

## OPINION CRTC

# CRTC to begin its most crucial hearings in recent memory

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SJEFF FRENKEN

Next month, the Canadian Radio-television and Telecommunications Commission will begin one of its most crucial hearings in recent memory.

Beginning Nov. 28, Bell, Rogers and Corus (controlled by Shaw), the major players in private broadcasting, will make their proposals to have their TV licences renewed for the next five years. The CRTC's data say this trio controls 66 per cent of the conventional, over-the-air TV channels and 28 per cent of cable/satellite-delivered specialty TV channels in Canada, or 38 per cent of the currently licensed English television programming services overall. Their TV channels take in 80 per cent of all television revenues. The CRTC's renewal hearing—announced in mid-June 2016—will determine the conditions of performance these companies will have to meet over the next five years. (The CBC falls under a different schedule and will be up for license renewal in 2018.)

Futurists may speculate this could well be the last time such a hearing will be held. Who knows what the media landscape will be past 2020? What paradigm-changing technologies will have emerged to modify yet again how we consume our media choices? Will over-the-air broadcasting even be relevant by that time? (Bell has already signalled its intent to shut down some 40 of its broadcast towers.) What effect will Canada's decades-old legislation and regulations have in a fully digital and increasingly wireless mobile world?

There is an old saying that generals embarking on a new conflict will almost always use the tactics and often the weapons of their previous victories—and pay the price for it. Unfortunately,

the commission is facing the same scenario. How does one “future-regulate” when one has no idea what the future will hold? How does one use yesterday's regulatory toolbox to nurture, encourage, and, yes, even protect the Canadian broadcast system when these tools probably won't fit the nuts and bolts of tomorrow's broadcast environment? Will we still even be using the term “broadcasting”?

The timing of this hearing is unfortunate and questionable: it lands in the middle of an all-encompassing review of this country's \$48-billion broadcasting, media, and cultural industries initiated by Heritage Minister Mélanie Joly this past April. She believes decades of technological changes and inattention by previous governments have resulted in a system ill-suited for the digital age and thus the sector is in need of a massive overhaul. In the minister's own words “Everything is on the table.”

Joly is on record saying she is willing to change laws such as the Broadcasting Act and the Telecommunications Act, modify the mandates of the CRTC and the CBC, and create new laws or agencies, as needed. That being the case, one might wonder why the CRTC would not opt for administrative renewals for a year or 18 months to allow the dust to settle. So far, the CRTC has declined such suggestions.

While the thrust of Joly's review is to ensure Canadian content thrives in the digital age and that our domestic cultural industries will be successful in the export of homegrown content, the disturbing fact is that on the private broadcasting side, the CRTC is now permitting television stations to air far less Canadian television programming than at any other time in the CRTC's history. While CRTC chair Jean-Pierre Blais tells journalists that the CRTC is “there for Canadians,” the CRTC's data belie that claim, at least in terms of the telecast of content produced by Canadians on Canada's conventional private networks.

Even though section 3(1)(f) of the Broadcasting Act requires every broadcasting undertaking to ensure that Canadian resources predominate in the creation of programming, for the last decade, private TV stations have spent more on foreign programming than on content created by Canadians. Between 2005 and 2015 private TV stations spent \$7.9-billion on foreign programming, and \$6.8-billion on content created by Canadians. CRTC requirements for Canadian programming expenditures may finally be shifting this pattern—but why has it taken a decade for the Commission to

require private TV stations to allocate more resources to Canadian, than to foreign, programming?

The same section of Parliament's Broadcasting Act also requires that every broadcasting undertaking ensure that Canadian resources predominate in the presentation of programming. Until 2009, in fact, private TV stations were required to ensure that 60 per cent of their weekly schedule consisted of content created by Canadians. The CRTC lowered this requirement to 55 per cent in 2010, and lowered it again in 2015 when it removed the requirement to broadcast any Canadian programming before 6 p.m. The CRTC now says that Canada's private TV stations need only broadcast three hours of content created by Canadians in prime time, the 6 p.m.-11 p.m. period every evening; in other words, a total of 21 hours of Canadian-created programming over the whole week—just 17 per cent of the broadcast week. The CRTC's current policy means, in other words, that up to 83 per cent of private TV stations' weekly schedule could be foreign. In addition, it recently reduced the ‘points’ that a program needs in order to count content as ‘Canadian,’ suggesting that at least some of that content will be somewhat less ‘Canadian’ than before. Is this really what Parliament intended when it said, in the language of the Broadcasting Act, that the resources for presenting programming should be ‘predominantly Canadian’?

The CRTC's disappointing track record suggests that continuing to advocate for more programming that reflects the Canadian experience will be an uphill struggle. When Canada's private broadcasters introduce their fall schedules by promoting how much they are “simulcast” with the American networks, it speaks volumes about where Canadian programming really fits into private broadcasters' business plans. It also refutes the arguments by the CRTC and broadcasters for the past twenty years that concentrated media ownership would increase and strengthen the content created by Canadians.

In the background papers and ministerial pronouncements of this cultural review there is much talk about how increased exposure and revenues from foreign markets will foster and fund the future production of more CanCon. There's some evidence that production activity is on the rise in Canada, but a great deal of what it produced is appearing on over-the-top (OTT) services like Netflix, Amazon Prime as well as YouTube and Facebook, and not on conventional network television. Increasing the production of television programs in Canada, regardless of whether these programs are meant for foreign consumption, may be good from an industrial policy point of view; it does not help the creation of television programs about Canadian stories and interests that are primarily meant for Canadian audiences. That requires a cultural policy—a policy that considers Canadians not just as ‘consumers’ of television programs, but also as citizens of Canada.

The strategy of seeking revenues from foreign markets will not be of any assistance to



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the one element of Canadian programming that has no export value, indeed no shelf life at all past its first run—and that is local news and information programming. This vital component of the system cannot be left behind as the regulator, bureaucrats and politicians look at “big picture” concepts and proposals for how Canadian culture can thrive and be found in the huge digital sandbox in which we all now play.

It is a fact that local television news is in trouble in Canada. While recent surveys have shown that local news is important to Canadians, at the hearing to re-view the policy framework for local and community television programming in early 2016, private broadcasters told the CRTC they can't afford to do it because they can't make money with it.

So the CRTC recently re-set its requirements for local programming in Broadcasting Regulatory Policy CRTC 2016-224, which says that “commercial English-language stations will continue to be required to broadcast at least seven hours of local programming per week in non-metropolitan markets and at least 14 hours per week in four metropolitan markets; and the local programming requirements for commercial French-language stations will continue to be assessed on a case-by-case basis, using a benchmark minimum of five hours of local programming per week.”

However, the CRTC's local programming concept does not necessarily mean newscasts. Regulatory Policy 2016-224 says “all licensees will be required to broadcast a minimum level of local news and to allocate a percentage of their previous year's revenues to such programming, with the exhibition and expenditure levels to be determined at licence renewal based on historical levels.” But what precisely these levels of news programming will be is to be addressed at this licensing hearing. It remains to be seen if the CRTC will make them an expectation, a requirement, or a condition of licence, an important legal distinction in terms of enforcement, as the CRTC said this past January that it will only enforce conditions of licence.

Furthermore, will the CRTC's June 2016 decision which allows TV stations to count talk shows as news programming—and the federal government's October

2016 decision to give private broadcasters tax credits for talk shows—shift information programming from newscasts that cover and report local events, to programs where panels discuss those events? As citizens, are we not entitled to more than just five per cent of a local station's airtime—an hour each 18 hour broadcast day—to keep us informed with solid news programming about the issues and events in our communities, provinces and country by those with access to the public airwaves?

Parliamentarians understand how important local media outlets in their ridings are to civic engagement and community reflection. Some observers believe the explosion of new on-line digital services will perform the same function in innovative and more effective ways. However, the so-called legacy media, which includes local over-the-air broadcasters, are at the moment still the most trusted and relied-upon source for news about the community. These services still attract significant audience attention. They still earn significant income from local communities.

Local television stations bear a responsibility that should not be further diminished by a regulatory regime that has already allowed the erosion of Canadian programming requirements.

There's an ad for a high-priced wristwatch which says that one really doesn't own the timepiece, one merely safeguards it for the next generation. The same thinking can be applied to the stewardship of our country. Those in charge today must ensure that Canada's private broadcasting system plays a meaningful role in reflecting Canada back to its citizens. Future generations are depending on it. We must get it right.

*Sjeff Frenken is chair of the Forum for Research and Policy in Communications which was established in 2013 as a non-partisan, non-profit organization focused on research and policy about Canada's communications system. Its submissions to regulatory and other bodies, including Parliament and the CRTC, advocate for strengthened access by people in Canada to high-quality programming made in Canada, and to low-cost broadcasting and telecommunications distribution systems. <http://frpc.net/home> The Hill Times*