

**TONY MANERA, *Remarks, Keynote address, Rebooting Canada's Communications Legislation, A conference to examine changes to Canada's broadcasting and communications legislation (Ottawa: May22-23, 2015),***

***INTRODUCTION***

I would like to thank the conference organizers for the opportunity to offer some observations related to its theme.

Given the large and growing number of audio-visual content sources, including those available through web-based platforms, some people question the need for continued public funding of Canada's national public broadcaster. My comments will focus on this question, making the case that the CBC is needed more than ever, in order to address the objectives set out in the Broadcasting Act. Those objectives continue to be relevant, although the means to achieve them must be adapted to the current environment.

I will be presenting desirable changes to the CBC's governance model, funding method, measures to better ensure its independence from the government of the day and an enhanced and more transparent accountability framework. Modifications to the CRTC's role that will facilitate such changes will also be suggested.

***THE CBC***

When Parliament created the CBC in 1936, Canadian commercial broadcasting was in its infancy and Canadian airwaves were dominated by American radio stations broadcasting near the border with Canada (there was no television in Canada until 1952). Moreover, the economics of broadcasting, then and now, were such that providing a Canadian counter-balance to that predominantly US programming presence could only be achieved by creating a state-funded "public" broadcaster.

Because of this funding, the CBC is sometimes described as a state broadcaster. This is incorrect. A state broadcaster functions as an arm of the government, which exercises control of the organization and its programming. To insulate it from political interference, the CBC has an arm's length relationship with the government. The Broadcasting Act specifically protects the corporation's *freedom of expression*, as well as its *journalistic, creative or programming independence.....in the pursuit of its objects and in the exercise of its powers*. This independence is what gives credibility to the CBC in key areas such as news and current affairs and remains an essential element of the role it is expected to play. Nevertheless, given that the CBC is dependent on the federal government for the bulk of its budget, the risk of interference in its operations cannot be completely ignored.

The most recent example of such interference is the adoption in 2013 of Bill C-60, which enables Treasury Board to oversee collective bargaining between the CBC and its unions. While the government's intent to ensure that taxpayers' money is spent responsibly is commendable, these provisions are not necessary and could be counter-productive in meeting this objective. This law can create a perception that the government is interfering in the CBC's coverage and

analysis of important newsworthy events. Such a perception, even if wrong, could damage not only the CBC, but also the government. Finally, there is always the possibility that management and its unions will reach an impasse. Currently, the Canada Labour Relations Board and the Minister of Labour have a role to play in resolving the impasse. Whether it's the appointment of a mediator or other measure, it would be very difficult for the government to be and to appear to be, impartial and objective if, however indirectly, it had already been a party to the negotiations.

Hence, while there will always be some risk to the CBC's independence, it can be minimized and I will be advancing suggestions for doing just that. Ultimately, it is the duty of the board of directors and president to protect the CBC's independence.

In the mandate established by Parliament, the CBC is required to provide a wide range of predominantly and distinctively Canadian programming that informs, enlightens and entertains. The *enlightening* component may be viewed as an educational objective. This perspective was well expressed by the CBC's late iconic national news anchor Knowlton Nash when, in a speech to the Empire Club in Toronto (April 1994), he said: "The media is, I think, essentially a teacher in the broadest sense of that word. Although it may sound excessively flattering, I think we're really in the educating business."

The CBC is also expected to reflect the different regions of Canada, a costly proposition because populations in some regions can be relatively small. Its programming must contribute to national consciousness and identity. According to the CBC's Mission Metrics Survey of 2012/2013, its unduplicated reach of viewers and listeners, through conventional and web-based platforms, exceeded 93% in French and 85% in English. I will address later the importance and value of an external validation of the methodology used for surveys of this kind.

The need for a Canadian public broadcaster has often been debated. I have addressed this question in the chapter entitled: "Who needs the CBC?" Numerous Royal Commissions and Parliamentary Committees have also examined the issue over the years.

The most recent review was conducted by the Parliamentary Committee on Canadian Heritage in 2007. It received submissions from individuals and groups representing a broad cross section of Canadian society. The voices of the cultural community, the motion picture industry, various educational institutions, government agencies, commercial media organizations, francophone and aboriginal associations, were heard. The breadth and depth of support for the CBC was clearly demonstrated.

The result of these hearings was unequivocal. In its 2008 report: *Defining Distinctiveness in the Changing Media Landscape*, the committee confirmed the CBC's role as *an institution at the centre of cultural, political, social and economic life in Canada*. It also recommended annual funding of \$40 per capita.

It must be acknowledged here that there has always been a small minority of Canadians who do not support any level of taxpayer funding for the CBC. Nevertheless, when the full range of opinions is taken into account, the need for the CBC could properly be described as a “no-brainer”, well beyond reasonable dispute.

### ***THE COMMUNICATIONS ENVIRONMENT***

Technology has been a key driver of change in communications for over 150 years. The telegraph, the telephone, the gramophone, radio, movies and television can all be characterized as transformational technologies that expanded the reach, speed and the very nature of human interaction. Digital technology and the world-wide web have further revolutionized communications, leading to synergies previously undreamed of. The stage has been set for another disruptive leap into a new world of disintermediation in which traditional gatekeepers are losing their grip. Conventional business models no longer work as they used to. This is true for broadcasters, as well as for print media. In fact, the line between print and electronic media has become blurred. Newspapers and magazines can be read on line, where they also offer video and audio content. Similarly, traditional broadcasters include print matter in their on line sites.

It's easy to become intimidated by the challenges of this technological progress and dazzled by the possibilities that it offers. But we should not forget that technology is only a means to an end. It will influence the form of programming and how it is accessed by audiences, but what really counts is the quality and relevance of that programming. A useful analogy would be that of a pipeline. Its value does not lie on the material of which it is constructed, but on the oil or natural gas that it delivers.

No one can predict with any degree of certainty how the media environment will be reshaped by the new platforms, nor which business models will survive. Some trends, however, can be identified.

The very idea of broadcast regulation is being challenged. The CRTC, in fact, has exempted from regulation programming streamed over the Internet. And, while conventional television viewing still remains high (about 28 hours per week per person,) video streaming through the Internet, currently around 2 hours per week, is bound to increase its penetration into the Canadian market. This carries important consequences for the quantity and quality of Canadian content that will be available to Canadian audiences. Nevertheless, much of the streaming now taking place is to watch TV programs originally created by traditional networks. Streaming is just a new technique to watch this content, all of which reinforces my basic premise that content is what really matters.

### ***CBC FUNDING***

Unfortunately, despite the conclusions and recommendations in the 2008 Heritage Committee Report, Parliament has failed to match the rhetoric with the required funding. From 1984-85 to 2012-13, the CBC's total (operating, capital and working capital) annual parliamentary appropriation went from \$1,094 million to \$1,155 million, a nominal increase of 5.6%, but a real decrease of 47.2% after inflation is taken into account. During the same period, total annual federal government expenditures rose from \$100 billion to \$277 billion, a nominal increase of 177%, or a real increase of 38% after inflation. As this is being written, further reductions to the CBC budget are being implemented.

The cumulative effect of all these budget cuts has led to a significant decline in the number of high production value programs, more repeats, and substantial losses of human talent. The latter is particularly worrying, since it is people, not machines or buildings, that produce content for viewers and listeners. Significant television audience share has been lost, in part due to the proliferation of new channels, but also because of the negative impact on programming caused by budget reductions. The additional loss of the commercial revenue associated with hockey rights has hit the CBC especially hard.

The corporation has attempted to cope with its smaller budget in a variety of ways. It has become more efficient, making better use of its human and physical resources. Some of the CBC's talent pool, for example, instead of being segregated in narrow silos, is now available across several platforms. These adjustments have been painful at times, but necessary. No doubt more can be done to advance this sharing of resources.

Another change has been an increased reliance on commercial advertising, which is disturbing. (In a recent episode of *The Rick Mercer Report*, for example, commercials took up 30% of the time, including some promos for other CBC programs and a 15 second promo for the Museum of Canadian History. The program ended with a characteristic and, in this case, ironic rant mocking the government's use of taxpayer money for partisan advertising! I am not picking on Rick Mercer. In this episode, as he does on all the others, he entertained the audience, while reflecting the different regions of Canada. That's the sort of thing that the CBC is supposed to do, not sell waffle makers, towel warmers, steak knives, winter boots, automobiles, heartburn remedies, etc. Private broadcasters can do this well enough.)

Such reliance on commercial advertising has been encouraged by successive governments. However, beyond a certain point, advertising has an adverse steering effect on CBC program content. Decisions on what programs to offer are driven more by what advertisers seek than by the expectations set by Parliament. This results in a CBC that is not sufficiently distinctive from its commercial counterparts. The law of diminishing returns is also bound to kick in at some point. Will people really pay attention to 18 minutes of commercials every hour, when all they have to do is record the program and fast forward through the ads? There are already indications that, while ads on CBC TV programs have been increasing, ad revenue has been declining.

While many public broadcasting supporters have advocated a totally commercial free CBC, my own view is that the CBC could be sufficiently distinctive by maintaining a hard cap of four

minutes of advertising per hour. This cannot be achieved within current funding levels. For web-based delivery, some other method to limit advertising would have to be devised.

In arguing for adequate levels of CBC funding, it's important to point out that Canadian private broadcasters also receive valuable support from taxpayers. This is because, for them to survive in the presence of their much larger American competitors, some combination of protection and regulation are necessary. The restriction on foreign ownership is one example. Another is Section 19 of the Income Tax Act, which disallows tax deductibility of advertising on foreign media primarily directed to a Canadian market. Then there are expenditure relief measures, in the form of production tax credits and access to the Canadian Media Fund, which benefit both the CBC and private broadcasters. Finally, we have simulcasting (the replacement by Canadian broadcasters of American commercials with their own on programs for which they have bought the Canadian rights.) The combined value of these benefits to private broadcasting entities was estimated by the Nordicity Group in 2011 at about \$1 billion per year, yet their obligations to offer Canadian programming and to serve minority audiences are far below those of the CBC.

The Auditor General's 2000 report pointed out that the CBC has an abundance of accountability relationships, but none of them defines the job it is expected to do broadly enough not to interfere with its independence but specifically enough to define resource requirements. In fact, the CBC is required to produce reports on its finances, environmental performance, employment equity, administration of the Access to Information Act, administration of the Privacy Act, Official Languages, Travel and Hospitality expenses. It must also make various submissions to the CRTC and is subject to audits by the Auditor General of Canada. It submits an annual Corporate Plan and, from time to time, appears before Parliamentary Committees to make presentations and to answer questions. No doubt some of these submissions and reports are necessary but, when taken as a whole, the regulatory and reporting burden appears excessive. There is no information available on the overall cost, nor whether any of these reports are actually used for decision making. The feasibility of streamlining the reporting process by including all essential data in the CBC's Annual Report should be considered.

As indicated earlier, the Parliamentary Committee on Canadian Heritage recommended annual funding of at least \$40 per capita in 2008, well above the \$29 in actual funding for 2014 which covers both English and French language services. Taking into account inflation since 2008, the loss of hockey revenue and the impact of the emerging digital technologies, an annual funding level of \$50 per capita seems quite reasonable (it's more or less equivalent to the 1994 level when adjusted for inflation.)

It's important to point out here that Canada is one of the most thinly populated countries in the world. In fact, of the 241 countries listed in the United Nations 2004 World Prospects Report, Canada ranks 230th in population density, with 3.4 persons per square kilometre. Broadcasting over such a large area is a costly endeavour.

The CBC is also expected to reflect the multicultural and multiracial nature of Canada. According to data from Statistics Canada, Canada's foreign born population in 2011 was 6.8 million (20.6% of the total). There were more than 200 ethnic groups, of which 13 surpassed the one million mark. All population growth scenarios point to migratory increases as the key driver of population growth over the next 50 years. All these factors create additional cost pressures for the CBC.

Whatever per capita funding level is established for the CBC, it should be done for a period of five years at a time, in order to ensure sufficient stability for proper planning. Adjustments for inflation can be made each year in line with those for the federal government as a whole. It is not unreasonable to expect five-year funding commitments from Parliament, given that the CBC is required to submit a Corporate Plan that includes its objectives and strategy for five year periods.

It is appropriate to point out here that the CBC's Parliamentary appropriation, beyond its nation building objectives, also provides the Canadian economy with a return on investment estimated at \$4 for every \$1 of taxpayer funding (The Economic Impact of CBC/Radio-Canada – Deloitte 2011.)

The case for Canadian public broadcasting, however, should not rest exclusively on the economic benefits of its tax funded appropriation. Not everything of value can, or should be, evaluated only on the basis of its financial returns. Funding support of culture is the foundation of great civilizations, and cultural development cannot be left entirely to market forces. As Max Frankel, former executive editor of the New York Times put it, "without government subsidy and tax supported philanthropy, there would be no great universities, no great libraries, no great museums, no grand opera or basic science."

Finally, an annual funding level of \$50 per capita would still fall well below the average \$82 available to public broadcasters in other Western countries (Nordicity – "Analysis of Government Support for Public Broadcasting and Other Culture in Canada; Oct. 2013.")

How could annual funding of \$50 per capita be achieved? With a hard cap of 4 minutes of advertising per hour, it is obvious that substantial additional resources would be required. Various options to generate such funding have been suggested in the past.

One option is that of a licence fee. Under this system, everyone is charged an annual fee based on the number of receivers that they have in their house. Canada had such a system until the year after the launch of CBC Television in 1953, when it was abolished. While in effect, licence fees paid by Canadian owners of radio receivers represented almost half of CBC revenues. This option is still used in some European countries, but I doubt that it would be acceptable in Canada. Even in Europe, it may not last, given the increased use of Internet delivery relative to conventional television reception.

Another option sometimes advanced is that of a tax on the sale of equipment such as radios, televisions, computers, iPods, iPads and similar devices. Here too, I would expect strong consumer resistance.

Subscription fees may be a more realistic option, since they can be levied through service providers and appear to be the fastest growing source of revenue for broadcasters. These would not work for radio, which remains accessible over the air, but could be viable for television and web-based platforms. It is a model already used for a variety of specialty channels. But, as far as the CBC is concerned, it raises important questions. If it is deemed to be a public service, should it not be available to all Canadians, regardless of ability to pay? Isn't that why it is called *public* broadcasting? And, if some form of payment is required, would it raise enough funds to be able to fulfill its mandate?

The foregoing raises difficult questions, to which I do not have all the answers. But there are certain realities that must be faced. The CBC is a creature of Parliament, which has given it a mandate to provide a range of radio and television programming services to Canadians in both official languages. The best available evidence is that current funding levels are woefully inadequate for the CBC to do its job. Is it not up to Parliament to decide how the CBC should be funded?

Should a Royal Commission or Parliamentary Committee be convened? Absolutely not. The record clearly demonstrates that such reviews amount to little more than stalling tactics. Public hearings are held, reports are eventually written and tabled. Then they gather dust, and nothing really changes. Surely there should be enough expertise within the federal government to provide Parliament with a range of options that addresses these questions. Additional expertise from other agencies, such as the CRTC, could be tapped.

Unfortunately, Parliament has been dithering while the CBC has been withering. Absent adequate and stable funding, the CBC is left to its own devices. What choices does it have that do not violate the mandate?

It could shift resources from television to radio, given that a dollar spent on radio programming goes a lot further than a dollar spent on television programming. Radio is a well established mobile platform. One can listen to it without distraction while driving or doing chores around the house. It already has a very loyal audience, although its reach is lower than that of television. Such a shift would mean fewer hours of original TV programming, which could be concentrated during the prime time hours of 7 p.m. to 11 p.m., with a predictable further drop in TV audience share.

In describing the foregoing option, it is not my intention to second guess decisions that the current board and management have to make. My only objective is to provoke a thoughtful debate about how a national institution like the CBC can survive and make a positive contribution to society. In fact, various alternatives for re-inventing the CBC have been advocated by well-meaning observers of the cultural scene. Some are worthy of pursuit, but they all beg the question of why Parliament is allowing the CBC to drift. And why so many people are prepared to accept this state of affairs. It's as if we are stuck in a state of

complacency. We should not be so easily deterred from speaking out – not in any politically partisan way – but as Canadians from all walks of life and all sides of the political spectrum. Our elected representatives have a duty to either fund the CBC adequately or to modify its mandate so that it can function within the resources that are available. This failure of leadership at the Parliamentary level should not go unchallenged. As things stand, the CBC is faced with a no-win situation. It can attempt to honour the existing mandate, and fail – or it can unilaterally determine what aspect of its mandate will not be met. Neither option should be acceptable.

## **GOVERNANCE**

The current governance system for the CBC needs a major overhaul. The board composition should reflect a broad cross section of society, rather than partisan affiliation with the governing party. Directors should be appointed through a transparent process and include individuals from the broadcasting, journalism, performing arts, academic, business, legal and other sectors, representing the various regions of Canada. (Prospective directors may now apply for vacancies on the CBC board through a Government of Canada website. No data are available as to the extent to which this procedure is actually used.) All members should serve without remuneration, other than reimbursement for out of pocket expenses. (CBC directors now receive compensation of up to \$2,000 per day.)

The CBC is a non-profit crown corporation. Membership on its board should be viewed as a public service, just like a hospital or library board.

Two employee representatives, one from the English side and one from the French side should be elected by their peers to serve as directors. Such participation would add considerable value to the work of the board (CBC employees who would serve on the CBC board of directors would not be representing the interests of their colleagues; that is the exclusive function of their union.) All meetings should be held in public (minutes of CBC board meetings are currently posted on the CBC website, but they offer minimal detail and are several months old.) Provisions for in camera sessions and for dealing with conflict of interest are already incorporated in the corporation's by-laws, but may have to be reviewed if the employee representation is added (employee representation on the boards of publicly funded corporations is already quite common in universities, hospitals, colleges, etc.) As it is currently constituted, the CBC board cannot realistically discharge its fiduciary duty to the public. Instead, it is often perceived as an arm of the government of the day.

Furthermore, the board, not the government, should have the authority to hire, compensate and, if necessary, remove the president. This step would enhance the CBC's independence. If a president's appointment, compensation and possible extension of term are the sole prerogative of the federal cabinet, is it not possible that he or she will feel more accountable to the government than to the board? A properly constituted board would provide an important layer of insulation between management and the government of the day.



The fact that no woman has ever been appointed president and CEO of the CBC provides further indication that the current process is flawed. I have known professionally many women with substantial broadcasting experience and strong leadership qualities who would have made a first class contribution in the role of CBC president. It is also puzzling that, over the past forty years, only one person from inside the CBC (me) has been appointed as its president (except for a 90 day period in 1989 when CBC executive vice president Bill Armstrong acted as president from the end of Pierre Juneau's term to the beginning of Gerard Veilleux's.) I doubt very much that I am the only CBC insider qualified to assume the mantle of president during that period. In fact, numerous individuals who served in senior roles at the CBC have distinguished themselves as CEOs or other senior posts in the private sector, government, academe and other important fields. Many of them possessed the qualities required to head the corporation. Perhaps they were considered but were too smart to take on such a role!

### ***INDEPENDENCE AND ACCOUNTABILITY***

I have already spoken about the importance of maintaining an arm's length relationship between the government of the day and the CBC. But, if the CBC is to be independent, should there not be a mechanism to hold it accountable? After all, as long as taxpayer funds are involved, there must be a process to evaluate how well the CBC is performing. I would characterize independence and accountability as the two sides of the same coin.

In theory, there is such a process. It is the CRTC's responsibility to hold public hearings and to obtain information from the CBC at each licence renewal interval. And the CRTC does have the expertise to do this in a professional and objective manner. But, in practice, there are significant limitations to this process. First of all, the CRTC cannot deny a broadcasting licence to the CBC (except in the case of specialty channels.) It can only impose conditions, but there are no consequences if those conditions are not or cannot be met, given that the CBC is dependent on Parliament for its annual appropriation. Sometimes, several years go by without a CRTC licence renewal hearing at all.

The Broadcasting Act requires the CBC to submit an annual report that includes quantitative information respecting its performance. The CBC is currently doing this by including a variety of metrics in its Annual Report, which is accessible on the CBC website. These indicators are directly linked to the CBC's mandate, and cover a broad range of quantitative (share and reach) and qualitative measures. In many cases, four-year comparisons are shown, along with management comments. With some exceptions, CBC audiences (in both official languages) give rankings in the 7-8 range (out of 10), which is commendable when one considers the financial constraints under which it must operate. The overall sense that one gets by looking at these indicators is that audiences perceive CBC programming to be informative, enlightening, entertaining, original, innovative, high quality, Canadian and different from what is available on other channels. Nevertheless, there is room for improvement, and a close examination of these indicators points to areas, such as regional reflection, where performance is perceived as relatively weak.

It is possible for the role of the CRTC vis-à-vis the CBC to be modified in order to strengthen the level of accountability by the CBC, while preserving the arm's length relationship. It would work as follows:

- a) The CBC, being a creature of Parliament, would not require a licence from the CRTC. This is based on the notion that Parliament itself has granted the CBC the equivalent of a licence, with a very specific mandate.
- b) The CRTC would examine the performance of the CBC at five-year intervals, using the CBC's own indicators as published in its Annual Report. The CRTC would give its opinion on: a) whether the indicators are relevant and sufficient for a proper evaluation of the CBC's performance in the fulfilment of its mandate and: b) whether the methodology used to develop such indicators is valid and makes year to year comparisons meaningful. It could also hold public hearings and recommend additional or different performance indicators.
- c) Based on its assessment of the CBC's performance and the CBC's own submission on resource requirements, the CRTC would submit a recommendation on a CBC funding formula to Parliament for the next five years.

I described the above process in my presentation to the Senate Committee on Transportation and Communications on June 11, 2014 (video link on my website.) It has not been fully developed and would require consultation with the CBC, the CRTC, the Auditor General and possibly other stakeholders before consideration by an appropriate Parliamentary Committee. Transitional arrangements would also be required, until the new framework could be fully implemented. The important point, however, is to find a way to hold the CBC accountable, while maintaining its independence from the government of the day. While Parliament would obviously have the final say on the funding formula, my proposal would at least give it an expert opinion from a knowledgeable agency (the CRTC) not tainted by political considerations.

In conclusion, without the CBC, English language Canadian broadcasting would be little more than a branch plant of the American media industry. And what about the survival of French Canada? The French language services of the CBC, commonly referred to as Radio-Canada, are highly popular in Quebec and the rest of Canada. The fact that they are delivered by a federal institution, created and financed by the Parliament of Canada, and overseen by a federally appointed board of directors, demolishes the myth that only a sovereign Quebec can protect the French language and culture.

The CBC could and should be a national treasure, playing a much greater role in fostering our Canadian identity, while providing opportunities for the nurturing of Canadian talent in all its forms. It could also be instrumental in assisting new Canadians to become full participants in Canadian life.

What has been lacking is the political will to sustain this vital institution.

