on U.S. stations intended for Canadian markets, and naturally arouses strong opposition from the U.S. stations concerned while not adding much to the revenues of Canadian stations. The power to order random deletion has been sparingly used by the CRTC, and further action has been deferred pending intergovernmental negotiations. It is understandable that this defensive measure is regarded by the U.S. stations as unfair. Simultaneous substitution is less objectionable; when a program is being shown at the same time on both a Canadian and a U.S. station, the cable operator is authorized, if so requested by the Canadian station, to blank out the U.S. station and substitute the Canadian station, so that the viewer sees only the commercials of the latter.

The issues here are exceedingly complex and cannot be treated in every aspect in this report. To start with, the owners of a program sell distribution rights in specified areas. In the United States, FCC regulations provide "exclusivity protection" for a station holding distribution rights to a program, which involves restrictions on a local cable company showing the same program brought in from some distant station. No such protection is at present available to Canadian stations against the distribution from the U.S. of a program to which it holds exclusive showing rights in a specified area. KVOS Bellingham, Washington, acquires rights in southern British Columbia, but the Buffalo stations have not acquired Ontario rights; it is significant that KVOS has offered to put up money for Canadian program production but the Buffalo stations have not felt that they are under any such obligation. A curious episode was an application by Global to black out certain programs from its transmitter near Windsor, Ontario, because a Detroit station held the rights for the Windsor area. The Committee's counsel advises that there is no Canadian statute that could be used to prevent U.S. stations from buying Canadian rights and, if there were, it would have no extraterritorial effect. Canadian broadcast signals that are receivable in the United States are not protected by the FCC.

The simple fact is that a broadcasting station, wherever it may be located, does not own a program it has procured but only the showing rights, and those are sold to the stations by the owners. The U.S. border stations complain that the owners charge them higher rates because of their cable spillover coverage in Canada, and that they therefor have a right to recoup by charging higher rates to advertisers; in fact, if those advertising announcements were consistently deleted for the Canadian audience, the price asked of the U.S. border stations for distribution rights would be lower.

The commercial aspects of this problem can be simply stated. A broadcaster does not sell programs to audiences; he procures [or produces] programs and sells audiences to advertisers. The larger the audience, the higher the price for distribution rights and the higher the advertising rates. Canadian broadcasters buy American programs because they attract large audiences; the advertising rates charged are therefore higher, and the resultant revenue helps to pay for Canadian program production. It is estimated that the Canadian broadcasting industry buys distribution rights for U.S. programs to the tune of $50 million a year, a sum that represents about 20 per cent of all U.S. producers' foreign sales.[6]

It might be thought that protection of this material could be given by copyright law. But this is not so, and that is a matter of great international concern in relation to satellite broadcasting and domestic reception. The U.S. law on copyright was revised a year or two ago, but is still regarded as inadequate to provide a solution to the problem of protecting foreign distribution rights; the Canadian Copyright Act provides no such protection. As Recommendation 14 suggests, we believe the government should give urgent attention to copyright, for the protection of this and all other cultural property.

Recommendation 13:

The problem of transplants — American stations carried in their entirety on Canadian cable systems — presents a perplexing mixture of conflicting needs, desires and rights.

a) The existence of the transplant system is inherently unfair to Canadian private stations and the CBC. The showing of U.S. programs on the transplants detracts from the commercial value of those programs to Canadian stations, even though the Canadian stations have bought Canadian rights to them. The Committee has concern that a time may arrive when, most of the country having been reached by cable, there will be little or no commercial value to Canadian stations in using U.S. programs.

b) In addition the transplants on cable spread foreign advertising far beyond the border areas and make it unnecessary in some cases for international corporations to buy advertising in Canada; they are covered by the "overflow" of their American parent companies' advertising.

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6 Op. cit.

c) The majority of the Committee proposes that when a Canadian broadcaster buys exclusive rights to a program for a given area, cable companies in that area be required to respect these rights and the CRTC to enforce them. This action should not be taken before public discussion and debate, including CRTC hearings.[7]

Two members of the Committee(Clyne, Fulford) firmly hold the view that this would be unacceptable to Canadian viewers who regard the watching of transplants as an incremental right, given the technological capability of cable.

d) It has been proposed to the Committee that Canadian cable systems simply delete all commercials from U.S. transplants. The Committee rejected this suggestion on the grounds that it would amount to unethical treatment of the U.S. stations.

e) The Committee holds the view that eventually this issue may be resolved in terms of property ownership under a revised copyright law.

Recommendation 14:

The federal government, which has traditionally exercised jurisdiction in the field of copyright, should urgently undertake a full revision of the copyright law, having regard to the extensive report made by Keyes and Brunet at the request of the Department of Consumer and Corporate Affairs and published in 1977.

The CRTC has generally leaned to permitting each cable company to carry one station representing each of the three principal U.S. networks plus a station carrying the Public Broadcasting Service [the 3 + 1 formula], but has not established this as a universal restriction; some Canadian cable companies distribute five or six U.S. stations. In heavily cabled areas, particularly south-eastern Ontario and British Columbia, difficulties arise when a new Canadian station comes on the air and displaces a popular U.S. station from a "clear" channel; the cry is that people are being deprived of the opportunity to view what they want to view. The Committee has some sympathy with this view, and believes that there would be less outcry if converter service were available to all, for the use of a converter would provide a "clear" channel for a displaced U.S. station. It has been suggested that most cable companies should sell or lease converters to their subscribers, the rental charge being added to the monthly subscription; subscribers owning their own converters would simply not be charged the extra amount.

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7 We note that in the United States the ownership of programs within a given area is protected by law and practice and that cable systems routinely black out programs from distant stations in order to protect the rights of local stations. Were Canadian cable companies to follow a similar rule, it would not be at variance with U.S. practice.

Recommendation 15:

The CRTC, in authorizing the carriage of television stations by cable, should continue to give precedence to Canadian stations, and should not increase beyond four the number of U.S. stations that may be distributed.

Mr. Clyne, Mr. Fournier and Mr. Beigie have reservations about this recommendation, and would allow the CRTC to have discretion as to the number of U.S. stations that may be distributed.

The treatment of the US border stations by Canada has created serious friction between the two countries, which could result in retaliatory measures in other fields of enterprise, and it is clear that there can be no solution that would satisfy the interests of all parties. The subject has been a matter of discussion between officials of the Canadian Department of External Affairs and the U.S. State Department, and in 1976 Canada made proposals for, *inter alia*, a bilateral treaty on cross-border advertising, but these were unacceptable for the United States. At this point we should like to quote from the brief submitted to us by the U.S. border stations:

> ...we urge that the problems of the Canadian broadcasting system [in this particular matter] can only be resolved in the context of an amicable understanding between the two countries.

We concur in this statement.

Recommendation 16:

The federal government should renew the discussions with the United States with a view to resolving the border television dispute at an early date.

8

Pay-Television

In our terms of reference we have been asked to make recommendations on "the framework and timing for the introduction of pay-television nationally." We take it that the inclusion of the word "nationally" implies that we already have pay-television in Canada, but it has been allowed to come into existence on a piecemeal basis. Cable TV is itself a form of pay-TV, in which the subscriber pays a set rate for all the channels carried by the system. Beyond this, we take pay-TV to mean payment either for a special

channel [pay-per-channel] or for access to a particular program on demand [pay-per-program]. A pay-per-channel system has been in operation in Saskatchewan, and there are a few pay-per-program systems giving service, mainly in hotels, in Ontario and the west. Quebec issued pay-TV regulations in August 1978, related to the establishment of a single non-profit network, independent of the government, which would be the exclusive supplier of programs to local exhibitors; all elements of the system would be regulated by the Public Service Board.

It was pointed out in Chapter 6 that television is not exclusively related to broadcasting, for coaxial-cable systems can distribute programs that have not been broadcast and, as in the case of films, may not have been originally intended for broadcasting. It is only if the cable company operates a receiving antenna that it is subject to federal regulation. Thus the pay-TV operation in Saskatchewan does not contravene any federal legislation and is not subject to regulation by the CRTC; the government of the province has helped the establishment of a Cooperative Programming Network which procures programming from Home Box Office [HBO] in New York City and mixes this with acquired Canadian programs on three channels provided by SaskTel, the provincial Crown corporation that operates the telephone system in the province.

We have heard no evidence that there is at present any substantial demand for the early introduction of pay-TV. There is thus no need for hasty action, but we believe that the demand will grow and that it would be wise to establish a strategic policy for its eventual introduction.

Much of the opposition to pay-TV is related to the fear that it will further fragment the television audience and greatly enlarge the volume of foreign programming made available to Canadian viewers. An opposite view is that Canadian content rules could be applied and that pay-TV would provide alternative viewing to those who do not like what is available, the programming that has the greatest appeal for the mass audience. We believe that as more channels become available, fragmentation of the television audience is inevitable, and may perhaps be desirable. A program that attracts 250,000 viewers may be negligible in the rating system but might still attract sponsorship or advertising directed to special-interest audiences. Opera and ballet, for instance, attract sell-out audiences in most Canadian theatres [at very high box-office prices] and are often supported or sponsored by large corporations. It is possible that, although these art forms have little or no mass appeal, perhaps hundreds of thousands of Canadians might be willing to pay, say, one dollar to view a televised performance. In New York, the Metropolitan Opera puts live performances on cable for distribution as television, and the resultant revenue goes some way to meet the deficit that is otherwise unavoidable every time the curtain goes up on an opera performance. As regards Canadian content, appropriate regulations, not necessarily the same as those applied to broadcasters, could easily be devised and applied.

The cable companies are eager to get into pay-TV as quickly as possible, foreseeing a profitable future. They suggest that part of the resultant revenue should be used by them to produce, or contribute to the production of, high-quality Canadian television programs, and to participate with U.S. producers in the financing of co-productions that would be marketable in the United States and perhaps other countries.

The cable companies are strongly in favour of a pay-per-channel system. At least one reason is that this could be introduced with only a minimal need for modification of their plant and billing procedures. A pay-per-program system, on the other hand, might entail relatively more extensive and costly modifications.

After careful consideration, we have come to the conclusion that a pay-per-program system would be best suited to Canadian circumstances. This would provide a new television outlet for independent Canadian producers and film-makers, and would apply a competitive stimulus and opportunities for new ideas. Pay-per-channel would entail the continuing subjection of television audiences to lowest-common-denominator programming; pay-per-program would attract audiences, relatively small perhaps, but still substantial, for Canadian and foreign productions of the highest quality. These would include those Canadian productions that are most likely to foster a Canadian cultural identity.

Recommendation 17:

a) Pay-per-program television should be recognized as more appropriate for Canada than pay-per-channel. Pay-television should be introduced as soon as the technology for pay-per-program is developed.

b) Pay-television should be provided by licensed Canadian-owned program undertakings.

c) Attention should be given to the elaboration of Canadian-content rules appropriate for pay-TV.

d) There should be a levy on profits from pay-TV, to be used for Canadian programming, with the amount to be determined by the CRTC.

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The question of pay TV would not go away, despite the obvious reluctance of both the CRTC and the Department of Communications to welcome the service into Canada. This attitude changed only slightly despite both a change in government (Joe Clark and the Progressive Conservatives formed a minority government in May 1979 which lasted until February 1980) and a change at the top of the CRTC (John Meisel, a social sciences professor at Queen's University, was appointed chairman in December 1979).

In November 1979, the new minister of communications, David MacDonald, asked the CRTC to carry out public hearings into pay TV. He set the tone and and direction of the inquiry by stating in his letter to the CRTC that "pay television offers a new and unique opportunity to support the Canadian broadcasting system...to encourage the development of Canadian programs." He further provided the committee a set of "objectives and guidelines" on pay TV that had been agreed upon by a federal-provincial conference of communications ministers in October 1979. It can fairly be said that not everyone saw pay TV in the lofty terms of the minister's letter or the "objectives and guidelines." People were buying satellite receiving dishes and illegally dragging in US signals in order to watch first-run movies, sports, and sex, without commercials. At the official level, the idea persisted that pay TV should be made to serve national cultural goals.

MacDonald, for example, also broached the notion that revenues from pay TV could be used to subsidize the extension of TV service via satellite to remote and northern areas, including service by and for Indian and Inuit people. Accordingly, when the CRTC appointed the group to do the work, it was called "the committee on extension of service to northern and remote communities." It was headed by a full-time member of the CRTC, Réal Therrien, and included four others from the CRTC, three people nominated by provincial governments, and one Inuit TV producer. Excerpts from the chapter on broadcasting by and for native people are reproduced below.

Though the committee's title somewhat obscured the fact that pay TV was one of the major issues before it, the report devoted a chapter to this subject. It dismissed the idea that there was any logical way to link pay TV to the extension of service to remote communities and treated the two topics quite separately.

In the excerpts below, the federal-provincial "objectives and guidelines" on pay TV, which appeared as an appendix to the report, follow the selection from the chapter on native broadcasting and precede the chapter on pay TV.

DOCUMENT 60: CRTC, Committee on Extension of Service to Northern and Remote Communities, *The 1980s: a decade of diversity: broadcasting, satellites and pay-TV*, July 1980, 21–22, 26–27, 89, 53–59.

Chapter 4

Broadcasting by and for the Native People of Canada

4.1 General Background

The Committee has expressed its conviction, in Recommendation 4, that Canada has an obligation to provide opportunity for its native peoples, the Inuit and the Indians, to preserve the use of their languages and foster the maintenance and development of their own particular cultures. Moreover, some regard the facilities for effective communication as a basic amenity, analogous to health and education services, that should for the most part be provided by the state.

Paradoxically, television is at once the most damaging threat to native objectives and the most potentially feasible means of achieving them. But the extension of services in native languages is no simple matter. It is perhaps easier to find ways of meeting the legitimate needs of the Inuit, most of whom are to be found in communities in the far North, than those of the Indians, who are widely dispersed throughout Canada and use a dozen or more different languages, often with subsidiary dialects. It would not be fair to insinuate that nothing has been done in the past, for the CBC and the NFB have made commendable efforts, within the uncommendable limits of internally restricted budgets, to address the needs of the native peoples. These efforts have been facilitated by the advent of satellite transmission, which has also brought much-needed reliable telephone service to large areas in the North, but the aspirations of the native peoples to engage themselves directly in broadcasting are very far from being fulfilled.

The CBC is widely criticized for spending too much of its little northern budget in the South, for providing too little time in its schedules for native-language programming, and for doing too little to help the production of programs that would make access to transmission facilities a practical reality in native community life. These criticisms are not perhaps all justifiable, but there seems to be almost unanimous agreement that more, and better, could be done. The CBC points out in its defence that there are no separate satellite channels dedicated to delivering CBC network programming to the North; northerners receive the services from the channels used for distribution east and west. It is possible, however, to insert

programming for regional delivery, and the CBC believes it probable that the channel capacity available will be sufficient to meet the needs of northern native groups for the next few years. In the future, the demand for northern network time will have to be reconciled with the satellite-channel time available. The CBC says that its capacity to provide a full service of programming for, and produced by, native and other northern communities, and to create links that permit a sharing of interest among northern areas and communities, is limited by the lack of special funding, while the means to achieve real growth are denied by the constrictions regularly applied to the corporate budgets of the CBC as a whole.

The National Film Board has been active in the North for many years. The NFB catalogue includes 99 films about native Canadians, representing more than six and a half percent of the English titles and five percent of the French titles available. Of these titles, 19 involved the creative participation of native people; a native writer, director, or co-producer was employed in seven. Services have been provided to several native communications societies under an arrangement with the Department of Indian and Northern Affairs which also sponsors relevant films. Training courses and workshops have been conducted in the North, and assistance given in the development of training courses by the natives themselves. The NFB plans to consolidate its present northern operations within a northern support project, with the primary objective of promoting the production of native and native-language programs. The Board's present budget is insufficient to meet the whole cost of the project, and attempts will be made to raise additional funds so as to meet its objectives without diverting money normally expected to support Inuit broadcasting.

Recommendation 15 The approved budgets of the CBC and the NFB should be supplemented by Parliamentary appropriations to be used exclusively for the development and support of broadcasting services by and for the native peoples of Canada.

The Department of the Secretary of State has taken initiatives by making limited funds available to assist native-language program production, but only on a temporary and ad hoc basis. The program was to be terminated at the end of June 1980. A development program for Inuit broadcasting in northern Québec, financed by the federal and provincial governments, is due to end in 1981. In seeking funds to continue or initiate broadcasting facilities or activities, the native peoples are perplexed by the plurality of federal and provincial sources. Native communications societies have demonstrated their experience and determination to establish their own broadcasting systems, and should therefore have priority in the allocation of funds. In different parts of the country, such societies should be given flexibility to negotiate funding arrangements suited to their circumstances. Much time, trouble, and frustration could be avoided if there were

a single federal coordinating body that could be approached, and it might be possible to arrive at collaborative agreements with the province or territory concerned in each case.

Recommendation 16 Funding by federal departments and agencies for use by native communications societies should be determined in consultation with the latter, and wherever possible, in cooperation with the province or territory in which the funds are to be spent.

The opportunity provided by satellite transmission for better broadcasting services is recognized and widely understood among the native peoples, who are anxious to set up local programming, not only in their own language, and inter-community networks. But neither the Inuit communities nor the Indian bands can afford the rentals of satellite channels and the cost of receiving and delivery equipment, and special arrangements will have to be made to meet their needs and requirements. Most of the proposals submitted to the Committee for the extension of service in general, or for a restructuring of the entire broadcasting system, recognize (some with a deep bow, others with a perfunctory nod) the urgent need for better broadcasting services for native communities. But there are more direct ways in which the private sector could complement or support governmental initiatives aimed at providing native communities with the tools they need to fashion their own programming. Private broadcasting undertakings serving areas in which there are native communities have a responsibility to provide some programming for them, even if they represent only a small proportion of the population of the area served. More generally, the private sector might be willing to help, as a service to the public, by donating surplus equipment, or by lending the temporary services of programming and technical experts to assist in setting up native program production and giving some advice in the techniques of operating broadcasting facilities.

Recommendation 17 Consideration should be given to the possibility of assistance from the private sector of the broadcasting industry to native organizations undertaking broadcasting activities....

4.4 Conclusions and Recommendations

The outstanding impression left on the members of the Committee by the presentations from native organizations was the extensive determination to receive, and often pay for broadcasting services that go some way to meet their needs and give expression to their cultural identities. Almost unanimous demands are being made for training programs, native-language and native-oriented program production, and community control of programs delivered locally, either by cable or off-air. In that regard, there were few

suggestions for a total elimination of mass-audience programming; many natives are interested in sports and high-quality entertainment, so long as their other needs are being adequately met.

There is an important point to be made about access. The word is used in a passive sense, that of giving people access to broadcasting services, and in an active sense, in demands for access to transmitting and cable facilities so as to be able to deliver community and native-language programming. It is not enough to give access, in the latter sense, alone; it is of little practical value without the assistance of trained staff and technicians, and funds to produce the programs. The Committee recognizes the value of communications satellites in providing opportunity for the linking of native-language communities, and for the protection and development of their languages and cultures. In view of the heavy expense associated with the use of satellites, additional funds should be made available to native communications societies to allow them the use of satellite channels, and their needs should be considered in the allocation of satellite capacity.

The Committee, having strongly recommended (4) recognition of the obligation of Canada to provide proper communications services for its native peoples, makes the following supplementary recommendations.

Recommendation 19 The CRTC should encourage licence applications from native communities or organizations to operate broadcasting undertakings in predominantly native communities, in order to promote native-language programming and production by native people.

Recommendation 20 Any predominantly native community should have the right to decide on the channels to be delivered locally; to eliminate complete channels; and, on any particular channel, to eliminate a program or substitute one of its own choice.

Consideration will have to be given to suitable arrangements in mixed communities; it is not possible to generalize an issue that is almost infinitely variable, but the Committee has observed that, in the northern and remote communities to which Recommendation 20 is intended to apply, there is often an eager willingness to cooperate on matters that would be likely to engender contention in more heavily populated southern areas....

Pay-Television: Objectives and Guidelines

I. Objectives

1. Pay-television should satisfy the demands of the public for high quality and complementary programming, and should ensure benefits to Canadian program production and distribution.

2. Canadian program producers should have significant access to pay-television distribution systems.

3. Pay-television should provide new markets for Canadian programs, new sources of revenue for Canadian program producers, and new pools of investment funds for Canadian program production.

4. Canadian programs should be produced for pay-television which will appeal to Canadian audiences and some of which can be sold in international markets.

5. Pay-television programming should be available in Canada's two official languages and should ensure fair regional balance in the production and distribution of programming.

6. Pay-television should be distributed to all parts of Canada at equitable rates.

7. The development of pay-television in Canada should take place within a framework that fosters the orderly development of the industry and that accommodates the interest and priorities of provincial and federal governments in pay-television.

II. Guidelines

1. The introduction of pay-television should initially be through the vehicle of one national distributor but should also permit regional and local pay-television distributors to acquire programs and market them to local exhibitors.

2. The delivery of pay-television to the viewer would be undertaken by a licensed local exhibitor.

3. The distributors should arrange for the most appropriate method of delivering programs to local exhibitors. However, in order to ensure the

availability of the service at equitable rates throughout Canada, satellite would be the preferred method for national delivery.

4. Distributors should be the primary mechanism for the acquisition of Canadian programs by means of investments, purchases, or other funding arrangements, and should market these programs to local exhibitors.

5. Program producers, distributors, and exhibitors should determine the most beneficial method of payment for viewing, and consideration should be given to both pay-per-channel and pay-per-program methods. In practice, a combination of pay-per-channel and pay-per-program might gradually evolve over time.

6. A realistic balance must be established between the audience viewing levels for Canadian and foreign product material.

7. Programs available via the present Canadian broadcasting system and in Canadian cinemas should not be siphoned onto a pay-television service.

8. Pay-television distributors could include mixed consortia, which may operate on a non-profit basis — involving both public, federal (e.g. CBC, CFDC), and provincial, as well as private participation — and could also include independent profit-making entities such as broadcasters, cable operators, symphony orchestras, professional sports organizations, entertainment industries, etc.

9. Cable licensees and other local delivery system operators must provide other potential exhibitors access to their systems on reasonable terms and conditions.

Chapter 8. To Pay or Not to Pay

8.1 Background

The history of earlier approaches to the possible introduction of pay-TV in Canada was related at some length in the "Report on Pay-Television" published by the CRTC in March 1978. Only the salient incidents need be briefly mentioned here.

The CRTC issued its first public statement on pay-TV in October 1972, which invited interested parties to participate in an examination of the issues involved. Several proposals were made in the course of 1973, but the

Commission concluded that none contributed significantly to the furtherance of the objectives set out in the *Broadcasting Act*. A CRTC position paper published in February 1975 was followed by a public hearing in June of that year, at which 40 briefs were considered, and a policy statement was published in December 1975. That statement expressed the Commission's opinion that the introduction of pay-TV at that time would have a disrupting effect on the broadcasting system, then in the throes of adapting to new policies, regulations, and licensing initiatives. The CRTC indicated that, nonetheless, it was prepared to consider pay-TV proposals on a case-by-case basis, and encouraged the development of ideas on pay-TV that would be consonant with national broadcasting objectives.

In June 1976, the federal Minister of Communications and the Chairman of the CRTC issued statements inviting a reconsideration of a possible Canadian pay-TV service. Both placed strong emphasis on the principles embodied in the *Broadcasting Act* as the governing factor in considering the benefits to the domestic program-production industry and the impact on the existing broadcasting system. In the same month, the CRTC formally called for submissions on the form and function of an organization to assemble, produce, and acquire pay-TV programming for distribution to licensed broadcasting undertakings. An analysis of the 105 submissions received showed that few had responded to the requisite fundamental principles; the Commission accordingly asked for an updating of the submissions and called a public hearing on 13 June 1977 to consider them. By that time, 181 submissions had been received, and 26 major representative organizations and individuals appeared at the hearing. A majority of submissions in which an opinion was expressed indicated strong opposition to the introduction of pay-TV in Canada at that time; the opponents included representatives of the public and private broadcasters as well as the public-interest groups who argued that pay-TV would not contribute to furtherance of the objectives of the *Broadcasting Act*. The principal proponents were representatives of the cable industry, who pointed to the significant benefits to the Canadian program-production industry that were to be expected.

Before coming to a decision, the CRTC conducted a national survey to ascertain public knowledge of the factors involved in the possible introduction of pay-TV, and public attitudes to pay-TV in general. The survey also sought to evaluate the demand for pay-TV, if it were to be introduced, in relation to particular methods of exhibition and cost. The survey was based on responses from 2,289 individuals, about half of whom were living in households capable of receiving cable TV service. The results indicated that pay-TV was not considered essential, and that there was no compelling demand for it, even among cable subscribers.

The conclusion of the Commission, based on its analysis of the submissions received, and of the public survey, was that it could not then

recommend the introduction of pay-TV, and that the pressures in favor of it should be resisted. Nevertheless, in response to the widespread opinion that pay-TV in Canada was inevitable, further consideration was given to the principles applicable to any Canadian pay-TV system. In its 1978 "Report on Pay-Television" (Chapter VII, pp. 37–54), the Commission presented its views on the objectives to be followed and its preference for a single national network operated by a private rather than a public agency, subject to regulation by the CRTC on such matters as Canadian content, protection against siphoning (the diversion of programming now viewed free to the pay-TV system), and the allocation of revenues. Local delivery could be effected off-air, by cable or MATV systems, by multi-point microwave distribution systems, or by any combination of them. As a conclusion to this analytical projection, the CRTC reiterated its view that the introduction of pay-TV would be premature. The Commission published three working papers describing possible models for a pay-TV system, prepared by its staff, noting that it did not necessarily subscribe to the views expressed.

In March 1979 the Consultative Committee on the Implications of Telecommunications for Canadian Sovereignty (the Clyne Committee) published its report, *Telecommunications and Canada*. In a very short chapter 8 on pay-TV, that committee said: 'We have heard no evidence that there is at present any substantial demand for the introduction of pay-TV. There is thus no need for hasty action, but we believe that the demand will grow and that it would be wise to establish a strategic policy for its eventual introduction." In addition to expressing its preference for a pay-per-program rather than a pay-per-channel system, the Committee recommended that "pay-television should be provided by licensed Canadian-owned program undertakings; attention should be given to the elaboration of Canadian-content rules appropriate for pay-TV; and there should be a levy on profits from pay-TV, to be used for Canadian programming, with the amount to be determined by the CRTC."

Little has changed in the general circumstances discussed in the 1978 "Report on Pay-Television" except for the phenomenal spread and success of pay-TV in the US. This example is used by proponents of a Canadian pay-TV system as evidence that there would be a market in Canada proportionately as large as that in the US. Opponents, on the other hand, mostly regard the American experience as more or less irrelevant to Canada, where the much deeper penetration of cable systems provides, for their subscribers, a variety of programming choice rarely available in the US. The balance between these two views is reflected in differing estimates of the size of the potential Canadian market, and of the likely willingness of Canadians to pay any money at all for optional television services.

8.2 Objectives and Guidelines for Pay-Television

A federal-provincial conference of communications ministers in October 1979 led, inter alia, to a consensus on a statement of objectives and guidelines for pay-TV in Canada (Appendix D). Emphasis was placed on the objective that pay-TV should satisfy public demands for high-quality and complementary programming, and ensure benefits to Canadian program production and distribution. The guidelines propose that "the introduction of pay-television should initially be through the vehicle of one national distributor but should also permit regional and local pay-television distributors to acquire programs and market them to local exhibitors," and that "the delivery of pay-television to the viewer would be undertaken by a licensed local exhibitor." To ensure the availability of pay-TV services at equitable rates throughout Canada, satellite carriage should be the preferred method for national delivery. Further, "a realistic balance must be established between the audience viewing levels for Canadian and foreign product material," and "programs available via the present Canadian broadcasting system and in Canadian cinemas should not be siphoned onto a pay-television service."

8.3 Opinions Expressed by Some Provincial Governments

8.3.1 Ontario

For more than five years, the government of Ontario has believed that pay-TV would offer significant benefits to consumers and to the Canadian program-production industry. A poll of Ontario residents in November 1978 indicated that 40 percent of the respondents were willing to pay for television programming that included first-run movies, sports events, theater productions, symphonies, operas and ballets, and other entertainment not normally seen on television. Some 38 percent of the respondents to the poll would be interested in television programs offering credit courses, teaching specific skills, or aiding 'self-improvement'. Ontario therefore prefers a wider definition of pay-TV that would include informational, educational, and entertainment programming for specialized audiences.

Ontario supports the proposed objectives and guidelines, and believes that, if pay-TV is to lead to maximum benefits, it must develop as a complement to and not as a substitute for existing services. High priority should be given to consumer interests and, by guaranteeing access to distribution systems and audiences for Canadian programming, provide significant benefits to the domestic program-production and cultural industries. In so doing, pay-TV would open up new markets affording new sources of revenue and pools of investment funds.

The Ontario government argues that central control of pay-TV by "a sheltered and bureaucratic monopoly" would tend to exclude small-scale Canadian entrepreneurs, whereas competition would provide the strong incentives to produce high-quality Canadian programs that are essential if pay-TV is to be a success. The market test of acceptance would be conducive to high-quality production, and a pay-per-program system would therefore be preferable to a pay-per-channel system.

Ontario recommends that pay-TV should be introduced as soon as possible on the basis of the objectives and guidelines proposed by a consensus of federal and provincial ministers; and revenues from pay-TV (and other premium services) should not be used to subsidize hardware and exhibition, but should be devoted, to the maximum possible extent, to finance and acquire Canadian programs.

8.3.2 Nova Scotia

The government of Nova Scotia observes that there appears to be no public demand for pay-TV in the province, and recommends that Canadian broadcasters should be reasonably protected against the detrimental effects of pay-TV if it is introduced.

8.3.3 Prince Edward Island

The government of Prince Edward Island suggests that there is no present demand for pay-TV in the province but that one is likely to develop once it becomes a general offering elsewhere. The provincial government would not support the introduction of pay-TV in the absence of "an ironclad commitment" to provide the whole of Canada with satellite services at equitable rates.

8.3.4 British Columbia

The government of British Columbia does not support the proposed objectives and guidelines, and takes the position that "there is neither a necessary nor an implicit linkage between satellite distribution and pay-television." The BC government consequently alleges that consideration of pay-TV by the CRTC is "unwarranted" in a provincial context.

8.3.5 Manitoba

The government of Manitoba supports the proposed objectives and guidelines, and the introduction of pay-TV, but recommends accommodation for regional pay-TV systems.

8.3.6 Saskatchewan

The government of Saskatchewan endorses the proposed objectives and guidelines, and recommends that:

- Local exhibition and sale of pay-TV should be licensed by provincial governments to a variety of classes of applicant.

- Provincial authorities should have overall responsibility for programming standards and classification.

- National pay-TV networks fed by satellites should be licensed and supervised by the federal government; ownership and control of the distribution networks should be diffuse, with representation of programming interests and the public sector.

- Affiliation or access to the national or regional networks should be open to any licensed local exhibitor; affiliation conditions should be non-discriminatory and approved by the regulatory authorities involved.

- Licensees of local pay-TV distribution should afford access to all potential exhibitors of programming on reasonable terms and conditions; federally regulated cable undertakings should set forth clear terms and conditions for the use of their channels for pay-TV.

- Canadian program producers must have significant access to the pay-TV networks and audiences, and must share substantially in forthcoming revenues.

8.4 Definitions

8.4.1 The Ambiguity of Terms

In much that has been written and said about pay-TV, including the objectives and guidelines outlined above, there is ambiguous use of certain words, such as distribution and delivery, used almost interchangeably. It is also apparent that pay-TV means different things to different people. We must therefore try to establish distinctions leading to precise definitions which we shall use in the following discussion.

8.4.2 Functional Distinctions

There are two distinct functional links in the chain between the producer of a program and the viewer: distribution and exhibition. Distributors (or program-packagers) acquire or produce programs and package them for sale or delivery; all broadcasters (broadcasting transmitting undertakings)

are distributors in this sense, as are broadcast networks. Exhibitors are undertakings effecting local delivery, either off-air or by cable; all broadcasters and existing cable operators (but not networks) are exhibitors.

8.4.3 Methods of Paying for Television

All broadcasting services must be paid for, either by public subsidy or from commercial revenue, but they are generally regarded as free because no direct payment falls on the consumer. Here we confine our attention to television services for which the consumer must make a direct payment. Today, more than half the television households in Canada are indulging in a form of pay-TV, in that they pay for cable service. Many of the proposals we have received make provision for optional cable channels, for which an additional fee would be paid; some of these come from organizations rigorously opposed to pay-TV as they see it: a diabolical mechanism for making a vast profit by flooding the Canadian market with still more US films and entertainment programs. There is, of course, no intention of allowing entrepreneurs to do any such thing. There are arguments to be made in favor of pay-TV (which might aptly be termed home-theater), as distinct from other optional services, in particular with regard to the benefits that might accrue to Canadian producers. We therefore make the following distinctions in discussing the methods of direct payment by the consumer for different services:

- Subscription services (Level 1): the channels generally available to subscribers to cable and other local delivery systems, as authorized by the CRTC.

- Optional services possibly sharing a channel (Level 2): available for a modest additional fee, for example those delivering programs for special-interest audiences (vertical or target programming), or entertainment services not generally provided by broadcasters, and perhaps multilingual programming.

- Pay services (Level 3): optional additional channels, available on more substantial payment, either per channel or per program, for high-quality mass-appeal entertainment from all sources, and special events.

Closed-circuit Level 3 pay-TV is already available in hotels in large Canadian cities, and pay-TV services are available in Saskatchewan.

Before proceeding, we must recall that subscription rates for cable service are higher in northern and remote areas than in large urban centers, and that there are many people in the underserved areas who have expressed or demonstrated their willingness to pay for services that are provided free elsewhere in Canada, or even for any television service at all.

If the concept of optional services, available for an additional monthly fee, is to be implemented, consideration will have to be given to the practicability of introducing differential rates for the services offered by local delivery systems. There seems to be general agreement that no great technical difficulties would be encountered, and most of the proposals for cable operators favor what has come to be called tiered pricing. Piracy of optional services would be prevented by scrambling the delivery signal or by the use of electronic traps to prevent it being received. Presentations to the Committee indicated that the technology for both systems has already been fully developed.

A tiered pricing tariff would comprise at least three levels of subscription for local delivery of signals received off air, from a satellite, or by direct feed without the use of the RF spectrum, for example:

Level 1: the normal subscription rate for whatever channels may be authorized by the CRTC (a service that must remain attractive to those who do not want to subscribe to optional services).

Level 2: an additional, probably fairly modest, rate for delivery of optional special-audience or target programming.

Level 3: a higher additional optional fee for delivery of costly mass-appeal entertainment, first-run movies, specials produc- ed by independent entrepreneurs, and sports and other events not pre-empted by broadcasters.

8.5 The Two Sides of the Coin

Most broadcasters are opposed to the introduction of pay-TV, fearing further audience fragmentation and loss of revenue, and stress the need, should it be introduced, for effective protection against siphoning. There is no particular reason, technical or other, why broadcasters and other entrepreneurs should not be allowed to compete with the local cable companies for a licence to deliver pay-TV services. We have already made a recommendation (23) on a method of dealing with objections to the introduction of new services, including pay-TV, that might cause loss of revenue through audience fragmentation.

The Association of Television Producers and Directors (ATPD) expressed the view that it would be premature to introduce pay-TV in the absence of a national communications policy. ATPD believes that, as a matter of urgency, the structure of communications using new technologies should be dealt with as a whole and not piecemeal. Many consumer groups are opposed to pay-TV (at Level 3) but, like ATPD and other opponents, they hedge their bets by proposing structures for pay-TV, if introduced, that include provision for what they call premium (Level 2) services. Much has

been said about the great benefits that would flow from pay-TV, in one way or another, to the Canadian-program-production industry, and it is therefore rather surprising to find the vociferous objections of the JAC endorsed by member organizations representing francophone and anglophone filmmakers, directors, performers, and technicians. Opposition from these particular groups must be given close attention in coming to any decision on pay-TV.

Two members of the JAC opposed to the introduction of pay-TV are the *Union des artistes* and ACTRA. The former, representing a large group of francophone creators and communicators, would never agree to allowing pay-TV to become a privileged medium for the exhibition of foreign TV programs, at least until typically Canadian programming is also being delivered; protection must be provided for Canadian artists and technicians, and a minimum 70 percent of Canadian content in pay-TV programming is called for. ACTRA, a professional assocation of more than 6,000 writers and performers working in radio, television, films, commercials, and the recorded media, is opposed to any form of pay-TV that is not publicly controlled; is dependent on US programming; does not generate substantial funds for the Canadian (public and private) program-production industry; and does not contain a major proportion of high-quality Canadian entertainment programs, including feature films.

Very strong opposition has been expressed in the presentation of the Motion Picture Theatre Associations of Canada (MPTAC), which recommends that, if there is to be pay-TV in Canada, no film should be shown before it has completed its theatrical distribution. MPTAC contends that:

- Theater owners in small towns or rural areas must be given the opportunity to participate in the operation of pay-TV in their areas.

- The establishment of a single national procurement agency for pay-TV would be unfair to exhibitors and might contravene the *Competition Act*.

- Pay-TV should not be introduced until pay-per-program technology is available.

- The introduction of pay-TV in any area should be subject to local option.

The chief proponents of pay-TV are some provincial governments, some cable operators, and some independent entrepreneurs and would-be distributors. Strong arguments are made by them, chiefly in regard to the benefits that would flow to the Canadian program-production industry.

8.6 Conclusions and Recommendations

Most of the members of the Committee have come to believe, during the course of this inquiry, that pay-TV would offer a new and unique opportunity to foster the beneficial development of the Canadian film and program-production industries while supporting and complementing the Canadian broadcasting system and catering to the needs of Canadian viewers, but this majority opinion is not unanimous.

A contrary opinion is that no significant benefits would accrue to the broadcasting system, and that there is little real consumer demand for pay-TV. Further, it is said, there would be no way to ensure that any profits remained within the broadcasting system; moreover, there is no precedent to be found in any Canadian industry for the imposition of levies, such as those that might be raised from cable operators to provide subsidies for the program-production industry. Lastly, it is suggested, the inevitable preponderance of US mass-appeal programs at least in the initial phase would present yet another threat to Canadian cultural sovereignty; in short the likelihood is that new technology would be exploited to provide a pipeline for still more US programming to be thrust before Canadian viewers. The majority of members recognize the concerns expressed in these arguments, particularly the last, but believe that the difficulties foreseen in ensuring effective safeguards against abuse of a pay-TV system, or in devising the administrative machinery necessary to ensure effective control in the public interest, are not insurmountable, given a readiness to accept licensing and regulatory innovations for which there may be no precedents. Pay-TV, in addition to broadening the choice of programming for viewers, might be of very substantial benefit to the broadcasting system, to program producers, to the Canadian entertainment industry, and to the Canadian electronics-manufacturing industry.

Program producers would benefit from the existence of a larger market, and perhaps from new financing to be made available from the profits of pay-TV undertakings. Independent producers would be afforded a shop-window for their programs, which would lead broadcasters to commission programs instead of producing them themselves, abandoning their reluctance to invest risk-capital in independent production. The entertainment industry would benefit in several ways. There would be more work for performers, scriptwriters, musicians, directors, and technicians. In addition, the exposure of Canadian performing-arts companies on nation-wide television would help them meet their heavy production expenses and thus reduce budget deficits where they exist. Lucrative new opportunities in a Canadian pay-TV industry would serve to reduce the talent-drain to the US which has been going on for many years. Lastly, the inauguration of a pay-TV system would create a large demand for scrambling and descrambling equipment, or electronic traps. A requirement that all these should be

manufactured wholly or largely in Canada would provide welcome benefits to the electronic-production industry, which faces heavy competition from abroad.

The consensus opinion of a majority of members is that the introduction of pay-TV offers an opportunity to secure benefits to Canadian producers and artists, viewers, and manufacturers that should not be missed, while broadening the choice of available programming. The prerequisites are that optional services must contribute positively and significantly to broadcasting in Canada, making effective use of Canadian resources; and that a significant proportion of the revenues must flow to the domestic program-production industry. The following recommendation is supported by a majority of the Committee.

Recommendation 28 Approval should be given for the introduction of pay-television and other optional services in Canada and of mechanisms for a system of differential pricing for local delivery, on condition that these new services make a significant and positive contribution to broadcasting in Canada, make effective use of Canadian resources, and that a significant proportion of the revenues flow to the domestic program-production industry.

On the evidence and estimates presented, it would appear that there is likely to be a substantial demand for pay-TV, once it is introduced, but penetration on the scale being reached in the US is not to be expected. The actual penetration achieved may be less profitable than has been estimated but should be on a scale that would be of benefit to Canadian program production. On the other hand, there is no evidence of widespread, or any, forceful public demand at the moment, although that is likely to develop as pay-TV services become available. The only people who demand instant introduction of pay-TV are those who expect to make profits out of it. The CRTC will be inordinately busy in the months to come with hearings on licence applications for extension of services. The Committee has recomended (5) that the extension of services in general should not have to rely upon pay-TV for any purpose whatsoever. A breathing space would be desirable, in which to work out the framework of a pay-TV system that would fulfil the prerequisite objectives and comply with existing federal and provincial legislation. The conclusion is that first priority should be given by the CRTC to public hearings on the extension of services.

Recommendation 29 The CRTC should give absolute precedence to public hearings and licensing actions on the extension of services, separate hearings on pay-television being deferred until later.

The Committee is unanimous in its conviction that the chief justifi-

cation for introducing pay-TV into Canada must lie in the opportunity it would afford as a stimulus to the program-production industry and the provision of new services. Before proceeding to a discussion of possible pay-TV systems, therefore, it is necessary to examine the structure of that industry, the obstacles to its growth in the past, and the action to be taken to foster a greatly increased volume of Canadian production.

Document 61

A little more than a year after the publication of the Therrien report (Document 60), the CRTC held a three-week public hearing to consider applications for pay TV licences. Applicants spared no money or effort in stating their virtues, specifically their commitment to stimulating the Canadian production industry and maintaining high levels of Canadian content.

There were 27 applications, most of them seeking a licence for what the CRTC called "general interest services," that is, pay TV for the mass market, consisting mainly of movies. Some mass-market applicants proposed to serve the whole country, others individual regions. Three proposed to provide multilingual services and five were for specialties such as sports or children's programs or avant-garde movies. Almost all envisaged a system of satellite delivery to local cable systems. Most, the CRTC reported, "intended to limit themselves to packaging and distribution of programs with no direct involvement in production." In all, six licences were issued. One was for a national service available in either French or English; three were for regional mass audience channels; one was for an arts and culture service, and one for a multilingual channel.

The lengthy decision (about 40 bilingual pages) was lengthened by the formal dissent of two members of the CRTC, who felt that six licences were more than the country could sustain. Events were at least partly to prove them right. Pay TV began in February 1983 and within 18 months the arts channel and the Atlantic regional service were dead. Following financial problems, the national mass-audience service had been taken over by a Montreal film distributor and it had split the national market with the Alberta regional service along the Manitoba–Ontario border; and pay TV's French-language service had merged with a subsequently licensed Quebec channel.

Reprinted here are those sections of the decision dealing in general with regulation, the CRTC's rationale for the licences it did issue, and the opinion of the two commissioners who dissented.

DOCUMENT 61: CRTC decision 82-240 on pay TV, 18 March 1982, 638–656, 658–661.

4. *The Regulatory Framework for Pay Television*

(a) *The Commission's Regulatory Approach*

Pay television is being introduced at a critical point in the history of the Canadian broadcasting system. Technological innovation has resulted in a proliferation of means of bringing video programming into the home. Pay television will compete for the Canadian viewers' attention with conventional broadcast programming, videodiscs, videocassettes and possibly, in the future, direct-to-home satellite broadcasting. To succeed, pay television will have to be adaptable to a changing and competitive environment.

Many of the individuals and organizations who made representations at the hearing proposed the adoption of regulations or conditions aimed at meeting a wide variety of worthwhile social, cultural and economic goals. However, in considering these proposals, the Commission has concluded that, in attempting to achieve too many goals through the introduction of pay television, it would risk failure to achieve the most important ones. Therefore the Commission has attempted to design a regulatory framework that is free from all but essential constraints and that will permit pay television networks maximum flexibility to innovate and experiment, consistent with the achievement of the objectives set out in part 3 of this decision and in the Broadcasting Act.

Had the Commission decided to license a single entity for the distribution of pay television programming, it is probable that an additional degree of regulatory supervision would have been required to ensure accountability and to achieve the Commission's goals. However, the relatively competitive market structure that will result from this decision should foster a dynamic industry with built-in incentives to realize the goal of diversity of programming. It should also provide for the creation of multiple opportunities for currently underutilized sources of programming production throughout Canada.

The Commission will, however, closely monitor the evolution of pay television. Measures will be taken, if necessary, to deal with problems that may arise in those areas where the Commission has expressed its concerns in this part of the decision but where no regulations or conditions have been prescribed at this time.

In addition, the Commission will consider denial of applications to renew the licences of those who have failed to contribute to the achievement

of the Commission's objectives for pay television by reason of their non-compliance with the conditions of their licences. Moreover, the Commission may consider introducing new regulatory approaches, such as competitive renewal applications, to achieve its objectives.

At this time the Commission prescribes three classes of pay television network licences: (i) general interest, (ii) specialty (performing arts), and (iii) multilingual. Additional classes may be prescribed in the future, as the pay television system evolves, particularly in the specialty programming area. The three classes are defined in the proposed regulations set out in Appendix A to this decision. These proposed regulations also deal with certain reporting requirements and other matters related to this decision. In accordance with subsection 16(2) of the Broadcasting Act, the proposed regulations will be published in the *Canada Gazette* and a reasonable opportunity will be afforded to licensees and other interested persons to make representations with respect thereto.

(b) *Canadian Content*

In its call, the Commission reiterated Recommendation No. 35 of the Report of the Committee on Extension of Service to Northern and Remote Communities which reads as follows:

> Consideration should be given to setting the requisite Canadian content for pay television at a realistic level responding to the capacity of the Canadian program production industry, which should be reviewed frequently so as to permit the imposition of a higher level as soon as that may appear practicable.

Evidence at the pay television hearings confirmed the appropriateness of this recommendation. The Commission also recognizes that substantial start-up costs will have to be incurred by licensees during their initial years of operation. In addition, the Commission wishes to provide a degree of flexibility in the manner in which applicants meet their Canadian content goals. Accordingly, the licences for general interest pay television network services issued in this decision are subject to conditions which provide for an increase in the percentage of minimum Canadian content exhibition time from 30 % in the initial years of the licence to 50 % in the last fifteen months of the licence term. These percentages will apply to these licensees' overall program schedule as well as to the specified evening viewing hours set out in the condition.

Because the national and regional general interest licensees will compete with each other, the Commission considers it fair that the Canadian content exhibition time requirements should apply to them equally. In making this determination, the Commission has taken into account the national licensee's responsibility to provide service in the two official languages, as

well as the smaller market size and different cost structures of the regional licensees.

In addition to prescribing minimum Canadian content exhibition times, the Commission has decided to specify, by condition of licence, percentages of the gross revenues and total programming budget of the general interest licensees that are to be spent on the acquisition of Canadian programs during the course of their licence term. Licensees will be expected to apply their best management judgment in setting Canadian programming expenditure levels in each year over the course of the five-year term.

The Commission considers it necessary to establish different Canadian content expenditure conditions for each general interest licensee to maximize the flow of revenues for Canadian pay television production, taking into account its respective economic circumstances. The Canadian content exhibition and expenditure conditions applicable to each of the general interest licensees are set out in Appendices C to F of this decision. Conditions and proposed regulations applicable to all licensees are set out in Appendices A and B.

In addition to its general concern that pay television provide opportunities for new and innovative Canadian programming to supplement that currently available, the Commission is particularly anxious to see that pay television provides a stimulus for Canadian dramatic programming. Most applicants and other parties at the hearing shared this concern. It is in the area of drama, in the Commission's view, that pay television can provide its most important contribution. Therefore, the conditions set out in the Appendices establish for the general interest licensees minimum levels of commitments to Canadian dramatic programming in terms of exhibition time and expenditures.

In the case of the specialty (performing arts) and multilingual licensees, different Canadian content rules than for the general interest licensees are appropriate. In deciding to issue the specialty (performing arts) licence, the Commission has given considerable weight to the goal of programming diversity on pay television. Accordingly, the conditions of this licence will not require as high a minimum level of Canadian content exhibition hours or, in most cases, expenditures. However, in the case of the specialty (performing arts) licence, the lower Canadian content levels will be offset by conditions restricting the number and type of feature films the licensee may distribute. These conditions will also require a significant proportion of the licensee's programming to be related to the performing arts. These rules are aimed at providing diversity of programming for Canadian pay television audiences and precluding unfair competition with the general interest licensees who have higher Canadian content requirements. The conditions applicable to the specialty (performing arts) licensee are set out in Appendix G.

There will be no conditions of licence for the multilingual service prescribing minimum Canadian content requirements. In the case of the multilingual licensee, diversity is encouraged by means of a licence condition that requires 60 % of total programming time, and of specified evening hours, to be devoted to programming in languages other than English, French or a native Canadian language. The conditions applicable to the multilingual licensee are set out in Appendix H.

The Commission will monitor Canadian content distribution and expenditure levels of general interest and specialty licensees, by means of the program logs and financial reports provided for in the regulations. Licensees are expected to increase Canadian programming commitments in a manner commensurate with achieving the prescribed distribution and expenditure levels within the licence term. It should be emphasized that mere acquisition by licensees of previously produced material will not meet the Commission's pay television objectives. Through their continuing demand for new products, licensees will be expected to play an active role in stimulating new Canadian production to be shown on pay television and, in some cases, ultimately on conventional television.

As indicated in the call, the Commission will deem to be Canadian those programs which have received Canadian content certification from either the CRTC or the Canadian Film Certification Office of the Department of Communications. The Commission may, after completion of its current Canadian Content Review process, prescribe a more appropriate definition.

In keeping with the Commission's overall regulatory approach, no further pay television content rules are proposed at this time in relation to percentage of original Canadian programming distributed, content categories or other matters.

(c) *Financial Arrangements with the Program Production Industry*

The Commission has considered the wide range of submissions made at the hearing regarding financial arrangements between pay television network operators and the program production industry. Several parties advocated that specific measures be adopted to produce what they considered a suitable mix of pre-sales, interim, equity and other financing arrangements. However, the Commission has concluded that it would be extremely difficult to prescribe mandatory types of program financing arrangements for pay television network operators without unduly fettering their managerial judgment and creativity.

The most appropriate form of program financing at any particular time depends on current interest rates and other factors related to economic conditions in different parts of the country, the financial requirements of

individual producers, the type of program involved, potential for foreign sales and a variety of other factors. These matters can be better ascertained by producers and network managers who are closer to the realities of the marketplace than the Commission. Licensees are expected to develop and use the forms of financing arrangements that may be required from time to time to acquire the type and amount of programming necessary to meet the Canadian content conditions applicable to them.

There was general agreement at the hearing that one type of financing is needed urgently at this stage in the development of the Canadian production industry: that required for script and concept development. To meet their Canadian content requirements, the Commission expects that licensees will establish substantial funding arrangements in these areas to stimulate pay television program production.

The Commission is aware that problems could arise regarding the plans of some licensees for co-operative production, program sharing arrangements or even regarding their access to sufficient high quality programs, if other licensees engage in exclusive buying or distribution practices. The Commission expects that licensees will not participate in program acquisition arrangements that would frustrate the Commission's pay television objectives.

During the public hearing, there was discussion among applicants on the merits of developing cooperative arrangements for the regional exchange and production of programming. The Commission encourages licensees to explore such arrangements with a view to enhancing regional production. A number of applicants and other participants at the hearing were also of the view that the Commission should require the establishment of a national buying agency for the acquisition of foreign programming so as to minimize the licensees' costs. While there may be some benefits to be achieved from such an arrangement, there are many problems associated with it and the Commission is not prepared to require implementation of this proposal at present.

The Commission has also considered submissions made by some parties that pay television services should be required to show all Canadian films or all Canadian films of certain classes produced in each year. It is not prepared to prescribe such requirements at this time. It expects, however, that licensees will show most programming in which they have invested production monies and that licensees will also ensure that Canadian programming receive substantial promotion in order to maximize its exposure to viewing audiences.

(d) *Ownership*

In its call for applications, the Commission expressed its concern that

integration of the production and distribution functions of pay television might prejudice the opportunities for access by independent producers. It put the onus on applicants proposing such a vertical integration of functions to demonstrate the benefits to be realized and the means by which such proposals will ensure access for independently-produced Canadian programs.

The Commission notes that several of the applicants licensed in this decision, or their shareholders, currently have interests in program production facilities. They have generally undertaken not to acquire programming from their associated production enterprises.

With respect to licensees other than the multilingual one, it is the Commission's view at this time, based on the evidence at the hearing, that the disadvantages of in-house production or acquisition from related companies generally outweigh potential benefits. Accordingly, the proposed regulations set out in Appendix A generally preclude the general interest and specialty licensees from producing their own pay television programming or acquiring programming from related companies. The Commission notes that an opportunity will be provided for public comment by interested parties before these proposed regulations are implemented.

The licences to be issued by the Commission for pay television shall be subject, as are those for other classes of broadcast undertakings, to the condition that the effective ownership or control of the licensed undertakings shall not be transferred or materially affected without the prior approval of the Commission. In considering whether to approve such ownership transfers, the Commission will take into account, among other concerns, its views on the integration of the production and distribution functions.

The Commission is not convinced, however, that the disadvantages of vertical integration of pay television production and distribution outweigh its advantages in all circumstances. In the area of multilingual programming, which is characterized by small markets and a limited number of programming sources, a degree of integration of production and distribution may be the most economically viable means of operation. Accordingly, the proposed regulations referred to previously will not apply to multilingual licensees. The Commission expects, however, that the multilingual licensee will acquire programming with a view to obtaining the highest quality in the most efficient manner, including acquisition from the independent production sector.

The Commission's call also expressed a concern about vertical integration of the distribution and exhibition functions of pay television. It put the onus on applicants proposing such integration to demonstrate the benefits of such a proposal and the means by which nondiscriminatory access to their exhibition facilities would be assured to other pay television distribution services.

The Commission is not convinced that the benefits of integration of the distribution and exhibition functions outweigh the substantial disadvantages. Accordingly, all pay television licences issued by the Commission shall contain a condition prohibiting the transfer of shares or ownership interests of any nature in the licensed undertakings to any person who, directly or indirectly, has any pecuniary or proprietary interest in an undertaking engaged in the exhibition of pay television or in a broadcasting receiving undertaking (cable television system), without the prior approval of the Commission.

(e) *Impact on Existing System*

In its call, the Commission expressed a concern that the introduction of pay television should provide new programming services which complement rather than duplicate those presently available. It noted that is wished to avoid the possibility of program "siphoning" or the purchase by, and distribution on, pay television services of programming which viewers have been accustomed to see on conventional broadcast television. However, in light of the evidence produced at the hearing and the commitments of the applicants, the Commission does not think that the adoption of specific antisiphoning measures is warranted at this stage in the evolution of pay television.

The Commission continues to believe that pay television should provide a new source of funds for the Canadian program production industry rather than simply divert monies presently committed to the broadcasting system. Accordingly, it is not prepared to permit advertising material on pay television at this time. The proposed regulations incorporate this restriction.

(f) *Exhibition Arrangements*

There was considerable discussion at the public hearing of the operating relationship between distributors of pay television services and those who will provide for the exhibition of the services in Canadian homes. As indicated in its call, the Commission intends to deal with applications for the local carriage and exhibition of pay television services only after the release of this decision. Pending consideration of the comments of potential exhibitors and other interested parties, the Commission is not prepared to prescribe specific exhibition arrangements. However, it expects that exhibition agreements will provide for the widest possible access to all licensed pay television services by Canadian viewing audiences. The Commission encourages licensees to begin negotiations with persons and organizations proposing to exhibit pay television services with a view to determining mutually satisfactory exhibition arrangements.

As a related matter, the Commission has carefully considered requests that it regulate the level of rates at which pay television services are

provided by distributors to exhibitors. Given the discretionary nature of the services licensed in this decision, the Commission is not convinced of the need to regulate the level of such rates.

The question of the need for regulation of the retail rates charged by exhibitors was discussed at some length during the hearing. The Commission notes the concerns expressed by the national general interest licensee, and others, that excessive charges by exhibitors, such as cable systems, would reduce market penetration of this new service. This, in turn, could have a detrimental impact upon financial returns to distributors and consequently on their ability to meet their objective of acquiring a substantial quantity of new, high quality Canadian programming. It may even be that some exhibitors could have an incentive to risk lower market penetration levels, and therefore lower returns to distributors, by proposing relatively high exhibition charges in an attempt to maximize their profits.

On the other hand, it must be borne in mind that the services now being licensed are discretionary, and that all players involved in the chain of delivery have an incentive to ensure the successful introduction of pay television. In addition, the Commission is cognizant of the complexity, the regulatory workload and the paper burden inherent in the establishment of an effective retail rate regulation system given the difficulties in determining elasticity of demand for these new services and the different cost structures of the hundreds of potential exhibitors.

Accordingly, the Commission will not at this time regulate the retail rate for pay television services. Licensees and potential exhibitors are encouraged to arrive at negotiated retail rates which compensate exhibitors for their costs and provide them with a fair return on their investments without undermining the Commission's objectives for pay television. Should such negotiations fail, the Commission will consider establishing an arbitration process or, if necessary, a system of rate regulation.

The Commission expects to issue a Public Notice regarding exhibition arrangements for pay television in the near future.

(g) *Commencement of Service*

The national general interest licensee and others have suggested that it be a condition of licence that competitive licensees should commence service in the same market areas at the same time. In principle, the Commission agrees that the viability of licensees might be adversely affected if their competitors were to commence service before them, especially in major markets. The Commission cannot prescribe an appropriate start-up date for all markets at this time, however. Much depends on the speed with which licensees establish operational organizations and on the successful completion of satellite distribution and exhibition arrangements. The Commission

is nevertheless determined to see that service begins as soon as reasonably possible.

The Commission will make it a condition of all licences issued in this decision that licensees obtain prior Commission approval for their commencement of service in all locations. Licensees are urged to co-operate in timing the commencement of their service in various areas at the earliest mutually convenient dates. Licensees should note that the Commission does not intend to delay unreasonably the commencement of service to accommodate the simultaneous service commencement of licensees. Further it does not intend to delay service commencement by any licensee to provide for simultaneous start-up of general interest services with specialty or multilingual services.

It will also be a condition of all licences issued as a result of this decision that the licensees begin service in at least one market no later than 1 April 1983, or such later date as the Commission may, upon receipt of a request before 1 April 1983, deem warranted under the circumstances.

5. *Applications Licensed*

The Commission has assessed the applications for licences in the context of its objectives for pay television as set out in Part 3 of this decision, taking into account the submissions made to it during the public hearing.

In arriving at its decision, the Commission has necessarily had to exercise its best judgment as to the relative merits of the numerous applications before it. It has been guided by the need to provide, to the extent possible, a viable framework for the introduction of pay television services in Canada as part of the Canadian broadcasting system, having regard to the cultural, political, social and economic fabric of the country.

In light of these factors and the relatively competitive licensing scenario which results from this decision, the Commission has not considered itself constrained to issue licences to applicants upon precisely the same terms and conditions as proposed in their applications. The Commission has imposed conditions of licence regarding Canadian content which are lower, in some respects, than those proposed by licensees. It has also made certain other changes which it considers necessary in order to establish what it considers to be a realistic and acceptable regulatory framework for pay television. However, the Commission reminds licensees that the rules established by this decision relate to minimum performance requirements, and encourages licensees to exceed them in the areas related to high quality Canadian program distribution.

(a) *National General Interest Service*

First Choice Canadian Communications Corporation—812201200

The Commission *approves* the application by *First Choice Canadian Communications Corporation* (First Choice), for a licence to carry on a national pay television network operation. This general interest licence will expire 1 March 1987 and is subject to the conditions set out in Appendices B and C to this decision, and in the licence issued.

The Commission has decided to award First Choice the only national general interest pay television network licence after carefully weighing all aspects of its application in comparison with those of competing national applicants. The Commission was favourably impressed by First Choice's overall English and French-language programming proposals, the experience and abilities of personnel associated with the application, its ownership structure, the absence of cross-ownership with potentially conflicting interests, its Canadian production funding proposals and its marketing plans. Based on these factors and the Commission's favourable perception of the approach and credibility of the representatives of First Choice at the hearing, the Commission is satisfied that its application was the best of those for a national general interest licence.

The Commission is confident that the licensee will provide Canadians with a diversified and attractive pay television service in both official languages which will maximize opportunities for the production and exhibition of distinctive Canadian programs and will provide new opportunities for creative talent to participate in the production of pay television programming.

In describing its application, First Choice indicated it intended to provide two basic services, 24 hours a day, seven days a week. It proposed to use three transponders on the Anik D satellite, two for the delivery of an English-language service and the other for a combined French and English-language service. The two English language transponders would distribute an identical program schedule but make allowances for time differences between eastern and western Canada. This service would originate from a studio in Toronto. First Choice indicated that its bilingual service would originate from a studio in Montreal. All services would be distributed to local exhibitors in unscrambled form. The applicant proposed to charge a single wholesale rate to exhibitors of $7.50 per subscriber per month for the services.

In addition to first-run, uninterrupted Canadian and foreign feature films, the applicant indicated that its programming will focus on special presentations of high production value. Approximately 90 % of such presentations would be Canadian, of which close to 40 % would consist of drama and live theatrical performances.

The applicant indicated it would establish a fund of $1.5 million at the outset to stimulate the early production of Canadian programming and would invest, during the last three years of its licence term, 5 % of its gross revenues in script, concept and interim financing arrangements.

The applicant further proposed to provide opportunities for regional production by acquiring approximately 25 % of its Canadian material from regional sources and by establishing regional offices across Canada with experienced personnel "to assist in generating program proposals and to respond to regional needs." In this regard, the Commission notes the applicant's willingness to seek out creative talent from all across Canada and expects it to cooperate with regional licensees in concept development, coproduction and program exchange arrangements and to keep the Commission advised of its progress in this regard.

In considering the proposed ownership and management of the licensee company, the Commission notes that the shareholders have no significant present involvement in broadcasting, program production or cable television. However, the directors and the shareholders, who are drawn from across the country, have a wide variety of talent and experience in the fields of broadcasting, production and financial management.

The French-language program service proposed by First Choice will, like its English-language service, provide a mixture of Canadian and foreign feature films and special high production value presentations. The applicant noted that eight out of 40 Canadian feature films proposed to be shown in any representative year would be originally produced in the French-language and that approximately 20 % of the hours allocated to special presentations would be originally produced in French. First Choice said it expected to program 35 hours of all French-language programming and 35 hours of programming intended for use in both English and French in addition to its feature films.

The Commission was impressed with the overall commitment and approach to the development of French-language programming proposed by the applicant and by the nature of the content proposed for this programming. The Commission has some concerns, however, with the scheduling format proposed by First Choice for such programming. The applicant has proposed to schedule its French-language programming on one channel on a shared basis with an equal amount of English-language programming of the same type as would be shown on its two English-language channels. First Choice further proposed that it would provide both its English-language service and its shared or bilingual service across the country, except in Quebec where only the bilingual service would be available.

The Commission considers that in proposing this scheduling format the applicant has genuinely attempted to be responsive to the complexities of

offering, in the context of a national pay television operation, an attractive two-language service which responds to the linguistic, cultural and economic realities of Quebec. However, the Commission has reservations as to the desirability of the licensee's proposal to schedule its French-language programming in a "checkerboard" bilingual format, particularly in view of the absence, at this time, of a regional pay television service in the French-language.

Such a proposal could fall short of satisfying either the French or English-speaking population in Quebec, since neither could be assured that programming would be available in their own language at their chosen viewing times.

With these considerations in mind, the Commission was faced with a choice of several options. First, taking into account that the Commission had decided that the licensing of a national service, together with the other services licensed in this decision, was the best means of achieving its objectives for pay television, the Commission chose not to delay the introduction of the national service by engaging in a further public process on the French-language scheduling matter. The Commission came to this conclusion because it had determined that the French-language program content proposed by First Choice was compelling and that that aspect of its application outweighed in significance the scheduling problem. The Commission also decided not to award the national general interest licence to one of the applicants that was less qualified overall, simply because it had proposed a better scheduling format for its French-language programming.

Accordingly, while the Commission has decided to issue a licence to First Choice, the applicant will be required to reschedule its French-language programming. It will be a condition of licence that the applicant schedule its proposed French-language programming during the initial two years of operation, or such further time as the Commission may determine, on a national, 24 hour-a-day basis, distinct from its English-language service.

The Commission notes that, at the hearing, the applicant indicated it could provide such a 24 hour-a-day French-language service without additional cost by repeating some of its programs. This approach is consistent with its English-language scheduling format. Moreover, at the hearing, the applicant emphasized the exploratory nature of this concept noting, the "proposal is a flexible one and we would be prepared to accept any Commission regulation relating to the offering of a French service, including channel and time allocation." Accordingly, the Commission has determined that the applicant should provide service in English on two satellite transponders, and in French on one. Both French and English-language services should therefore be available via satellite throughout the country.

As previously indicated, the Commission is calling for applications to provide a French-language service, on a regional basis, in Quebec, Ontario and Atlantic Canada. The Commission considers a call for such a regional service essential because it could provide new opportunities for French-language production and the French-language artistic communities. Furthermore, because of its smaller market area, such a service might acquire pay television programming at lower prices than a national service. The Commission recognizes that, if such a regional service is licensed, the scheduling format of the French-language service offered by First Choice may have to be reviewed in the light of the programming offered by the regional service. In any such review, the Commission would want to be assured that the French-speaking population across Canada receives high quality service in its own language.

In light of the above, the condition of licence relating to First Choice's French-language programming schedule will, as noted earlier, be limited in duration to reflect the interim nature of this requirement.

(b) *Regional general interest services*

(i) ALBERTA—812175800

Allarco Broadcasting Limited, carrying on business under the name of Alberta Independent Pay Television

The Commission *approves* the application by Allarco Broadcasting Limited carrying on business under the name of *Alberta Independent Pay Television* (Allarco) for a licence to carry on a regional pay television network operation. This general interest licence will expire 1 March 1987, and is subject to the conditions set out in Appendices B and D to this decision and in the licence issued.

The Commission considers that Allarco's application was the best of those for a regional network licence to provide pay television service in Alberta. In the Commission's view, Allarco's proposals for pay television will provide Alberta viewers with an attractive mix of programs. The applicant indicated that its pay television service will provide some 50 hours a week of English-language programming, both Canadian and foreign, 70 % of which would consist of a variety of feature films. The balance of the programs will offer a mix of theatrical, musical variety, comedy specials and sports.

The Commission was favourably impressed by Allarco's proposals for the production and exhibition of Canadian programs and for the development of scripts and projects drawing on the Canadian experience. Further, it has noted the applicant's plans for the development of quality programs which the Commission expects will, for the most part, be reflective of the

region it proposes to serve, using regional creative talent and production facilities. The Commission notes that the applicant proposed to allocate 20 % of its production budget to regional projects for the development of a variety of programs that reflect the various cultural and linguistic groups in Alberta.

The programming will originate from a production centre in Edmonton and be carried on the Anik C satellite, West spot beam, for distribution to local exhibitors throughout Alberta in scrambled form. The applicant indicated it would charge a wholesale rate to exhibitors of $8.75 per subscriber per month during the first year of operation, rising to $10.35 in the fifth year.

In line with the applicant's commitment at the hearing, the Commission will expect Allarco to co-operate with other regional licensees in the production, acquisition and exchange of programs that express and interpret the distinctive experiences, characteristics and lifestyles of each region and strengthen regional creative resources and production facilities.

The Commission has taken into account Allarco's proposal to invest 100 % of its profits from the pay television operation in independent Canadian production. In addressing this concept at the hearing, the applicant emphasized that:

> Allarco would realize a return on its investment in pay television only after independent producers have succeeded at their task of producing top quality Canadian programs...We have projected that over $20 million will be paid to Canadians by Alberta Independent Pay Television for exhibition rights and production funding in our initital five years of operation... Regardless of whether or not our projections are conservative or liberal, our commitment to invest 100 % of the profits will remain unchanged.

In addition, Allarco indicated that 2 % of the gross revenues generated from pay television will be allocated, over the term of this licence, to script and concept development.

In assessing the applicant's proposed ownership structure, the Commission has taken into account that the directors of Allarco are experienced broadcasters from Alberta with a proven record in television, production and financial management. Their expertise and knowledge can bring to the pay television operation a valuable understanding of the social, cultural and linguistic needs and interests of the people living and working in Alberta.

Allarco is the licensee of CITV-TV Edmonton and owns television production facilities carrying on business under the name of "ITV Productions". The interrelationship among these various interests were discussed at the hearing. In this regard, the applicant reiterated a commitment made

in the application, "that no funds at all of any projects that we are now doing for pay television would flow into ITV productions." As indicated in part 4 of this decision, the Commission's proposed pay television network regulations will generally preclude a general interest pay television licensee from producing pay television programming for its own use or from acquiring such programming from a person related to it.

The applicant undertook to set up an advisory board with representatives from the cable, motion picture and theatrical industries, the public and the applicant to oversee the development of programming projects and to ensure a fair and reasonable distribution of funds among independent Canadian producers. In the Commission's view, such an advisory committee can do much to assist the licensee in this regard.

Finally, the Commission notes Allarco's proposal to offer the use of its satellite transponder to the Alberta Educational Communications Corporation (ACCESS) when it is not required for its pay television service and urges the parties to attempt to make suitable arrangements for such time-sharing.

(ii) ONTARIO—812176600

Steven Harris and Jon Slan, representing a company to be incorporated under the name of Ontario Independent Pay Television

The Commission *approves* the application by Steven Harris and Jon Slan, representing a company to be incorporated under the name of *Ontario Independent Pay Television* for a licence to carry on a regional pay television network operation. This general interest licence, which will expire on 1 March 1987, will be issued upon receipt of documentation establishing that the company (Ontario Independent Pay Television) has been incorporated in accordance with the application. The licence is subject to the conditions set out in Appendices B and E to this decision and the licence to be issued.

The Commission considers that the Ontario Independent Pay Television application was the best of those for a regional network licence to provide pay television service in Ontario. In the Commission's view, this pay television service will provide Ontario viewers with an attractive and diversified programming mix.

It will offer some 50 hours a week of both Canadian and foreign English-language programming, of which approximately 70% will consist of a variety of feature films. The balance will include a mix of theatrical, musical, variety and comedy specials and sports. The applicant also proposed innovative approaches to programming which include experimental films and video, live and experimental theatre, dance and combinations of

video and musical performances, many of which will reflect Ontario life. Significant funds will be allocated for the development of these projects.

The programming will originate from production facilities in Toronto and be carried on the Anik C satellite, east central spot beam, for distribution in scrambled form to local exhibitors throughout Ontario. The applicant indicated that the wholesale rate to exhibitors would be $8.75 per subscriber per month during the first year of operation, rising to $10.35 in the fifth year.

The Commission notes the applicant's commitment to make available 20 % of its production funds for joint funding with other regional distributors of projects to be produced outside of Ontario. In this regard, the Commission encourages the licensee to cooperate with other regional licensees in the production, acquisition and exchange of programs that express and interpret the distinctive experiences, characteristics and lifestyles of each region and strengthen regional creative resources and production facilities.

With respect to the applicant's proposal to invest 100 % of its profits from the pay television operation in independent Canadian production, the Commission notes the applicant's statement that:

> The commitment to invest 100 percent of the profits from pay television into the production industry is a certain factor the Commission can count on. We believe pay television should be nothing less than a full commitment to support Canadian production.

In addition, the applicant proposed to establish a Canadian production fund to be developed in close relationship with the Canadian Film Development Corporation, the Association of Canadian Movie Production Companies and the Canadian Film and Television Association.

The applicant also indicated that 2.5 % of its gross revenues will be allocated to script and concept development. It further proposed to implement an apprenticeship program specifically designed to develop writers, directors and technicians and to invest approximately 50 % of its production budget in projects written, produced and performed in Ontario.

The Commission notes that a substantial share of the ownership of this licensee is not in the hands of regional residents. In this regard, the applicant confirmed that the proposed board of directors is composed of four members from Ontario and two from Alberta. It also noted that a clause in its shareholders' agreement provides that any future vacancy in the Ontario membership of the Board will be filled by an Ontario director. It shall be a condition of the licence that the above noted provisions relating to the Ontario Board membership be adhered to, as noted in Appendix E to this decision.

The Commission expects the licensee to increase significantly the proportion of shareholders from Ontario, reflective of the various parts of the province. It also expects the licensee to adhere to the commitment made at the hearing to the effect that, should this application be licensed, Steven Harris, the proposed president of the pay television company to be incorporated, would resign his position as vice-president of Allarco.

In assessing this application, the Commission has considered the experience of the proposed directors in broadcasting and financial management and their proven record in film, theatre and musical productions. At the same time, the Commission notes that a number of the directors and shareholders are directly involved in television and program production activities. In this regard, the interests of shareholders in ITV Productions, Jon Slan Enterprises and Mentor Host Ltd. are particularly noted.

As indicated in part 4 of this decision, the Commission's proposed pay television network regulations will generally preclude a pay television licensee from producing pay television programming for its own use or from acquiring such programming from a person related to it.

The applicant undertook to set up an advisory committee with representatives from various sectors of the entertainment industries to advise it on the programming and production aspects of its operation and to ensure a fair distribution of funds among independent Canadian producers. In the Commission's view, such an advisory committee can do much to assist the licensee in this regard.

The Commission also notes that the applicant indicated it would offer its satellite transponder time to TV Ontario when it is not required for its pay television service and would negotiate with TV Ontario in this regard. The Commission urges the parties to attempt to make suitable arrangements for such time-sharing.

(iii) ATLANTIC REGION—812249100

Finlay M. MacDonald, representing a company to be incorporated under the name of Star Channel Services Ltd.

The Commission *approves* the application by Finlay M. Macdonald, representing a company to be incorporated under the name of *Star Channel Services Ltd.* (Star Channel) for a licence to carry on a regional pay television network operation. This general interest licence, which will expire 1 March 1987, will be issued upon receipt of documentation establishing that Star Channel has been incorporated in accordance with the application, and is subject to the conditions set out in Appendices B and F to this decision and in the licence to be issued.

In considering Star Channel's proposals, the Commission was favourably impressed by the applicant's creative approach to regional programming which draws heavily on Atlantic Canada's diverse and distinctive experiences. It also notes the applicant's plans and financial commitments for the development of regional creative and production resources, both human and technical.

The applicant indicated that the pay television service will offer viewers some 47 hours a week of programming, both Canadian and foreign, consisting of feature films, theatre presentations, variety shows, music specials, magazine-type documentaries and sports. While the programs will be predominantly in English, there will also be provision for the dual-tracking of some programming which will originate from a central office in Halifax and be carried on the Anik C satellite, East spot beam, for distribution in scrambled form to local exhibitors throughout the Atlantic region.

The Commission notes the applicant's proposal to set up an office in St. John's Newfoundland, in addition to its Halifax central facilities, in order to provide more convenient access to Newfoundland independent producers.

The Applicant proposed to charge a wholesale rate to exhibitors in its licensed area of $12.00 per subscriber per month during the first year of operation, gradually increasing by $0.50 yearly during the term of the licence.

The applicant proposed to invest "$1 million in the production industry prior to commencement of operations," and 50% of its programming budget during the five-year licence term on productions originating in Atlantic Canada. It also undertook to distribute on its undertaking all programming funded by this regional production fund.

The Commission expects the applicant to allocate a significant portion of its Canadian programming budget to script and concept development. In this regard, the applicant submitted a well thought-out proposal for a step-by-step approach to the development of a viable Atlantic regional production industry and indicated it would develop an apprenticeship program of Atlantic independent producers and create a significant annual scholarship fund for regional artists to study film and video production.

The applicant also indicated it would work very closely with other regional licensees to stimulate the growth of independent production centres across Canada. In this regard, the Commission encourages the licensee to co-operate with other regional licensees in the production, acquisition and exchange of programs that express and interpret the distinctive experiences, characteristics and lifestyles of each region and strengthen regional creative resources and production facilities.

Star Channel will be owned by residents from all the Atlantic provinces. Their diverse regional backgrounds and the broadcasting and production experience of Finlay MacDonald, the proposed chief executive officer of Star Channel, should contribute significantly to the success and viability of this pay television operation. In addition, the Commission notes that the proposed shareholders and directors do not currently have any ownership interests in conventional broadcasting, cable or production companies.

The Commission has examined Star Channel's request that all subscribers of the national service in Atlantic Canada also be required to buy Star Channel's service. The commission is not prepared to approve Star Channel's request for such a tied-sale requirement, but it urges the applicant to explore with the national general interest pay television licensee other methods of increasing its market penetration. The applicant should advise the Commission of the outcome of such negotiations.

(c) *Specialty (Performing Arts)*

Lively Arts Market Builders Inc.

TORONTO, ONTARIO—812191500

The Commission *approves* the application by Lively Arts Market Builders Inc. (LAMB) for a licence to carry on a national pay television network operation. This specialty (performing arts) licence will expire 1 March 1987 and is subject to the conditions set out in Appendices B and G to this decision and in the licence issued.

The Commission was favourably impressed with the potential of this application to enhance the diversity in the programming offered by the Canadian broadcasting system and to provide substantial new exposure for Canadian performing artists. LAMB is committed to encourage innovation, expansion and diversification of the performing arts on television and to contribute significantly to the financial support of Canada's cultural industries. The applicant indicated that the service would offer viewers some 42 hours a week of both Canadian and foreign performing arts programming.

The service will originate in facilities in Toronto and be distributed to licensed local exhibitors throughout Canada in scrambled form via the East and West spot beams of Anik C. The applicant proposed to charge a wholesale rate to exhibitors of $8.00 per subscriber per month during the first licence period.

The Commission notes LAMB's intention to distribute complete opera, symphony, dance and theatre performances and programming that will "explore the full range of lively arts", including folk concerts, jazz festivals, experimental works, individual creative compositions and performances, and popular entertainment presentations.

In the area of children's programming, LAMB indicated that it would offer a two-hour weekly young people's theatre presentation on Saturdays and thirty minutes of children's magazine format programming, Monday through Friday, of which approximately 80 % would be Canadian material. In addition, it will schedule feature films, with particular emphasis on international, classic and youth-oriented feature films.

The Commission notes that LAMB proposed that 20 % of its schedule will consist of regional productions. In addition, it will also use a variety of financial mechanisms to assist writers, composers and choreographers throughout Canada to develop new and experimental programming.

LAMB proposed to create a program advisory committee which will review and select programming proposals and screen pilots and completed projects for the specialty service.

The Commission notes that LAMB proposed to devote a significant portion of its total presentation time, at least 39 % or 16.5 hours of its weekly schedule, to feature films. Of these some 12 hours (28 %) would be from the "International Award Cinema" category. At the hearing, LAMB stated that the popular recent film Kramer vs Kramer was an example of what might be included in this category. In the Commission's view, a specialty service such as LAMB should add significantly to the diversity of programming available on pay television and therefore should not only have a lower level of feature films than general services but should also concentrate on films of a classic or experimental nature and those related to the performing arts, or otherwise differentiated from the film fare offered by the general interest national and regional services.

Accordingly, the conditions of licence outlined in Appendix G limit the proportion of the programming schedule that can be devoted to feature films to 40 %. In addition, they limit, to not more than 5 % of the licensee's total programming schedule, the showing of feature films which were included in the top 30 grossing films in the Canadian market during the three years immediately preceding the licensee's distribution of such films on its undertaking. Other conditions of licence designed to ensure that the programming provided by the holder of the specialty (performing arts) licence complements rather than duplicates that of the holders of general interest licences are outlined in Appendix G to this decision.

The Commission notes that the directors of LAMB have long experience in production, broadcasting and financial management and particularly in the production of Canadian performing arts works. In this regard, the applicant indicated its willingness to ensure that the Commission's concerns regarding vertical integration of production and distribution were met and stressed that there was "no intention of going into any production at all." As indicated in part 4 of this decision, the Commission's proposed pay

television regulations will generally preclude the licensee from producing pay television programming for its own use or from acquiring such programming from a person related to it.

(d) *Multilingual Service*

Bernard T. C. Liu, representing a company to be incorporated under the name of World View Television Ltd.

VANCOUVER, BRITISH COLUMBIA—812210300

The Commission *approves* the application by Bernard T. C. Liu, representing a company to be incorporated under the name of *World View Television Ltd.* (World View), for a licence to carry on a regional pay television network operation. This multilingual licence, which will expire on 1 March 1987, will be issued upon receipt of documentation establishing that World View has been incorporated in accordance with the application. The licence is subject to the conditions set out in Appendices B and H to this decision, and in the licence to be issued.

In approving this application, the Commission has given particular consideration to the diversity of the multilingual programming proposed, particularly in the evening viewing hours. In this regard, it notes that the applicant's proposed multilingual service is designed to meet the needs of various linguistic communities in Vancouver by providing a diverse mix of programming in Chinese, Japanese, Italian, Scandinavian, and East Indian languages, among others. The applicant indicated that it would provide some 92 hours a week of programming originating from production facilities in Vancouver for distribution to local exhibitors in British Columbia. The service will consist of feature films, children's programming, public affairs, variety, performing arts, sports, drama and educational programs, and would be offered to local distributors for a wholesale rate of $10.00 per subscriber per month in year one, rising to $12.00 in years three to five.

The Commission notes that the applicant has only proposed to devote 43 % of its scheduling time to programs in languages other than English and French. The Commission considers that such a level is too low for a multilingual licensee and requires, as a condition of licence, that a minimum of 60 % of its total scheduling time and of the evening viewing hours between 6.00 p.m. and 10.00 p.m., be devoted to programs in languages other than English, French or native Canadian language.

Further, as the service develops, the applicant is encouraged to expand the variety of languages offered in order to meet the needs of the various linguistic communities in Vancouver.

The Commission expects that the background and the multilingual

programming experience of the shareholders and of Mr. Bernard Liu, the proposed chief executive officer of World View will provide the licensee with a valuable understanding of the needs of the multilingual audience and production industry in British Columbia.

In this regard, it has noted World View's proposals for the production of local programs that respond to the needs and interests of its multilingual community, and notes its commitment to the development and exhibition of new Canadian programs. In particular, the applicant indicated that, by the fifth year of its licence term, its investment in script and concept development would amount to 7.5 % of its gross revenues.

It further indicated that it would set up an advisory board to administer the proposed Canadian production development fund. Representation on the board would consist of two members from World View, two experienced television producers and two members from a community advisory board also to be established by the licensee. The licensee would appoint a community relations co-ordinator to ensure effective liaison with the various linguistic groups in the region. In the Commission's view, such an advisory committee can do much to assist the licensee in this regard....

MINORITY OPINION OF COMMISSIONERS GAGNON AND GRACE

To launch pay television in a country as large and as thinly-populated as Canada, a country with two official languages, is a challenging task, particularly when pay television must be integrated into the Canadian broadcasting system so as to complement rather than compete with existing broadcasting services. In attempting to meet this challenge, the Commission has chosen to create a pay television structure which is innovative, an almost heroic effort to reconcile competing goals. It has its own internal logic. Yet we find ourselves convinced that specific, crucial elements of the licensing decision taken by the Commission will add dangerously to the difficulties of the pay television enterprise which it seeks to introduce at this time.

(i) *National general interest service*

It is our view that the decision to license First Choice on the basis of a substantially changed French-language service than that proposed in the application is unfair to competing, unsuccessful applicants, particularly where the changes have been made by the Commission itself.

The details of the bilingual, "checkerboard" channel, proposed in the application of First Choice and discussed at great length at the public hearing, are set out elsewhere in this Decision. The bilingual channel proposal was put forward by First Choice in response to what it, as an applicant,

perceived as the realities and limitations in providing a French-language pay television service on a national basis. No other applicant proposing a national, French-language pay television service responded in a manner similar to First Choice.

The Commission has found the solution proposed by First Choice in the form of the "checkerboard" bilingual channel to be unacceptable. We, of course, share that view. Such a proposal would have provided a satisfactory service neither to the French-speaking public in all parts of Canada nor to the significant English-speaking population within the Province of Quebec where only the "checkerboard" service was to be made available to exhibitors. But having found the application of First Choice to be unacceptable in this respect, it does not, in our opinion, now come within the competence of the Commission to refashion so vital an element of this application in such a way as to make acceptable and therefore, licensable, what would otherwise have been found unacceptable and unlicensable.

We cannot agree with the Commission's assumption that its alteration of the "checkerboard" is merely an interim measure pending the licensing of a regional French-language pay service for Quebec, Ontario and Atlantic Canada and that once licensed, such a regional service would then be the principal instrument through which a high-quality, French-language pay service could be offered. The Commission would apparently become free at that point to allow First Choice to revert back to the "checkerboard", or some other equivalent form of attenuated French-language service, so as not to compete with that regional licensee.

We must reject such a scenario. Even should an application to serve francophones in Quebec, Ontario and Atlantic Canada be received, and there is nothing to indicate that such an application is actually pending, the contemplated regional service would be no substitute for a strong, comprehensive national network. French and English-speaking Canada extends beyond the envisaged territory. The concept of territorial bilingualism has been discredited and should not now be reintroduced by a regulatory decision. Furthermore, such a regional service, even if it were to come into existence, cannot be allowed to supplant a national service, particularly if the effect were to weaken the quality of French-language service offered to French-speaking viewers outside of Quebec, Ontario and Atlantic Canada who have the same right to receive a separate and distinct French-language service as to English-speaking Quebecers to a complete English national service.

(ii) *Making Pay Mandatory*

The matter of a universal and mandatory pay television service was not the subject of the licensing hearing from which this Decision comes. Indeed, in its call for licences, the Commission explicitly expressed its strong

preference for a pay television service which individuals would be entirely free to buy or not to buy. Yet the Decision now holds out mandatory pay television as a "desirable" means of providing what it sees as "balance" and calls for a hearing to discuss ways and means in which such a service might be imposed upon every single cable subscriber in Canada.

The very concept of a mandatory pay system raises substantial questions of policy and law. Should Canadians be required to pay for programs for which they may have no desire merely because they want basic cable services? Does the Commission have the authority to impose what could well be construed as a tax by another name in forcing a payment for made-in-Canada pay television? Are the problems of securing financial and program accountability of such a system so severe as to be overwhelming? Is a mandatory, universal pay television system, if that is what the public wants, something that Parliament, not a regulatory agency, should bring into being?

We see a mandatory, universal pay television system as a new CBC without commercial: an ill-timed, expensive luxury in two languages for which no public demand has been demonstrated.

We further take the view that a mandatory, universal pay television system would have a deleterious, if not devastating, effect upon the discretionary systems licensed by this Decision. In being able to derive revenues from every single cable subscriber in Canada, over 4,000,000 households at this time, a universal pay television licensee will have enormous financial resources to draw upon to acquire "blockbuster" films for its exclusive use. Such a licensee will be able to outbid competing discretionary systems for such programming which is going to be one of the major attractions of discretionary pay systems for years to come.

Even if the universal licensee were to be limited in terms of how much foreign content it could exhibit, the siphoning away of the top 10 to 20 foreign films from discretionary pay licensees will force those licensees to exhibit less attractive programming which will make their services less, if not totally, unmarketable.

Were such the result of fair competition between various pay licensees, all vying for the limited number of highly-prized feature films available at any given moment for pay television exhibition, we would remain less concerned. In the situation foreseen, however, the competition between discretionary and universal pay licensees will be unfair.

The discretionary licensees, those who, unlike the universal licensee, will have to market their service and make a return on their considerable investment, will be left without the best product as a result of the superior, built-in, and protected financial resources which will be handed to a

universal licensee through the indirect method of taxing all cable subscribers to this licensee's benefit.

(iii) *Too Much Pay Television*

As a result of the present Decision, we see Canada transformed within a short time from a no-pay television situation to a country with national discretionary pay television, a full system of regional pay television, specialty pay television, multilingual pay television, not to mention universal pay television. It is system overload.

How many pay television systems can Canadians afford? How many do they need? The Commission is now licensing six pay services and is calling for two more regional pay systems, not even taking account of Saskatchewan which has its own provincial pay system. How many of these birds will fly?

The arguments in support of a full system of regional pay television systems we find unconvincing, and the financial impact of such a system on a national pay operation insufficiently recognized, particularly with respect to the real possibility of "cream skimming" by certain regional pay systems in the more lucrative markets. In our view, some of the regional systems licensed by this Decision could well be construed as "mini-nationals" without more onerous marketing and bilingual programming requirements which the national licensee, competing directly with these regionals, must support. We further believe that it is unrealistic to assume that a country of Canada's population and resources can support significant production centres outside Toronto and Montreal. The United States concentrates its film and television facilities in only two major locations— New York and Hollywood. Such concentrations of artistic talent are an historic reality, a requirement for excellence and successful international competition. Canada cannot be different, even for the best of intentions.

For these reasons we express our dissent to the Decision herein....

Document 62

Students of cultural policy had a rich field to survey in the late 1970s and early 1980s. The Clyne committee on telecommunications and Canadian sovereignty (Document 59) was appointed in November 1978 and reported in March 1979. The Therrien committee on service to northern and remote communities (Document 60) was appointed just a year later in November 1979 and reported in July 1980. The federal cultural policy review committee ("Applebaum-Hébert" after its co-chairmen, composer Louis Applebaum and publisher Jacques Hébert) was appointed in August 1980 and reported in November 1982. The royal commission on newspapers (not included in this book) was appointed just a month after Applebaum-Hébert and reported more promptly, in August 1981.

This obsession might be blamed on changes in government (Tories unhappy with the ideas of a Liberal-appointed committee, or vice versa). Possibly the increasing frequency of such investigations reflects the frustration of policy-makers. In the latter half of the 20th century, it seems evident that, in the absence of totalitarian controls, modern communications will ignore national and cultural barriers; individual citizens will choose what they listen to and watch despite the policies of their governments, and the viewing and listening habits of the mass of the populations will distress the intellectual elite in whatever country the choices are made.

The report of the federal cultural policy review committee was written by people mostly remote from government and representative of such an elite. They were: Louis Applebaum, committee chairman and composer; Albert Breton, professor of economics; Ted Chapman, broadcaster; Joy Cohnstaedt, Manitoba's deputy minister of culture; John M. Dayton, a leader of community arts organizations; Jacques Hébert, committee co-chairman, author and publisher; Denis Heroux, film director and producer; Robert E. Landry, vice-president of Imperial Oil; Elizabeth Lane, arts lobbyist; Hilda Lavoie-Frachon, painter and print -maker; Mary Pratt, painter; Guy Robert, art historian; Jean-Louis Roux, National Theatre School; Sam Sniderman, "Sam the Record Man;" Alain Stanké, publisher; Thomas H.B. Symons, professor of Canadian studies; Max Trapper, arts administrator; and Rudy Wiebe, novelist.

Their report, tabled in November 1982, had the most radical recommendations of any government-sanctioned committee since the Second World War—including the idea that the CBC should abandon all television production except news in favour of buying its programs from outside studios. This idea, and the report itself, were criticized almost universally for being poorly researched and impractical. In 1983, both the CBC (in "The Strategy of the CBC") and the minister of communica-

tions, Francis Fox (in "Building for the Future: Towards a Distinctive CBC") rejected any notion of divesting the CBC of its production or distribution facilities. These responses are not included in this book.

Reprinted here is part of the committee's 43-page chapter on broadcasting, the part containing its recommendations.

DOCUMENT 62: *Report* of the federal cultural policy review committee, November 1982, 288–311.

Setting Cultural Goals for Broadcasting

All components of Canada's broadcasting system — the public and private broadcasters, the cable and satellite delivery systems — must be made to work together to reach important cultural objectives. The government's regulator, the CRTC, must see to it that such cultural goals are in fact pursued and, as much as possible, fulfilled. How, then, can the broadcasting system as a whole achieve these goals coherently?

The key element in the system, fundamental to its operation, is the publicly owned broadcaster — the voice of the public's interests, the expression of Canada's multifaceted reality. We must have a public broadcaster to provide original and stimulating programs that private broadcasters will not provide because they may not be profitable; to ensure that Canada's artists and producers are encouraged to develop new ideas, new forms of entertainment, new program concepts; to be involved with developing technologies and engaged in video and audio experimentation. We need a public broadcaster free to reach audiences, in Canada and elsewhere, through all possible means. *In short, we need a better, more vital, more courageous CBC.*

The CBC as Public Broadcaster

This Committee regards the CBC as the heart of broadcasting in Canada. As Canadians we have built up many expectations about the CBC as a medium through which we learn about ourselves and the world. We have asked it to weave together the many and diverse strands of our society's finest accomplishments. We have used it as the instrument on which our creative artists could learn to play. We have asked it to provide an outlet for the intellectual and creative energies that have burst forth in all regions of the country. The CBC has been able to succeed remarkably well in some of these assignments; in others it has failed.

As we have indicated in the preceding pages, we face a critical moment in our broadcasting history. This moment demands that we release our

programming potential to express itself in Canadian programs of quality and character — programs that Canadians will want to watch and will relate to because they reflect parts of themselves. If we do not do this consistently and in large measure, we are in danger of losing for all time the 50-year fight to establish and retain a broadcasting voice that is our own.

In order to tackle the job, we need a CBC that is strong yet flexible, able to concentrate its energies on essentials, open and responsive to opportunities, ready to draw on the store of existing talent in Canada and the exciting array of new talent which will inevitably come to the fore when the chance to create and perform presents itself.

All through our history Canadians have been ready and able to respond in an extraordinary way to new challenges. Talent blossoms when the opportunity to express it arises. The CBC can provide that opportunity if it becomes, once again, Canada's leading broadcaster, a prime force in furthering the evolution of Canadian self-expression. To achieve this end, we propose a series of changes in the CBC which arise from the analysis we have set out in the preceding pages.

Advertising and Affiliation Agreements

In the light of our previous discussion, the Committee recommends the following:

65. CBC television should discontinue selling air time for commercial advertising.

66. CBC television should discontinue its affiliation agreements with private television stations.

We argued earlier that the need for advertising revenue exerts a profound pressure on CBC programming decisions to fill prime time with U.S. programs. It is fundamentally important that CBC television be released from that constraint, so that its programming options can be considered only in terms of the best interest of Canadians.

The expedient of broadcasting CBC television programs to all communities through affiliated private stations has resulted in agreements that have also affected CBC programming adversely. It has been cheaper to arrange for affiliates to carry portions of the CBC schedule to some parts of the country than to build and operate stations in those places. Because private broadcasters depend on advertising revenue, the affiliates resist carrying programs with a limited audience and especially programming that does not carry advertising, such as a number of CBC public affairs shows. The initial resistance to carrying the English-language public affairs program "The Journal" during prime time is a case in point. Because affiliates do

not earn enough money from carrying CBC programs, the CBC pays those stations compensation on a negotiated basis. In 1981-82 these payments totaled $11.6 million.

In addition, because of pressure from affiliates and advertisers, the CBC carries U.S. shows in prime time not only to earn revenue for itself but also to provide the opportunity for revenues for its affiliates. As a result, we have the ironic situation in which the CBC not only gives financial assistance (much of it being taxpayers' money) to private affiliates to carry a portion of its programs, but also itself carries shows imported from the United States to ensure this limited distribution of its own programming.

In some cases, the CBC could discontinue its affiliation agreements without undue hardship or disruption for the private stations. The latter can fill their schedules from other sources and perhaps develop new relationships with other private stations or networks. In other localities, special arrangements would have to be made, involving buying out the affiliate if necessary.

In those instances in which disaffilation would be appropriate, CBC television programs would reach areas now served by the affiliated stations in several ways. In some localities, low-power rebroadcast transmitters could be used; in others, linking satellite to cable or to low-power transmitters might be effective. Eventually, Direct Broadcast Satellites will offer yet another delivery alternative. Care should be taken to avoid the loss of local service, and existing arrangements should therefore be maintained until alternative modes of delivering them can be put into effect.

CBC Television Programming

This Committee wants the CBC to provide a genuine alternative to the programming policies of private broadcasters and we believe that many Canadians want the same thing.

Over the past 25 years, observers of the Canadian broadcasting system have been consistent on this one point: the need for the CBC to provide a distinctive Canadian service and to provide encouragement and outlets for Canadian creative talent. The CBC, in its proposal for CBC-2/Télé-2, noted that the Corporation itself has repeatedly called for television programs that "spring from our cultural roots, that...reflect life as it is lived and experienced in our many cultural and regional communities. It means a full spectrum of programming...more and better serious and popular dramas, an emphasis on the development of variety stars, many more and better children's programs and the full range of programming for diverse minority interests." Alphonse Ouimet, a former president of the CBC, called for "complementary" programming, "to serve at the same time all tastes and needs and not just those of some artificial mass." What Mr. Ouimet meant

was that the CBC should not strive to provide homogenized mass entertainment, like that produced by the U.S. networks and Canadian private networks, but a diversity of specialized and distinctive programming attuned to different segments of the population with specialized and distinctive interests.

For a long time the CBC has not been the only player in Canadian broadcasting. Even the imperative under the Broadcasting Act to provide "balanced" programming can be criticized, as we have criticized it, since very soon television programmers will be offering specialized services: "vertical" channels programming only sports, religious broadcasts, feature films, children's shows, multilingual services, arts coverage, and so on. Some of this is already happening and more will be forthcoming with pay-television programming in 1983. The fate of television networks themselves is in question, at least in their present form and character.

Under such conditions, we think the time has come for the CBC to act decisively, to concentrate all its energies on building programs in response to public needs. Programming concepts and ideas should flow from diverse sources, tapping Canada's creative resources. The objective should be to stimulate the production of attractive, entertaining and informative Canadian shows that will win viewers.

The number of channels to which the CBC has access should therefore respond to programming needs. As the CBC itself notes, "although many Canadians have a wide choice of television stations, we really don't have much choice in television programming." In the Corporation's proposal for CBC-2/Télé-2, it outlined types of programming that it considered to be missing from the Canadian television system, and listed suggestions it had received from the public. Following is a summary of these.

The CBC might be expected to provide:

- a truly Canadian alternative to American programming;
- an end to the excess of sports coverage on television;
- programming in specialized areas such as business, the arts, international affairs and politics;
- more cultural programming, including more dramas from Canadian theatres;
- more regional programming and expression of regional points of view;
- programs explaining our cultural diversity and shared experiences;
- more Canadian films and high-quality documentaries;
- more criticism, news and analysis of theatre, music, dance, books, films;
- more opportunities for performing arts companies to gain television experience;
- more exchange between English and French programming;

- national viewing of materials produced by provincial television agencies;
- experimental programming and new ways of dealing with the visual arts;
- classical foreign series;
- repeats of outstanding programs.

It is a fine catalogue and is in line with comments that we heard about the CBC during our own public hearings. However, we must stress that, in the view of this Committee, the programming policies of the CBC must encompass not only the arts and specialized programs but also popular and mass entertainment; comedies, soap operas, light dramatic series, variety shows and children's programs. As a programmer, the Corporation should be able to call on all of Canada's creative production and performing talent.

In the past, the CBC has been burdened with far too many responsibilities: building the hardware necessary to reach audiences, constructing program schedules, producing the programs described in those schedules, and delivering them to audiences through its network of owned and affiliated stations. We indicated in the previous section, "Problems of the Present Broadcasting System," some of the difficulties which such structural integration has created. To achieve substantial improvements in programming, and to ensure that such programming sufficiently utilizes the cultural potential of Canada, this Committee is convinced that a much larger proportion of the CBC's television budget must be allocated to using outside production talent. We have sought to find a way of determining what would be the appropriate share of the CBC schedule to be given over to outside programming and also who would see that such a share was respected in practice.

We have come to the conclusion that an ideal proportion of outside programming is not, in principle, definable. But, more importantly, we have concluded that even if such a formula were to exist, its implementation on a day-to-day basis would be an unnecessary intrusion into program decision-making.

67. With the exception of its news operations, the CBC should relinquish all television production activities and facilities in favour of acquiring its television program materials from independent producers.

It is essential to be clear about what this recommendation does not say. First, it does not transfer the CBC to the private sector, nor does it place the public corporation in the hands of independent producers. As the 1965 Fowler Committee stressed, "The only thing that realty matters in broadcasting is program content; all the rest is housekeeping." In our recom-

mendation, programming decisions remain firmly in the hands of the CBC. Second, our proposal does not mean that the CBC, as programmer, is a passive recipient of what the independents will decide to produce. We trust that the public programmer will be attentive and responsive to ideas that originate with the independents, but we emphasize that programming should be controlled by the CBC and that many ideas for commissioning new programs will originate in the public corporation.

By becoming solely a programmer, the CBC would clarify its purpose and direction. Many of the talented people it has developed would move into private operations of their own, producing programs for the CBC. It is impossible to guarantee that the transition process would be a smooth one, since it would inevitably entail a certain amount of disruption and realignment of human resources. But if the changeover were carefully planned, new production companies, new facilities, studios and services (many presumably to be created, owned and run by ex-CBC staff) would quickly respond to the opportunity to produce programs for the Corporation and for other exhibitors and users. As a result, we see emerging in time a much larger production universe than now exists.

Most of the television studios in the country are owned by broadcasters, public and private. We would like to see more of these facilities acquired by non-broadcasting interests, by producer and producer-oriented service companies, thus reducing the danger of self-serving decisions being made by broadcasters. The studio and other technical facilities released by the CBC could gradually be acquired by such interests.

Transmission facilities could be owned and operated by a subsidiary operation within the CBC or, better still, assigned to an independent agency, within the CBC, with the CBC having such access as it needs for its operations. In the hands of such an agency the facilities could be shared — rented to public, private and community programming operations as they become available. This might be especially helpful in building up the prospects for increased local programming, a subject we discuss below.

We recognize that if the CBC relinquishes all television production (except for news) and relies on contracts and arrangements with independent producers to obtain its programs, the operation of "natural" economic forces will lead to a concentration of production in Montreal and Toronto and possibly one or two other centres. If this were allowed to happen, our main goal would not be achieved, since the vast reservoir of actual and potential talent outside these centres would not be tapped in ways most beneficial to the rest of Canada. To obviate this tendency,

68. A proportion of the CBC's programming budget should be allocated specifically to the commissioning of programs produced in the various regions of the country.

Although the objective of our recommendations is a public television corporation that is an alternative to private broadcasting and one that will genuinely reflect Canada's character, we do not wish the CBC to be closed to programs and materials from other countries. Nor would we want the CBC to be precluded from undertaking, through independent producers, certain coproductions with other countries. Much television production outside of Canada is of high quality but never reaches Canadian screens. The CBC's programming should rectify that situation and bring the best in television programming, from whatever the country, into Canadian homes.

69. CBC programming, though developed primarily from Canadian sources, should nevertheless include imported programs or coproductions of some programs of interest and excellence which would not otherwise be available to Canadians.

CBC Television News

Television news should continue to be produced within the CBC. Additional resources should be invested in the news service, not only to extend coverage and technical quality but also to raise the level of journalistic skill so that greater objectivity and depth of treatment can be achieved. The use of more CBC foreign correspondents, for example, would improve the confidence that Canadians have in the Corporation's news service. Raising the standards of news coverage would in turn contribute to the growth of a better informed and more aware public.

CBC Radio

During our public hearings we heard many favourable comments about CBC radio service in both languages. We do not propose changes in the CBC's handling of the radio aspect of its mandate. The Corporation should, however, remain sensitive to new developments in the delivery of radio programming — such as the use of cable and satellite systems — and adapt to new modes of delivery as they become practical.

Although we are not recommending that the CBC discontinue its own radio program production, we believe that it is in the public interest to encourage the development of an independent radio production potential in Canada. This view is consistent with our desire that the greatest variety of programming ideas find their way into the system.

Northern Service

Like CBC radio, the Northern Service for radio and television broadcasting should be retained as a production operation within the CBC. A special type of expertise and sensitivity to cultural, linguistic and social issues are essential in providing this service. Native people should have a strong voice in shaping the policies and operations of a service which so directly affects their lives and communities. *Additional resources seem to be justified, and we would urge the CBC Board to give the future development of the Northern Service careful and concerned attention.*

Radio Canada International

The CBC should retain its international service, which we discuss in Chapter 11, "International Cultural Relations." Radio Canada International, which already reaches countries in Europe, Africa and Latin America, should be provided with the means to enlarge its service to countries on the Pacific rim which are not now being served.

Regional and Local Programming

The mandate of the CBC requires it to provide programming that reflects each region of Canada to itself and to the rest of the country. In addition, although it is not a requirement of the Broadcasting Act, the CBC provides local programming to communities in which it operates stations. There is some confusion, even within the CBC, about how local and regional programming should be clearly defined and differentiated.

In earlier days, the CBC provided the only production capability worthy of mention in many of the regions it served. Out of its own budgetary resources, the CBC developed production facilities in St. John's, Halifax, Moncton, Montreal, Toronto, Winnipeg, Edmonton and Vancouver. (Although at present the Prairie Provinces are served from Winnipeg, a new production centre is projected to open in Regina in the Fall of 1983 to serve Saskatchewan) These regional facilities are backed up by sub-regional centres and local stations in Corner Brook, Goose Bay, Labrador City, Sydney, Charlottetown, Moncton, Quebec City, Ottawa, Windsor, Saskatoon and Calgary (Fredericton has only production facilities). These in turn are supported by an extensive network of television rebroadcast transmitters strategically located to extend service to virtually the entire population of Canada.

But today the CBC is no longer alone in providing regional programming. Private broadcasters have been extending their reach into many communities, cable systems are bringing more channels into more homes, and soon satellites will allow television signals to be received even in remote and isolated areas. At the same time, production facilities have grown and

cable operators have studio facilities in many parts of the country designed to provide opportunities for community-based programming. Further, the talent and capability to produce and exploit the medium have proliferated through the growing number of film and television training centres and cable community channels, and through experience acquired in the production of commercials, documentaries and industrial films.

The needs of local television programming can now be filled in a variety of ways, some of which will be examined below in the section on private broadcasters. If local programming is given a fairly precise definition, the CBC provides very little in the way of local programming, except for local news. For example, in the Atlantic provinces, the schedule normally offers 81 hours per week of national programs (which include 8 hours of regional contributions), 31 hours of regional programs, but only one to three hours of local productions.

Recommendation 68 on CBC television programming aims to stimulate production from regional sources and to provide an outlet for underused creative production talent. There would thus be a better opportunity to integrate regional program materials into the national distribution network, since the search for program ideas and materials would be the core of the CBC's operations.

Local television programming, as we indicate below, could be provided more effectively through a combination of sources not including the CBC. The Corporation would therefore be able to give more time and attention to national and regional programming. Local radio programming should be sustained and continued by the CBC.

70. In its television services the CBC should rededicate itself to providing regional programming, but should phase out local programming as soon as alternative local broadcasting facilities are in place.

English and French Services

From the beginning, the CBC has maintained services in Canada's two official languages. But the two services are quite separate and parallel to each other, even if their central administration in Ottawa is common to both. That parallelism has been accentuated by the extensive production activities of the Corporation in English and French. We do not believe that our recommendations will automatically bring the two services closer nor do we suggest that the two be fused into one. Such a step would not be feasible, nor culturally productive if it were.

But once the CBC concentrates all its activities on programming, we would expect a substantially increased level of exchange and collaboration between its two language services. Beyond that, many programs could be

dubbed for distribution by both services. It should be possible in many instances to avoid having to build different operations solely on the basis of language.

71. As a matter of policy the CBC should encourage the greatest possible collaboration, cooperation and exchange between programmers in the French and English services in order to make the best use of human resources and to permit a truly significant exposure of programs produced in both languages to all Canadians.

Marketing Operations

For some time the CBC has marketed its products through what is now called CBC Enterprises for the English radio and television networks and, only recently, through the Ancillary Rights Service for the French networks. These marketing arms promote and sell materials produced by the CBC — including television programs and, mostly through mail order, records, books and similar products. We would like to see these activities pursued with more vigour. CBC programs, records, films, books, information materials and entertainment items of various kinds should be sold, or rented as appropriate, in all formats through retail and other outlets. Under expert management, the marketing operations should earn revenues for the CBC. In Chapter 8, "Sound Recording," we note the importance of these marketing units for the distribution of specialized recordings.

The CBC is also the principal outlet for the presentation of National Film Board films. In Chapter 9, "Film," we propose that the CBC should assume responsibility for the distribution of the NFB's library of films. Such distribution would fit appropriately into both the proposed programming and marketing functions of the CBC. In this connection, the CBC should undertake to repackage the appropriate NFB films, seek out markets all over the world, and make available this valuable library of films to Canadians.

72. The CBC should enhance its marketing operations in order to exploit the maximum domestic and international marketing potential of its materials and those of other producers.

Audio and Video Archives

Audio and video materials form a vital part of Canada's heritage. In spite of the concern and effort of a few dedicated collectors, however, much of that valuable material has been or is being lost. The accent on the immediacy of much of radio and television production tends to produce indifference to its preservation, even among those who are in the broadcast media. The problems related to the preservation of these materials are great, as we were reminded during our hearings, but they demand a solution.

Fortunately, some first steps have been taken. In 1959, the CBC began to preserve its sound recordings in Toronto and Montreal. In 1975, it made an arrangement with the Public Archives of Canada for the collection and preservation of its broadcast materials, to which other documentation was added in 1981. Thanks to this agreement and with funding for the purpose, the vast repository of CBC materials began to be processed. Unfortunately, the operation was curtailed when funds ran out. Nevertheless, a system for handling such materials has been established, providing a basis for future archival development.

According to the Association for the Study of Canadian Radio and Television, an organization which has concerned itself with better sound and video archives, the CTV television network has assembled an estimated 18,000 hours of videotapes awaiting cataloguing. The Canadian Association of Broadcasters has made its members aware of their responsibilities in this area, though a comprehensive program still remains to be developed.

Time is an important factor: backlogs must be dealt with before these materials disappear forever, and preservation of future collections and the provision of public access to them must be undertaken. The job is massive and requires assistance from many sources. Given the widely scattered origins of the materials, even within the CBC, not only must the Public Archives become more deeply involved, but agreements should also be made and projects undertaken with provincial and other archival services. It is estimated that about $10 million would be needed to deal with the backlogs alone within the CBC and CTV collections, but since this process would take several years, the annual financial burden would not be heavy.

To deal with this serious problem, and in view of the time constraints involved,

73. The federal government should immediately provide funds to the Public Archives of Canada to enable it to deal with the serious problem of the collection and preservation of audio and visual archives and to operate a soundly based, ongoing archival program in this area.

The Public Archives of Canada should work closely with all those who have audio and visual archival materials, especially broadcasters and film producers, as well as with provincial and other repositories, to coordinate and facilitate the efforts in this field. The Public Archives should continue to serve the archival needs of the CBC and should, as we have suggested in Chapter 9, undertake the management of the National Film Board vaults and archival materials.

A New Broadcasting Act

Our recommendations for the CBC call for a reconsideration of its mandate. But the restructuring that we propose should not be construed as diminishing the autonomy that the CBC enjoys. We have argued in Chapter 2, "Government and Culture," that it is vital for the CBC to be free of political influence in its programming decisions. At the same time we are conscious of the fact that some of the changes we recommend have been proposed in the past by others, including the CRTC, to little effect.

Frankly, we worry that a continued effort to maintain the status quo may lead the Corporation to react negatively to our suggestions. Too many Canadians are beginning to question the very need for a public broadcaster such as the CBC. Our recommendations are intended to preserve the valuable experiences gained throughout the long and productive history of the CBC, so that these can be strengthened and built upon in a new and vibrant operation that is able to face the future and to contend effectively with its demands.

Many of our recommendations could be implemented within the present legal framework provided for the Corporation and for the other elements that make up our broadcasting system. However, taken together, our proposals represent a significant departure in direction sufficient to warrant new legislation.

74. A new Broadcasting Act should be presented to Parliament.

Private Broadcasters and Increased Canadian Programming

Private broadcasters in Canada have been well served by the protection offered them by public regulations. Even within the current economic climate and although individual operators may be suffering downturns in profit, advertising sales are high and profitability over the whole industry is healthy. However, there is too little to indicate a relationship between industry health and improved Canadian programming in either television or radio.

Competition from new delivery systems will affect private broadcasting, but an inherent flexibility should enable the system to adapt to new conditions, as it did when cable television emerged. Our concern is not with the ability of private broadcasters to adjust to the new environment but with the contribution that they can and should make to the cultural life of Canada.

The withdrawal of the CBC from the advertising market and from the competition for U.S. programs, both of which we have recommended, would provide several advantages to the private broadcaster. For one, the

departure of the CBC from the market for foreign programs would most likely make it possible for Canadian private broadcasters to buy such programs at a lower price. More significantly, well over $100 million in advertising revenues would become available. It is probable that a large part of those funds would be absorbed by television operators within the CTV, TVA and Global networks and by other independent stations. Some way must be found to convert some or all of these additional funds, and a significant portion of private station profits, into better Canadian program production.

In the recent CRTC ruling on pay-television licensing, the conditions imposed on the licensees called for a commitment to Canadian programming which differed from standard Canadian content regulations, although they resemble prior efforts by the CRTC. Currently, Canadian content is measured only in terms of time allocated within the schedule. The new approach adds a requirement to spend a percentage of gross revenues and a percentage of programming budgets on Canadian shows. We believe that this approach makes good sense and will make a definite impact on the quantity and nature of the programming produced by the private sector.

We have noted several times that, in general, programs emerging from private broadcasters do far too little to enhance our sense of ourselves and our culture. Their coverage of news and sports is good, but little else of cultural value is produced with any consistency. We believe that much more is possible and should be required of the private broadcasting community.

75. The CRTC should require private broadcasters to allocate substantial percentages of their programming time, programming budgets and gross revenues to new Canadian program production.

In the pursuit of this objective, the CRTC might find it necessary to make its requirements for the scheduling of Canadian programs more precise and rigorous. At the same time, if the fraction of gross revenues and programming budgets which the private broadcasters are required to devote to Canadian programs is sufficiently large, these broadcasters may be induced to produce attractive Canadian shows, which they would then find in their own interest to display in prime time. The test of any regulation in this area will be a decision by private broadcasters to air their own programs in prime time.

We also believe that the additional revenues that would accrue to the private system, once the CBC ceased to carry advertising on its television programs, should be used for increased production at the local and regional levels. The annual CANPRO awards, which highlight productions emanating from private broadcasting stations, indicate a high level of production talent whose efforts often deserve wide exposure.

This move toward increased Canadian programming could be accomplished in several ways. One possibility is that, in markets where it is feasible, private station owners could be required to program, as a condition of their licence, a second channel whose content would be all, or nearly all, Canadian and on which they could sell advertising.

A variation of this concept would open up a second channel to entrepreneurs willing to provide a new, predominantly Canadian service. There would be open competition to provide this service. The bidders might be the local private station, affiliates of other networks, and others desiring entry into this field. Approval would be granted only if plans for Canadian production and programming were satisfactory. To be effective, performances would need to be strictly policed and the approval of licences withdrawn and opened to new bidders if programming promises were not fulfilled.

76. The CRTC should permit the establishment of new, private local television services in those communities able to absorb them, and use its licensing powers to ensure that these new services contain almost exclusively Canadian programs.

A third possibility is the introduction of a tax on profits which would be earmarked for upgrading the quantity and quality of Canadian programming. Beyond the problems of devising such a tax, however, there are the problems related to earmarking, which we have analyzed in Chapter 3, "Marshalling Resources."

The largest single television advertiser is the Canadian government. At present federal advertising expenditures are associated with U.S. programs on Canadian television stations on the basis that these programs attract the largest audiences. Such are the dictates of efficiency, at least as long as only one objective is being considered. Should the government choose to allocate a reasonable part of its advertising budget to Canadian programs that are attracting large Canadian audiences, even if these audiences are not as large as those viewing American shows, the government would not only provide a further incentive to private broadcasters to invest in Canadian program production but could also set an example to other advertisers.

The Challenge of a Multi-level Cable System

Approximately 80 per cent of all households in Canada have easy access to a cable television connection in the sense that the cable "passes" near their homes; and, as we have already noted, 59 per cent actually subscribe to a cable service. The cable system is therefore a prime delivery mechanism. Off-air transmission — the traditional way to receive television signals — no longer governs the way we look at broadcasting.

The CRTC has not allowed the cable television industry to engage directly in program production, beyond the provision of community channels and services. When cable first arrived on the scene it was considered a threat to the off-air broadcaster. Recent history, however, has shown that the two delivery systems can work together to their mutual advantage. Now satellites are seen by some as dangerous intruders into the system. But already there are signs that a combination of cable and satellite systems could provide equal or greater coverage than is being provided currently, thus putting even isolated and remote parts of the country within reach of broadcasters. Various kinds of data, security and other services could be offered, in addition to entertainment and consumer information. As ever, the questions are not merely technological but cultural: which programs will be offered to and seen by Canadians?

Proliferation of cable systems has increased Canadians' access to U.S. television programs, and the use of cable converters increases this access still further. Without cable, viewers can receive off-air signals from Canadian network broadcasters like the CBC, CTV, TVA or others, depending on the province of residence. Since the production and transmission of these signals are financed either by public appropriation or by advertising, viewers are provided with a practically free service. Looking at one more program does not cost them anything more, beyond a few cents of electricity and wear and tear on the television set. By purchasing cable service, at an average cost of about $7 a month, viewers can increase the number of channel choices to eight or twelve (the "basic" service) and improve the quality of the picture on their sets. For an additional $5 or so a month (or an outright purchase price of around $100), a converter increases the number of choices still further.

Early in 1983, viewers will have the option to purchase yet another level of service from cable companies, when pay-television is offered for a probable price of around $15 a month for the first pay channel, with discounts applying to additional channels. To receive pay-television programs, which will be delivered to cable companies by satellite in a scrambled form, a decoder will have to be bought or rented. Soon, for an additional sum, non-broadcast services such as banking, house protection, shopping, etc., will add another level to what is available. Before long, viewers will probably also be able to buy individual programs instead of whole channels of service.

Thus we are already entering a multi-level, or tiered, system in which viewers have freedom of choice in paying for what they use. As the number and types of these new cable services increase, their pricing and marketing will become more complex, and the tendency of cable companies to use popular foreign programming to attract subscribers will increase as well. For this reason it will be necessary to ensure two things: that Canadian programs are scheduled in adequate quantities and at appropriate

times, and that Canadian program production is increased as a result of the introduction of the new services.

In effect, then, it will be necessary to regard the entire programming offered by any cable system in the same light as we now regard a broadcaster's service. Of particular concern to this Committee is the need to maintain all Canadian non-discretionary services — national, regional and provincial networks, independent stations, community channels, educational services, House of Commons coverage — as part of the basic service of all cable companies.

77. Any CRTC policies on multi-level, or tiered, cable service must continue to ensure that the first priority on the basic cable service is given to designated Canadian services. In addition, a substantial portion of all other tiers of service offered to cable subscribers must be Canadian.

We believe that every effort should be made to reduce the fee charged for the basic cable service to the lowest possible level. Furthermore, the federal government and the cable industry should consider a policy of hooking up to cable systems all households that are now "passed" by cable and offering them this basic, low-cast service. Our purpose here, as elsewhere in this Report, is to give encouragement to Canadian creativity by providing our creators with enlarged audiences. Recommending a favoured position for Canadian-based channels within the cable television system is a major step in this direction.

Our position on increased Canadian programming suggests that we should advocate an open and unlimited policy for Canadian television producers and that, in particular, we should recommend that cable companies produce and distribute their own programs. But the inherent conflict of interest placed on carriers who are also producers forces us away from making that recommendation. We are ready to acknowledge that, in the short run, production of Canadian programs could increase, but only at the cost of very probable long-term reductions of such production. Nor do we believe that the problem posed by conflict-of-interest situations can be resolved by such legal devices as arm's-length companies, because the degree of autonomy must be monitored and enforced, and we have serious doubts, for reasons given earlier, about the resolve to do this. Prudence and the logic of this position therefore dictate the following:

78. The CRTC should encourage cable companies to improve their community channel operations, but cable production must remain limited to such programming.

Local Television Programming

References have been made throughout the earlier parts of this chapter to local programming. We have indicated that private broadcasters should substantially increase their production activities, providing much more access to independent production talent in their communities. This Committee wishes to underline its particular concern for this aspect of broadcasting in Canada. At the local level, the provision of opportunities to develop and produce programs is fundamental to the thrust we advocate so strongly, namely, that the future of broadcasting in Canada depends on our ability to generate productions that reflect and concern us. Nowhere is this more vital than in the area of what is termed local broadcasting.

This Committee fully shares the concern so often expressed to us during our public hearings about the improvement of local service and the development of local talent. When we propose, in Recommendation 70, that the CBC discontinue the small amount of local programming it currently undertakes, it is in order that the CBC might then be able to provide producers with increased access to its system, through the additional time and funds it will have available for the stimulation of new production.

Our proposals on additional cable-delivered stations to be made available to private broadcasters should provide further opportunities for production talent. The additional revenues — $100 million or so — to be earned by private broadcasters when the CBC ceases to sell air time for commercial advertising should be directed in large part to new productions. Whether this is achieved by regulation or otherwise, the goal in all these developments has to be found in the fundamental needs we have described.

The cable system offers further possibilities. In 1979, 467 cable companies provided community channels and 276 operated studios (156 with colour facilities). On average, about four hours of programming a day are produced by these community channels. Local groups are also given access to cable facilities for television programming. However, much more can be done; the CRTC already requires that cable facilities, equipment and expertise be made available to communities as a condition of cable licences, but the Commission has not been firm in administering these conditions. It had been hoped that cable operators would allocate 10 per cent of their revenues towards the operation of community channels; generally this has remained an unrealized hope.

Nevertheless, a great variety of opportunities have been opened up in the brief history of cable community programming. Many individuals and

groups have become involved, technical training and outlets for local talent have been provided and encouragement given to local entrepreneurship. In communities where colleges and schools offer some television training, students have become not only operators but have also helped train citizens in the use of cable television cameras and equipment. Community groups in some areas virtually control the entire community channel activities, while in others the cable companies do most of the production emanating from community sources. In many places the community channel provides the only local television service. The diversity of approaches and ways of dealing with local conditions is one of the strengths of community channel operations.

Of special interest to this Committee is the fact that, through the cable system's community channels which can create new relationships between the public and television, the Canadian broadcasting system has one of its few alternatives to mass entertainment and information in which the viewer is merely passive. In the community channel operations, direct participation by members of the community in all aspects of programming is not only possible, but the norm. As a result, programming policies are attuned to a remarkable degree to specific local needs and aspirations. Even in their present underdeveloped stage, community channels have sometimes been able to develop program ideas that have been picked up by off-air commercial broadcasters.

The Committee has concluded that cable community channels must continue to be developed and strengthened, and suggests three areas in which improvements should be sought: there should be a greater contribution and commitment by cable companies, a search for additional and diversified sources of funding, and increased efforts to establish closer relationships between communities and operators of community channels. To that end we recommend the following:

79. Cable television operators, as a condition of licence, should be required by the CRTC to allocate a significant percentage of gross revenues toward the facilities and programming of community channels.

80. The CRTC should encourage the establishment of Local Programming Leagues wherever community channels are available to the local community.

The Local Programming Leagues would be nonprofit organizations composed of representative groups and citizens within each community. If incorporated as charitable organizations, they could appeal to a variety of sources for financial support. The allocations by cable companies which we propose in Recommendation 79 would provide basic operating funds. Increased funding could be sought from provincial and municipal govern-

ments, the Canadian Film Development Corporation (see Chapter 9 "Film"), other federal agencies and local private and business sources.

The Leagues should be deeply involved in local programming. They would seek to improve its quality and its sensitivity to local needs and to provide encouragement and opportunities to local talent. The licence would continue to be assigned to the cable operator, who would be accountable for fulfilling its conditions. The League could, in some circumstances, seek other distribution outlets for its programming needs.

Cable companies providing important local services in communities that have no other local broadcasting service should be able to use off-air facilities in the form of supplementary transmitters for the purpose of improving their coverage.

In making these proposals we seek to achieve three principal objectives: a better broadcasting service in line with the interests of local residents, more opportunities for performers and producers to test themselves and to grow, and more involvement by citizens in ensuring television's usefulness in their lives.

Developing a Policy for Satellites and New Production

There are some strange ironies to be observed in Canada's approach to the satellite question. Canada has been a pioneer in the use of satellites for broadcasting purposes. Long before the United States and other countries began to look seriously at the potential of satellites, the CBC was using Canada's Anik series of satellites to serve the North. Yet Canada now seems to be almost reluctant to build upon and exploit this early lead. We are now preoccupied with controlling the entry of foreign satellite signals and programs into Canada, instead of recognizing that this new technology provides unprecedented opportunities for us to increase the distribution of new Canadian programs and service, not only domestically but internationally.

The United States has dramatically shown how satellites used in conjunction with cable systems can bring audiences the kind of program diversity which our own Broadcasting Act expects from the Canadian system and which thus far has eluded us. Furthermore, when Canada launches Anik C in late 1982, this country will move to the forefront of new satellite technology, making it possible to offer, among other new services, the economical transmission of broadcasts directly to individual homes. Ironically, the first users of this type of service (Direct Broadcast Satellite Service) could be U.S. entrepreneurs. It is one thing to be concerned about the high cost of technological development and the inordinate emphasis it has received in relation to our underfunded program production activities. But it is vital to recognize that the wise use of technology extends the opportunity for

creative communication and expression and is an essential component of Canada's present and future cultural endeavours.

Canada must be able to look to its public and private institutions to respond to these challenges, and government policies must be flexible enough to allow for considerable individual initiative. To the program producer and distributor, these technological systems represent new program dissemination possibilities to be considered along with all the other systems — such as cable and videodiscs — now becoming available. Consequently it is important not to retard such new developments as satellite systems, nor single out any one system as being the "preferred" system of program and service delivery.

There are some very specific actions which must be taken now. The Committee has already referred to the vital need to undertake more research in programming and has suggested in Chapter 9 how the National Film Board may be reconstituted to serve this need. In addition, we have proposed for the CBC a primary role in programming within the expanding broadcasting and communications system. These two public institutions should be fully alert to the potential of new satellite systems, taking that potential into account in their long-range planning. For example, a much closer ongoing coordination with the telecommunications satellite corporation, Telesat, is highly desirable, to encourage the evolution of new technological systems that can serve programming objectives.

The federal government and the CRTC must see their roles as custodians of a multifaceted program distribution system in which extended range and diversity is sought. It is essential to be open to all ideas, to encourage new systems development, and to see every advance not as a cause for concern but rather as an opportunity for creative enterprise.

81 The Canadian government must develop a clear and coherent policy for the orderly development of satellite capabilities and put such technologies and the funds they can generate to the service of new Canadian production.

A Strengthened CRTC

The licensing and regulatory powers of the CRTC exert a powerful effect on broadcasting in Canada. These powers should be used with firmness and determination in enforcing the delivery of promised performance by licensees in respect to Canadian programming.

Licensing and Cultural Objectives

The CRTC has generally shied away from applying the ultimate penalty for non-performance in cultural matters — the revocation of, or refusal to

renew, a broadcaster's license — for fear of depriving a community of services. With new broadcast ventures continuing to proliferate, that fear need no longer be a factor in many of the CRTC's licensing decisions. The need to protect the business concerns of private broadcasters is not as important as the need for new Canadian program production. Non-enforcement of any promise, pledge or assurance is an incentive to further non-performance. Conversely, the only way the CRTC can show that it places cultural objectives on a par with, or higher than, industrial or commercial objectives is through strict enforcement of promises with respect to cultural matters. It must remind broadcasters that they are licensees, not owners, of the airwaves.

82. The CRTC must strictly enforce conformity to all conditions of licence.

The Broadcasting Act, in its present form, has been a source of friction between the CBC and the CRTC. The Act gives the CBC a specific mandate and the authority to carry it out. The CBC is also licensed by the CRTC, but that licence cannot be suspended or revoked. When the two agencies find themselves in adversary positions on some subject, the CBC has managed to get its own way.

83. The proposed new Broadcasting Act should give clear authority to the CRTC in matters related to the CBC.

In Chapter 2, "Government and Culture," we discuss the power of cabinet ministers to provide policy direction to agencies. Although we are firm in our conviction that agencies need to be strongly shielded from political direction, we note that the conditions surrounding the CRTC as a regulatory body put it in a different position. We disagree with that aspect of the present Broadcasting Act which disallows policy direction while enabling the government to challenge individual CRTC decisions on granting or renewing of licences. We repeat our position here.

- The cabinet's right to challenge licensing decisions should be removed.

- The minister should have the right to offer general policy directions under certain conditions: prior consultation with the CRTC and the tabling of the policy view in the House of Commons. The CRTC should, however, be able to hold public hearings on the issue in question prior to the policy direction being formally given.

84. The proposed new Broadcasting Act should confirm the total independence of the CRTC from political intrusion in matters relating to licensing, but permit direction by the minister on matters of general policy, under certain specified conditions.

* The federal government does not play any direct role in educational broadcasting, except that through the CRTC it licenses educational services. In order to reduce the danger of political control or undue political interference in educational broadcasting, these licences are given to independent bodies operating at arm's length from provincial or municipal governments, although they may be funded entirely by such governments. Thus educational operations such as TVOntario, Radio-Québec, Access Alberta and others are licensed by the CRTC. Cable systems also provide channels to educational broadcasters, including those based at universities.

The ownership of broadcasting operations by political bodies presents certain dangers. Political influence on programming decisions must be minimized, in order to protect the integrity of the broadcasting system against accusations of being used for political ends or presenting views biased towards one political or social cause. Although provincial educational broadcasting undertakings have shown genuine interest in the promotion of Canadian programs, provincially administered cable activities have shown the opposite tendency, apparently wishing only to provide access to American programs. It is in the Canadian interest that cultural goals in broadcasting be pursued by these enterprises. For these reasons,

85. The CRTC should continue to license provincially and municipally based broadcasting undertakings.

Encouraging Alternative Radio

In the course of our public hearings, radio was criticized for shortcomings in its programming much less than was television. CBC radio in particular was widely lauded. In Chapter 8, "Sound Recording," we have already noted the dependence of radio on recorded music and vice versa; we have also noted how little attention is paid by radio programmers to serious music. Our recommendation to the CRTC in that chapter is aimed at increasing the performance on both AM and FM radio of Canadian specialized recordings.

When FM radio emerged as an alternative to AM broadcasting, the CRTC sought to make FM programming "different," a way of providing an alternative for listeners who complained about the nature of the AM

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* The Committee records an abstention on this matter (up to and including Recommendation 85) by one of its members, Joy Cohnstaedt, Deputy Minister, Cultural Affairs and Historical Resources, Province of Manitoba. That department is responsible for provincial telecommunications policy.

service. Their criticisms had noted AM radio's repetitiveness, stridency, triviality, undue commercialization and imitativeness. To avoid these tendencies, FM licensees were required to provide a certain amount of "foreground" programming, were forbidden to simulcast in cases where the licensees operated both FM and AM stations, and were generally encouraged to provide greater diversity, substance and quality in their programming and to limit the amount of commercial advertising. It was hoped that in response to such pressures, broadcasters would create new ways of dealing with subjects that private radio had ignored. There were other hopes. It was expected that independent radio production would develop, that exchanges, syndication operations and even networking would result. Little of this has happened. The program exchange service of the Canadian Association of Broadcasters is as limited in its scope as it has always been.

The CRTC should persist in its efforts to make private radio programming more diverse and imaginative. Given the fact that most Canadians now own FM receivers, the CRTC should reconsider its FM licensing procedures, making it easier for small entrepreneurs with different ideas to enter the field. The costs of preparing an application and of submitting it are sometimes so high that such entrepreneurs are almost barred from entering the market. This situation, while protecting profits of existing operators, also impoverishes the whole sector by limiting its openness to new ideas.

One group, the community and campus-run stations, already provides valuable alternatives to the fare provided by private commercial stations. Community and campus-run stations are also usually very different from each other, and that diversity should be encouraged. Such radio stations not only provide an important local service through their information programs, but also encourage experimentation and offer opportunities for new talent to develop. Many of these stations operate in small communities and in the North; as a result they often provide vital exchanges between small, isolated groups. Others are located in urban centres serving special groups. Still other stations function in universities, often operated by students. All share the problem of being seriously underfinanced.

Some departments or agencies of the federal government have at times provided assistance to these stations, usually for special projects. The Quebec government, the only provincial government to do so, has provided funds toward the basic operation of many stations within the province but even in those cases, the financing has proved to be both insufficient and lacking in continuity. Private fund-raising is difficult for such ventures, and the sale of advertising would often be antithetical to their interests even if it were permitted.

86. Federal and provincial governments should seek ways to assist community and campus-run radio stations to alleviate their financial difficulties and to stabilize their operations.

Advisory Committees for Performance Assessment

Dialogue between a regulatory agency such as the CRTC and the public is very important. The constituency that watches and listens to programs should be heard clearly alongside the professionals and businessmen of the media. The public can provide a useful evaluation of broadcast or cable services that are presumably designed for their benefit, and some mechanism for the regular sharing of views with the public would be an asset to the supervisory and regulatory roles played by the CRTC.

We would like to see advisory committees formed by the CRTC to which the agency would have regular and consistent access. These committees should be representative and wide-ranging enough in their activities so that a thorough feedback system would be in effect, providing an efficient and accurate public assessment of broadcasters' performance. The ancillary impact of such an operation on individual broadcasters and the networks could be considerable. Just knowing that their work is seriously and continuously being assessed would affect broadcasters' daily decision-making. Since much volunteer effort would be involved, the operation of such a network of advisers should not be costly. The process would not downgrade public hearings, which should remain the core of the CRTC evaluative process. In fact, participation by such advisory groups in the CRTC's public hearings would be both appropriate and valuable.

87. The CRTC should set up Advisory Committees in each province to assist in performance evaluation of licensees and to provide advice and reaction from a local perspective on all broadcast activities.

Funding Public Broadcasting

Concern was often expressed to us at our public hearings about the portion of the federal government's cultural expenditures consumed by the CBC. In the eyes of many, this amount is inordinately large. Hopes were often voiced that even a small part of the CBC's budget could provide major benefits if it were reassigned to other federal cultural agencies, all of which operate on a small fraction of the funds available to the CBC.

There are no simple ways of establishing whether net savings to the government would result from the recommendations we have put forward on broadcasting in general and the CBC in particular. Very substantial savings are indicated by some of the measures we advocate; these derive from staffing adjustments, disposition of physical plant, realignment of services, shifts in priorities and tightening of operations.

On the other side of the equation, there is the proposed loss of CBC advertising revenue, the cost of breaking with the affiliated stations and, most of all, the cost of commissioning more high-quality programs. It is extremely difficult to add up benefits or losses on either side and arrive at a useful answer. Time considerations add to the dilemma. When will certain actions begin? How long will they take to complete? What will be the condition of our economy at the time?

The problem of acquiring the necessary funds raises other issues. In Chapter 3, "Marshalling Resources," we have set out our views on such questions as special taxes, levies and other means of acquiring funds for particular cultural purposes. This Committee wants the government to act responsibly to achieve a stable ongoing financial commitment to the cultural activities that are essential to the well-being of Canadians. A strong Canadian programming presence is undoubtedly one such activity. In the briefs presented to us, we heard ideas on the accumulation of special funds through taxes earmarked to provide financial support for Canadian television and film productions. One of these ideas took the form of a tax on cable billings; another a tax on blank audio and video tapes; yet another a levy on television set sales. The most frequently heard suggestion was a levy on cable subscriptions, with the income going to the CBC or to a production fund in the hands of the Canadian Film Development Corporation or some other agency. This has been called, perhaps inaccurately, a "universal pay" television system and was advocated by several intervenors at our hearings.

The government may, indeed, choose to use any or all of these funding devices. We would prefer, however, to have the necessary funds for cultural purposes come out of general tax revenues, thus avoiding the pitfalls that we have described in Chapter 3.

The CBC has often voiced a plea for assured funding from the government over a period of years. At one time the government promised five-year appropriations, but that promise has never been fulfilled. Other agencies, such as the Canada Council, have also asked for multi-year funding in order to serve the needs of their clientele better. In recent years, the Federal Policy and Expenditure Management System has required all agencies to provide a three-year projection of their financial needs. We hope that this process can eventually lead to an arrangement enabling the government to provide appropriations for the CBC and other cultural agencies for periods longer than the one-year cycle on which they now must function.

Whatever the pattern and whatever the source of funds, we urge that enough financial support be provided to enable the activation of the creative potential of Canadians. In that context, the CBC is vital, and Canadians should be vigilant that they do not cheat themselves of the great benefits to be derived from a properly motivated and well-operated public broadcasting system.

Document 63

Formal regulations for pay TV were published after the system had lived through the failure of some companies and the merger of others, and broadcasters had cut back on some of the optimistic promises of the 1981 licensing hearings.

DOCUMENT 63: CRTC, "Pay television regulations," Statutory Orders and Regulations 84–797, *Canada Gazette*, Part 2, 17 October 1984, 3923–3926.

Short Title

1. These Regulations may be cited as the *Pay Television Regulations.*

Interpretation

2. In these Regulations,

"Act" means the *Broadcasting Act;* (Loi)

"associate", where it pertains to a person, includes

(a) a partner of that person whether or not the partner is acting on behalf of the partnership,

(b) a trust or estate in which that person has a substantial beneficial interest or in respect of which that person serves as a trustee or in a similar capacity,

(c) a spouse, son, daughter, son-in-law, daughter-in-law of that person, or other relative of that person or of his spouse who resides with that person,

(d) a person with whom that person has entered into an arrangement, understanding or agreement as to the voting of securities of a corporation that is an associate of that person,

(e) a corporation of which that person, either alone or together with one or more associates as described in any of paragraphs (a) to (d) and (f), has, directly or indirectly, control of not less than 20 percent of the issued voting securities thereof, and

(f) a corporation of which one or more associates as described in any of paragraphs (a) to (e) has, directly or indirectly, control of not less than 50 per cent of the issued voting securities thereof;

(associé)

"Canadian program" means a program to the extent that it is recognized by the Commission to be a Canadian program in accordance with the criteria established in the notice published by the Commission dated 15 April, 1984 entitled "Recognition for Canadian Programs";

(émission canadienne)

"commercial message" means any commercial announcement that mentions an advertiser or any product or service of an advertiser, including any such mention in a list of prizes, but does not include any

(a) public service announcement,

(b) advertisement for programs distributed by a Canadian pay television undertaking, or

(c) identification of a pay television undertaking, or

(d) production credit;

(message commercial)

"Commission" means the Canadian Radio-television and Telecommunications Commission; (*Conseil*)

"control", means with reference to any securities

(a) ownership or beneficial ownership thereof, and

(b) an arrangement, understanding or agreement as to the manner in which such securities are to be voted;

(*contrôle*)

"date of authorization" means the date of publication in the *Canada Gazette* of the decision of the Commission granting a licence; (*date d'autorisation*)

"filler programming" means programming, in no case longer than 15 minutes in duration, the purpose of which is to fill in the time between the presentation of the major programs distributed by the licensee, and

includes material that promotes the programs or services provided by the licensee; (*matériel d'intermède*)

"licence" means a licence issued by the Commission to carry on a pay television network; (*licence*)

"licensee" means the person who holds a licence; (*titulaire d'une licence* or *titulaire*)

"production credit" means a display or an announcement, or a display and an announcement, appearing at the commencement or end of a program and included as an integral part of the program as supplied to a licensee which

(a) where it appears at the commencement of the program, identifies a person who has contributed to the production of the program without indication of any product or service of that person; or

(b) where it appears at the end of the program, identifies a person who has contributed to the production of the program with or without a specification of the nature of such contribution;

(*générique*)

"program" means the presentation of sound or visual matter, or sound and visual matter designed to inform, enlighten or entertain but does not include network identification or public service announcements; (*émission*)

"programming" means everything distributed by a licensee on its undertaking; (*programmation*)

"semester" means a period of six consecutive months ending on the last day of June and December in each year; (*semestre*)

"undertaking" means the network operation licensed by the Commission on which programming is distributed and for which programming a fee is payable to the licensee thereof. (*entreprise*)

Application

3. These Regulations apply to every licensee and to all programming distributed on the undertaking operated by a licensee.

Program Logs

4. (1) Every licensee shall maintain a program log in a form acceptable to the commission.

(2) Every licensee shall enter in the log referred to in subsection (1), on a daily basis, the following information:

(a) the date;

(b) identification of its undertaking or service thereupon;

(c) the title and a brief description of each program distributed, the time at which each program began and ended and a designation indicating Canadian content classification determined in accordance with the criteria established in the notice published by the Commission dated 15 April, 1984 and entitled "Recognition for Canadian Programs".

(3) A licensee shall present to the Commission, within seven days after the end of each month, its program log for that month carrying an attestation by or on behalf of the licensee certifying the accuracy of its content.

Programming

5. (1) A licensee shall not distribute in its programming any commercial message.

(2) Subject to subsection (4), a licensee shall not distribute any programming, other than filler programming, produced after the date of authorization either by itself or by any associate.

(3) For the purposes of subsection (2), "produced" does not include

(a) the furnishing, on a commercial basis, of facilities or technical personnel associated with such facilities necessary for the production or post-production processing of a program; or

(b) editing or formatting or other similar measures necessary to enable proper and effective distribution of programming by the licensee.

(4) Subsection (2) does not apply in respect of a licensee authorized to provide programming of which not less than 60 per cent of the total programming time in each semester is devoted to programming other than in English, French or a native Canadian language.

6. A licensee shall not distribute in its programming any abusive comment or abusive pictorial representation that, when taken in context, tends or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

7. Where a program to be distributed by a licensee is not suitable for an audience other than an adult audience by reason of its subject matter or treatment thereof, or any characteristic thereof, including its depiction of violence, nudity or explicit sexual conduct, or by reason of coarse language or other content likely to be offensive to some viewers, the licensee shall so advise by providing an appropriate indication thereof at the beginning, and in all promotion, of the program.

Returns

8. On or before November 30 in each year, a licensee shall file with the Commission a statement of accounts for the financial year ending August 31 of that year that sets out separately,

(a) with regard to Canadian programs distributed or intended for distribution on its undertaking, the amounts, if any, expended by it in respect of

(i) the rights to distribute such programs thereon,

(ii) investment in such programs,

(iii) loans and loan-related losses for the financing of such programs, and

(iv) script and concept development of such programs;

(b) the amounts, if any, expended by it in respect of the distribution on its undertaking of non-Canadian programs; and

(c) the amounts, if any, received or receivable by it in respect of

(i) subscriptions to its pay television service,

(ii) investments made in Canadian programs for distribution on its undertaking, whether received or receivable directly or indirectly,

(iii) repayment of loans, including interest thereupon, made for financing of Canadian programs for distribution on its undertaking, and

(iv) repayment of advancements made for script and concept development of Canadian programs for distribution on its undertaking.

EXPLANATORY NOTE

(This note is not part of the Regulation, but is intended only for information purposes.)

These Regulations establish the terms and conditions for the carrying on of pay television network operations in respect of the keeping of program logs, the nature of program content and reporting requirements.

Document 64

In May 1985, a new term was added to the lexicon of Canadian investigation into broadcasting. The recently elected government of Conservative Prime Minister Brian Mulroney set up a task force on broadcasting policy which would be the first such thoroughly public venture of this sort since the Fowler Committee's Report in 1965 (Document 35). Unlike Applebaum-Hébert (Document 62), it would deal only with broadcasting, and unlike the Clyne Committee (Document 59) among many others, it would deal with all aspects of broadcasting rather than specific issues.

The task force on broadcasting policy soon took on the names of its co-chairmen—Gerald Caplan, the former national secretary of the New Democratic Party, and Florian Sauvageau, from the communications department of Laval University. The other members provided a strong representation from the private sector of the industry. They were Francine Côté, a lawyer who had often represented the cable industry; Mimi Fullerton, an executive with Telemedia and a member of the CAB planning committee; Felix Blanche-Fraser, a producer from the Alberta Educational Communications Corp.; Conrad Lavigne, a businessman who created the first commercial francophone station in Timmins, Ont.; and Finlay MacDonald, Jr., a former CTV reporter who had been president of the Maritimes pay TV channel until it went broke. Journalists and politicians generally approved the apparent effort by the government to avoid political bias—in addition to Caplan with his NDP background, Fullerton had strong Liberal ties and MacDonald was a Conservative.

The 700-plus-page report was presented to the Minister of Communications in June 1986 and published in English and French in September. It reflects the vast change in broadcasting during the life of the 1968 act. Technologies such as satellite delivery to cable TV networks were absent or barely beginning in 1968. Questions about pay TV, gender or ethnic stereotyping, access, the use of aboriginal languages, and other issues were not on the national agenda in 1968. By the mid-1980s, partly as a consequence of the Constitution Act and its Charter of Rights and Freedoms, these questions were important enough to affect broadcasting. Canadian broadcasting also found itself operating in a world where cultural barriers were dissolving and other nations were becoming familiar with the Canadian experience of imported popular culture from the United States.

The Caplan-Sauvageau task force reflected upon all this and recommended a new broadcasting act to respond to new conditions. Reprinted below are the chapters outlining the new international order, reflecting upon the definitions of a "cultural industry," and recommending a new act. Footnotes have been omitted.

DOCUMENT 64: ***Report*** **of the Task Force on Broadcasting Policy, September 1986, "International Perspective," 25–32; "Culture and Industry," 35–42; and "Principles and Objectives," 133–168.**

International Perspective

Sir John Aird would feel very much at home with the issues and dilemmas with which the Task Force has attempted to come to grips. What would truly surprise him, however, is the extent to which satellites and other new technology today make all the industrialized countries susceptible to the problems that have always bedevilled Canadian broadcasting.

It is no exaggeration to say that broadcasting is undergoing a crisis everywhere in the world, particularly in the public sector. In Europe, the trend is towards privatization; all the European public television networks are feeling the effects of government withdrawal of financing. As we were concluding our work, the decision in France to turn one of the public channels, TF1, over to the private sector, caused considerable public outcry. In several countries the monopoly that the public sector had over broadcasting only a few years ago is dwindling. Conrad Winn of Carleton University has commented that virtually all the liberal democracies are currently experiencing a growth in the relative share of the private sector in broadcasting, whether through the establishment of private networks or increased use of independent production. Winn goes on to say:

> There exists a significant cross-national tendency for both public and private broadcasters to contract out more of their program production. Japanese, British, French, Belgian and other national public television broadcasting systems have made conscious decisions in recent years to purchase more programming from independent producers.

News and public affairs are usually excepted, as the Applebaum-Hébert report suggested should be the case in Canada. In Belgium the government recently authorized the French-language RTBF to contract out entertainment programming but emphasized that the network would be required to continue producing all its own news and public affairs programming.

During the winter of 1985-1986 in Britain the Peacock Committee was examining various financing options for the BBC, including the unthinkable possibility of allowing advertising.

> To many, and not least the BBC management, the mere suggestion of the Corporation accepting advertising is akin to taking the Queen Mother off the Civil List and supporting her public duties by sponsor-

> ship or other commercial means. The Peacock Committee is now doggedly collecting evidence but its very existence has sharpened debate about the whole ethos of public broadcasting, commercial and ratings pressures, and competitive efficiency.

In the end, however, the Committee rejected the advertising option.

The issues in the Canadian debate are not peculiar to Canada. Not only do budget crises and the reduction of government involvement give rise to the same problems everywhere, but the technological revolution and the ensuing proliferation of channels and options have completely changed the ground rules.

The CRTC's Klingle Task Force on Access to Television Services in Underserved Communities noted the new challenges to the broadcasting system stemming from increased use of satellites:

> The CRTC's policy of promoting Canadian broadcasting services by containing the spread of U.S. broadcast services in Canada which was workable in 1975 is no longer applicable in the changed environment of 1985.

In opening up the skies to satellite dish antennas in 1983, then Communications Minister Francis Fox recognized the limits of regulation as a means of government control in this field. New distribution techniques make content quota requirements used alone problematic because regulation can easily be bypassed by simply shifting to other delivery systems such as videotape recorders. But there is more to it than this.

Every country's production capacity (financial resources and often human resources as well) lags behind the new transmission capacity. As we in Canada know only too well, the programs that are readily and cheaply available are American. The Bredin Report submitted to the Prime Minister of France in May 1985 noted that a program of the production calibre of *Dallas* would cost 12 times as much to produce in France as to buy. National television services everywhere, private and public networks alike, are becoming Americanized, because the public sector gives in to the same temptation to use American programming in order to compete. American products and techniques as well as their universal themes sell well everywhere. The victory of pop culture is complete. "Pop is easy listening, easy watching, easy thinking."

While ten years ago it was the Third World countries that raised the issue at UNESCO, today Europe is invoking national sovereignty to combat a cultural invasion that Canada has faced since the early days of radio in the late twenties, and which has been restored to the headlines by the Canada-United States free trade talks .

In a sense the world is becoming 'Canadianized' as it learns to come to terms with American culture. Canada no longer seems as parochial as it has been painted in the past because of its "standing on guard" for "our home and native land" and for "safeguarding, enriching and strengthening" the country's fabric. A glance at the television programs, movie marquees, newsstands and bookstores in Canada shows just how open we are to foreign cultural products. Moreover Canada has often presented itself in international forums as a model for reconciling opposing points of view in the debate on communications: the preservation of domestic culture on the one hand and freedom of expression and the free flow of information and ideas on the other.

A number of public opinion surveys show that Canadians support access to American culture as strongly as they support government measures to ensure they have access to

> ...the creative output of Canadians and information about Canada and the world viewed from a Canadian perspective. It has become almost a commonplace of speeches by Canadian communications ministers that real freedom for Canadians consists of the opportunity to choose between Canadian and foreign content.

This is where government intervention has a key role to play.

Communications today ignores borders. Cultures are becoming homogenized: 'Americanized' or 'internationalized'. Jean-Paul Lafrance, a professor at the Université du Québec à Montréal, and visiting professor at the Université de Paris, writes that

> The evolution of communication systems has seriously compromised the balance of European development in three areas: equipment, networks, programming. It is not a joke to say beware of equipment being entirely Japanese, all programming being American, and network standards being set by the two of them together. When thought is given to what is on TV screens today, there is an industrial threat, a political threat, and a threat to cultural and linguistic sovereignty. (translation)

For the francophone world, the cultural invasion is, in effect, multiplied by a linguistic problem. France even airs American news programs in the original English. Canal Plus, a pay-TV channel, makes the most of the transatlantic time difference to broadcast the previous day's CBS evening news with Dan Rather early in the morning in Paris. This linguistic threat was met by the exceptional measures taken by the French government at the instigation of former culture minister Jack Lang. Grants to cultural activities were substantially increased over a three-year period. The film industry, already being heavily funded by the government, had its grants doubled.

In 1985 Lang appealed in English to the Haute Autorité de la communication audio-visuelle, the French counterpart of the CRTC, to end the invasion of local radio stations by Anglo-American music, said to account for up to 85 percent of air time. This is a familiar development in Quebec, where English has become de rigueur in music just a short time after original Quebec songs were thought to have helped shape the social and political renewal of the sixties.

According to journalist Nathalie Petrowski, a critic of the Quebec cultural scene, a new generation of Quebec musicians and composers started singing in English in 1982-1983. In 1984-85 at the "Empire des futures stars" in Montreal, an event organized by CKOI-FM to promote the changing of the musical guard in Quebec, 90 percent of the contestants sang in English. Quebec is not an isolated case. The same thing is happening throughout the Western world, without regard to political borders. From Montreal to Moscow, young people identify with rock music and, more often than not, with songs in English.

> However, geography and a short history make [Quebec] more vulnerable to American culture than older countries like France. The new generation's "sing white" would not be so insidious if young songwriters were using English as no more than a vehicle to describe their own immediate reality and features specific to Quebec. They do nothing of the sort, but rather produce something without identity, interchangeable and devoid of personality, a by-product that bears witness to nothing but an overwhelming urge to be absorbed and assimilated as quickly as possible. (translation)

Some of these young artists reply that they are not solely responsible for preserving the French language, nor do they see any need to save their own culture which they do not see as better than the new "universal" culture. They feel that cultural identity can be perfectly well preserved while singing in another language. In a remark that sums up the whole issue of culture and the cultural industries, one young Quebec singer said: "I sing in English to make a buck, because it's more profitable, and to increase my chances of making it in markets outside Quebec." (translation)

Easy as it is to understand the legitimate desire of francophone artists to have international careers, the dire consequences of galloping Americanization for the francophone world must also be recognized. The Haut Conseil de la francophonie, chaired by French President François Mitterand, recently registered its alarm by identifying culture and communications as two of the key sectors where French, at the international level, was suffering serious losses. The Haut Conseil said Quebec television deserved attention because its proximity to English-language television "anticipates what is likely soon to be the situation in many countries of the world as a result of satellite development." (translation)

What can be done? Set quotas? For example, require French-language radio stations to play French-language records in the hope that demand for French songs may be stimulated? This in fact is what the CRTC does and what many singers, musicians, writers, producers and technicians in Quebec would like to see. It should of course be remembered that the cultural community has a vested interest in defending its cultural identity. But quotas without a corresponding production policy are not the solution. According to a study commissioned by the French Ministry of Culture, it is not a matter of imposing restriction for its own sake to give an appearance of national concern, but rather of ensuring that an alternative exists.

> If defending cultural identity is confused with defending a fixed past, it risks becoming no more than conservatism, which immediately produces creeping bureaucracy and self-satisfied mediocrity. Cultural identity is reduced to a sort of smugness and leaves at centre stage 'happy fools born here'. It all adds up to asphyxiating parochialism. (translation)

This is where the concept of the special nature of the French-language broadcasting (see Chapter 8) becomes important and the application of uniform rules across the country can create problems. Because of its smaller population, threatened language and limited market French Canada's need for room to breathe is even more pressing than that of English Canada. Hence, Canadian content rules ought not to treat the two communities in the same fashion. In Quebec, quotas mean French-language content, no matter where it comes from. Singers Renaud and Francis Cabrel of France are every bit as important on Quebec rock stations as Martine St-Clair and Daniel Lavoie.

For Quebec, co-operation with other French-speaking countries and communities is a question of survival. That is why the Canadian and Quebec governments, as well as the CBC and Radio-Québec, have in recent years signed numerous agreements and carried out many exchanges with France and other Francophone countries.

The most important agreement and the best known by Quebeckers is that of approving the introduction of French television into Quebec (TVFQ). First signed in 1979, it makes an annual volume of 2,300 hours of programming available to Quebec cable operators through France Média International (FMI) and the Société d'édition et de transcodage (SETTE). The vast majority of these programs (2,000 hours) come from the three French television networks (FR3, Antenne 2, TF1). The French foreign ministry and the Quebec international relations department contribute equally toward the technical costs and the purchase of broadcast rights.

The private sector is also showing increased interest in the international francophone community. In June 1974, Télé-Métropole was accepted as a

member of the Communauté des télévisions francophones (of which Radio-Canada is a founding member) and now plans to develop its relations abroad. Télé-Métropole, Pathonic, COGECO and independent producers, as well as representatives from the public sector, are members of a Canadian consortium established to participate in TV-5, a satellite-to-cable network whose French language TV programming is distributed to various countries of Europe and North Africa. TV-5, which also includes participation by France, Switzerland, and Belgium, devotes one evening a week to French-Canadian programming.

But the results of all these projects are still minimal and they are being met with significant resistance. Co-operation is in fact often a one-way street. While the agreement for the introduction of television from France into Quebec initially anticipated broadcasting Quebec programs in France, the Quebec programs remained on the shelf and only the French contribution to the exchange remains.

It is therefore important to beware of seeing exports as the miracle solution, as both Ottawa and Quebec City have tended to do in recent years, and to remember that financing for our cultural products must first be found at home. 'We export when we give our products away'' we were told by Jacques Girard, President and Chief Executive Officer of Radio-Québec. The fact is that there is a tendency to overestimate opportunities in foreign markets and to underestimate resistance.

France is in fact the only potentially profitable market for French-language products. After undergoing a long period when there were few channels and the programming was being produced locally, France now has more channels, including Canal Plus and a fifth private network, and could well begin to welcome French-language programming from Canada. But there are substantial problems facing exports: very few French households are cabled, although major projects are under way; Quebec products also have a language barrier to face—''Parisian French'' does not welcome so-called regional accents with enthusiasm! Pressure from French unions also maintains a ban on foreign programs that are dubbed outside France, except for programs from EEC countries. In spite of all this, both France and Canada now have a better understanding of the need for co-operation and of what is at stake for French culture around the world.

Some exported Canadian programs have been spectacular successes or, to put it another way, exceptions that prove the rule. For example, many countries are interested in Denys Arcand's film *The Decline of the American Empire*, which won the international critics' prize at the 1986 Cannes film festival. According to the film's director,

> It's very strange. My film is being sold everywhere and yet it's about people from Outrement and Hutchison Street, people who have

> dinner together on Saturday night. But their regional ways seem to be immediately understandable to everyone.

The journalist who interviewed Arcand concluded:

> It's obvious that the director's comments are intended for all those well-intentioned bureaucrats who by force of circumstances have become the gravediggers of cultural film to the benefit of commercial, international, efficient, soulless, watered-down film with no identity if its own, no character. (translation)

The judgment is harsh but, apart from the tone, not far from the truth, for both motion picture films and some television programs, and for both English and French Canada.

Government has an essential role to play, not in the creative area, but rather to encourage international co-operation. For example, communications will be a central concern at the next Francophone summit, scheduled for Quebec City in 1987. A number of interesting proposals will be considered, including one for the establishment of an international Francophone agency to provide news footage and another for a French-language radio network.

In the aftermath of TV-5, Canada is studying the possibility of proposing a similar project for the Commonwealth, a kind of Commonwealth TV broadcasting network. Member countries would exchange their best programs by satellite. The Department of Communications, in co-operation with the Commonwealth Secretariat, is preparing a feasibility study for this useful project. The English side of TV-Canada, the second public network we wish to see established, could become the primary means for disseminating Commonwealth productions following the model that we recommend in Chapter 13 for French-language productions on TV-5.

Canada's involvement in TV-5 and a possible future Commonwealth network would allow this country to play a greater role in the international debate on communications that we referred to earlier. Canada has also been showing increased interest in the International Program for the Development of Communications (IPDC) established by UNESCO to finance Third World projects. This is one of a number of programs in which Canada contributes technical, financial and advisory assistance in the field of broadcasting to Third World countries. Canada also provides instruction for students and trainees at specialized centres and at the major radio, television and audio-visual organizations.

As examples of this international co-operation, two projects could be considered in the context of the obvious interest Canada has shown recently in Africa and in Third World women. One such project would establish an

International Women's Television and Film Network to be distributed by satellite. This project developed out of the Conference on Women held in Nairobi in 1985; it was endorsed at the First International Women's Peace Conference in Halifax later that year. Another project is the Africa Watch program described by the Honourable David MacDonald in his report on famine in Africa as follows:

> There is a need to provide more continuing media access to Africa as it passes through this critical period in its history. The media often lack the resources to report on important but distant events. CBC-Radio-Canada should combine their efforts with those of Radio Canada International to launch a special "Africa Watch" project to increase coverage of Africa and to provide opportunities for Africans to broadcast to (and about) Canada.

Though it is not appropriate for this Task Force to make recommendation on programming matters, we feel that both projects merit close study.

All these projects, whether exchanges between Quebec broadcasters and the Francophone world or the involvement of Canadians in the development of a women's television network, clearly show that radio and television, like all forms of technology, can become what we want to make of them. Television can shape the future of the global village in different ways:

- Use of television for strictly commercial purposes will certainly ensure the dominance of the American cultural model and its various national clones.

- A more social approach could contribute in unexpected ways to the continuance of various cultural differences and to better understanding between peoples.

When sharp-tongued critics accuse television of having turned politics into show business, thus making it impossible to discuss seriously the major issues of the day, they are too readily confusing media logic with the American commercial model. It is not television that is at issue here, but the use we make of it.

Chapter 3
Culture and Industry

The Issue

It is our responsibility as a government-appointed Task Force to recommend appropriate public policy for broadcasting. The overriding question throughout our work has been to determine the rationale by which we call for the state either to intervene or to keep its nose out of various aspects of the broadcasting system; what, we needed to understand, was a legitimate role for public policy as opposed to private market forces, or, to complicate the matter, for public policy to bolster market forces?

In practice, grappling with this key conceptual problem led us immediately to the fashionable but complex question of Canada's so-called 'cultural industries'. As the Canada Council asked our predecessors on the Applebaum–Hébert Commission, "Does a cultural industrial policy pursue industrial or cultural objectives?" And, as we learned through repeated examples, the answer remains shrouded in ambiguity and confusion.

The Canada Council was confident of the answer to its question: "In reality, cultural and industrial objectives are usually competitive and often conflicting." Professor Abraham Rotstein of the University of Toronto, one of our research consultants, suggested to us rather more gently that culture and industry interact in a complex manner, sometimes overlapping in a benign way, at times conflicting. But in either case their needs, aims and responsibilities are distinctive and different, and public policy must carefully recognize the discrete interests of each. Indeed, it is precisely in the political arena that the tensions and contradictions which may be present must be faced and resolved.

The goals of industry are normally clear enough. Typically they imply market criteria, with the bottom line being success as judged by the market. In broadcasting that truth has always seemed inadequate. After all, the most profitable broadcasting system in Canada would be one that featured exclusively foreign material, since it is invariably cheaper to buy American production than to produce something new from scratch. But if the bottom line were all, Canada itself would never have been built and would indeed soon cease to have any meaningful existence.

It was two unblemished conservative businessmen, Sir John Aird, president of the Bank of Commerce, and R.B. Bennett, 11th prime minister of Canada, who first decreed that broadcasting was a public trust and a tool to enhance Canadian national consciousness. In principle, private broadcasters have long accepted that only a public system could provide substan-

tial Canadian programming, yet that the private sector had certain social obligations to perform in return for the privilege of being granted a broadcasting license. The issues from the outset therefore became ones of balance: between the role of the private sector and that of the public broadcaster, as well as between the level of profitability of the private broadcasters and the value of their social and cultural contributions.

Any serious analysis must be based on the reality that private broadcasting as an industry is in the business of selling audiences to advertisers. As CKND Winnepeg's Donald Brinton noted on behalf of the Canadian Association of Broadcasters, in commercial broadcasting revenues depend directly on audiences and the value of audiences to advertisers. Programming is the commodity that determined the size and nature of the audience, and therefore of the advertising it attracts. Programs are a cost of operations, not an end in themselves.

Most American broadcasting is a far purer example of market economics than our own. In its non-news programming especially, it is substantially uninterested in any non-economic functions — cultural, social or national. Some see it as merely the logical extension of the factory production system of American industry transferred to the mass media. The American critic Dwight MacDonald long ago considered it Mass Culture, "an article for mass consumption, like chewing gum... imposed from above. It is fabricated by technicians hired by businessmen... producing what might be called homogenized culture." So when we do buy U.S. cop shows and sitcoms and prime time soaps like *Dallas* and *Dynasty*, we buy sheer commodity rather than culture, even if some American programs are undeniably of a higher quality than some Canadian shows.

Television broadcasters buy those programs because they are dramatically cheaper than producing a new show, and because they often attract large audiences; in a word, it is very profitable to do so. And as the CAB underlined in its January 1985 document, *Industry in Transition : A Strategic Plan for Private Broadcasting*, "Above all it must be stressed that private broadcasting is a business... By their nature, private businesses are profit-oriented and, cultural objectives of the government notwithstanding, broadcasters will always maintain a strong profit motive...".

Yet the Canadian tradition being what it is, the CAB went on to state that it would yet "continue to support the concept that the private broadcasting sector should make a meaningful contribution towards the achievement of the cultural, social and economic goals of Canada."

The cultural, social and economic goals of Canada: the tools, in short, to forge a national consciousness different from that of the United States. From the first, as we saw in Chapter 1, it has been an article of non-partisan faith that broadcasting had special responsibilities in the Canadian circum-

stances. It was to play the role of both the railways and the telegraph in binding a geographically absurd entity together. It was to be a key instrument in the never-ending task of affirming a sense of Canadian consciousness.

What evolved was a system that is an exquisite microcosm of the Canadian way. How Canadian was it to be? As Canadian as possible given the economic circumstances. Whose responsibility would Canadian content be? A combination of the private and public sectors. What balance, or proportion, of the nationalist obligation would each sector bear? That would be worked out on an *ad hoc* basis.

The Public Broadcaster

The public sector, the public interest, would be represented by the CBC. Its job was to offer Canadian programming, which in Canada is tantamount to saying Canadian culture, except, of course, when no other broadcast provided the popular American programs Canadians wanted to watch, or when inadequate government funding made necessary the purchase of popular American programs to assure that advertisers would be interested. The logical notion that only a commercial-free public broadcaster could fulfill the ambitious mandate imposed upon the CBC was never acceptable to any of the governments that have held the purse strings. Radio, eventually, was allowed to drop advertising, with wonderful ensuing results. But television simply cost too much.

CBC English television especially suffered from its schizophrenic situation. Was it a vehicle for the transmission of Canadian experiences, reflecting our own environment and reality as interpreted by our own creative resources — for the purposes of this Task Force perhaps an adequate enough notion of culture? Or was it to use American-style programs to attract the largest possible audience? How much did its commercial obligations sully its cultural goals?

In 1974, when it was renewing the CBC's license, the CRTC argued that the marketing environment was inappropriately forcing the Corporation into a mode of operation increasingly based on mass appeal, whereas the range of viewers reached should be much more relevant and important than the numerical size of any particular audience. The CRTC also considered disentanglement of the Corporation from the commercial context to be an urgent priority.

Yet when the CBC proposed non-commercial second television networks in French and English in 1981, the Liberal cabinet refused additional funding, piqued, it was widely believed, by the unproved conviction that Radio-Canada was a hotbed of Quebec separatism. In turn, the CRTC rejected the licence application for CBC-2 since designated funding was not

available, instead of joining with the CBC to importune the government to reverse its decision.

CBC television consequently remained a curious hybrid, obligated to offer programming both for advertisers and for demanding fans of public broadcasting, by no means identical constituencies. At the same time that government funding continued to decline in real terms, new obligations were added. In 1983, for example, the Government announced its expectation that CBC would significantly increase its proportion of Canadian programming, a costly change for which, however, no further funding was offered.

For the main public broadcaster, then, its institutional ambivalence has been a source of never-ending anxiety and perpetual discontent both within the Corporation and among its public supporters. For the private sector, too, the constant attempt to reconcile its obligations to its shareholders with those of the *Broadcasting Act* created a distinct form of schizophrenia. Ironically, however, private broadcasters have on the whole benefited more from their curious situation than the CBC.

The Obligations of the Private Sector

"The only thing that really matters in broadcasting is programme content," so Robert Fowler, one of our distinguished predecessors, began his committee's report; "all the rest is housekeeping." It is a fine, memorable epigram, but it is wrong. All the rest is in fact a major branch of Canadian industry, and functions accordingly, save for the penalties it pays and the rewards it earns for carrying out certain limited social obligations.

On behalf of the CAB in 1984, Donald Brinton explained one part of the dilemma for private broadcasters. 'The private TV licence is an assignment of extensive public service responsibilities to a private, profit-making activity... [These are] inherently opposite objectives..."

The following year, Global's Paul Morton angrily scolded a Canadian Conference of the Arts conference consisting mostly of public broadcasting advocates for failing to understand that he could only afford to show Canadian programs if they were cross-subsidized by the profits made on American shows. Global's 1985 submission to the CRTC carefully explained their intention to produce Canadian programs "consistent with our ability to finance the projects on a realistic, business-like basis".

But the private broadcasters hardly have complete freedom of choice. Their social and cultural obligations require that they broadcast certain amounts of Canadian content each day. In fact, the CRTC regulations limit the amount of foreign programming they can broadcast. "One might say", the CAB has said, "that Canadian content is the compromise resulting from

the uneasy amalgamation of two conflicting principles, broadcasting as an instrument of national, social and cultural policy and as a business enterprise."

In fact, the situation has been even murkier than this. The 'cultural' role of the private sector has not always been overwhelming. Robert Fowler in 1965 described the contribution of private TV to Canadian programming and the support of Canadian artists as "contemptuous". Although CTV representatives have repeatedly re-committed the network to significant amounts of Canadian content, in the 1984 calendar year about one percent of programming on CTV between 7 p.m. and 11 p.m. was Canadian drama, while some 50 percent was foreign drama, overwhelmingly American of course. Hershel Hardin, in his pugnacious and well-documented *Closed Circuits: The Sellout of Canadian Television*, shows the unbroken pattern by which new applicants promise the moon if they receive a television licence, and are invariably back before the CRTC in the briefest possible time seeking relief from their own commitments. As Frank Spiller and Kim Smiley in a report to the Canadian Conference of the Arts neatly put it: "Promises of performance are like campaign promises, glowingly presented by potential licensees but not scrupulously adhered to once the licence is granted."

Even 21 years ago, Fowler was so angry at this process that he insisted that a promise made to obtain a licence should be "an enforceable undertaking". And every one of our predecessors has exhorted the licencing agency to get tough with those licensees who fail to live up to their commitments.

Protecting Private Broadcasting

So regulation, mainly in the form of Canadian content quotas, was imposed on the private sector. Yet this Task Force barely heard a single private sector spokesperson call for an end to regulation. We were surprised in two ways: by the unsolicited commitment of the private broadcasters to the aims of the 1968 Act, and by their almost eager acceptance of regulations of some kind. Hoskins and McFadyen provided an answer to this apparent paradox: in a 1980 study they concluded that regulation in Canada had largely operated to the benefit of private broadcasters, who received state protection from American competition in return for undemanding levels of Canadian content "which in any case had not always been met". Let us look more closely at this phenomenon.

In the first place, the Canadian content regulations were not imposed rigorously. Private broadcasters themselves acknowledge the ease of fulfilling the letter but not the spirit of Canadian content regulations. As the CAB explained with notable candour in 1984, their members had been

"spreading ever more thinly the level of resources available for original Canadian program production. The net effect of this has often been to reduce the quality of the results while maintaining the quantitative content requirements".

Secondly, the private broadcasters traded their roles as good corporate citizens for substantial legislative and regulatory protection against overpowering American competition as well as against the Canadian cable industry. This can best be demonstrated by an analysis of one piece of federal legislation, Bill C-58, and one regulatory mechanism, simultaneous substitution. As we will point out in the chapters that follow, both function to provide lucrative incentives to Canadian television broadcasters to show popular American programs in prime time. Take simultaneous substitution. In order to protect the rights of Canadian broadcasters to the Hollywood shows they buy each year, if a Canadian and an American station are both telecasting the same program at the same time, the CRTC allows the Canadian broadcaster to have its signal substituted on cable for that of the American broadcaster. In other words, whether you are tuned to the American or the Canadian station, you are watching the Canadian station — and, let it be noted, the commercials being run on the Canadian station. But the catch, of course, is that the purpose is served only if an American program is being shown.

Ralph and Stephen Ellis, two Toronto producers, spelled out for us the clear implication of simultaneous substitution as initiated by the CRTC. In a real sense decision affecting prime time in Canada are being made in New York, since a Canadian station will buy an American program and create its schedule to match that of the US network showing the same program. Should American executives in New York choose to move its program from Monday at 8 p.m. to Thursday at 10 p.m., the Canadian broadcaster will follow suit.

This may be highly desirable for the commercial needs of television broadcasters. But in setting it up, the CRTC not only chose the interests of broadcasters over the interests of the cable industry — without persuasively indicating why the economic health of the one deserved greater state assistance than that of the other — but chose a form of industrial protection with results inimical to the goals of the *Broadcasting Act*.

Why would the regulatory agency devise regulations which seem directly to contradict its statutory responsibility to implement a "predominantly Canadian" broadcasting system? The CRTC's response to the culture vs. industry dichotomy seems to come in three stages. Initially it acts for the sake of cultural goals. Then it ensures the economic viability of the industry so that the broadcasters will be able to afford to cross-subsidize from their profits on American programming the production and scheduling of Canadian programs. Finally, the CRTC protects the industry for its own

sake, as an end in itself. Can this last stage be called anything other than commercial protectionism? The CRTC believes that broadcasting renders a legitimate benefit to the domestic economy with respect to employment, trade balances and foreign exchange investment, benefits which would naturally end were the Canadian system destroyed in head-to-head competition with the Americans.

Is it for the first, second or third of these purposes that the CRTC affords further security to private broadcasters by licence renewal hearings which hear no competitive applications, and by receiving applications for transfers of licence only from the party proposed by the vendor. The Fowler Commission had been unequivocal: "The grant of a new broadcast licence is the temporary and conditional alienation of an important and valuable public asset which, by its very nature, cannot be shared with others." This central principle had been written into the 1968 Act. Yet the CRTC has implicitly institutionalized *de facto* private property rights within the broadcasting system.

This is why our Task Force was not lobbied to end, but merely to modify, the present regulatory system imposed on the private sector. It is also why we rarely heard invoked the grand old entrepreneurial principle of the right to go broke. Whether in the protection of AM radio stations from FM competitors or private broadcasters from cable or cable from satellites, almost everyone involved in the broadcasting system rejects the traditional view of the market as the determinant of economic success, and agrees on the appropriateness of a state agency to protect the various components of the industry from the United States and from each other.

Almost everyone concerned with broadcasting dismisses the unadulterated case for the market to decide, as expressed by economist Steve Globerman: "It is unclear why such ventures [subsidies for cultural projects] should be promoted at public expense any more than Canadians should be expected to subsidize the growing of bananas in Canada." The reason, of course, is not only would there remain as much Canadian culture as Canadian bananas, but the private broadcasting system would perish as well.

That is why little surprise greeted the announcement that "a high-powered committee of cultural industry leaders" had been formed early in 1986 to ensure that "cultural concerns" would not be forgotten in the Canada–U.S. trade negotiations. It included, inter alia, most of the influential private broadcasters in the country. If a broadcasting licence is often a licence to print money, as a certain Roy Thomson once observed from his own experience with broadcasting, this group controlled the printing presses. Robert Fulford, editor of *Saturday Night*, described them with some cynicism: "Private broadcasters who have made millions mainly by importing cop shows and situation comedies from Los Angeles have been transformed... into born-again nationalists, even anti-Americans... The

possibility that free trade with the United States will alter or eliminate cultural protectionism and subsidies has brought [them] together...''

Such jadedness has not been the preserve of intellectuals like Fulford; industry insiders have long viewed the public-spiritedness of private broadcasters with much amusement. In the wry words of Wood Gundy analyst Michael Waring, ''To win a licence you don't say, 'We're doing this to make a lot of money'. You say, 'We're going to lose a lot of money, but we're doing it for the good of Canadian broadcasting' ''.

Nor has it escaped our attention that the interests of many of those who importuned us on behalf of public broadcasting are hurt if the CBC is hurt. In fact we received 60 briefs, over a quarter of the total submitted to us, from sources such as CBC departments, unions within the CBC, producers and talent associations, all extolling the intrinsic virtues of public broadcasting. Of course the sincerity of none of them is in question. But objectively, all have a vested interest in maintaining or enlarging the CBC.

The issue here is not to judge motives but merely to clarify and illuminate interests. For if the state is to intervene, the purposes must be clear, far clearer than they have been thus far.

Assumptions

Our first priority is to make the broadcasting system serve Canadian culture, broadly defined, more effectively in the future than it has done in the past. We want the system to be program-driven, with Canadians able to choose from a substantial number of quality Canadian programs. That is why we call for a significantly expanded public sector.

When we recommend policies to enhance the position of the broadcasting industry — those businesses which produce and disseminate programming — our aim is to induce the private sector to maintain cultural objectives as a serious goal of its operations; that is our second priority, the development of private broadcasting industries as a means to a cultural end, not an end in itself. That is why we call for significant contributions from the private sector to the objectives of the broadcasting system.

Finally, as our third priority we agreed in some instances that, for the sake of economic stability and to preclude economic dislocation, broadcasting industries in their commercial capacities alone merit certain forms of protective intervention by the state. That is why we endorse the continuation of measures such as C-58 and simultaneous substitution. But this must be recognized as simple commercial protection of industries that happen to be in the 'culture business'.

It follows logically from this that the Task Force had little difficulty in reaching its views on the issue of Canada's cultural sovereignty. Only one conclusion is possible under our priorities. We interpret cultural sovereignty to refer to our own control of our cultural destiny, our own control of the instruments of decision-making which determine our cultural future. The broadcasting system has a pre-eminent role to play in both nurturing and reflecting Canadian culture. Governments must therefore not consider measures to achieve the objectives of Canadian broadcasting as mere chips that may be traded across a bargaining table. Canadians must maintain the sovereign right to make whatever decisions we deem necessary to protect our own culture.

Part II

Toward a New Broadcasting Act

The 1968 *Broadcasting Act*, contains most of the provisions that govern broadcasting in Canada. Part I of the Act, which is the key to its distinctiveness, sets out the fundamental principles and establishes the general objectives of Canadian broadcasting policy. Part II assigns the implementation of this policy to the CRTC, which is given broad regulatory powers (the authority of the CRTC over telecommunications falls under a different Act). Part III establishes the Canadian Broadcasting Corporation and states both its objectives and responsibilities.

Few statutes contain this kind of policy statement. Those that do incorporate a great deal of hard-won experience which it is important to preserve. The principles and objectives governing Canadian broadcasting must therefore not be considered a mere preamble: they have normative and symbolic importance of which we are very much aware.

While the CRTC is subject to the stated policy in the sense that each of its decisions must be ground in policy, it has a great deal of latitude in interpreting the policy, which gives it broad jurisdiction indeed. The independence of the regulatory body is a dominant feature of the existing

Broadcasting Act. While Parliament may be said to have chosen the point of departure and the destination, the CRTC, and in some instances the government, are free to decide the route. This gives the broadcasting system flexibility to adapt the rights and obligations of licensees, where required, to rapid changes in circumstances.

But everything depends on the principles and objectives stated at the outset in Section 3 of the Act. It is these principles and objectives that define the various components of the system: the CRTC, the Canadian Broadcasting Corporation, the private broadcasters and the rights of viewers and listeners. They state clear choices about Canadian society and it is on these choices that our study will initially focus in Chapter 6.

Whenever these principles need to be modified to reflect current circumstances, the regulatory apparatus designed to implement them must also be reviewed as we show in Chapter 7. The Canadian Broadcasting Corporation is considered separately in Chapter 10.

Chapter 6

Principles and Objectives

Some of the basic principles of the Canadian broadcasting policy are now included in the Constitution. We shall consider these first because they limit other principles embedded in ordinary statutes.

Principles Guaranteed by the Constitution

The Canadian *Charter of Rights and Freedoms*, which is a part of the *Constitution Act*, 1982 guarantees the rights of all Canadians. Since the Charter became law we are the first to attempt an in-depth review of the Canadian broadcasting system, and it is therefor incumbent upon us to examine the extent to which the Charter affects the constitutional basis of the broadcasting system.

The Charter is not merely a statement of intent. It is an integral part of the Constitution and takes precedence over other statutes by limiting their scope. Section 52 of the *Constitution Act* states it as follows: "The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect."

Section 1 of the *Constitution Act*, however, states that the rights and freedoms guaranteed under the Charter are not absolute. They can only be restricted by "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".

Parliament can thus pass legislation to limit rights and freedoms but not if such limits cannot reasonably be justified, as we shall see in connection with broadcasting.

The Constitution guarantees a number of fundamental rights, of which the most frequently invoked in connection with broadcasting are freedom of expression and, in recent years, the right to equality. The Constitution also recognizes equality of status for English and French in all institutions of the Government of Canada, as well as aboriginal rights, and at the same time states the general objective of preserving and enhancing Canada's multicultural heritage. All rights and freedoms guaranteed under the Charter are, moreover, guaranteed equally to males and females.

Parliament must in the normal course of events provide a legal framework for broadcasting that does not conflict with these fundamental rights. But broadcasting is so complex and plays such an important role in the lives of all Canadians that it sometimes gives rise to conflicts among rights. That is why in setting out a policy Parliament must put forward provisions that reconcile the rights in question, sometimes at the price of placing reasonable limits on the exercise of each.

Freedom of Expression

"Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication" is clearly the foundation of broadcasting as we conceive it in Canada. The principle has always been the cornerstone of the regulatory system. Moreover, the 1968 Act states that the right to freedom of expression is unquestioned.

There are two opposing views as to how best to interpret this basic freedom in the broadcasting sector. The first is that all persons licensed to operate broadcasting undertakings have a right to express their points of view, which assumes the right to broadcast what they choose subject only to criminal and civil liability. This traditional view generally prevails in print media. According to the second view, licensees are instead considered to be trustees of a public asset, the airwaves, and that far from expressing only the view-points of the owner, their role is surely to make possible, in the name of freedom, the balanced expression of the differing view-points to which any question of public interest gives rise.

Because it is not absolute, freedom of expression cannot be defined once and for all. Rather, it must be based on the reasonable limits, related to the Charter, upon its exercise, whether to extend it from the few to the many, or to make room for other rights. The provisions governing broadcasting are such limits: they must therefore be reasonable and justifiable in a free and democratic society, as laid down in the *Canadian Charter of Rights and Freedoms*.

That most democratic countries have found greater restrictions on freedom of expression in broadcasting than in print media to be acceptable validates the concept under which radio and television undertakings are regarded as public trustees.

On the other hand, one must be careful not to impose restrictions on broadcasters that are so strict that they will no longer be able to make genuine programming decisions. Doing so could certainly not be considered reasonable and justifiable limits on freedom of expression under the Charter.

To establish that a restriction is reasonable and that it can be justified in a free and democratic society, the courts, which are the ultimate arbiters in such matters, verify compliance with the rights and freedoms stated in other provisions of the Charter. According to the Supreme Court, an objective must be of real and urgent social concern in a free and democratic society if it is to be considered important enough to infringe upon a right. Also, the methods chosen to limit a right or freedom guaranteed by the Constitution must be equitable and carefully designed to achieve only the desired objective and be logically linked to it. The Supreme Court recently recalled that the burden of proof in demonstrating that a restriction of a right guaranteed by the Charter is reasonable and that it can be justified in a free and democratic society falls to the party requesting that the restriction be maintained.

It was in this spirit that the Task Force worked on revising the obligations of broadcasters. Broadcasting regulation calls for the development of sophisticated measures to ensure the rights and freedoms of all in the use of a public asset, radio waves. A balance among the various rights and freedoms at issue must be sought and taken into consideration in all important decisions.

Equality Rights

The right to equality in broadcast programs has led to vigorous debate because it has been claimed that it conflicts with freedom of expression. Some want the promotion of equality among various social groups to become one of the objectives of programming. Bill C-20 proposed the following amendment to the *Broadcasting Act*:

> The programming provided by the Canadian broadcasting system should respect and promote the equality and dignity of all individuals, groups or classes of individuals regardless of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability

This proposed amendment was met with misgivings. The Consumers Association of Canada considered that such a provision, by obliging the CRTC

to foster human equality and dignity, would place an even heavier burden on the Commission than is placed on the censors. The Canadian Cable Television Association saw it as an unhealthy form of interventionism, as did the Canadian Association of Broadcasters, who feared that the CRTC would be in a position to exercise absolute control over program content.

Other groups, however, want the amendment strengthened to eliminate unequivocally discriminatory stereotypes on the grounds that television is a determining factor in the development of such stereotypes and attitudes.

It is clear that the *Canadian Charter of Rights and Freedoms* affects the regulation of the use of public airwaves. The embryonic state of research on freedom of expression, the right to equality and appropriate methods of regulation hampers discussion of such issues. It should not deter us, however, from giving careful consideration to the relationship between the right to equality and broadcasting activities.

Current debate on this aspect of Bill C-20 centres on the question of whether radio and television programs should promote equality or reflect the various groups in an equitable manner.

It is frequently argued that it is not up to the media to promote equality. The media, whose purpose is to reflect reality, would become censors if they were to take on a task of righting wrongs. From this point of view, the idea of obliging the press to promote a cause, however legitimate it might be, is incompatible with freedom of expression.

According to advocates of the promotion approach, however, section 15 of the *Canadian Charter of Rights and Freedoms* not only prohibits Parliament and the provincial legislatures from passing discriminatory measures, but also requires them to act in such an way as to encourage and protect the right to equality.

Recognizing that the Constitution now prohibits discrimination, other groups have argued that programs need only adequately reflect the presence of women and minority groups. Obviously many Canadians, including the Task Force members, agree that stereotyped discrimination or portrayals that could lead to prejudice and discriminatory behaviour are unacceptable. But while it is easy to recognize the promotion of equality as praiseworthy in itself, to impose it on broadcasting by a provision with the force of law raises many problems, not the least of which is the contradiction with the freedom associated with the very concepts of creativity and a free flow of information.

Our concern is to achieve compliance with both freedom of expression and the right to equality without doing so at the expense of either. Freedom of expression exhorts us to intervene as little as possible in what is broad-

cast while the right to equality imposes on broadcasters a responsibility for the messages they broadcast in that respect.

Administering a legislative provision calling for the fostering of equality would clearly require a highly developed system for monitoring and analyzing all programming. A code of professional ethics is a more desirable alternative; however, the efforts of the CRTC and the broadcasting industry to combat stereotypes have thus far yielded results that some consider inadequate.

In 1984 the CRTC amended its regulations on AM broadcasting, FM broadcasting, television broadcasting and cable to include a prohibition of the broadcast of

> any abusive comment or abusive pictorial representation that when taken in context, tends or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The purpose of this provision is to prevent the most obvious forms of discriminatory programming. It can be shown to be a reasonable and justifiable limit on freedom of the press and other media because the abusive representations targeted by the provisions are similar to those for which Canadian courts have admitted that freedom of expression may be limited.

The new provision also covers stereotyping or at least the most reprehensible examples. Stereotypical representations must, however, be distinguished from abusive programming.

Stereotyping

In 1979 the CRTC, at the request of the Minister of Communications, established the Task Force on Sex-role Stereotyping in the Broadcast Media. The Task Force's report *Images of Women* explained that it was the cumulative effect of stereotyped portrayals that was likely to lead to discriminatory behaviour:

> It is not the isolated incident of portraying a woman in a stereotyped role that is at the center of public criticism. When a program or commercial presents a stereotyped image of a woman or a man in a certain role, it may be acceptable for that particular role in that particular script. Rather, it is the cumulative effect of associating women and girls with certain roles, products, and behaviour that is the source of concern. For example, when too many portrayals show the man as the breadwinner and the woman as the homemaker, the cumulative effect

> is that men and women become associated exclusively with those roles. An identical problem occurs when men and women appear again and again in traditional "male" or "female" jobs, perform only "male" or "female" tasks, and consistently display sex-stereotyped behaviour.
>
> The constant repetition of these images tends to reinforce their perceived reality, thus influencing the attitudes of women, men and children, and encourages both women and girls to limit their horizons both socially and professionally to those roles which they see portrayed.

The same is true of ethnic stereotypes. In its Public Notice entitled *A Broadcasting Policy Reflecting Canada's Linguistic and Cultural Diversity*, dated July 4th, 1985, the CRTC stated that:

> Representatives of cultural and visible minority groups and organizations across Canada felt that many broadcasting undertakings do not accurately portray ethnic groups. Such portrayal ranges from classic stereotyping to instances where biased treatment of ethnic and racial minorities is involved.

The struggle against discrimination therefore requires that we pay close attention to the stereotypes found in the media if we are to ensure that they do not give rise to prejudices that will lead to discriminatory behaviour against women or minority groups.

In a research study prepared for the Task Force, Mahoney and Martin argue that section 15 of the *Canadian Charter of Rights and Freedoms*, which guarantees equality rights to every individual, can be used to justify regulations prohibiting stereotyping. Such regulations would be a justifiable limit on freedom of expression because their purpose would be to protect the equality rights guaranteed by the Constitution. The absence of regulation and the proliferation of images which depict stereotypes could even be considered a form of discrimination prohibited by the Constitution. It also could be asserted that all the other rights and freedoms guaranteed by the Constitution are themselves reasonable and justifiable limits on freedom of expression, and were formulated specifically to set such limits.

These arguments support the provision in Bill C-20 which states that "the programming provided by the Canadian broadcasting system should respect and promote the equality and dignity of all individuals".

While recognizing the legitimacy of the objective, which is the elimination of stereotypes, the wording opens the door to an interpretation that would allow intervention by the public authorities in programming decisions to achieve the desired goals. Such interference seems to us altogether incompatible with freedom of expression. That is why the provision stated in section 3 of Bill C-20 should be rejected.

There would also be further problems for the CRTC in administering such a provision. It would, for example, have to develop sufficiently precise criteria to make it possible to distinguish clearly what is allowed from what is not. So accurate, adds Marie Finklestein in her study for the Task Force, that they "must quantify in percentage terms the type of programming required". Hence the problem of attempting to quantify the obligations needed to promote equality. Finklestein states:

> The problem is how the CRTC can possibly quantify the amount of programming required to meet stated equality objectives. How many black program hosts, for example, is enough to promote the equality of blacks in Canadian society? It is submitted that any such determination would be completely arbitrary and would effectively cast the CRTC rather than the broadcaster in the role of programmer.

The CRTC ought not to be allowed to become so deeply involved in programming decisions.

Thus far, the CRTC's efforts to develop standards for decreasing stereotyped portrayals have taken a different approach, more respectful of civil liberties. The approach, called self-regulation, involves voluntary compliance by broadcasters with a code of ethics.

Following the publication of the *Images of Women* Report, the CRTC established a self-regulatory program with its industry partners. The evaluation of the program has just been completed. According to the CRTC's 1986 report of the program, there has been a decline in sex-role stereotyping, although many forms of stereotyping remain. The Canadian Association of Broadcasters (CAB), in co-operation with advertisers, amended its Code of Ethics to include clauses addressing sex-role stereotyping in programming, adopted its own self-regulatory guidelines, and established a standing committee to receive complaints from the public. The CBC, for its part, monitored its own programming and concluded that stereotypical representations of women and conventional role portrayals were still numerous.

The same trend is taking shape to prevent ethnic stereotypes. At the CRTC hearing on ethnic broadcasting policy in March 1985, the Canadian Association of Broadcasters announced that its committee on ethnic and social issues was planning to develop guidelines on ethnic program content.

The approach does appear to be yielding results for sex-role stereotyping. Although one might wish for more rapid progress, some changes have taken place in the portrayal of men and women on television and radio. The question is not so much whether more changes are needed; it is clear that the complete elimination of discriminatory representations and sex-role stereotypes is the objective. The important point at issue is rather how to

go about achieving it. Would a higher level of interventionist legislation have led to any better results? It will no doubt always be extremely difficult to define general standards to be applied to creative endeavour, partly because creativity is inherently difficult to measure and partly because measurement of this kind is largely subjective, depending on changing objectives. Much remains to be done in exploring regulatory approaches that will respect these features, at least in the Canadian context.

Thus far, common sense has always been the best way of identifying stereotyping in the broadcast media. The right to equality is not necessarily denied by the broadcast of any particular program, no matter how full of stereotypes it may be. Problems begin to arise when all of a licensee's programming tends in the same direction. It is up to the broadcaster to ensure that programming generally strikes an appropriate balance. Also, nothing can replace the role of the public itself. It is the public that listens and watches. With appropriate mechanisms allowing individual and group complaints to be taken into account, it would be possible to determine which sorts of programming encourage stereotypes. In the next chapter we recommend the appointment by the CRTC of public advocates in its regional offices. By receiving and following up such complaints and intervening at licence renewal hearings, the public advocates could help to ensure that a licensee's overall programming complies with the right to equality.

All such measures, appealing to personal responsibility, attempt to reconcile the right to equality with freedom of expression. They will no doubt not please those who believe that one or the other of those two rights must take precedence. The rest, ourselves included, recognize that the rights and freedoms upon which our society is based must be balanced and that this balance takes shape in broadcasting within the regulatory process.

Recommendation

> When licenses are renewed, the CRTC should ensure that the overall programming offered by licensees does not conflict with the right to equality.

Participation of Women and Minorities in Broadcasting

However successful a policy based on a self-regulatory approach and increased public awareness may be, it cannot alone guarantee equitable representation for women and minority groups on radio and television. Only increased participation of women and individuals belonging to minorities in broadcasting will bring about change.

Stereotypes are a manifestation of a deeper problem; women and minorities are under-represented in most broadcasting jobs. Equality of employment opportunity at all levels of broadcasting is a fundamental objective here as elsewhere, because changes have to come about before they can be portrayed; the frequency of stereotypical portrayals will diminish if more women and members of minorities contribute to the development and production of programs and to broadcast programming decision.

The Employment Equity Bill proposes requiring licensees to report annually on the number of women hired in each employment group. The figures should include the number of vacant positions, the number of persons hired and the number of promotions. Statistics like these, which are not available at the moment, would make it possible to measure progress. Broadcasting undertakings should also be required to implement programs to encourage increased hiring of women and members of minorities in strategic positions. We recommend that this requirement be made a condition of licence. The equal employment opportunity programs would require a commitment to a significant increase in the number of women and the number of members of minorities at all employment levels. Like any other condition of licence, they could vary to suit the specific conditions of each undertaking.

In order to increase their influence in broadcasting, the government should take appropriate action to ensure that more women and representatives of minority groups are appointed to bodies like the CRTC and the boards of directors of the Canadian Broadcasting Corporation and Telefilm Canada.

Finally, there is a need for more programs prepared by women. There is no longer any need to prove that women can produce quality programs. In the seventies, Radio-Canada produced and broadcast Femmes d'aujourd-'hui, which greatly influenced the movement to redefine the role of women in society. At the National Film Board, Studio D has produced many very interesting films that were well received by the public, including *Not a Love Story, If You Love this Planet, The Way It Is,* and *Dream of a Free Country: A Message from Nicaraguan Women*, to name only a few. Just as the excellent work of Studio D — which, to Canada's credit, is the only experiment of its kind in the world — deserves praise, it is deplorable that there are so few productions by women; many more should find their way to our screens. We would like to see all institutions involved in program production grant women and minorities equal opportunities to produce and disseminate their works.

Recommendations

Broadcasting licences should include an obligation to establish an equal employment opportunity program. Such programs should provide for

> efforts to increase significantly the number of women and members of minority groups at all levels within each undertaking and be adjusted to suit the specific conditions of each undertaking.
>
> The Government should appoint women and members of minority groups to the CRTC, to the Board of Directors of the Canadian Broadcasting Corporation and to other decision-making positions in sufficient numbers to reflect their relative numbers in society.
>
> All broadcasters should ensure that women and minority groups have equal opportunity to produce and disseminate their works.

Essential Public Services

In addition to guaranteeing these fundamental rights, the Canadian Constitution refers to the rights of Canadians to essential public services of "reasonable quality".

> Without altering the legislative authority of Parliament, or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to . . . providing essential public services of reasonable quality to all Canadians.

Although the wording of this provision is far from clear, analysts have not given it the attention it deserves. It is unusual for a constitutional instrument to refer merely to the "commitment" of Parliament and the legislatures. It would appear that it involves neither an obligation to act nor any changes in their respective jurisdictions. In fact, it raises more questions than it answers. The one thing that is certain is that the commitment stops at "essential public services" without ever defining them.

Do the meaning and scope of this provision provide all Canadians with a right to essential broadcasting services? Is this constitutional commitment of Parliament and the legislatures intended to cover the public broadcasting sector? Could it be invoked to prevent any dismantling of such services? Without going to such an extreme, does a provision of this kind provide a constitutional basis for the principle, heretofore well established in Canadian tradition, of the independence of the CBC?

While the answers to the questions raised by this provision of the Constitution may not be obvious (it is up to the courts to decide them), the fact remains that for a large number of Canadians, public broadcasting services are deemed to be essential. That is why Parliament must take this constitutional commitment into consideration. Although it is clear that it is up to our

elected representatives to determine the means to be used, the conditions under which public broadcasting services are organized and provided cannot be considered 'acceptable' without taking qualitative considerations into account. It has been argued that there is a minimum level below which the resources devoted to public broadcasting cannot be reduced without affecting the quality of programming. We limit ourselves in this instance to reporting the facts; just as the Constitution guarantees a number of rights and freedoms, the principle stated in section 36 (a) circumscribes, to an extent not yet clearly established, Parliament's freedom of action with respect to public broadcasting services.

Principles Stemming from the Act

The unique aspect of the *Broadcasting Act* is that it begins with a policy statement followed by a delegation of powers. It was the Fowler Committee (1965) that first suggested including a policy statement in the Act. The Fowler Report attributed the problems of Canadian broadcasting to an inadequate formulation of the goals set forth by Parliament. That is why it recommended:

> Parliament should state firmly and clearly what it expects the boadcasting system to be and do; and should set explicit goals for both the public and private sectors of Canadian broadcasting in the Broadcasting Act and more fully in a White Paper on broadcasting policy...

The 1968 *Broadcasting Act* was the first to receive this addition. It carefully set forth the principles and objectives of the system and then assigned to the CRTC the powers to regulate and control it.

Critics of the Act have not called the model itself into question. What they argue about is the relevance of the objectives. Section 3 is criticized for not including the whole field of broadcasting, cable operations for example, which has sometimes led the CRTC to hand down decisions without a firm principle upon which to base them.

The way in which the system is organized, requiring objectives from Parliament and the implementation of these objectives through an independent authority, assigns enormous decision-making powers to the authority. The advantage of this method is that it can deal with a variety of situations and interests in a flexible manner. But its effectiveness depends entirely on the regulatory body so established, which is expected to be able, without betraying the general objectives, to adapt the system to circumstances by using innovative approaches and yet remain fully aware of its responsibilities. As we consider what principles and objectives to define in the new act, we are also assuming, before even providing for it, that there will be an effective regulatory authority capable of basing its decisions on Parliament's policies.

Some have been tempted to see the prescriptions of Parliament as being opposed to the laws of the market place and technological progress, as if they were mutually exclusive. However, if the objectives already included in the Act as well as those we are putting forward are reviewed, it becomes clear that they do not imperil the commercial viability of the broadcasting undertakings as demonstrated by the performance of broadcasting compared to other industries. If these objectives are to be achieved, the industry must be healthy and dynamic.

What some people perceive to be constraints are values that are inherent in the mixed nature of broadcasting, which is both economic and cultural. These values encourage the use of Canadian talent and imagination to develop a strong and dynamic Canadian industry to reflect the creative output of Canadians, wherever they may live and whatever language they may speak.

We believe we must once again gamble that the Canadian broadcasting system will stand a far better chance of prospering by remaining true to its own traditions rather than indiscriminately copying foreign models.

Recommendation

> The *Broadcasting Act* should continue to state the fundamental principles upon which Canadian broadcasting policy is based. This policy statement should be the basis for decisions by the government and the broadcasting regulatory authorities respecting the undertakings which make up the broadcasting system.

The Public Character of Radio Frequencies

To the best of our knowledge, the radio frequencies used for broadcasting are considered to be public property in every country of the world, even though they are subject to many different forms of control, ranging from government monopolies to commercial operations with varying degrees of regulation.

It has often been claimed that the rules governing broadcasting activity ought to be liberalized because the basic justification for existing regulations — the scarcity of frequencies — no longer holds true. According to this line of argument, although radio frequencies have in the past been considered public property because of their scarcity, such frequencies, including those used for broadcasting, are no more scarce than other goods. Moreover it is argued that alternative methods for carrying broadcasting signals have been developed, notably cable and satellites. Scarcity is being replaced by a proliferation of channels.

Nevertheless, the radio frequencies that can be used for broadcasting are not unlimited; nor does the availability of a large number of channels guarantee access to them. It is unlikely that the time will come when anyone who happens to have the appropriate resources will be able to broadcast at will, just as written materials are printed and published. The government has a number of other reasons for maintaining control over the airwaves, including its international responsibilities in the assignment of frequencies in order to avoid technical interference. A degree of regulation is also needed to define broadcasting countours within boundaries. Radio frequencies are also needed for purposes other than broadcasting. For example, UHF frequencies are used for both television and land mobile radio and they can interfere with one another. This too makes public intervention necessary.

If Parliament wishes to continue to have a different regulatory system for broadcasting than for other forms of communication, it should provide reasonable arguments in favour of doing so. Otherwise the courts might determine that the regulations are incompatible with freedom of the press and other media. Although the scarcity of radio frequencies was for a long time the main justification for restrictions, it has never been the only one. The social and cultural importance of broadcasting, the still little-known effects of broadcasting on audiences, and the need to protect certain minorities have been added to scarcity of frequencies and to the need to co-ordinate transmission sources as reasons for regulating broadcasting.

Unlike American communications legislation which was designed primarily for co-ordination purposes, Canadian broadcasting policy has always pursued social and cultural objectives. It was never just because radio frequencies were scarce, but also because the Canadian presence on the airwaves was weak, that since 1929 commissions of inquiry into broadcasting have recommended strengthening the system. The assignment of radio frequencies for broadcasting in Canada is an essential component of national sovereignty.

Because of the urgency of the issue, Canada has always expected broadcasting to reflect the country's identity. From the outset radio and television were considered instruments for creative expression, education and information by and for Canadians rather than simply as entertainment media. The availability of a larger number of channels will do little or nothing to guarantee access or to ensure that the airwaves will reflect Canadian identity and culture.

There are therefore still very good reasons for maintaining the public character of the radio frequencies used for broadcasting. It is not so much on the ground of the scarcity of radio frequencies that this policy is justified, but rather because of the importance of broadcasting in maintaining our national identity and expressing the values upon which our society is based.

Those who are granted the right to use radio frequencies are given an important responsibility. Contributing to the dissemination of Canadian culture is a duty inherent in the privilege they are granted as a public trust on behalf of Canadians.

Recommendation

> The *Broadcasting Act* should continue to include the principle that radio frequencies used for broadcasting are public property. All persons authorized to use radio frequencies should be considered trustees of the Canadian public.

Broadcasting Undertakings Considered as a System

The present Act states that undertakings authorized to broadcast in Canada constitute a single system comprising both public and private elements. It states that the broadcasting undertakings are to be considered as a whole because the objectives referred to in the Act are assigned to the whole. The White Paper that preceded the passage of the Act stated that:

> The Canadian broadcasting system, comprising public and private sectors, must be regarded as a single system which should be regulated and controlled by a single independent authority.

It is nevertheless a whole made up of many parts and in which are found not only French and English as well as public and private elements but also general services and specialty services, commercial stations and community stations, urban areas and virtually unpopulated regions. It is unrealistic to hold the same expectations for each of the many elements in the broadcasting system. The Government of Nova Scotia noted in its brief to the Task Force that:

> Although the Broadcasting Act states that private and public broadcasting undertakings constitute a single Canadian broadcasting system, we would argue that there are, in fact, two systems — one private and one public. The expectations, mandate and role each takes should be premised on this assumption.

The Canadian broadcasting system does in fact consist of undertakings with different goals. Private undertakings clearly have profit motives while the mandates of public broadcasting services are defined by Parliament or the provincial legislatures. Depending on the region, the roles of community stations vary considerably.

These differences are not incompatible with the pursuit of the national objectives defined by Parliament for broadcasting. That is why the broadcasting undertakings should henceforth be considered a composite system. Each must contribute in its own way to the achievement of the public-service objectives assigned to the Canadian broadcasting system.

Recommendation

> Within the meaning of the Act, broadcasting undertakings should be considered part of a composite system, each contributing in its own way to the achievement of the objectives assigned to the Canadian broadcasting system.

Definition of Terms

Because it states policy, the *Broadcasting Act* is demanding of individuals and undertakings involved in broadcasting. If responsibilities are to be shared equitably, it is important to have an unambiguous statement of what is included in the broadcasting system.

Because of developments in broadcasting and telecommunications, two concepts must be redefined: "broadcasting", to cover the provisions of all scheduled television programming services, and the transmission and distribution of such services by whatever means; and "broadcasting undertaking" to reflect network structures.

Broadcasting

The *Radio Act* and the *Broadcasting Act* define broadcasting as "any radiocommunication in which the transmissions are intended for direct reception by the general public". This definition covers only the activities of undertakings that broadcast their programs free of charge to anyone who has equipment capable of receiving the signals. It is based on the assumption of program transmission by Hertzian waves, which was the dominant configuration in 1968 when the *Broadcasting Act* was passed.

Because it covers only radiocommunication in which the broadcasts are intended for "direct" reception by the "general" public, the definition appears to ignore the many program services such as specialty services transmitted by point-to-point satellites that are distributed to subscribers only. It was determined that such services are not intended for reception by the general public and therefore are not broadcasting services within the meaning of the Act. Nevertheless, pay-television is intended for the general public insofar as it is prepared to pay.

In its brief to the Task Force, Allarcom Limited expressed the need for a new and broader definition of broadcasting as follows:

> There is a definite need to revise the legal definition of broadcasting so as to clearly encompass the various forms of broadcasting operations that have resulted from technological advances in the field of telecommunications. For the purposes of a national broadcasting policy, broadcasting should include origination, transmission, distribution and reception of signals through various configurations, and the use of any combination of telecommunications means for the purpose of providing programming to the viewing public, whether any consideration is involved or not.

The important thing is to include all forms of transmission, distribution and reception of signals containing programs intended for the public, whether in scrambled form or not.

It is not fair for individuals or companies involved in activities that very closely resemble the activities of companies considered to be part of the broadcasting system to be able to avoid the obligations incumbent upon the latter simply because the definition of broadcasting in the Act is too narrow to include them.

Defining a Broadcasting Undertaking

The definition of a broadcasting undertaking should of course tally with the definition of broadcasting. It should cover not only the transmission and reception of broadcast signals, but also any other form of program distribution by telecommunication, whether or not there is a charge for the service, as well as networks. All undertakings involved in such activities would, within the meaning of the Act, be considered broadcasting undertakings. Only common carriers such as telephone companies should be exempted because their role is limited to relaying messages.

The network concept requires special attention because broadcasting networks have grown dramatically over the past 20 years. The 1968 Act defines the word "network" as:

> ... any operation involving two or more broadcasting undertakings whereby control over all or any part of the programs or program schedules of any of the broadcasting undertakings involved in the operation is delegated to a network operator.

The definition implies a delegation of authority. The broadcaster assigns to the network operator control over all or part of his programming. The network is therefore an entity distinct from those it controls for specific purposes.

In Canada today there are three major network categories: radio networks, television networks, and satellite-to-cable networks. The *Broadcasting Act* covers only the first two. The introduction of satellite-to-cable networks came much later, and the Act has not yet been amended to accommodate them in explicit terms.

Radio and television networks decide what programs will be offered to their affiliates and are therefore responsible for the programming and regulated accordingly. Since one of the objectives of the Act is to apply certain standards to all undertakings that have a degree of control over the programs broadcast in the interests of Canadians, it is clear that undertakings which distribute programs, even though they may not have produced them, have ultimate control over access to these programs by the Canadian public. There is therefore no reason to exempt undertakings that operate satellite-to-cable networks from the meaning of the act.

These networks are nevertheless operated differently from conventional radio and television networks. Their relations with cable operators are more like a transmission contract than the typical affiliation contract. Since the definitions in the current Act do not make such distinctions, they should be amended before the regulatory concepts become distorted as a result of trying to squeeze services based on new technology into categories formulated for another era.

If all the activities and undertakings that make programming available to the public through electronic means are to be covered by the Act, then we recommend new definitions for three concepts: broadcasting, broadcasting undertaking, and network. There are some activities and undertakings that will be subject to little or no regulation. Such decisions should be the responsibility of the regulatory authority and be based on consistent reasons rather than on the inadequacy of the definitions given in the Act.

Recommendations

The Act should cover all undertakings involved in broadcasting in the widest sense, that is, those that decide what programs to carry, as well as those that are involved in program dissemination to the public and thus in determining program accessibility to Canadians.

The Act should broaden the definition of broadcasting and related concepts to cover all types of program reception and distribution whether by Hertzian waves or through any other technology.

Canadian Ownership of the System

The *Broadcasting Act* states that "the Canadian broadcasting system should be effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada" Following the adoption of the Act in 1968, the regulatory authorities ensured that undertakings owned by non-Canadians were sold to Canadians in compliance with the Act. All broadcasting undertakings operated in Canada are now in the hands of Canadians. This is a situation which must be maintained, because it makes it possible in principle to carry out the next step, which is to encourage them to "safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada". The Canadian ownership requirement, while it is essential, cannot by itself "Canadianize" the airwaves, as experience has shown, because it does not address the content issue. This is an objective that will best be achieved through a careful regulatory approach.

Recommendation

> The Act should reaffirm the principle that only Canadians may own and control broadcasting undertakings in Canada.

A Broadcasting System for Canadians

The idea the the Canadian broadcasting system should contribute towards "safeguarding, enriching and strengthening the cultural, political, social and economic fabric of Canada" is not a new one. Many commissions of inquiry into broadcasting have supported the idea and nothing would appear to be more legitimate than to count on Canadian broadcasting to serve first the interests and needs of Canadians.

In an area where cultural considerations are also at stake, one cannot restrict debate to purely economic concerns. For example, it is difficult to argue that costly Canadian products should be replaced by lower-cost foreign goods in the field of broadcasting because if Canadians do not produce works that reflect their own culture, no one will do it for them; it is only when the market has a reasonable share of Canadian creative works that Canadians will find a reflection of themselves.

To this extent, we subscribe to Parliament's objective. But taken in isolation as formulated in the Act, it invokes the idea of undue political pressure, "national promotion", that would in some way be applied to programming. At this stage, the important point is to put the objective back in its proper context to allow us to understand its meaning correctly. It is now in the section that requires Canadian ownership of broadcasting under-

takings so as to "safeguard, enrich and strengthen" etc. This means that it is intended to support a measure designed to regain control over the system and we have already seen that regaining ownership of the system is not enough to guarantee that Canadians will find their proper place on Canadian airwaves.

This, then, goes some way toward explaining how the Act was a reaction to a powerful and recurring trend present from the very inception of Canadian broadcasting: left to itself, Canadian broadcasting slips out of the hands of Canadians. The intent is not to promote something but rather to redress a specific state of affairs. The purpose is to establish conditions that give Canadians access to a medium of expression that has a complex and ponderous infrastructure.

The expression "safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada" may appear to be mere rhetoric, even to some members of the Task Force, but placed in a broader perspective that clearly shows it to be an objective of Canadian policy, it becomes forceful again. The current French version of the Act uses the word "structure" for the English "fabric". The word "tissu" would be a more appropriate translation. It would be a good idea to make this linguistic amendment.

The objective requires that the Canadian broadcasting system should play an active role in fostering a greater awareness of Canada and make available a greater variety of Canadian programming to allow the expression of the Canadian identity. It binds those involved in the Canadian broadcasting system to make their operations consistent with these objectives. The objective may on occasion conflict with the short-term interests of some participants. But it would tend in the long run to make a reality of the principle of Canadian broadcasting for Canadians, whatever region they may live in and whatever their culture. A concern for regionalism is one of the things that sets Canada apart. The broadcasting system must therefore be open to aspiring artists from across Canada who wish to have their work distributed and meet particular regional needs. Its programming must by the same token reflect Canada's cultural diversity as urged by many minority groups (see Chapter 22)

Recommendation

> In both its organization and operation, the Canadian broadcasting system should serve the interests of all Canadians and their need to express themselves, in order to "safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada".

> The Canadian broadcasting system should play an active role in developing an awareness of Canada, reflect the cultural diversity of Canadians and make available a wide range of programming that is Canadian in content and character and that provides for a continuing expression of Canadian identity. It should serve the special needs of the geographic regions and actively contribute to the flow and exchange of information and expression among the regions of Canada.

Access to the Broadcasting System

Although Canadians have access to innumerable radio and television programs, comparatively few Canadians manage to express themselves through radio and television. The problem remains one of providing an equitable place for everyone in the broadcasting system: Canadians in general; producers, workers and artists in various regions or representing various views; finally, aboriginal peoples, minorities, women, and local communities. All these groups stated in our consultations that they had little or no access to the system. The introduction of a new multi-channel environment increases the number of doorways but does not necessarily open them. Paradoxically, the proliferation of channels contrasts with a drought in programming as creative talents remain untapped. The challenge of the coming years will therefore be to provide increased access to the airwaves for a diverse range of Canadian communities and interest groups.

There has been a failure to anticipate that once Canadians in every remote corner of the country had been provided with radio and television programming they would want to play a more active role. It must not be forgotten that the art of communication is itself communicative. Access to the airwaves, which has for so long faced technical barriers, is now within reach and the new technologies have given a renewed impetus to demands for such access, spurred on by the apparent realization of the old dream of a universal forum in which people in isolated villages become part of the bustling "global village".

Although the reality is perhaps not on such a grand scale, many new forms of access are indeed appearing and it is up the state to decide how to allot these. Local communities (city neighbourhoods, small towns, isolated villages, northern communities) have needs for expression and information that no national service will ever be able to meet. The low power stations that were established in many communities were testing grounds, classrooms for the people, public markets and community centres, and it was here that community broadcasting developed.

Canada played a pioneer role in community radio and television. Under CRTC regulations, most cable operators include a community channel in the basic service offered to subscribers. Community radio stations, especially in Quebec, broadcast over-the-air.

Community broadcasting has proved to be very useful on occasion in providing access to the system. That is why we recommend that it should be recognized in the Act as a distinct sector in the system, on an equal footing with the public and private sectors which it complements. Although the standards and objectives may not be the same, it is precisely the grass roots foundation of community radio and television that allows them to take different forms depending on the community and the projects. Too much control over community broadcasting would change its nature and perhaps stifle its spontaneity. It is nevertheless important to give community radio and television a statutory basis to allow it to fulfil the role of granting access to the system, a responsibility which the other two sectors, with other calls on their services, have been unable to fulfil.

Recommendations

The right of access of all Canadians to the broadcasting system should be affirmed.

Community broadcasting should be recognized for this purpose as one of the components of the system.

The Right of Persons to Receive Broadcasting Service

Like the right to freedom of expression, the right of persons to receive programs is recognized as "unquestioned" in subsection 3(c) of the *Broadcasting Act*, "subject only to the generally applicable statutes and regulations".

The wording of this right reflects the general view of broadcasting when it was more or less limited to transmission by Hertzian waves. With over-the-air transmission, the programs broadcast in a particular area are intended for direct reception by anyone with the appropriate receiver. Since then, new distribution methods have come into general use, including cable or satellites which are not public property and whose technical characteristics lend themselves to reception by subscription. The right of persons to "receive" programs has therefore been subjected to a number of conditions by operators. Canadians without the means to subscribe or who live in areas that are not served by cable now feel abandoned by a system in which everyone else has abundant choices. A new class division has appeared between the information rich and the information poor.

This new state of affairs has given rise to conflicts. Clearly basing themselves on a right which appears to them to be recognized in subsection 3(c), individuals began to receive by means of their own dish antennas satellite signals intended for cable operators. Others connected their television sets

to cable themselves or rigged up a decoder to unscramble programs intended for subscribers without paying subscription fees. Television piracy was born.

Of course all radio and television services must be paid for in the long run. Whether they earn their revenues from the government, from advertising or from subscriptions, the consumer pays in the end. Consumers should thus have the right to receive broadcasting services just as freedom of expression gives them the right to any publications they wish as long as they are willing to pay for them. Geographical happenstance and the current state of technology impose further limits.

The principle of the right to broadcasting service is, moreover, already recognized in the *Cable Television Regulations*, which require every licensee, on receipt of the amount of the installation fee, to install equipment for the provision of service to all homes situated in any residential area within its licensed area. The many configurations now available for the delivery of broadcasting services prompt us to state explicitly the right of persons to receive such services. Unless provided for under generally applicable statutes and regulations, broadcasting services ought not to be available to some residents of a given area and denied to others without legitimate reason.

Recommendation

The Act should state the right of persons to receive broadcasting services, subject only to generally applicable statutes and regulations, rather than stating the right to receive programs.

The Right of the Hearing Impaired to Receive Broadcasting Service

In order that the right of Canadians to receive broadcasting services does not knowingly exclude anyone, we wish to stress that the rights of groups like the hearing impaired need to be given special consideration. In its brief, the Canadian Captioning Development Agency pointed out that:

For close to 2.2 million Canadians, television is a picture puzzle. They all get the picture, but only a few get the message. To be denied access to television is considered a hardship by many. For someone who is hearing impaired, it is a double handicap.

Until quite recently not much could be done. Beginning in 1980, however, closed captioning began to be more widely used. Like movie subtitles, the captions are part of the picture but they are invisible to those who are not equipped with a special decoder.

Reacting to the recommendation of the Special Parliamentary Committee on the Handicapped in its report *Obstacles*, the Department of Communications supported the establishment of the Canadian Captioning Development Agency, a non-profit agency that provides broadcasters with closed captioning services for the hearing impaired. The CBC and, to a lesser extent, the private television networks now include closed captions on a number of programs. With an estimated 30,000 decoders now in use in Canada, large numbers of hearing impaired viewers are able to understand what is being said on these programs. Further, more than two hundred companies are now providing captions for their advertisements.

Although the *Obstacles* report recommended that closed captioning should be made a condition of licence, the CRTC and the Department of Communications have clearly stated their preference for a voluntary approach. Many broadcasters have promised to increase the number of captioned programs. They are to be congratulated for this commitment and the CRTC should be encouraged to consider it in issuing and renewing licences.

Recommendation

> At the time of licence renewal the CRTC should take into consideration the licensee's willingness to increase the number of programs with closed captioning for the hearing impaired.

The Right to Broadcasting Service in English and French

Subsection 3(e) of the Broadcasting Act states that "... all Canadians are entitled to broadcasting service in English and French as public funds become available".

It may safely be said that this right has become a reality: except for a few isolated pockets, all of Canada is provided with broadcasting service in both languages. This is no mean achievement, especially since some of the areas covered — in English and French — are among the most inaccessible in the world.

Clearly, it is up to the CBC to cover the whole country. Although some private broadcasters have extended their service to areas remote from the major centres, a policy cannot be based on intermittent action. Private enterprise should not be required to broadcast in all regions in both official languages unless there is an appropriate market. In all other instances the right of Canadians to broadcasting services in French and English requires action by the public sector.

Recommendation

The Act should reaffirm the right of all Canadians to broadcasting service in French and in English, to be implemented if necessary by means of concerted action by the public sector.

Broadcasting in Quebec

As we see in Chapter 8, French-language broadcasting in Canada faces a number of special problems. The differences stem not only from language and culture, but also from the characteristics of the French-speaking audience, 90 percent of which is concentrated in Quebec and which thins as it moves westward. Although it gains in consistency what it lacks in size, the French market remains too small to have its needs served through normal commercial television and radio.

A realistic and effective Canadian policy cannot ignore the facts. A distinctive Quebec broadcasting system exists and lacks only recognition in law and in appropriate institutions, in order that the CRTC, the CBC, Telefilm Canada and others be able to tailor their decisions to it where they are not already doing so.

Recommendation

Canadian broadcasting policy should recognize the special character of Quebec broadcasting, both in itself and as the nucleus of French-language broadcasting throughout Canada.

Consultation with the Provinces

It is often forgotten that the Aird Report recommended in 1929 that provincial authorities should exercise jurisdiction over the programming of stations broadcasting on their territory. The 1932 Act provided for somewhat less — the appointment by the provincial authorities of assistant commissioners who would in turn appoint provincial and local consultative committees following agreement with the provincial authorities. It was the Privy Council's 1932 decision on broadcasting that put a stop to this process. Since that time, the role of the provinces has been officially ignored, at least in the Act.

The 1968 *Broadcasting Act* is thus silent on the role of the provinces. In 1973, however, then Communications Minister Gérard Pelletier recognized a degree of legitimacy for the provinces by proposing that they and the Government of Canada should consult with a view to co-ordinating their

respective policies. Bill C-16(1978) included federal-provincial consultation as one of the principles of the system; it was never adopted. Following the debates of the seventies on the role of provincial government broadcasting undertakings, the Clyne Report in 1979 and the Applebaum-Hébert Report in 1982 both recommended that existing provincial broadcasting undertakings should continue. The CRTC was allowed to continue to issue licences to provincial broadcasting undertakings.

More recently, the report The Future of French-language Television, stated the wish that it would "mark the beginning of fruitful consultations" between the governments of Canada and Quebec. A co-operative agreement for consultation and harmonization in the development of the French-language television system was signed soon thereafter. We welcome this initiative to improve co-operation in the field of Canadian broadcasting between the provincial governments and the federal government.

The time has come to establish a clear position on this issue. Broadcasting raises too many questions in too many different areas for the federal government to ignore the concerns of the provinces. Provincial jurisdictions often come into play in broadcasting, as we see with the development of educational television and provincial networks which, by carrying out their respective functions, also contribute to increasing Canadian content on the airwaves. Intergovernmental co-operation can only strengthen Canadian broadcasting policy. That is why we recommend that the principle be included in the Act.

It must be remembered that the principle should not infringe upon the autonomy of the various institutions involved and ought not to be used as a pretext for government intervention in the decisions of regulatory authorities of public broadcasting agencies.

Recommendation

> The principle of federal-provincial consultation should be part of the Broadcasting Act but it should not interfere with the autonomy of broadcasters or regulatory authorities.

Broadcasting in Native Languages

The Constitution specifically recognizes the rights of Canada's aboriginal peoples, who generally were late in gaining access to the communications media essential to the preservation of their threatened cultural heritage. Much remains to be done, however. Each of the aboriginal peoples has its own culture, which it is important to preserve, enrich and further develop.

Justice would be done if the very factor that accelerated the assimilation of aboriginal peoples in the past were henceforth to foster their development. We therefore recommend including in the Act the right of aboriginal peoples to broadcasting services in representative native languages (see Chapter 20). 'Representative languages'' means the most widely used languages that the aboriginal peoples themselves would like to see survive.

The Inuvialuit Communications Society's brief to the Task Force described the role played today by the Inuit language:

> Language is the heart of a culture, and the keeper of people's heritage, but our language is in serious trouble...When English is the predominant language in more than four out of five homes, it is imperative to offer young people opportunities to hear and use Inuvialuktum, and to emphasize its worth.

The Northern Native Broadcasting Society emphasized the close link between the economic well-being of native populations and their use of their own languages:

> Many northerners still speak their native languages. For those people whose first language is not English, they find much of the public affairs and news programming available from the mass media unintelligible. Yet the events and the decisions portrayed in such programming demand the participation of these same people, if they are to be successful contributors to the socio-economic development of their homelands.

There is no shortage of reports illustrating the degree to which the survival of many native languages is threatened. Broadcasting policy cannot by itself ensure their survival. It can, however, play a role in helping to redress the current state of affairs.

Recommendation

> The Act should include the right of aboriginal peoples to broadcasting services in representative native languages, where numbers warrant and as public funds become available.

The Responsibility of Broadcasters for the Programs they Broadcast

The principle of the responsibility of persons licensed to carry on broadcasting undertakings for the programs they broadcast is one of the basic principles of Canadian broadcasting. The Act states that "all persons licensed

to carry on broadcasting undertakings'' have such a responsibility. The principle makes a clear distinction between these persons who are in practice the management of the undertaking from all others involved in the broadcast of programs.

Anything said on the airwaves, no matter who says it or what program it is said on, is the responsibility of the broadcasting undertaking. It is the broadcaster, for example, that is responsible before the courts for any prejudicial statements for which the person whose rights have been infringed is claiming restitution. It is therefore up to the management of each broadcasting undertaking to ensure that there are no prejudicial statements made in the programs broadcast. A broadcasting undertaking may use this principle as ground to refuse access to the airwaves to a person who wishes to express a point of view.

The concern for legal responsibility therefore threatens to restrict access to the system, which would be contrary to the objectives stated elsewhere in the *Broadcasting Act*. There is nevertheless a way of reconciling responsibility and accessibility if legal responsibility is adjusted to the actual roles played in the broadcasting of programs. A careful examination of the concept of responsibility or liability in Canadian law is therefore in order.

According to civil law in Quebec, a person's liability for a prejudicial act depends on the behaviour leading to the injury. If the behaviour is at fault, whether voluntarily or as a result of negligence, and a sufficient link can be established between the injury caused and the individual's behaviour, there is liability and hence an obligation on a person to compensate for the injury. Behaviour is considered to be at fault if it demonstrates an error of judgment, negligence or intent to cause injury that would not have been committed by a reasonable, prudent and diligent person placed in the same circumstances.

Under common law in all provinces except Quebec, libel or damage to a person's reputation is covered by a system of strict liability. The person held responsible is the one who decided to publish the information, regardless of intent. The injury caused is the determining factor. An undertaking involved in disseminating a defamatory libel in the course of its operation may only avoid liability by demonstrating that it took every care to ensure that the material broadcast was not defamatory, and can prove it did so.

On the basis of these criteria, a broadcasting undertaking cannot be held responsible for injury unless its behaviour is at fault, by intervening or failing to intervene in the content or transmission of the program in question. It is because the undertaking exercises under the law the power to broadcast that it is ultimately responsible for what is broadcast.

Where a radio or a television station uses its own facilities to broadcast programs that it produces or has chosen to broadcast, the responsibility is clear: the undertaking is responsible for the messages transmitted because it is constantly involved in the decisions that create or retain contentious matter. On the other hand, carriers whose role is simply to relay programs on behalf of broadcasters have no authority over these programs and hence escape any liability for program content. Their position is similar to that of a telephone company which no one would think of holding responsible for any slanderous statements exchanged between callers.

There is, however, one category of undertaking whose activities cover both broadcasting and telecommunications, and do not call for equal degrees of responsibility. This leads to confusion. When the 1968 Act was passed the legislators could not have guessed at the expansion that was to take place in cable and therefore gave it no special consideration.

Some cable television channels are used exclusively to distribute in a particular area programs that belong to other undertakings. The cable operator is restricted to receiving and distributing the signals that section 18 of the *Cable Television Regulations* prohibits it from altering or curtailing, in whole or in part. Such activity excludes any responsibility for content.

The issue becomes more complex when the cable operator also offers different types of services, for example when the operator programs the content distributed. Here there is reason to recognize the cable operator's responsibility for content. But the Act includes cable operators under broadcasting undertakings and this automatically makes them responsible for all programs they carry, even if they are doing no more than redistributing the programs of others.

If this appears to go beyond the intent of the legislation, it is because it was necessary to use verbal agility in the *Broadcasting Act* to cover cable television without naming it. Thus the Act states that "broadcasting undertaking includes a broadcasting transmitting undertaking, a broadcasting receiving undertaking and a network operation...." Because another section of the Act associates traditional broadcasters with "transmitting undertakings", it was determined that "receiving undertaking" was intended to cover cable operators. Then again, elsewhere in the Act it is stated that those who operate broadcasting, now deemed to include cable operators, are responsible for the programs they broadcast. The verbal web leaves no room for variations. A new Act should provide for them.

There are other circumstances that prompt such amendments. For example, most cable operators, as required by CRTC regulations, set aside a special channel for community programs which are either produced by or submitted to the operator. The channel is to be used strictly for community programming, but the choice of programs is up to the cable operator who, as a result, becomes solely responsible for the program content.

This appears to us to be less than very compatible with the idea of community broadcasting because the power to decide on the programs distributed, which in turn determines legal responsibility, does not lie with the community or its representatives. The resulting problems are not serious, but the community representatives who work on such programs are forced into a kind of official irresponsibility and do not have the autonomy they want.

The essence of community broadcasting is that program content should depend entirely on the local or regional community. If cable operators are to keep to their primary function of merely providing transmission facilities, then it is up to those who produce the programs to take full responsibility for them, including any implications resulting from broadcasting them.

We therefore recommend that the status of broadcasters' responsibility for programs broadcast be adjusted to reflect the nature of their operations within the framework of the legal criteria we establish elsewhere for cable television and community broadcasting. Once cable operators drop responsibility for programs they limit themselves simply to carrying, the responsibility must be shifted to another undertaking: this is the opening which will accommodate the development of autonomous community undertakings.

Recommendation

> The Act should consider persons authorized to operate all categories of broadcasting undertakings responsible for the programs they distribute except when they have no decision-making power, in whole or in part, over the messages distributed.

The Search for Balance

The central principle of Canadian broadcasting policy is a striving for balance on which many of the system's principles and objectives are based. Thus in describing the range of programming to be provided to Canadian audiences, the *Broadcasting Act* specifically requires a balance among types of programs and points of view.

Balanced Types of Programs

The present Act requires broadcasters to offer a varied and comprehensive range of programming to suit the interests and tastes of all viewers. Until the introduction of pay-television and specialty services, it was up to each

broadcaster to devise a selection of programming that would comply with this balance in types of programming. A limited number of undertakings were licensed to broadcast and what was expected of the system was required of each of them. The proliferation of channels makes it possible from now on to allow a degree of specialization without reducing the choice offered by the whole system: the diversity lost to the system because of specialization by one channel is replaced by the gamut of specialized channels.

It is therefore important to continue to ensure a balance in the types of programming offered by adapting the principle to the new circumstances. It is up to all general and specialty services as a whole to achieve the balance required by the Act and up to the regulatory authority to see that it occurs in issuing licences and renewals.

Recommendation

> The Canadian broadcasting system should offer a range of programming that is varied and comprehensive, providing a balance of information, enlightment and entertainment for people of different ages, interests and tastes.

Balance of View-points

The balanced expression of differing points of view has in fact always been more or less explicitly tied to the principles of Canadian broadcasting. Hence the controversy which led to the first inquiry into broadcasting in 1929. The Minister of Marine had revoked the licence of the International Bible Students Association and the Jehovah's Witnesses were subjected to what looked very much like censorship. Broadcasting, which had until then been primarily concerned with technical matters, shifted its focus to ideas. And ever since, the authorities have been reluctant to grant broadcasting rights to religious or political groups whose purpose would be primarily the promotion of a single point of view.

In 1939, the Canadian Broadcasting Corporation, which was the authority over broadcasting at the time, published a statement of principles on controversial programming. The statement rejected censorship and recommended that radio should be used to discuss controversial subjects because the critical expression of differing points of view was the best way to protect civil liberties. It was here that the Canadian Broadcasting Corporation noted for the first time that radio would evolve along with its listeners and that the ways of presenting arguments over the airwaves would change accordingly. The use of any predetermined formulas would be a waste of time and would quickly become obsolete.

The statement emphasized tolerance and flexibility. In 1961, the Board of Broadcast Governors restated the principle as follows:

1. The air belongs to the people, who are entitled to hear the principal points of view on all questions of importance.

2. The air must not fall under the control of any individual or groups influenced by reason of their wealth or special position.

3. The right to answer is inherent in the doctrine of free speech.

4. The full interchange of opinion is one of the principle safeguards of free institutions.

Almost a decade later, the CRTC in its turn reinforced the tradition. The special committee established to study the controversial program *Air of Death* stated that in discussing matters of public interest, the role of broadcasters was to allow the statement of a number of points of view and the privilege of audiences was to select from among them. It then reiterated the importance of flexibility, stating that the quality of Canadian broadcasting would not be improved by over-regulation or restrictive interpretations of the Broadcasting Act.

Over the years the CRTC stated its views on this subject on a number of occasions. Decisions of the CRTC and its predecessors provide everything needed to establish a code of ethics which we believe can be used to deal with what is meant by "opportunity for the expression of differing views on matters of public concern".

What are we to make, however, of the argument that such a limitation is incompatible with freedom of expression because it constrains the statement of opinions by the press? It may reasonably be argued that providing for differing points of view, which goes beyond the freedom of expression that broadcasters claim for themselves alone, complies with the right that the Constitution guarantees all Canadians. In the United States, where the First Amendment guarantees freedom of the press, the Supreme Court has ruled that far more restrictive measures than these are compatible with freedom of the press.

Balance of points of view does not mean the same thing for a small community with a single radio station as it does for a large city with a wide range of broadcasting services. A small community station with a restricted territory, which states points of view rarely expressed on major stations, ought not to be forced to broadcast opinions that are already widely circulated. Under such conditions, the CRTC should act with circumspection.

Measures to put such objectives into practice should stop short of censorship. Also, the CRTC's supervision of the application of such measures should be exercised as it is now, after the fact, at arm's length, and in a measured way. One way to describe it would be with subtle moral authority. There are already well-established mechanisms—analysis of public complaints, restatement of basic principles, requesting broadcasters to explain certain actions, outlining remedial steps to be taken in the future. The advantage of this method is that it recognizes that prime responsibility rests with the broadcaster. It is up to the broadcaster to present programming that is, on the whole, balanced.

This method is in fact based on the voluntary compliance of broadcasters with a professional code of ethics. There is not yet any general trend in this direction, but in Quebec, for example, despite the frustrations that result from a scarcity of resources, the Press Council's increasingly important role, with broadcasters as members, is becoming the envy of many.

Recommendation

> The programming of each broadcaster, in keeping with its circumstances in the community served, should be designed to present a balanced opportunity for the expression of differing views on matters of public interest. The principle applies to each broadcaster's overall programming and not to every program broadcast.

Programming of High Standard

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".

Despite some progress, the research carried out over the past twenty years has not developed program evaluation tools for determining whether the broadcasting system as a whole complies with the high standard requirement. The high standard criterion has been invoked under many different circumstances, notable to justify, sometimes with a number of strange twists, various CRTC decisions.

For example, the CRTC has prohibited the broadcast of telephone conversations over the air without prior permission from the person in question unless the person telephoned the station with the intention of participating in a program. Both the Ontario Court of Appeal and the Supreme Court of Canada have handed down majority decisions stating that the CRTC has the power to make this regulation pursuant to the section on

the high standard requirement. This meant that both courts recognized that the CRTC prohibition aimed at implementing the high standard objective by making a rule condemning inappropriate procedures.

This is not too surprising, especially when one recalls that the only powers the CRTC has are the implementation of the policy stated in the Act and that all decisions must be based on one or other of the concepts contained in it.

The CRTC itself has had occasion to refer to the wording of the Act. In its *Notice Concerning a Complaint by Media Watch with Respect to CKVU Television, Vancouver*, it commented as follows on the inflammatory statements made about a public interest group:

> The responsibility imposed on each broadcaster for the programs it broadcasts includes the requirement that the programming provided on its undertaking be of high standard.

To determine whether the broadcaster has met this responsibility, the CRTC considers the precautions that should have been taken under the circumstances. For example, following the shooting that took place at the Quebec National Assembly, the CRTC received numerous complaints against radio station CFCF in Montreal. In its notice on this matter, the CRTC ruled that the use of spontaneous "telephone surveys" of events bearing on a vital component of public order do not meet the high standard requirement. The CRTC concluded that by using an inappropriate method, the station served its listeners and the public at large poorly.

As we can see, the high standard requirement sets an ideal standard somewhere in never-never land. Nowhere is the concept defined. Although the definition is always left implicit or expressed poorly, it authorizes the CRTC, with all the attendant risks of arbitrariness that the courts complain about, to make value judgements on programs. More discretion could be hoped for from the CRTC. If, on the other hand, programs were subjected to "recognized professional standards", this would provide criteria independent from the CRTC. But can one prevent the debasing of such standards if they are to be established by the industry itself, and how are they to be prevented from being lowered? This is the dilemma of evaluation; broadcasters are being asked to use their own resources to raise their standards and to renew them wherever necessary in ceaseless cycle of progress.

It is obvious that "recognized professional standards" will have to vary depending on the category of the undertaking. Flexible standards are needed to allow proportionately more to be required of all undertakings, whether large or small, without allowing them to attempt to escape from the low end ("the small companies won't be able to follow suit") or the high end

("only the big companies have the appropriate means"). Seen from this standpoint, the high standard requirement has merit. If the high standard criterion is to be prevented from becoming a dead letter, it should be closely linked to a regulatory authority requirement for firm commitments from broadcasters as described in the model we put forward in the following chapter.

Recommendations

Programs aired on Canadian radio and television should be of high standard, pursuant to firm commitments by broadcasters when their licences are issued or renewed and for which they are accountable before the regulatory authority.

The concept of high standard should be based on recognized professional standards, depending on the category of the undertaking.

The Principles and Objectives of Canadian Broadcasting

The principles and objectives that we have just described are those we recommend for inclusion in a new Canadian broadcasting policy to replace the existing provisions of section 3 of the *Broadcasting Act*. They are summarized in the following list (except for those concerning the CBC, which are provided in Chapter 10):

- The radio frequencies used for broadcasting are public property.
- All persons authorized to use broadcasting frequencies should be considered trustees of the Canadian public.
- An independent body should continue to regulate the undertakings which make up the broadcasting system in accordance with principles set out by Parliament.
- Broadcasting undertakings in Canada form a composite system. Each in its own way should contribute to the achievement of the objectives assigned to the Canadian broadcasting system.
- Only Canadians may own and control broadcasting undertakings in Canada.
- In both its organization and operation, the Canadian broadcasting system should serve the interests of all Canadians and their need to express themselves, in order to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada.

- The Canadian broadcasting system should play an active role in developing an awareness of Canada, reflect the cultural diversity of Canadians and make available a wide range of programming that is Canadian in content and character and that provides for a continuing expression of Canadian identity. It should serve the special needs of the geographic regions and actively contribute to the flow and exchange of information and expression among the regions of Canada.

- All Canadians have a right of access to the broadcasting system. Community broadcasting should be recognized for this purpose as one of the components of the system.

- All Canadians have a right to receive broadcasting services, subject only to generally applicable statutes and regulations.

- All Canadians have a right to broadcasting services in French and in English.

- The special character of Quebec broadcasting should be recognized including its role as a nucleus for French-language broadcasting throughout Canada.

- The principle of federal-provincial consultation is fundamental and should be pursued without interfering with the autonomy of broadcasters or regulatory authorities.

- Aboriginal peoples have a right to broadcasting services in representative native languages, where numbers warrant and as public funds become available.

- All persons authorized to operate broadcasting undertakings and retransmission undertakings are responsible for the programs they distribute except when they have no decision-making power, in whole or in part, over these programs.

- The Canadian broadcasting system should offer a range of programming that is varied and comprehensive, providing a balance of information, enlightenment and entertainment for people of differing ages, interests and tastes.

- The overall programming of each broadcaster, in keeping with circumstances in the community served, should provide a balanced opportunity for the expression of differing views on matters of public interest.

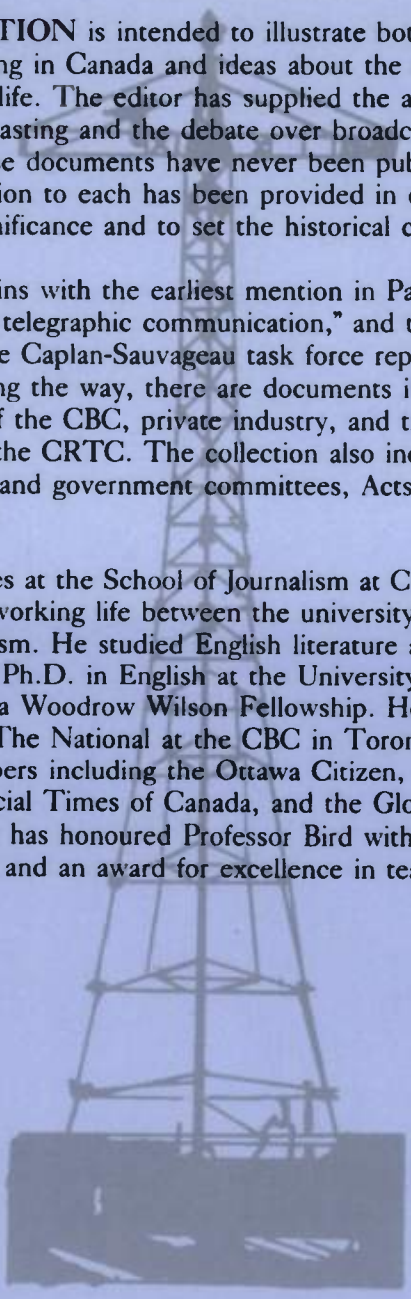
- Programs aired on Canadian radio and television should be of high standard, pursuant to commitments made by broadcasters and in keeping with recognized professional standards appropriate to the category of the undertaking.

Any new broadcasting act should obviously be founded in respect for the rights and freedoms now guaranteed by the Constitution. It should deal with all broadcasting services in Canada, including the Canadian Broadcasting Corporation.

THIS COLLECTION is intended to illustrate both the development of broadcasting in Canada and ideas about the role of broadcasting in national life. The editor has supplied the actual documents upon which broadcasting and the debate over broadcasting have been built. Many of these documents have never been published in book form. An introduction to each has been provided in order to illuminate the item's significance and to set the historical context.

The collection begins with the earliest mention in Parliament of "the Marconi system of telegraphic communication," and the latest entry is an excerpt from the Caplan-Sauvageau task force report on broadcasting policy. Along the way, there are documents illustrating the birth and growth of the CBC, private industry, and the emergence of regulators such as the CRTC. The collection also includes reports of royal commissions and government committees, Acts of Parliament, and legal decisions.

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