

National Policy Conference 2006

DISCUSSION PAPER A CANADIAN CULTURAL POLICY: A STUDY IN FIRST PRINCIPLES

For decades, the cry for a coherent federal cultural policy has been the Holy Grail of cultural politics in Canada. It can be found in almost every task force or Royal Commission report that touches on the arts since Massey-Lévesque reported in 1951. It looms as a panacea for all our cultural and arts policy challenges in the imagination of generations of artists and arts professionals.

In the now-aborted campaign of ex-Minister Liza Frulla to leave a federal cultural policy as part of her legacy, one must maybe reluctantly come to the conclusion that **in fact a federal cultural policy or policies already exists**. Rather than a monolithic policy edifice, Canada has adopted a “scatter shot” approach to a federal cultural policy.

Elements of our cultural policy can be found in various pieces of legislation from the *Income Tax Act*, the *Copyright Act*, the *Broadcasting Act* and more specialized legislation such as the *Status of the Artist Act*. When one puts these elements together a different picture of federal cultural policy emerges. For the most part these elements have largely succeeded in slipping below the radar of critics, policy wonks, and certainly the cultural sector and the Canadian public.

The elusive federal cultural policy has four main dimensions:

- the broad canvas of values and ideals that form the basic idea of Canada;
- the physical and legislative infrastructure designed to actuate these ideals;
- specific measures designed to address the needs of individuals and defined groups within society which play a role in the sustenance and development of Canadian cultural expression;
- the regulatory and financial support framework for content and ownership, including industries, structures and organizations mediating the relationship between owners and users of intellectual property.

The Broad Canvas

Let us start with the British North America Act, Canada's Constitution. The constitution embodies the principal tenets of Canadian cultural policy, namely:

- the recognition of French and English as the official languages of Canada and provisions to ensure the perpetuation of these groups as keystone elements of Canadian history;
- the recognition of our first peoples as integral to the Canadian experience;

- the recognition of the multicultural nature of Canada and the importance of preserving, enhancing and increasingly our shared multicultural heritage;
- the Charter of Rights and Freedoms which provides freedom of thought, opinion and expression, including freedom of the press and other media of communication;
- the Constitution also recognizes copyright and intellectual property as areas of exclusive federal jurisdiction.

The fact that the Constitution reflects those elements that are the essence of Canadian culture and embeds them in the primary law of the land is the important basis on which all further cultural policy is overlaid.

The next most powerful element in the federal cultural policy arsenal is the 1991 Broadcasting Act. Anyone who doubts the commitment of Parliament to promote and preserve Canadian cultural and artistic expression need only read section 3.1 d) of the legislation:

“d) The Canadian broadcasting system should:

- (i) Serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada;*
- (ii) Encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity by displaying Canadian talent in entertainment programming*
- (iii) Through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society;”*

The Act also established the Canadian Broadcasting Corporation, the largest single investment ever made by the federal government in the cultural domain. Further, the Act directs *“that each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resource in the creation and presentation of programming”*. In the application of this part of the Act, the CRTC has been able to lever over \$1 billion annually from the broadcasting community for the development of Canadian content.

The Act also affirms that the Canadian broadcasting system is owned and controlled by Canadians, another cornerstone concept of federal cultural policy. This will be much tested in the coming years as new technologies for production and distribution of programming make their presence felt in the market.

The principle of **Canadian ownership** is a theme that we see repeated in policies regarding the ownership and control of cultural industries. The application of this concept to cultural industries has not been without controversy; and has often been challenging for the government to uphold. Nonetheless, it would appear to be a key element in the cultural policy of the Government of Canada.

In the whole federal legislative arsenal, the Broadcasting Act is the one which best enunciates, embraces and implements the values and aspirations of the federal government in the cultural policy realm. Other legislation developed over the decades would follow suit to a lesser degree of detail or eloquence; however, it is clear from the legislation that the federal government does see a role for itself in cultural policy and is prepared to use it for the benefit of all Canadians.

The Physical and Legislative Infrastructure

Lofty goals and noble sentiments are empty unless there are provisions for carrying them into action. The next element of a federal cultural policy gives Canadian society some of the key infrastructure needed to carry forward the development and expression of Canadian culture and values.

To this end, the federal government continued to build the infrastructure to foster and sustain artistic and cultural expression in Canada and, as such, it enacted a raft of legislative initiatives including:

- ***the National Film Act (1939)***

“9.(a) The Board is established to produce and promote the production and distribution of films designed to interpret Canada to Canadians and to other nations:”

- ***Telefilm Canada Act (1967)***

“10.(1) The objects of the Corporation are to foster and promote the development of a feature film industry in Canada”

- ***The Canada Council Act (1957)***

“8.(1) The objects of the Council are to foster and promote the study and enjoyment of, and the production of works in, the arts.....”

- ***The National Arts Centre Act (1966)***

9.(1) “The objects of the Corporation are to operate and maintain the Centre, to develop the performing arts in the National Capital regionand to assist the Canada Council for the Arts in the development of the performing arts elsewhere in Canada.”

- **The Museums Act (1990)** (*Civilization, National Gallery of Canada, Library and Archives Canada, Science and Technology, Nature*)
3. “It is hereby declared that the heritage of Canada and all of its peoples is an important part of the world heritage and must be preserved for present and future generations and that each museum established by this Act
- (a) plays an essential role, individually and together with other museums and like institutions, in preserving and promoting the heritage of Canada and all of its peoples throughout Canada and abroad and in contributing to the collective memory and sense of identity of all Canadians;”

Each piece of federal legislation cited above contains similar, though in most cases, less effusive pronouncements on the goals and commitment to federal cultural policy. However, **it is clear that Parliament endorsed repeatedly the legitimate role of the federal government in Canadian cultural policy, and continues to build upon that role even today.**

The above examples are not intended to be a comprehensive examination of key cultural legislation; indeed, many other excellent examples have been omitted. The point of this exercise is that Parliament, consistently, deliberately and continuously, considered and adopted federal cultural policy legislation fully aware of what it has done and continues to do.

In addition to creating the building blocks of the infrastructure to foster and promote artistic and cultural activity, the federal government has also developed legislation and regulations which touch directly on those Canadians who earn their livelihood in the arts and cultural industries.

Specific Measures

In our effort to excavate the outlines of a federal cultural policy, we have so far looked at two areas where Parliament has asserted its intention to contribute to the artistic and cultural development of Canada: the constitutional and legislative documents and the basic cultural infrastructure.

Parliament has also been mindful that it is important to create conditions for artists and creators that encourage them in their efforts to enlarge the Canadian imagination.

Like many other elements of Canadian cultural policy, a few of these float above the waterline, while many, like the bulk of an iceberg, are not readily visible to the naked eye.

In this latter category we can include measures such as:

- the Copyright Act;
- the Status of the Artist Act;

- certain elements of the Income Tax Act that apply to professional artists, some national arts service organizations, and the treatment of charitable gifts by artists or their estates.
- a) In the case of revisions to the Copyright Act, the government struggles to maintain a balance of interests between copyright owners and copyright users. This balance is difficult to achieve and tenuous at best given the constant technological changes that affect the creation, distribution, and consumption of creative products.

A further dimension to the reality of copyright legislation is the fact that reform always lags way behind technology. With new technologies emerging constantly, the efficacy of copyright legislation is under constant scrutiny by rights owners, creators and distributors. The revisions to the *Copyright Act* are therefore almost by their very nature reactive and always in a process of review and refinement. The task of the legislator is to ensure that while seeking a balance of interests, the legitimate moral and economic rights of the creator/copyright owner are respected and enhanced.

The Copyright Act must also reflect international undertakings made by Canada through bodies such as the World Intellectual Property Organization and the World Trade Organization. Some of these measures are not consonant with representations from either the creator or user community; however, they do reflect the growing globalization of information and the need to develop standards of protection for both groups.

- b) The Canadian Status of the Artist legislation was the response of the government to a number of developments both international and domestic, namely:
- the Belgrade Recommendations of UNESCO (1980);
 - the findings of the Siren-Gélinas Task Force on the Status of the Artist (1986);
 - the recommendations of the Canadian Advisory Committee on the Status of the Artist (1988);
 - work undertaken by the Standing Committee on Communications and Culture (1990).

While the federal legislation deals only with artists working in areas of federal labour jurisdiction (banking, transportation, communications and international trade), it was a development that had been sought by professional artists for some time.

The legislation recognizes within federal law the right of self-employed professional artists to bargain collectively and enjoy collective representation.

These practices had existed in the cultural sector for over 40 years prior to the legislation; however, technically they were in violation of a number of federal laws and regulations.

- c) The development of this legislation was complemented by a series of changes to the Income Tax Act dealing with some aspects of the tax treatment of professional artists. While these changes were welcome, there is a broad appreciation in the cultural sector that more must be done to ensure the fair tax treatment of self-employed artists and arts professionals. This work is ongoing and arduous due to the number of different interveners in the taxation system including the Canada Revenue Agency, the Department of Finance, the Treasury Board and other federal bodies.

The Regulatory and Financial Support Framework for Content and Ownership

The policy debates about supporting the creation and distribution of Canadian cultural content have been raging for decades. The federal government has tried to strike a balance in its approach to fostering content and ensuring that the content is produced and has a conduit through which it can be accessed by audiences.

Canada's regulatory framework has evolved over time to include quasi-judicial agencies such as the CRTC, the Copyright Board, the Competition Bureau, and the Canadian Artists and Producers Professional Relations Tribunal (CAPPRT). It is the task of these bodies to interpret legislation and policy to protect Canadian cultural content and ensure carriers are owned and controlled by Canadians. It is through the regulatory framework that conflicts are addressed and resolved in the push and pull world of the arts and cultural industries.

Regulators are sometimes hampered in their efforts by the lag time between the introduction of new technologies, and the development and passage of new legislation to address them. Furthermore, their decisions are often questioned and appealed to Cabinet (e.g. CRTC decisions concerning pay audio services in the 90s and the satellite radio decision last summer) because they seem more and more frequently disconnected from the cultural policy objectives scattered throughout the cultural policy mosaic described in this paper.

As indicated in the Physical and legislative infrastructure section above, the federal government has recognized in many ways the need to subsidize the creation of Canadian content, whether it be through the creation of the CBC, the Canada Council, Telefilm, the Canadian Television Fund or support to Canadian magazines. Decisions from regulatory bodies like the CRTC have also led to a flurry of funds to support the development of Canadian talent. The proliferation of such funds and the ensuing bureaucratic nightmares for applicants are well

documented and have been addressed at least partially in various ways. The reality is that the federal government has increasingly recognized the need to invest in, in one way or another, the production of Canadian content. Some suggest that the need for this support is greater than ever, whether it be in the not-for-profit or private sectors.

Ownership issues are an important dimension to the content/carrier discussion. The capacity to share Canadian stories and to recognize our diversity and creative expression is reliant on Canadian owned and controlled publishers, broadcasters, sound recording industries and new media ventures. The tension between private ownership and public policy is best seen in the measures developed to ensure Canadian ownership and control of our cultural enterprises. In English Canada, we are unfortunately well-versed in knowing the difficulties that our domestic films encounter in getting access to cinema screens across the nation, or of getting Canadian books to the retail market. Yet, it would appear that we are about to witness the same approach being applied to electronic distribution systems like the internet or satellite radio, where the effective content control is actually in the hands of non-Canadians.

Such protective measures that we still have are also increasingly subject to the strictures of international trade agreements seeking to broaden access to the Canadian market. To date, Canadians can claim a rather tenuous victory in preserving rules governing ownership and control of this important component in the creative continuum; however, the internal and external pressures to liberalize these rules will increase as our international partners seek to reduce trade and commercial barriers and treat culture like any other consumer good.

Is That All There is to Federal Cultural Policy?

It would be fair at this point to surmise that with the raft of legislative and regulatory measures attached to various cultural institutions and activities, the work of a federal cultural policy is done. Unfortunately, such an assumption would be false.

While it is true that many measures exist to encourage and promote the development of Canadian cultural and artistic expression, the ability of these measures to work in a complementary and cohesive manner is still the missing link in the equation.

Further, by their very nature, cultural policies tend to be reactive rather than proactive. The role of the cultural sector is to point government in the right direction in ensuring that the cultural policy framework is both responsive and effective in dealing with new challenges or opportunities. Advocates for a federal cultural policy must not shirk from this task as, in a real sense, what is required is a refinement of language around the federal cultural policy discussion. If one

asked most proponents of a federal cultural policy what it would look like, the lack of concrete detail would be the common denominator in those answers.

What is needed is a vehicle to ensure that existing cultural policies are reflective of the rapidly evolving environment in which the arts and culture exist. It must ensure that across the spectrum of legislation, regulation and policies there is a clear sense that they share a common objective and a common determination to foster and promote the development of the cultural sector in Canada.

Part of the problem is precisely the manner in which cultural policy measures are spread over a number of responsibility centres within the federal government. A good example of this is copyright. While the Department of Canadian Heritage shares this responsibility with the Department of Industry, the orientation of each department is somewhat different. Both departments assert that the driving impetus behind copyright is the balance of interests between creators and copyright owners and users; however, the interpretation of this varies between the two departments. This difference of perspective has bogged down the copyright reform process to an inordinate degree.

Another example of the gap in reality: the federal government emphasizes access by Canadians to their cultural heritage. However, budget cuts by the Department of Finance and the Treasury Board curtail the ability of our national museums to meet the accessibility objectives. Some of the institutions have reduced the hours of public access and the scope of their work across Canada.

Such examples of contractions in the system abound, notably in decisions rendered by regulatory bodies like the CRTC. **The lack of coherence between one set of policy objectives and another driven by sheer financial considerations is the gap that is most evident in examining federal cultural policy and its application.**

The Department of Canadian Heritage is notionally the lead department in the area of federal cultural policy, but it must undertake this role in close collaboration with other ministries whose objectives may be significantly different.

Yet other examples may be found in areas such as the taxation of artists and the arts, international trade policy and agreements that stray from the lines of existing federal cultural policy, foreign ownership and control of our cultural industries, and financing of the arts and cultural sector

While there are distinct benefits to be had by spreading responsibility for various elements of cultural policy throughout the federal government, there must be effective connective tissue to ensure that there is a singular

purpose and resolve guiding the implementation and development of new and existing policies and legislation. The challenge for the cultural sector and government is to devise such a mechanism and put it to good use. The task we must face in the context of these consultations is to refocus our efforts. Maybe what is required is some sort of “Charter of culture” against which policies and decisions concerning the cultural sector could be measured and challenged!

While such a mechanism may not be a panacea, it will mark a new stage in the partnership between the federal government and the arts and cultural sector. It could insulate the sector from inadvertent and uninformed policy decisions that have a negative impact.

We must turn our collective imagination to conceptualizing such a mechanism and ensure that it works to enforce and respect current and future federal cultural policies in a uniform and predictable manner. If we can solve this conundrum we are well on our way to ensuring the elements that already exist can actually function as a coherent federal cultural policy.

Conclusion:

It is the view of many within the arts and cultural sector that any progress in the cultural policy area requires three elements:

- political will;
- financial resources;
- appropriate policy and regulation.

It is rather easy to determine whether these elements are present in any political scenario and from there to gauge the prospects for progress. It is much too soon to judge the new Government of Canada on these matters; however, **it is the task of the cultural sector to do whatever it takes to ensure that these three essential elements come together to form a sustained momentum.**

QUESTIONS FOR CONSIDERATION

Are some of the existing policies and regulations outdated? What can we do to update them for the 21st century?

Are there missing pieces in this mosaic of a federal cultural policy?

Given globalization and the rapid advances in new technologies, what policies are required to ensure a place for Canadian culture at home and on the world stage?

How can we ensure that the decisions of regulatory bodies actually support the stated cultural objectives of the federal government?

Do we need a refurbishing of ownership and control rules and regulations for our cultural enterprises?

How can we encourage production and innovation while at the same time ensuring Canadian ownership of those undertakings crucial to our national culture?

What contribution should new distribution undertakings be required to make to the health and growth of Canadian culture?

Given the economic and demographic realities of our country, is it still justifiable to distinguish between not for profit and for profit organizations when it comes to subsidizing the production of Canadian cultural content?