THE REGULATION OF CROSS-MEDIA OWNERSHIP:
THE LIFE AND SHORT TIMES OF PCO 2294

by
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A case study of cross-media ownership which argues that the 1982 Cabinet order directing the CRTC to deny broadcasting licenses to newspaper owners was symbolic in origin, content and administration.

Une étude sur la propriété des médias avance que l’ordre de 1982 du cabinet obligeant le CRTC à refuser des permis de radio diffusion aux propriétaires de journaux était en fait symbolique quant à son origine, son contenu et son administration.

Introduction

The federal Cabinet issued a policy direction to the Canadian Radio-television and Telecommunications Commission (CRTC) on July 29, 1982. It required the CRTC to refuse to issue or renew broadcasting licences to the proprietors of daily newspapers unless this would "adversely affect service to the public or create exceptional or unreasonable hardship to the applicant and the level of existing competition in the area served or to be served..." (PCO 1982-2294). The direction, Privy Council Order 2294, was described as a measure:

- to ensure that, with certain exceptions, enterprises engaged in the publication of daily newspapers shall be prohibited from owning or controlling broadcasting undertakings in the same market area for the general purpose of fostering independent, competitive and diverse sources of news and viewpoints within Canada (Explanatory note, PCO 2294).

The direction, issued under the authority of The Broadcasting Act, came 11 months after the Royal Commission on Newspapers and broadcasting undertakings. The 1970 Special Senate Committee on the Mass Media had urged action to stem cross-media ownership. In the 12 intervening years, there was no government initiative to develop a formal policy on cross-media ownership. PCO 2294 was revoked by Cabinet without explanation on May 30, 1985 (PCO 1985-1735). The silence spoke volumes about efforts to regulate cross ownership in the Canadian media.

The political and bureaucratic origins of PCO 2294 were central to its life and short times. It was a symbolic measure never meant to disturb existing cross-ownership situations. Rather, it was seen by its framers as a deterrent to future problems while responding to a temporarily prominent issue. Conceived of political necessity and
rooted in administrative precedent, PCO 2294 was incapable of fulfilling the role Cabinet claimed for it at proclamation. The direction was destined to a brief existence whose demise signalled a return to business as usual in the Canadian media environment.

The following case study of the direction's origins and application supports such conclusions. Part One looks at the record of cross-media ownership regulation prior to PCO 2294. Part Two examines the roots of the policy direction with particular reference to its executive-bureaucratic formulation. Part Three analyzes the implementation stage. The final section summarizes the findings about the nature and effectiveness of the cross-ownership policy direction.


The Canadian Radio and Television Commission was created in 1968 with a mandate to "safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada" (The Broadcasting Act, Sec. 3, b). One objective was to ensure that "the programming provided by the Canadian broadcasting system should be varied and comprehensive and should provide reasonable, balanced opportunity for the expression of differing views on matters of public concern..." (Sec. 3, d). Cabinet was empowered to issue directions to the commission on who could hold broadcasting licences (Sec. 27, 1). The wide-ranging authority of the CRTC promoted its status as a powerful policy actor.

The policy direction enjoyed growing favour as a governing instrument during the 1970s to counter a perceived erosion of political control of regulatory agencies (Janisch, 1987: 11; Kenniff, 1979: 68). The 1979 Royal Commission on Financial Management and Accountability encouraged its use. Before a policy direction was issued, the government should refer the matter to the affected agency for public hearings (1979: 318). The government would be free to accept or reject the agency's advice. The next year, a House of Commons Special Committee on Regulatory Reform urged that Cabinet be authorized to issue binding policy directions to the CRTC and other federal regulatory agencies (1980: 1004).

A review of the advantages and disadvantages of policy directions -- for both agency and Cabinet -- suggests several political and administrative implications (Roman, 1981, 1985; Janisch, 1979; Vandervort, 1979: 129; Hartle, 1979: 127-133). The perceived advantage of increased control by Cabinet is two-edged. An agency faced with a difficult decision might seek a policy direction from Cabinet to absolve itself of responsibility for an especially hard judgment. A directive power concentrates lobbying on the Cabinet although "the power to influence the Governor in Council is by no means equally distributed throughout the population" (Roman, 1981: 153). By defining directions too precisely, Cabinet could be seen to be deciding individual cases, thereby destroying an agency's credibility while attracting criticism for politically-motivated regulation (Johnston, 1980: 91). A direction framed in broad
terms could be open to conflicting interpretations. Regulatory decisions made subject to policy directions could be challenged before the courts or appealed to Cabinet on the grounds the direction had been misinterpreted by the agency. A vague direction would be especially vulnerable. Its very existence would suggest "some tension, lack of trust or uncertainty" between the government and the agency (Roman, 1981: 157).

The Cabinet's directive power under *The Broadcasting Act* was used three times prior to 1982 -- to reserve cable channels for provincial educational television, to bar non-Canadians from holding broadcasting licences and to restrict licences held by provincial agencies to educational broadcasting outlets (Consolidated Regulations of Canada, 1978). In 1978, the Liberal government proposed a new Telecommunications Act -- never approved -- which would have allowed Cabinet to issue such directions to the CRTC as were considered necessary to achieve the policy objectives of the act (Bill C-16, 1978).

Research for the Royal Commission on Newspapers described the extent of newspaper and broadcasting cross ownership in 1981 (Oliphant and White, 1981: 45-49). The Irving family (of which more later) operated radio and television stations in the same New Brunswick communities where it also published all of the province's English-language daily newspapers. The Blackburn family owned the daily newspaper, two radio and one television station in London, Ont., as well as two radio and one TV station in nearby Wingham. Southam Inc. and Selkirk Communications Ltd. (with the former holding 30 per cent of the voting shares of the latter) overlapped newspaper and broadcasting markets in five areas -- Vancouver, Calgary, Edmonton, Hamilton and Prince George. Power Corp. of Montreal through its control of Gesca Ltd. published four daily newspapers and also held 10 radio and TV licences. These operations shared markets in only one community -- Granby, Que. Armadale Co. Ltd. owned the daily newspaper and the leading AM radio station in Regina. The Burgoyne family owned the daily newspaper in St. Catharines, Ont. and a local radio station. Western Dominion Investments Co. Ltd. held broadcasting stations in Toronto, Ottawa and Montreal although the newspapers published by an operating division, Sterling Newspapers, were located in smaller, distant centres. Thomson Newspapers held minor interests in some small Ontario cable TV outlets.

The CRTC's approach to regulating cross-media holdings in broadcasting took the form of overseeing the transfer of shares, licences and other means of ownership and control. The commission said it "considered the regulation of ownership as an essential element in its regulation and supervision of the Canadian broadcasting system with a view to implementing the objectives of the Broadcasting Act..." (Notice of Public Hearing, Feb. 9, 1979). From 1968-1975, the CRTC dealt with applications to transfer ownership or control of 515 radio, television or cable (CATV) operations (Babe, 1976: 569-71). The commission approved 423 and denied 92, with nine of the former conditional on the new licence holder divesting or reducing holdings in broadcasting property due to concerns over CATV and television cross-ownership. Of
the denials, 41 cited an unacceptable concentration of control and local ownership. Two others were denied because they would have resulted in newspapers controlling the operations. "The Commission considers that the ownership and control of broadcasting undertakings should be separate from the ownership and control of newspapers except in special circumstances..." the commission wrote in denying a 1974 transfer which would have given The Toronto Star control of a small cable company (Decision 74-44). It did not say what the "special circumstances" were.

The commission recognized that The Broadcasting Act did not give specific guidance with respect to ownership and control but drew its authority from the principles and objectives of Section 3. Ownership issues were evaluated "on the merits of each individual case, taking into account the particular factual circumstances. This approach has provided the Commission with the necessary flexibility to assess each application in the light of the objectives and requirements of the Act" (Notice of Public Hearing, Feb. 9, 1979). The specific question of newspaper control or ownership of broadcast undertakings was, the Commission continued, of particular concern,

in view of the potential reduction in independent and separate editorial judgments that this could involve. This would be of greater concern if there were joint ownership of broadcasting and newspapers in the same market. A further concern with respect to cross-ownership of cable television undertakings and newspapers has been that such cross-ownership potentially could establish for the newspaper enterprise involved an undue advantage over other print media in the same community.

On the evidence of these statements, the CRTC was clearly inclined to discourage cross ownership of all kinds but the rules -- if any -- were vague.

A critical period was reached in the late 1970s. An October 1979 CRTC ruling denied permission to transfer shares in Multiple Access Ltd., which controlled several broadcasting stations, to Baton Broadcasting, another large chain. The transfer would have put CFTO-TV in Toronto and CFCF-TV in Montreal, the largest private stations in their respective markets, in the same corporate hands. Although the application was denied on the basis of concentrated ownership, an anonymous dissenting opinion argued the transfer should have been allowed. The split decision demonstrated disagreement within the commission on ownership issues. On Feb. 9, 1979, the commission announced hearings would be held the following May on the cross-ownership issue. "The objective of such a review would be to determine whether... there is justification for altering the Commission's position that cross-ownership should not be permitted except in special circumstances." Three months later, the CRTC said it was cancelling the hearings. Although 25 written briefs were received (most from broadcasters and newspaper publishers), only eight parties said they wished to appear. There were six requests to postpone the hearings, with the remaining briefs urging the commission to treat cross-ownership applications "on the
merits of each individual case, taking into account the particular factual circumstances ..." (Notice of Public Hearing, May 10, 1979). The commission said it would think about it.

The CRTC was not the only government agency with a mandate to act on ownership issues, but by the late 1970s events made it appear so. In 1976, the Supreme Court of Canada upheld a lower court ruling that K.C. Irving Ltd., by owning all English-language daily newspapers in New Brunswick, had not violated the merger and monopoly provisions of the venerable Combines Investigation Act, a criminal statute with a poor record in cases involving newspapers (Henry, 1970). The Irving family also held broadcasting licences for one radio and two television stations, facts which did not enter the case. The only provision of the legislation upheld involved sections dealing with conspiracy to create a combine. The case had "a devastating impact on Canadian combines law and policy", gutting the legislation as it applied to the media (Green, 1981: 426).

The consequences of the Irving judgment were of more than academic interest to other newspaper chains concerned about the impact of anti-combines legislation. Southam Inc. and FP Publications, respective owners of competing, money-losing newspapers in Montreal, Ottawa and Winnipeg pondered their options in the face of proposed changes to competition laws which would nullify the effect of the Irving decision. Executives feared that any action to reduce competition between the chains could lead to a "newspaper CRTC" (Globe and Mail, Sept. 22, 1983). They were reassured in 1978 when Industry Minister Jack Homer intimated that changes to the law would not be forthcoming and the existing legislation would stand (Slotnick, Sept. 21, 1983). The Montreal Star closed in 1979, leaving The Gazette as the surviving English-language daily newspaper in the city. Eventually, a deal was struck that took effect on Aug. 27, 1980. The Ottawa Journal and The Winnipeg Tribune were closed (leaving Southam and FP dominant in Ottawa and Winnipeg respectively) while Southam purchased interests in The Gazette and Pacific Press of Vancouver which were owned by Thomson Newspapers Ltd., FP’s parent company. Investigators from the combines branch submitted a report on these events to the federal Attorney General in January 1981 (Report of the Director, 1981: 59). In May 1981, Thomson, Southam and affiliated companies were charged with conspiracy to restrain trade as well as merger and monopoly. By December 1983, the companies had been acquitted of all charges (Slotnick, Dec. 10, 1983). The anti-combines legislation as a means of controlling media ownership was effectively dead.

II The Birth of PCO 2294.

The news of the closure of The Ottawa Journal and The Winnipeg Tribune on August 27, 1980 found Multiculturalism Minister James Fleming at a meeting of the Cabinet committee on Priorities and Planning. As chairman of the Cabinet committee on communications, he was designated government spokesman on the newspaper
situation. The following week Cabinet decided to appoint a royal commission under chairman Tom Kent to investigate the newspaper industry. Fleming, a former broadcast journalist who had been in Cabinet only five months, was given responsibility for the commission and subsequent policy development.

The Royal Commission on Newspapers (hereafter the Kent Commission) reported to Cabinet in July 1981. Among other measures, the Commission proposed a Canada Newspapers Act which would require newspaper proprietors to meet certain requirements before being granted a broadcasting licence in the same community where their publications were dominant (1981: 239-40). There would be provision for compulsory divestment in cases where existing cross-ownership was deemed in violation of the legislation. The determination and adjudication of cross-ownership situations would fall to a new Press Rights Panel, with the Canadian Radio-television and Telecommunications Commission only peripherally involved as the broadcast licencing authority.

There was little or no perceived widespread public pressure for action on cross-media ownership, Fleming said later, although he had personal concerns about the issue. He believed there was a potential for one man or organization to control news coverage and opinion in certain local markets. The Irving position in New Brunswick exemplified the kind of situation he feared most. The pressure which Fleming did identify on the issue came from working journalists, organized labour, the Consumers Association of Canada "and probably more than anywhere else from academia relating to journalism." Fleming wanted to formulate a policy which would avoid any future crisis over cross ownership involving newspapers and broadcasting.

The development of a policy response to the Kent Commission was coordinated by the Privy Council Office. There were practical as well as political reasons for linking any subsequent proposals with this powerful central policymaking agency. There was no government department with a responsibility for newspapers to which the task could be assigned. Furthermore, senior departmental bureaucrats were generally "terrifically hostile" to the original Kent recommendations because of their questionable constitutional status and the difficulty of implementing them (Confidential source). Fleming, as a Minister of State, had a very small staff. To research a policy, he needed the support personnel assigned from the Privy Council Office. Fleming agreed to accept Alan Darling, PCO director of operations, as coordinator of the project. Although Fleming was initially reluctant, PCO Clerk Michael Pitfield persuaded him Darling had the necessary standing and authority to overcome bureaucratic opposition to developing a newspaper policy (Confidential source).

Two groups were set up to study Kent's proposals. Alan Darling headed both, putting him at the centre of the policy analysis process. The first was a PCO working group which made a detailed analysis of the proposals. The second was a coordinating
committee of assistant-deputy ministers from departments with an interest in the Kent recommendations -- Communications, Justice, Finance and Consumer and Corporate Affairs. The PCO working group -- Darling and two officers -- spent three months examining the implications of Kent's recommendations. They consulted with the Department of Communications and CRTC independently to ascertain their reaction to implementing cross-media ownership controls. The PCO officers determined the CRTC had been following an implicit policy for several years of not authorizing a broadcasting licence to a new applicant if the applicant also owned a newspaper in the same community. They concluded Kent was recommending that the CRTC's implicit policy become explicit for new licences, a significant conclusion in light of later developments.

The policy analysis took place at the same time as newspaper and broadcasting companies reacted to the Kent report. Darling received telephone calls from Southam and Thomson officials -- forwarded through Fleming's office -- asking him to meet company lawyers to hear their views. The Canadian Daily Newspaper Publishers Association arranged to discuss the proposals at a conference in Toronto in November 1981. Darling attended as an observer. He began to appreciate for the first time the frustration and hostility of newspaper publishers and proprietors. However, only those who held broadcasting licences seemed concerned about the possibility of cross-media regulations. It was a distinction which did not go unnoticed in Fleming's office.

The government's policy options were developed during January and February of 1982, apparently without opposition from other Cabinet ministers who had earlier shared Fleming's concern about the constitutional implications of many of Kent's recommendations (Gray, Feb. 14, 1983). A briefing paper prepared in late March by Fleming and his staff was distributed to ministers on the Cabinet committee on social development which reviewed possible government responses. The paper defined cross-media ownership as the "effective ability to control all news sources - especially in local markets" (Mimeo, March 31, 1982: 6). The possibility of constitutional challenge was suggested for almost all ownership controls (largely on the grounds of interference with property and civil rights) except in the cross-media area. The paper recommended a direction to the CRTC which would require "no cross-media ownership in local markets except when such a rule would cause unfair hardship or when market is extremely competitive" (1982: 29). The cross-ownership proposal received little attention in the document, probably because it presented "no general problem" (1982: 14). A direction promised few political complications. The other Kent proposals, by contrast, were a constitutional bog.

The Department of Communications would be responsible for any direction issued under The Broadcasting Act. Fleming dealt directly with Communications Minister Francis Fox who "was very supportive in this personally", although the same could not be said for DOC officials in the beginning. "There was some argument from some officials that there already was a cross-media rule," said Fleming. "I pointed out
that clearly it was inadequate ..." The reluctant DOC officials were concerned about the political repercussions of a direction. If it proved a success, Fleming would get the credit. If it was a disaster, they feared their minister would be blamed. In fact, Fox and Fleming had an understanding that if CRTC interpretations of a direction were too vague or otherwise ineffective, they would bring in a more strongly-worded measure (Confidential source).

CRTC chairman John McIsel supported the principle of cabinet directives to regulatory agencies. "There should be greater guidance from the government in future decisions are taken, and less of a government review activity after decisions have been taken," he told a House of Commons committee (Communications and Culture, June 6, 1982, 39:7). He did, however, favour some form of Cabinet appeal "because the Cabinet directive is very likely to be put in very broad terms." The role of appeal should be limited to ensuring that the commission in fact implemented a directive, and applied the interpretation Cabinet intended in issuing it. McIsel's willingness to accept directions -- and Fox's evident willingness to issue them -- suggested high-level unanimity on the principle.

Fleming outlined the government's plans in a speech at the University of Western Ontario on May 25, 1982. The CRTC would be directed to reject licence applications or renewals in cases where newspapers operated radio or television stations in the same market where their publications circulated. The measure itself was to be incorporated into a subsequent Canada Newspapers Act which eventually died on the parliamentary order paper. Meanwhile, responsibility for regulating cross-ownership was to rest with the CRTC rather than the new press regulatory agency recommended by the Kent Commission. The emphasis was thereby shifted to the agency which had already taken the policy initiative several years previously by adopting the rule-of-thumb inherited from earlier broadcasting regulators. The direction would formalize the informal.

There had been unofficial suggestions for some time in the civil service that Cabinet might call for a cross-media ownership direction. Lawyers in the Department of Communications and the CRTC were prepared for the possibility. In March 1982, a DOC lawyer was assigned to research earlier CRTC decisions involving cross-ownership. The formal order to write the direction marked the beginning of a series of consultations and drafting sessions in the DOC's legal branch in the first week of June 1982. The lawyers consulted briefly with the DOC's own broadcasting policy section. However, because the direction was to deal essentially with newspaper issues there was little input from that quarter. The DOC lawyers made several telephone calls to Darling to clarify that draft texts conformed to Cabinet's intent on the direction.

There is evidence to suggest the CRTC had little impact on the policy formulation process despite its existing cross-ownership policy and eventual responsibility for applying the direction. CRTC chairman McIsel's first firm intimation of a direction
came from Fleming’s speech in late May. Although Mcisel had read the Kent report, he was not asked for comment by Cabinet-level officials who felt it would be inappropriate to consult directly with a semi-judicial office ultimately responsible for implementing whatever measures were decided on. Within the CRTC, there was no sense of a crisis -- real or impending -- over cross ownership. A draft copy of the direction was forwarded by the DOC to CRTC general counsel Avram Cohen for comment in June. He discussed the draft with "some of the commissioners", other CRTC officials and lawyers. The issue did not require special study, given the agency’s long-standing interest in the area. Mcisel reviewed the draft with Cohen. They agreed the proposed wording was general and loose. Their suggestions for improving the text were sent back to DOC. It is not known if these were accepted. But if they were, the ambiguous language of the direction suggests that earlier versions must have been vague indeed. Only after the direction had been issued did Mcisel discuss it with other commissioners, and then only to consider how hearings involving the direction should be structured.

The CRTC executive may not have been well-informed about the development of cross-ownership policy at the political level. An agency official claimed there was considerable friction between Fox and Fleming over the direction, but the opposite seems to have been true. The same official said there was limited interest in the direction at the CRTC because it was considered a "symbolic" measure being pushed by Fleming for his own political benefit. Furthermore, CRTC and DOC officials regarded the direction as something that "had to be got through" because a minister had "a bee in his bonnet." Bureaucratic resignation, if it existed, may have reflected a feeling that there was little chance of affecting decisions given the strong PCO involvement in the process. The CRTC may have simply been out of touch with its political masters in this matter, perceived the direction as a ratification of existing policy and proceeded accordingly.

Meanwhile, DOC lawyers researching CRTC precedents decided the agency rulings were not very sophisticated in their explanations of why cross-media owners were awarded or denied licences. The lawyers faced two major problems in writing the direction. The first was a definition of "control". The Foreign Investment Review Agency was consulted on the specifics and subtleties of business control situations. The second difficulty was pinning down the idea of "co-location", the concept of two media sharing the same market area. No specific use was made of the recommendations or research of the Kent Commission, although the DOC lawyers were generally aware of the material.

A DOC draft was carried to a senior-level meeting which included Fleming, Fox and Darling. Fleming later took responsibility for insisting on so-called "grandfather" and "level-of-competition" clauses to permit the CRTC to exercise discretion. The first clause would permit the CRTC to exclude from the direction’s provisions in certain cases cross-media proprietors who already held licences. The competition clause left
it up to the CRTC to assess levels and degrees of competition. The draft was finalized and forwarded to the Privy Council Office for Governor in Council approval.

The principal policy actors shared a similar perception of the direction's intent. Fleming saw the new measure as "simply a matter of strengthening it and giving a signal by government restating and I believe toughening the [existing CRTC] policy." The lawyers who drafted it believed a direction would give "a legal foundation" to an existing policy. "It didn't change the Commission's approach," said one. Alan Darling argued the direction put the CRTC's implicit policy on a firmer legal basis, especially if challenged in court. "The directive reinforced their policy and gave it a legal sanction which it previously didn't have ... " The directive was also a warning to newspapers not to contemplate future investments in broadcasting. "I think that's clearly, explicitly, an area of investment not to be pursued," Darling concluded in late 1983. Time would tell.

III The Life and Short Times of PCO 2294

CRTC licence hearings in 1983 saw publishers and broadcasters attack the direction. The Canadian Daily Newspaper Publishers Association maintained the Commission had already applied "meaningful cross-ownership restrictions" during the previous 15 years. The publishers urged the Commission to hew to its proven policy of examining each case on its merits. "In general ... we believe the public interest is best served by interpreting the direction so as to cause the least disruption to existing rights and service" (CDNPA Brief, May 24, 1983). The Canadian Association of Broadcasters called for the renewal of cross-owned licences in the public interest, noting that "the fact of cross-ownership is not in itself offensive" (CAB Brief, May 24, 1983).

It may be argued the direction had some tangible impact. The Irving family's New Brunswick Broadcasting Co. Ltd. made changes in personnel and corporate structure to avoid charges the broadcasting and newspaper operations were controlled by the same individuals (Wood, Feb. 26, 1983). The CRTC approved the sale by Southam of 10 percent of its Selkirk shares to a third party, thereby "removing Selkirk from the provisions of the cabinet directive" (Globe and Mail, Sept. 8, 1983). A deal in which Maclean-Hunter purchased a substantial interest in the Toronto Sun newspaper chain was deliberately structured to avoid the direction's provisions (Alan Darling, 1983).

However, there is little evidence the direction increased the sources of news and opinion in areas with newspaper and broadcasting cross-ownership. The CRTC continued to renew licences where cross ownership was an issue. The most important case involved New Brunswick Broadcasting Co. Ltd. The Commission concluded that non-renewal of the Irving licences would be in the public interest,

but for the fact that the licences in question all expire on 30 September, 1983 with the result that there would be a sudden cessation of the only source of
CBC English-language television service in New Brunswick. Such a cessation of service would be contrary to overriding public interest considerations in that it would adversely affect service to the public (Decision 83-656: 10-11).

In other cases, the CRTC ruled that "effective ownership and control of the licensee" did not reside with a company set up by newspaper publisher Ken Thomson (Decision 83-675: 5); that "failure to grant a licence renewal for CFPL London would be contrary to overriding public interest considerations" (Decision 83-676: 7); that "MHL (Maclean Hunter Ltd.) does not effectively own or control, nor is in a position to effectively own or control, the Toronto Sun Publishing Corporation" (Decision 83-773: 7). The decisions relied on the vague language and exceptions provided in the direction. David Townshend concluded the direction may have served only to legitimize ownership patterns which could have been dealt with over time using other means (1984: 282).

However, there were few alternative proposals to stem cross ownership. The CRTC apparently made no effort to develop new options. The opposition Progressive Conservatives favored competition between the print and electronic media but not to the detriment of current proprietors. Conservative critic Perrin Beatty called for changes to the tax laws to prevent family-owned firms being forced to sell out to chains and to encourage advertising expenditures (House of Commons, Debates, June 9, 1983: 26220, 26237) The Liberal government dropped its media initiatives in the summer of 1983, coincident with Jim Fleming's removal from Cabinet. Meanwhile, proposed changes to the anti-combines legislation (subsequently passed largely unchanged as The Competition Act of 1986 by the Conservative government) may have been seen by Liberals as an alternative policy instrument. But, it was not clear how, or if, or to what extent, the new competition rules would affect cross-ownership situations.

The direction's authority was affirmed by the courts, a vindication of the various claims of enhanced legal standing for CRTC policy. The Irving family challenged the direction as a result of the short-term renewal of its broadcasting licences. The Federal Court ruled in July 1984 that the directive was within the power of the CRTC, that it was not directed against the Ivins in particular or newspaper proprietors in general and that it did not violate the Ivins' rights to free speech or to hold property. The court concluded the direction "says nothing and does nothing to regulate either the concentration of ownership of newspapers or the owners of newspapers" (New Brunswick Broadcasting Co. Ltd. v. CRTC. [1984] 2 F.C. 412).

The direction remained intact through a change in CRTC leadership and a new Conservative government. But in April 1985, CRTC chairman Andre Bureau told a Montreal audience the commission was willing to ease its broadcasting cross-ownership restrictions "on a case-by-case basis, if that is what it would take to
ensure strength and long-term viability" for the industry (Canadian Press, April 4, 1985). A few days later Communications Minister Marcel Masse announced a broadcasting policy review, although Bureau responded that his agency would not be making immediate major policy changes as a result (Westell, April 10, 1985). Two months later PCO 2294 was revoked by Cabinet without explanation. Shirley Serafini, the CRTC’s director-general of broadcasting, was quoted later as saying the directive had "served its purpose" and its continuance "would impose a burden on both the industry and the commission" (Westell, June 4, 1985). The death of PCO 2294 was not viewed by the commission as a policy change. This is no surprise, given what had gone before. "The Government wants competition in the media but ‘feels it has other instruments for doing that,’ including combines laws," according to Serafini. It was not explained how this could be, given the uncertainties of existing and proposed legislation.

Conclusion

PCO 2294 was a flawed governing instrument. It was a political direction rather than a policy direction, chosen because it appeared the least troublesome of the available options. It was an incremental measure which attempted to formalize de facto procedures already implemented by the regulatory agency. And even then, the direction would have been unnecessary had Cabinet provided some guidance on cross-media ownership in the past. By 1982, however, the initiative had passed long before into the hands of the regulatory agency.

The predictable dynamics of policy directions came to the fore. The Cabinet and senior bureaucrats became the targets of industry lobbying. There were legal challenges to the direction’s impartiality and intent. The court’s ruling confirmed the direction’s legal authority. Vague language used to avoid charges of discrimination created confusion about the direction’s exact meaning. Uncertain interpretations flowed from ambiguous language. The CRTC’s internal policy was replaced by an external order developed by officials lacking the agency’s long experience in the subject. It is little wonder that application of the direction provoked a cranky response from regulators and regulated alike.

The cross-media ownership direction was essentially symbolic in origin, content and administration. It was symbolic in origin because it was a substitute for the untenable policy proposals made by the Kent Commission. It was symbolic in content because its provisions did little more than attempt to formalize an imprecise de facto CRTC policy. It was symbolic in administration because it did not -- and could not -- meet the claims made for it by Cabinet. PCO 2294 was a creation and a victim of political convenience. It is a conclusion that serves equally well as epitaph.
Notes

I wish to acknowledge the counsel of Prof. Richard Schultz and Cathy Duggan of the Centre for the Study of Regulated Industries, Department of Political Science, McGill University.

1. The bulk of this section is based on interviews with the officials named, as well as others who requested anonymity. The quotations, unless otherwise noted, are from interviews conducted by the author as part of the research for an MA thesis. Allan Bartley (1984) "The Magic Solution: The Cross-Media Ownership Direction," Unpublished MA thesis, McGill University, Montreal.

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