

Accountability in the commercial radio sector: Lessons from Canada

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Abstract

In most areas of public policy, where regulation is expected to exhibit transparency and accountability, evaluation is recognized as necessary. Broadcasting is no different. Nevertheless, recently published reports argue that a new evaluative approach for broadcasting processes and policies is required because past assessments are outdated and current methodologies are lacking in rigour. Using a mixed methods approach, which explores the use of formal evaluation methods, this study seeks to provide tangible data about 141 commercial radio stations having undergone radio licence renewals from 1997-2007. The objective of the study is to determine how and to what extent Canada's regulation agency, the Canadian radio-television and telecommunications commission (CRTC), holds radio station owners accountable to the objectives of the Canadian legislation, regulations and policies, as well as broadcasters' conditions of licence. Although the CRTC has criteria to evaluate stations and has been moving toward streamlining in recent years, it is apparent that case by case approaches are still employed and discrepancies have taken place in providing sanctions to non-compliant stations. Results also demonstrate how the process lacks monitoring to uphold accountability. The study provides an example for all countries seeking to improve accountability in the communication sector as a whole.

Keywords: Radio, accountability, evaluation, Canada, commercial radio

Introduction

Over ten years ago, the parliamentary committee responsible for Canadian heritage published a voluminous report entitled *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting* (Canada, 2003) which includes close to one hundred recommendations. Although, the document did not garner the attention from government officials and regulatory professionals it intended, for many researchers and advocates it still remains a key reference document for addressing issues of broadcasting system reform. Among its recommendations, it argued that renewed evaluation of the broadcasting system and its policies is essential, not only because current policies and programs are inadequate, but because past assessments are out of date and new methodologies should be adopted. This recommendation has since been echoed in numerous studies, reports and public hearings in Canada and abroad demanding not only evaluation and new methods, but also new forms of accountability and, most of all, empirical data to support decision-making (see Murray, 2001; Shultz & Held, 2004; Reinard & Oritz, 2005; Dunbar & Leblanc, 2007; CRTC, 2007b for examples). Critical changes in the industry, from consolidation to technological convergence, further emphasize the need for transparency. Nonetheless, evaluation in the broadcasting sector remains

ad hoc and reactionary based on poor judgment calls and spontaneous decision-making that succumb to various pressures rather than being guided by informed research and thorough analysis. It is in this context that this article explores the use of formal evaluation methodology to assess the extent to which Canada's regulatory agency, the Canadian radio-television and telecommunication commission (CRTC), has upheld accountability in the broadcasting sector, particularly with regards to commercial radio licensees.

Though the Internet and ownership regulation might make interesting topics, an examination of well-established regulations provided by radio make a suitable subject of study. Radio is still a relatively self-contained environment in opposition to television, for example, which is available through many platforms and channels. Also, radio's rich history can provide insight for the use of newer technologies, as well as the application of specific evaluation methodologies. The study which is documented here is not only relevant for Canadians, but for all countries seeking to improve their means of assessing accountability. The study provides precious information about commercial radio practices which are often left unstudied given access to information in this area is guarded and difficult to obtain. The results of the documentary analysis are the main focus of the article.

The Canadian radio sector

Radio in Canada is comprised of three complementary sectors: Public radio (84 stations along with 18 digital services, namely the Canadian broadcasting corporation); the community sector (150 campus and community stations); and the commercial sector (681 licensed stations, 158 AM stations and 523 FM stations) (CRTC, 2009, p. 95). Commercial radio in Canada is a highly concentrated sector comprised of very few players with networks of radio stations run out of hubs. This is in clear opposition to the more eclectic landscape of radio comprised of multiple owners that would have been the norm a few decades earlier. All three sectors are regulated by the Canadian radio-television and telecommunications commission (CRTC). The main governing legislation is the *Broadcasting Act, 1991*. This law along with the *Radio regulations, 1986*, the *Commercial Radio Policy, 1998* and the *Commercial Radio Policy, 2006* are the main documents of reference for regulating the commercial sector.

The licence renewal process

Though the object of this article is not to discuss the licence renewal per se, but rather its outcomes, it is important to note the steps taken to assess a station's performance and more importantly the criteria used to evaluate the stations. In Canada, radio stations undergo formal licence renewals every 5 to 7 years. This

renewal is not automatic and undergoes a formal assessment by the CRTC. Until recently, public hearings were reserved for situations of non-compliance. However, in the past few years, the CRTC has been moving towards public hearings for all parties. Nonetheless, the criteria are the same. Stations are evaluated on the number of complaints received (if any)¹, the comments they receive from the public (if any) during the public notice of renewal period, the amount of Canadian content broadcast in comparison to the required amounts, the ability of the station to retain program logs and records and the ability to provide programming information.² The evaluation also takes into account elements of the *Commercial Radio Policy, 1998 and 2006*, such as the measures taken to promote Canadian music, achieve the levels of particular categories of music (depending on conditions of licence) and how a station ensures Canadian content development levies³ are paid. Furthermore, for stations broadcasting in French, the levels of French-language music broadcast according to the *Commercial Radio Policy* as well as the length of the proposed French musical selections. Attention to compliance with the amount of local programming broadcast is also examined to assess performance.

Within this context, the object of this article is to present the results of a documentary analysis of 141 Canadian radio stations licence renewals between 1997 and 2007 to determine to what extent the CRTC holds radio licence holders accountable to the laws and policies to which they are bound.

Methodology

The adopted research design was inspired, for the most part, by the work of Contandriopoulos et al., (2000) and Weiss (1998) who are renowned evaluators in the health and education sectors respectively. Contandriopoulos et al.'s (2000) approach involves a series of assessments including process evaluation. This particular article focuses on a portion of the third step of the evaluation which involves a results appraisal of the Canadian commercial radio licence renewal process.⁴

To evaluate the results of the licence renewal process, and to make an assessment of the CRTC's ability to uphold accountability, one must establish the criteria and measurements to be used. In the field of evaluation this can be done by including the help of stakeholders or not. Given the financial and time constraints of this case, the criteria for evaluation were selected based on the literature review of regulation and accountability, as well as elements from the *Broadcasting Act, 1991*, the *Radio Regulations, 1986* and

¹ It is to be noted that commercial radio station complaints are handled through an independent organization: the Canadian broadcast standards council (CBSC) except for situations pertaining to the *Broadcasting Act, 1991*. Membership to the CBSC is voluntary.

² See parts Part 1, section 2.2, 1-14; Part 1.1., sections 3-7, Part 1.1, section 8 and Part 1.1, section 9 of the *Broadcasting Act, 1991* for further details: <http://laws.justice.gc.ca/eng/acts/B-9.01/>

³ These levies include Canadian Talent Development, which is a financial program that was put in place by the CRTC in the late 1990s to inject funds in the Canadian music industry to assist in building Canadian artists' careers and provide Canadian content for radio. In 2006, this program was renamed Canadian content development (CCD) as the mandate was expanded not only to develop Canadian talent, but overall Canadian content. CCD contributions came into effect on 1 September 2007.

⁴ The detailed methodology which includes all the phases of the research is forthcoming in *Medien*.

its amendments; the commercial radio regulations from 1998 and 2006; annual reports of the CRTC; and conditions stated in the radio licence renewals of the chosen sample of stations from 1997-2007.

Since the prescriptive aspects of the *Broadcasting Act, 1991*, are "so broadly worded that it would be impossible to judge whether a willing and cooperative licensee was really compliant" (Salter & Odartey-Wellington, p. 126); and because the ideal evaluation scenario (criteria chosen in consultation with all major stakeholders involved in the renewal process) was not feasible for financial and time constraints, the criteria chosen to evaluate the CRTC's performance in upholding accountability of commercial radio stations included elements from the day-to-day application of the *Radio Regulations, 1986*, and in the *Commercial Radio Policy, 1998 and 2006*.

As previously mentioned, the study limits itself to Canadian radio licence renewals that took place from 1997 to 2007. It does not examine cases that involve public or community radio because they warrant studies of their own considering the differences in policy and regulation that apply to these sectors. Commercial radio is also the radio sector where the licensing and regulatory role of the CRTC is most critical, as public radio (CBC) is governed by its own statute and the CRTC has a very light role with respect to community radio. The 1997-2007 timeframe is proposed for ease of access as paper archives are often missing or incomplete (in person request for information, September 18, 2007). It was also decided to select a time span long enough for some stations to have had at least two licence renewals for comparison purposes. Most renewals run from three to seven years.

Following the instructions of the Senior Officer, Information Holdings at the CRTC, a customized online search of the CRTC website was conducted to determine the number of licence renewals conducted per year as this is not a statistic held by the agency. Although the results were mostly on target, some documents proved irrelevant and were removed. These included repeat results, licence amendments, documents pertaining to digital radio, licence renewals for special events (example: sporting or religious events), cable licence renewals, satellite renewals, television licence renewals, applications for new stations and documents pertaining to acquisitions or licence amendments (for example changing from the AM band to the FM band). The resulting entries totalled 1, 657. These results were then entered into an electronic spreadsheet program (Microsoft Excel) for ease of reference and all entries pertaining solely to networks, transmitters or to the CBC, as well as community and campus stations were removed from the total number of results to isolate true commercial radio licence renewals. This 'weeding' process yielded a total of 298 entries, representing a total of 141 stations over the ten year period. These remaining stations constitute the basis for analysis. They represent the entire population of formal licence renewals for commercial stations from 1997-2007. With the exception of historical documents involving stations prior to

1996, such as initial applications for licence renewal and administrative correspondence, most of the information collected was obtained through the CRTC website www.crtc.gc.ca.

The analysis of the licence renewal documentation of these stations was conducted using a grounded theory approach (Glaser & Strauss, 1967). Data obtained from documentation relevant to the licence renewals for the selected radio stations and the CRTC monitoring reports were analysed to identify themes and categories of information pertinent to the research question and that corresponded to the chosen criteria. A checklist approach was used to determine if the CRTC discussed the relevant criteria in the cases as described on paper, then the material was analyzed for similar / dissimilar wording. The themes that emerged were used as illustrative examples during the interviews to obtain more information on licence renewals, and to gain insight as to why the process sometimes breaks down and how it could be improved. Analysis of the decision notices of the 141 stations was performed using emerging codes from the Glaser and Strauss (1967) approach. Each document was given its own series of codes; only after coding was completed did comparisons and categorization take place. The categories were scrutinized multiple times to validate the reoccurring patterns (if any) and the series of observations which emerged from this process to provide the basis for a theory on licence renewals. At this point, coding based on Glaser and Strauss' (1967) model ended. It was subsequently possible to make links between the categories and criteria of evaluation using observations, and the categories were reduced to include only those relevant to the newly established 'theory'.

Results from licence renewal data analysis were complemented by the existing research on broadcasting policy and relevant policy documents. They served to provide insight into the way in which radio station licence renewals have been conducted over time.

Results and discussion

The results and discussion are described following the order in which they were obtained. This includes a description of the conditions of licence, the duration of licences and issues of non-compliance. The conditions of licence highlight station requirements, whereas results pertaining to the duration of licence explain if radio stations fulfilled requirements or not. Analysis of non-compliance explains situations of shorter licence terms.

Conditions of licence

Examining licence renewal documents identified a number of apparent commonalities between most licence renewals, particularly in the types of conditions of licence issued. The conditions of licence are obligations that a radio station must fulfill and are complementary to what is stated in the *Broadcasting Act, 1991* and *Radio Regulations, 1986*. They are included in licence renewals and sometimes appear as reminders, either because of past non-compliance, or because they are particular to a type of station. In other cases, conditions of licence are the same for all stations as they represent general CRTC objectives. These are not stated as such in other legal documents. Examples include requirements to comply with regulations from another ministry or department, as in the case of hiring equity, for instance.

The wording of conditions of licence differentiates what constitutes a reminder, a suggestion or a legal obligation. Observations in this regard follow. In 129 cases, the CRTC issued, in general terms, conditions of licence which radio stations were to follow. In 69 cases, the licence renewal document noted that licensees were "subject to the conditions of their current licence, the decision at hand and the licence to be issued." A similar sentence was used in 22 cases where the licensees were said to be "subject to the conditions in the decision and the licence to be issued." In 36 other cases, the licensees were said to be "subject to the licence to be issued." Finally, in 2 cases, the licensees were said to be "subject to the current licence." Although few cases had different wording that seemed to refer to a similar idea, there was no notable consistency with the other 169 renewals, and the majority did not include any such phrase.

Certain conditions of licence are common to many stations. One such condition prohibits licensees from operating within specialty formats defined in CRTC public notice 1995-60. This was noted in 48 renewals. In 133 renewals, the CRTC made note of contributions to be made to Canadian talent development (CTD) and Canadian content development (CCD). Only in one case was there specific mention of an exemption from this condition of licence. Also, in 62 renewals there was a note of the need to respect the Canadian association of broadcasters' (CAB) sex-role portrayal code⁵. And, in 287 renewals, the CRTC encouraged the licensees to comply with the Employment Equity Act or mentioned that they were subject to it.

In addition to these conditions of licence, in a few cases, the CRTC highlighted particular conditions of licence that only affect a particular station. These cases relate to stations that have exceptions to current regulations or stations with previous issues of compliance that are being addressed. These situations were quite rare, however, and the most prevalent had to do with exemptions to the *Broadcasting Regulations, 1986* (4% of exceptions) where most exemptions dealt with the type of programming that must be broadcast at certain times or its quantity. The second most common consideration had to do with Canadian

⁵ Now known as the "Equitable portray code" (See <http://www.cbcs.ca/english/codes/epc.php>)

content (3.4% of exceptions). In the majority of these cases, the CRTC required a higher level of Canadian content than what is indicated in the regulations.

Reminders

In a number of cases, the CRTC provided stations with reminders. Most of these reminders seemed to act as warnings to ensure either continued compliance or to improve performance in the future. Table 1 presents the type of reminders used and their frequency.

Table 1 – Frequency table of reminders issued to radio stations by the CRTC in radio licence renewals

Reminders	Frequency	Percentage (%)
Provide year of release of musical selections	8	2.7
Expectations about funding	1	0.3
PN 1990-111(AM FM policy for the nineties)	2	0.7
Changes to <i>Radio Regulations, 1986</i>	1	0.3
Hit music requirements	1	0.3
PN 1993-78 (religious broadcasting policy)	2	0.7
CANCON and spoken word quotas	2	0.7
Licencee's responsibility for what is broadcast	1	0.3
News content requirements	1	0.3
Provide report on benefits	4	1.3
Benefits commitments	22	7.4
Responsibility to serve the English-speaking audience	1	0.3
Increase in CTD requirements	1	0.3
Must wait for broadcasting certificate (Issued by Industry Canada)	1	0.3
Total	48	15.9

The most frequent reminder is to fulfill benefits requirements, which are amounts to be expended on public interest activities⁶ following a change in ownership. According to the *Broadcasting Monitoring Report 2007*, from 1 May 1998 to 31 December 2006, 77.5 million dollars have been spent in benefits from transactions

⁶ These include FACTOR, MUSICACTION and other eligible initiatives as outlined in the commercial radio policies.

involving English-language stations and 99.3 million dollars were spent for transactions involving French-language stations (CRTC, 2007c).

Duration of licences and non-compliance

A total of 101 renewals resulted in licences with shorter durations than maximum. This represents 34 % of total cases, involving 86 stations. Among these stations, only eight were given at least two short-term licence renewals in a row. It is important to note, however, that 41 cases resulting in 6-year renewals were not for non-compliance. The CRTC required the stations to renew at an earlier time in order to meet the objectives of its regional plan – a strategy undertaken by the CRTC to renew licences from the same region during the same timeframe – or for workload reasons (in other words depending on how many cases the CRTC had to evaluate in a given time period). Seventeen cases resulted in shorter renewals, but no specific reason was provided in the CRTC decisions. Table 2 illustrates the duration of licences from 1997-2007.

Table 2 – Frequency table of duration of licence renewals

Duration of licence	Frequency	Percentage (%)
7 years	197	66.1
6 years	61	20.5
4 years	17	5.7
3 years	12	4.0
2 years	5	1.7
17 months	1	0.3
15 months	1	0.3
8 months	1	0.3
3 months	2	0.7
Non renewal	1	0.3

No links were made between the reasons for non-compliance and the length of short-term licence renewals except in the case of 3-year renewals. Of the 12 stations renewed for 3 years, 8 had issues with Canadian content (CANCON) requirements. However, these were not always exclusively CANCON related. Table 3 illustrates stations with more than one short licence renewal during the timeframe of the study.

Table 3 – List of stations with more than one short licence renewal, their location, the number of consecutive short renewals and their duration

Station	Location	Number of consecutive short renewals	Duration of licences
CKVM-FM	Ville-Marie, QC	5	4 years, 3 months, 2 years, 4 years, 2 years
CKPC-FM	Brantford, ON	2	3 years, 3 years
CKOD-FM	Salaberry-de-Valleyfield, QC	2	17 months, 8 months, 2 years
CKKW-FM	Kitchener, ON	2	3 years, 3 years
CHOI-FM	Quebec, QC	2	2 years, non renewal
CIMX-FM	Windsor, QC	2	6 years, 4 years
CJBQ-AM	Belleville, QC	2	6 years, 3 years
CKBY-FM	Ottawa, ON	4	4 years, 3 months, 15 months, 6 years

A few cases in Table 3 are of note because they underwent public hearings: CKVM-FM, CKBY-FM, CKOD-FM and CHOI-FM.⁷ Very few stations were required to have public hearings because the licence renewal process during the period under study was generally a strictly 'written-on-paper' process. However, in some circumstances, the CRTC required stations to 'show cause'⁸ particularly in situations of non-compliance. CKVM-FM is an adult contemporary station operating out of Abitibi-Témiscamingue, Quebec (the northern part of the province), but its audience extends to North-eastern Ontario. It has virtually no competition as it is in a very isolated market. It received its first short-term licence for non-compliance with the levels of French-language vocal music and Canadian content being broadcast. Station representatives explained that the former was due to programming changes within the station, while the latter was beyond its control since the content was provided by a third party, the CBC (CRTC, 1997a). The next licence renewal resulted in a public hearing. According to the decision, this was the fourth short-term licence renewal in a row, which means the station had been struggling prior to the decisions stated in this sample. The other short-term renewals dealt with non-compliance concerning logger tapes (1989 and 1992), and with the CRTC wanting to review the file with other stations (1994) (CRTC, 2001a). Once again, in 2001, the station was non-compliant in maintaining logger tapes. The reason for non-compliance this time had to do with technology breakdown. The public hearing discussed measures to avoid this happening again (CRTC, 2001a). The CRTC felt that the licensee did not provide enough evidence to avoid a similar situation again, therefore issued a mandatory order and a two-year licence renewal. In 2003, the station applied to convert

⁷ CFRB (not shown here) also had a public hearing, but received a full-term licence renewal the following time.

⁸ Show cause: means that a station must explain its behaviour. The onus is on the station representatives to explain the situation in which they find themselves.

to the FM band. Considering the station's history, the CRTC approved the conversion, but gave it a four-year term and three conditions of licence including one which required the licensee to supply the CRTC with self-assessments of its programming (CRTC, 2003). In 2007, the station was once again found in breach of regulations for not having broadcast adequate amounts of French-language vocal music. The CRTC once again mandated a short renewal of two years and maintained the self-assessment condition of licence. This time, no mandatory order was issued (CRTC, 2007a).

CKBY-FM is a private commercial country station in Canada's capital region of Ottawa. It is currently owned and operated by Rogers Communications Inc. According to logger tapes, logs and music lists for the week of March 24 to March 30 1996 requested by the CRTC, CKBY-FM had broadcast 52.7% of musical selections that were considered hits. A condition of licence required the station to air no more than 50%. Consequently, in CRTC decision 1997-486, only a four-year licence renewal was issued (CRTC, 1997b).

Following notice of a public hearing, CKBY-FM appeared before the CRTC in June 2001 (CRTC, 2001c). The CRTC noted an "apparent failure of the licensee to comply with its condition of licence requiring that the station maintain the level of hits below 50% each broadcast week" (CRTC, 2001c). At the hearing, the licensee was required to explain why a mandatory order should not be issued to ensure compliance. According to the transcripts of the public hearing, the station acknowledged its error and explained that, although serious, it was not intentional. Station representatives assured the CRTC that this would not happen again and explained how it would resolve the problem. Among other things, the station's owner, Rogers Communication Inc., hired a regulatory affairs officer to oversee policy and compliance (CRTC, 2001d).

On August 10, 2001, CKBY-FM was granted a three-month renewal because the CRTC had not made a final decision. On November 7, 2001, CKBY-FM was once again issued a shorter licence renewal period, 15 months, and was issued a mandatory order. The CRTC believed that the station had failed to provide an acceptable explanation for its behaviour during the hearing, and that this was not the first time it had assured the CRTC that changes would be made to avoid a repeat offense. In its 2003 decision, the CRTC granted CKBY-FM a full licence term since it had remained in compliance for the period of the previous renewal, and it also dropped the mandatory order.

After a series of administrative renewals, CKOD-FM, an independently owned French-language radio station operating in Salaberry-de-Valleyfield, Quebec (not too far from Montreal), was invited to a public hearing in the Fall of 2005 to 'show cause' why a mandatory order should not be issued given the station's non-compliance with logger tapes and annual reports. The initial explanation for failing to provide logger tapes in 2004 was attributed to an equipment malfunction. The CRTC further noted that four annual reports for the station were missing and during the hearing it was confirmed that payments to Canadian talent

development (CTD) initiatives were not complete (CRTC, 2005). Although station representatives assured the CRTC that changes were being made to comply with regulations, the CRTC decided to issue a mandatory order to ensure compliance with annual report submissions and CTD contributions (CRTC, 2005). A 17-month licence renewal was issued.

In 2006, CKOD-FM was subject to another public hearing. The CRTC required the licensee to explain why mandatory orders should not be issued for the failings concerning logger tapes and CTD contributions. According to the CRTC decision, "the licensee ha[d] taken [a] completely opposite course, committing one act of non-compliance after another" (CRTC, 2006). The licensee once again failed to provide annual reports and logger tapes, and did not broadcast the required amount of French-language vocal music. Nor had the licensee honoured its commitment regarding CTD contributions. There were also technological deficiencies noted by Industry Canada (our ministry) in 2005 (any problems involving equipment, and the renewal of spectrum licences are handled through Industry Canada, but communicated to the CRTC in preparation for licence renewals). A change in control that had not been previously approved by the CRTC was also noted in 2004 and was only resolved in 2006. Consequently, the CRTC opted for an eight-month licence renewal from September 2006 to May 2007, and mandatory orders were issued for logger tapes, annual reports, missing CTD contributions and to ensure that French vocal music broadcasting met required quotas.

CHOI-FM is a French language station operating in Quebec City, Quebec. Until Radio Nord Communication took over the station in 2004, it was owned by Genex Communications Inc. and primarily aired active rock music.⁹ The case of CHOI-FM, began in a similar fashion as CKOD, with a shorter licence period, but the outcome was different. On July 16, 2002, in Broadcasting Decision CRTC 2002-189, the CRTC renewed CHOI-FM's licence for a two-year term and provided the station with eight conditions of licence it had to follow including compliance with the CAB's sex-role portrayal code; compliance with the CHOI-FM Code of ethics that was set out in the decision; the creation of an arm's-length advisory committee to deal with the potential complaints arising from non-compliance with the code of ethics; compliance with French-language vocal music identification; compliance with the number of English-language montages to be played in a day; compliance with the classification of what constitutes a *montage*;¹⁰ maintenance of logger tapes for 90 days following broadcasts; and an allocation of \$8,000 annually for the promotion in Quebec of new Canadian talent in the alternative rock format. These conditions were necessary because four analyses conducted by the CRTC confirmed continuous non-compliance with logger tape requirements and French-language music quotas. CHOI-FM employees were also shortening certain songs and counting them as

⁹ An active rock station airs both modern rock and classic rock music.

¹⁰ A montage is the result of a number of previously recorded song excerpts put together to create a new musical composition. The CRTC has requirements surrounding the use of montages. These can be found in section 12 of the *Radio regulations, 1986* : <http://laws.justice.gc.ca/eng/regulations/SOR-86-982/index.html>.

though they had played in their entirety to fulfill French-language and Canadian content quotas. They also promoted the consumption of alcohol and spoke English on air. The CRTC received 47 complaints from 1999 to 2001 concerning offensive remarks or language broadcast on CHOI-FM, offensive on-air contests, and personal attacks and harassment. The CRTC also questioned the standards of spoken word programming, all of which did not comply with the *Radio Regulations, 1986* or existing licence agreements. The station's owner, Genex Communications inc. (Genex) responded to the public's complaints using a form letter and informed the CRTC of corrective measures. It would adopt a code of ethics, create an advisory committee to review complaints, would join the CAB and the Canadian Broadcast Standards Council (CBSC)¹¹ and it would "broadcast messages informing listeners that they have a right of reply if they [felt] offended by any observation or remark broadcast by the station" (CRTC, 2002).

In December 2003, the CRTC announced a public hearing commencing February 16, 2004 at which Genex would need to appear regarding its licence renewal and its requested amendments. The amendments proposed by Genex in October 2003 included the removal of some of its conditions of licence including the code of ethics, advisory committee and preservation of logger tapes for 90 days. Genex believed it had satisfied the requirements of the previous decision and argued that CRTC should not be concerned with new complaints filed during its licence term (CRTC, 2004). More importantly, it was required to 'show cause' as to why the CRTC should not issue a mandatory order and why it should not suspend the licence or refuse renewal. In its decision, the Commission conducted three new analyses into the station's programming and found only one instance of non-compliance related to French-language vocal music requirements during one of the weeks of observation in November 2002, May and August 2003 (CRTC, 2004). The station did become a member of the CBSC in September 2002 as agreed, but 45 new complaints were lodged with the Commission regarding spoken word content. Throughout the process, Genex had been struggling with a half hour segment in the station's morning show that raised serious issues regarding the abusive spoken word content. Comments generally targeted people with mental illness, women and minorities, exposing them to hate or contempt. Twelve cases were referred to the CBSC, five were grouped into one complaint and 29 were reviewed during the public hearing. In advance of the hearing, Genex requested that the CRTC remove a specific series of complaints from its file otherwise it would be unprepared to attend the hearing (CRTC, 2004).

The public hearing was conducted as planned and initial concerns over the CRTC's jurisdiction in handling complaints were quickly dismissed. In response to a campaign organised by CHOI-FM asking its supporters to write to the CRTC in the hope of saving the station, the CRTC "received 9,468 interventions concerning

¹¹ Most radio and television stations are members of the CBSC, however, this is voluntary and stations who choose not to participate, must deal directly with the CRTC. The CBSC deals with all complaints related to 7 different codes of conduct. The CBSC is non-governmental and independent. It is at arm's length of the CRTC.

CHOI-FM's licence renewal application: 9,417 were in favour of the application; 38 were opposed; and 13 were comments" (CRTC, 2004). The campaign was focused on CHOI-FM's right to freedom of expression, but as Charles Dalfen, the CRTC Chair at the time, explained in an interview with journalists from the *Globe and Mail*, it is "not about controversial comments. It is about abusive comments. Although debate about what constitutes censorship may be legitimate [...] in this case there is no question that the station breached the rules. Wherever the line is, this licensee is way over it" (Blackwell, Ha, & Tuck, 2004). The comments received encouraging the renewal were proponents of freedom of expression and appreciated some of the efforts the station was making to address often marginal social topics and to promote French alternative rock music. On the flip side, those against the renewal were concerned with the way the station was using public airwaves and suggested the CRTC should take appropriate corrective measures for the station to comply or simply revoke its licence (CRTC, 2004). In the end, the decision was based on the fact that CHOI-FM station managers did not control their hosts; comments made during the morning show were repeatedly in breach of the *Broadcasting Act, 1991* and the station's own code of ethics. Furthermore, the station proposed modifications to its code of ethics which made it difficult for the CRTC to ensure accountability. The CRTC also noted refusal to acknowledge the severity of the problems in question and the difficulties in handling the numerous complaints brought to the Commission's attention. For the CRTC, all these issues proved that Genex was not ready to meet its "regulatory obligations" (CRTC, 2004). The CRTC therefore felt it had no choice but to deny the station's licence renewal application. The battle did not, however, end that day. Genex contested the case before the Federal Court of Appeal, but in the end the CRTC decision was upheld.¹²

CHOI-FM provides multiple examples of non-compliance in a single case, but is not the norm. Sample results confirm that most cases of shorter licence renewals involve one or two reasons for non-compliance.

Licence renewal non-compliance results

Table 4 provides a list of reasons for non-compliance which have resulted in shorter licence durations. These results were tabulated using the data provided by the CRTC in licence renewal documentation.

¹² More information on the Federal Court decision can be found on the Office of the Commissioner for Federal Judicial Affairs website: <http://reports.fja.gc.ca/eng/2005/2005fca283/2005fca283.html>

Table 4 – Frequency table of reasons stated for non-compliance in the 298 licence renewals

Reasons for non-compliance	Frequency	Percentage (%)
CANCON regulations	15	5.0
French language quotas	5	1.7
Logger tapes (failure to produce or invalid)	4	1.3
Number of complaints	1	0.3
CTD contributions	2	0.7
<i>Radio Regulations, 1986</i>	6	2.0
Level of hits to be broadcast	3	1.0
Annual reports (not providing)	1	0.3
Total	37	12.3

CANCON regulations, the main reason for non-compliance illustrated in Table 4, are particularly interesting; although non-compliant situations are sometimes very close to being compliant, the CRTC still notes the situations. Table 5 compared the difference between the content required and the content broadcast.

Table 5 – Table of Canadian content non-compliance for 16 of the 298 licence renewals

Stations	Percentage of CANCON broadcast (%)	Percentage of CANCON required (%)	Difference
CHOI-FM	Not stated	Not stated	Not stated
CHNS-FM	29.35	30	0.65
CIMX-FM	18.6	20	1.40
CJQQ-FM	2.4	10	7.60
CFNY-FM	33.8	35	1.20
CFNO-FM	27	30	3.00
CFFM-FM	0	30	30.00
CKDX-FM	27.4	30	2.60
CKKW-FM	28.01	30	1.99
CKOD-FM	Not stated	Not stated	Not stated
CKPC-FM	29.1	30	0.90
CKRW-FM	23	30	7.00
CKSL-AM	28.8	30	1.20
CKTB-AM	28.5	30	1.50
CKVM-FM	8.6	10	1.40
CJQQ-FM	2.4	10	7.60

The reasons for non-compliance presented in Table 3 resulted in shorter licence durations for the licensees. Mandatory orders were issued in four cases because the stations failed to demonstrate how they would comply with particular requirements. The CHOI-FM licence was the only one in the sample that was not renewed during the 10 years studied. The next most recent last commercial radio non-renewal dates back to 1987. Coaticook FM Inc., known as CFIN-FM, was not renewed in the face of numerous failures with regard to commitments and promises of performance, issues in respecting CANCON and French-language music quotas.¹³

In general, there have been very few non renewals, and most of these have dealt with community, rather than commercial, radio stations. Table 6 includes a short list of radio non renewals, all sectors combined, provided by two lawyers in the field of broadcasting, Auer (2010) and McCallum (2010).

Table 6 – List of radio station non-renewals

Year	Station	Location	Company if relevant	Additional information
1968	CJLS AM	Yarmouth, NS	Gateway Broadcasting Company Ltd.	Did not maintain minimum standards (news and current affairs)
1973	CJLX AM	Thunder Bay, ON	Lakehead Broadcasting Company Ltd.	Campus station
1977	CFBC-FM	Saint-John, NB	Fundy Broadcasting Co. Ltd.	Did not provide minimum standard in the public interest
1981	CFMX-FM	Cobourg, ON	Radio CHUC Ltd.	Difficulties remaining on air and issues with promises of performance
1981	CHNL-FM	Kamloops, BC	NL Broadcasting Ltd.	Difficulties in ability to put the station on air
1984	CJMF-FM	Quebec, QC	CJMF-FM Ltee	Not in compliance with its promise of performance
1987	CFCQ-FM	Trois-Rivières, QC	Teleduc Inc.	Community station, non-compliant and out of funds
1987	CFIN-FM	Coaticook, QC	Coaticook FM Inc.	Failure with regard to commitments and promises of performance, issues with CANCON, French-language music quotas
1987	CFOU-FM	Sainte-Thérèse, QC	Radio Communautaire des Basses Laurentides	Community station, reasons unspecified
1987	CKLE-FM	Rimouski, QC	Radio communautaire du Bas St-Laurent	Community station, issues with compliance in advertising and French-language quotas

¹³ For more information on this case see (CRTC, 1987).

1987	CION-FM	Rivière-du-loup, QC	Communications communautaires des Portages	Community station, reasons unspecified
2004	CHOI-FM	Quebec, QC	Genex Communications Inc.	Case explained above

After CHOI-FM, in 2008, the CRTC refused to renew the licence of Harmony Broadcasting in Winnipeg. The CRTC also suspended permission for CKFM-FM Standard Radio, Toronto to air commercials for three days in 1988.

Discussion

The objective of the research was to provide tangible evidence of how the CRTC holds licence holders accountable to the laws and policies relevant to broadcasting, particularly in the area of radio broadcasting. Previous studies on Canadian radio have included reviews and government funded studies, but only two have looked at the performance of stations through the lens of the CRTC, and these focused solely on cases of non-compliance. As it was mentioned by Moore (1995), evaluation should include information about past performance to get a better sense of what to expect in the future. Except for Circular No. 444¹⁴, which was written based on a general sense of past experience and promises of performance (which are only used for media acquisitions and not licence renewals), the future of radio policy and the fate of the industry has mostly been a 'guesstimate.' If for no other reason, this research has provided improved data and information about the recent past in order to orient future practices. In medicine, for example, prior experiments on animal subjects help prepare for the use of medication in humans; and in finance, stock market trends help stockholders analyze future economic behaviour.

Case by case decision-making

The results show several discrepancies in the application of the licence renewal process. They appear to be the result of the CRTC's preference for case by case treatment of files rather than an example of its desire to streamline processes and uphold values such as transparency and equity. Examples such as CKRW-FM, CKTB-AM and CHNS-FM, where the two first stations received three-year renewals and the third station received a four-year renewal, essentially for breaches in levels of CANCON are cases in point. The more blatant case of CKOD-FM in Valleyfield where multiple renewals were given, notwithstanding non-

¹⁴ This is a notice that was issued by the CRTC in 2001 to describe how the CRTC would proceed with situations of non-compliance. It can be retrieved at <http://www.crtc.gc.ca/eng/archive/2001/c2001-444.htm>

compliance, show exactly how the CRTC has individualized certain cases, rather than objectively evaluating them using a common set of criteria and guidelines, even though they do exist.

CRTC track-record

Nonetheless, whether the stations complied or not with the regulations at hand, it is evident that the CRTC is dedicated to achieving the objectives of the *Broadcasting Act, 1991* because Canadian content is always evaluated at the time of licence renewal. The CRTC has found stations in situations of non-compliance of *Radio Regulations* and has exercised its powers by issuing short licence renewals. Over time, only 20% of all cases studied resulted in short renewals due to non-compliance. Is 20% a satisfaction number? That is difficult to assess, since only one other study documents a similar statistic (Auer, 2006). Auer (2006) found that "75% of commercial radio stations in (her) sample breached the regulations or the broadcasting legislation one or more times" (Auer, 2006, p. 123). Auer's statistic, however, cannot be used as a true benchmark for comparative purposes, as it represents far more stations than the population considered in this case. It also included stations that may have received a different type of sanction, not only a short renewal. Therefore, it is difficult to judge if 20% is sufficient to tell whether the CRTC is doing its job. As Auer (2006) concluded, the CRTC has not done a good job in enforcing regulations because more than half of the non-compliant stations in her sample reoffended even after receiving a sanction (p. 130).

Notwithstanding the fact that this study also identified re-offenders, and a few cases of multiple repeat non-compliance, it seems too easy to look at the glass that is half empty. The CRTC's control in managing the system has had a positive impact on results, regardless of problems noted in the way it investigates non-compliance. We can assume that there are probably more cases than those uncovered in the monitoring process undertaken for this study, but even with the sample presented here, it would be difficult to assume that the reputation of the entire industry is much worse than what was indicated. Without dwelling on the 20% of cases of non-compliance resulting in short renewals, this study has demonstrated a positive impact of regulation on some of the objectives of the *Broadcasting Act, 1991*. Regarding the promotion of Canadian content, for example, this claim may be made for three reasons: the first is that the low percentage of Canadian content non-compliance (5%) assumes that the other 95% of the time, stations are upholding the regulations. In 60% of the non-compliant cases, stations are only lagging by 3% or less of the required Canadian content. The second reason for believing in the system is the fact that the majority of stations that are found to be non-compliant are not repeat offenders, at least not during the timeframe observed. Finally, the third reason is that stations are collaborating effectively when it comes to

providing their CTD (now CCD) contributions; in the period studied, only two cases were noted of stations not complying in that area, and in both cases, the stations eventually paid their contributions.

All in all, the radio medium, has been demonstrated through ten years of data, to be a generally effective means of promoting Canadian ideals and identity through the broadcast of a cultural good – music – using public airwaves. Even those, such as Auer (2006), who are critical of the CRTC, in the end agree that 100% compliance is utopian. However, there are minimum requirements that should be met and tools for surveillance and enforcement that are not utilized to their fullest, or which could be improved, to deter radio stations from non-compliance beyond what existing processes accomplish.

Explaining the discrepancies

Renewals are also impacted by the CRTC's structure and appointment process. The appointment of the Chair of the commission and the commissioners is made by Cabinet, with the political views and influences of the party in power. Because of this, the Chair has very little control over the commissioners. Some solutions could include the establishment of a more democratic process, to allow the public and other stakeholders to voice their concerns. Considering current public access to media in Canada through public hearings and public complaint mechanisms, elections could be an option. Worldwide, the trend seems to be to find solutions that increase the public aspect of media and telecommunications rather than to let corporate-commercial activities expand and be directly influenced by state intervention (McChesney & Schiller, 2003).

This study also demonstrates how the Commission lacks in evaluation prior to implementation of new processes. For three-quarters of the renewals analyzed, public hearings were only used for non-compliant stations, but in the latter part of the study, public hearings were starting to be used for all licence renewals. It is unclear why the CRTC decided to implement this practice without evaluating the outcome of the existing practice. The decision to conduct more frequent public hearings brings a new dimension to the process, but the jury is still out on the impact these public hearings have on accountability. As of yet, there has been no evidence that these hearings were created with accountability in mind or to further public participation in the process.

Problems also remain within the sample which we cannot necessarily attribute to the people in the process. That is the case for the conditions of licence. In total, 17 types of individual conditions of licence were recovered from the case sample, but few are relevant to more than one station. Noted differences are more likely attributed to the fact that many stations were in a transitory state during the period examined. The CRTC was modifying most licences to only include a small number of conditions that represent a majority of

stations rather than issuing specific conditions for each station. This process was supposed to ensure a minimum of standard conditions that would apply to most stations, thereby avoiding discrepancies and reducing the need to analyse different conditions at each renewal. Examining a period prior to 1997 would reveal a longer list of conditions because more emphasis was given to promises of performance in applications for licence. This emphasis was lost along the way. Stations being given conditions of licence on a case by case basis when they are owned by conglomerates rather than individuals make such an approach unrealistic as a way of ensuring equity and transparency. Consideration is being given to the possibility of streamlining all media activities from a conglomerate rather than taking a piecemeal approach to renewals, but this may still be a long way off.

Impact of streamlining

Like all decisions, there are pros and cons. In this case, however, the positive seems to outweigh the negative. For one thing, fewer conditions of licence to monitor increases the chances of equity among the stations, as it is easier to compare them to ensure an overall degree of compliance. Fewer conditions of licence also help reduce barriers to entry, and increase competition. Advertising regulations, for example, may reduce the possibilities of revenue for stations starting out, while regulations involving hit quotas may discourage local talent from being heard and limit ad revenue. However, fewer conditions of licence may also significantly reduce the standards of operation. One such condition involves formats. Formats are thoroughly examined when applications for new stations are made, but not considered as conditions of licence giving stations *carte blanche* when it comes to defining their station brand. This also has a significant impact on the demographic that was initially intended to be served. In short, if a station promised to provide grunge music for teenagers at its initial acquisition hearing, once the licence is awarded nothing prevents the owner from deciding to offer heavy metal music instead, as long as its Canadian content or French-language quotas are met.

In any situations of further streamlining, the CRTC must not undermine accountability which deserves a study on its own to determine the risks involved.

The criteria used for evaluating radio licence renewals should match what is used to evaluate radio applications. If not identical, there should be a clear distinction in the regulations to define both groups of criteria. For the moment, they are intertwined. A section in the *Commercial Radio Policy* addresses formats in the context of consolidated ownership alongside policies for Canadian content. Furthermore, the sanctions for non-compliance with each criterion should be explicitly stated instead of vaguely described in the legislation as a supposition rather than an actual consequence. As provided in section 32 of the

Broadcasting Act, 1991, "every person who contravenes or fails to comply [...] is guilty of an offence punishable on summary conviction [and] is liable" to the fines mentioned. Even if guilty, nothing requires the CRTC to initiate court action. A change should ensure that the CRTC uses its powers on a systematic basis. Supplementary documents, such as Circular no. 444 are cumbersome for stakeholders who do not always remember to consult them. This particular document should be appended to the *Radio Regulations, 1986*, to increase its visibility. The present impression is that the CRTC is trying to hide it. Furthermore, the wording of the paragraph on mandatory orders in Circular no. 444 should be modified to offer clarity and improve CRTC enforcement of regulations. Instead of saying that "the Commission may issue a mandatory order", the document should specify exactly when a mandatory order should be issued and change the "may" to "shall."

Commonalities

Despite the discrepancies identified, some of the commonalities in the cases do relate to the language used, since decisions are expressed as standard documents, reminders and the wording used to explain conditions of licence are similar from one case to another. Furthermore, they are based on legal terms specific to the industry, which cannot be significantly altered from one time to the next. The use of this language is beneficial to standardization, but may be difficult for an outsider, or a member of the public to grasp, given industry-specific vocabulary. Nevertheless, the CRTC should continue to maintain consistency with regard to the language used in its decisions, but should consider the impact on actual policy. The way things are written do have an impact on how policy is implemented (Abramson & Raboy, 1999).

One of the conditions of licence mentioned in almost every case is the employment equity clause, which, in most cases, encouraged stations to comply with the *Employment Equity Act* or mentioned that they were subject to it. Although it was stated as 'encouragement,' it was still included in the section on conditions of licence; it is obvious, however, that the weight of the statement was less than if it were stated as 'must comply' or 'subject to.' Since 1985, all organizations under federal jurisdiction have to comply. The first federal report on employment equity was published in June 1987. Since 1996, the Human Rights Commission is responsible for enforcing the law. The changes in wording from 'encouraging' to 'subjecting' stations was not a mandated change by, Human Resources and Skills Development Canada (Manigat, 21 May 2009), however, the result does establish consistency within the CRTC's practices and provides an example of the types of clauses found in the renewals.

Dealing with non-compliance

Regardless of the common terminology for some aspects of renewals, it is clear that the CRTC does not have a standard set of guidelines to determine what duration of licence renewal should be associated with specific issues of non-compliance. So, for example, two stations, CJTK-FM and CKDX-FM, with similar problems of non-compliance (CANCON requirements and logger tapes) do not necessarily receive the same length of short licence renewal period. It is clear, however, that the CRTC does not take non-compliance lightly, as only one station that was noted as having a case of non-compliance got away with a warning. CIAO-AM had a \$3,000 shortfall in CTD expenditures in 2001, because the initiative it was supposed to support was scheduled to receive funding until 2002. CIAO-AM did pay the outstanding amount in 2002, but the CRTC, which only reviewed the case in 2007, let the station off the hook and did not issue a short-term renewal. Though this may seem reasonable as the money eventually went to the place it should have gone, one must wonder why the station did not advise the CRTC of the situation ahead of time to avoid scrutiny at the time of renewal. Again, these discrepancies are due to the case by case approach taken by the CRTC and the lack of consistent monitoring practices. Although shorter licence renewals are seen as a deterrent, it is clear that there is a difference between a renewal of a few months and a renewal of a couple of years, especially when it comes to financial considerations. The more frequently a station must present itself before the CRTC, the more it costs. Stations must gather information and put together a defence each time and, in some cases, must travel to the hearing unless CRTC events are taking place in their region.

No particular links between the reasons for non-compliance and the duration of licence renewals provided were identified. The closest to a pattern were, as indicated, cases of three-year licence renewals, but the results are inconclusive. The only other indicator provided is the information in Circular No. 444 (CRTC, 2001b), which attests to the fact that the CRTC gives a seven-year renewal to stations found in compliance while those found in situations of non-compliance receive four-year renewals to give them a chance to address the situation of non-compliance. In the case of stations with more than one consecutive short licence renewal, once again, there is no clear explanation for the different renewal terms.

Conclusion

In conclusion, this article has served to present the results of a documentary analysis which was part of a three step process evaluation used to gain a better understanding of how the CRTC holds commercial radio stations accountable to their conditions of licence as part of its radio licence renewal process.

Though very few stations have been singled out as being non-compliant over the ten years evaluated here, accountability is probably the area that would require the most work for the CRTC. Since monitoring only takes place once every 5 to 7 years, it would seem obvious that further human and financial resources should be allocated to monitoring the system in an efficient way. In this electronic age, resources could be used to acquire technology that would be cost-effective and ensure periodic monitoring of broadcasters. Furthermore, to ensure equity in accountability for all parties, the CRTC should seriously consider creating a chart of escalating sanctions and periods of short licence renewals based on the types of infractions. After so many years, this should not be difficult to do. This would eliminate case by case evaluations which have been productive of observed inconsistency. Data storage in the public interest would also be beneficial. This would include accurate information on the number of renewal evaluations conducted each year and their outcomes, with statistics on issues of non-compliance, and information on standard positive actions performed by stations, such as their contributions to CTDs, in a comparable form from one year to the next. In short, the CRTC should come up with its own evaluation system paired with accountability policies including an overarching accountability strategy for all media in Canada. A Canadian version would, as in other countries such as Sweden, include specific guidelines for decision-making and a code of ethics for the practice of licence renewals. The CRTC could also adopt a streamlined monitoring and review process. In any event, this system should include, as Bardoel and d'Haenens (2004) recommend, training, periodic evaluation, monitoring and feedback.

So what are the lessons other countries can gain from Canada's experience?

- Continued applied research applications and evaluation are essential to foster public awareness of processes, particularly with regards to media policy applications, as they provide tangible data and examples of how decisions are made in situations that may seem vague and out of reach to the average citizen.
- Government officials should continue to maintain high standards, and practitioners should lobby for solutions, such as fines, that could aid arm's length agencies, such as the CRTC, in making tough decisions without having to choose between two extremes: the short renewal or the licence revocation.
- It is difficult to uphold social values and make difficult decisions when these decisions may contradict other national values.
- Further inquiries into the actual cost and value of appropriate monitoring and periodical evaluation should be considered.
- Finally, these results shed light on the licence renewal process results over time, which until now has been an understandable, but complex process for most Canadians and people from abroad.

The many benefits of having conducted this research cannot conclude without pointing out certain limitations.

Since no previous scientific research into the evaluation of the CRTC has been conducted, a normative research approach was warranted. Conditions for the type of evaluation conducted by evaluation professionals were not optimal given not all stakeholders were able to select appropriate evaluation criteria creating the need for a modified application of the evaluation framework. Furthermore, most of the work involved in reducing the population sample from the initial compiled results was done using a computer, however, much of the actual analysis, coding and calculations were done by hand, which may have resulted in human error.

On a positive note, this research also provides ideas for future research. Further studies could involve other sectors such as public and community radio, in a more comprehensive study. An examination in terms of other media, such as television, would also be worthwhile to determine if the CRTC is consistent in its decision-making across all sectors and media, or if it has different approaches. Research into the levels of compliance over a single licensing period would help ascertain if stations are more frequently non-compliant than perceived at present. A geographical analysis of non-compliance over time would provide insight to the behaviours of certain regions as well as specific companies. Studies into the reasons for not complying with CRTC regulation, and the reasons behind repeat offences could advise the development of enforcement tools such as, but not restricted to fines. Furthermore, a study of the thresholds of non-compliance would be useful for the CRTC, the CBSC and other international agencies that struggle with deciding when a particular sanction should be used as opposed to another.

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