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"QUALITY" BROADCASTING:
EQUIVOCATION IN THE REGULATORY PROCESS

by

Suzanne Elva Scheuneman

B.A., Queen's University, '1985

THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS

in the Department

of

Communication

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ABSTRACT

This thesis examines attempts since 1968 to regulate quality broadcasting. The emphasis is on the federal regulator, the Canadian Radio-Television and Telecommunications Commission, who is required by legislation to ensure that the programming provided by each broadcaster be "of high standard".

The thesis also explores the ways in which many other players in the broadcasting arena use the concept of quality broadcasting, particularly in the context of regulation. It is suggested that any concept of quality will be a function of context, real and perceived, and vested interest.

It is concluded that the term quality, being vague yet having only positive connotations, is used by all players - regulator and broadcasters alike - to further their own goals. In any given situation there may be many definitions at work. Quality may, for example, be variously correlated with budget size, audience size, or prestigious awards.

The thesis also explores factors that are seen to be related to quality. In addition, some policy options for addressing the issue are discussed.

DEDICATION

This thesis is dedicated to Oscar and Elya Scheuneman,
whose love and guidance over the years I have treasured.

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The people I wish to thank for their words of wisdom and humour include Paul Heyer, Yasmin Jiwani, Martin Laba, Margaret MacNeill, Liora Salter, Philip Savage, and above all Frans Vandendries.

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CHAPTER I
INTRODUCTION

"The only thing that really matters in broadcasting is programme content, all the rest is housekeeping."¹

"While it is relatively easy to obtain general agreement that the programming offered by the Canadian broadcasting system should be of high standard, there is a great deal of disagreement about what is meant by 'high standard'."²

To date, discussion within and about the broadcasting industry has largely been centered on such quantitative criteria as Canadian content quotas and monetary constraints. The hopes are that by ensuring required minimum Canadian content levels and by easing the financial burden associated with presenting Canadian programming, the way will be paved to reflect, to articulate, or to create a sense of Canada to Canadians. This has been the stated objective behind much

¹ Fowler, Kenneth et al. Report of the Committee on Broadcasting. Ottawa: Queen's Printer, 1965, p. 3.

² Caplan, Gerald Lewis and Florian Sauvageau. Report of the Task Force on Broadcasting Policy. Ottawa: Supply and Services, 1986, p. 163.

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broadcasting activity in Canada and behind many regulatory attempts.

It is possible, however, that the discussion has been somewhat misguided on two counts. First, sheer volume of Canadian content will not necessarily produce the desired effect, and indeed could result in precisely the opposite effect if the material presented is of low quality. Secondly, given a minimum operating budget, it is not the case that quality will necessarily increase in proportion to increased spending. Quality, then, is not directly related to budget size. Nor is it obviously related either directly or inversely to widespread appeal. Clearly, it is an elusive concept.

Rather than the current policy practice of ensuring quantity with the assumption that quality will follow, it might be more reasonable to promote quality and to expect that quantity will follow. In order to do this, however, the concept of quality in programming available to Canadians must be thoroughly investigated and denaturalised. Yet, curiously enough, it has rarely been the object of direct scrutiny.

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What is seen by the broadcast regulator and various groups to constitute 'quality' broadcast programming and the many interpretations of the "...of high standard" clause in the 1968 Broadcasting Act provide the focus of this thesis. This has been accomplished by identifying those factors that are said to vary with quality as well as those factors which are said to vary inversely with quality. In other words, an attempt is made to isolate what are perceived to be both positive and negative influences upon quality. This should at least provide a starting point in the quest for a workable definition.

Many players in the broadcasting arena and observers might say that quality is not an issue. And in a sense, they would be right. It is relatively safe to assume that virtually no one sets out to produce an inferior broadcast product. Everyone is in favour of quality programming, at least publicly. At issue, then, is not the desirability of quality programming, but rather what constitutes quality programming.

Of particular interest is the fact that the various meanings are not in open competition. Precisely because broadcasters, regulators, and audiences are in agreement

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that quality is positive and to be pursued, it becomes vitally important to isolate, as evidenced in words and actions, the various meanings associated with the term.

The importance of uncovering competing meanings clearly has wide implications. Many, and possibly most, content issues in broadcasting -- violence on television, sex-role stereotyping, closed captioning, visible minority group stereotyping, children's advertising, Canadian content, and balance, for example, -- are often spoken of in terms of quality.

Also of concern is what is being done to encourage broadcasters to produce and to exhibit high quality programming. For this we look to the federal regulatory body, the Canadian Radio-television and Telecommunications Commission (CRTC). The Commission's annual reports provide much of the rhetoric, policy positions, and context within which decisions are made.

This thesis consists of five chapters. Chapter Two introduces the main players and explains their roles and powers. It is suggested that any definition of quality is very much a function of context and vested interest.

The main purpose of this chapter is to provide an understanding of how and why the various actors might exert influence in the regulatory process.

Constituting the bulk of this thesis, Chapter Three addresses the CRTC's attempts to regulate and supervise quality. The goal is to provide an overview and some understanding of how the regulator has handled the issue of quality. The issue of quality in major CRTC policy statements, regulations, and network television decisions is traced through the three CRTC stages. In order to make the vast wealth of material manageable, decisions and policy statements were chosen in the first section by virtue of being cited in the CRTC Annual Reports in relation to quality programming. This ensures that the question of quality was seen by the Commission to be an important aspect of the event, while aiming to preclude the possibility of misconstruing the importance of an incidental aspect. This methodology was chosen over random or periodic selection of material in an attempt to ensure that major regulatory events in which quality was an issue were not missed.

In the second and third CRTC stages the CRTC Annual Reports proved less useful. The methodology is therefore altered to include a heavier reliance on accounts in other literature for a starting point.

The thesis focusses on major events in an attempt to render it as useful as possible. Other relevant documents are briefly examined to further assist an understanding of the context and competing, or complementary, views.

The next two chapters are exploratory in nature. Chapter Four proposes a specific framework for investigating the concept of quality in broadcasting. It is suggested that there exist at least two levels with regards to which quality is discussed: the micro or paradigmatic level, and the macro or syntagmatic level.

Chapter Four also identifies some perceived elements and indicators of quality broadcasting as well as hindrances to its achievement. In an attempt to draw together previous chapters, areas of commonality among the various actors' definitions are sought and areas of divergence are shown. Although this chapter is not

central to the thesis, the curious reader might find in it moments of insight.

Based on the findings of the thesis, Chapter Five, the final chapter, suggests policy options to promote quality broadcasting and their likely implications.

The specific options explored each hinge on a slightly different set of premises.

It is regrettably beyond the scope of this thesis to examine every CRTC decision and every relevant document of the last twenty years. Instead, in an effort to determine how quality has been addressed as well as to provide a sense of how often and in what circumstances, the research focusses on major CRTC releases supplemented by pertinent documents which address quality to varying degrees.

Tracing the philosophical roots of the term "quality" is also beyond the scope of this thesis. The reader should recognize, however, that the concept is grounded in two divergent schools of thought: one stating that quality is a perceived trait and completely dependent upon the perceiver, the other stating that quality exists

independently of being perceived. Both because the duality is rejected in many circles and because it was deemed peripheral to the purpose of this thesis, the historical development of the relevant philosophical thought is not presented.

As a final note by way of introduction, it is assumed in this thesis and verified by the research that "quality" has only positive denotations and connotations. The Funk and Wagnalls Canadian College Dictionary defines "quality" thus:

1. That which makes something such as it is; a distinguishing element or characteristic.
2. The basic or essential character, nature, etc., of something: the quality of summer.
3. Excellence: to aim for quality rather than quantity.
4. The degree of excellence; relative goodness; grade: the high quality of these fabrics.
5. A moral or personality trait or characteristic: He has many good qualities.
6. (Logic) The character of a proposition or judgment in regard to its being either negative or affirmative.
7. (Music) The timbre of a voice or musical instrument.
8. (Phonet.) The character of a vowel sound as determined by the size and shape of the oral cavity and pharynx acting as resonance chambers.
9. (Archaic) High or superior social rank or birth: a lady of quality; also, persons of superior rank collectively.

~ Particularly relevant to this thesis are the third and fourth definitions. It is interesting to note that quality and quantity are placed in opposition to each

other. The relationship between the two recurs throughout the thesis.

It could be argued that in their own ways and armed with their own implicit definitions, every player in the broadcasting arena strives for quality broadcasting. It is critically important, then, to understand what this means to them and to the regulator within whose prescribed constraints they must operate.

CHAPTER II

MAIN PLAYERS: THEIR ROLES AND ASSUMPTIONS

Introduction

Every citizen is a potential participant in broadcasting regulatory proceedings, either alone or as part of a group. It is important to recognize that there therefore exist an infinite number of individual and group players in broadcasting-related issues.

This chapter identifies the roles, powers and vested interests of the main actors. The main governmental actors include Parliament, provincial legislatures, the Canadian Radio-television and Telecommunications Commission, the federal government, the federal Minister responsible for Communications, the courts, and the Canadian Broadcasting Corporation. The main non-governmental actors include industry, nonprofit organizations, and individual members of the public. Certain comments by specific organizations are chosen

for study later in this thesis by virtue of the organization being either high profile or frequent participants in the broadcasting regulatory process.

Government Actors

There are several distinct governmental and quasi-governmental actors: Parliament; Provincial Legislatures; the Canadian Radio-television and Telecommunications Commission; Government; and, the Minister.¹ The courts might be seen as a sixth.

These actors typically have very different powers and interests. At any given time there are in place both formal rules and informal, guiding principles governing the relationships between the actors and influencing the outcome of their programs and their policy and legislative initiatives. These rules range in formality from the legislation of the day to personal relationships between individuals involved. Clearly,

¹ Peter J. Lown, A Reflection of the Roles and Responsibilities of the Main Actors in the Broadcasting System (Prepared for the Task Force on Broadcasting Policy, December, 1985), p.7.

some of the governing factors are more visible and publicly accessible than others.

How the actors interact at any given time, then, is largely a function of circumstance. The variables include complex political, social, cultural and economic realities which can result, inter alia, in rapid shifts of power.

1) Parliament

It was not at all clear in 1928, when the first royal commission to investigate broadcasting was appointed, that broadcasting was to become an exclusively federal domain.

Since 1931, however, when the matter was first seriously challenged, the courts have consistently determined that broadcasting comes under federal jurisdiction.²

² 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); Re. C.F.R.B. (1973), 3 O.R. 819 (Ont. C.A.); Capital Cities Communications v. C.R.T.C. (1977), 2 S.C.R. 141; Attorney-General of Quebec v. Kellogg's of Canada (1978), 2 S.C.R. 211; Public Service Board v. Dionne (1977), 2 S.C.R. 191.

According to Lown, the basis for Parliament's broadcasting responsibilities stems from the following premises: the airwaves are deemed to be public property; broadcasting affects Canadian identity; broadcasting has an international aspect requiring treaty-making power; and, broadcasting in Canada constitutes a unitary system. Proposed new broadcasting legislation, Bill C-40, would expand the basis of federal jurisdiction. Bill C-40 states that broadcasting is an essential service, which invokes the "peace, order, and good government" power given the federal government under the Constitution Act.

The legislative role Parliament plays is perhaps one of its key functions. Parliament is responsible for making and amending broadcasting legislation and such other relevant legislation as the Canadian Radio-television and Telecommunications Commission Act.

Parliament is also responsible for appointing a Striking Committee to select members of Standing Committees of the House. The Culture and Communications Committee,

which from time to time undergoes a change in name, is one of some dozen Specialist Committees.

The Committee is selected such that parties are represented proportional to their membership in the House of Commons. Most important is the Committee's legislative function, in which it scrutinizes and refines government bills, typically after second reading. As part of this process, the Committee hears witnesses and interested parties. Based on its deliberations, the Committee makes its recommendations with respect to the bill to Parliament.

Parliament also provides an important site for struggle between the government in power and the opposing parties. Individual Members of Parliament also represent the views of their constituents and interest groups, thus bringing a richness of perspectives to the discussion.

2) Provincial Legislatures

Canada's provincial legislatures have several indirect powers over broadcasting activities in their respective

provinces. They may initiate complementary policies falling within provincial jurisdiction. They may control related commercial practices and regulate aspects of the physical plant. They may initiate programs to support broadcasting, for example, a program to extend broadcasting services to remote and underserved communities.

In addition, education falls within provincial jurisdiction. The status of provincially-funded educational broadcasters, however, has been left unclear. In 1969, federal legislation was introduced to establish the Canadian Educational Broadcasting Agency to broadcast educational programming on behalf of the provinces. It met with provincial opposition and was soon dropped. By the early 1970s, the federal government allowed provinces themselves through arm's length corporations to establish broadcasting facilities for educational broadcasting based on the 1969 agreed definition.

Quebec, Ontario, Alberta and British Columbia have their own provincial educational broadcasters, which are arm's length Crown corporations and should be considered

"quasi-governmental." British Columbia's Knowledge Network, begun in 1980, is the most recent example of the four and is currently not licensed by the CRTC. The four Atlantic provinces cooperate in the broadcast of educational programming via the Atlantic Satellite Network.

The provinces also play an important role as intervenors in regulatory proceedings, although few participate formally on a regular basis in broadcasting matters.³ Provinces may also choose to comment on broadcasting programs, white papers, bills, and other federal initiatives.

Since federal/provincial relations are so important in Canada, there may be opportunities for one or more provinces to negotiate with the federal government for the provision of programs or the adoption of policy in exchange for cooperation on another matter that may or may not be related to broadcasting. The converse situation may also arise, such that one or more

³ The governments of Ontario, Qubec, British Columbia and Nova Scotia are currently the most frequent participants.

provinces concede on a broadcasting related issue in return for cooperation in another area. This, coupled with frequent changes on the political front, make the interpretation of provincial positions complex.

3) The Canadian Radio-television and Telecommunications Commission (CRTC)

The Commission is an autonomous and independent administrative tribunal. It regulates broadcasting activity through licensing and formulating policy, for which purposes it solicits public response.

The scope of the Commission's responsibilities can be inferred from the many acts relevant to the regulator, which include the following:

- . Broadcasting Act;
- . Canadian Radio-television and Telecommunications Commission Act;
- . National Telecommunications Powers and Procedures Act;
- . Railway Act; and,

- . Teleglobe Canada Reorganization and Divestiture Act.

The Commission oversees compliance with the following sets of regulations, which it formulated after seeking public input:

- . Radio Regulations;
- . Television Broadcasting Regulations;
- . Cable Television Regulations;
- . Pay Television Regulations;
- . Broadcasting Licence Fee Regulations;
- . CRTC Rules of Procedure (Broadcasting);
- . CRTC Telecommunications Rules of Procedure; and,
- . CRTC Tariff Regulations (Telecommunications).

Through its direct regulation, it is the CRTC of all governmental actors who most influences industry activity. Its mandate and powers will be dealt with in detail in Chapter Three.

4) Federal Government

The political party in power, the government, carries out the statutory policy of the country. It sets the budget for the Department of Communications and the CRTC. It appoints board members and executives for such arm's length organizations as the Canadian Broadcasting Corporation and the CRTC.

The government is ultimately responsible for all broadcasting matters not delegated to the CRTC but within the scope of federal jurisdiction, such as spectrum management. It reports its supervision of these matters to Parliament on a yearly basis.

5) The Minister

The Minister of Communications is directly responsible for relevant legislative and program initiatives. In addition, the Minister is responsible for the relevant aspects of operation of the following acts of

Parliament:

The Department of Communications Act;

- . The Telegraphs Act;
- . The Canadian Radio-television and Telecommunications Commission Act;
- . The National Transportation Act;
- . The Telesat Canada Act;
- . The Radio Act;
- . The Railway Act;
- . The Broadcasting Act;
- . The Canada Council Act;
- . The Canadian Film Development Corporation Act;
- . The Cultural Property Export and Import Act;
- . The National Arts Centre Act;
- . The National Film Act;
- . The National Library Act;
- . The National Museums Act; and,
- . The National Archives of Canada Act.

Of course the overall priority-determining function, and therefore the importance of initiatives generated by the Minister, is performed by Cabinet. In addition, the Broadcasting Act contains provisions for Cabinet to execute certain powers as it sees fit.

6) The Courts

The courts are responsible for settling legal disputes that might arise between any of the actors.

As previously discussed, one of the earliest and most important broadcasting matters brought before the courts was in 1932, when the government of Quebec challenged federal jurisdiction over broadcasting. Quebec argued that radio receivers should be deemed provincial property under section 92(13) of the British North America Act and therefore under provincial jurisdiction. The Supreme Court of Canada ruled by a slim majority of three to two in favour of federal jurisdiction, and upon appeal the Privy Council upheld the decision. Federal jurisdiction was established by virtue of the power of the peace, order, and good government of Canada, granted under section 91, and by virtue of federal Parliament's power over interprovincial undertakings, granted under section 92(10)(a).

Over the years the courts have extended the federal government's power to regulate television, cable television, and broadcast content.

The courts may also be called upon by the CRTC in action it may take against operators not holding a CRTC licence. A licensee itself may challenge in court the CRTC's authority, for example, to impose certain conditions of licence. Other actors may also employ the courts in resolving broadcasting-related legal matters.

Canadian Broadcasting Corporation (CBC)

As the only national, publicly funded broadcaster, the CBC is an unusual actor in broadcasting. An arm's length, federal Crown corporation, it may be seen as a quasi-governmental player.

It is governmental insofar as the Minister of Communications procures from Treasury Board the large part of its yearly budget. Although it is therefore accountable to Parliament, it is given the authority to act as it sees fit within legislative, regulatory and policy constraints. These include general constraints applicable to all broadcasters and those specific

expectations and requirements it is expected to fulfill as the national public broadcaster.

Most importantly, the CBC is a broadcaster, providing services to virtually every Canadian household in English and French on AM and FM radio and on television. It also provides a specialty, subscriber-funded, all-news service on basic cable, a northern service and an international short-wave radio service.

Private radio broadcasters argue that CBC competes with them for audiences. Television broadcasters complain in addition that the CBC competes with them for distribution rights and advertising revenue.

Non-governmental Actors

Non-governmental actors include any group or individual other than the aforementioned actors who might choose to act or comment on a broadcasting-related issue.

Private broadcasters are perhaps the most obvious of these, because without their participation there would

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be no private broadcasting system. They must apply for a licence, seek periodically to renew their licence, and from time to time defend their noncompliance before the regulator.

Business principles govern the behaviour of private broadcasters. The goal is to limit expenditures while earning as much revenue as possible in order to provide shareholders with an attractive return on their investment.

Such industry organizations as the Canadian Association of Broadcasters (CAB) and the Canadian Cable Television Association (CCTA) are other non-governmental actors.

These associations perform several functions. They provide a forum for discussion among industry members. They gather information, inform members, and provide the industry with strategic plans. Equally important, they serve a lobbying function, seeking to protect the interest of their members by representing the industry's position to parliamentary committees and in formal regulatory proceedings.

These associations face some difficulties from time to time in representing industries which are comprised of companies of different sizes and from different regions. These companies might hold very different positions on any given issue, and it may be impossible for the industry association to resolve their differences to everyone's satisfaction.

Often there is much grumbling among the association's members when the formal industry position is seen to serve the specific interests of the more powerful companies. In the course of the regulatory proceeding in such a case, the CRTC may be presented both with the association's position and those of several corporations whose positions might differ substantially. When the industry does not present a united front, CRTC decision-making takes place in a less constrained environment.

Also participating in broadcasting proceedings and lobby efforts are important non-broadcasting industry lobby groups. Participating on a regular basis are such special interest groups as the Consumers' Association of Canada (CAC), the Public Interest Advocacy Centre

(PIAC), and the National Old Age Pensioners Association.

There are often groups from other industries who feel they have an interest in the outcome of a certain proceeding. Such participants include telecommunications companies, equipment suppliers, and investment analysts.

As well, politicians and other important community leaders often participate on behalf of a large group. Certain pressure groups, such as the West Coast Media Society, may form for the sole purpose of intervening in one particular proceeding.⁴ Pressure groups may be defined as "organizations whose members act together to influence public policy in order to promote their common interest."⁵

Individual members of the public may also express their opinions in the regulatory process. The Commission welcomes such input and purposefully made the

⁴ WCMS was formed as a lobby group to bring CBC service to Victoria.

⁵ Pross, Paul A. Group Politics and Public Policy. Toronto: Oxford University Press, 1986, p. 3.

broadcasting procedures less formal than those for telecommunications matters in order to encourage public participation.

Clearly, the actors are varied and numerous with many different vested interests. At any given time where their interests converge any number of them may join forces to present a strong front for the purpose of either defending the status quo or securing change.

Some of the coalitions represent obvious allies but from time to time an unlikely coalition of traditional foes forms to address an issue. While many of the basic positions of the main actors may remain unchanged over time, the environment is nonetheless a dynamic one.

CHAPTER THREE
CRTC SUPERVISION OF QUALITY

As shown, the Canadian broadcasting arena is comprised of numerous players: private and public broadcasters, various levels of government, the courts, task forces, royal commissions, special interest groups, and the regulatory agency responsible for broadcasting undertakings, the Canadian Radio-television and Telecommunications Commission (CRTC). As might be expected, many of the players differ from each other with respect to concepts of quality in broadcast content.

The CRTC, however, may be seen as a very special player. Not only does it offer another set of assumptions and a perspective that is arguably more fluid than most others since it must balance many interests, but in addition the CRTC provides a forum for discussion for the other players.

It acts, then, as observer, participant, and judge, while providing an important site for negotiation and

struggle. For this reason, in this thesis the examination of the concept of quality is largely centered around the CRTC's agenda. An important premise of this focus is that the agenda of the CRTC reflects and influences to a large degree the issues and concerns affecting the industry it regulates.

Mandate and Powers

The CRTC replaced the Board of Broadcast Governors (BBG), which was created as a regulatory tribunal in the 1958 Broadcasting Act to assume the CBC's regulatory role. In the ten years since its creation many disputes had erupted between the BBG and the CBC. The Liberal government expected the powers given the CRTC under the new Broadcasting Act to end this.

The Commission was created under section 15 of the 1968 Broadcasting Act to "regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy enunciated in section 3 of this Act." It was given powers to

prescribe classes of licences, to make regulations, and to issue, amend, revoke or suspend licences.¹

The actions of the CRTC are subject to legislated constraints, including: the Governor-in-Council's power to set aside a licensing decision or refer it back to the Commission; the mandatory reviewal of all regulations on points of law by the Clerk of the Privy Council and the Deputy Minister under the Statutory Instruments Act; and, the right of a party directly affected to appeal a decision to the Federal Court of Appeal.

The Commission's principles and actions stem from its mandate to ensure that broadcasting "safeguard, enrich, and strengthen the cultural, political, social and economic fabric of Canada", and from the legislated premise that the airwaves are public property. The CRTC imposes programming and other requirements on broadcasters in exchange for providing them with the use of a scarce frequency and protection from undue competition.

¹ It cannot, however, revoke or suspend the licence of the Canadian Broadcasting Corporation.

It is important to note in section 16 of the Broadcasting Act that among the regulations the Commission may make is specified those "respecting standards of programs and the allocation of broadcasting time for the purpose of giving effect to 3(d)." Not only should the programming be "varied and comprehensive", but subsection 3(d) further states that "...the programming provided by each broadcaster should be of high standard using predominantly Canadian creative and other resources."

Specifically, subsection 3(d) of the Act declares:

...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.

With respect to addressing and interpreting quality an important factor appears to be the close proximity of "high standard" with "varied and comprehensive" and with "Canadian." They become almost, but not always, inextricably linked in CRTC theory and rhetoric, and often in its decisions.

The reasoning behind this section is elaborated in the White Paper on Broadcasting, published on July 4, 1966. One section is entitled "Programming", and is worth quoting. Although brief, it provides an excellent and seminal treatment of the concept of quality programming.

The paper states that private broadcasters have a 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." But, the paper states, standards of quality should not be formulated on a universal 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.

Quality was, then, linked early on to two other factors: diversity and financial cost. It was also recognized that the same level of commitments should not be required of all broadcasters, suggesting that it would be appropriate to use conditions of licence rather than regulations to achieve quality.

The paper goes on to examine the concept of quality broadcasting:

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 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.

The important suggestion here is that while it is difficult to impose quality requirements, levels of programming quality can be recognized and should be factored in to licence renewal decisions.

In the twenty years of its existence, divisible into three regulatory phases², the CRTC has put forth many notable decisions, regulations and policy statements which address quality indirectly by claiming it as an objective. Through each phase, the quality issue is traced in prominent CRTC 'events', including regulations, decisions, and policy statements. These

² Liora Salter, in Issues in Broadcasting, identifies three phases: Pro-Active (1968-73/5), Managerial (1975-1981/3), and Supervisory (1982-).

involve the introduction and amendment of policies and regulations expected to have profound implications for quality programming and the addition, reaffirmation or entry denial of significant new players.

Prominence has been established by the importance attributed to the event in the CRTC annual reports and in the literature on broadcasting, academic and otherwise. Where relevant, related statements and developments, particularly those pertaining to cable, are briefly noted.³

Pro-active Phase (1968-73/5)

According to Salter, this phase was characterized by an "initiatory" and "innovative" regulatory stance. In this phase, the Commission did employ the term "innovative" frequently.

³ Since cable operators are mainly concerned with content either strictly from a distributor's point of view, or as a regulatory requirement in the case of the community channel, the cable issues will be dealt with only peripherally.

Salter further notes that there was "...a willingness to deal directly with issues concerning the quality of programming content."⁴ While this was certainly true, the Commission would prove itself to be vulnerable to opposition. It would frequently appease vocal broadcasters by modifying its original policy proposals in their favour, and by licensing a second private Canadian network when, according to some, circumstances suggested this might not be in the public interest. This phase, then, is marked by a striking ambivalence in the actions of the Commission, in spite of its strong verbal stance and noble intentions.

In these important early years, the Liberal appointed Commission came under the philosophical and articulate direction of Chairman Pierre Juneau.⁵ Harry Boyle, from the CBC, was appointed vice-chairman. Under Juneau, the Canadian Radio-Television Commission, as it was then named, sought to put into effect policies which might encourage quality programming.

⁴ Liora Salter, p.4

⁵ Juneau had been appointed to the BBG in 1966. He would later assume the presidency of the Canadian Broadcasting Corporation.

As early as 1968, Pierre Juneau was ostensibly concerned with ensuring quality programming on the Canadian airwaves:

We don't want to throw our weight around with broadcasters, but there is no doubt that Parliament - and presumably the public - has an expectation that broadcasting can be better. Under the new law we have the right to attach conditions to the granting of a license <sic>, or group of licenses. We can demand more quality, particularly from the big and profitable stations. When a new application is received we can ask, what new will you have to contribute that isn't already being provided.⁶

The last statement clearly linked quality to diversity. There was apparently no doubt in the Chairman's mind that quality should be improved, and that the Commission had the right to demand it.

As a package, however, the events of this phase betray the Commission's vulnerability. On the one hand, there are the Canadian Content Regulations, the institutionalization of the community channel, and the FM Policy. In terms of addressing quality these were positive steps, although both the Canadian Content Regulations and the FM Policy had been weakened from the

⁶ "The public has an expectation that broadcasting can be better." Financial Post. 6 April, 1968, p.6.

proposal stage - the former considerably -in response to political pressure and private sector intransigence.

The Global network licensing, on the other hand, has been called "one of the most destructive acts in Canadian broadcasting history."⁷ Although this is perhaps an unduly harsh statement, it does confirm that this phase should not be seen as one of unqualified success. Indeed, it could be argued that many opportunities open to a new agency with no established record of behaviour were lost.

At its outset, however, the new regulatory agency did make every attempt to deal directly with the issue of quality. In its first year it denied nine radio licence renewals. The first annual report noted, "The quality of broadcasting emanating from radio AM sources is a predominant and continuing concern..."(p.8).

Similar concern was expressed with regards to FM, as well as an intention to see "distinctive" programming on

⁷ Herschel Hardin, Closed Circuits: The Sellout of Canadian Television. Vancouver: Douglas and McIntyre, 1985, p.47.

FM stations. That the Commission was serious about this is reflected in the reasoning behind four FM application denials (Decision 68-3):

FM channels are public assets and the CRTC is determined that they be developed in such a way as to contribute to a more varied program service which will complement and enrich services already available from existing sources.

The four denied stations had failed to demonstrate to the Commission's satisfaction how they would do this. In terms of identifying the important issue of quality programming and acting on it, it was a promising start for the new Commission.

In May, 1969, the Commission made its first CATV policy announcement, stating that a prescribed order of precedence must be given to the various services available. This shows the relative significance of types of stations to the Commission's perception of what is in the public interest. First priority was to be given to CBC, second to private Canadian networks, third to independent Canadian stations, fourth to local and educational programming, fifth to non-Canadian stations, and lowest priority was to be given to duplicate channels. The low placement on the list of American

stations demonstrates the Commission's strong commitment to the goal of maintaining a vital Canadian presence on the airwaves.

By the year's end, the Commission had strengthened its resolve by announcing its decision not to license broadcasting receiving undertakings based on the use of microwave or other systems for the wholesale importation of programs from distant U.S. stations. This public announcement on CATV (December 3, 1969) conceded that "Certainly Canadians should not be denied access to the best material available from other countries." Exactly how one was to determine what constitutes "best" or how to selectively allow its entry were not addressed.

The announcement also voiced the fear that "The Canadian broadcasting system...must now improve rapidly or risk disappearing...." The Commission tried to speak meaningfully in terms of "the Canadian broadcasting system", a term taken from the 1968 Broadcasting Act where it was stated in legislation. The notion of a single broadcasting system in Canada is a loftly theoretical concept but a problematic one. There are, for example, few structural safeguards in place to

ensure that the public and private elements complement each other.⁸ The term, however, is frequently used in early annual reports.

In the proposed advertising regulations (February 12, 1970), the Commission again spoke of quality.

Advertising was to be permitted 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." Again, this improved quality was not explained, measured or regulated.

Clearly, no workable definition for quality had been established, and in its absence quality could not be so easily implemented as, for example, the community channel through conditions of licence or as Canadian content quotas through regulations.

⁸ Indeed, the severe under-financing of the CBC and the unreliable, year-to-year manner its budget has traditionally been determined in Parliament has required the public broadcaster to resort to advertising and commercially successful American sitcoms. This puts it in the awkward position of competing with, rather than complementing, the private sector.

In July, 1971, the community channel was first required as part of the basic service. The Commission stated that cable systems must emphasize "ways and means to develop programs rather than hardware systems." This appears optimistic given that, for the purposes of profit, cable operators are only in the business of distribution (irrespective of the activities engaged in by their parent companies' holdings). By offering local programming free of advertising and financed through cable company profits, this channel was expected to extend the range of programming available.

Towards the end of this phase, the Commission required numerous licensees to provide programming "significantly different" from that of other licensees in the area.⁹ In 1975, the Commission stated that cable's need for quality Canadian programming to distribute and its own contribution to programming channels make it a significant, growing part of the system. Once again, it

⁹ See, for example, Decision 74-120. Some applicants were denied licences on this account. Foothills Broadcasting was denied an AM radio licence in Calgary because programming plans did not "offer sufficient diversity from what is already available in the Calgary area." They were encouraged to improve the quality of service for the licences they did have (74-433).

is unclear what is meant by quality Canadian programming.

The Canadian Content proposals (70-99) were heralded as "revolutionary" in newspapers and magazines.¹⁰ While stronger than the BBG regulations they replaced, the actual regulations implemented two years later showed a markedly weaker stance than did the proposed regulations. A public hearing and outrage on the part of the Canadian Association of Broadcasters (CAB), who challenged the regulations on constitutional grounds, effectively softened the original proposals.

From February, 1970, when the intention to revise BBG regulations was announced, to the final adoption in July, 1972, the content proposals underwent five modifications. The disparity between the original, bold proposals and the actual regulations is remarkable. For example, in their final form the regulations provided that quotas would be averaged over the full broadcasting year rather than over the originally proposed four week

¹⁰ See, for example, Robert Fulford, "Juneau's Revolution: Making TV History," in Saturday Night, March, 1970.

periods, the prime time period was extended by an hour, and a special co-production clause was introduced. In addition, the maximum foreign content quota in prime time was raised from 40 to 50%, with no restrictions by country of origin, as had been proposed.¹¹

During this period the Commission also backed down on its CATV policy, deciding instead to strive for "vigorous development" of cable television and its integration into the Canadian broadcasting system. This was largely a result of pressure from Members of Parliament serving remote regions.

In spite of the Commission's official independent status, the precedent of demonstrating such sensitivity to the concerns of the CAB and, more importantly Parliament, had been set early on in the life of the Commission. Although the regulatory stance may have been initiatory and the intentions noble, by the time

¹¹ In all fairness, the Commission possibly recognized that its original proposals were unrealistic. Indeed, in light of the difficulty the Commission has since experienced in securing compliance, this is likely.

initiatives were enacted they often had been significantly altered.¹²

The process of negotiation, then, is a clear determinant behind any set of regulations emanating from the CRTC. This is important to recognize, because while no player in the broadcasting arena can be said to act in a vacuum the CRTC, through public hearings and acceptance of submissions, actively seeks advice from other concerned players.¹³ Under sections 19 to 21 of the Act, it is only with regards to licensing decisions - with the exception of amendments - that the CRTC is required to call a public hearing. Yet from the start the Commission set a tradition of calling public hearings for input on all facets of its responsibilities. In its first three years, the CRTC held hearings relating to FM policy, Canadian content regulations, and cable television licensing policy.

¹² It is also notable that, although the CRTC solicits input from all interested parties, revisions to policy proposals are typically made in the interest of industry. This is not surprising since industry usually is the most well-informed and well-financed intervenor.

¹³ Associations, of course, solicit advice from their members but the input they seek is from a select group.

The CRTC's interpretation and subsequent implementation of the dictates of the Broadcasting Act are bound to be influenced, albeit to varying degrees, by vocal parties. But the CRTC is not required to accept any public recommendations, and could conceivably act in complete disregard of them. Over the years, however, the Commission has shown itself to be highly sensitive not only to public and political comment, but also to the demands of private broadcasters. The Canadian content case, while no doubt a sincere attempt to establish new heights in Canadian broadcasting, revealed this new Commission's flexibility perhaps for the first time.

The theory behind Canadian content regulations is worthy of examination because the debate is a heated, ongoing one, surfacing later with some force during the 1982 pay-TV hearings. The regulations represent an attempt to have broadcasters act in a way that is not profit-maximizing behaviour, namely, to exhibit prescribed quotas of Canadian material. It is a generally accepted fact that Canadian programming both costs more to produce on a per capita basis and also generates less

advertising revenue because it is less popular than traditional American fare.

The quality of the Canadian material, however, is not addressed much less regulated, and is therefore left to market forces. Arthur Seigal has noted:

The CRTC recognizes that Canadian content regulations in their present form do not work, for there are no requirements or incentives for private broadcasters to produce quality programming....¹⁴

The quotas, however, may be seen to have worked insofar as they succeeded in stimulating artistic development, which has been most dramatic in the Canadian recording industry. However, there are no complementary regulatory or policy safeguards in place to ensure that the actual Canadian material presented to fulfill the requirements is of high standard.

Even if the quotas were met, then, much of the programming could conceivably be modelled on the American formula, thereby following the letter but not the spirit of the regulations:

...while there remains a widespread commitment to the Canadian-content policy, there is increasing

¹⁴ Arthur Seigal, p.182

recognition that by itself this regulatory measure is not sufficient to produce a balanced, varied selection of high-quality Canadian sound recordings.¹⁵

The situation is even more grim for television because of the substantially higher costs involved in television production. It is hardly surprising that private broadcasters consistently fail to meet the requirements, which are often adjusted downwards through conditions of licence. There is very little incentive to fulfill the requirements, aside from avoiding the public reprimand of the CRTC and the cost involved in being called to a hearing, because rarely does the CRTC deny renewal to a licensee in non-compliance, particularly if the licensee makes every effort to demonstrate that the financial burden associated with the quota requirements would be crippling. The Commission has never denied a television broadcaster's licence renewal application. The regulator has often come under attack for its tradition of admonishing the offender yet renewing the licence.

One wonders how successful the regulator could be in encouraging quality when it has trouble enforcing the

¹⁵ Paul Audley, p.182

simpler quantity measure. For although there are problems in defining what constitutes a Canadian program, there are many more problems in determining by what criteria quality should be assessed.

By 1972, the Commission had formally recognized that there exist many ways of determining quality:

Program quality can be measured by a variety of standards such as degree of critical acceptance, audience achieved, awards granted, or foreign sales success.¹⁶

It can be assumed that these all were seen as valid measurements of quality, since the Commission offered no accompanying commentary.

However, American programming was clearly isolated as a threat to quality Canadian programming. The Commission conceded that acceptance of the American program models make it a challenging task for Canadian programming to succeed. For this reason, the Commission noted in detail and with interest:

...those programs or trends in Canadian production that diverge from standard formulas and themes, that are innovative, that extend program variety and

¹⁶ CRTC Annual Report 1971/72, p.11

comprehensiveness or raise the general standard of Canadian programming.¹⁷

The Commission made remarks on specific programs which were grouped according to "program intention." Three divisions were identified: "Conventional Programming," consisting of original television drama, music and variety, news and public affairs, and synthetic history; "Explication," consisting of television essays, service information, and information for young people; and, "Active Community Programming," characterized by community participation and access.

It is unfortunate that the practice of making lucid observations for each of these categories was not adopted as a regular feature of the annual reports. The annual report was condensed the following year, and this feature was dropped altogether in 1975. Part of the reason might be that increasingly the Commission was diverted by growing responsibilities.

Just when the new regulator might be achieving some degree of confidence and authority, the regulatory pace

¹⁷ Ibid, p.14

quickenēd dramatically. There were, at this point, hints of the Managerial phase to follow.

The 1972/73 year was eventful. In the election the Liberals won again, but this time emerged with a minority government.¹⁸ The Anik satellite was launched, extending service to isolated northern communities and, according to the Commission, promising more diverse forms of television emanating 'live.' The Commission established a class of licence for student-operated broadcasting undertakings. The cable transmission capacity was growing, the converter service had been approved (which meant that subscribers could receive signals above channel 12), and the Commission approved the first network of cable systems for local programming. The French network, TVA, had been in operation for over a year.

During this time, the Commission denied three applications for a third television service in

¹⁸ This may be said to have had the effect of making the government more politically sensitive. The Liberal-appointed Commission, then, although theoretically independent from the government, might have felt some pressure to regulate with moderation.

Vancouver, saying they did not "adequately reflect the potential of a rapidly growing city with the unique cultural possibilities inherent in its location and people" (Decision 73-398). As well, it denied CBC's radio program policy proposal (Decision 72-197) because it seemed to:

... exhibit a concern with audience ratings, which are influenced more by standards of commercial popularity than by standards of program distinctiveness and excellence.

Of course, the Commission's expectations are different and possibly higher for the publicly funded broadcaster.¹⁹ The above statement is telling, however, insofar as audience ratings are distinguished from distinctiveness and excellence. Yet the Commission spoke in similar terms when approving Global Communications Limited's application for a television network licence.

¹⁹ In the FM policy of 1975, for example, the Commission states that "Canadians ... expect that their support of the CBC through public funds will assure them a programming service which is national in scope and purpose and of a standard that would be difficult for strictly commercial broadcasters to attain." (p.14)

1) Global Network Licensing

The Global public hearing was held in September, 1971, and in July of the following year the licence was approved (Decision 72-224). The Commission concluded that "the implementation of Global's commitments will play an important part in the building of a balanced Canadian broadcasting system, predominantly Canadian in content and character." Because Global had stated an intention to develop programs using creative resources of independent Canadian producers and production houses, the Commission reasoned that the Global licensing would develop the Canadian broadcasting program industry.

Global did not begin operations until 1974, by which time its original management had been replaced. In the meantime, the federal government released Proposals for a Communications Policy for Canada (March, 1973). In its annual report, the Commission saw fit to quote from this green paper, noting that:

Of great importance ... for the further development of broadcasting functions is the Paper's insistence on ... growth in the ability of Canadians to provide "fuller and more diverse Canadian sources of

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information, entertainment, and cultural and educational material of excellent quality."²⁰

The Commission's rhetoric had been unmistakably firm from the start, and it frequently cited the government as support. Not only was the range of programming to grow, but the programming itself was to be of high quality. It would be unclear how licensing the Global network, however, would do much to help realize the stated goals and mandated objectives of the CRTC.

It was not necessarily the licensing of a private network per se that was unwise, although some would argue this.²¹ Others have suggested that private industry consolidation of resources will foster the development of Canadian television fare:

If private television in Canada ... is going to begin to make a ... contribution to financing prime-time Canadian entertainment, the resources of the industry will have to be pulled together at the national level to a much greater degree than at present.²²

²⁰ CRTC Annual Report 1972/73, p.4.

²¹ See, for example, Herschel Hardin's Closed Circuits..

²² Caplan and Sauvageau, p.451.

Rather it was the terms under which the Commission approved the licence that in retrospect might appear naive. Global was expected to be "a new national program service." It never did extend beyond central Canada. Indeed, the entire operations came dangerously close to collapsing only three months after the network went on air. On April 3, 1974, the Commission called a public hearing for April 10, 1974, to consider the application to transfer effective control of Global. This gave interveners only five days to respond.

Perhaps in part to save its own reputation for licensing Global in the first place, the CRTC approved a takeover bid by IWC Communications and Global Ventures Western (Decision 74-83). However, the Commission registered concern "that the ability of Global to maintain the quality of its programming ... not be imperilled...."

For this reason, and without elaborating on what was meant by "quality," an increase of commercial time from eight to ten minutes per hour was approved.

Global was expected to stimulate Canadian production and to play an important part in creating a balanced system.

But Allan Slaight himself, Global's President, stated very clearly in 1974:

There is no point in anyone kidding himself. The reason Canadian television thrives is U.S. and British programming.... We at Global will proudly present good imported movies and good game shows.²³

It is, therefore, hardly surprising that in a study of program balance and diversity for 1974/75 it was discovered that Global had the lowest diversity indexes for prime-time and for Canadian programming in prime-time.²⁴ It did, however, have the second highest amount of "information," the classic inexpensive yet attractive Canadian programming source. The authors concluded that the CBC-owned stations provide the best balance and diversity, and that "The least diversity is found in the programming of Global."²⁵

The CRTC itself had studied Global's programming since the transfer and found its information to be

²³ Globe and Mail, September 5, 1974.

²⁴ McFadyen et al., "Program Balance and Diversity by Network," Table 11.2, p.202.

²⁵ Ibid., p.204.

"commendable in terms of both quality and quantity", again without defining how quality was measured or evaluated. It also found, however, that Global was "providing virtually no support, encouragement, or outlet for independent Canadian program production; nor is there any immediate prospect of improvement in this situation."²⁶

In 1976 the Commission called a public hearing on the matter, stating:

The Commission reminds broadcasters that Canadian content requirements are not simply a matter of quantity, for Section 3 of the Act also requires that "...the programming provided by each broadcaster should be of high standard..." Thus, while the Commission notes Global's desire to meet the Canadian content requirements in the 1975-76 year now in progress, the Commission will be equally concerned about the quality of the proposed Canadian content programming.

Without regulatory requirements pertaining to quality, however, the Commission has little recourse at licence renewal.

At the public hearing on November 4, 1976, Global was chastized for not upholding many of its promises of

²⁶ CRTC Annual Report, 1975/76, p.8.

performance since the ownership transfer, including support of Canadian independent program production and levels of Canadian content. Upon expiry, however, the licence was renewed in 1977.

2) FM Policy

Nonetheless, the Pro-Active phase may be said to have ended on a promising note. One of the more focussed and determined regulatory efforts to promote quality programming is the FM Policy of January, 1975.²⁷ It generally has not been favoured by FM broadcasters who argue that it imposes unduly restrictive constraints and for that reason must be viewed as a qualified success. It is, however, arguably the most serious CRTC effort to address quality to date.

The use of the technology of frequency modulation was dealt with at a time when the spectrum was opening up. FM radio was therefore in the historically unusual position of having been very much shaped by CRTC

²⁷ It was revised in July of that year, and put into effect in September, 1976.

regulation; it was not only constrained but also constructed by the policy.

The Commission held public hearings on FM licensing policy in 1969 and 1973, and while the policy was being developed, from 1972 to 1975, no new commercial FM stations were licensed. The second hearing, in October 1973, was for the Commission to consider responses to its policy proposals and the new content categories. At the hearing, the Canadian Association of Broadcasters (CAB) said the CRTC should make individual deals with each station rather than setting high overall standards. Conditions of licence, it was argued, were preferable to regulations.

Journalist Blaik Kirby of the Globe and Mail remarked on the hearing thus:

You can't really blame the broadcasters, for their basic business is not making programs but selling advertising. If the CRTC applies such high standards to FM that audiences aren't big enough for the advertisers, then the stations are going to have some very lean times. For the CRTC policy to succeed may require a revolution in the ad industry, in which mere head-counts are no longer the only thing that matters.

The journalist's premise here is clearly that high quality programming is high-brow and attracts a small audience.

Unlike in the Cancon case, however, the Commission went ahead and put into effect a radically innovative set of regulations.²⁸ They are worth examining in some detail.

It is significant that the final document is entitled FM radio in Canada; a policy to ensure a varied and comprehensive radio service. "Radio service" presumably refers to the radio system as a whole. The Commission specifically laid out FM regulations with the existing Canadian radio system in mind; they are aimed at avoiding duplication on FM radio of typical AM programming.²⁹ Such programming is based on the "Rolling Format," musical recordings interspersed with

²⁸ Although concessions were made in response to the March, 1975, hearing (e.g. reduction of total foreground programming required), the 15 minute period minimum for foreground format was retained and the bold, new spirit of the regulations kept intact.

²⁹ The industry has often argued, and not without validity, that there is nothing inherent in the method of FM delivery that suggests a format be adopted that is different from AM.

time, weather, and traffic announcements. The Commission felt that FM radio had quite another calling from AM:

There has been a widespread expectation that FM would provide an alternate radio service of higher quality.³⁰

The regulations were ambitious: "The expansion of FM in Canada must be accompanied by the expansion of imagination and creative resources and capacity in Canada." The terms "quality" and "high standard" are frequently used throughout the document, and an apparently sincere, concrete attempt is made to address what is meant by such terms and how to promote such programming.

In the rhetoric of the preamble, quality is variously correlated with the following: degree of significance to its audience involving the station as point of origin; presentation of the best in any field; and, programs that meet and broaden tastes and needs.

³⁰ FM Policy, p.5.

From the start, the Commission makes it clear that it dismisses the high culture/low culture dichotomy:

The Commission believes that the best can readily be distinguished from the trivial by expert and public alike....³¹

This is an extremely interesting statement, for implicit is the idea that high quality programming possesses cross-sectional appeal. Indeed, an argument could be made that cross-sectional appeal is an indicator of quality.³²

Perhaps the most significant feature of the new policy, certainly for quality, is the introduction of a replacement set of program content categories, in particular the "foreground" category:

It is intended that these new content categories... will stimulate a broader range of high quality programming... and contribute to the establishment of a clearly distinct style of FM programming.³³

³¹ FM Radio in Canada, p.3.

³² It is conceivable, of course, that a program could possess quality but for reasons such as lack of promotion has not demonstrated cross-sectional appeal. It may not be a necessary factor, then, although it may be a sufficient one.

³³ FM Policy, p.5.

The other aspects of the policy - ownership regulations, the AM/FM simulcasting prohibition, reduction of commercial time, commercial-free community access time, and the new FM application form - seek largely to protect these categories in practice, thereby expanding the range of programming on the airwaves.

Foreground programming is defined as that which requires "active attention on the part of the audience." The category replaces the BBG's Arts, Letters and Sciences category, and must constitute 12 per cent of programming for FM licences and 20 per cent for joint FM licences. To qualify as foreground, a presentation of at least 15 minutes in duration must be unified by theme, subject or personality.

Three other program format classifications are given. The "gramophone" format consists of the uninterrupted presentation of music. The "rolling" format, as previously mentioned, is much the same as the gramophone format but with the addition of surveillance material. Lastly, the "mosaic" format refers to any other type of program presentation.

To explain and justify its new foreground requirement the Commission rejects the assumption that listeners use radio as background, and asserts that this fallacy has led to a lack of foreground programming. Further as a result of this assumption, radio schedules have been typically "imitative rather than innovative", and prior to 1975 the range of interests of all Canadians had not been met.

Not only are the FM stations to differ in terms of programming content from the AM stations, but they must be distinguishable from each other as well. The radio regulations were created to achieve the former. To achieve the latter, the Commission relies upon the licensing process and Promises of Performance:

The Commission does not intend to permit... an absence of diversity on FM and will use the licensing process to evaluate the contribution of applicants to the diversity of service available to the community in the area of programming.³⁴

In this way, the Commission hoped to encourage a wide range of programming proposals which would differ from station to station within market areas.

³⁴ FM Policy, p.13

The Promises of Performance are submitted as detailed commitments on the application form, and are ultimately attached to the licence along with any modifications resulting from the public hearing that the Commission sees fit. Applicants are required to set out their commitments under 10 sections: Language; Network/Affiliation; Duration by 18 content categories; General policy for spoken word, for music, and for promotion; Canadian content; Automation; Format; and, Scheduling. Along with the explanation of these categories the Commission states an expectation that FM licensees give deep treatment of news and that they fill local programming gaps and develop community talent and resources.

Although the document certainly reflects a thorough prescription for content, the legislated requirement that the broadcasting system use "predominantly Canadian creative and other resources" is clearly not satisfied by this policy. FM stations playing popular music need fulfill only a 20 per cent Cancon quota, which was intended to reflect the amount of available Canadian music while encouraging its growth. This drops to 10

per cent for stations playing mainly instrumental music. It appears that, in the attempt to address quality, Canadian content was sacrificed. Nonetheless, for the purposes of defining and promoting quality, the FM Policy represents a regulatory high point which to this day may well not have been equalled.

Throughout the public discussion surrounding the new FM policy the industry had much opportunity to comment.

E.S. 'Ted' Rogers, President, Radio Rogers Limited of Toronto, spoke thus:

...freedom will be endangered by a government who wants to use control over programming, detailed control over programming, to foist its will upon the public.

And, therefore, I think we as an industry have a responsibility to the citizens within our community to be on guard against this.... We must remain vigilant and on guard against the small groups of elitists who think that the public is stupid and does not know what it wants.³⁵

While there is some logic to this position, it must be pointed out that in the absence of exposure to certain

³⁵ Canadian Association of Broadcasters, eds., FM of the Future: A Creative Programming Seminar, Reference Paper No. 1, Ottawa: 1974.

material the public could not possibly be expected to exert influence in the marketplace to bring it about.

Also in 1975, in its cable policy, the CRTC decided that it was "premature to introduce a comprehensive pay television service into Canada at this time." The regulator rather chose to study extensively how pay-TV should best be introduced before approving it. In mid-1976, then Minister of Communications, Jeanne Sauvé, stated that pay-TV must provide a greater range of programming, ensure the production of high quality Canadian programs which Canadians will watch, and ensure that programs are produced in Canada for international sale. Pay-TV was to surface again in the early 1980s as an important issue.

In its 1974/75 Annual Report, the Commission noted that it had licensed community and non-commercial FM stations on an experimental and case-by-case basis and that they "provide examples of innovation in the areas of program formats and audience feedback." (p.3) In issuing three community FM licences that year, the Commission also remarked that it placed importance on "originality and

quality of programming plans, and the potential for community service."³⁶

In this Pro-Active phase, the Commission very rarely took severe disciplinary action. Of the 1,144 licence renewal decisions from 1969-75, there were only eight cases in which the Commission announced its decision either not to renew the licence or to revoke it.³⁷ Only two of these cases concerned the licensee's performance.

There were, however, 49 short-term renewals of which, according to Babe, ten "dealt directly with concerns over the quality of programming." Short-term renewals, while not as drastic a measure as either refusal to renew a licence or licence revocation, do serve to signify the Commission's displeasure. Short-term renewals are also costly, requiring the applicant to go through the licensing process sooner than otherwise necessary.

³⁶ CRTC Decisions 74-116, 74-155, and 74-388.

³⁷ Robert E. Babe, Canadian Television Broadcasting Structure, Performance and Regulation, p.183.

As a whole, the Pro-Active phase was one of obvious good intent on the part of the Commission. One senses that the Commission truly believed great things could be accomplished through regulation for the improvement of quality broadcasting.

A real attempt was made to deal with the concept of quality programming and to encourage it, both in specific programs and in the range of programming available. The FM Policy stands out as the single most initiatory and innovative event.

The Cancon proposal and the original CATV stance were also bold initiatives, but on these matters the Commission retreated. When Global came close to bankruptcy, the very competence of the Commission in determining licensee suitability was brought into question. Nonetheless, in light of the next two phases, the Managerial and Supervisory phases, the Commission in this first phase may be regarded as having been both initiatory and innovative.

Managerial Phase (1975-81/3)

Salter describes CRTC regulation in this phase as "managerial in orientation, reactive and flexible."¹

This was in part attributable to Communications Minister Gérard Pelletier's new communications policy. Under this policy, the CRTC assumed the duties of the telecommunications committee of the transport commission which was responsible for regulating federally-chartered telephone and telegraph companies, telex, broadband, and other telecommunications operations and rates. This came into effect on April 1, 1976 under the CRTC Act. To handle its added duties, the permanent Commission was increased from five to nine members. Harry Boyle became the Commission's new Chairman.

In this phase, Salter notes, "In the context of decisions focussed on the system as a whole, regulation of program content -- the quality of service -- seemed somehow less appropriate. In several hearings the CRTC fumbled with the issue of quality in programming,

¹ Liora Salter, Issues in Broadcasting, p.5.

fearing the complaint that it would be labelled as a censorship body."²

She also notes that in this phase the Commission centered its attention in broadcasting regulation on the concept of the rights of all Canadians to receive the same range and choice of services. Whereas in the Pro-Active Phase the Commission sought to address quality in terms of specific content (as in the FM Policy, for example), in the Managerial Phase it focussed on the range of services available in each market. Towards this end, the Commission decided to rationalize the licensing of stations within a market.

1) Cable

Policies and regulations involving cable operations are important to the discussion of quality insofar as they deal with the question of the composition and quality of the content package. The cable regulations came out on November 26, 1975, and were followed on December 16 by

² Ibid., p. 6.

the "Policies respecting broadcasting receiving undertakings (cable television)."

Listed first among the objectives for cable television in the policies is to "make a contribution to the quality and diversity of the Canadian broadcasting and program production industries." (p.3).

The concept of diversity was certainly not a foreign one to the cable industry. Cable operators profit by distributing broadcast signals (and other programming and non-programming services) where customers cannot otherwise receive them with conventional antennae ("off-air"). In order to successfully convince potential customers to subscribe to cable service, therefore, it is apparent that the cable operator must offer services above and beyond those that can be picked up free of charge in that area. In the course of doing business, then, cable operators will necessarily contribute to the diversity of programs available.

They would not naturally be expected, however, to contribute to the diversity and quality of the broadcasting and program production industries. This

could have been done through a tax on cable revenues which in turn could have financed broadcast program production, however, this has never been pursued.³

The approach the Commission decided to take was rather to require cable operators to establish "community channels." As previously mentioned, this first came about in July, 1971, when the Commission issued its public announcement, "Cable television - the community channel." This notice required cable licensees to distribute as part of the basic service a locally-produced community channel.

Since stable financial support was deemed essential, the Commission expected, but did not require, that 10 percent of gross annual revenues would be put towards the operation of the community channel. The major portion was to be spent on program production. In its 1974 cable policies, the Commission reaffirmed the importance of the community channel, and stated that the programming offered on it "should be distinctly

³ There does exist a tax on cable rates which is used to finance Telefilm, however it is at the level of the subscriber and is largely used to finance film production. It is not regionally allocated.

different from the programming offered by radio and television stations serving the licensed area." (p.17 of policies). In addition, the technical quality was to be acceptable.

The community channel requirement might be seen as another effort on the part of the Commission to ensure that the range of programming on the air was as wide as possible while encouraging Canadian, and specifically local, content. Also towards this end, the cable regulations required licensees of systems of 3,000 or more subscribers to carry the signals of certain radio stations licensed by the Commission.

An interesting private industry argument with respect to quality is noted by the Commission in its 1975-76 Annual Report (p.21). The Commission had published its public announcement, "Financial disclosure relating to cable television undertakings," on October 28, 1975.

According to the Commission, cable companies had argued for financial information to be treated as confidential because, "financial disclosure might result in undue emphasis being placed on financial and economic factors to the exclusion of other more important considerations

such as quality of service." It is interesting that the importance of quality, although likely intended to refer to technical matters, is placed above the importance of factors which would relate to the actual cost of the service. Invoking quality here serves the cable industry's goal of keeping financial matters confidential. On another level, however, it could be argued that it prevents intervenors from making statements which would relate the operator's financial information to quality of service.

One can conclude from this brief examination that the Commission did not see cable operators solely as distributors of programming. They were expected to contribute to the diversity of programming available not only in the normal course of doing business, but also by funding and managing a local community channel.⁴

⁴ Interesting enough, over the years the cable industry has found its community channel commitment to be particularly useful in maintaining contact with politicians and other community leaders, who may provide assistance through intervening in support of a licence renewal or takeover application. In addition, originating programming has allowed the cable industry to argue successfully to continue to be viewed and regulated as a broadcaster rather than a telecommunications carrier. The latter would imply submission to the more onerous rate-of-return regulation and filing of intercorporate transactions.

At the time of writing, the CRTC has issued a call for comments on revisions to its community channel policy (Public Notice CRTC 1990-57). The Commission is proposing to make it a regulatory requirement that cable operators contribute 5 percent of gross basic cable revenues to community programming.

2) CRTC Procedure

The issue of quality arises frequently in disputes over proper CRTC procedure. It is, from time to time, recognized that quality may be a function of certain procedures. A good example of this from 1976 is the renewal of the broadcasting receiving licence for Victoria Cablevision.

It was known that the Victoria system was consistently one of the most profitable cable operations in Canada. A local grass roots organization, Capital Cable Co-operative, put in an application for the licence when it came up for renewal. The CRTC, however, refused to hear

the application and accorded the group only intervenor status.

Upon appeal, Honourable Mr. Justice J.E. Dube of the Trial Division of the Federal Court of Appeal overturned the CRTC decision. Both have a right to be heard, he ruled, although Victoria Cablevision has a prior right if in full compliance with the terms of its licence. He also suggested that more competition would greatly assist the CRTC in achieving its objectives, and that by failing to hear other applications the CRTC might pass by "better and more acceptable alternatives."

Furthermore, he stated:

It is contrary to the basic principles of natural justice to decide without hearing. True, it is just and fair to grant a licence holder priority hearing in order to decide whether his monopoly should be extended for a further term, but it is no less important that other applicants for the same licence be given the opportunity to offer alternatives: the test is bound to produce higher standards.

The Order was set aside two months later by the Federal Court of Appeal, who ruled that it was up to the CRTC

⁵ "In the Federal Court of Canada, Trial Division, In The Matter of the Broadcasting Act, And In The Matter of Capital Cable Co-operative And The Canadian Radio-Television Commission And Victoria Cablevision Limited," judgment rendered 2 February, 1976.

whether or not to hear competing applications. Both a court and a noncommercial organization, however, had recognized that a link could exist between CRTC procedures and the quality of broadcasting.

3) Canadian Broadcasting Corporation

The Commission continued to make extension of service a priority, approving in various stages CBC's Accelerated Coverage Plan. The goal was to extend CBC service to underserved communities of 500 or more.

In 1977, under President Al Johnson, however, the CBC came under strong attack for the alleged bias of its programming. Charging the CBC with a pro-separatist bias, Prime Minister Pierre Trudeau requested the CRTC to hold an inquiry on the matter. Trudeau asked the CRTC to see if the CBC was fulfilling its mandate to promote national unity.⁶

Then Trade Minister Jean Chrétien complained that CBC was giving no coverage to his speeches in Quebec but was according detailed coverage to those of Quebec Premier

⁶ This has been removed from Bill C-40.

René Lévesque. External Affairs Minister Don Jamieson claimed that the CBC should be biased in favour of federalism. In response, Johnson said at a news conference that he would rather resign than give in to political pressure.⁷ While he agreed that politicians may criticize CBC programming, they must be careful that this does not become political pressure.

Since the CRTC had not received many such complaints, Boyle asked Members of Parliament to supply him with any letters of complaint they have received which suggested that Radio-Canada has been biased in its coverage of political issues. He was, understandably, reluctant to launch an investigation without good cause.

Shortly thereafter, the Ontario Committee for CBC Reform, a newly formed citizens' group, held a press conference, deploring the growing "banality" of CBC music programming on both AM and FM and the shift to

⁷ "PM won't attend CBC inquiry despite appeals," Montreal Star. March 16, 1977, p. A10.

popular music. They suggested more money be spent on talent rather than bureaucracy.⁸

Harry Boyle resigned from his position as Chairman in September, 1977, and Pierre Camu was appointed to replace him. Camu radically altered the annual reports, shrinking them considerably and preferring to focus on coverage statistics and organizational structure rather than summarizing the Commission's activities over the fiscal year.⁹

4) Pay Television

In the mid-seventies, industry was calling for approval for pay TV, in the expectation that it would be very successful. In its 1975 cable policy, however, the CRTC had suggested that pay TV was premature at that time

⁸ Kirkland, Bruce. "Citizens demand CBC programs end mediocrity" Toronto Star. March 22, 1977, F1; "CBC radio 'grows banal'" Montreal Star March 24, 1977, B11.

⁹ It has become therefore necessary for this thesis to shift approaches from that of relying for the most part on CRTC Annual Reports to relying equally on high profile items as demonstrated by extensive coverage in relevant literature and significant regulatory and policy changes.

(Policies, p. 10). Specifically with respect to quality, the CRTC had stated the following:

The success of programming on pay television will of course depend on its quality and diversity. However, the size of the market served will also be of critical importance. If the market is fragmented among too many individual pay television network operators, insufficient funds will be available to support quality production. If excessive centralization occurs the diversity of the Canadian creative community will tend to be stifled.¹⁰

The CRTC envisaged a requirement that pay television network operators spend at least 15 percent of gross revenues annually on the acquisition and production of Canadian programs.

In 1976, Minister of Communications Jeanne Sauvé said that a regulatory structure for pay TV must achieve three major objectives: provide a range of programming which does not duplicate that now offered by broadcasters without siphoning programs from the broadcasting system, ensure the production of high-quality Canadian programs which Canadians will watch, and ensure that programs are produced in Canada for

¹⁰ CRTC, Notice of Public Hearing 1975-15, "Proposed Regulations and Policy Statements concerning Cable Television and Position Paper on Pay Television Service" Ottawa: CRTC, February 17, 1975, p. 9.

international scale. This was included in the public announcement of June 30, 1976 calling for public comment on pay TV.

That year, pay TV was the topic of the annual convention of the Canadian Cable Television Association. It was in the newspapers that Ottawa was drafting its policy even while Saskatchewan was planning to introduce pay TV and to bypass federal regulation. It would, however, be several years before pay TV would be sanctioned by the CRTC in Canada. In fact, the pay TV drama will later resurface to usher in the final CRTC stage.

5) CTV Licence Renewal

The 1979 decision to renew CTV's network licence is notable because in it the Commission makes several references to quality.¹¹

As it did with Global, the CRTC commended CTV for the high quality of its news and public affairs programming, but pointed out that "comparable results with

¹¹ CRTC, Decision 79-453 "CTV Television Network Ltd." Ottawa: CRTC, 3 August, 1979.

distinctive Canadian entertainment programming, particularly in the field of drama" had not yet been achieved. One of the Commission's concerns was with ratings (p.4):

The Commission considers that, in entering the 1980's, the CTV priority must be the strengthening of its Canadian entertainment programming, with particular emphasis on the development of Canadian dramatic programs capable of attracting viewers in the most competitive mid-evening hours.

To this end, the Commission attached a condition of licence that 26 hours of original new Canadian drama be presented the next year, followed by 39 hours in the successive year. These were to be broadcast in the peak viewing hours of the evening schedule. The Commission also stated an expectation that CTV purchase programs produced by independent Canadian producers.

The Commission quoted from its CBC renewal decision of that year, in which it said that dedicating additional resources to Canadian programming should not be an exclusive responsibility of CBC: "...the Commission fully intends to continue its emphasis on ensuring that private broadcasters make an increased commitment to the predominance of Canadian programming of excellence." It is unclear, however, exactly how the increased

requirement of CTV would ensure high quality Canadian programming. Again, the assumption is made that if quantity is secured, quality will follow.

The Commission did say that although it is impossible for CTV to match U.S. program production expenditures, "...the Commission considers that a substantial increase in the production budgets of certain Canadian programs will be required in order to enhance their appeal to Canadian viewers." (p.5).

The Commission also suggested that stations combine their resources in order to attract audiences nationally. Affiliated stations not capable of developing pilots for national programs could contribute financially according to their ability. These increases in Canadian content expenditures, the Commission expected, would require a review of the structure of the network and cost-sharing arrangements.

A concern was expressed about the absence of CTV programs which reflect the cultural life of Quebec to the rest of Canada, and this deficiency was to be remedied during the course of the licence term. In

addition, CTV was told to do more for the development of programs for children.

Groups intervening complained about balance in public affairs programming and the portrayal of women, and the Commission noted their concerns in its decision. In this decision, then, the CRTC spoke of quality and programming excellence in terms of Canadian content, adequate funding, balance, and diversity. For the most part, concerns were expressed about what CTV was not achieving, with the implication that accomplishing the objectives set forth by the Commission in this decision would redress the problem with quality.

Supervisory Phase (1981/3-)

Salter notes that the introduction of this phase is marked by the pay TV licensing decisions. Although the issue of quality is not addressed in any new manner in the pay TV proceeding, it is worth noting that it signified a shift in the CRTC's regulatory approach, from a managerial to a more reactive role.

1) Complaints resulting in public censure

In 1983 and 1984 there were two broadcast incidents which caused members of the public to complain about the inflammatory way in which the broadcasters in question had handled certain items. In both cases the CRTC responded by referring to the "...of high standard" clause in the Broadcasting Act and issuing a public notice of censure. Neither public notice goes far towards clarifying the Commission's definition of quality, although they do point to what the Commission considers quality is not.

The first case involved commentary by Doug Collins, editorialist with CKVU Television in Vancouver, on the activities of Media Watch, an organization concerned with the portrayal of women in the media. In CRTC Public Notice 1983-187, Mr. Collins is quoted as stating:

If there is ever another conventional war, it's my hope that Media Watch and its army of snoops will be found in the front line where they can be raped by the Russians.

The Commission noted that many complaints were received which contended, among other things, "...that Mr. ...

Collins' statement is so abusive and offensive as to fail to attain the quality of programming required of Canadian broadcasters or to respect the Code of Ethics of the Canadian Association of Broadcasters (CAB) which requires that broadcast programming not contain abusive or discriminatory material or comment."

In response, the licensee stated that it does not censor free expression of viewpoints on matters of public concern. It only ensures that statements do not violate libel and slander and human rights laws or deviate from the CAB Code of Ethics.¹² CKVU also pointed out that it publicly expressed regret that the commentary might have caused hurt or displeasure, that it welcomed the appearance of Media Watch on the station to elucidate its position on the matter, and that it will not apologize for remarks expressing individual views. Apologizing would, CKVU argued, suggest either that it agrees with those views or that it regrets providing an

¹² The CAB Code of Ethics includes the following provision: "Recognizing that every person has a right to full and equal recognition and to enjoy certain fundamental rights and freedoms, broadcasters shall endeavour to ensure, to the best of their ability, that their programming contains no abusive or discriminatory material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, sex, marital status or physical or mental handicap."

open and free platform for the "unfettered expression" of views. Moreover, CKVU claimed that an apology for the viewpoint of a commentator would undermine the station's freedom of expression.

The Commission concluded that CKVU's interpretation of its legal responsibilities is too narrow, pointing out that in addition to the laws mentioned by CKVU . . . broadcasters must also respect the Broadcasting Act. Under the Act, responsibility for all broadcast programs rests with the person licensed to operate the station. The Commission pointed out that this is true irrespective of whether the program reflects the licensee's editorial position.

The Commission also noted that the programming must be of high standard. The following is the explanation offered on how the Commission determines adherence to high standard (p.6):

In assessing whether or not a broadcaster has discharged that duty, the Commission will take into consideration the circumstances of each case, including the programming context in which a statement which is the subject of a complaint was made, the extent to which the broadcaster had an opportunity to determine, prior to broadcast, whether a statement did not merit airing and, failing that, its willingness to accept responsibility and offer an

apology for the airing of a statement which failed to satisfy acceptable standards of broadcasting.

It is not clear from this explanation how one statement would be deemed objectively by the CRTC to be of high quality whereas another would not. It relates more to procedure than to the relevant criteria the Commission uses to assess quality.

However, later in the public notice the Commission does state very clearly that broadcasters fall short of attaining high quality programming "when the frequency entrusted to them is used, not to criticize the activities of a particular group but to advocate sexual violence against its members." This is later generalized to the statement that high standard programming is "free of demeaning comments or incitement to violence towards any identifiable group."

Finally, the Commission rejected the relevance of CKVU's offer of airtime to Media Watch and of the freedom of expression argument. With respect to the former, the Commission stated, "...this complaint is not based on an allegation of lack of balance in programming which can be cured by offering the offended party an opportunity

to present a differing view." This is interesting because the CRTC often makes an implicit or explicit link between balance and quality. With respect to freedom of expression, the Commission stated that an individual's right to freedom of expression "cannot displace the right of others to receive broadcast programming of high standard."

In 1984, the Commission again censured a broadcaster on the grounds that the station failed to maintain high quality programming (Public Notice 1984-159). Again, violence was the central theme.

On May 8, 1984, Corporal Lortie entered the National Assembly in Quebec City and opened fire. Many were killed and wounded. Early the next morning, radio reporter Chrys Goyens put the following question to listeners on CFCF, a radio station in Montreal:

Many people calling radio phone-in shows in the wake of the National Assembly shooting have expressed sympathy with the Corporal's motives.. Do you feel this way?

Listeners were given two numbers, one to register a "yes" vote, the other to register a "no" vote. Updates were given throughout the day with the final result

announced in the early evening. Of the nearly 1,300 callers, 76% registered a "yes" vote.

In response to complaints, the Commission asked the licensee of CFCF to submit a report. In its report the licensee made several points, including the reporter's extensive background and the fact that the stations had aired an apology. The licensee also stated that the question brought out the widely held feeling of frustration with government and that it was unfortunate that reaction had become identified with the violence of the gunman rather than with the underlying issue. In addition, the licensee argued that it was the response to the question, rather than the question itself, which caused the problem together with other media taking the issue out of context.

The Commission concluded that a "central flaw" was the wording of the question, which encouraged listeners to answer "yes." The question should have been worded, the Commission stated, "so as to avoid to the greatest extent possible any slant toward the negative or the affirmative answer." Allowing listeners to answer yes or no was a poor method of exploring listeners' views.

Not only is such a method "inappropriate" but it is "dangerous" where fundamental public issues are concerned.

The validity of the poll itself was also in question; there were no devices in place controlling the number of times a person could vote. In any case, the Commission stated that such a serious and sensitive topic could not be properly explored with such an unsophisticated tool.

In addition, the timing of the poll was raised as inappropriate given the feelings of the families and the possibility of aggravating the situation by inviting extreme sentiments to be expressed. Moreover, the poll should have been stopped as soon as its shortcomings became apparent.

The Commission stated (p.7), "The importance and tragic nature of the events warranted a more thoughtful and careful treatment than they received." The licensee, it was concluded, failed to meet the requirement of high standard of programming contained in section 3(d) of the Broadcasting Act.

Both of these public censure notices were sparked by members of the public offended with a broadcaster's condonation of violent behaviour. In the case of CKVU, Mr. Collins explicitly expressed hope that members of Media Watch would be raped. His remarks were inflammatory, advocating sexual violence against a particular group. In the case of CFCF, on the other hand, the condonation of violence was implicit, by virtue of the fact that the question had been asked in such a biased manner.

In both cases there was a marked lack of sensitivity about the feelings of certain groups, women (specifically Media Watch members) or family and friends of victims. In neither case, however, did the Commission call a public hearing, choosing instead to raise the issue and the manner in which the licensee subsequently dealt with such topics at their licence renewal hearings.

If one were to generalize from these incidents, it could be inferred that in operation was a definition of quality which precluded 1) material presented in a biased manner, coupled with either 2) programming on

serious and sensitive topics, the timing and nature of which fail to recognize the feelings of those suffering as a direct result of the item of discussion, or 3) programming which incites violence against members of a particular group.

2) "Focus for Quality" and the Task Force Report

Two relevant documents will be briefly examined in order to supplement the findings presented thus far. The two documents, CBC's Focus For Quality and the Report of the Task Force on Broadcasting Policy are important to the discussion of quality in broadcasting in different ways. The former is the only document the author was able to find that dealt exclusively with the issue of quality. The latter, although the most recent and possibly the most comprehensive examination of broadcasting in Canada, is striking in its lack of commentary on the issue of quality.

In 1983, the CBC created a task force on English regional television programming. Its 1984 unpublished report was called Focus for Quality. Part of the Task Force's mandate was to make "specific recommendations on

steps to be taken over the next five years to improve program quality within the context of the current economic environment." In spite of recent budget cuts, then, the CBC still hoped to be able to improve the quality of its English regional television programming.

In short, the Task Force recommended specific ways to achieve decentralization of a certain amount of program production, streamline certain programs, and implement five-year regional plans. For the purposes of this thesis, the value in this report is to be found as much in the discussion leading up to the recommendations as in the recommendations themselves.

Network management's desire to develop "high quality, high impact" programming the Task Force attributes to the choice offered audiences through cable. But, it is lamented, budget cuts make the development of such material difficult:

There is nothing wrong with being lean. But the simple, inescapable truth about television is this: while good budgets do not always guarantee audience

size and satisfaction, low budgets usually drive people away.¹³

The Report goes on to identify other factors that determine audience size, including promotion, market size, the nature of the program itself, and scheduling. But the problem with regional productions is a difficult one. Not only do they tend to have a high cost-per-viewer, but in addition the task force found that across the country there was broad dissatisfaction with many local CBC programs. This is attributed to lack of funds, staff, and resources.

With this in mind, the Report goes on to tackle in practical terms the relationship between quality and diversity while recognizing the importance of both. The Task Force rules out several possibilities: receiving more money, closing down operations in order to secure more funds, concentrating resources and money in key centres, and leaving things as they are while developing a more efficient method of regional exchange. The latter, the Task Force suggests, "would increase diversity, but it

¹³ Canadian Broadcasting Corporation. Focus For Quality: Report of the Task Force on Regional Programming (Working Document for discussion), June 1984, p. 6.

wouldn't do a thing for production values and therefore quality." (p.14). The solution in focussing for quality is rather "Do less in order to do it better".

The Task Force suggest this can be achieved by cutting the number of prime-time regional periods and reassigning these periods to national programming produced in the regions. Competition is seen to be a healthy part of this process -- all regions would be offered the chance to compete for these prime-time national slots.

In addition, the Task Force recommends consistent, rather than flexible, scheduling. The reasons are simple: "programs designed for a given time period are wrong for another; revenue would suffer; promotion cannot be focussed; and exceptions are, as a rule, satisfactorily negotiated between network and regions." (p. 27). The Task Force also noted that PBS programmers advised against flexible scheduling.

CBC's management responded formally to each of the recommendations in the Report of the Task Force.¹⁴ For the most part, they agreed with the recommendations. They offered no additional insight towards the concept of quality, confining their comments to the viability of the recommendations and the proposed time-frames.

Shortly thereafter, in 1985, then Minister of Communications Flora MacDonald created a task force "to make recommendations on a cultural and industrial strategy to govern the future evolution of the Canadian broadcasting system through the remainder of this century". The result was the 1986 Report of the Task Force on Broadcasting Policy. In the Chairman's Forward, the following caveat is noted:

Nor have we made a contribution to the problem of devising criteria by which to judge the quality of programming, although the job must soon be done to assure that broadcasters cannot meet their obligations to the Broadcasting Act by quantitative methods alone. It is not enough to show programs that do no more than fulfill formal CRTC Canadian content requirements. We in no way believe that any Canadian program is by definition superior in quality or nature or redeeming social value to any American show. Yet we understand that must appear to be the implication of some of our recommendations, and

¹⁴ Canadian Broadcasting Corporation. Management Response to the recommendations in Focus for Quality. October 16, 1984.

in that sense we are not satisfied with our own work and hope others can do better.¹⁵

While it is true the Task Force does not directly address the issue of quality, some discussion on the matter does take place in the course of making recommendations. In the section entitled "Towards a New Broadcasting Act", for example, the Report devotes almost two pages to "Programming of High Standard".

It is pointed out that the CRTC has used the high standard criterion on certain occasions to justify its decisions. When the CRTC's power to prohibit the broadcast of telephone conversations without prior consent of the individual was challenged in court, both the Ontario Court of Appeal and the Supreme Court of Canada ruled that this was within the CRTC's power in part by virtue of its mandate to ensure broadcasting of high standard.¹⁶

¹⁵ Caplan, Gerald Lewis, Florian Sauvageau et al. Report of the Task Force on Broadcasting Policy. Ottawa: Supply and Services, 1986.

¹⁶ Regina v. CKOY Ltd., (1976) 13 O.R. (2d) 156 and CKOY v. The Queen, (1979) 1 R.S.C. 2.

Further examination of these decisions reveal that the Court of Appeal gave the following reason for its decision:

The purpose of the impugned Regulation was to prohibit an undesirable broadcasting technique which does not reflect the high standard of programming which the Commission is required to maintain and, accordingly, is one which may be fairly brought within the powers given to the Commission.¹⁷

The dissenting judge's reasoning, however, is also compelling:

The power of the Commission...to regulate the standards of programmes...pertains to the quality of what is heard on the air rather than the manner in which the particular broadcast is made. Whether or not the interviewee consents to the interview being broadcast can have nothing to do with the standard of the programme, and the fact that the broadcasting technique against which the Regulation is directed may be an objectionable one and the motives of the Commission laudatory is irrelevant.

The Task Force makes the observation that in responding to complaints, censoring, and licensing decisions the CRTC evaluates whether the broadcaster has met the high standard requirement by considering what precautions should have taken place. However, with respect to the ideal standard, the Report notes:

¹⁷ Regina v. CKOY Ltd., (1976) 13 O.R. (2d) 157.

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..., to make value judgements on programs. More discretion could be hoped for from the CRTC.¹⁸

The Task Force recommends that high standard should be based on "flexible" and "recognized professional standards, depending on the category of the undertaking." In addition, broadcasters should be required to commit to such standards when applying or renewing a licence. Unfortunately, as the Chairman noted in the Forward, the Report stops short of providing a proposed definition.

In response, the Standing Committee on Communications and Culture stated that it recognized the high standard requirement could be seen as vague and imprecise. In its estimation, however, "the standard has existed for almost 60 years and has worked quite satisfactorily."¹⁹

¹⁸ Caplan, Gerald Lewis and Florian Sauvageau. Report of the Task Force on Broadcasting Policy. p. 164.

¹⁹ Standing Committee on Communications and Culture, p.50.

Nor was the Committee convinced that relating high standards to recognized professional standards would clarify the concept.

3) Cable Television Regulations

The revised cable regulations (PN CRTC 1986-182) were published in August following a public hearing in April, 1986. Much of the discussion took place on the issue of rate regulation. The Commission put in place several mechanisms which allowed it to reduce its scrutiny of rate change applications. The CRTC's supervisory stance left the carriage priorities essentially unchanged.

The issue of content quality is mentioned in the public notice with respect to community programming (p.11):

The new regulations will permit contra, credit, and sponsorship messages on the community channel to enable licensees to continue to improve the quality of community programming.

Quality here is again linked to monetary considerations.

4) Television Regulations

1987 was an important year for television in Canada.

The new regulations were published and the licences of

the country's two national networks, CBC and CTV, were renewed. In the news release published with Public Notice CRTC 1987-8, "Regulations Respecting Television Broadcasting", CRTC Chairman André Bureau stated:

With this leaner, cleaner regulatory environment, the Commission expects strong commitments from its licensees to produce and air distinctive, high quality Canadian programming.

The January, 1987, Public Notice followed a public hearing in September, 1986. The Commission had proposed to reduce Cancon requirements from 60% to 50% if a licensee invested a proportion of gross revenues in Canadian programs. This met with opposition, however, and was dropped from the regulations.

With respect to programming content, the television regulations were revised to eliminate certain provisions deemed unnecessary or outdated, in keeping with the Commission's supervisory approach. These included advertising during newscasts and advertising bonds, shares, securities, and commodities.

5) CBC Television Network Licence Renewals

Decision CRTC 87-140 renewing CBC television network licences is entitled "Current Realities, Future Challenges." Issued in February, 1987, the decision followed a public hearing in October, 1986.

At the hearing, concerns were expressed on such issues as balance, Canadian content, scheduling practices, and inadequacy of regional reflection. The CBC stated that it would not be able to fulfill its mandate and would be required to curtail some of its current services unless substantial additional public funds were made available.

The Commission imposed only four conditions of licence on the CBC. They relate to sex role stereotyping and advertising to children. Reasoning that the CBC has a leadership role:

In each instance the Commission requires that the CBC's internal standards be more stringent than similar guidelines to which private broadcasters are required to adhere. (p.79)

CRTC expectations in the decision included specific prescriptions for: Canadian content; drama; regional production; English/French program exchange; Northern

Service; programming for children and youth; performing arts; independant production; Canadian musical talent; diversify sources of foreign content; sex-role stereotyping; weekend news and information on the French television network; Francophones outside Quebec; representation of native Canadians; representation of multicultural minorities; closed captioning; extension of service; commercial rates and advertising practices; and other sources of revenue. This list provides some sense of the areas of improvement sought by the Commission.

The expectations were stated with the awareness of the funding constraints faced by CBC. While the Commission emphasized the importance of the Government's support, it stated (p.111):

Should Parliament deem, however, that the existing legislation has set out demands and obligations for the CBC that are beyond the CBC's current level of financing, it must seriously consider if it should reduce its expectations as to the level and quality of service the Corporation is currently mandated to deliver and that the Commission is, at present, mandated to expect of the national public broadcaster.

The Commission thus clarified the various roles to be played by itself, CBC, and the Government, while again pointing out the link between funding and quality.

6) CTV Television Network Licence Renewal

One month after renewing CBC's licence, the Commission issued Decision 87-200, renewing CTV's television network licence. Both the CBC and CTV licence's were renewed for five years, signifying that the Commission did not feel that any concern was great enough to warrant calling the broadcaster back for a hearing before the maximum licence term had passed.

The CTV decision followed a November, 1986, public hearing. At the hearing, the Alliance of Canadian Cinema, Television and Radio Artists Association (ACTRA) and the Canadian Film and Television Association (CFTA) voiced concern that CTV affiliates had not contributed sufficient resources towards Canadian programs. ACTRA and CFTA recommended a short-term licence renewal.

The Consumer's Association of Canada suggested that Canadian content requirements be dropped for private

broadcasters. Only CBC, they argued, should be required to produce and broadcast Canadian programming; it would be in the interest of consumers if private broadcasters were to be allowed to respond freely to the demands of the marketplace.

Other concerns raised at the hearing included closed captioning, sex-role stereotyping, and the reflection of ethnic and racial make-up of Canada.

CTV came to the hearing as an extremely successful enterprise, one which together with its affiliates had a 50% share of television revenues and profits in Canada. Six of the affiliates were among the ten most profitable Canadian stations.

Although the Commission had asked CTV prior to the public hearing to submit its long-term objectives, CTV failed to do so. It did, however, commit to substantially increased expenditures on Canadian programming over the licence term, and the CRTC made the figures a condition of licence. The increase in Cancon represented a 75% increase compared with the previous five-year licence term.

The Decision stated (p.13):

The Commission is satisfied that the changes in network structure, and in the cost-sharing arrangements between the network and its affiliates, as described at the hearing, together with the foregoing conditions of licence, will permit the requisite increase in the quantity and diversity of Canadian programs aired by the network.

Cancon levels were not explicitly related to quality, but to quantity and diversity.

With respect to specific program categories; the Commission did raise the issue of quality. Information programming was deemed to be of high standard. The Commission stated the expectation that CTV would establish news correspondents in all provinces and decrease its reliance on foreign news services in order to provide Canadian viewers with a Canadian perspective on international issues. In the category of sports programming, CTV was also commended on the quality and variety of its coverage.

In the music, entertainment and drama category, the Commission required CTV as a condition of licence to broadcast over its licence term a certain number of

(2.5 rising to 4.5). The proportion of original hours to repeats is to remain above the 70% level. In addition, each year CTV is to broadcast 34 hours of Canadian dramatic features, mini-series, and limited series. The Decision also stated (p.18):

The Commission expects these programs to reflect high production standards in order to be attractive to a wide Canadian audience.

The Commission named three "high-quality Canadian dramatic features": The Bay Boy, Sword of Gideon, and Peter Ustinov's Russia.

To ensure exposure for new Canadian musical talent, the Commission required CTV as a condition of licence to provide at least six hours per year.

With regards to social issues such as sex-role stereotyping, violence, reflection of ethnic minorities, and closed captioning, the Commission instructed CTV to file a report within five months. CTV was required by condition of licence to adhere to the CAB guidelines on sex-role stereotyping. While it was acknowledged that CTV was adhering to the CAB code on violence, the Commission stated that CTV should assume a more

proactive and responsible role. Nothing substantive was suggested on the matter of ethnic minority portrayal, being difficult to measure and in the absence of an industry code. Closed captioning, on the other hand, is measurable and the Commission was satisfied with CTV's proposed commitments.

In the conclusion of the decision, the term "quality" is frequently employed. The Commission believed its conditions of licence and expectations would "ensure a substantial improvement in the quality, attractiveness and diversity of the network programs offered to Canadians." (p.37). In addition, the Commission was satisfied that the allocation of funds required by the decision will help CTV achieve "excellence" in all programming categories.

It appears clear, then, that most CRTC licensing requirements are aimed at improving quality programming. This is the Commission's repeated justification for the specific decisions it renders.

CHAPTER IV
TOWARDS A DEFINITION

The various concepts of quality in Canadian broadcasting reflect the social, political and economic realities of the day. The use of the term by any particular player reflects the player's vested interests and locus within this larger context. For this reason, there appear to be many competing definitions and different applications of similar definitions.

In the previous chapter it became obvious that there are many different assumptions embedded in different notions of quality. Private broadcasters tend to measure quality in terms of ratings and awards. The CRTC has also spoken of quality in these terms but more often in terms of diversity and in specific instances in terms of what quality is not.

As noted in Chapter One, Funk and Wagnall's Canadian College Dictionary defines "quality" thus:

1. That which makes something such as it is; a distinguishing element or characteristic
2. the basic or essential character, nature of something
3. excellence; to aim for quality rather than

quantity 4. the degree of excellence; relative goodness 5. a moral or personality trait or characteristic 6. (logic) the character of a proposition (negative or affirmative) 7. (music) the timbre or tone of a voice/instrument 8. (phonetics) the character of a vowel sound 9. high or superior social rank or birth.

For the purposes of this thesis the third and fourth definitions are most relevant. Nonetheless, these two definitions do not offer much insight because "excellence" is the operative - and elusive - concept.

It is worth reiterating at this point that this thesis is attempting neither to discover nor to infer the ultimate definition of quality broadcasting. Indeed, the very opposite is closer to the truth; an attempt is being made to uncover the many diverse and, it is assumed, equally valid meanings associated with the term, with particular emphasis on the CRTC's operative definition(s).

It is important to bear in mind that, among adjectives and nouns, "quality" is highly subjective in nature. Compounding this problem is the fact that few actors in broadcasting have explicitly and officially laid out what they mean by quality.

What follows is an attempt to devise a simple theory within the framework of which a discussion on the various concepts of quality could take place.

It is perhaps possible to divide the discussion surrounding quality in Canadian broadcasting into two broad and coexisting levels: the micro and the macro-levels. It will become clear that in reality there are many more, however it is first important to identify two main levels indicative of the way the discussion on quality has taken shape. They might best be explained by borrowing concepts from the science of signs, semiotics.

In Reading Television, John Fiske and John Hartley state that in any system of signs there exists a structural relationship between two modes that is fundamental to the organization of the system.¹ They explain that a paradigm is a vertical set of similar units from which one is selected. A unit in a paradigm is similar but distinct from the others in the unit, and is defined in

¹ John Fiske and John Hartley, Reading Television, London: Methuen, 1978, p. 50.

opposition to the others in the unit that were not selected. A syntagm is the horizontal chain which links these units to make it a meaningful whole.

In language, for example, a sentence may be seen as the syntagm and the words may be seen as the units selected from paradigms. Consider the following sentence:

"Father burst into the den clutching the newspaper."

The significance of the choice of each word can only be understood in relation to the other words from the set of words (paradigm) which could have conveyed a similar meaning. "Father" was chosen over "Dad," "Papa," or his surname. Similarly, "burst" was chosen over "came into" and "entered", among others. Significance lies in what was chosen to convey the meaning over what was not.

In broadcasting, there are two main active perspectives from which paradigms and syntagms take meaning, that of the broadcaster and that of the audience member. Both are actors in selecting at the paradigmatic level and constructing at the syntagmatic level. The CRTC plays a more reactive role, acting as a judge at both levels.

Each broadcast program may be likened to a word. At any particular time a program has structural meaning to the audience member in relation to the combination of other programs available. The paradigm to the audience member, then, is the combination of programs scheduled in a given time slot. The paradigm to the broadcaster is the set of programs from which one must be chosen for broadcast at a particular time.

Take, for example, a weeknight at 7 p.m. This is prime-time, and television broadcasters are required to average 50% Canadian content during the period from 6 p.m. to 11 p.m. Broadcaster A might decide to schedule a news program for those who missed the 6 p.m. news on another channel, against which Broadcaster A could not afford to compete. Broadcaster B might decide to schedule a popular American sitcom, and Broadcaster C might decide to pre-empt other broadcasters' movies typically scheduled at 8 p.m. by scheduling at 7 p.m. a blockbuster movie. In addition, each broadcaster's programming decision for that time-slot was also made in relation to what other programs the broadcaster had acquired the rights to air (broadcaster paradigmatic level) and what made good business sense to the

broadcaster to schedule given the other programs available to the audience at that time (audience paradigmatic level).

A broadcaster paradigm or syntagm is determined by a peculiar intersection of circumstances, among them the CRTC's conditions of licence on the various broadcasters (Cancon and station format), competition and the profit motive, and the broadcasters' many perceptions (both grounded in fact and imagined) with respect to audience behaviour, taste, and scheduling expectations.

Individual stations have very little control over the particular combination of formats and programming provided by other stations in their market area. A very successful station may spark imitators, but any such influence on the programming of other stations is usually unintended, indirect, and often minimal. The determination of the range of sets of units, then, is for the most part a preserve of the CRTC and, to a lesser degree, DOC insofar as it is responsible for allocating frequencies.

In broadcasting, the paradigmatic category may be seen as the micro level. Discussion is centered on the quality of specific programs, the choice of one program over another, and the varying degrees of quality within each genre. At this level, a particular program may be pointed to as an example of high quality, or conversely, as an example of what quality is not. This may be likened to semiotics' vertical, paradigmatic axis.

At the syntagmatic level on the other hand, the service as a whole is the object of scrutiny. It is the quality of the complete broadcast package available to the Canadian citizen within that market that is of concern. It is at this level that the particular combination of programming offered is examined and questions of diversity, balance, and range of programming are addressed. This may be likened to the horizontal, syntagmatic axis in semiotics. As in language, certain words might be seen to hold more weight than others -- nouns and verbs (possibly networks) compared to adjectives and adverbs (the community channel and nonprogramming channels), for example. The two levels are, of course, complementary and interdependent, and

are distinguished here only for the purposes of analysis.

There are, then, at least two loci at which quality of broadcast programming may be discussed. One typically speaks either of the quality of a particular program or of the quality of the broadcast package. This has been borne out by the findings in Chapter III.

It is understood, however, that there is an infinite number of other levels at which quality programming is discussed, which to varying degrees lend themselves to the concepts of paradigm and syntagm. For example, at the paradigmatic level one may speak of the quality of acting in a particular scene within a program. For the purposes of analysis, however, this would involve defining units very carefully. Based on Chapter III, the paradigmatic level might best suit discussions on quality where 1) the units are programs, or 2) the units are episodes within programs, which might be isolated as being offensive and examples of what quality is not.

Chapter III would suggest, however, that only in response to complaints does the regulator supervise

issues of quality and diversity at this level of detail. The CRTC rather concentrates on the different thrusts of the stations in the market. The Commission is more inclined to grant a licence to a station that promises to provide programming that differs significantly from that of other broadcasters in the area than a station which would virtually duplicate other programming available in the area. Although a tentative programming schedule must be submitted, the successful licensee is allowed wide scheduling leeway.

It would appear that both levels come into play in discussions on quality where the focus is on 1) the combination of formats provided in a market area by the broadcasting stations receivable off-air and via cable, and 2) the combination of programming provided by a particular broadcaster. Discussion focussing on the combination of formats in a given market typically takes place during the course of hearing new applicants, whereas discussion focussing on the quality of a station's programming typically takes place during the course of a licence renewal proceeding.

As previously explained, the paradigmatic level involves selecting one unit over others. This occurs, for example, when one program receives an award; it was chosen over others in its category.

Factors Related to Quality

With the paradigmatic and syntagmatic levels in mind, it is possible to explore the factors that are seen to be related to high quality. From the regulatory perspective of the CRTC, the issue appears relatively simple; the more sustainably different formats available in a market the better. This means that the CRTC encourages through the licensing process large and varied sets of units from which audiences can choose.

The entry of each, however, involves demonstrating to the CRTC's satisfaction that the existing, typically mainstream, broadcasters will not suffer by the introduction of another broadcaster. The existing broadcasters may feel threatened by a potential new entrant, particularly if the applicant is backed by an owner who has proven to be successful in other markets. They might intervene in opposition to the granting of

another licence in the area, and attempt to demonstrate that the applicant's programming will erode their audience share, and the quality of their programming will suffer as a result. What is ostensibly at issue in such disputes is diversity and competition.

At the level of the program, the discussion is equally complicated. How is it that a consensus can be reached about the quality of a particular program? How can one know that a program is regarded as high quality? Are there any characteristics of a product which will increase the likelihood of its being deemed to be of high quality?

As stated at the outset, this thesis does not attempt to identify specific quality productions. To do so, it is suggested, would be not only presumptuous but irrelevant to the intent of the thesis. For the purposes of future study, much more value lies in determining what the important broadcast actors mean when they speak of high quality.

There are two very good ways of determining whether or not a program is regarded as high quality. One is to

look at its ratings, which reflect popular appeal. The other is to get a sense of how experts rate it, as signified by awards and favorable reviews. It might be argued that the highest quality programs win the approval of the audience and expert alike. In addition, they may be seen to transcend such ~~traditional~~ audience boundaries as class, religion, age, gender, education, income level, and ethnicity. Programs with varying degrees of such cross-sectional appeal might be said to appeal to that which is fundamentally human.

It follows from the rejection of the high culture/low culture dichotomy that no one audience is more valid than another. The composition of audiences, that is, groups of people who have watched or listened to the program in question, may vary tremendously. An audience may be small or large, homogeneous or very disparate.

Part of the success in terms of a program's "quality quotient" depends upon the success of the creators of the program in reaching an audience who will react favourably to the content of the program. This, of course, greatly depends upon the success of the promotion and scheduling of the program.

There are some identifiable factors which are related to certain productions, channels, formats and other units of analysis, to the extent that they increase the likelihood that they be seen as examples of quality. Such factors may be necessary but not sufficient to the diagnosis of high quality (such as adequate funding) or sufficient but not necessary (such as high ratings or awards). No factor has been found to be both necessary and sufficient.

It is equally appropriate to examine some of the causes alleged to result in inferior programming. As expected, there are many.

Perhaps the most common reason cited is inadequate funding. This has been the cry of independent producers in their attempts to secure Telefilm funds, of CBC in the face of budget cuts, and of private broadcasters arguing against the licensing of another competitor in their market or for a reduction in Cancon.

It is undoubtedly true that adequate funds are important. Without them the producer might not, for

example, be able to secure the director, actors and actresses, or location (s)he would like. But it is also true that ample funds will not guarantee a program's critical or commercial success.²

As the Report of the Task Force on Broadcasting Policy observed, the CRTC has attributed low quality to the broadcaster's failure to take the necessary precautions given the circumstances. So, for example, the CRTC will censure a broadcaster who allows inflammatory comments to be aired about a public interest group for failing to meet the high standard requirement.³

In such instances the CRTC plays a responsive rôle, usually leaving the identification of specific problems with the public. The public, then, plays an important part in determining what is socially acceptable broadcasting behaviour.

² CTV's night-time soap/drama, "Mount Royal", is one such example.

³ CRTC, "Notice Concerning a Complaint against CKVU Television, Vancouver British Columbia by Media Watch", CRTC Public Notice 1983-187, Ottawa: CRTC, August, 1983.

In this regard, the constraints of such industry generated codes as the "Voluntary Code Regarding Violence in Television Programming" are responsive to the extent that they reflect society.⁴ They are proactive to the extent that they guide broadcasters in avoiding offensive programming and pre-empt the CRTC's issuance of similar codes. In spite of the apparent voluntary nature of such codes, the Commission typically requires adherence as part of a station's conditions of licence.

Low quality, then, may be seen either through public complaints about offensive programming or through failure to adhere to these codes. Lack of public complaints and strict adherence to industry codes, however, does not necessarily result in a program of high quality.

⁴ The Canadian Association of Broadcasters has published several industry codes: "Voluntary Code Regarding Violence in Television Programming", Ottawa: CAB, January 1987; "The Broadcast Code for Advertising to Children", Ottawa: CAB, January, 1988; "Voluntary Code Regarding Sex-Role Portrayal in Radio Programming" Ottawa: CAB, April, 1988; and, "Voluntary Code Regarding Sex-Role Portrayal in Television Programming", Ottawa: CAB, April, 1988.

The CRTC also speaks of the lack of programming quality in terms of low Canadian content levels and lack of balance. An inadequate level of Canadian content or a failure to achieve a balance of views might lead to a conclusion by the CRTC that the overall programming is low quality. Again, however, high quality programming does not necessarily follow from a high level of Canadian content or success in achieving a balance of views.

While the quality issue explored here is strictly one of content, production values are an important related consideration. If the production values of a particular program are so low as to detract from or obscure the content, it is unlikely that a program will be deemed by anyone to be of high quality. This is not to say, however, that high production values will necessarily ensure that any element other than production values are of high standard.⁵

⁵ There may exist a relationship between the two, however, that is not one of cause-and-effect but rather one of correlation. The important variable in question could well be the level of funding, and through this high quality content and high production values may be related.

Examining factors that increase the probability that a program will be considered high quality is considerably more difficult than factors related to low quality.

Perhaps most obvious yet most elusive of elements is the nature of the program's content. Although it is clearly a significant determinant in establishing the level of quality a program possesses, it is one of many factors, and one that is particularly difficult to measure directly. After all, content is always valued in a context. One approach is to look at the program's relevance to its audience.

Whatever the genre, programs vary widely in both originality/banality and relevance/meaninglessness to the audience. To be considered high quality, it is likely that a program cannot be so original as to have very little meaning or relevance. On the other hand, a program trivial to the point that its audience considers it banal is perhaps equally unlikely to be deemed of high standard.⁶

⁶ Elitists would likely argue that on this continuum the high culture perspective of high quality tends towards originality whereas low culture tends towards banality.

Perhaps the most striking finding thus far is that it would appear to be the case that it is simpler to define quality in terms of what it is not than in terms of what it is. It is relatively easy, for example, to predict that a program will be considered low quality by the Commission and certain interest groups if we know that it is lacking in originality, relevance, Canadian content, balance, or that it contains material that could be considered offensive by some. As previously noted, there are additional factors exclusive of its content which might preclude a program being pointed to as an example of high quality: poor scheduling, low production values, or lack of promotion.

On the other hand, it is difficult to specify what factors lead to a program's success in being deemed "of high standard." That this is so explains the many diverse situations in which the issue of quality is raised. A concept that has no operative definition yet has only good connotations has the potential to be usefully employed to serve almost any end.

CHAPTER V
POLICY OPTIONS

The policy options explored in this chapter range from a hands-off to a regulated approach. Some are realistic and with effort could be implemented, others are not but are offered to provoke thought.

For this chapter to be useful, it will refer periodically to the existing Broadcasting Act and where appropriate, new broadcasting legislation now being tabled by Prime Minister Brian Mulroney's Conservative government, Bill C-40.

Option One: Laissez-faire

The title of this chapter, "Policy Options" raises two questions. Must government interfere in the normal course of doing business by regulating broadcasting undertakings and imposing policy constraints on broadcasters? More specifically with respect to the issue of quality, why not let the market decide what constitutes high quality programming?

This, then, is the first option. What would be some of the foreseeable implications if the federal government chose not to regulate broadcasting at all?

First, broadcasters would not be required to get a licence. Theoretically, anyone who could afford to could start a broadcasting station. One can imagine that all sorts of problems would arise. Since there is naturally a limited number of frequencies there would be much competition for the frequencies there are, while at the same time there would be no protection for transmitters already in place. One could expect significant levels of signal interference. It would appear that any invisible hand at work in this scenario would surely choke the life out of the broadcasting industry.

It is less clear what the implications would be if the only change in the Broadcasting Act were that the CRTC was not empowered to ensure that broadcasting be of high standard, if the words "of high standard" were removed from the Act. Legal battles would have to be fought on different grounds.

If only the "of high standard" requirement were removed, the Commission would still be able to regulate Canadian content and ensure that the broadcasting system be varied, comprehensive, and balanced.

With the primary legal basis for regulating quality removed, however, much of the Commission's rhetoric on quality might not appear in its public notices and decisions.¹ It is hard to imagine that as a result programs of high quality would cease to be aired or that the current ratio of high quality to low quality in anyone's estimation would change. Indeed, it is unlikely that the broadcasting situation in Canada would be noticeably different.

It might, however, be more difficult for the Commission to handle problems arising from the airing of inflammatory comments. In the two censure cases examined in Chapter Three, reprimand was issued on the basis of broadcasters failing to achieve programming of

¹ Subsection 16(1)(b)(iii) does grant the Commission the power to make regulations respecting standards of programs and the allocation of broadcasting time, but it is for the purpose of giving effect to the clause which refers to high standard. It is assumed that this subsection would also be removed.

high standard in specific instances. Without the benefit of a legal opinion on the matter, however, it is unclear what recourse aside from libel, slander and other such legislation not administered by the CRTC offended parties might have were the "of high standard" clause to be removed from the Broadcasting Act.

In addition, many of the requirements in the FM Policy appear to rest on the justification of ensuring high standard. Without such a legal basis, such a degree of regulatory control might be questionable.

As it is, it could be argued that the Commission is exceeding its mandate in striving for diversity on each station. The Act only stipulates that "the programming provided by the Canadian broadcasting system should be varied and comprehensive", yet the Commission has sought, through such requirements as minimum levels of traditional and special interest music, to ensure that the programming provided by each FM station be varied. Unless this were to be argued on the basis of ensuring "the programming provided by each broadcaster should be of high standard" it appears difficult to find a legal basis for requiring such diversity of FM broadcasters on their respective stations.

Bill C-40, however, retains the high standard provision. Indeed, the importance of the objective is underscored in this proposed legislation; high standard is pulled out as a separate clause.

Option Two: Minimal Regulation

The assessment of the degree to which the industry is regulated is necessarily a subjective one. It also depends on which segment of the broadcasting industry one is examining: AM radio, FM radio, television, or cable, to name the larger categories.²

In addition, the perception of the degree of regulation is likely very much a function not only of the actual regulations in place but also of the evolution of regulation in that specific segment of broadcasting and in others. AM radio broadcasters, for example, might privately consider themselves to be enjoying minimal regulation. Their perception would be influenced not

² The list could be broken down much further to include, among others, native radio broadcasters, student radio broadcasters, community channel broadcasters, cable operators in remote regions, specialty service broadcasters, educational television broadcasters, and the CBC.

only by the change in regulation over the years - which includes ~~removal~~ of the daily advertising limit - but also by the much higher degree of regulation imposed on their FM counterparts.

Broadcasters, particularly those operating FM stations, argue that they are over-regulated. The Commission, on the other hand, has made the argument to Treasury Board that it does not have the resources necessary to regulate the industry as it would like. At the same time, the CRTC has of necessity as much as through philosophy come to rely more and more on industry self-regulation.

It is relatively safe to assume that most segments of the broadcasting industry do not currently enjoy minimal regulation, with the possible exception of AM broadcasters. Minimal regulation, it could be argued, would be similar to the United States model, such that no content regulations are imposed but licences, and thus some degree of protection, are granted.

This would assume, however, that such goals as "predominantly Canadian" had disappeared. This is

unlikely, in light of the fact that Bill C-40 retains that objective and indeed adds to the objectives of the current Broadcasting Act. Minimal regulation would likely also see the disappearance of the community channel.

Were many of the existing objectives for the Canadian broadcasting system to be removed from legislation, it could be argued that it would still be necessary to keep the "of high standard" clause in order for the Commission to deal with offensive or abusive programming. The other objectives, then, are not necessarily related to quality but to other specific goals, such as Canadian content.

The problem with giving the Commission the power to regulate quality, of course, is that it is vague and subjective; the legislation offers no insight regarding how quality is to be interpreted. Nor has the Commission sought help from the public through a call for comments on the definition of quality or how it might be regulated. It could be argued, however, that the Commission has addressed the issue of quality to some degree with the broadcasting industry by asking

them to create industry codes for the Commission's approval.

Adjust Current Level

Working with the existing goals for the Canadian broadcasting system, it might yet be possible to adjust the current level of regulation such that market forces are relied upon to a greater degree to achieve the same ends.

Indeed, it might be the case that certain regulations cannot be justified under the Broadcasting Act, which would render them entirely unnecessary, or do not achieve the purpose for which they were designed.

With respect to the requirement that the programming provided by the Canadian broadcasting system be "of high quality", it is difficult to find regulations whose sole purpose is securing this goal. Examples might include requiring adherence to CAB industry codes as a condition of licence and the more detailed regulatory requirements of FM broadcasters. That they are seen to increase the

level of quality programming in the public perception would be worthy of public scrutiny and comment.

The recent call for comments on the FM Policy, however, is not directly framed in this context. Although the matter of high standard is mentioned as one of three objectives, the question is not put to the public whether or not in their estimation the current policies encourage high quality programming. As long as public input is not sought specifically on this issue, the CRTC's own concept of quality cannot be questioned or explored, nor will a definition acceptable to many different groups be achieved. Moreover, it would be appropriate and fair for the broadcasting industry to be aware of its regulator's concept and definition of quality.

Adjusting the current level of regulation, then, would be possible outside the scope of addressing quality. As previously indicated, there are some questionable areas of regulation which are somewhat related to notions of quality.

In order to bring the issue of quality firmly and openly into the context, however, there should be a public process through which definitions and approaches can be discussed for each of the broadcasting sectors.

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