

NETWORKS AND GATEKEEPERS:
THE POLITICS OF INTERNET POLICY IN CANADA

Submitted by
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Declaration of Authorship

I, Sabrina Wilkinson, hereby declare that this thesis and the work presented in it is entirely my own. Where I have consulted the work of others, this is always clearly stated.

Signed:

Date: January 6, 2021

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Abstract

This dissertation investigates the politics of Canadian internet policy development and the implications of these dynamics for the public interest. Drawing on the political economy of communication and gatekeeping theory, this study finds that heightened risks to the public interest exist in different phases of policy formation, including the issue-identification and framing, consultation, deliberation and decision, and recuperation phases. While these threats are wide-ranging, they often relate to the strategic behaviours of well-resourced groups that advocate for policy positions adjacent or contrary to the public interest, a regulatory process unsuited for robust civil society participation, and the resource constraints of participating public interest groups.

An expansive and critical adoption of gatekeeping theory illuminates how gatekeeping in internet policy development encompasses a dynamic and multi-faceted set of actors, behaviours, and tools. In this domain, power is exercised in varied and shifting ways, but there are nonetheless dominant actors who regularly take on the gatekeeper role. An examination of the ways that gatekeepers exercise this power, and the institutions and norms that allow them to do so, offers an innovative approach to the study of internet policy development. There is also novelty in the application of gatekeeping theory to online gatekeepers within the context of internet policy engagement campaigns.

Substantial structural reforms to the institutions and processes that characterize Canadian internet policy development, as well as the economic framework they exist within, are necessary for Canada to have a truly equitable communications system. However, improvements to the existing policy environment can offer opportunities for internet policy that more readily reflects the public interest.

Contents

| | |
|--|-----------|
| List of tables | 8 |
| Abbreviations and acronyms | 9 |
| Introduction | 10 |
| Internet policy development at the Canadian Radio-television and Telecommunications Commission | 11 |
| Emerging conversations about the regulation of global technology companies..... | 14 |
| Mitigating the risks to Canadian internet policy development | 16 |
| What is the public interest?..... | 18 |
| Findings on the dynamics of Canadian internet policy development | 19 |
| Chapter outline..... | 21 |
| Chapter 1: How to approach the study of internet policy development?..... | 24 |
| Select understandings of policymaking | 25 |
| Applications to the study of internet policy | 35 |
| Conclusion: The case for a political economic conceptualization of policy development . | 48 |
| Applying gatekeeping theory to internet policy development..... | 49 |
| Traditional gatekeeping theory | 50 |
| Gatekeeping theory in the study of other social sciences and business | 58 |
| Networked gatekeeping theory: The gate swings open?..... | 66 |
| Conclusion: Linking gatekeeping theory to the political economy of communication | 72 |
| Chapter 2: Methodology | 74 |
| Philosophical assumptions..... | 75 |
| Research approach, design, and methods | 78 |
| Case studies..... | 79 |
| Semi-structured interviews | 82 |
| Document review | 85 |
| Questions of motivation, access, and consent..... | 88 |
| Other ethical considerations..... | 91 |
| Conclusion: Qualitative methods and the ‘messiness’ of policy development..... | 93 |
| Chapter 3: Four phases of policy development: Risks to the public interest..... | 94 |
| How is internet policy developed in Canada? | 95 |
| Issue-identification and framing | 98 |
| Follow the money | 99 |
| Considering the funding challenges of civil society groups | 101 |
| How excessive consultation acts against the public interest..... | 105 |
| Consultation..... | 108 |
| The role of resources in policy consultations..... | 109 |
| Learning the rules of the game..... | 112 |
| Privileged discourse | 114 |
| Deliberation and decision | 117 |

| | |
|--|------------|
| Partisanship and CRTC appointments | 118 |
| Government responses to decisions and recommendations | 120 |
| The implications of personal agendas and showmanship | 123 |
| Recuperation | 126 |
| Needless complexities..... | 129 |
| A certain lack of consistency | 130 |
| Private interests’ influence on the costs award process | 133 |
| Conclusion: A dire situation | 136 |
| Chapter 4: The CRTC’s differential pricing practices consultation | 138 |
| Differential pricing practices within the Canadian internet policy ecosystem | 142 |
| Raising, and defining, the issue of differential pricing practices..... | 144 |
| Stakeholder community, familiarity, and animosity | 147 |
| Shaping the frame | 151 |
| Competing viewpoints | 154 |
| On the record..... | 157 |
| Opening the floor to Reddit | 162 |
| Credit where credit is due | 166 |
| Smoke and mirrors | 168 |
| The battle continues | 177 |
| Overpower and delegitimize | 178 |
| Lengthy and unexplained waits..... | 181 |
| Conclusion: The long-term view | 183 |
| Chapter 5: The ETHI committee’s inquiry into Cambridge Analytica and Facebook.... | 186 |
| The straw that broke the camel’s back..... | 190 |
| What prompted and guided the ETHI committee’s inquiry..... | 191 |
| Bringing issues to the table | 193 |
| Who gets to speak? | 196 |
| Asking the right questions: The consultation phase | 198 |
| Tactical testimony | 199 |
| Procedural innovation | 202 |
| Drawing policy conclusions..... | 207 |
| The views reflected in the ETHI committee’s report..... | 209 |
| What should be done? | 213 |
| Impact and rhetoric | 217 |
| The government’s response | 218 |
| Rhetorical choices in party platforms | 222 |
| Conclusion: Inaction and deferrals | 227 |
| Conclusion | 229 |

Forms of resistance 231

Theoretical advances 234

Leveling the playing field, somewhat..... 237

Where to go from here? 246

Bibliography..... 248

Appendix 1: Stakeholders referenced in the CRTC’s decision 288

Appendix 2: The ETHI committee’s final report recommendations..... 293

Appendix 3: Government’s response to ETHI committee’s recommendations..... 297

Appendix 4: List of research participants..... 299

Appendix 5: Recruitment message..... 302

Appendix 6: Consent form..... 303

List of tables

Table 1: Contributions to the CRTC's differential pricing practices proceedings..... 158
Table 2: Stakeholders referenced in the CRTC's differential pricing practices decision.... 172
Table 3: Canadian federal parties' platforms as they relate to select internet policy issues 223

Abbreviations and acronyms

| | |
|---|----------------|
| Bell Canada | Bell |
| Broadcasting and Telecommunications Legislative Review Panel | BTLR panel |
| Canadian Internet Registration Authority | CIRA |
| Canadian Media Concentration Research Project | CMCRP |
| Canadian Radio-television and Telecommunications Commission | CRTC |
| Consumers' Association of Canada | CAC |
| Consumers Council of Canada | CCC |
| Council of Senior Citizens' Organizations of British Columbia | COSCO |
| Designated Public Office Holder | DPOH |
| Equitable Internet Coalition | EIC |
| Forum for Research and Policy in Communications | FRPC |
| House of Commons | HOC |
| Information Highway Advisory Council | IHAC |
| Public Interest Advocacy Centre | PIAC |
| Media Access Canada | MAC |
| Member of Parliament | MP |
| Non-governmental organization | NGO |
| Office of the Privacy Commissioner of Canada | OPC |
| Rogers Communications Inc. | Rogers |
| Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic | CIPPIC |
| Standing Committee on Access to Information, Privacy and Ethics | ETHI committee |
| Telus Communications Inc. | Telus |

Introduction

I begin this dissertation with the understanding that internet policy development is highly political (Braman, 2008; Freedman, 2008; Rideout, 2003; Streeter, 1996). The spaces where internet policy formation occur are not neutral administrative venues devoid of power, inequity, and struggle (McChesney, 1996). Neither are they domains where an entirely impartial arbiter considers equally and fairly a diversity of policy ideas representative of the positions held by the general public (Braman, 2008). Rather, in these venues, through oral arguments, documentary evidence, and less visible means of participation and influence, stakeholders, including corporate lawyers, civil society groups, and activists, contest widely disparate policy views, on unequal footing (Shepherd, 2018). Corporate actors working on behalf of dominant internet service providers and global technology companies engage in internet policy development with copious resources, highly technical and legal arguments, and elite connections (Turnball, 2018b). Civil society advocates usually operate under much greater financial constraints and with fewer, if any, connections to powerful figures (Chhabra, 2018a; Johnson, 2018). Regulatory institutions and governments are often guided by legislation, precedents, and influences that inform decisions made in the interest of the market over the public (Middleton, 2011; Rideout, 2003; Shepherd, 2018). In many cases, these factors contribute to a lack of decision-making on the part of these institutional actors, which maintains a status-quo already in favour of corporate groups (Freedman, 2008).

The title of this dissertation highlights one key element of these politics. Within domains of internet policy development, gatekeepers can use gatekeeping power to bar entry to, or limit activity within, these spaces (Barzilai-Nahon, 2008, 2009; Laidlaw, 2010). Gatekeepers, such as regulators, politicians, political staff, and public servants, play important roles in deciding what policy issues are suitable for attention or review. When a policy issue is deemed worthy of study, these actors play a part in determining which arguments are prioritized and legitimized in a policy debate, rather than silenced and undermined. Gatekeeping power can be exerted through gatekeeping practices, which are employed to undercut the potential influence of disadvantaged groups. An example is the use of highly obtuse language on the part of private sector actors to deny their companies' misbehaviours. Gatekeeping power is also reflected in gatekeeping mechanisms, which are long-standing institutional processes that similarly privilege or undermine certain policy participants, or forms of participation. One illustration is

legislative provisions that favour corporate entities (Turnball, 2018b). The gated, most often civil society groups or engaged citizens, are those whom these forms of gatekeeping are exercised against (Barzilai-Nahon, 2008).

This project investigates how ‘gatekeeping’, as a multidimensional and dynamic set of actors, processes, and tools, characterizes the politics of internet policy development in Canada. In doing so, this dissertation also starts with the view that modes of deliberation that better resource and support stakeholders who are currently disadvantaged increase the opportunities for such parties to influence internet policy in ways that promote equitable access to, and experiences of, communication technologies. These opportunities are possible despite the structural inequities built into the system of internet policy development in Canada (Rideout, 2003), and the economic system that gave rise to these disparities (Harvey, 2005). As theorists of participatory democracy have highlighted, limitations to wide participation in public policy development can result in the silencing of already marginalized voices in policy development and ensuing policy (Nancy Fraser, 2007). Researchers, some from the tradition of the political economy of communication, have made compelling cases about the extent to which inequities in policy formation have manifested in subsequently developed internet policy (Freedman, 2008; Rideout, 2003) and this dissertation contributes to this literature.

Internet policy development at the Canadian Radio-television and Telecommunications Commission

In Canada, structural barriers that disadvantaged non-commercial interveners resulted in a free market strategy guiding the early development of Canadian internet infrastructure (Shepherd, 2018, p. 233). The consequences of this strategy included “the failure of sufficient federal oversight to ensure that less-profitable communities and cultures were adequately connected” (Shepherd, 2018, p. 234). Indeed, since the 1990s, Canada’s internet policy has been guided by a neoliberal agenda (Rideout, 2003). The country’s key decision maker in the area of internet policy development, the Canadian Radio-television and Telecommunications Commission (CRTC), a quasi-judicial administrative tribunal, has long made its internet policy decisions with a view to “the role of the market in delivering telecommunications services” (Middleton, 2011, p. 70).

Canada's 1993 Telecommunications Act calls for an increased reliance on market forces and regulation that is "efficient and effective" (s. 7f). Certainly, there are some provisions in the Act that highlight Canadians' communications rights. For instance, the Act (1993) states that Canadian telecommunications policy should also strengthen "the social and economic fabric of Canada", "render reliable and affordable telecommunications services", and "respond to the economic and social requirements of users of telecommunications services" (s. 7a, b, h). Yet, coupled with a 2006 order from the federal government that instructed the CRTC to "rely on market forces to the maximum extent feasible", the regulation of the provision of telecommunications services, including internet services, has been limited in Canada (Order Issuing a Direction to the CRTC, 2006).¹ Shepherd (2018) points out how a series of Canadian federal government digital strategy decisions, ranging from recommendations put forward by the 1994-1997 Information Highway Advisory Council (IHAC) to more recent Digital Canada 150 (2010-2015) initiatives, reinforces a framework premised on market principles that back the view that "the government's primary role should be to support the corporate development of digital technology" (p. 51). Indeed, the 1995 IHAC report advocated for private interests to be put in control of the development of Canada's "information highway" and the removal of "outdated and unnecessary regulatory barriers" (as cited in Menzies, 1996, p. 54). According to Barney (2011), the report's recommendations called for the government to reflect the "liberal spirit" enshrined in the Telecommunications Act and "allow it to animate the exploitation of network technology" (p. 114).

As Naomi Fraser (2007) highlights, government rhetoric around the 'knowledge society', which signalled the vast increase in and proliferation of communication technologies in the 1990s and 2000s, was paralleled by "the widespread adoption of neoliberalism", including in Canada's communications industries (p. 203). Today, Canada's communications environment is one characterized by high levels of concentration and diagonal and vertical integration (Canadian Media Concentration Research Project [CMCRP], 2019). With respect to concentration, research from the CMCRP (2019) suggests that, with some fluctuations,

¹ Notably, in 2019, the federal government did issue a new policy direction for the CRTC, which emphasizes broad-based competition far more than the 2006 order. It is too early to assess the impact of this order on telecommunications policy development (Order Issuing a Direction to the CRTC, 2019).

“incumbent cable and telephone company operators have dominated the retail internet access market for years” (p. 38). Diagonal integration describes instances where a single player controls multiple elements of the communications economy, although those elements are not part of the same supply chain, such as mobile wireless and cable television services, respectively. In Canada, for example, Shaw, an internet service provider, recently purchased Canada’s last stand-alone mobile operator (CMCRP, 2019, p. ii). Finally, vertical integration defines cases where one firm owns more than one element of the supply chain, such as facets of both production and dissemination. In media, this concept speaks to instances where internet service providers also own media content companies. In Canada, in 2018, and in contrast to the rest of the developed world, four vertically-integrated firms (Bell, Rogers, Shaw, and Quebecor)² controlled 56.5 per cent of Canada’s network media economy (CMCRP, 2019, p. ii).³

Relatedly, in Canadian internet policy development, where the regulation that governs the activities of actors in the country’s communications industries is determined, example after example characterizes civil society participation as “difficult” (Shade, 2016, p. 352). Shepherd (2018) highlights how such policy formation can be modulated by “a series of discursive judicial, technocratic, and gendered, classed, and raced structures” (p. 243). These limitations are long-standing. Winseck (1995) notes that, due to a lack of financial resources, public interest groups’ activities have largely been “reactions to specific policies, rather than sustaining efforts to define the issues” (p. 88). The policy work of academic participants, a fundamental component of civil society involvement, remains inadequately recognized by the institutions that fund and support this research (Shepherd et al., 2014, pp. 17–18). This lack has surely reduced the level of academic participation in Canadian internet policy development, despite the value of these activities for policy and scholarly communities (Shade, 2008; Shepherd, 2018, p. 18).

² Bell Canada is referred to as Bell throughout this thesis, and Rogers Communications Inc. as Rogers.

³ The Canadian network media economy includes the country’s telecommunications and internet infrastructure media, digital and non-digital audiovisual media services, and core internet applications and sectors (CMCRP, 2019, p. i).

By contrast, industry groups reflect a level of cohesion in regular participation in associations and at conferences, and representation on government boards (Winseck, 1995, p. 89). Importantly, these inequities nonetheless characterize policy proceedings where civil society groups ‘win’ (Shepherd, 2018), as in one of the two case studies included in this dissertation. Moreover, there is a stark disparity in the rhetoric employed around internet policy development in Canada and the realities of the situation. Despite the rhetoric prevalent on the CRTC’s website, it does not often seem to be the case that “listening” to citizens is “critical” for the institution (CRTC, 2017e). Nor do researchers (Lithgow, 2019; Shepherd, 2018) suggest that the regulator necessarily relies on the public to “point [it] in the right direction” (CRTC, 2017e).

Emerging conversations about the regulation of global technology companies

There are also new and emerging dialogues about internet policy in Canada that have less to do with Canada’s dominant telecommunications service providers (Bell, Telus,⁴ and Rogers—the “big three”), and more to do with the potential regulation of global technology companies, like Google and Facebook. In these cases, rather than issues like broadband provision and net neutrality, the dialogue is often centered around others such as algorithmic transparency, privacy, content moderation, and election integrity (House of Commons Standing Committee on Access to Information, Privacy and Ethics [ETHI committee], 2018b) even though both sets of policy issues certainly connect to both groups of actors in different ways. At this time, in Canada, these policy discussions typically take place in parliamentary venues, including House of Commons and Senate committee meetings, although recent recommendations from the Broadcasting and Telecommunications Legislative Review (BTLR) panel (2020) call for a reimagined CRTC to play a role in the regulation of these firms in the future (p. 131).

In Canada, as I investigate in my second case study, the conversation around the regulation of these firms was most readily prompted by the 2017 Cambridge Analytica scandal (Wong, 2019; Zuckerberg, 2018). Initially, it seemed as though there was political will on the part of the Canadian government to address the misbehaviours of these firms, and to listen and respond to civil society views in these endeavors (e.g., BTLR panel, 2020). However, time has shown that

⁴ In this dissertation, Telus Communications Inc. is referred to as Telus.

many of the gatekeeping practices and mechanisms that factor into CRTC policy development also characterize formal discussions about the regulation of global technology companies.

Consistently, representatives of these global technology companies show a lack of willingness to meaningfully engage with regulators and lawmakers. This includes a refusal on the part of Facebook CEO Mark Zuckerberg and CFO Sheryl Sandberg to participate in an ‘international grand committee’ inquiry into the company’s activities. The request was made via subpoena by Canadian parliamentarians (Angus, 2019; O’Sullivan & Newton, 2019). This lack of cooperation runs in sharp contrast to executives’ suggestions that ‘big tech’ should and must be regulated (Bloomberg, 2020). In instances where private-sector representatives do engage, lawmakers’ lack of understanding of the issues at hand can mean that these proceedings are, at best, ineffective, and, at worst, give private interests an even greater upper hand (Soave, 2019).

It is also common for these firms to show little to no concern for comments raised about their rapidly expanding operations, and the implications of this increase in scope for democratic states in particular. Despite widespread criticism over its failed ‘smart’ neighborhood project in Toronto, Sidewalk Labs, Google’s sister company, has plans to pursue urban innovation projects in other jurisdictions (Protalinski, 2020). Google itself is massive in scale with products that include the search engine of the same name, the operating system Android, the browser Chrome, Google Maps, and YouTube (Forbes, 2020a). Alphabet, the holding company that operates Google, Sidewalk Labs, and a slew of other companies, ranks thirteenth in Forbes’ 2020 annual rankings of the world’s largest public companies, with a market value of US \$919.3 billion (Forbes, 2020c).

In 2019, showing what many saw as a clear disregard for concerns about the global scale and reach of Facebook, the social media company announced that it would be creating Libra, a global digital currency (Constine, 2019; Kuhn, 2019). Despite extensive criticism from civil society and lawmakers about the problematic nature of this endeavour, an iteration of this effort is still on the table (Massad, 2020). Alongside its flagship social media platform, Facebook also owns Messenger, WhatsApp, Instagram, and Oculus (Forbes, 2020b) and ranks thirty-ninth on Forbes’ 2020 list, with a market value of US \$583.7 billion (Forbes, 2020c).

Like at the CRTC, public consultations facilitated by the federal government on internet policy issues, including those posed by global technology companies, show a gap between rhetoric and action. Recent consultations held by the BTLR panel (2019), for instance, were purportedly facilitated to “hear a wide range of views on the need for legislative change” (p. 4). However, a lack of transparency on the part of the panel raised questions about the extent to which the process really was as open and inclusive as this language suggested (Geist, 2019a).

Mitigating the risks to Canadian internet policy development

Yet, despite these examples, and accounting for policymaking’s “politicized and exclusionary features” (Freedman, 2013, p. 65), I contend that interventions on behalf of civil society have the capacity to at least contest and disrupt these dominant forms of power (Huke et al., 2015). While ensuring that currently disadvantaged participants have the means to participate effectively will not solve the structural problems inherent to Canada’s internet policy development domain (Rideout, 2003), theoretical and empirical research suggests that such efforts can create possibilities for these views to be better recognized by the regulator, and incorporated in policy, through “possible passageways and points of departure for resistance or emancipation” (Huke et al., 2015, p. 745; McMahon, 2014). Although it is my view that it is only with transformation to the practices and institutions that characterize Canadian internet policy that a “strong, vibrant, popular democratic” communications system is possible, there are still improvements that can be made within the existing system (Magder, 1989, p. 293).

Some have commented on whether the CRTC has recently “earnestly attempted to engage non-industry perspectives” and increase civil society involvement (Shepherd et al., 2014, p. 17). One example is the CRTC’s 2012-2013 wireless code proceedings, which, while focused on both telephony and internet service provision, are nonetheless illustrative. Shepherd, Taylor, and Middleton (2014) highlight how public participation principles were built into the design of the proceedings, including in an online comment portal and dedicated campaign (p. 12). Academic participants also saw their participation cited in the subsequent CRTC decision, which indicates that their input may have influenced the regulator’s deliberations in some way (Shepherd et al., 2014, p. 15). However, the authors submit, private interests nonetheless dominate Canadian telecommunications policy discussions, including at the CRTC (Shepherd et al., 2014, p. 5). At proceedings facilitated by the regulator, it is common for citizens to be viewed as “spectators to the ‘real’ work of experts” (McKelvey, 2014, p. 605). This is despite

the fact that public interest research has brought many internet policy issues to the attention of regulatory institutions (McKelvey, 2014, p. 609).

Yet, there remain illustrative examples of instances where civil society was able to overcome high barriers to participation and influence in the realm of Canadian internet policy development. Not least, there is the case of the recently abandoned Sidewalk Labs smart city project. In 2017, Canadian Prime Minister Justin Trudeau announced that Sidewalk Labs, the subsidiary of Alphabet, and sister-company to Google, would partner with Waterfront Toronto, a tri-government organization, that manages Toronto's waterfront revitalization, to develop a 12-acre area of Toronto's eastern waterfront (Office of the Canadian Prime Minister, 2017). The 'smart' neighborhood would include businesses, residences, and technologies designed to track and manage various elements of the space, including traffic lights, air quality, noise levels, and emissions (Wilkinson, 2019b).

From Trudeau's 2017 announcement to the 2020 abandonment of the project, there were concerns about the Prime Minister's involvement in the procurement of Sidewalk Labs and gaping shortcomings in the organization's plans around data collection, management, storage, and security (Wilkinson, 2019b). In response to these criticisms, and despite the seemingly unlimited resources funneled into the project by Sidewalk Labs and the lack of transparency around the process, a dedicated group of grassroots civil society advocates, under the banner #BlockSidewalk, campaigned against the Sidewalk Labs project over the following three years, along with a number of high-profile figures in the Canadian digital landscape (O'Kane, 2019b). Most notably, Jim Balsillie, former technology CEO, actively crusaded against the project (Lorinc, 2019). While Sidewalk Labs claims the cancellation of the project was due to the coronavirus pandemic, this advocacy, on the part of #BlockSidewalk, Balsillie, and other actors, seems to have played a critical part in Sidewalk Labs' ultimate decision to give up on the effort (Barth, 2020; BlockSidewalk, 2020; Walker, 2020). Although there are important questions about whether this civil society victory would have been achieved, or at least would have occurred at this time, without the support of prominent contributors, it is nonetheless notable that Sidewalk Labs' upper hand was usurped.

An improved decision-making process, more equitable resources between participants, and decreased information asymmetries will contribute to a *more* level playing field and more

rational and diverse discourses on internet policy options. Again, while I am of the view, characteristic of those writing in the tradition of the political economy of communication (Freedman, 2006), that substantial reforms are needed to ensure that the multiplicity of viewpoints that make up the public interest are adequately reflected in internet policy, I argue that a relative levelling of the playing field can contribute to policy decisions that at least *improve* existing disparities in the system.

This amelioration is possible despite the risks at play and the impossibility of an entirely equitable balance of forces in the current environment. In contrast to the pluralist viewpoints discussed in my literature review, which suggest that the interplay of actors within a policy development process produces stability within the system (Dahl, 1956, 1961; Freeman, 1965; Merelman, 1968; Truman, 1951), I believe that other structural changes to Canadian internet policy development, and Canada's communications environment more broadly, are fundamental to truly public interest-oriented internet policy. In particular, measures to address Canada's highly concentrated communications market, which is also characterized by high levels of diagonal and vertical integration, are welcome (CMCRP, 2019). Nonetheless, I take the position that challenging the issues addressed in this dissertation are an important first step to mitigate the range of risks that characterize this domain through "smaller tactical moments of subversion" (Shepherd et al., 2014, p. 16).

What is the public interest?

To address these inequities, and identify how internet policy development might better allow for these 'possible passageways' (Huke et al., 2015, p. 745), a workable definition of the public interest is needed. In the domain of Canadian internet policy formation, when it comes to this notion, there are many proponents of differing, and sometimes conflicting, perspectives and strategies (Hudson, 2014; McMahon, 2014; Media Access Canada, 2015). Important research has been conducted to catalogue and understand the implications of Canada's digital divide on First Nations in Canada, and advocate for policy decisions "grounded in and emerging from First Nations communities themselves" (McMahon, 2014; McMahon et al., 2011, p. 8). There are also divergences between the internet policy priorities expressed by rural and urban public interest communities in Canada (Hudson, 2014; Rajabiun & Middleton, 2014).

At the same time, some stakeholders focus policy interventions on particular public interest issues, such as accessibility, including groups Media Access Canada, the Canadian Association of the Deaf, and the Deaf Wireless Canada Committee (Canadian Association of the Deaf, 2016; Media Access Canada, 2015). While it is not often the case that other public interest interveners directly dispute arguments put forward by these parties, it can be the reality that these narrower sets of issues are left unnoticed by larger, more generally focused, civil society groups. Others emphasize the importance of non-discrimination policy principles which ensure that all internet access seekers are treated equally (OpenMedia, 2017; Public Interest Advocacy Centre [PIAC], 2017). ACORN Canada (2020), meanwhile, is motivated to make sure that low-income Canadians are represented in internet policy. Broadly, Canadian internet policy development is also an arena that remains dominated by men, including with respect to the participating stakeholders, regulators, and politicians active in this space (Shade, 2016, p. 364). This reality becomes even more evident when we consider the prevalence of male voices in this dissertation, despite the author's efforts to access and recruit women involved in this domain. This lack has rightly been highlighted by feminist political economists, with an emphasis on the need to ensure that women's issues are integrated into internet policy (Shade, 2016, 2014b).

Keeping in mind this diversity of issues and perspectives, a conception of the public interest suitable for a study of this topic and scope is critical. In this case, I rely on an understanding drawn from the political economy of communication, a key element of this dissertation's theoretical framework. In this view, public interest-oriented internet policy allows for the equitable and "effective exercise of informed citizenship, defined as the right and capacity to participate fully in social life and to contribute to determining its future forms" (Murdock & Golding, 2016, p. 765). Along similar lines, the public interest is linked "closely with the values of equality and citizenship within a democracy" (Feintuck, 2004, p. 248). In other words, although the ways that these activities and this advocacy manifest certainly vary, public interest involvement in Canadian internet policy development is about finding ways to lessen the existing inequities between internet companies and users, between the state and users, and between some groups of users and others.

Findings on the dynamics of Canadian internet policy development

The dynamics of Canadian internet policy development are difficult, if impossible, to concisely measure. Yet, I reject the notion that what is 'unmeasurable' is 'unreal' (Bachrach & Baratz,

1962). Rather, this dissertation highlights various phases in Canadian internet policy development and explores how the public interest can be undermined during these ‘moments’, including through complex and opaque institutional norms and processes, and disproportionate influence on the part of industry actors. These challenges have real implications for the extent that the public interest can be and is reflected in Canadian internet policy outcomes, particularly within a system that is already structurally skewed against civil society voices (Rideout, 2003).

Through a variety of ways and means, the public interest is often undermined from the moment a policy issue enters the domain of dialogue to the time civil society stakeholders recoup costs incurred in a public policy consultation. These activities are exacerbated by the existing lack of resources behind individuals and groups participating on behalf of civil society (Johnson, 2018). Yet, given the dynamic nature of the issues and actors at play, it is also evident that the politics of Canadian internet policy development are not uniform. The manifestations of these threats are complex, multi-faceted, and varied. Accordingly, it is important that research includes in-depth case studies to assess the particular expressions of these risks in a given context.

As laid out in my literature review, in contrast to a pluralist approach premised on the identification of the winners and losers in a given policy context (Dahl, 1961), the aim of this study is to explore “the dominant values and the political myths, rituals and institutions which tend to favor the vested interests of one or more groups, relative to others” (Bachrach & Baratz, 1962, p. 950). Whereas pluralism is oft readily employed to “describe and justify” (Freedman, 2008, p. 24) existing modes of policy development, I seek to employ the political economy of communication and gatekeeping theory to identify the risks to the public interest inherent in Canadian internet policy development. Importantly, scholars have rightly criticized the extent that a political economic approach has historically “under-emphasised or obscured [...] autonomous, creative and ongoing—instances of contestation, disruption, and struggle” (Huke et al., 2015, p. 745). Yet, more recent work in this tradition highlights how dominant forces can be challenged and disrupted (Bailey et al., 2018; Huke et al., 2015), despite the reality that these contestations exist within a flawed system premised on market values (Freedman, 2006; Rideout, 2008). This dissertation’s findings and recommendations attempt to open up a dialogue around these possibilities by highlighting existing risks to civil society advocacy in Canadian internet policy development, and how they can be mitigated.

Chapter outline

The overarching aim of this research project is to investigate the politics of Canadian internet policy, with a focus on the risks to the public interest that arise in this domain. Underneath this aim, this project's objectives are twofold. My first objective is to develop a coherent account of the Canadian internet policy development process. My second objective is to catalogue the threats to the public interest that characterize this process. This dissertation's central research question is: What are the politics of Canadian internet policy development? Its four sub-questions are: (1) Who are the key players involved and what strategies are employed to bolster their ideas and aims? (2) What are the key institutional processes and norms that influence Canadian internet policy development? (3) What are the key risks to the public interest prevalent in Canadian internet policy development? (4) What are the implications of these findings for Canadian internet policy?

The structure of this dissertation is as follows. Chapter 1 situates my study in the existing literature on policy development and gatekeeping. The first half of my literature review outlines three groups of approaches to the study of policy development processes: pluralist, discursive, and political economic. It analyses the strengths and limitations of these perspectives and aligns my research project with a political economic viewpoint. The second half of my literature review outlines the history of gatekeeping theory from the mid-20th-century to its application to networked technologies today. It explores how the theory has been used in media theory, political science, law, and business. This chapter concludes by outlining how I draw on elements from both the political economy of communication and gatekeeping theory to study the politics of internet policy in Canada.

Chapter 2 delineates and evaluates the methodological tools used to answer my above research questions. This section explores why I opt for case studies, interviews, and document review to answer these queries. The two case studies I identify are: the CRTC's 2017 differential pricing practices proceedings and decision; and the ETHI committee's inquiry into Facebook and the Cambridge Analytica scandal. Finally, this chapter outlines some ethical considerations, including as related to my access to research participants, anonymity, and informed consent.

Drawing on interviews and documentary research, my first empirical chapter (Chapter 3) outlines and analyses four phases of the internet policy development process: issue-identification and framing; consultation; deliberation and decision; and recuperation. Through the framework of these phases, I identify risks to the public interest in internet policy development in Canada, including the strategic behaviours of well-resourced groups who advocate for policy positions that are adjacent or contrary to the public interest, a regulatory process unsuited for robust civil society participation, and the constraints of participating public interest groups.

Chapter 4, my second empirical chapter, examines the politics surrounding the CRTC's differential pricing practices decision. Interviews with members of civil society groups and internet service providers, and activists and scholars, feature prominently in this chapter. The structure of the chapter follows the framework developed in Chapter 3. In this case study, I find that, despite the fact that civil society 'won' at face value, the politics and gatekeeping practices that characterized these proceedings reflect the real long-term instabilities of civil society involvement in Canadian internet policy. Not least due to comments on the part of CRTC and federal government decision-makers since that point that have raised the possibility of a rollback to the net neutrality legislation adopted as a result of the differential pricing practices proceedings (CRTC, 2018b) and other actions that would harm the public interest (Geist, 2020b), these long-standing challenges reflect inequities that cannot be mitigated by a single 'victory'.

Next, Chapter 5 explores the politics of the ETHI committee's inquiry into Facebook and Cambridge Analytica. I rely on interviews with members of parliament, staffers, and civil society advocates, and documentation from the inquiry. The structure of the chapter also closely follows the framework developed in Chapter 3, aside from an investigation into the policy impact of the inquiry in lieu of an examination into the 'recuperation phase'. In this case, I conclude that gatekeeping practices on the part of global technology companies and the federal government played a critical part in delaying any tangible action on the important policy issues raised by civil society participants in the inquiry. There remains little action on this file on the part of the Government of Canada, despite tough rhetoric from politicians and numerous investigations and recommendations (Angus, 2019; BTLR panel, 2020; Liberal Party of Canada, 2019; ETHI committee, 2018b). Indeed, the steps the government has suggested it

will take do not address the issues at the heart of this scandal, including privacy and algorithmic transparency, but rather seek to develop “narrow cross-subsidy programs for news organizations and broadcasters” (Geist, 2020b).

My conclusion lays out my key findings on the politics of Canadian internet policy development, provide recommendations on how these dynamics can be improved to better support civil society participation, and comments on where further research might be directed.

Chapter 1: How to approach the study of internet policy development?

This dissertation is about how internet policy is made and the power dynamics that characterize this process. In two sections, this literature review sketches out the theories and concepts I draw on to this end. The first half of this review relies on literature from across the social sciences to contextualize the dialogue between those who research policy development processes from pluralist, discursive, and political economic⁵ positions. I evaluate the key ideas in each of these approaches, the tensions between them, and how these perspectives apply to the study of internet policy development. Each approach has some advantages and limitations for a robust inquiry into the politics of internet policy in Canada. Despite some contributions to the study of policy dynamics, a pluralist approach (Dahl, 1957, 1961; Freeman, 1965; Merelman, 1968; Truman, 1951) falls short in a reliance on quantitative methods and neglect of public participation considerations. Discursive analyses (Dunn, 1993; Lithgow, 2019; Powell & Cooper, 2011) offer indispensable insights, but underplay the structural elements of policy development processes. While the political economy of communication has been criticized for an alleged tendency to put theory before empiricism and neutrality, these limitations are exaggerated (Prodnik & Wasko, 2014). These criticisms are also offset by the strengths of this theoretical framework, including a critical and contextual approach to the object of inquiry (Mansell, 2004; McChesney, 2000, 2013). Consequently, I argue that the political economy of communication offers the most to a robust understanding of Canadian internet policy development, and this study in particular. I conclude by outlining the ways I align myself with this approach.

The second section of this literature review focuses on gatekeeping theory. Drawing on research from the social sciences and business (Barzilai-Nahon, 2008; Laidlaw, 2010; Shoemaker & Vos, 2009), I investigate how this theory explores decision-making processes and maps onto the study of internet policy development specifically. I highlight arenas where gatekeeping takes place in modern society, including in the areas of media (Shoemaker & Vos, 2009; D. M. White, 1950), markets (Inghelbrecht et al., 2015; Lagner & Knyphausen-Aufseß,

⁵ Given the prevalence of the term political economy in a variety of disciplines, it is worth noting that this dissertation focuses on the political economy of communication, which I outline in greater detail later in this chapter.

2012), policy (Baum, 1977; Kaheny, 2010), and intermediaries that have a role in how and what information flows on the internet (Laidlaw, 2010; Lynskey, 2017). Drawing a link to the first half of my literature review, I consider the value of the political economy of communication in assessing how gatekeepers operate in Canadian internet policy development, including in instances where communication technologies are employed in these processes.

Select understandings of policymaking

I begin my literature review by outlining three key theoretical frameworks to the study of the politics of policy development: pluralist,⁶ discursive, and political economic approaches. In contrast to later sections of this review, the following paragraphs are not focused on internet policy specifically but on how certain key assumptions in each approach implicate the study of policy dynamics broadly.

Pluralism and the study of public policy development

A pluralist framework operates on the assumption that the interactions between intervening participants in a policymaking process lead to an equilibrium of ideas in policy outcomes. This is the thesis put forward in Dahl's (1961) book *Who Governs? Democracy and Power in an American City*, which outlines a case study of the policy development process in New Haven, Connecticut. In his analysis of the city, Dahl finds that the community's policies are developed in a pluralist system where no one group has a say on most issues except an 'executive centered order' (p. 201). The citizens of the community are largely apathetic (with their interests being adequately taken up by special interest groups). Despite existing relationships between local politicians and businessmen, Dahl concludes that economic factors play a minimal role in New Haven's policy development processes.

⁶ Like any long-standing scholarly tradition, pluralism has evolved since its initial emergence in the postwar era. To ensure that a fulsome account of key pluralist principles can be provided, this review largely focuses on postwar pluralism as this was the period during which many of ideals that continue to underpin contemporary understandings of pluralism were developed. It is also these key principles that are most readily countered by scholars writing in the political economy of communication tradition, which the author ultimately adheres to (e.g., Ali & Puppis, 2018; Freedman, 2008, 2010).

Relying on the conception that “A has power over B to the extent that he can get B to do something that B would not otherwise do” (Dahl, 1957, pp. 202–203), the work of Dahl and other pluralists (Dahl, 1958; Freeman, 1965; Merelman, 1968; Truman, 1951) during this period implicitly or explicitly responded to studies that suggested the US was dominated by elites (Hunter, 1953; Mills, 1956). As Mills (1956) wrote, the power elite is made up of people whose societal positions allow them to “transcend the ordinary environments” of the general public and make consequential decisions (p. 3). In particular, Dahl (1958) criticized the ‘unscientific’ nature of this work, stating that “a theory that cannot even in principle be controverted by empirical evidence is not a scientific theory” (p. 463). Dahl’s (1961) study of New Haven sought to determine the realities of the city’s policy dynamics through “*an examination of a series of concrete cases where key decision are made*” [sic] (Dahl, 1958, p. 469). To counter the alleged lack of science characteristic of researchers studying elite power, this exploration operationalized “symbolic notation” (Dahl, 1957, p. 201) to analyse power relationships.

Thus, in contrast to the approach taken by the author of this dissertation, the famous empirical study of New Haven relied on quantitative measurements of influence (Dahl, 1961). The number of “successes” or “defeats” that actors garnered in the policy development process were tabulated and “participants with the greatest proportion of successes out of the total number of successes were then considered to be the most influential” (Dahl, 1961, p. 330). Accordingly, a key focus in this text is the “importance of initiating, deciding, and vetoing” (Bachrach & Baratz, 1962, p. 952). The necessary assumption behind this approach to the study of public policy development is thus that the elements of the process that are visible and measurable are the only ones that have occurred, or are at least sufficient to examine and understand the dynamics of a policy setting.

According to the pluralist view, interested parties in policy development settings organize and represent positions, which determine how policy is made and can achieve some level of societal equilibrium. In this conception, the diverse interests of the population are effectively encompassed by parties who make views heard at important political moments (Son, 2015). Despite the inequitable distribution of political and economic resources, “no single asset (such as money) confers excessive power” (Manley, 1983, p. 369). Thus, pluralism can be considered both an explanation of and ‘justification’ for how power operates (Manley, 1983, p. 369).

A fundamental tenet of this approach is stability, which is brought about by this interplay of actors, rather than the force of citizen involvement. Indeed, pluralists' concern for the engagement of regular people in policy development processes is limited. As Son (2015) writes, while "Dahl was not an unabashed advocate of apathy and nonparticipation [...] his endorsement was confined to a specific kind of participation" (p. 538). These requirements seem to have included holding a certain educational level, socio-economic status, and income (Son, 2015, p. 537). An interest in readily and actively incorporating the wide range of views that characterizes a democratic society into policy development, including from those parties who have been systematically marginalized, is not present.

Linked to the economic principle that competition ensures efficiency, pluralism thus broadly "views the policy arena as a place of conflict, bargaining, compromise, and coalition building" (Islam, 2007, p. 15). According to Becker's (1983) reflection on Dahl's conception of a pluralist society:

Individuals belong to particular groups . . . that are assumed to use political influence to enhance the well-being of their members. Competition among these pressure groups for political influence determines the equilibrium structure of taxes, subsidies, and other political favours. (p. 372)

As shown in the above quote, pluralism is also focused on the actions of agents, rather than the context within which these interactions occur (Hay, 1997, p. 46). The social, political, and economic systems that surround these actors are viewed as secondary. The same can be said for the class differences between individuals in society. As Dahl writes, "economic class is only one factor, often less important than others", including organizations and norms (Dahl, 1971, p. 107).

In summary, pluralism takes the view that the interplay of actors within a policymaking process can produce stability and roughly equitable policy outcomes. The power dynamics in these debates tend to be mitigated by the range of competing stakeholders.⁷ As I discuss in a later

⁷ Notably, Dahl's views on pluralism evolved over the course of his career and some suggest the political scientist travelled far "from benign celebration of American pluralist democracy [...] to increasingly sharp criticism of that regime for its failure to achieve its best potentialities" (Krouse,

section, the consequences of these assumptions for the study of internet policy include a prevailing focus on what is visible and measurable, and a lack of concern for public participation. Indeed, it is this pluralist understanding of policymaking that those writing in the political economy tradition (Ali & Puppis, 2018; Freedman, 2008), including the author, often seek to counter. We would suggest, rather, that policy development processes take place within a fundamentally flawed economic system (Harvey, 2005). Policy outcomes cannot truly reflect the public interest without reform to this reality. Among other differences, political economists are also more readily conscious of the elements of policy development that are silenced and cannot be measured (Freedman, 2010). First, however, this next section looks at how another group of scholarship, focused on discourse and rhetoric, understands the policy development process.

The argumentative turn's approach to an exploration of policy development

A sharp departure from the pluralist perspectives just outlined, there are those who adopt a discursive approach to the study of public policy development (Dunn, 1993; McKenna & Graham, 2000; Shepherd, 2018; L. G. White, 1994). A prominent group of literature within this framework is 'the argumentative turn', which rejects the portrayal of policy analysis as technical and value-free and instead examines the extent to which this work is influenced by factors such as emotion, politics, culture, discourse, and argument (Fischer & Forester, 1993; Fischer & Gottweis, 2012b, 2013). Burgeoning in the 1990s, and building on ideas from thinkers such as Habermas (1970), Kuhn (1962), Haraway (1988), Chomsky (1972), and Foucault (1966), this scholarship considers how the above factors colour what policymakers understand as objective knowledge. Often using qualitative methods, including discursive and interpretative forms of analysis, work within the argumentative turn aims to account for the normative judgments that take place in policy development, especially in the formation of arguments and decisions.

1983, p. 167). However, as has been the case for many thinkers who later revised or rethought their earlier ideas, these revisions have not necessarily been adopted by literature that relies on pluralist assumptions. Moreover, Dahl's (1956, 1961) classic texts, albeit with some revisions and qualifiers, remain key volumes for political science scholars and students.

The ‘turn’ is one part of a broader shift across the social and hard sciences against positivist understandings of the world (Fischer & Gottweis, 2013). This literature rejects the notion that the scientific method, as employed in the policy sciences, can be separated from values, ethics, and norms (Dunn, 1993). A ‘scientific’ approach that embraces “a technically oriented rational model of policy making” masks the realities of policy analysis and development (Fischer & Gottweis, 2012a, p. 2). Policy arguments cannot be measured, evaluated, and applied using the methods employed in the hard sciences. Hajer and Wagenaar (2003) argue that the focus on rhetoric is an “attempt to understand and reconstruct that which we are already doing when we engage in scientific inquiry” (p. 217). Rather, policy development processes are characterized by communicative practices, which involve the use of arguments, the creation of policy frames, and the integration of normative ideas (Fischer & Gottweis, 2012a).

An ontological assumption behind the argumentative turn is that policy development processes, and the world more broadly, are arenas where knowledge is at least in part socially constructed (Fischer, 2005; Howlett & Ramesh, 1998; Vlassopoulos, 2007). Fischer (2005) criticizes the ‘fact-value dichotomy’: the notion that “empirical research is to proceed independently of normative context or implications” (p. 130). By starting from the position that knowledge is to some extent socially constructed, this work acknowledges that policy information unavoidably relies to some degree on political, experiential, moral, ethical, and other grounds. Knowledge is not something that can be objectively uncovered or found by putting aside one’s own beliefs and values (Dryzek, 2004, p. 89). As Denzin (2009) writes, “ways of knowing are always already partial, moral and political” (p. 155). In other words, information does not exist outside of its particular contexts. Rather, knowledge is always in some ways shaped by these environments (Guba, 1985, p. 13). Yet, many caution, effective policy science should employ, as appropriate, both traditional empirical approaches and a healthy skepticism towards the grounds on which these claims are made (deLeon, 1998; Durning, 1999; Weimer, 1998). Advocates of the argumentative turn do not generally call for a complete turn away from traditional forms of policy analysis but rather a “patient and persistent process of revamping and testing a new tool kit for professional policy analysis” (Hoppe, 1999, p. 209).

Thus, literature within the argumentative turn relies on the understanding that reality exists; however, it can only be understood when ascribed meaning and, even then, only by imperfect means (Guba, 1985). By taking this approach, these thinkers push back on the notion of policy

development as an endeavour fundamentally premised on processes of linear problem-solving or policy dynamics as scenarios that can be measured entirely by economic or statistical models. Taylor Webb (2014) uses Foucault's notion of problematization to reimagine policy debates as spaces where a range of different ideas, possibilities, and dialogues can be embraced: "Policy problematization, then, seeks contingencies and indeterminacies that might provide a way out of established systems and logics, and that may provide moments of becoming different" (p. 374).

This view contests pluralist understandings of policy dynamics premised on notions of stability and equilibrium (Dahl, 1961; Freeman, 1965) in favour of explorations of power, inequality, and persuasion (Buchstein & Jörke, 2012; Healey, 2012). These themes still have considerable implications for how scholars interested in the politics of policy development think about the struggles for meaning that underlie policy debates, including on internet policy issues (e.g., Amernic & Craig, 2004; Powell & Cooper, 2011; Shepherd, 2018). Broadly, this research sheds light on how the winners of policy dialogues influence the social world, given that those able to impact public policy are partially able to constitute the realm of possible actions for citizens (Lemke, 2015).

To this end, this research often focuses on how public policy problems are framed and agendas set in public administration and policy development processes (Fischer & Forester, 1993; Taylor Webb, 2014; Vlassopoulos, 2007). Policy problems are considered "complex events related to the construction and reconstruction of political causes, of structures, of roles and of moral positions" (Vlassopoulos, 2007, p. 4). The problematization process occurs through ongoing interactions between interested parties whereby those able to exert their understanding of the issue have influence over the measures implemented (Hawkesworth, 2012). These processes can involve competing stakeholders who use diverse methods, including lobbying and public relations efforts, to push their interpretation of the policy problem to the fore of a debate.

In particular, contributors to the argumentative turn highlight the role of public administrators and regulators in assigning the terms of a policy problem. Fischer and Forester (1993) state that "analysts' ways of representing policy and planning issues must make assumptions about causality and responsibility, about legitimacy and authority, and about interests, needs, values,

preferences, and obligations” (p. 1). How analysts and administrators choose to discursively present the issues in a debate plays a critical role in creating the policy problem itself as well as the questions that will be asked to solve it. The act of articulating a particular policy problem is political as it contributes to the shaping of the subsequent policy questions and decisions. By bringing these assumptions to the fore, policy outcomes can better reflect ‘a policy science of democracy’ (Fischer, 2005, p. 143). This literature also shows an interest in the articulation and construction of policy arguments and the subsequent dominance of certain proposals, as reflected in policy decisions. Indeed, the winners of a policy debate rely on both argument and evidence to make their case, and the former element is far more important than many suggest (Schmidt, 2012). Dunn (1993) writes that understanding policy reforms as arguments helps alleviate the divide between what types of knowledge are deemed scientific, objective, and worthy of regard, versus unscientific and political (p. 256). Both policy arguments *and* reforms are embedded with social values. A policy reform or decision does not lose its politicization in its dominance.

Some of this work also looks at the implications of ‘scientific’ policy arguments for public engagement (Fischer, 1993, 2006; Smyth, 2012). Fischer (1993) argues that the increasing complexity of policy arguments weakens citizen participation; a challenge that might only be solved by the “equally difficult political task of building new policy institutions that permit the public to engage in a much wider range of discourse” (p. 38). Fischer (2006) also notes that increased participation in the political sphere can be brought about through a systemic integration of scientific and citizen-driven efforts in ways that enhance each party’s views. Other commentary highlights the necessity of employing perspectives from the argumentative turn to show how inclusive policy activism can “improve the public good” (Smyth, 2012, p. 182).

A review of the argumentative turn’s approach to the study of policy development reveals an emphasis on the extent to which discourse influences and in part creates policy problems, arguments, and decisions. A clear theme in this literature is that to ignore struggles over meaning risks supporting the status-quo rather than explaining or interrogating it. In contrast to political economic perspectives (Mansell, 2017; McChesney, 2008), which I examine shortly, these approaches are concerned with the power dynamics produced by language over the structural elements of these processes. This is not to say that this scholarship discounts the

influence of such factors in policy formation (e.g., Powell & Cooper, 2011), but that the structural elements of the process are viewed as secondary to the discursive aspects discussed in this section. While this dissertation ultimately aligns itself with the political economy of communication, the author is nonetheless of the view that discourse does certainly play a critical role in influencing the terms of internet policy debates, including as discussed in certain empirical sections of this dissertation's investigation.

Ideas central to the political economy communication

This section outlines the key principles of the political economy of communication as a seminal subdiscipline of communication. Differently to the previous two discussions on pluralist and discursive approaches to the study of policy dynamics, respectively, this review focuses on the history and underlying tendencies of a political economic approach writ large. My rationale here is twofold. For one, given that the political economy of communication is specifically linked to a research topic, it is challenging to discuss the theory's approach to policy dynamics more broadly without encroaching on the territory I cover in a later section of this literature review. In short, scholarship that draws on the political economy of communication to examine policy dynamics is *already* about the potential regulation of communication and media technologies, including the internet (e.g., Ali & Puppis, 2018; Freedman, 2008; Hesmondhalgh, 2005; McLaughlin & Pickard, 2005). Second, as I opt to use the political economy of communication as the lens through which I understand my research topic, it is imperative that I make clear what I see to be the key ideas of this approach (Mansell, 2004; McChesney, 2000; Mosco, 2009; Murdock & Golding, 2016; Winseck, 2016). Indeed, considering the extent to which the political economy of communication privileges history and context in its application, it seems fitting to provide this background before applying this framework in this project. To do so, this section outlines three interrelated principles underlying political economic approaches: historical context, a critique of the current economic order, and a resistance towards institutional and other forms of power. A key emphasis in research within the political economy of communication tradition is the location of the object of study within its historical and other contexts under capitalism (Mansell, 2004, p. 97).

Closely linked with the emergence of firms in the areas of media and communication technologies as "key institutions in advanced capitalist states", this framework was developed

to study these organizations through a lens distinct from and indeed contrary to “bourgeois cultural sociology” (R. Williams, 1977, p. 136). A rejection of the ‘idealism’ that characterizes much research in the discipline of media studies, the political economy of communication confronts the dynamics of cultural production within a capitalist framework, over the content that is produced by these systems (Garnham, 1979, p. 145). Accordingly, this approach stands apart from traditional economists’ view that the economy is a distinct and separate domain of activity and that research should be conducted without “moral considerations and political questions” (Calabrese, 2003, p. 1). Instead, this tradition focuses on placing economic concepts at the heart of a broader contextual inquiry into the interaction between communications, markets, and states (Murdock & Golding, 2016). Moreover, political economists approach research with certain normative ideas about what democratic communications should entail. Murdock and Golding (2016) sum up these values: the political economy of communication “requires a normative perspective that sees the effective exercise of informed citizenship, defined as the right and capacity to participate fully in social life and to contribute to determining its future forms” (p. 765).

In affixing itself to such values, the political economy of communication offers a strong critique of the current economic order. McChesney (2000) writes that the tradition explores how the structures of media and communication technologies “reinforce, challenge, or influence existing class and social relations” (p. 110). Political economists do so with an eye to the role that economic and other powerful factors and forces play in the interrelated and interdependent processes of the production, regulation, and consumption of these technologies (Calabrese, 2003, p. 10). In such investigations, it is imperative that researchers understand and interrogate how major actors in the communications environment exercise and wield power and, accordingly, shape the landscape they exist within (Murdock & Golding, 2016, p. 764). In this dissertation, such attention is paid, in particular, to Canada’s dominant telecommunications service providers, the global technology firms that operate in the country, and the state and regulatory actors that govern their activities.

To conduct these analyses, this literature often situates its object of analysis in Marxist thought or at least a critical assessment of the current state of capitalism. Some of this work focuses on concepts including labour, exploitation, and commodification (Brophy, 2017; Cohen, 2017, 2019; McKercher & Mosco, 2007). Others critique industry consolidation and conglomeration

(Miège, 1987, 1989; Wasko, 2003; Winseck, 1995). Another group puts forward a much-needed feminist political economy of communication to address the ways that the traditional theory's key tenets, including its criticism of capitalism, are gendered (Lee, 2011; Riordan, 2002). In recent years, much research in this tradition rebuts understandings of the internet as a utopic and open domain that circumvents the risks and dangers of the neoliberal project (Curran, 2012; Curran et al., 2012; Freedman, 2012). Yet, others emphasize that the Marxist ideals that lend themselves to this work exist as *an* element rather than *the* element of the political economy of communication. Winseck (2016) states that “there is no need to shy away from Marxist political economy so long as we accept that Marx offered partial fragments on communications rather than anything programmatic” (p. 74).

In critiquing the current economic order, the political economy of communication readily resists institutional and other forms of power, another key element of the tradition. McChesney (2000) emphasizes that “speaking truth to power” is a fundamental element of identifying and recognizing where and how power exists in the first place (p. 116). When it is these institutions that often provide research funding to universities, it is no surprise that concerns towards the possibility of effectively and actively producing political economic research is expressed in McChesney's writings. Others have highlighted increasing pressures in the social sciences to focus research efforts on the short-term concerns of existing industrial and other communities, rather than the channels of powers that characterize economic, political, and other social relations (Mansell, 2017, p. 2014). However, there is nonetheless a certain duty or responsibility within this tradition to conduct this work and aim to resolve the ills revealed therein (Chen, 2013).

The forms of resistance described and proposed in political economic research vary. There are those who explore workers' movements, including the establishment of trade unions and other novel models of organization (Mosco & McKercher, 2008; Salamon, 2020). Some political economists present reimagined and cooperative societies that alleviate the challenges posed by the current economic system and its implications for modern communications (Fuchs, 2009; Holzer, 1975). In critical political economy research, which includes that specific to the discipline of communication, an emphasis on resistance is also present (Bailey et al., 2018; Huke et al., 2015). Some of this work is useful to reference because it raises important points about the possibilities for resistance within the existing capitalist framework through diffuse,

partial, and ‘disruptive moments’ (Huke et al., 2015). This research highlights the extent to which opposition to the neoliberal project is not always organized and readily evident (Bailey et al., 2018). Rather, it is often fragmented and overlooked, but yet nonetheless worthy of study. Indeed, this dissertation examines both these types of resisting movements, including organized public interest group participation in Canadian internet policy development as well as the ways that these parties and engaged citizens push back against dominant forms of power in more subtle and often complex ways.

This section has explored some of the key ideas that underly the political economy of communication, including historical context, a critique of the current economic order, and resistance towards institutional and other forms of power. It has also hinted at some of the ways that political economists differ in their application of the theory. When we take a closer look at how political economists address internet policy dynamics as a research area, we will too find divergences there. In that section, I will also outline an understanding of the ways that this project applies the political economy of communication to the study of Canadian internet policy formation.

Applications to the study of internet policy

This section addresses what pluralist, discursive, and political economic understandings of policy dynamics mean for the study of internet policy. I explore how media and communications scholars (Ali & Puppis, 2018; Freedman, 2008, 2010) have countered pluralist perspective espoused by Dahl (1956; 1961) and others (Freeman, 1965; Merelman, 1968; Truman, 1951) and critique the approach’s implications for the study of internet policy development. I then examine how discursive (Gillespie, 2010; Lithgow, 2019) and political economic research (McChesney, 2013; Rideout, 2003) investigate the dynamics of internet policy development and describe how and why I adhere to a political economic approach in this research project.

What pluralism hides in the study of internet policy development

Pluralism is not without its critics. Bachrach and Baratz (1962) suggested that Dahl’s (1961) New Haven study neglected to account for “*both* faces of power” [sic] (p. 952). Dahl’s focus on which proposals were accepted and veto-ed reflected an ignorance of ‘non-decisionmaking’. This concept describes the extent to which “*status quo* oriented persons and groups” [sic] affect

values and institutions and how these forms of influence can restrict what issues are examined in policy development settings (Bachrach & Baratz, 1962, p. 952). Drawing on the concept of ideology, a third dimension of power was conceived by Lukes (1974). This ‘third face’ illustrates the process of “securing the consent to domination of willing subjects” (Lukes, 2005, p. 109).

These responses sought to address the restricted view of politics and power enshrined in key pluralist texts (Dahl, 1956, 1958, 1961; Freeman, 1965; Truman, 1951). Dahl (1961) in particular focused on the elements of the policy development process that can be neatly quantified and produce clean conclusions. Yet, as Lukes (2015) writes, power works in “other ways, including agenda control, the suppression of potential issues [and] the shaping of beliefs and preferences” (p. 264). Dahl’s lack of interest in these other elements of power led to findings that were not reflective of the multi-dimensional power dynamics at play in policy development processes, and the implications of these politics for policy outcomes. As Hunter (1962) states in a review of Dahl’s thesis in *Who Governs?*: “When he finds little or no connection between economic dominants and processes of decisions [...] I tend to fall of the cart” (p. 518). To many who rely on pluralist principles to understand these processes, public policy development is not a domain with major structural inequities, but one that often functions quite adequately. In Dahl’s (1956) view, for instance, despite its limitations, the American political system “nonetheless provides a high probability that any active any legitimate group will make itself heard effectively at some stage in the process of a decision” (p. 150).

Media and communications scholars have also highlighted the limitations of pluralist thought (Ali & Puppis, 2018; Freedman, 2008, 2010; Mansell, 2004). In particular, this work explores or reflects on the ways in which pluralist perspectives undermine the study of internet policy development. They investigate the implications of ignoring the often hidden and unmeasurable ways that power operates in internet policy development settings. Freedman (2010) studies the “hidden face” of media policy development whereby “policy frames, guiding assumptions, foundational principles, and ideological presuppositions” silence certain actors and viewpoints (p. 358). Ali and Puppis (2018) outline how media and internet companies can covertly influence how policy information about their own regulation is communicated to the public.

McChesney (2008) points out the role of ideology in maintaining the status quo in communications policy environments.

These examples and others highlight a central problem with pluralist thought: its assumption that the policy development process is “competitive, accessible, transparent and logical” (Freedman, 2006, p. 921). Rather, pluralist viewpoints ignore the real and investigable policy dynamics that are often hidden behind otherwise ‘clean’ outcomes. These abovementioned studies signal just some of the many less visible ways that power is latent, manifest, or exercised in internet policy development processes. Yet, they are all elements of these environments that would not be accounted for in a classical pluralist investigation. If we acknowledge that these aspects of the process are as real as the formal accepting or veto-ing of a policy proposal, the use of pluralism to examine internet policy formation is inarguably ill-suited.

Pluralist thought also underplays or ignores the potential contributions of the general public, focusing instead on the proliferation of a finite number of interest groups. To Dahl, democracy is not made up of the ‘will of the people’ so much as the “processes by which ordinary citizens exert a relatively high degree of control over leaders” (as cited in Son, 2015, p. 535). This control is exerted through interest groups that effectively represent individuals’ interests. Yet, pluralist Easton expressed concerns about the “demand overload” that would occur if parties representing all facets of society actively participated (as cited in Weinstein, 1974, p. 27). Accordingly, only a certain number of stakeholders should take part in policy development processes and “apathy, deference, acquiescence and loyalty to loyalty” would contribute to a necessary ‘slack’ in the system (Weinstein, 1974, p. 27). Indeed, in Dahl’s view, minority groups are ‘embedded’ in pluralist society and “their interests remain within the bounds of a broad consensus underlying the system” (Son, 2015, p. 535). The views and wants of these parties are not perceived to be disruptive to the status-quo, but compliant (Son, 2015, p. 535). Even with revisions made to postwar pluralist thought in the 1960s, critics levelled that the viewpoint’s increased interest in a ‘right to participate’ is undermined by the absence of any attempt to address the claims and needs of “racial minorities, women, consumers and the aged into its ideals and schemes of reform” (Weinstein, 1974, p. 35).

This pluralist principle is again misaligned with the widely-acknowledged importance of robust and diverse public participation in internet policy development, including from those writing in the tradition in the political economy of communication. Research has highlighted how the Government of Canada's limited efforts to engage Canadians in internet policy development processes prompt real concerns about "the nature of representation and the legitimacy of online public consultations" (Felczak et al., 2009, p. 455). Luka and Middleton (2017) explore the general public's involvement in a major Canadian broadcasting debate, finding that "citizen-consumers became actively engaged" in the process (p. 93). Lithgow (2019) examines individuals' contributions to that same debate and calls for "long overdue" strategies on the part of the regulator to harness these comments' "democratic energies, ideas, and potentials" (p. 107). Rather than "'extremist', 'deviant', 'irresponsible,' or 'dysfunctional'" (Baskin, 1970, p. 72), these forms of participation are understood to be necessary facets of a robust democracy.

This work and others (e.g., Luka & Middleton, 2019; Shepherd, 2019b) makes the intrinsic link between public participation and a democratic internet policy clear. Policy that truly reflects the public interest requires the involvement of the diverse breadth of views, ideas, and people that make up a given society. It also requires decision-makers to account for this diversity, including in the 'translation of the public imaginary' into policy decisions (Lithgow, 2019). By contrast, pluralism does not embrace nor seek to promote the possibilities of such active participation but often views apathy from certain parties as "a normatively desirable condition" for the functioning of the system (Son, 2015, p. 537). Through this lens, the public is often understood to be passively and apathetically living with policy, without having contributed to its development. As Baskin (1970) writes, this perception is driven by a concern for the balancing of well-resourced interests in the social system and an ignorance of the capacity of individuals to "develop a public self" and "benefit from the sustenance it is capable of yielding" (p. 95).

Pluralist approaches also too readily view the "professional politician [or regulator] as the balancer of economics and social interest under capitalism" (Janowitz, 1962, p. 401). Certainly, the pluralist understands that these actors bring with them their "own role perceptions, loyalties, and interests" (Baskin, 1970, p. 73). Yet, this understanding downplays the real role of corporate influence in policy development settings. In media policy development broadly, Freedman (2008) writes that this process "is hard to quantify, difficult to confirm, but

impossible to ignore” (p. 12). Relatedly, pluralists do not actively critique capitalism, but rather view the economic system as intrinsically linked to democracy, albeit with its limitations (Andrain, 1984, pp. 654–655). As I outline later in this chapter, it is my view that a strong critique of capitalism is vital to understanding and interrogating the realities of public policy development, in particular internet policy formation. Indeed, I believe that an investigation into the “specific historical circumstances under which new media and communications products and services are produced under capitalism” (Mansell, 2004, p. 98) is necessary. This includes readily acknowledging and addressing the extent to which internet policy is developed in a highly inequitable system (Harvey, 2005) whereby certain voices and ideas are privileged and others the converse.

This section has raised some thoughts and questions about why and how pluralism is an inadequate theoretical framework to study internet policy development. A key reason for this inadequacy lies in the extent to which pluralist thought runs the risks of ignoring the real but less measurable struggles and contestations that contribute to the ways that internet policy is developed. There are also issues to be raised about pluralism’s limited critique of capitalism and lack of concern for public participation in policy development processes. Pluralist thinkers have contributed to the broad dialogue around policy formation. Yet, to talk about policy development without actively acknowledging that these dialogues take place in arenas with fundamentally inequitable dynamics (Freedman, 2008; Harvey, 2005) discounts elements of policy discussions that undoubtedly contribute to the likelihood of certain proposals being included in subsequent policy outcomes. It is these dynamics, and the extent to which they influence Canadian internet policy, that this project is interested in.

Using a discursive lens to understand the politics of internet policy

While pluralist thought has implications for the study of internet policy, so too does the argumentative turn. Many studies in recent years have reflected principles raised in the ‘turn’, or at the very least an interest in the relationship between discourse and internet policy

(McKenna & Graham, 2000; Obar, 2016; Shepherd, 2018).⁸ The prevalence of these studies can in part be attributed to the highly public and contested nature of various internet policy dialogues, including those surrounding net neutrality and privacy (Evangelista, 2018; Tunney, 2019; Wong, 2019). This interest is also connected to the increasing role of the internet as a facilitator of communication, including in democratic capitalist states (CRTC, 2019, p. 23).

Indeed, a discursive perspective provides “valuable perceptual, social and cognitive insights to the ways in which Internet technology can be mobilized within a capitalist system to influence thought and action” (Amernic & Craig, 2004, p. 21). Streeter (2013) notes that the study of discourse in communications policy allows for an exploration of arguments and rhetoric devices, not simply as tools, but as “significant moments in the ongoing flow of human action” (p. 490). As these insights show, discursive analyses are informed by a level of criticism not often found in pluralist accounts (e.g., Dahl, 1961; Freeman, 1965). The following paragraphs review how literature in this tradition explores the use of discourse and rhetoric to legitimize corporate or public policies related to the internet, and to prioritize certain arguments over others in internet policy debates.

The first and narrower approach is scholarship that focuses on the singular role of a company, institution, or state in making corporate or public policy, respectively (Amernic & Craig, 2004; Naomi Fraser, 2007; Streeter, 1987). Examining AOLTimeWarner’s policy regarding internet-based discourse, Amernic and Craig (2004) call for an awareness of corporate interests’ use of rhetorical devices “to construct ‘us’ and the ‘new communications world’ in ways that render us disenfranchised, pliant consumers, in an Internet-mediated world” (p. 35). While the focus of this dissertation is on public policy, the aforementioned study raises some important questions about the extent to which corporate policies play a role in shaping how people use and understand communication technologies. Naomi Fraser (2007) examines policy documentation from the Canadian federal government to investigate how the rhetorical notion of the ‘model user’ influences an understanding of how Canadians should engage and behave in the context

⁸ Given the range of different types of internet regulation (e.g., net neutrality, copyright, misinformation, and others), this section and the subsequent one on political economic approaches to internet policy dynamics do not distinguish between the focus of the policy. Rather, the focus is on the approaches to these objects of study.

of eGovernment. This research illustrates how the state also contributes to the molding of what constitutes the ideal digital citizen. In these studies broadly, the focus is not on the interplay, collaboration, or tensions between competing discourses so much as the dominant rhetoric surrounding a particular policy issue and the ways in which that narrative is enhanced or mitigated by other factors.

There has been other research in this area that has similarly coalesced around various terms related to internet policy (Budnitsky & Jia, 2018; Kimball, 2012; Livingstone et al., 2007). In an examination of the use of ‘platform’ in advertisements, politics and policy, Gillespie (2010) suggests that a term does not “emerge in some organic, unfettered way from public discussion. It is drawn from the available cultural vocabulary by stakeholders with specific aims” (p. 359). Platform, in particular, sits nicely alongside other terms such as ‘conduit’ and ‘common carrier’ that, in different ways, lend themselves to the notion of neutrality (Gillespie, 2010). If social media companies are able to effectively imbue the terms that characterize them with certain associations, there is the risk that policy befitting these associations, whether or not they are in fact accurate, will be applied (Shepherd, 2019b). Cavanagh (2005) investigates the implications of defining the words “pornography”, “obscenity” and “inappropriate” as they relate to internet use at public libraries. This work reveals the power of organizational vocabularies to “block meanings or understandings” in dialogues around how the internet should be regulated and employed (Cavanagh, 2005, p. 357). While outside the context of policy, Browning et al.'s (2013) analysis of terms as “discursive structure[s] that can be captured as a set of rules or as rules of access to a structure” (p. 111) is illustrative.

Also a step removed from internet policy is Garnham’s (2005) analysis of UK policymakers’ use of the term ‘creative industries’ which he suggests “serves as a slogan, as a shorthand reference to, and thus mobilises unreflectively, a range of supporting theoretical and political positions” (p. 16).⁹ In other words, the phrase is fraught, and has taken on a range of connotations beyond what it initially referred to (i.e., work within a specific set of domains).

⁹ A strong argument could be made to place Garnham’s article in the next section on the political economy of communication. Given this particular piece’s chief focus on discourse—I opted to place it amongst other works focused on rhetoric. If anything, this occurrence highlights the extent to which works in these categories tend to overlap at the margins.

Cunningham (2007) applies Garnham's findings across four other regions, and concludes that the term has been broadly operationalized in the arts and culture domain with diverse cultural meanings linked to the respective geographies. Again, this scholarship highlights the extent to which certain terms or references can garner powerful associations that fall outside the actual characteristics of the particular phenomenon.

Other research examines the rhetorical interplay between a variety of actors in internet policy dialogues (Cramer, 2013; Kimball, 2016; Powell & Cooper, 2011). Kimball (2016) uses the US's Federal Communications Commission's 'open internet' policy process to outline how advocacy groups "linked the languages and processes of policy 'insiders' with the values and actions of policy 'outsiders' [to] entail public participation in arcane administrative procedures" (p. 5951). In this instance, we can see an interest in how language can be used to positively incorporate a greater number of voices rather than, as is the case in much of the scholarship in this section, a focus on the ways that discourse can be used to dominate and subvert policy debates. In a comparison of arguments around net neutrality in the US and UK, Powell and Cooper (2011) find that both regulatory precedents and cultural norms play a part in the making of net neutrality policy: "the structure of discourse is a central determinant of policy outcomes and regulatory posture, in combination with structural factors which the discourse in turn addresses" (p. 322).

Cramer (2013) examines policy, political commentary, and media reports to probe rhetorical notions of internet freedom in the US and abroad. The conclusion is that, in the US, internet freedom is used to characterize the rights of service providers, while abroad it is used to describe victims of internet censorship. Jacobs and Li (2017) study news coverage of internet privacy policies in Chinese, British, and American news coverage. They find that reports about domestic privacy policies are often less critical than coverage of their international counterparts, a revelation the authors attribute in part to the relationships between "news genres, public narratives, and journalistic autonomy" (p. 4). In these articles and others (Goodwin & Spittle, 2002; Novak et al., 2018), it is clear that competing conceptions of policy problems and debates have tangible political and social implications, that often differ across geographies. Media and communications scholars have also looked at the ways that discourses on different media or applications influence individuals' use of and engagement on these tools (Herman, 2012; Stanfill, 2015). Herman (2012), for instance, studies how rhetoric about

copyright is used across various media, finding sharp differences between the breadth of discussion across these different platforms. This work and related research (Lithgow, 2019; Luka & Middleton, 2017; Obar, 2016; Shepherd, 2019b) reveals the importance of thinking about the different communicative capacities of traditional and digital media, as well as the mechanisms created by policymakers to encourage public engagement on these tools.

But the research examined here also exemplify a key shortcoming of discursive approaches to the study of policy dynamics. While a focus on the discursive elements of policy development is worthwhile and indeed necessary, such a focus does run the risk of underplaying the structural forces at play. As my aim is to explore “systemic changes in corporate [and other forms of] power that have identifiable material force” (Graham & Luke, 2011, p. 105) in policy formation, these structural influences must be primary in my analysis. Moreover, as I outline in my methodological chapter, my interest in discourse is also less prevalent because I adhere to the understanding that discourse does not shape society and politics but is rather ‘grounded’ in these relations (Graham & Luke, 2011, p. 105). For these reasons and others, my theoretical approach ultimately aligns with the political economy of communication. Yet, an understanding of how policy issues are discursively framed by regulators, private actors, and other parties, nonetheless contributes to a more robust understanding of this domain. Accordingly, as appropriate, insights drawn from scholars who have studied these elements of internet policy development do contribute to my empirical investigation (e.g., Lithgow, 2019; McKenna & Graham, 2000; Shepherd, 2018, 2019).

How the political economy of communication addresses the politics of internet policy

Flowing from the key principles of the political economy of communication outlined earlier, this section explores how this tradition has informed research on the dynamics of internet policy development (Freedman, 2008; McLaughlin & Pickard, 2005; Rideout, 2003). This scholarship starts from the position that the internet exists within a fraught environment where a variety of key values about communications, democracy, and society are at risk (Curran, 2012; Fenton, 2016; Freedman, 2008). These values should be protected, in particular within the context of internet policy development, which implicates how people can and do use modern communication technologies. This view is reflected in Lasswell’s calls for a “multi-

disciplinary, problem-oriented, contextual outlook [that is] explicitly normative ... a democratic, distinctly human policy science” (as cited in Just & Puppis, 2012, p. 14).

Given the breadth of this endeavor and the need to defend these ideals, employing pluralist measures isolated from a robust understanding of the economic environment that internet policy is developed within, and the actors and contentions that characterize this space, neglects critical elements of the object of study (Rideout, 2003). At the same time, a focus on discourse can underplay the structural elements of communication technologies, including their economic and political contexts and the norms, structures, and actors that dominate internet policy formation. Rather, political economic approaches to this subject matter locate complex and contested policy debates within these realities in order better to understand their implications for everyday people as well as the global communications environment (McChesney, 2013).

The grounding of internet policy dialogues within a historical and critical understanding of the current system is thus a crucial step for political economists interested in this topic (T. Meyer, 2014; Zhao & Chakravartty, 2007). As McChesney (1996) suggests, an accurate assessment of the internet can only be conducted with a critical and historical understanding of capitalism, rather than a mythological one. This departure point also lends itself to a concern for the role of the public interest in media policy within contemporary capitalism (Ramsey, 2017; Sarikakis, 2007). Potschka (2012) states that the political economy of communication “recognizes the special nature of the media and its societal and democratic function” (p. 26). These foci invariably have a role in the sorts of questions political economic researchers ask and the type of conclusions they draw.

Meyer (2014) seeks to develop an explanation of how and why certain EU online copyright enforcement policies came into place. But unlike those who might approach policy dynamics from a pluralist approach (Dahl, 1958; Freeman, 1965; Merelman, 1968), the aim is not to find cause and effect but to “clarify opportunities and pitfalls and contribute to a way forward” (Meyer, 2014, p. 4). In contrast to conceptualizations of internet policy development focused on measuring policy outcomes (Dahl, 1961), researchers applying political economic principles to the examination of internet policy development show concern for the multiplicity of dynamics at work in these dialogues and, in many cases, the capacity for selected policies to inscribe

media in ways that reflect or diverge from existing inequalities (Freedman, 2008; McChesney, 2013).

Adherents to a political economic approach to the study of internet policy formation also highlight the fallibility of the pluralist notion of the policy maker “as the balancer of economic and social interests under capitalism” (Janowitz, 1962, p. 401). Political economists have readily outlined the potential of regulatory capture or other government misbehaviour to undermines the public interest (Freedman, 2006; Hintz & Dencik, 2016). Hesmondhalgh (2005) highlights the ‘strategic alliances’ between the Labour government of the day and various private actors in areas related to media and cultural policy, suggesting that “political parties in advanced industrial countries are unlikely to achieve power without the support of such businesses” (p. 108). Policy decisions are often made in keeping with an expectation of how key private interests will act (Hesmondhalgh, 2005, p. 97). Powers and Jablonksi (2015) use the notion of information sovereignty to connote the extent to which communication technologies can operate as an arena for state power. Others outline the ways that governmental powers are increasingly being transferred to corporate entities in the domain of internet regulation (Curran, 2012; McChesney, 2013). DeNardis (2012) states that the task is now to “grapple with the question of the appropriate bounds of restrictions on information flows” so that online entities can take on these responsibilities (p. 734). As I explore in my study of politicians’ and regulators’ activities in Canadian internet policy development, these figures are actors, not arbiters, who behave in complex and often self-interested ways.

Another persistent focus in this tradition is the undue influence of private actors on internet policy development processes (Ali & Puppis, 2018; Pickard, 2014). In this dissertation, this concern is largely linked to Canada’s dominant telecommunications service providers, including Bell, Rogers, and Telus, and global technology companies that operate in Canada, such as Facebook and Google. Freedman (2006) argues that the private sector has a disproportionate influence on media policy debates, although the extent of this influence varies. This reality has prompted decisionmakers to act in a way that “structures the parameters of the debate, dictates what forms of participation are most effective and conditions the balance of power in the policy process” based on private interests (Freedman, 2006, p. 921).

An opposition to corporate influence often means that political economic research is positioned in contention with incumbent participants in internet policy debates (Rideout, 2003; Winseck, 1995). In a study of the politics of online intellectual property rights in the US, Haggart and Jablonski (2017) state that policy decisions are “determined by the exercise of political power within a wider political economy consisting of institutional structures that favor actors with different interests and resources over others” (p. 104). Policy debates exemplify the push-and-pull between various parties in these dialogues, but policy outcomes enshrine the inequities that exist between these parties. As my research shows, while there is some back-and-forth between private interests and civil society groups active in Canadian internet policy development, that contestation does not occur on an even playing field (CMCRP, 2019), nor within a near equitable economic system (Harvey, 2005).

These disparities do not disappear in the digital sphere. Curran (2012) posits, in contrast to those who conceive of the internet as a place of utopic promise, that market forces are still operating in full force online: “the impact of technology is filtered through the structures and processes of society” (p. 33). Benkler (2001) characterizes struggles around these processes, between market forces and those that resist them, as a ‘battle over the institutional ecology of the internet’. But this battle occurs on unequal terms as “the incumbents gain and internalize all the benefits from new rights. Their gains are concentrated, and they view them as private gains unto themselves” (p. 89). The internet and the policies that surround it are not necessarily fixed but they do exist in a skewed landscape and one where powerful players increasingly have an upper hand (Fenton, 2016).

While many writing in this tradition highlight the public’s lack of engagement with and knowledge of communications policy, they suggest that this absence is part of a fundamental inequity that exists in political processes (Hackett & Anderson, 2011; Shade, 2014a). Mueller (2004) suggests that reluctance on the part of the public to participate in policy development processes is in part caused by the fact that internet policy is arcane and technical. Yet, Mueller (2013) is more correct when he highlights that there are many instances where the public is willfully excluded from the conversation. Others emphasize the importance of taking steps to ensure enhanced and inclusive participation is a facet of policy reform (Shade, 2014a, 2014b). Pratt (2005) states that local level participation will be a vital component of new re-imagined spaces of cultural industries governance (p. 19). This need for ‘local’ and ‘grassroots’

participation is also critical for environments where internet policy is developed (Hackett & Anderson, 2011; Raboy & Shtern, 2010a; Shade, 2014a).

However, this tradition, and its approach to the study of internet policy development, has its own limitations. Research in this vein has been criticized for a lack of neutrality, due to its commitment to outline an understanding of the world and reliance on a certain set of core values (Dahl, 1958; Merelman, 1968). These are real elements of the political economy of communication but also characteristics that colour all social research. While research that is administrative in nature may mask such values, normativity is nonetheless present. As Lazarsfeld (1941) suggests, administrative research is interested in questions about how media are used and its goal is often to make that media better known. This branch of communications research is limited as its focus is narrower and addresses problems that are “generally of a business character” (p. 8). Indeed, the methods employed in administrative research “could be used to improve the life of the community if only they were applied to forward-looking projects related to the pressing economic and social problems of our time” (Lazarsfeld, 1941, p. 8). Despite being useful in areas of public life, such work lends itself to a bounded study that is devoid of context and an understanding of the value of communications to an informed citizenry. Rather, my project aims to incorporate both those latter elements. Accordingly, a critical approach, distinguished by a prevailing understanding of the social world and an adherence to certain core ideas and values (Lazarsfeld, 1941, p. 9) is imperative to this project.

Relatedly, some have critiqued studies of dominant forms of power for their focus on theory at the alleged expense of empirical rigor (Dahl, 1958). Although, as is the case with any group of literature, there are undoubtedly instances where ideological leanings have come to the detriment of empiricism, there is no shortage of scholarship in this vein that exhibits rigorous and evidence-based research on media industries and policy. Wasko points out that political economists “may take a moral position and argue that a system is not the best of possible systems, but you also have to look at it empirically and see what is actually happening” (Prodnik & Wasko, 2014, p. 23). Winseck, whose Canadian Media Concentration Research Project (2019) tracks the annual levels of media concentration in more than a dozen sectors of the media industries in Canada, is a key example. A further illustration is the Data Justice Lab’s running record of data harms caused by big data (Redden & Brand, 2018). This research and that conducted by many other political economists (Freedman, 2008; McChesney, 2013;

Rideout, 2003) show that robust theory does not come at the expense of methodical empirical work, and vice-versa.

This section has outlined how political economists, or those relying on the theory's principles, approach the study of internet policy development. I have focused on the ways this tradition incorporates not least a critique of capitalism and a skepticism towards various pluralist assumptions about the roles of certain actors (Dahl, 1957, 1961; Freeman, 1965; Merelman, 1968) in the study of policy formation. As I hope to show in my own application of this theoretical framework, this work does show a path forward towards a communications policy environment that is more fair, accountable, and transparent, and that meaningfully incorporates a wider array of voices (Hackett & Anderson, 2011; Pratt, 2005; Shade, 2014a). A fully equitable system is not feasible within the current economic system (Harvey, 2005); however, improvements within this frame are possible (Bailey et al., 2018; Huke et al., 2015). Given the approach's ready and warranted criticism of the current state of affairs, recommendations and insights on what and how such ameliorations can occur are welcome and necessary.

Conclusion: The case for a political economic conceptualization of policy development

The rise of public outsourcing across developed countries (Pensiero, 2017) and extensive efforts from private interests looking to influence policy (Office of the Commissioner of Lobbying of Canada, 2020c, 2020a, 2020b, 2020e, 2020f) highlight the importance of research that critically investigates the politics of policy development. Studying an issue as dynamic and contentious as the internet is especially important. As Pickard (2013) states in a call for academic engagement in media policy broadly, "media policies that will influence our democracy for the coming decades will likely be determined during this current critical juncture" (p. 15). Scholars and students of media and communications are important contributors to this dialogue (Pickard, 2013, p. 15).

This first section of my literature review outlined three groups of scholarship commonly used to examine policy dynamics. While each of these avenues add insights to the study of internet policy development, these distinct traditions also come with certain shortcomings. Pluralist approaches answer some narrow questions about policy dynamics, yet the theory's limited focus on elements of policy formation that can be measured leaves out many considerations

critical to a robust understanding of the case at hand. Discursive research highlights the extent to which discourse plays a part in policy development and outcomes, but this scholarship does not always fully account for the structural elements of this domain. It is clear that the political economy of communication, despite its own limitations, offers most to this project's aims. This approach embraces a breadth of methods, incorporates values in line with my understanding of internet policy development, and critically contextualizes this environment, as I sought to do in this dissertation's introduction.

The second half of my literature review critically outlines the historical development of gatekeeping theory to its more recent application to networked environments. I then locate the theory within this now-established understanding of the political economy of communication. While the political economy of communication underpins my view of Canadian internet policy development, gatekeeping theory allows me to more tangibly understand the multi-faceted set of processes and actors that exert influence and power within this environment.

Applying gatekeeping theory to internet policy development

The study of gatekeeping stems from a concern with control and power. It is motivated by an interest in who makes decisions in society, the rationale behind their choices, and how these decisions influence the ways the general public understand and experience the world (Lewin, 1947a, 1947b; Shoemaker & Vos, 2009; D. M. White, 1950). But gatekeeping is also a theory in flux. In recent years, the relevance and applicability of gatekeeping theory has been contested by new networked technologies that have touched nearly all aspects of social, economic, and political life (Castells, 2010). Networked gatekeeping theory has emerged at the forefront of the response to the challenges technological advances pose to traditional gatekeeping theory. This approach accounts for the increasing role of users in the gatekeeping process and the dynamics of gatekeepers in networked environments (Barzilai-Nahon, 2008). Extensions of the theory have mapped out the various levels of gatekeeping that take place in online environments (J. Wallace, 2017). Others have made initial steps to apply this approach to internet regulation and policy development (Laidlaw, 2010; Lynskey, 2017). However, while networked gatekeeping theory moves traditional gatekeeping theory into the 21st-century, this approach falls short in calling for a fulsome analysis of the political economic context that networked gatekeepers operate within.

In this critical review, I map the origins of gatekeeping theory across a variety of disciplines to its resurgence in the study of networked environments today. I analyse the approach's initial application in the private sphere (Lewin, 1947a; 1947b) through its development into a key tenet in the study of news production (Gieber, 1956; Snider, 1967; D. M. White, 1950). Alongside this body of work, I interrogate the development of gatekeeping theory in the areas of law (Baum, 1977; Kaheny, 2010), politics (Breuning, 2013; Calvo & Chasquetti, 2016; Putterman, 2005), and business (Bowles, 2012; Inghelbrecht et al., 2015; Mason et al., 2016). I address how these approaches rely on similar concepts and tools, how they diverge, and the ways that each relates to the study of policy development. I also take a closer look at the advances and limitations of networked gatekeeping theory, with a focus on how this approach accounts for the policy implications of networked gatekeepers (Laidlaw, 2010; Lynskey, 2017).

In doing so, I highlight how my dissertation applies gatekeeping theory, within a wider political economic context, to examine the practices employed by the gatekeepers of Canadian internet policy development, and the institutional mechanisms these actors exploit to further their aims. Where applicable, I also examine how the operations of companies that provide access to, or facilitate significant operations over, the internet also exert gatekeeping power in the digital elements of policy formation. This review's analysis of the recent turn towards networked gatekeeping theory also underscores the importance of regulatory action around internet companies that operate as gatekeepers in these networked environments.

Traditional gatekeeping theory

Gatekeeping theory emerged from a concern towards the influence of subjective values on objective states. While my study uses the approach to examine the dimensions and implications of internet policy development, famously, the theory was first used to study domestic life: how a housewife acts as a gatekeeper to the food served to her family and the forces (e.g., the price of the food) that guide her decision-making (Lewin, 1947a; 1947b). Though the focus of the case study was narrow, Lewin's aim was to make a broader argument about how certain individuals can hold and mobilize control in social, cultural, and political contexts.

Accordingly, targeting gatekeepers is the most effective way to facilitate social change (Shoemaker & Vos, 2009, p. 12). While Lewin's theory paved the way for a slew of studies on the control of goods, services, and information flows, its initial application focuses on decision-making in private social settings. Specifically, Lewin's research highlights how individual

conduct by a family member influences the social habits of others within the family unit. Yet, the work stops short of applying these concepts to the public sphere, that “discursive space in which individuals and groups associate to discuss matters of mutual interest and, where possible, to reach a common judgment about them” (Hauser, 1999, p. 61). In doing so, the approach, while offering a micro-level view of gatekeeping, fails to provide a perspective on how this practice can operate across society, particularly through mass media.

In the years following Lewin’s writing, a range of studies emerged to fill this gap—using the theory to examine the influence of gatekeepers in the news-making process. These social experiments study how the decisions made by news editors and reporters (Gieber, 1956; Snider, 1967; D. M. White, 1950), photographers (Bissell, 2000; McEntee, 2018), and online newswriters (Cheung & Wong, 2016; Singer, 2008) shape the social and political realities of their audiences. Lewin’s research assistant, White (1950) conducted the first and most widely-cited study to this effect when he sought to examine why an editor chose select news items from three separate press sources. The report reveals that the editor, aptly dubbed ‘Mr. Gates’, selected items based on his conservative inclinations (both politically and stylistically) and dislike for figures and statistics (p. 389). The experiment concludes: when studying “overt reasons for rejecting news stories from the press association we see how highly subjective, how based on the gatekeeper’s own set of experiences, attitudes and expectations the communication of ‘news’ really is” (p. 390). Other social experiments in this vein similarly focus on the role of personality and interests (Henningham, 1997; Rosen et al., 2016; Weaver & Wilhoit, 1986) or journalistic values (Carmichael et al., 2019; Gans, 1979; A. Williams et al., 2018) in the news-making process. The application of the theory in this sense understands gatekeeping as a selection process whereby a gatekeeper decides what is “in” or “out” (Shoemaker & Vos, 2009). In these studies, gatekeeping is often seen as a linear and dichotomized process.

These social experiments move traditional gatekeeping theory from the private sphere to the public sphere. Moreover, they shine a light on how the subjective experiences and values of workers involved in the news cycle can have a role in the selection of the information disseminated to the public. In many cases, these studies’ findings provide compelling evidence to suggest that mainstream outlets’ selection of ‘newsworthy’ material is far less balanced than many would posit (Preston, 2014). As we see in this dissertation’s investigation into the

inequities characteristic of internet policy development, gatekeeping theory is thus a useful way to highlight how spaces or processes that are portrayed as objective, fair, or equal, are further imbalanced by the behaviours and choices of gatekeepers.

These reports are valuable; however, where they might be too narrow is in their lack of regard for instances of gatekeeping that take place at other levels of the news-making process. It is not just the editor, or, in this project, the regulator, corporate lobbyist, or other powerful policy actor, that facilitates gatekeeping practices. There are forms of gatekeeping that are linked to the organizational, ideological, cultural, and other aspects of the practice and setting in question (Shoemaker & Vos, 2009). Alongside the individual level, Shoemaker and Vos (2009) suggest that gatekeeping can occur at the communication routines level, the organizational level, the social institution level, and the social system level. A singular focus on how newswriters engage with news selection risks masking how broader norms and values in the organization, industry, or society can play a part in the production and dissemination of information within the public sphere too. Gatekeeping theory has since been applied to each of these tiers of analysis and it is through this model that I review the literature examined in the remainder of this section. Given that, within the disciplines of communication and journalism, these studies' topics of inquiry largely include news practices and organizations, the cited literature is primarily on this subject. Yet, to highlight the applicability of this research, and gatekeeping theory broadly, to my project on internet policy development, I also intersperse this review with commentary on how these ideas are linked to understandings of gatekeeping in policy formation.

Beyond research that focuses on the individual level are studies that examine the routines of communication work—the use of regular practices emerging from gatekeepers' understanding of their audience, external sources, and the context of meaning-making (Cheung & Wong, 2016; Clayman & Reisner, 2016; Hecht et al., 2017). In contrast to research trained on the influence of individual actors' subjectivities, this work zooms out to account for norms and values put in place through the practice of newswork more broadly, including newsworthiness, professionalism, and objectivity. Clayman and Reisner (2016), for instance, interrogate the role of newspaper editors in maintaining routines in the newsroom, concluding that “department editors play a crucial role in proposing which story characteristics should form the basis for evaluation, and how each story should be ranked vis-à-vis other available stories” (p. 197).

Others take their analysis outside the walls of the newsroom to assess how newswriters' interactions with sources might colour news practice. Hecht et al. (2017) study how journalists work with public affairs specialists in the context of the US military, finding that journalistic gatekeepers are more receptive to specialists who reflect reporting norms, such as authenticity and objectivity. In journalism, and in policy development, the norms that characterize how people make decisions matter. As Braman (2002) notes, with respect to the latter, too little attention is paid to the "the ways in which [policy research] is incorporated into decision-making processes" (p. 35).

Work that focuses on gatekeeping as a manifestation of routines tempers the high degree of agency provided to individuals by literature that highlights the influence newswriters have on information production. But this research has its own limitations. The last several decades have seen contention over the legitimacy and even feasibility of traditional journalistic norms including the notions of objectivity and newsworthiness (Keller, 2013). Tuchman (1972) suggests that objectivity can be viewed as a strategic norm to protect journalists from critics who contest their presentation of the truth. More recently, McChesney (2003) insists that western journalism evolved by incorporating certain key ideals into the professional norms of the practice (p. 302). This occurred despite the fact that "there was nothing naturally objective or professional about those values. In core respects they responded to the commercial and political needs of the owners" (McChesney, 2003, p. 302).

At the same time, the decline of the advertising-driven business model of traditional news outlets complicates the maintenance of journalistic norms and standards by increasing precarity and pressure across the industry (Cohen, 2017). Journalistic routines are also disrupted in politically turbulent contexts. Cheung and Wong (2016) examine how reporters in Hong Kong have been forced to adopt adaptive routines in response to authoritarian police forces who have gained a gatekeeping role in news dissemination practices. Journalistic norms have never been clear-cut—and this ambiguity has only increased alongside new digital technologies and, in some cases, politically fraught environments. Indeed, much of this commentary also applies to how the norms around internet policy development have changed, not least alongside the "evolution of the nature of the state" and technological advancements (Braman, 2002, p. 42). Thus, those analysing gatekeeping through this lens run up against the challenge of measuring processes that may be in a state of flux or declining level of consensus.

Others focus on how organizational structures contribute to the ways workers create meaning (Nijholt et al., 2014; Panis et al., 2015; Wagenberg & Soderlund, 1976). Nijholt et al.'s (2014) study examines practices of gatekeeping across magazines with a range of funding arrangements. The research finds that well-funded magazines have greater autonomy to follow norms of journalistic independence while their counterparts are more likely to favour the views of thought leaders and advertisers. Alongside resource comparisons, work in this area has also homed in on the ways ownership arrangements might influence decision-making. Wagenberg and Soderlund (1976) look at the effects of newspaper chain ownership on the editorial coverage of Canada's 1974 federal election. Yet their results are not clear cut. The study reveals some indications that this ownership structure may elicit a community of social and political values, though not in the form of a concerted editorial direction. While the findings show no statistically significant variations in the coverage of political institutions, political leaders, and other measures, they do show "that the press is an agency for maintaining the status quo in terms of the major outlines of liberal capitalist society" (p. 689). Finding similarly mixed results, other research examines how cross-ownership may translate into the cross-promotion of the outlets' affiliated services (Panis et al., 2015). In the realm of internet policy development, changes to organizational structures can also implicate the findings and policy outcomes of public institutions. The increased privatization of government, for example, may result in decisions "counter-intuitive to those concerned about the public interest in communication policy" (Braman, 2008, p. 434).

The literature that highlights how organizational structures enact gatekeeping regimes shows a concern for the effects of private interests and behaviours on decision-making, including media content and policy decisions. The rationale behind these fears is warranted. Research on media concentration in 30 countries (including 22 OECD member nations) finds that levels are universally high (Noam, 2016). Yet some rightly point out the difficulty of linking a concern for media conglomerates with methods that rely on content analysis. Studies in this vein often produce results that are mixed and inconclusive (CMCRP, 2015). In internet policy development, it is similarly difficult to assess the ways a regulator's organizational structure influences how decision-makers come to a particular policy decision or outcome. Thus, research on the causal impact of organizational structures on media content or policy decisions may risk undermining some of the broader concerns around these developments, including the transformation of market power into gatekeeping power and the setting of de facto policy

norms. At the same time, others have criticized studies in this vein for brushing over the agency of the individuals working within these organizations. Shoemaker and Vos (2009) point out that workers in these studies are often portrayed as “passive and have no important distinguishing features; they are interchangeable cogs” in the machine (p. 18).

Another body of literature highlights how structural forces in society, such as interest groups, communications agencies, markets, states, and, more recently, global technology firms, might put various pressures on decision-making, particularly in news practices (Andsager, 2000; Anzia, 2011; Chomsky & Herman, 1988; McChesney, 2003; Vos & Russell, 2019). These entities are not always gatekeepers in the environments in question; however, they can have an influence on those who do make decisions in journalistic, or other, practices. This focus is famously exemplified by Chomsky and Herman (1988) who posit that, alongside other uses, “the media serve, and propagandize on behalf of, the powerful societal interests that control and finance them” (p. xi). These forces manifest and discipline the news media in subtle ways, such as in the provision of slanted experts and ‘flak’ (e.g., lawsuits or complaints against news stories). These issues are only exacerbated by heightened market forces and the excess profit motive of news firms, which further contributes to a decline in the quality of news content (McChesney, 2003). Similarly, in internet policy development, consider how the neoliberal turn (Harvey, 2005) contributes to decisions that favour private over public interests.

Reports on how social institutions might influence news or policy information provide a view to the webs of power that exist in decision-making environments. But they often undermine the existence, and sometimes prevalence, of public-service ideals in these settings. There are many accounts of reporters who have challenged governments (Shaheen & Hatunoglu, 2017), police forces (Hasham, 2017), and their affiliated outlets (L. Wallace, 2017) in the name of press freedom. A survey of journalism students in five European countries reveals that they broadly share a desire for self-expression and workplace autonomy (Nygren & Stigbrand, 2014). At the same time, positive public opinion towards contemporary newswriters is on the decline (Pew Research Center, 2013) and precarity on the rise (Cohen, 2017). These realities suggest that those in the field may not necessarily be in the pursuit of either prestige or income. With respect to internet policy development, scholars have similarly documented ‘earnest’ attempts by Canada’s communications regulator to incorporate public interest viewpoints into public consultations and decisions (Shepherd et al., 2014, p. 8).

There are also those who direct their attention to the relationship between culture, ideology, and decision-making (Galtung & Ruge, 1965; Hanusch, 2013; Siebert et al., 1973; Touri et al., 2017). This approach is adopted by Siebert et al. (1973) who argue that since the press “was introduced into an already highly organized society, its relation to that society was naturally determined by the basic assumptions or postulates which were then furnishing the foundation for social controls” (p. 10). This research is chiefly concerned with the ways in which the existing ideological underpinnings of a society are reflected in its communications decisions, such as media outputs. Galtung and Ruge (1965) suggest that various factors drive western media’s selection of newsworthy items: a focus on elite nations and people, a concern for events that can be attributed to the actions of specific individuals, and an inclination towards events with negative consequences. Others have conducted studies on specific geographic regions (Hanusch, 2013; Touri et al., 2017). Hanusch’s (2013) examination of the role of cultural values in the work of Maori journalists reveals practices specific to the region’s cultural context, including an adherence to certain protocols, behaviours, and language norms. Governmentality, “the cultural habits and predispositions out of which modes of governance and government arise, and by which they are sustained” (Braman, 2008, p. 433), is a useful tool to consider how the ideologies that underpin governance influence internet policy formation.

Research that homes in on practices of gatekeeping in social, cultural, and ideological contexts often underplays the political economic circumstances of the research topic. By drawing on the political economy of communication (Mansell, 2004; McChesney, 2000; Winseck, 2016), these studies might better highlight how economic influences work alongside, and in conjunction with, culture and ideology. Shoemaker and Vos (2009) also outline the difficulties of defining the parameters around a ‘system’ in the first place, and the competing values and norms that exist within them. While social systems “shape what gatekeepers understand to be the natural world [their complexity] does not produce gatekeepers who must act alike” (p. 106).

Reflections of cultural and ideological contexts are complicated and vary across subjects, which makes it difficult for research in this area to determine the influence of ideological factors amidst the other forces that I have discussed thus far.

Where traditional gatekeeping theory offers much to assessments of 20th-century mass communications, its relevance in an increasingly globalized, capitalized, and networked media environment is less obvious. In the disciplines of media studies and journalism, traditional

gatekeeping theory has most often addressed the forces and pressures at work across news production processes. (In order to draw out the relevance of this discussion to this research project, I have also highlighted how these different tiers of gatekeeping factor into considerations of internet policy development.) These studies examine journalistic practice at five tiers of analysis, ranging from assessments of how journalists' personal values factor into the selection of news items to the influence of culture and ideology on journalistic content. While these reports differ in the depth of their focus, they are largely aligned in their emphasis on linear information production processes. Although the literature provides a view to how a message is influenced by forces of varying levels of power in practices of traditional media, it does not always fulsomely account for how information is produced, shared, and consumed in the digital age, or the dynamic role of the audience in digital environments. These changing practices are also reflected in developments to internet policy formation as increased channels of communications have opened new ways for the public to contribute to public policy proceedings, but also new ways for private interests to legitimize their policy views (CRTC, 2017a; Obar, 2016).

Moreover, and in contrast to the work in the disciplines of politics, law, and business that I discuss in the following section, journalistic research on gatekeeping is primarily interested in issues of influence rather than access. This research chiefly focuses on the role different forces play in content production rather than the ways that people gain access to content in the first place. In considering internet policy development, this distinction can be found in an emphasis on stakeholders' interactions within a policy development arena, rather than a view to the complicated ways that certain actors may not be able to gain access to a policymaking venue at all (Freedman, 2010). To be sure, access is addressed but its inclusion is normally through an especially narrow lens that considers the selection or rejection of a news item or issue (D. M. White, 1950). At a time when an increasing amount of information is directed through a shrinking number of firms (CMCRP 2019; McChesney, 2013), a focus on the media that actually channel the content undoubtedly warrants greater attention. Relatedly, in this dissertation, a concern for the ways that policy interveners gain or are barred access from policy debates is necessary.

Gatekeeping theory in the study of other social sciences and business

While gatekeeping theory was flourishing in the study of journalism in the latter half of the 20th-century, it began to find its foothold in other areas. Research in the disciplines of political science and law approaches gatekeeping theory with a view to the mediation of decision-making in democratic contexts (Baum, 1977; Calvo & Chasquetti, 2016; Kaheny, 2010; McCubbins et al., 1994). In contrast to an examination of information flows from a publisher to an audience, the application of the theory in these disciplines is concerned with how and why individuals, groups, and states make decisions and the ways that the structural underpinnings of their environment support or mitigate their power to do so—emphases that are of direct relevance to this project. These studies largely fall into two camps: first, the power to provide access to decision-making spaces (Baum, 1977; Kaheny, 2010; McCubbins et al., 1994); second, the power to influence decisions (Denzau & Mackay, 2017). Across these distinctions, these reports often perceive gatekeepers as those interested in maintaining the status quo, or “order and equilibrium” (Barzilai-Nahon, 2009).

At the same time, business research has used gatekeeping theory to examine how gatekeepers operate between and within organizations (Bowles, 2012; Inghelbrecht et al., 2015; Mason et al., 2016). These texts deal with access in terms of market entry, primarily focusing on individuals’ or firms’ access to a commercial workplace (Bowles, 2012) or marketplace (Inghelbrecht et al., 2015), respectively. Often, this literature suggests that entrepreneurial practice on the part of the individual or firm can reduce or eliminate gatekeepers’ power. With regards to gatekeepers’ capacity to influence, business research focuses on the ways that market gatekeepers break down boundaries, influence change, and use positive disciplinary power. In contrast to the literature on gatekeeper influence in journalism, law, and politics, and the approach largely taken in this dissertation, the business-focused work in this area often views the practice as a constructive force.

A focus on the ways that democratic figures have the capacity to provide access through decision-making has long resonated in the study of gatekeeping in legal and political contexts (Baum, 1977; Kaheny, 2010). Work in this area often examines the role court actors play in selecting or barring what cases or issues warrant further consideration, and the rationale behind these decisions. Baum (1977) finds that, amongst other factors, US federal and state supreme

court judges with discretionary jurisdiction often screen out cases that do not fit their agenda (p. 14). Pointing out the different ways that gatekeeping operates across multiple levels of democratic institutions, Kaheny (2010) looks at how circuit judges similarly grant or deny whether litigants and claims receive a full hearing—determining that decisions are often based on a combination of personal preference, institutional features, and rules and procedures.

Others look at how structural frameworks constrain or support the gatekeeping of access within political institutions. Calvo and Chasqueti (2016) find that political structures with limited forms of gatekeeping restrict the power of majority parties. Gatekeeping theory has also been used to examine how pieces of legislation gain access to decision-making spaces through the political process. In an examination of the US's executive system, McCubbins et al. (1994) state that the “single most important feature of the legislative process [...] is that, to succeed, a bill must survive a gauntlet of veto gates in each chamber, each of which is supervised by members chosen by their peers to exercise gatekeeping authority” (p. 18). This point highlights why some research might concentrate on the power to control access over the power to influence. Policy issues must first pass into the domain of consideration and review before they can be influenced by relevant parties. This is made especially clear in research that perceives gatekeeping as the first step in a multi-stage process (Blanton, 2000). As I show in this dissertation's case studies, the challenge is often first getting an internet policy issue into the realm of consideration, either by Canada's communications regulator or the federal government, before policy interveners can begin making arguments about how that issue should be addressed.

In the business literature, access is largely viewed in terms of market entry (Bowles, 2012; Inghelbrecht et al., 2015; Mason et al., 2016). This work falls into two camps: first, an individual's capacity to access certain employment positions (Aggarwal et al., 2014; Bowles, 2012), second, a product's or service's entrance to, or barring from, a marketplace (Inghelbrecht et al., 2015; Lagner & Knyphausen-Aufseß, 2012). In the former case, for instance, research examines how the parameters of graduate management admission tests play a role in who is admitted to master's programs in business and, correspondingly, gains access to coveted business leadership positions (Aggarwal et al., 2014). Bowles (2012) looks at how women ascend to the top of corporate hierarchies by self-advocating to gatekeepers within business environments. Here and in other instances, gatekeepers are understood as barriers to

be overcome by entrepreneurial practices. As one research participant explained “‘I’m a firm believer [in] you never get anything you don’t ask for” (Bowles, 2012, p. 199).

On a broader scale, research examines how gatekeepers to marketplaces can have their role undermined by the creativity and resourcefulness of the gated, those whom gatekeeping is being exercised upon. To the dissatisfaction of market gatekeepers, Marfaing and Thiel (2013) highlight how previously excluded actors gain entry to Ghanaian and Senegalese trade through entrepreneurial skill and the leveraging of other opportunities. In these contexts, maintaining power over access is often an ongoing negotiation between the gatekeeper and the gated. To this point, other work examines how internal consultants in management agencies try to bar the hiring of external consultants who could challenge their position as subject matter experts (Sturdy & Wright, 2011).

Business research often uses gatekeeping theory to explain phenomenon that cannot be accounted for by traditional economic measures. Research has examined, for instance, why genetically modified food ingredients are excluded from the EU marketplace despite their complementarity with the bloc’s agricultural regime. Findings show that perceptions, experiences, and information asymmetries played a substantial role in gatekeepers’ decision-making in the marketplace (Inghelbrecht et al., 2015). This line of inquiry is also used in research that examines why angel investors choose to invest in start-ups. Mason et al. (2016) find that the lack of certain personal characteristics in entrepreneurs, such as openness, trustworthiness, honesty and expertise, were key factors in whether or not investors decided to invest. However, and in an interesting contrast to social science conclusions in gatekeeping literature, the research found “no evidence that the personal characteristics of [angel investors] influenced their investment decisions” (p. 531). Thus, while work in other areas reveals instances where the personality, values, and agenda of gatekeepers seem to play a part in decisions related to access, this reading suggests that some business decisions are influenced less by gatekeepers’ possession of certain characteristics but by those of the gated. In this study, in the context of Canadian internet policy development, the gatekeepers’ features more readily influence policy formation, although the behaviours and attitudes of the gated are not inconsequential.

The power to provide access is a thread running through the literature on gatekeeping theory in business, law, and politics. This emphasis plays a far greater role in these three fields than in early research on gatekeeping in journalism, which addresses access through an especially narrow lens. Rather than a concern for how civil society members access their news content through the media more broadly, this literature often understands access in terms of the selection or rejection of a news item or issue. In these contexts, editors and journalists are often appointed gatekeepers and forces, such as personal attributes and values, are probed for their role in the decision to provide or deny access. This research assumes that the media itself is readily available to its audience. In the application of this view to this project's topic of study, such a perspective assumes that policy interveners are able to gain entry to a policymaking venue in the first place. This is not an assumption I hold in this project.

In contrast to this approach, political and legal scholarship often implicitly views gatekeeping as a two-step process: first, access to a decision-making space and, second, the forces of influence upon that decision. While the terminology is a little different, this two-step undertaking applies to the work of business scholarship too. Individuals and firms must enter into a marketplace before they can engage in market activities and experience the modes of influences exerted on those transactions by gatekeepers. In my study of Canadian internet policy development, I also view gatekeeping as a two-step process whereby interveners, particularly civil society groups, must have a certain amount of financial and other resources to engage in a policy development process. As my research shows, this minimum amount is not guaranteed (Johnson, 2018), which means that the continued participation of some public interest groups in these processes is at risk, and the entrance of other participants may have been barred by these implicit resource requirements.

In considerations of access, many of the reports from law and politics display an interest in gatekeepers' individual characteristics. However, these studies diverge in which personal traits are considered, and the degree of power attributed to the gatekeeper. While the literature on journalism directs attention to the ways a range of attributes, including ethnicity, personality, and values, factor into decisions (Hanusch, 2013; Henningham, 1997; D. M. White, 1950), studies from law and politics are nearly exclusively focused on the gatekeeper's personal or party policy agenda (Baum, 1977; A. McLeod, 2012). It seems possible that the singular focus of political and legal scholarship has ignored how other attributes such as those listed above

might contribute to these choices. On the other hand, where this research may provide a more robust view is in a broader perspective towards the overlapping factors that can contribute to gatekeeping practices. While Kaheny's (2010) research considers the ideological preference of circuit court judges, it also considers other factors such as the resources of the litigant and circuit rules. This literature also at times proposes tangible solutions to combat the challenges that gatekeeping poses to robust democratic practice. For instance, the *Harvard Law Review Association* (1997) suggests that courts might appoint scrutinized technical advisors to balance some of the powers granted to court judges.

Diverging from a concern for gatekeeper characteristics, the business literature often displays an interest in the attributes of the gated. This attention is a refreshing distinction from the other areas of the literature reviewed thus far where there is little mention of the ways civil society members negotiate decision-making in their social, cultural, and political lives, and contribute to decisions that are made on their behalf. Regular people are, with few exceptions (Putterman, 2005), viewed as passive and powerless given their lack of gatekeepers status, and in contrast to decisionmakers and content producers operating in the public sphere. Certainly, there is a substantial, concerning, and increasing imbalance between those who hold political, legal, and cultural power in western liberal democracies and those who do not (Harvey, 2005). Moreover, these inequalities are exacerbated by new digital technologies (Fenton, 2016; McChesney, 2013). But, to ignore the ways in which audience and civil engagement and resistance occur in both offline and online environments risks heightening the imbalance even further.

At first glance then, the attention paid to those on the other side of the gate in business contexts is welcome. However, the literature in these disciplines places too strong a weight of responsibility on the shoulders of the gated. Specifically, the work in this vein frequently highlights how the espousal of entrepreneurial qualities can help firms or individuals overcome gatekeepers in a marketplace, and the ways that these groups can undermine gatekeeper power by leveraging information asymmetries. There are certainly strategies and principles that can be adopted to mitigate the power held by gatekeepers in economic settings; however, the capacity for members of the gated to mobilize them may not always be feasible nor realistic. Moreover, by adopting this approach, this scholarship implicitly relies on the neoliberal perspective that "human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework" (Harvey, 2005, p. 2). In the context of my research,

there are limited ways that civil society participants in Canadian internet policy formation can combat the gatekeepers of this environment, given in part the extremely unequal playing field these debates play out on.

How actors and groups influence decisions, and why, is another key application of gatekeeping theory in law and politics (Breuning, 2013; Denzau & Mackay, 2017; McCubbins et al., 1994). In contrast to a focus on the selection or barring of information for public review, these studies examine the ways that gatekeepers use their power to influence how pieces of legislation are crafted and implemented, and international norms set. At the fore of these reports is an understanding of the power of information, knowledge, and expertise to influence policy. Denzau and Mackay (2017) find that committee members' knowledge of the inner workings of political institutions allows for legislative outcomes aligned with their own policy agendas. In the implementation of EU directives, König and Luig (2014) reveal that the gatekeeping power and specialized knowledge held by appointed ministers in coalition governments exacerbates the risk that partisan ministers might pursue the ideological aims of their political stripe.

Yet, alongside knowledge there are other characteristics that lend themselves to influence in these domains, namely, political persuasion. Breuning (2013) suggests that gatekeepers are often key actors behind the adoption of international norms, especially when they are able to design a message that garners broad public support and steer through the rules, procedures, and norms of their affiliated political institution. But the power to influence is not universal or stable across political structures. McCubbins et al. (1994) point out that the relative prevalence of several factors can allow members of an enacting coalition to influence legislation: whether they hold a gatekeeping position, the knowledge they hold about alternatives to the bill, and the "the details of the differences in policy objectives among members" (p. 18).

The power to gatekeep through influence is largely perceived as a dynamic interplay between structural forces, institutional norms, and ideological positions—amongst other factors. Accordingly, and as highlighted earlier, the literature in this area often moves between more than one of Shoemaker and Vos's (2009) tiers of analysis at once. Unlike studies focused on journalism which largely focus on how gatekeeping occurs in a single narrow context, the corresponding research in political science and law is more inclined to consider factors such as an actor's ideological position alongside the rules and processes that constrain the examined

environment. This fluidity results in research that, at times, provides a better view to the breadth of moving parts in decision-making contexts, whether in political environments or elsewhere. Another divergence can be found in a recognition of the different roles that gatekeepers such as newswriters, judges, and political actors play in the public sphere. For instance, while mainstream newswriters and judges are bound to adopt norms of objectivity, political actors are by their very position partisan. Accordingly, while scholarship in the areas of law and journalism often highlights the covert, and sometimes unintentional, ways that decisions are influenced by personal values or policy agendas, research on political gatekeeping is more inclined to point out the overt means of persuasion adopted by political figures on ideological grounds (Breuning, 2013). This includes Chapter 5's study of gatekeeping in the House of Commons' Access to Information, Privacy, and Ethics committee's inquiry into the Cambridge Analytica scandal.

In contrast to research in the social sciences where gatekeeping practices are largely viewed through a critical lens, the business literature on gatekeeper influence often sees these practices as a form of breaking down barriers, a function of change, or as a positive disciplinary force. Work in these disciplines examines how experts in a market can facilitate knowledge flow between groups, improve innovation, and reduce cognitive distance (Mitchell et al., 2014). These gatekeepers often exhibit certain behaviours, such as an active presence in industry events and activities, and an ability to gather and disseminate relevant information from a broad range of sources (Klobas & McGill, 1995). Within the literature, these qualities are often superimposed onto commercial groups. Giuliani (2011) finds that technological gatekeepers in industry clusters can reduce "technological risk and [avoid] negative technological lock-in" (p. 1342). These outcomes are beneficial for the cluster, which reaps the rewards of the experts' work, and the gatekeepers, who acquire local knowledge and foster relationships with other firms. Other research looks at how market gatekeepers can have a positive disciplinary effect on other actors. Meng (2013) finds that Chinese firms experience harsher regulatory and legal scrutiny from financial gatekeepers when listing their company on foreign markets. Nonetheless, this research posits that these measures are ultimately beneficial for the companies, who often adopt better governance practices and secure the corresponding bonding benefits. Notably, this view of gatekeepers is not one adopted in this project, where these actors, and the practices they employ, are nearly universally viewed as deterrents to internet policy development processes that are robust, fair, and democratic.

It is worth noting that gatekeepers in the business scholarship do not always hold a static role. Other work highlights how gatekeepers' disciplinary capacities can be undercut through information asymmetries and other factors. Pollack and Zeckhauser (1996) point out how agencies in charge of budget allocation can be gamed by suborganizations trying to secure greater budget amounts for the following year. This is especially the case in decentralized budget structures that allocate funding based on spending patterns, thus incentivizing departments to spend inefficiently. In this scenario, the gatekeeper is understood as a sort of regulator with disciplinary powers. This actor can regulate the sums provided to suborganizations and, when it is able to identify these practices, punish those underperforming or adopting subversive behaviour.

In the disciplines of law and politics, gatekeepers have the power to provide access to and influence decisions. Relatedly, gatekeepers in business can control market entry and influence. This work aligns with literature on news production processes in that it focuses on forces ranging from the individual level to the structural, but the research differs in the degree to which it addresses more than one tier of analysis at once. Legal and political literature is more inclined to move in-between these levels of analysis, often looking at instances of potential ideological bias in conjunction with the structural parameters of a legal or political environment. Studies in the areas of journalism and business, meanwhile, often focus their attention on a single level of analysis. The research also diverges in legal and political scholarship's focus on decisionmakers' policy agendas in lieu of the array of personal attributes and values examined by studies of gatekeeping in journalistic environments. The business literature is unique in its emphasis on the gated's characteristics more than the attributes of gatekeepers. Of greatest difference perhaps is the journalism literature's limited attention to issues of access in contrast to the gatekeeping scholarship in other disciplines, which looks at both issues of access and influence.

Despite their differences, most of the research examined is united in a lack of consideration for the political economic context of gatekeepers. There are some exceptions (Bagdikian, 1984; Chomsky & Herman, 1998) but, by and large, this research is reluctant to contextualize its findings within the study of the power dynamics that characterize how media is produced, distributed, consumed, and regulated (Mosco, 2009). In the discipline of media studies, where much of the work on news production process is conducted, some point out an emphasis on

media content and audiences over communication labour and other facets of political economy (Mosco, 2008). This interest in content and audiences is reflected in much of the reviewed literature. In focusing on specific aspects of content production as distinct from the wider balance of forces, this work to some extent fails to provide the reader with an understanding of the broader political, economic, and social relations that surround the gatekeepers in question. Indeed, this wider context is also necessary for a study of Canadian internet policy development, where gatekeepers and gatekeeping practices exist within a regulatory environment premised on neoliberal values (Rideout, 2003). This limitation is also evident in the literature on networked gatekeeping theory that is reviewed in the following section. How I mitigate this concern in my own research is explored in this chapter's conclusion.

Networked gatekeeping theory: The gate swings open?

Networked gatekeeping theory emerged to account for the increasing role of information networks in nearly all domains of social, political, and economic life. Castells (2010) calls this transformation the 'network society': a highly open and dynamic system that simultaneously holds up capitalism while facilitating a substantial reorganization of power relationships. Power in this context has been rerouted to those who direct data through communication networks, making them "the fundamental sources in shaping, guiding, and misguiding societies" (p. 502).

Networked gatekeeping theory offers a conceptual framework to address this reorganization of power. Largely attributed to Barzilai-Nahon (2008), the approach outlines a networked gatekeeping classification system to model the relationships between networked gatekeepers and the gated. Networked gatekeepers are the persons, organizations, or governments able to exercise gatekeeping on the network, while the gated are those whom gatekeeping is exercised against. These relationships are measured by the gated's possession of four characteristics: political power, ability to produce information, relationship with the gatekeeper, and alternative options in the context of gatekeeping. The more attributes the gated hold, the more power they have in relation to the gatekeeper (Barzilai-Nahon, 2008, pp. 1493–1494). Thus, this work assigns some degree of agency to the gated by suggesting that these parties "are increasingly empowered in the digital age" (Xu & Feng, 2014, p. 422). In more recent work, networked gatekeeping theory also pushes the boundaries of traditional gatekeeping theory outward to account for gatekeepers in networked environments that operate outside of content production

spaces (Lynskey, 2017), including those that provide internet access (Helberger et al., 2015; Laidlaw, 2010).

In the context of this study, these approaches are thus highly relevant. These perspectives highlight why the regulation of some internet companies in the public interest, including global technologies companies and internet service providers, is critical to a robust democracy (Laidlaw, 2010; Lynskey, 2017). Moreover, networked gatekeeping theory provides insights into the ways that these firms can employ practices that implicate policy proceedings related to their potential regulation, including in regulatory public engagement campaigns that employ digital technologies. Barzilai-Nahon's (2008) detailed classification of networked gatekeepers and related processes also informs the typology I employ to illuminate the dynamic set of gatekeepers and practices that characterize Canadian internet policy development.

In recent years, social networks, search providers, and, to a lesser extent, internet service providers have accordingly emerged as core objects of analysis in networked gatekeeping research. Research on these entities illustrates an interest in how experiences online are influenced algorithmically (Saurwein et al., 2015; Tambini & Labo, 2016; J. Wallace, 2017) and, to a lesser degree, the ways that users gain access to the internet (Helberger et al., 2015; Laidlaw, 2010). There is a connection here to the gatekeeping literature from the areas of law, politics, and business, which often views gatekeeping as a multi-step process whereby actors or ideas must first pass a gate into a domain of action and decision-making before they are subject to forces of influence. Users must first access the internet before they experience algorithmic influence.

But, in the study of networked gatekeeping, there are different forces at the gate and new actors at play. Researchers note the extent to which algorithms select, filter, and manipulate content. Saurwein et al. (2015) highlight how the "combination of ubiquitous computing, big data, new profit opportunities and economic pressure for optimizations is pushing the rapid diffusion of applications that automate the analysis and selection of information" (p. 43). Accordingly, work that focuses on influence is often concerned with the notion of 'algorithmic power'. Tambini and Labo's (2016) study finds that global technology companies control access to a substantial amount of online news content, although these firms' editorial influence is more difficult to measure, due to a lack of algorithmic transparency. Other research focuses on the coinciding

production and distribution of news content by humans and technical functions. Julian Wallace (2017) develops a model to examine how newswriters, algorithms, and platforms each operate as gatekeepers in digital environments. Studies also examine the complicated relationships global technology companies, like Facebook and Google, have with news outlets. Nielsen and Ganter (2017) point out how journalistic organizations are forced to evaluate the short-term gain and long-term risks of working with online platforms in a dramatically changed media environment.

Discussions of algorithmic influence in networked environments highlight the new challenges digital technologies pose to news dissemination and media plurality. Networked gatekeepers do not simply select and withhold. They display, channel, manipulate, repeat, time, localize, integrate, disregard, and delete information, and through a variety of mechanisms (Barzilai-Nahon, 2008, p. 1497). Moreover, it is increasingly clear that these firms are aware of their power, and aim to maintain it. Gillespie (2010) delineates how global technology companies use the term ‘platform’ to shape understandings of their roles and responsibilities in the public sphere. Indeed, in its empirical chapters, this dissertation provides many examples of the ways that these firms seek to shape the rhetoric of the political and policy discussions about their potential regulation. Despite these revelations, however, studies that focus on networked gatekeepers’ editorial influence may downplay the potential for new digital technologies to offer “defined improvements in autonomy, democratic discourse, cultural creation and justice” (Benkler, 2006). Again, there are compelling arguments suggesting that economic power has found its foothold on the internet (McChesney, 2013); but can we yet say that the plurality of our news content has actually worsened with its emergence?

Other research highlights the capacity for new voices to emerge in traditional and networked gatekeeping environments (Hermida, 2015; Meraz & Papacharissi, 2013; West, 2017; Xu & Feng, 2014). Meraz and Papacharissi’s (2013) study of Twitter use during the 2011 Egyptian uprising suggests that networked environments can support the influence of ordinary users “in the realization of what is newsworthy” (p. 161). Xu and Feng (2014) find that citizens have varying degrees of political influence and power in their interactions with journalists on Twitter. Other work examines how social media users resist moderation by using collective action campaigns to promote subversive content (West, 2017). Meanwhile, some look at how networked gatekeepers lend authority to users, though these practices are often co-opted for the

networked gatekeeper's gain (Coddington & Holton, 2014). Yet, other research contests assumptions about the openness of online political and informational communities (Curran et al., 2012). For instance, Shaw (2012) argues that the rhetoric of transparency and collectivity conflicts with gatekeeping practices employed by elite members of online communities. Keegan and Gergle (2010) find that some Wikipedia users experience a form of one-sided gatekeeping where they have the power to block editors' promotion of certain news items but not to bolster their own selections.

The capacity for ordinary voices to rise to the fore of public discourse was a great dream of the early days of the internet (Benkler, 2006). Though the limitations of this reality were soon realized (Curran et al., 2012), the literature on networked gatekeeping reveals instances where individuals, both elite and non-elite, have made significant contributions to debates and events taking place in the online public sphere. Meraz and Papacharissi (2013) note that activists can use Twitter hashtags "to create, spread, and validate the ways that events" are framed on the social network (p. 159). In these instances, we can see multiple levels of gatekeeping at work. Leading activists act as networked gatekeepers to information shared on Twitter, another gatekeeper itself. However, there are degrees of power held by these respective gatekeepers. These theorizations (Barzilai-Nahon, 2008; Xu & Feng, 2014) often provide too high a degree of agency to the gated, characterizations which are misaligned with investigations that catalogue the extent to which inequities from the offline world are also present online (Curran, 2012; Fenton, 2016; McChesney, 2013).

To be sure, this literature reveals scenarios where citizens have had significant influence in online public discourses (Meraz & Papacharissi, 2013). But these are often amidst political events that are hailed for their grassroots efforts and activism already. Rather than, for instance, the public discussion around the monotonous everyday slog of government decision-making. Moreover, these findings may inadvertently downplay the reality that algorithmic regulation is incredibly weak (Mansell, 2015). This means that a change to the algorithm could occur with very little oversight. In some regions, states also have the power to shut down internet access.

Studies that draw on networked gatekeeping theory identify and probe many of the modes of influence that can manifest in networked environments, and the increased agency of the user in these spaces. Moreover, these reports reveal the dynamic interplays of power that exist in

digital environments between elite and non-elite users, news outlets, governments, and social networks. Yet, this research does not as readily address issues of internet access. In particular, how the interactions that occur online are mediated first by access to the internet. There is also only a limited assessment of the regulatory and policy implications of networked gatekeepers. These studies reveal some of the ways that global technology companies shape access to content in digital environments, but they do not as often discuss how regulators can help rebalance the scale. Moreover, while the work does apply traditional gatekeeping concerns within the bounds of content production and distribution, it less often considers internet access. This absence warrants reconsideration, given both the ongoing ‘battle over the institutional ecology of the internet’ (Winseck, 2015) and the prevalence of connectivity in nearly all aspects of modern life.

Recent research begins to address these gaps by considering the human rights and regulatory implications of global technology companies and internet service providers through the framework of networked gatekeeping theory (Helberger et al., 2015; Laidlaw, 2010; Lynskey, 2017). Moreover, some of these adaptations operationalize Barzilai-Nahon’s expansion of networked gatekeeping theory to include not just those networked gatekeepers that can influence content, but also those that control access to the internet. To address the human rights implications of these entities, Laidlaw (2010) distinguishes between two types of gatekeepers: internet gatekeepers, which only control information flows, and internet information gatekeepers, which control information flows *and* play a role in democratic practice. While internet gatekeepers can select or bar information, in Laidlaw’s conception, that information does not have a significant bearing on how people engage in democratic culture. In contrast, internet *information* gatekeepers play a role in controlling “deliberation and participation in forms of meaning-making in democratic society” (p. 268).

Accordingly, only internet information gatekeepers should be conferred human rights responsibilities, given that this latter group can influence individuals’ rights to freedom of expression and association, and privacy (Laidlaw, 2010). The weight of these responsibilities and the corresponding regulation should be determined by the strength of the internet information gatekeepers’ gatekeeping power. These responsibilities should be greatest for those that provide internet access and least for those that moderate websites with content that accords them the status of internet information gatekeeper. These responsibilities should also be

weighted based on the democratic content on the platform. More regulatory attention should be paid to Facebook, for instance, than celebrity gossip sites (Laidlaw, 2010, p. 270). Laidlaw's (2010) theorizing sheds new light on the possibilities for a distinction between networked gatekeepers that warrant regulatory oversight and those that may not. Given the prevalence of gatekeepers across networked environments, this is a useful endeavor for researchers that hope to advise policymakers in this domain. In my own project, the selection of two case studies which examine, respectively, internet service providers and global technology companies, was highly influenced by a concern for the role of 'internet information gatekeepers' in Canadian democracy.

Consideration of the human rights implications of internet information gatekeepers through networked gatekeeping theory signals the importance of the regulation of powerful internet companies like global technology firms and dominant internet service providers. However, these conceptions may not be as straightforward as Laidlaw (2010) implies. Assessing human rights implications, and the corresponding regulatory rules and responsibilities, requires an evaluation of what constitutes a democratic space, and what does not. At face value this may seem straightforward; however, this conception is complicated by a consideration of counter public spheres in digital environments, which have played a critical, though complicated, part in recent social justice movements (Fenton, 2016). How are these, often subversive, spaces accounted for in Laidlaw's model? And who decides? When it comes to the regulation of these firms, it is crucial to think about how these parameters will be drawn and who will draw them. Others have also pointed out that democratic practice may not be the only measure of regulatory responsibility. Lyskey (2017) suggests that "any action of a gatekeeper that hinders individual autonomy or dignity might merit regulatory attention even in the absence of an influence on democratic culture" (pp. 10-11).

Lyskey (2017) also points out that gatekeeping in networked environments is not just about the control of information flows but the complex relationships that these corporate entities have with users. The focus should be on both the power held by these entities as well as the consequences of their actions. It may not be the case that internet information gatekeepers should be regulated because they mediate information, but because they act in ways to control that information and construct digital spaces in their relationship with users (Lyskey, 2017, p. 11). These assertions are supported by Helberger et al.'s (2015) assessment of media diversity

in networked environments which calls for a user-centered approach to regulation that “takes more account of the dynamics between gatekeepers and the gated and seeks to re-establish the opportunity for users to exercise power” (p. 67). Together, this body of work identifies the need for and importance of regulatory action around some internet companies to foster a robust democracy where the public interest is protected online (Helberger et al., 2015; Laidlaw, 2010; Lynskey, 2017). This scholarship also highlights an important part of my rationale for deciding to investigate dialogues around the control of these companies.

Conclusion: Linking gatekeeping theory to the political economy of communication

This section has critically reviewed the literature on gatekeeping and networked gatekeeping theory in a range of social science disciplines and business research. There are similarities and divergences throughout this research, and room for the theory to provide a more robust understanding of the policy implications of networked gatekeepers in the digital age. The most notable divergences are twofold. There is the journalistic literature’s hesitancy to engage with issues of access alongside issues of influence, unlike work in the other examined disciplines. There is also the lack of agency attributed to the gated in traditional gatekeeping research in journalism, law, and politics in contrast to an emphasis on entrepreneurial activity in business research and user participation in more recent work on networked gatekeeping theory.

This review has also set the stage for my project to operationalize gatekeeping theory on two distinct levels. I employ this theory first to account for the politics of Canadian internet policy formation, including in the study of the dynamic ways that gatekeepers operate and exert gatekeeping power in this domain. I rely on insights drawn from gatekeeping theory’s application across all the disciplines investigated in this review to explore how gatekeepers, such as regulators, politicians, and corporate actors, use certain gatekeeping practices to undermine civil society participants in Canadian internet policy development. Second, to a lesser extent, I draw on theorizations from recent scholarship on networked gatekeeping theory to examine how internet companies’ networked gatekeeping practices can implicate policy development processes, such as in instances where regulators use social media platforms in public engagement efforts. Networked gatekeeping theory also highlights my rationale for selecting policy dialogues around dominant internet service providers and global technology companies as this dissertation’s focus. These firms play a critical role in Canadian democracy

and the relevance and importance of related debates around their regulation should not be understated.

In these distinct levels of analysis, I use a typology drawn from gatekeeping literature to animate my understanding of gatekeeping as a fluid and multi-faceted set of actors, tools, and processes (Barzilai-Nahon, 2008; Laidlaw, 2010). Gatekeepers are organizations or individuals who have the power to decide what actors or ideas have access to a given domain or dialogue, and under what terms. Gatekeeping practices are the routines, discourses, and exercises used by gatekeepers to achieve these ends. The use of these practices reflects the exertion of gatekeeping power. Gatekeeping mechanisms are long-standing institutional processes or norms that also exert such gatekeeping power. The gated are those actors or ideas who these practices and mechanisms are used to silence, undermine, or delegitimize.

These applications of traditional and networked gatekeeping theory fit within my broader political economic understanding of Canadian internet policy environment. As identified in this review, most theorists who employ gatekeeping theory do not readily analyse the political economic contexts that surround their research subjects. This lack is limiting given that the Canadian internet policy environment is premised on neoliberal values, including those that have been enshrined in the legislation that informs regulatory decisions (Middleton, 2011; Rideout, 2003). Accordingly, this project relies on an application of gatekeeping theory within the wider, contextual view of the political economy of communication (Freedman, 2008; Mansell, 2004; McChesney, 2008).

Together, the political economy of communication and gatekeeping theory offer a strong framework to investigate the politics of Canadian internet policy. This perspective encompasses the array of dynamics that characterize these debates, and the histories that contributed to their politics (Rideout, 2003). In contrast to a pluralist approach that focuses on how elements of policy debates can be measured (Dahl, 1961), this approach offers a wider lens that allows for a richer and more critical view of this research subject. This framework also promotes new perspectives on the regulatory politics of global technology companies and internet service providers in the use of these two theories in tandem. It is my belief that this interplay allows for a more fulsome and robust understanding of the Canadian situation, and it is my hope that it will offer a path forward for future research on this topic.

Sabrina Wilkinson

Chapter 2: Methodology

Drawing on the political economy of communication and gatekeeping theory, my dissertation aims to investigate the politics of Canadian internet policy formation, with a focus on the risks to the public interest that arise in this domain. My main research question is: What are the politics of Canadian internet policy development? My four sub-questions are: (1) Who are the key players involved and what strategies are employed to bolster their ideas and aims? (2) What are the key institutional processes and norms that influence Canadian internet policy development? (3) What are the key risks to the public interest prevalent in Canadian internet policy development? (4) What are the implications of these findings for Canadian internet policy?

To answer these questions, I classify the activities that take place during Canadian internet policy formation into distinct phases so that I can more clearly evaluate what occurs at each stage of the process (Chapter 3). I then analyse how these risks manifested in two distinct case studies. The first case study is the 2017 differential pricing practices proceedings, and subsequent decision, from Canada's communications regulator, the Canadian Radio-television and Telecommunications Commission (CRTC) (Chapter 4). The second is Canada's House of Commons Standing Committee on Access to Information, Privacy and Ethics' (ETHI committee) inquiry into Cambridge Analytica and Facebook (Chapter 5). Within these three empirical chapters, I rely on semi-structured interviews and document review. This chapter outlines these practical methods as well as this dissertation's methodology and ethical considerations.

Notably, while I did listen to and observe testimony from both case studies in-person,¹⁰ and have attended many other CRTC policy proceedings as a student and analyst prior to my

¹⁰ During the CRTC's inquiry into differential pricing practices, I attended many of the hearings in my former role as a research analyst at a management consulting firm that regularly worked with clients involved in Canadian telecommunications policy. I also attended several of the ETHI committee meetings that studied Cambridge Analytica and Facebook that were held while I was in Ottawa conducting interviews for this dissertation. These experiences certainly informed my thinking on these case studies, and Canadian internet policy development broadly and helped with this project's recruitment, even if my observations of the hearings did not feature in the eventual thesis.

doctoral studies, I opted against directly drawing on these experiences to inform this research project. The rationale here was simply that, while such an analysis would have undoubtedly added another dimension to this project, the use of interviews and documents to understand Canadian internet policy development provided more than enough data for a study of this scope and scale. That said, I certainly hope to draw on such observations in future studies on this topic.

Philosophical assumptions

This research project comes with certain philosophical assumptions. As Creswell (2014) writes, these assumptions can be viewed as part of a “general philosophical orientation about the world and the nature of research that a researcher brings to a study” (p. 35). In social science research, it is important for investigators to identify and explore these worldviews as they contribute to decisions made in research design, including in the selection of methods. To explore my own philosophical point of departure for this project, this section outlines these assumptions in greater detail with a focus on my adoption of a materialist ontology and epistemology.

In brief, ontology is the study of the nature of reality (Creswell, 2014, p. 54). My ontological position is premised on a materialist conception of the world. Philosophically, materialism is the understanding that what exists outside the mind (i.e., physical reality) shapes what is inside the mind (i.e., consciousness) rather than the other way around. To provide a tangible example drawn from media theory, materialism is focused not on the capacity for language to structure knowledge and power (Foucault, 1966) but on “the set of relationships that, in conjunction with other institutions and processes, helps to structure our knowledge about, our ability to participate in, and our capacity to change the world” (Freedman, 2014, p. 331). In other words, discourse is a byproduct of “social and material relations”, rather than the inverse (Graham & Luke, 2011, p. 105). A materialist approach to the study of internet policy starts from the position that it is the structural elements of internet policy, the communications industries broadly, and the gatekeepers at work in these arenas, that shape whether and how people access and use the internet. As Pereira (2009) describes the conception, “social structures are historically determined by the way value circulates and gives power to certain institutions” (p. 326). With respect to my study of Canadian internet policy development, my project thus begins with the view that the dynamics of internet policy development play a critical role in influencing how Canadian citizens and residents send, receive, and consume information about

the world. These politics also thus contribute to the ways that individuals understand their social, political, and economic lives.

This ontological position raises several key considerations for this project's research design, and epistemological approach. Epistemology is the study of "how we know what we know" or, in other terms, "what constitutes valid knowledge and how we can obtain such knowledge" (Creswell, 2014, p. 54; Oppong, 2014, p. 245). A first such consideration is the necessity of robust empirical research that helps uncover the complex relationships between processes, actors, and institutions in Canadian internet policy development, through methods such as semi-structured interviews. To understand the practices and implications of this type of policy formation, I must "focus on those sites where power is most overwhelming concentrated" and use methodological tools that allow me to effectively and deeply investigate these spaces (Freedman, 2014, p. 331).

Given the lack of transparency around these environments, it is often only by speaking with individuals involved in internet policy development that one can thoroughly understand the complex relationships at work and gather information to complement and complicate publicly-available written accounts of these processes and their outcomes. Indeed, in this case, investigators can best gather knowledge through the pursuit of information that is often hidden, silenced, or undermined in traditional reports of how internet policy is made. As Freedman (2010) writes, this work of uncovering "media policy silences" requires scholars to "bring this process of exclusion to light" (p. 358). Interviews, particularly with those parties whose voices are typically weakened in internet policy development processes, are vital to highlighting these forms of exclusion.

A second consideration is the extent to which document analyses that are present in this project should focus predominantly on what this content means for the "nexus of relationships between actors, institutional structures, and contexts that organize the allocation of the symbolic and material resources concentrated in the media" (Freedman, 2014, p. 321). Rather than studying the linguistic or symbolic elements of these texts, my ontological position lends itself to a concern for how these texts reflect, or better help understand, the material elements of internet policy development and the structural processes at work in this domain. As Miller (2015) writes, "struggle over language" occurs as a product of the "material facts of conflicting power

and interests” (p. 250). To go this route is not to discount the rich insights that discursive analysis—and other perspectives—can bring to this project, and media studies broadly. These approaches offer contributions to the discipline that cannot be replicated through a materialist approach. Rather, I have outlined the approach that most aligns with my view of the world and lends itself to my theoretical framework and the methods I employ underneath it. A materialist framework also lines up with my view that language and discourse are not separate and distinct from material processes but are, rather, shaped by them. It is my position that “there is no abstract struggle over language, only a struggle over power and resources of which ideological battles form part” (Miller, 2015, p. 251).

To be sure, to some degree, discursive analysis does factor into my project. In chapter 5, for example, I analyse whether and how the ETHI committee’s recommendations around the regulation of global technology companies were reflected in Canada’s major federal political parties’ platforms in the 2019 federal election. I also discuss the ways that certain powerful industry actors, including representatives of Facebook, used strategic testimony to mitigate political and public scrutiny. In Chapter 3, I comment on the extent to which technocratic discourses can privilege certain policy arguments that are deemed rational, scientific, and technical over others that rely on rhetoric that is considered subjective, narrative-driven, or ideological (McKenna & Graham, 2000). In Chapter 4, I highlight how the inclusion of a Reddit thread to encourage public participation in an inquiry into differential pricing practices may have been part of a broader rhetorical effort on the part of the regulator to *signal* diversity and inclusion, rather than a serious effort to diversify the views present in this domain.

In these sections, I draw on the argumentative turn and attendant concepts to examine how arguments, public engagement campaigns, and decisions in Canadian internet policy development are “a complex blend of factual statements, interpretations, opinions and evaluations” (Fischer & Gottweis, 2013, p. 430). Specifically, I operationalize this theoretical approach, in conjunction with work that draws on the political economy of communication and gatekeeping theory, in two key ways. The first of these is in the *selection* of aspects of my case studies, or Canadian internet policy development broadly, such as those listed in the previous paragraph, that relate to argumentation and related concepts. The second way that I operationalize the argumentative turn relates to how I *analyse* these elements of internet policy formation. In particular, I use writings on concepts such as technocratic discourses (McKenna

& Graham, 2000), narrative aesthetics (Lithgow, 2019), and discursive legitimation (Shepherd, 2018) to help me unpack interview quotes and other data collected for this dissertation. For example, Lithgow's (2019) study of narrative aesthetics and the public imaginary allows me to reflect on an interview quote about the shift toward increasingly "fact-based submissions" at the CRTC and the extent to which this turn will further undermine the more contradictory and complex, but nonetheless critical, policy contributions of members of the public (p. 106).

My aim here has been to show that, despite my broader focus on political economic factors and the roles of gatekeepers and related behaviours and processes, Canadian internet policy development is inextricably linked to argument, discourse, and ideas about what sort of policy tropes are 'best' or 'most important'. My hope is also that my selective integration of this theoretical literature helps, as Kingdon (1984) states, to "weave a rich tapestry of some of this world, in which the details are laid bare at the same time that the larger picture is clarified" (p. 230).

Yet, I aim to continuously link such analyses to the material policy processes that accompany and inform the rhetoric found within these platforms. As others whose research crosses the line between discursive and political economic frameworks show, these dynamics often work hand-in-hand in the study of internet policy development (Powell & Cooper, 2011). However, for the purposes of laying out a clear departure point, my principal focus is on the material interactions and elements of the actors, norms, processes, and strategies at play in my selected case studies.

Research approach, design, and methods

With these philosophical assumptions in mind, I use a variety of qualitative methods to investigate the politics of Canadian internet policy development. I organize my research into one framing chapter (Chapter 3), which outlines four key phases to Canadian internet policy development, and two case studies (Chapters 4 and 5), which rely on similar structures. In these three empirical chapters, I draw from data collected in semi-structured interviews and document review.

Broadly, qualitative research explores how people understand social challenges. In contrast to quantitative research, which focuses on the relationship between a given number of variables, qualitative work embraces complexity, contradictions, and 'messiness'. The approach has also

been linked to several key characteristics, some of which are illustrative to highlight here (Creswell, 2014, pp. 235–236). Rather than a lab or contrived setting, qualitative researchers generally “collect data in the field at the site where participants experience the issue or problem under study” (p. 235). In the course of this research, I spent two months in the Ottawa–Gatineau region of Ontario and Quebec, where the CRTC and Canada’s Parliament are based. During this period, I conducted numerous interviews with participants involved in Canadian internet policy development, often in interviewees’ workplaces, and actively attended events and policy proceedings where potential participants would be present. Characteristic of qualitative research, this project also employed an ‘emergent design’ whereby my research plan was not “tightly prescribed” (Creswell, 2014, p. 236). Rather, I sought to build flexibility in my research design so that I could negotiate challenges or limitations that may emerge during my fieldwork, or at any other points in the project cycle.

Finally, I aim to provide some degree of reflexivity to this work. As I outline later in this chapter, I was motivated to pursue this project in part due to my experience working as a research analyst at a consulting firm involved in CRTC policy development. This background is an important component of my development as a social science researcher interested in Canadian internet policy development and it is useful to consider how this and other experiences “hold potential for shaping [my] interpretations, such as the themes [I] advance and the meaning [I] ascribe to the data” (Creswell, 2014, p. 236). Drawing on these and other key characteristics of qualitative research, the subsequent sections explore in greater detail three key practical methods employed in this project: case studies, semi-structured interviews, and document review.

Case studies

This dissertation’s two case studies include, respectively, assessments of the CRTC’s 2016 differential pricing practices proceedings and the ETHI committee’s 2019 inquiry into Cambridge Analytica and Facebook. As the justifications for the selection of these two cases, and summaries of their key elements, are outlined in Chapters 4’s and 5’s introductions, the aim of this section is to identify and explore the usefulness, and limitations, of the case study method for this dissertation.

The advantages of this approach are myriad. For one, the case study method readily allows me to rely on my theoretical framework in my empirical work. As Amerson (2011) writes, the method “allows for the prior development of theoretical propositions to direct the data collection and analysis” (p. 427). In other words, this approach enables me to examine the extent to which my theoretical framework, drawn from the political economy of communication and gatekeeping theory, is evident in two distinct internet policy proceedings. The case study method also allows for “an in-depth investigation of a contemporary phenomenon within its real-life context” (De Massis & Kotlar, 2014, p. 16). Case studies highlight the dynamics that manifest in a single environment or context. In the study of internet policy development, this avenue allows researchers to immerse themselves in a single, finite, inquiry, with a clear start and end date. The limited scope of this endeavour lends itself to a certain depth of study. Without needing to span a vast expanse of historical material, or a range of jurisdictions, the investigator can look more closely and profoundly at the material key to the single case. Ensuing insights can accordingly be rich in detail and draw from the wide range of evidence that characterizes any internet policy development process. These findings can highlight the ‘imagery’ element of the case study, once described as the “production and refinement of an image of the thing we are studying” (Becker, 2009, p. 228).

Another benefit to this method is the extent to which it provides the researcher with a way to understand and assess the driving forces behind processes and subsequent outcomes. Goodwilliam (2013) suggests “that the case study method is particularly effective as both a means of evaluation and for explanatory research questions that are asking how or why something happened” (p. 3). My project has a strong evaluation component. Among other objectives, I aim to investigate the politics of Canadian internet policy development and the risks to the public interest that characterize this domain. Central to this line of inquiry is the capacity to assess events, interactions, and decisions that have characterized historical Canadian internet policy development and the two selected case studies. It is within these two case studies that such evaluation is most feasible and salient. By examining bounded cases (Chapters 4 and 5), in contrast to the breadth of processes and events that characterize my framing analysis (Chapter 3), I am better able draw links between the actors involved and forces at play. My research participants, for example, can more readily speak to the specifics of their involvement in the case. The documents reviewed can directly highlight key elements of the

processes and decisions. Accordingly, my assessments of these cases are that much more precise and detailed.

This approach also offers a degree of methodological rigour to this project. The varied sources of evidence that inform case studies, including, in this case, documentary sources, semi-structured interviews, and in-person attendance at and video recordings of policy proceedings, provide multiple entry points and perspectives. This diversity allows me to ‘triangulate’ or observe a single case from “different angles”, which fosters findings that are “more convincing and accurate” (De Massis & Kotlar, 2014, p. 21). The multiplicity of case studies means that connections and incongruities can be drawn across the two cases to highlight differences and similarities. As De Massis and Kotlar (2014) write, this “variety of lenses [...] allows for multiple facets of the phenomenon to be revealed and understood” (p. 16). Yet, the similar structure used across the three empirical chapters allows for such comparisons to be made in a straightforward manner. Further rigor is found in case studies’ emphasis on “pattern matching, explanation building, using logic models, or addressing rival explanations” (Amerson, 2011, p. 427). Throughout this dissertation, I regularly aim to identify patterns that characterize Canadian internet policy development. I also include counter-arguments made by research participants or highlighted in documentation or oral proceedings to highlight the complexity of these processes and the contesting perspectives at play.

But there are also limitations to the case study method. The specificity of my conclusions, for instance, mean that my findings will be less applicable to other cases in Canada, and internationally. For many social scientists, generalizations, these “context-free” statements of “enduring value”, is the end goal of research (Lincoln and Guba, 2009, p. 27). The objective is to find universal laws that can cleanly be used to predict and understand other related phenomena. This outcome is not the goal of this project, in part due to the real criticisms of the concept of generalizability, in its pure form at least. Among other considerations, some have highlighted the extent to which this idea is limited by the assumption that there are fixed and certain linkages between elements and the belief that such universalities can apply across time and space (Lincoln & Guba, 2009, pp. 30–33). Especially in the study of social and political subjects, the real world is complex and does not readily fit the firm frames implied by the notion of generalizability.

Rather, there are many rich and useful insights that can be gleaned from case studies, despite a certain lack of ideal generalizability. In this project's case studies, for example, there are multiple analyses of specific strategies employed by private sector actors to undermine civil society groups and disguise corporate misbehaviours. These instances are specific to the selected policy inquiries, yet my research suggests that similar tactics have been employed by these groups in a wide range of cases that are not addressed in this dissertation. Understanding the intricacies of how these strategies were operationalized in two case studies eases the path for future researchers examining similar phenomena, whether in Canada or foreign jurisdictions. These two examinations can thus serve as useful comparators, which can support those who seek to determine how the politics of internet policy development manifest in different, but often, similar, contexts. Indeed, the case study method has been "tried and found to be a direct and satisfying way of adding to experience and improving understanding" (Stake, 2009, p. 23). Finally, my 'framing analysis', found in Chapter 3, which provides a broad review of four stages to Canadian internet policy development, offers a wide understanding of these processes, in addition to the case studies of Chapters 4 and 5.

Semi-structured interviews

My three empirical chapters partially rely on 39 semi-structured interviews with subject matter experts, industry members, activists, public interest group members, civil society lawyers, journalists, and policymakers historically or currently active in Canadian internet policy formation. The purpose of these interviews was to determine how these stakeholders develop internet policy positions, what resources support their regulatory participation, how they interact with other actors in these debates, and how their involvement reflects the public interest. Open-ended interview questions were used although these queries were designed based on my understanding of the research participant's policy positions and approach to policy engagement given their role, previous policy positions, and representation in the media and elsewhere. To interviewees who had taken part in either of the two cases that feature in this dissertation, I posed specific questions related to that participation, alongside other general queries about their understanding of and involvement in Canadian internet policy formation. Most interviews were conducted in-person, while some were via Skype or phone. They ranged from 45 minutes to two and a half hours.

Many of the interviews conducted for this dissertation were with research participants who would be considered elite in social science research. Many have problematized and challenged the term ‘elite’, and the ways the nomenclature has been used to encompass a wide range of individuals in varied positions of power, with sometimes little further reflection (Neal & McLaughlin, 2009; Smith, 2006). Among other criticisms, some have highlighted the extent to which elite membership is “highly context-specific and unstable” (Neal & McLaughlin, 2009, p. 703). For the purposes of this dissertation, I acknowledge the limitations to this idea and aim to use an understanding that at least suits the scope of this project. In this context, I view elites to be those who regularly hold or exercise power with minimal resistance or pushback (Woods, 1998, p. 2105). Thus, I consider elite research participants to be the politicians, regulators, and industry members interviewed.

All in-person elite interviews, aside from one, took place in personal offices and institutional meetings rooms, whereas every non-elite in-person interview occurred in a public space, including cafés and restaurants. In all cases, I encouraged in-person research participants to select where they would prefer the interview to take place to ensure that participants were minimally inconvenienced. In the case of elite interviews in particular, it also seemed likely that allowing research participants to select the location would increase rates of participation. Just like in differences between remote and in-person interviews, wherein participants’ body language and expressions are often not clear to the researcher in phone or Skype interviews, and vice-versa, interviews in different types of locations contributed to differences in the interview process. In the elite in-person interviews that took place in personal offices or institutional meeting rooms, for example, I often had challenges physically accessing and finding the location, due to rigorous security measures and the complexity of modern-day government buildings’ office layouts. Accordingly, I had markedly less time to get comfortable in and familiar with the environment, among other differences.

By contrast, in the public spaces where my non-elite in-person interviews took place, I was able to arrive early, independently observe and familiarize myself with the space, and organize my ‘tools’, including two recording devices and a notebook. If needed, I was often able to manipulate the space to better suit my needs, by, for example, moving a café table to a quiet area with access to an outlet. There are certainly challenges to interviewing in public spaces. The most pressing may be that these interviews are more readily interrupted by external noise

or actors. But, broadly, this informality seemed to contribute to a greater degree of amicability and ease of conversation between myself and these research participants. These comments are not a call to have all elite interviews in public spaces. That approach would surely be highly detrimental to researchers' already limited access to this type of interviewee. Nor is it meant to admonish research participants for selecting these locations. It is reasonable that a participant would want to meet in their place of work if that is feasible. My point is instead to acknowledge one way that power inequities can be exacerbated and reflected in the interview process, including in this research project.

Once transcribed, I relied on a thematic analysis to examine the interview transcripts. This process involved first developing a familiarity with the data. In this case, I reread the transcripts multiple times. From there, I identified notable ideas and concepts that appeared in the material, grouped them according to themes, and selected useful examples. This analysis was premised on the notion of phronetics, a heuristic device used to develop "knowledge resources that support clear choices" (Huffman & Tracy, 2018, p. 564). In contrast to a focus on developing abstract knowledge or technical assertions, phronetic claims attempt to establish, among other things, which parties gain and lose in a given context, and what should be done about these dynamics (Huffman & Tracy, 2018, p. 564).

As Huffman and Tracy (2018) posit, phronetic claims "highlight and guide and are especially valuable when researchers desire to reinforce or challenge issues of policy, practice, strategy, and tactics within both everyday and extraordinary moments" (p. 565). In this case, the aim of this approach was to reliably and consistently identify ways that internet policy debates are restricted through the delegitimization and exclusion of certain groups, individuals, and ideas, and the normalisation and prioritization of others. This strategy allowed me to identify and understand where and how gatekeepers have been able to use gatekeeping practices and mechanisms to suit their own interests, and to create links and connections across different policy proceedings. This approach also helped classify the series of phases that frame this dissertation's empirical analyses and highlight how certain risks to the public interest exist at the fore of each of these stages of Canadian internet policy development.

Interviews come with certain benefits and limitations. They can be a time-intensive practice, both in terms of the amount of time it takes to arrange and conduct an interview as well as that

spent transcribing and analysing the data. Accordingly, the number of participants I interviewed was limited by the time I had to conduct primary research in Canada and the time my participants had to offer. In contrast, surveys can be less time-intensive, more cost-effective, and likely to reach a greater number of research participants. However, the nature of a survey's findings would be different. For instance, the parameters governing survey questions make it difficult to gather meaningful insights that go beyond publicly available information about an actor's policy position and contribution to a given case study. Interviews, on the other hand, allowed me to ask follow-up questions, probe for further insights, and interpret body language and tone.

Interviews are also well-suited to study how certain voices or ideas are marginalized in Canadian internet policy debates. As Dawes and Freedman (2016) state, the key “is to identify the main dynamics and drivers of the policy field and then to figure out the countervailing forces and ideas” (p. 6). Indeed, in this project, interviews proved to be an immensely valuable way to understand the ‘messy’ components of internet policy development that are not always evident in documentary evidence and decisions. In some ways, this method allowed me to “disrupt the calcification of political debates by presenting different perspectives in ways that ‘trouble’ rather than reinforce the established terms of these debates” and highlight ‘inconvenient facts’ that complicate the norms of policy dialogues, deconstruct dominant policy visions, and illuminate marginalized voices in these spaces (Forrest, 2017, p. 110). In my empirical chapters, these interviews serve as one tool to investigate the oftentimes opaque power dynamics at work in Canadian internet policy formation.

Document review

In addition to these interviews, my empirical chapters rely on a review of relevant policy, political, and media documents. Given that these primary sources are publicly available, I collected my data through desk research, using sources including the CRTC's and federal government's online archives, transcripts of public proceedings, media articles from Canadian news sources (e.g., CBC, *The Globe and Mail*, *National Post*) and research from academic, industry, and public interest sources. Much of this research focused on documents related to my two case studies, but I also reviewed other material connected to contemporary Canadian internet policy development broadly, and historical events and policies that have contributed to modern internet policy debates.

This document review was essential to the success of my project for several reasons. First, as identified in the previous section, an important component of my interview preparation involved documentary research about participants' professional backgrounds, policy preferences, interactions with other parties involved in Canadian internet policy development, and media appearances. Through this early work, I was able to first determine which individuals would be well-suited to recruit as interview subjects and then garner a better sense of where these individuals sit in the broader policy environment. This approach ensured that the questions I asked interviewees were informed, relevant, and, ultimately, useful for my research, and showed participants a level of professionalism and expertise on my part. Entering these interviews with a strong understanding of the broader landscape and the research participant's professional background also meant that I had more time to ask participants for information about events, views, and activities that I knew was not publicly available. This benefit proved especially valuable in interviews with elite participants who were particularly challenging to recruit and could often only meet for a limited and firm time period.

Given the contentious and political nature of Canadian internet policy development, this method also helped me gain a broader view of this domain and avoid being persuaded, with sometimes limited evidence, by research participants who advocated for a perspective that was misaligned with reality. Rather, this research, which occurred throughout the breadth of the project cycle, gave me a firm grounding to which I could add insights from those interviewed. Analysing my interview material without this foundation would have proved confusing and problematic because different parties often made arguments in direct contradiction with each other. It was only with existing knowledge, or further research, that I could determine whose version of the issue was more accurate.

It should be noted that this document review largely revealed only the official narrative of events. Indeed, this limitation is what made interviews such a valuable component of my project. Yet, this analysis did shed some light on the voices who are often underrepresented in Canadian internet policy development. Such perspectives can sometimes be found on the margins of key policy texts, and they can include "the options that are dismissed in the footnotes of consultations and [ways to] read the submissions by some of the most powerful players and see what makes them nervous" (Dawes and Freedman, 2016, p. 6). In other instances, these findings came from documents that are less widely circulated and harder to

find, such as media reports from alternative news sources or blogs (Geist, 2017, 2018, 2019b), research reports published by poorly-resourced civil society groups (Forum for Research and Policy in Communications [FRPC], 2017, 2018a, 2018b), and archived Twitter dialogues between members of this community.

What follows is a summary of the key documents that inform this dissertation's three empirical chapters. In Chapter 3, I analyse historical and current notices of consultation, policies, regulations and laws that are salient to a contemporary discussion of internet policy in Canada. These include CRTC decisions or processes linked to issues such as website-blocking, broadband service objectives, net neutrality, regulatory process, and costs awards (CRTC, 2009, 2010a, 2010a, 2015a, 2016i, 2017b; Geist, 2018). I examine Government of Canada legislation that increasingly relates to Canadian internet policy, including the Telecommunications Act (1993), the Broadcasting Act (1991), and the Lobbying Act (1985). I also draw on records from Canada's Office of the Commissioner of Lobbying of Canada (2020a, 2020b, 2020c, 2020d, 2020e).

In Chapter 4, I rely on data gathered from primary documentation relevant to my first case study: the CRTC's 2017 differential pricing practices proceedings (CAC-COSCO-PIAC, 2015; CRTC, 2017b; Vaxination Informatique, 2015). In contrast to Chapter 3, my focus in this chapter is narrow, and aims to highlight whether and how the described activities, strategies, contentions, and collaborations play out on a smaller scale. I reviewed documentation particular to this decision, including the complaints that initiated the proceedings (CAC-COSCO-PIAC, 2015; Vaxination Informatique, 2015), the notice of consultation and related documents (CRTC, 2016c, 2016d, 2016e), written interventions (e.g., OpenMedia, 2016), and applications for reimbursement from eligible public interest stakeholders (CRTC, 2017f, 2017h, 2017g, 2017i). I also investigate participation in a CRTC-facilitated Reddit thread on differential pricing practices (CRTC, 2017a) and stakeholders' reactions to the regulatory decision (OpenMedia, 2017; PIAC, 2017). All these documents are available on the public record, including on the web sites of the CRTC, participating stakeholders, and media publications.

In my second case study (Chapter 5), I review documents pertinent to the ETHI committee's inquiry into Cambridge Analytica and Facebook (Parliament of Canada, 2019; ETHI committee, 2018a, 2018b). These include transcripts and video footage from the inquiry

(Parliament of Canada, 2018a) and several related ‘international grand committee meetings’, the committee’s interim and final reports (2018a; 2018b), the Government of Canada’s response to the final report (Parliament of Canada, 2019), industry and civil society commentary on the inquiry (McKelvey, 2018; Zuckerberg, 2018), and media coverage (e.g., Tunney, 2019; Wong, 2019), including several op-eds written by parliamentarians leading the investigation (Angus, 2018, 2019). This chapter also includes a review of whether and how major Canadian political parties’ 2019 federal election platforms incorporated the committee’s recommendations (CBC News, 2019; Conservative Party of Canada, 2019; Green Party of Canada, 2019; Liberal Party of Canada, 2019).

Questions of motivation, access, and consent

My experience (January 2016 to February 2017) as a research analyst at a consulting firm involved in CRTC policy development contributed greatly to my interest in this research topic. During my time at the company, among other activities, I worked for stakeholders involved in various telecommunications policy proceedings and led and assisted efforts to attract other potential clients active in these processes. From a knowledge and skills-based perspective, this work was immensely helpful to this dissertation because it gave me a hands-on familiarity with CRTC processes, norms, and procedures. I attended many policy proceedings in-person, maintained a calendar of upcoming proceedings for the office, and provided regular updates to my superiors on the status of these events. I gained a strong understanding of the key actors that regularly submit interventions to these proceedings, fostered many connections who were later interviewed as part of my dissertation research, and gained a familiarity with some of the key strategies different stakeholders employ to bolster their policy ideas and goals. I learned how to effectively navigate the CRTC website which, as many research participants shared, is no trivial task. Over a six-month period, I also contributed extensively to a project specifically for the CRTC which, while unrelated to the regulator’s policy development process, gave me a better understanding of the organization’s structure and operations. More generally, as a professional researcher, I improved my writing, research, and policy analysis skills, all abilities that have been extremely useful to this exercise.

My work as a research analyst also allowed me to see and understand the power disparities that characterize internet policy development at the CRTC. It quickly became clear to me that the organization I worked for was quite logically more inclined to support the interventions of

well-resourced private companies because these firms could pay more for services and also recompense these costs up-front, rather than on the recuperation of costs, which is how many civil society groups are reimbursed for their participation in CRTC telecommunications policy proceedings. It seemed likely that other consulting firms and think tanks would be similarly inclined, which raised questions about the extent to which public interest groups could hire third-party experts to provide evidence to support their policy positions. This is especially concerning given the reality that the type of research conducted by these organizations is often highly privileged in regulatory arenas (McKenna & Graham, 2000). During this time, I also developed a better sense of the disparity in resources between different stakeholders' participation in these processes. This understanding prompted me to wonder whether these differences in resources may or may not manifest in policy outcomes that routinely support certain views over others. All these considerations piqued my interest in this research topic, and ultimately played an important role in my pursuing doctoral studies.

In terms of access, I recruited many participants to interview for this research project by drawing on the network of contacts developed during this period of employment. From there, I used snowball-sampling to widen my group of participants. In instances where I sought to access potential participants with whom I had no mutual contacts, I sent formal requests for interviews via publicly-available e-mail addresses. In some cases, I followed up my request with a tweet directed to that individual briefly outlining my project and research objectives. Yet, even with this existing network, the terms of consent that many research participants required before agreeing to participate in this research were often more stringent than in other interview-driven research projects I have led in the past. This was also despite pre-emptive efforts to ensure that any of the minimal risks to participants were mitigated.

In this project, I gave participants the opportunity to speak on condition of anonymity and, after the transcription of the interviews, sent each interviewee the list of their quotes that I was likely to include in my dissertation. Understanding the contested nature of the Canadian internet policy environment, the purpose of these measures was to ensure that participants would feel open to speaking freely during our interview. This decision proved valuable for that reason and, in the case of allowing participants to review quotes, because it provided interviewees the opportunity to review and, if needed, refine their contribution to this project. Alongside their review of this list of quotes, participants were encouraged to let me know if there were any

quotes they would like me to refrain from using in my dissertation, anonymize, or superficially edit for clarity. If participants spoke with me on an anonymous basis, they had the opportunity to ensure that none of the quotes included any information that could reveal their identity, although I did take steps to ensure that all identifying information was removed. But, at the same time, these measures did not give participants' any degree of editorial control over my project. Rather, the choices and changes interviewees made after receiving these selected transcripts were largely negligible and frequently helped clarify their views for myself and the readers of this dissertation.

But there were also some research participants who requested terms different or beyond these measures. A few participants would only participate in interviews on agreement that I would strictly use the transcript to inform my thinking, and not publish any of their spoken comments, anonymized or attributed. Others asked to review the written sections of my dissertation where their comments appeared. A related but different challenge was illustrated in instances where I interviewed certain parties involved in one element of Canadian internet policy development, but then took my project in a different direction that made these contributions, though nonetheless interesting and insightful, no longer directly relevant to the task at hand. A key example is six interviews with technology journalists that occurred at the beginning of my field work, before I ultimately decided to focus my research on the stakeholders, rather than commentators, of Canadian internet policy development.

I am not suggesting that the fact that some participants had firm grounds under which participation would be granted is problematic, or even surprising. To the contrary, I am extremely grateful to the many participants who gave me their time, expertise, and trust in speaking to me during my fieldwork, and in later interviews over phone or Skype. Moreover, it is entirely understandable that many participants requested terms such as the ones described above as it is common for members of this community to use material on the public record to undermine their rivals in internet policy proceedings. In asking for such terms, participants were often simply seeking to protect themselves, and the organizations they were affiliated with. Especially considering that social science researchers have a certain duty of care to their research participants, these were completely reasonable asks and I did not seek to dissuade such requests.

Rather, I readily fulfilled the wishes of those research participants who asked that none of their comments, attributed or otherwise, appear in this dissertation. Yet, from a research perspective, the request to review the sections of my dissertation that contained participants' quotes did require me to reflect on how I would safeguard the wishes of my research participants and provide some semblance of 'methodological equity' between those interviewees who asked for this additional measure and those who did not.¹¹ Notably, nearly all the interviewees who made this request were 'elite' participants, including regulators and industry members. This divergence signalled that some interviewees may be more inclined to ask for these terms than others. In particular, it seems possible that those with a legal education or background, which includes most of the participants who requested this measure, might be particularly applicable to this practice. It also seems likely that the level of authority held by the research participant in the domain of Canadian internet policy development may have been a factor as well. None of the students, scholars, activists, or engaged citizens interviewed for this dissertation made this request.

Ultimately, I opted to use these insightful interviews to inform my thinking on the issues that characterize this project, but not to quote or paraphrase, either anonymously or attributed, from these sources. My decision on this matter was made in an effort to limit the extent to which some participants may have the opportunity to inadvertently or otherwise exercise any degree of editorial influence over my project. I also sought to ensure that the disparities that characterize the interactions between certain actors in Canadian internet policy development are not replicated in this dissertation's methodological choices.

Other ethical considerations

These research methods raise other ethical considerations that should be accounted for. Before beginning any fieldwork, I received Research Ethics Board (REB) approval from the department of Media, Communications, and Cultural Studies at Goldsmiths, University of London. This section explores some of the ethical considerations that informed my REB

¹¹ Notably, in all cases this request was made after a preliminary or fulsome discussion of the terms of the interview had occurred and, in most cases, after the interview was completed.

application that have not yet been addressed in this chapter, in particular with respect to the interview method.

As outlined elsewhere in my dissertation, I approach this research project with certain ideas about what constitutes a democratic communications environment. Thus, the degree to which I made these views clear to research participants was an important ethical consideration. To ensure that interviewees understood my point of departure for this study, I outlined my concern for public interest involvement in Canadian internet policy development in my recruitment message. At the outset of interviews, I verbally provided another short synopsis of my research project's approach and emphasized that I was open to any questions the interviewee may have. Notably, several participants variously asked for further information about my educational and professional background, theoretical leanings, and former colleagues.

Potential adverse consequences to research participants included minimal risks to these individuals' reputation or employment should they disclose details that run contrary to their employers' policy positions. To preclude such risks, I also made clear to participants that anonymization was an option available to them, and articulated the steps that would be taken to maintain this confidentiality. In the case of certain elite individuals who have an active media presence, anonymity required careful attention to the removal of all identifying details and comments. As mentioned previously, participants also had the opportunity to review the quotes I planned to include in this dissertation and notify me if there were any statements they would prefer not to have published. I also informed researchers of the breadth of venues within which I hoped to publish findings from this project. All participants were advised that they could withdraw their participation at any time, if they wished to. I consider the conveyance of all the above information a vital part of the informed consent process in social science research. As Iphofen (2015) writes:

Gaining consent cannot easily be separated from the giving of information. Subjects should be able to choose 'freely' to participate in research. They should have been given enough information about the research for them to know what their participation involved. (p. 3)

As this project is being conducted at a British university, I used the UK Research and Integrity Office's Code of Practice for Research to ensure I took appropriate steps to maintain ethical

standards throughout the duration of my research project. Given that this project was generously supported by the Social Sciences and Humanities Research Council of Canada, I also referred to the Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans.

Conclusion: Qualitative methods and the ‘messiness’ of policy development

A key aim of this chapter has been to outline the philosophical assumptions that underpin this investigation and the practical methods that I use to gather and collect data. Accordingly, these pages have explored how drawing on elements of the political economy of communication and gatekeeping theory line up with epistemological and ontological approaches premised on materialism and methods including case studies, semi-structured interviews, and document review. In particular, I have sought to show how a view to materialism allows me to investigate the power that characterizes Canadian internet policy development, and the ways it manifests in “struggles for a range of objectives that include legitimation, influence, control, status, and, increasingly, profit” (Freedman, 2014, p. 319). Qualitative methods, which account for the varied factors, interactions, and dynamics at work in these processes, are thus ideal tools for this project. I hope that, together, these methodological decisions help illuminate the complexities of Canadian internet policy development, and the implications of this ‘messiness’ for the public interest.

I have also sought to be reflexive in this chapter, particularly in identifying the experiences that initially motivated my interest in this research topic. My work as a research analyst played a vital role in shaping how I understand the issues at the heart of this project, and it is important that I acknowledge this background before delving into my empirical findings. This employment was also methodologically useful, as it provided me with access to many of the research participants that feature in this dissertation. There are also related and distinct issues of consent that were raised during this study’s fieldwork phase, which prompted further reflection and decision-making on my part. Ultimately, these choices contributed to a greater understanding of the unique relationship and dynamics between the social science researcher and research participant, and between research participants in a single study.

Chapter 3: Four phases of policy development: Risks to the public interest

Well, I think from earthworms we learn that before anything grows there has to be a prepared soil. When we are talking about that endless process of bringing briefs and information to governments, and so on, the only thing that can keep us going is the notion that it prepares the soil. It may not change minds, but it will provide the arguments for a time when minds are changed. I think until and unless there is that prepared soil, no new thoughts and no new ways of dealing with problems will ever arise. (Franklin, 2014)

A variation of this quote, spoken by Canadian physicist and feminist Ursula Franklin, was relayed to me in an interview with Marita Moll, a long-time civil society advocate in the Canadian communications sector. When I asked what motivated Moll to participate in the policy process, she referenced Franklin's analogy, adding: "Some people will just tilt against windmills because it has to be done. You might not have impact but somebody behind you might have impact". This is a perspective I heard from multiple research participants. Their view was that civil society's influence on Canadian internet policy may not always be evident, but public interest engagement is a critical part of bringing new ideas and arguments to the public discussion. I agree with this sentiment. In fact, my research suggests that civil society involvement has had *some* influence on Canadian communications policy, and internet policy specifically. However, my study also shows that these metaphors' emphases on the provision of new policy arguments may inadvertently mask the ways that the norms, strategies, and actors that characterize these processes often limit civil society's influence from the get-go, when these participants are able to contribute in the first place.

This chapter investigates these procedural and other challenges to the public interest in Canadian internet policy development. Relying on data gathered from interviews and primary documents, I argue that distinct threats to the public interest exist at different points in the process. While these risks are wide-ranging, they often relate to the strategic behaviours of well-resourced groups who advocate for policy positions adjacent or contrary to the public interest, a regulatory process unsuited for robust civil society participation, and the constraints of participating public interest groups.

After a brief delineation of the two main venues of Canadian internet policy development, I organize this chapter around a discussion of four key phases of internet policy development (1) issue-identification and framing (2) consultation (3) deliberation and decision, and (4) recuperation. Using a range of historical and contemporary examples, I critically discuss the risks that emerge in each of these phases. With reference to literature on the political economy of communication and gatekeeping theory, I also outline where and how processes of gatekeeping occur in these periods and the ways these activities may pose threats to the public interest. In particular, I use the typology (gatekeepers, gatekeeping practices, gatekeeping power, gatekeeping mechanisms, gated) outlined in the introduction and Chapter's 2 conclusion to show how gatekeeping manifests as a multi-faceted set of actors, actions, and tools in the Canadian internet policy environment. This chapter's aim is to provide the reader with an introduction to the politics of this settings, and the relevant political and regulatory contexts, before the subsequent chapters' case studies, which examine the dynamics of two specific cases.

How is internet policy developed in Canada?

In contrast to the remainder of this chapter, this is a descriptive section that outlines the two main avenues by which internet policy is developed in Canada. The development of policy in any context is a multi-stage process that often involves a variety of participants from across society. Internet policy development in Canada is no exception. Thus, before I can properly engage with a discussion of threats to the public interest within this process, I need to briefly explain how this system fundamentally works and engages stakeholders. The following paragraphs proceed with that aim.

The Canadian Radio-television and Telecommunications Commission (CRTC) is a key decision maker in Canadian internet policy development. The quasi-judicial administrative tribunal's policy decisions primarily aim to meet the objectives outlined in two key pieces of legislation: The Broadcasting Act, enacted in 1991, and the Telecommunications Act, enacted in 1993. As Middleton outlines, "the role of the market in delivering telecommunications services" has been furthered by provisions in both the Telecommunications Act and a 2006 federal government policy direction (Order Issuing a Direction to the CRTC, 2006; Middleton,

2011, p. 3).¹² These inclusions reflect a key idea that informs how contemporary Western society is ordered. That is, “the market’s own dynamics [...] are expected to protect the interests of consumers (and citizens)” (Mansell, 2017, p. 6).

In the area of telecommunications policy development, the regulator regularly facilitates public consultations, including many that address various elements of the internet, including issues such as net neutrality and broadband provision (CRTC, 2015a, 2016c, 2016i). These proceedings generally begin with a notice of consultation, which sets out, among other information, the “nature of the matters to be considered and the deadline for intervening in the proceeding and the date and time of the commencement of the public hearing” (Rules Applicable to Broadcasting and Telecommunications, 2010). Any interested party, including telecommunications service providers, civil society groups, and engaged Canadians, can, before the established deadline, submit an intervention that responds to the outlined issue. A second deadline may allow interveners to submit a response to policy arguments and evidence brought forward by other parties in initial interventions (Rules Applicable to Broadcasting and Telecommunications, 2010).

During the public hearing, selected interveners are invited to orally present and defend their policy positions before a panel of commissioners, individuals who have been appointed to the CRTC and are “entitled to vote at Commission meetings and participate in the decision making process” (CRTC, 2020). After a deliberation period, the regulator publishes the relevant decision with reference to the evidence provided on the public record. What follows is the implementation of the policy and any recuperation of funds by eligible civil society groups (CRTC, 2010c).

The Government of Canada also plays a role in internet policy development through its legislative process. Opportunities for engagement include participation in public consultations

¹² In 2019, the federal government did issue a new policy direction for the CRTC, which emphasizes broad-based competition far more than the 2006 order (Order Issuing a Direction to the CRTC, 2019). The impact of this order on telecommunications policy development, however, remains unclear.

and committee meetings, but these occasions are fewer and lead to policy recommendations rather than policy decisions (Parliament of Canada, 2007). In some cases, these recommendations are incorporated into bills, which must pass through the House of Commons and the Senate in order to become law. The law is then adopted and implemented, until the time when it again re-enters the public debate (Parliament of Canada, 2018b). Given the breadth of elements at work in federal government policy development, this chapter largely focuses on the operations of House of Commons (HOC) committees, with a view to their role in developing recommendations that relate to Canadian internet policy.

There are at least three significant differences between the CRTC's and Government of Canada's respective approaches to internet policy development. First, participation in CRTC policy proceedings, at face value, seems to factor more directly into policy outcomes. The regulator considers evidence and independently publishes a policy decision. Alternatively, participation in Government of Canada consultations and HOC committee meetings can influence bills, yet these measures must pass through the House of Commons and Senate before becoming law. Second, there are differences in the extent to which interested parties can participate in these respective avenues. Most CRTC proceedings are prompted by an open call for comments, whereas HOC committee meetings operate on an invitational basis. (Certainly, public consultations led by the Government of Canada are often open to any member of the public; however, these are less frequent and arguably less impactful than contributions made to HOC committee meetings.) Finally, there is a difference in the volume of information produced in these respective areas of policy development. Both processes result in many pages of documents, transcripts, expert reports, amongst other policy materials. Yet, given the relative constraints around the amount of time that invited witnesses can contribute to a HOC committee meeting (Parliament of Canada, 2020), in comparison to the multiple levels of participation that take place in CRTC policy proceedings, interveners in the latter camp typically have the opportunity to produce and present more arguments and evidence than they would in the former.

Despite these divergences, an analysis of both these policy development venues paints a picture of the politics at play in Canadian internet policy development. This perspective allows for a comparison of the ways these two avenues to internet policy function and how they limit or support the public interest in diverging or converging ways. At the same time, this view

considers how stakeholders who take part in these processes, including private interests, public interest groups, activists, scholars, and engaged members of the public, interact and behave in these respective arenas. Both processes also follow roughly the same series of phases, which allows for an examination of each on a step-by-step basis.¹³ Using a range of historical and contemporary examples, the remainder of this chapter investigates these two policy development spaces across the four aforementioned phases of internet policy formation.

Issue-identification and framing

The first phase of the internet policy development process identified in this dissertation is issue-identification and framing. In this phase, actors, including regulators, politicians, public servants, and sometimes other stakeholders, decide or influence what issues will be considered part of the policy agenda, and how they will be framed. These choices and pressures shape various elements of the policy development process. Not least, they determine what policy debates warrant public scrutiny, with what scope, and under what terms. They open a space where some stakeholders can outline their positions on particular issues, within set frames, and where other views are effectively silenced. Moreover, the process of defining or framing the issue has an impact on where the issue is addressed in the broader governmental apparatus as well as the effectiveness of the process. The activity of developing the parameters around stakeholder participation also shapes and limits the types of responses participants can provide—consider the CRTC’s practice of identifying issues that are “outside the scope” of a public policy proceeding and thus should not be addressed by interveners (CRTC, 2017b).

This section looks critically at this first phase of internet policy development, with a view to both CRTC and Government of Canada approaches. There exists, I argue, at least three challenges to the public interest in this phase of the process: (1) the extensive lobbying efforts of well-resourced groups who have a greater capacity to decide what issues are considered and on what terms (2) the lack of stable funding for civil society groups, which inhibits their capacity to contribute to issue-identification and framing and fosters competition between

¹³ Notably, as explained in greater detail later, HOC committees do not have a ‘recuperation phase’; however, the other three phases are largely applicable to both processes.

organizations and (3) the wide range of overlapping consultations on internet policy issues, which further exacerbates these divergences.

Follow the money

Engagement in lobbying, which describes efforts by non-governmental interests to influence the actions of decisionmakers, is the most obvious inequity between stakeholders that contribute to policy development. As Freedman (2006) argues: “The biggest threat to transparent policy-making [...] derives from the continuing and intimate relationship between key corporate interests and government policy-makers, a relationship whose bonds are rarely exposed to the public” (p. 917). Other work has studied the role of lobbying in the US and in Canada, much of it highlighting the close ties between business and policymakers (Blau et al., 2013; Boucher, 2018; Drutman, 2015; McKay, 2011; Yackee & Yackee, 2006). These dialogues among private interests and decisionmakers, and the relationships they represent (Freedman, 2006), are gatekeeping practices that undermine certain groups or individuals who are unable to put forward their views in these informal settings.

The case is no different in Canadian internet policy formation, where lobbying allows some stakeholders the opportunity to introduce and frame policy problems to decisionmakers outside formal policy development settings. A review of Canada’s Office of the Commissioner of Lobbying’s public records indicates that this access is disproportionately held by private organizations. Canada’s ‘big three’ telecommunications service providers (Bell, Telus, and Rogers), for example, record frequent and regular meetings with decisionmakers. From the beginning of January to the end of April 2020, 35 oral and arranged communications occurred between members of Telus and the Government of Canada on the topic of telecommunications (Office of the Commissioner of Lobbying of Canada, 2020c). Rogers took part in 29 such communications and Bell, 11 (Office of the Commissioner of Lobbying of Canada, 2020a, 2020b)

While these communications were not with the chair or vice-chairs of the CRTC, who are the key regulators of Canadian telecommunications service providers, but rather, largely, ministers and political staff from various federal government departments, it is important to highlight that the federal government can influence CRTC decision making (e.g., in the implementation of a policy direction), that meetings between these companies and members of the CRTC are

recorded in periods prior to January 2020, that many other meetings took place during the studied period on topics other than telecommunications, and that access-to-information requests have further shed light on interactions between these parties, including some which are not formally recorded (Order Issuing a Direction to the CRTC, 2006; Geist, 2018; Office of the Commissioner of Lobbying of Canada, 2020a, 2020b, 2020c). Moreover, and most importantly, these companies are not obligated to report communications with CRTC commissioners who are not chair or vice-chair (BTLR panel, 2020, p. 46). This reality severely limits the public's understanding of the interactions between private interests and the regulator and shows a gatekeeping mechanism enshrined in Canada's lobbying legislation that allows this practice. During this same four-month period, global technology companies with operations in Canada also recorded oral and arranged communications with political members and staff, including Google (15) and Facebook (5) (Office of the Commissioner of Lobbying of Canada, 2020e, 2020f).

By contrast, three key public interest organizations (Public Interest Advocacy Centre, OpenMedia, and the Canadian Internet Policy and Public Interest Clinic) involved in Canadian internet policy development have no activity recorded in the Office's 12-month lobbyist search. These findings align with existing research on lobbying organizations in Canada, which shows that corporations and trade associations represent 64 per cent of all lobbying contacts performed in recorded history, whereas public interest associations only reflect eight per cent (Boucher, 2018, p. 324).

Aptly reflecting what McChesney (2000) describes as the political economy of communication's concern for "how economic factors influence politics and social relations" (p. 110), the advantages of private interests' heightened access to regulators and politicians were highlighted by many interview participants. Ken Engelhart, former Senior Vice-President of Regulatory at Rogers, described the value of regular access to decision makers in the following terms:

Many periods [during my time at the company] we didn't have a government relations person in there. But, when we did that was sort of another input. 'Oh, the politicians are going to hate that. The politicians are going to like that.' Or, 'the politicians aren't going to get involved so we don't have to worry about the politicians'. So, there'd be another piece of advice from our government relations person.

This statement suggests that one advantage of lobbying access is that it affords stakeholders ways to better understand a regulator's or politician's goals or agenda. We can see how these practices also facilitate a sort of information asymmetry between those groups with additional 'inputs', and those groups without. As research drawing on gatekeeping theory shows, such asymmetries can foster decision making that aligns with the information holders' views or goals (Denzau & Mackay, 2017).

There is an illustrative example of private interests' capacity to pre-emptively share their views on a policy issue with internet policy decisionmakers in the case of the 'Fairplay' proposal, a policy document developed by a group of over 25 telecommunications, broadcasting, and other organizations that advocated for website-blocking in cases of copyright infringement (Geist, 2018). An access-to-information request reveals that Bell, the company leading the proposal, asked for a meeting with the CRTC in July 2017 and was allowed to present its proposal (which at that time was only branded with Bell's logo) in September 2017. Effectively silencing the potential contributions of parties that would argue against the proposal, these meetings prompted "commission officials [to develop] internal positions and analysis without a formal filing or the benefit of the dozens of detailed submissions that carefully examined the legal implications of site blocking" (Geist, 2018). It was not until January 2018 that the proposal was formally put forward to the CRTC and, shortly thereafter, open to public comment (Geist, 2018).

Not only does this instance highlight the delays public interest groups can face in gaining access to information readily shared between dominant interveners and the regulator, but it illustrates the extent to which some private sector actors can act as gatekeepers who set the agenda on topics of study and inquiry in the domain of Canadian internet policy development.

Considering the funding challenges of civil society groups

The disparities outlined above are starker when we consider the limited resources and precarious structures that characterize some civil society groups involved in Canadian internet policy development (Raboy & Shtern, 2010a; Shade, 2014a; Shepherd, 2018). Bill Abbott, CRTC Counsel and former Assistant General Counsel and Privacy Ombudsman at Bell, one of Canada's largest telecommunications service providers, suggested the company could allocate virtually unlimited resources to consultations of interest. By contrast, Canadian public interest

groups often have the issue of funding front of mind (Chhabra, 2018b; Johnson, 2018; Public Interest Advocacy Centre [PIAC], 2019, p. 1; Shekar, 2018). This section considers how the challenges underlying business models typical of Canadian civil society groups can undermine the influence these organizations have over what internet issues, and on what terms, are considered in Canadian internet policy development. Instead, I suggest that competition between civil society groups for scarce resources necessitates an environment where these organizations generally approach policy issues reactively rather than proactively. This reality makes for a situation where the ‘scope of initiation’ is limited as civil society groups are restricted in the extent to which they can push policy issues on decisionmakers’ agendas (Bachrach & Baratz, 1962, p. 952).

A survey of some of the key Canadian public interest groups in this domain finds that many participating groups fund their regular operations at least in part through donations, grants, and partnerships, all forms of revenue that can be precarious and unpredictable, and fluctuate year over year (Canadian Internet Policy and Public Interest Clinic [CIPPIC], 2020; Johnson, 2018; OpenMedia, 2020). Several of these groups’ participation in CRTC internet policy formation specifically also depends at least in part on the costs awards that civil society groups may apply for from the regulator on the completion of a policy proceeding (CRTC, 2010b). This flawed process (FRPC, 2017, 2018b) will feature in the final section of this chapter.

One illustration of these varied sources of funding can be found in an examination of CIPPIC’s business model, a key intervener on behalf of the public interest in Canadian internet policy development, both at the CRTC and in Government of Canada policy development. The organization was:

established in 2003 with a start-up grant . . . which was matched by the Ontario Research Network for Electronic Commerce (ORNEC). In 2007, CIPPIC received a transformative gift from Prof. Pam Samuelson and Dr. Robert Glushko of Berkeley, California, that allowed it to become a leading voice in Canadian and international technology law and policy discussions. . . . CIPPIC relies on the generous contributions of individual donors to maintain and expand its operations. (CIPPIC, 2020)

Like many of its peers, CIPPIC regularly claims costs awards for its participation at the CRTC. Indeed, it is unclear whether the organization would have the capacity to contribute to CRTC internet policy development without these awarded costs. Its contributions to other areas of

Canadian internet policy formation are supported by the above sources. Particularly when we consider the profound limitations to this CRTC program (FRPC, 2017, 2018b), the picture is of an organization that relies on assorted funding sources, and with monetary sums that may be difficult to predict or maintain on a consistent basis.

Information on OpenMedia's finances, another key participant in Canadian internet policy development, suggests that the organization may face similar challenges. In the 2019-2020 fiscal year, 84 per cent of the group's revenues came from grassroots donations, eight per cent from businesses, and five per cent from other non-profit groups (OpenMedia, 2020). PIAC, a third important intervener in this arena, relies at least in part on individual donations, federal government grants, and CRTC costs awards (CanadaHelps, 2020; Johnson, 2018). In part due to long delays in recouping these costs awards, the organization has publicly highlighted its financial challenges and the extent to which the Centre has had to cut costs to stay afloat (Johnson, 2018; PIAC, 2019, p. 1).

Scholarly contributions from groups such as the Canadian Media Concentration Research Project (CMCRP), run out of Carleton University, rely on highly-competitive research grants from sources such as the Social Sciences and Humanities Research Council (CMCRP, 2020). It also seems probable that the loss of such funds would limit or destabilize this group's capacity to contribute, particularly as it would undermine the CMCRP's ability to hire research assistants, who often play important roles in collecting and analysing evidence used to support its interventions.

With the available information, it is not possible to measure the extent to which the fluctuating budgets of the groups examined in this section implicate their capacity to participate in internet policy development to the same degree as powerful industry participants, as pluralists (Dahl, 1961; Merelman, 1968) would seek to do. Yet, it is nonetheless reasonable to suggest that this lack of resources can influence the number of proceedings these stakeholders participate in, the nature of their contributions, and the extent to which these parties collaborate with each other. As Josh Tabish, former campaigns director at OpenMedia, outlined in an interview, this reliance on donations, grants, CRTC costs awards, and other forms of like funding has played a part in the ways that these groups function in Canada: "I think there's a lot of competition for resources. The pie can only get sliced so many ways and with that competition for resources

comes competition for air-time and public visibility”. This point becomes more relevant when we consider that a major survey of Canadian non-governmental organizations (NGOs) found that 62 per cent expressed dissatisfaction regarding media coverage of their organization and issues of interest (Hackett & Anderson, 2011, p. 163). There are also the dire financial difficulties highlighted by groups like PIAC, which has outlined the “very real prospect” that it will “cease operations after 40 years of operation” (Johnson, 2018; PIAC, 2019, p. 38).

As other research has revealed, many Canadian civil society groups active in this sphere are unable to plan for the future as they “stretch their human and financial resources to the limit trying to stay operational and fulfill their own mandates on a day-to-day basis” (Raboy & Shtern, 2010a, p. 225). Interview participants further laid out how these challenges prompt modes of thinking and operations that lend themselves to a reactive rather than proactive approach to policymaking. Competitive pressures can limit the extent to which groups may want to work together to push issues to the fore of the public agenda. In line with research on competition, rivalry, and power within the civil society sector (Godsäter & Söderbaum, 2017), Tabish suggested that the competitive atmosphere in advocacy related to telecommunications services in Canada can create a “real kind of ‘every man for themselves mentality’ amongst the leadership in Canadian civil society organizations”.

In contrast to the virtually unlimited resources that can be channeled into internet policy consultations of interest to powerful industry groups described earlier, these examples show how many civil society groups’ funding models force a focus on resources before strategic policy development. The upshot of this situation is that consumer-focused groups are often competing for scarce resources (Godsäter & Söderbaum, 2017) under precarious business models, instead of pushing certain issues onto the public agenda, despite their willingness to do so. These challenges necessitate an environment whereby resources play a critical role in decisions about how and if to engage in internet policy development at all. As Hackett and Anderson (2011) highlight, lack of funding is the primary concern for a great number of Canadian NGOs (p. 164). This anxiety, and the competition it fosters, makes calls for “greater coordination among existing NGOs and civil society actors [...] to ensure that the needs and interests of citizens are heard in vibrant democratic debate” (Raboy & Shtern, 2010a, p. 227) seem, unfortunately, increasingly infeasible. In this context, many civil society groups are effectively ‘the gated’, those parties whom gatekeeping power is exercised upon.

How excessive consultation acts against the public interest

The resources of global technology firms and Canada's dominant telecommunications service providers, coupled with the funding difficulties of civil society groups, are further exacerbated by the high number of recent consultations on policy issues related to the internet in Canada. Given the evolving role of the internet across nearly all aspects of modern life, it is not difficult to see how excessive consultation on the implications of this medium occurs. A single aspect of the internet can be framed in ways that are relevant to multiple regulators, agencies, committees, and departments. Yet rarely do these groups work together to collaboratively address these issues in the Canadian context. Nathaniel Erskine-Smith, Liberal Party of Canada Member of Parliament (MP), suggested:

It does seem to me like the CRTC should be working in-hand with the Competition Bureau, should be working in-hand with the privacy commissioner, and they should have pathways open to them for sharing information, sharing communication and having joint inquiries.

While this interview occurred in late 2018, this coordination remains far from a reality and this lack poses a real risk to the public interest. As Raboy and Shtern (2010a) wrote a decade ago, "the system lacks coherence and coordination, and steps need to be undertaken to eliminate parallel and conflicting principles" (p. 221). Excessive consultation often results in a range of overlapping and redundant proceedings led by different groups (Geist, 2017) and is effectively a gatekeeping practice executed by these decisionmakers. Existing documentation and arguments are often needlessly repurposed and reframed by public interest groups who have already made their case in other venues. These organizations, who are already stretched for resources (Johnson, 2018; Raboy & Shtern, 2010a; Shade, 2014a), are forced to make tough decisions about whether they should expend these funds to repeat their policy positions to a new audience.

This challenge is put into sharp focus in an illustration from November 2018. The CRTC issued a call for comments on the development of a mandatory code of conduct for internet service providers (CRTC, 2018c). While this inquiry would be a distinct proceeding, many noted that the findings of another hearing focused on the aggressive and misleading sales practices of Canadian telecommunications service providers would inform those participating in this new

internet code of conduct consultation (Chhabra, 2018b). PIAC general counsel, John Lawford, who filed an extension deadline request shortly after the inquiry was announced, noted that “the Commission’s sudden resolve to address Internet service issues, while laudable, risks a superficial review and weak regulatory output”, due in part to the high volume of other relevant policy reviews (Chhabra, 2018a). Lawford highlighted ongoing consultations led by a Senate committee, a legislative review panel, and the regulator, all which involved groups that regularly participate in CRTC telecommunications policy proceedings. Despite these arguments, the CRTC denied the request, which prompted PIAC as well as a number of other prominent civil society groups to boycott the call for comments (Chhabra, 2018a). A group of 10 scholars also submitted a letter to the regulator that outlined how the current deadline acts against the public interest given its short turnaround time alongside the aforementioned other reasons (Chhabra, 2018b).

Catherine Middleton, Professor at Ryerson University, suggested that the letter was the upshot of the CRTC’s rigidity towards civil society participation in recent years. Middleton explained, “To me, it’s what I would call a disregard to recognize the way that people who are intervening work”. As research has highlighted, advocacy at the regulator and in federal government consultations is labourious and fraught with “institutional pressures”, despite at times being rewarding for civil society interveners (Shepherd, 2018; Shepherd et al., 2014, p. 17). Even with potential new avenues for scholarly policy impact (Ali & Herzog, 2019), Middleton suggested that many public interest interveners who contribute to these proceedings are doing so “as a second job”. This includes academics who also juggle researching, writing, grading, and teaching. Rather than pro-actively bringing forth policy problems for the regulator’s consideration, public interest interveners often struggle to even participate in internet policy development in the first place. As Middleton said:

I do believe the CRTC is really reliant upon this group of people to do this labour, to present a full picture of the experience of Canadians and what a world-class communications system looks like to them. That’s what they’re reliant upon, but the way the system has developed is that it doesn’t seem to respect the challenges that those individuals or those groups of individuals face in trying to play by the rules the Commission has set out for them.

These comments suggest that a high volume of demands coupled with the inflexibility of the process play a role in limiting civil society participation. These statements also prompt the concern that those issues that are identified for public consultation, and the ways that they are framed, are more often confined to those raised and defined by private interests and the regulator. This reality might narrow the scope of policy review to what is deemed ‘safe’ or reasonable (Bachrach & Baratz, 1962, p. 952).

Several research participants indicated that the boycott is also partially an outcome of the increasingly unpredictable nature of the CRTC’s schedule. Previously, these interviewees suggested, interveners were sometimes able to plan what policy proceedings they might participate in, based on information provided in the regulator’s annually updated three-year plans. However, Middleton said:

The timetable has become increasingly unpredictable. When the timetable was a bit more predictable you could say ‘okay, well, this is something I’m interested in. Maybe I or a group of people could go out and collect some data.’

In reference to the internet code of conduct proceedings, Josh Tabish, OpenMedia’s former campaign director, said that “the CRTC sprung this consultation on everybody without warning”. A review of the regulator’s three-year plan (2017-2020) affirms Tabish’s point (CRTC, 2016b). Such a proceeding is not among the eight initiatives listed in the regulator’s three-year outlook on measures “strengthening the security and safety of Canadians within the communication system” (CRTC, 2016b, pp. 27–29).

With respect to issue-identification and framing, the boycott reveals how excessive consultation further exacerbates the real differences that exist between internet service providers and global technology firms, in contrast to interveners who regularly submit on behalf of the public interest. Canada has gone from a situation where the number of public consultations facilitated around communications issues is ‘laudable’ (Raboy & Shtern, 2010b, p. 88) to highly impractical and even redundant. This increase undermines the participation of those groups and individuals these consultations are purported to serve and also raises doubts about the extent to which “the gated are increasingly empowered in the digital age” (Xu & Feng, 2014, p. 422). Rather, the increase of information and information-sharing brought about by the transition to digital and the real concerns about if and how to regulate varied aspects of digital life have contributed to the ‘gated’ in this context being disempowered.

Well-resourced organizations have the capacity to regularly put forth their policy positions in lobbying (Geist, 2018; Office of the Commissioner of Lobbying of Canada, 2020a, 2020b, 2020c, 2020e, 2020f; Turnball, 2018b) and formal policymaking settings. On the other hand, interveners with fewer resources who nonetheless wish to regularly to contribute to internet policy development in Canada often face funding challenges that force them to consider resources before policy (Johnson, 2018; PIAC, 2019, p. 1). These divergences are only heightened in periods of excessive consultation (Geist, 2017), particularly when decision-makers are inflexible to the needs of these latter groups and individuals (e.g, Chhabra, 2018a).

Consultation

Consultation is the second phase of the internet policy development process identified in this dissertation. This phase involves a public dialogue between policymakers and relevant stakeholders, including corporate lawyers, public interest advocates, activists, scholars, and engaged citizens. This process begins when policymakers invite select witnesses to provide their perspectives on identified issues (Parliament of Canada, 2020) or release a notice of consultation that asks interested parties to offer their views on the topics at hand (CRTC Rules of Practice and Procedure, 2010). Often this phase involves both the submission of written arguments and an oral statement in a formal setting. The oral statement is generally followed by relevant questions from the policymakers present, who may seek to clarify, or contest, certain claims made, or gather further information from the intervener (CRTC Rules of Practice and Procedure, 2010; Parliament of Canada, 2020). This process ends when the policymaker concludes data collection from outside sources and begins an internal review of this information.

The activities that take place during the consultation phase are important, not least because this is the period during which the arguments that characterize a particular policy issue are most overtly put forward. It is also a time when a policy issue is likely to receive a heightened amount of news coverage. As a consequence of these factors and others, the consultation phase is also a period where there exists a number of risks to the public interest. This section addresses three of these threats: (1) the capacity for certain groups to leverage their resources to undermine stakeholders with opposing views, (2) the formal procedures that characterize policy settings, which often favour those with a legal background, and (3) the privileging of certain

‘technocratic discourses’, which can silence the views and policy positions of groups that do not reflect this form of rhetoric.

The role of resources in policy consultations

In the previous section, I explored how the disparity in resources between stakeholders can result in certain groups having a greater say in what issues are identified and framed in Canadian internet policy development. In different ways, this inequity is also a powerful element of the consultation phase of policy formation. Certain organizations (generally, dominant telecommunications service providers and global technology companies) have the capacity to expend more funds on the preparation of documentary evidence and oral statements for policy consultations. Moreover, these companies at times use their funds to drown out, exhaust, or intimidate stakeholders who put forward proposals at odds with their policy positions.

Just as Lewin (1947a; 1947b) suggests, a process, or in his words ‘channel’, such as internet policy development, is influenced by gatekeepers, like these firms, who exert gatekeeping power upon that process, here through funds and strategies. Again, these issues are exacerbated when we consider the limited resources of many civil society groups and individuals who participate in internet policy consultations. This section addresses these implications, in that order. Despite their differences, the outcomes of these risks are in many ways reflective of those described in the issue-identification and framing phase. Funding flows allow certain groups to bolster and augment their arguments before policymakers, while enabling them to exert gatekeeping power upon others. Indeed, this conflict and suppression is a widely-understood component of organizations’ interactions in policy development settings as “organization is the mobilization of bias” (Schattschneider, 1960, p. 71). The diverging resources between different parties involved in these interactions contributes to dominant forms of ‘bias mobilization’ over others.

The resources that the dominant telecommunications service providers in Canada (Bell, Rogers, and Telus—the ‘big three’), as well as the global technology companies that operate in the country (e.g., Facebook and Google), dedicate to regulatory participation are significant. As noted earlier, one interviewee suggested Bell has virtually unlimited resources when it comes to participating in public policy consultations of interest to the organization. That research

participant, Bill Abbott, currently CRTC counsel, also noted that Bell has a regulatory team of roughly 70 people, which includes roughly 10 to 12 lawyers, as well as analysts, economists, and other staff, some with experience dating back decades. The group also works closely with the company's government relations and corporate communications teams. Meanwhile, Ted Woodhead, Senior Vice-President of Federal Government and Regulatory Affairs at Telus, suggested there are about 39 individuals on Telus's regulatory team. While some members of the team focus on broadcasting policy, and about a third are in administrative roles, the group is still substantially larger than those of the civil society groups involved in this study. (In comparison, many civil society groups involved in CRTC policy development have only a handful of regulatory-focused staff, some of whom balance other responsibilities.)

While the monetary sums that these organizations spend on a single policy proceeding are unclear, what is evident is that, more broadly, participation in relevant public policy proceedings is a regular and well-resourced aspect of these firms' business operations.

Middleton, the Professor at Ryerson University, described the situation:

The providers, by and large, there are differences between them but, by and large, this is a part of their business. So, engagement in regulatory processes is something that they need to do to keep businesses running. They have resources that allow them to interact.

Relatedly, Mansell and Javary (2003) wrote about the consequences of such providers' "financial flows and networks" in the British context, including "feedback loops" that function to reinforce dominant views in policy settings and reduce quality of service outcomes (p. 240).

In a few instances, interview participants who participated in internet policy development on behalf of the public interest described times when their interactions with these organizations were confusing and sometimes intimidating. Fenwick McKelvey, Associate Professor at Concordia University, described his experience taking part in a CRTC inquiry into a net neutrality violation which resulted in an unfavourable decision for Bell (CRTC, 2015a). Upon losing, the company took its case to the Federal Court of Appeals, naming McKelvey as part of the file. According to McKelvey:

Bell basically dropped about a foot-high stack [of documents]—and this is kind of standard practice—I had no idea what was going on. I was completely confused and intimidated that I could be on the hook for damages.¹⁴

Engaged citizen Marc Nanni referenced instances where major service providers undercut his contributions by suggesting he “should be aware of this or that”, despite his newness to the policy process and the fact that he is a regular Canadian seeking to participate in an open venue. These behaviours are other examples of gatekeeping practices employed by private interests to undermine the ‘gated’ (civil society parties in this environment). It is illustrative here to highlight Hunter’s (1953) assertions on the maintenance of elite control, including through methods such as “warnings, intimidations [and] threats” (as cited in Lukes, 2004, p. 3). As Nanni said, “you’re up against seasoned professionals”.

As discussed in the previous section, these issues can be exacerbated when civil society groups approach public policy participation singularly, rather than in cooperation with other organizations or individuals working in the public interest. The competitive pressures that exist between groups in the first phase of the policy development process often continue into the consultation phase. Tabish, former campaigns director at OpenMedia, suggested: “I think they see working together as antithetical to their own individual visibility with policymakers but also with funders through media placements, media hits, and media interest”. According to Tabish, the rationale underlying this behaviour can again be linked to the competition for scarce resources:

I think that when [civil society groups] see that attention, that kind of brand recognition being potentially undermined—they get really sketched out and decide that they’re better to go it alone in the hopes that their work will be centered and visible and that that can be leveraged into more resources.

This quote highlights the importance of a political economic viewpoint in this endeavor, particularly in its focus on how such ‘scarce resources’ are distributed, and what this allocation means for “human action” (Mansell, 2004, p. 98).

¹⁴ Another important comment on this matter is from Taylor (2019) who also highlights the extensive legal costs that Bell threatened to put upon public interest advocates if they lost this appeal case against the company: “this legal procedure clearly deters even the most committed public advocate from taking part in the policy process” (p. 12).

These interactions are complicated further when we consider that regulatory interventions in internet policy proceedings are often not a core part of the professional roles of those who submit on behalf of the public interest. Middleton described the situation in the following manner: “. . . you have a whole lot of others, broadly speaking the public interest groups, the academics and individual citizens. All of whom are doing this because they feel it’s some sort of public duty . . .”. McKelvey, the Associate Professor at Concordia University, is someone who holds this sentiment. He suggested that he took part in the aforementioned net neutrality case with a sense of duty as a scholar, and in particular to support a doctoral student who had put forward the initial complaint. Yet, as Middleton notes, this work is demanding and often takes place in the early mornings or late evenings, alongside the other administrative, research, and teaching activities that characterize academic labour.

Learning the rules of the game

Gaining the expertise to engage in public policy consultations can be a significant hurdle to participation in the first place. The policies and procedures for engagement can be extensive (e.g., CRTC Rules of Practice and Procedure, 2010), not to mention intimidating to and ambiguous for individuals who are participating in a formal capacity for the first time. Procedural errors can result in interveners having arguments or evidence removed from the record, and reputational damage. Moreover, powerful stakeholders at times use their procedural expertise to point out relatively minor errors made by other parties, a gatekeeping practice that sometimes prompts the outcomes outlined above. This section argues that excessively arcane procedures are a gatekeeping mechanism that undermine the public interest by making it unnecessarily difficult for new, irregular, and resource-constrained interveners to participate in the internet policy development process. To do so, I focus on the volume of documentation that must be consumed by an intervener to participate in a single proceeding, including the CRTC’s extensive rules of procedure.

Perhaps the most evident procedural norm in Canadian internet policy development is the sheer volume of information produced in a single proceeding or inquiry. The ETHI committee’s inquiry into Cambridge Analytica and Facebook, this dissertation’s second case study, produced two reports, and took place over 25 meetings. Fifty-eight witnesses testified at these meetings, whose testimony comprises many tens of hours of video footage and hundreds of

pages of transcripts. Two briefs were also submitted to the committee. While all this information is readily available on the public record, (aside from the contents of a few private meetings) it is not summarized—outside of the committee’s interim and final reports, the latter which was only published at the conclusion of the consultation phase (ETHI committee, 2018a, 2018b).

Absorbing the necessary content to understand the views and arguments of the key individuals involved in the case takes time, particularly for those who did not follow the inquiry on an ongoing basis. Notably, it is probable that those individuals are often employed in full-time roles that are only peripherally related to regulatory participation, such as academics, or employed on multiple files, one of which is regulatory participation, as is the case in many civil society groups. This is in contrast to the regular monitoring of and participation in such inquiries by well-resourced government relations teams at large companies. McKelvey described the challenges to serving as a witness for the aforementioned Cambridge Analytica inquiry:

So then when coming before the committee, I find out on Thursday that I’m presenting on Tuesday. I’m already on pat leave, I don’t have a ton of time. You’re just expected to get your act together and make a coherent argument. Not a lot of time. So, I get something together, and how do you prepare for that, they’re asking you—how do you regulate social media? How do you deal with content moderation?

The necessities and norms of policy development and the short periods within which stakeholders are required to adhere to such processes and consume relevant information can be linked to Foucault’s (1980) study of the techniques and procedures through which power “freely circulates” (p. 99). In this context, House of Commons committee procedures, and those of the CRTC below, are simultaneously banal and intrinsically linked to power. To the extent that these policy development processes undermine civil society engagement, they are mechanisms and technologies that contribute to, variously, the creation, transformation, and maintenance of forms of domination (Foucault, 1980, pp. 99–102).

This is an even greater issue at the CRTC, where multiple rounds of submissions and interrogatories mean that a single organization can submit hundreds of pages of documents in a single proceeding (CRTC Rules of Practice and Procedure, 2010). Given that it is not

uncommon for interveners to be asked about the positions of other parties in the oral component of the consultation phase, it is reasonable to suggest that many interveners would spend time, or wish to spend time, reviewing the arguments of other groups and individuals. Yet, again, this is a challenging task for many participants. Katy Anderson, former Digital Rights Campaigner at OpenMedia, described her preparations for her first experience intervening before the regulator:

Initially I thought I was going to be able to look at one hearing and read everything that was submitted and quickly I realized that that was not going to be possible, just because of the time that I had and the sheer amount of information that was going to be filed in these proceedings.

Anderson noted that it is this type of work, specifically, understanding the intricacies of past and current internet policy, that is perhaps especially challenging for groups such as OpenMedia that generally learn policy through practice rather than formal legal training. Let alone learning these things and absorbing this information while juggling tasks outside of the policy realm, such as running campaigns, participating in media interviews, and keeping up with administrative work. Another procedural challenge participants described is navigating the legal norms that underpin internet policy development in Canada. The rules of procedure, the regulations by which interveners taking part in an oral proceeding must adhere to, are lengthy. Another illustrative quote is from engaged citizen Marc Nanni:

There are barriers which I overcame, and it took a few years I guess to get used to it. Because when you're in the thick of it, you're presented with a document of rules, practice and procedure. You're holding your head and going 'holy cow, do I really need to understand all of this, and read all these pages, and every other document it links to?'

When we consider such processes of policy development as technologies with an “intrinsic systems character” (Franklin, 1994, p. 249), we can see how this gatekeeping mechanism can function to include or exclude citizens, and their representatives, involved in internet policy development.

Privileged discourse

Resources held by industry participants in Canadian internet policy development also allow these groups to engage with decision-makers through privileged ‘technocratic discourses’ (McKenna & Graham, 2000; McMahon et al., 2017, p. 272), another gatekeeping practice that

characterizes this environment. As Shepherd (2018) highlights, in the CRTC's review of Basic Telecommunications Services, Telus's use of commissioned expert testimony played into existing symbolic understandings of valuable evidence: "politically welcome, industry-funded, quantitative data on markets, market competition, and legal idiosyncrasies" (p. 240). As many interviewees submitted, this type of evidence is often outside the budget of participating public interest groups (Chhabra, 2018a). Katy Anderson, former Digital Rights Campaigner at OpenMedia said:

It's really hard to be able to engage with policy [in the same ways] that telecom companies can that have teams of people that get paid a lot of money and have a lot of experience working on these issues. But I don't think that should discount participation from non-policy wonks.

Perhaps in part due to these budgetary constraints, but also in an effort to convey policy arguments in ways that are both meaningful and accessible, the aforementioned approach employed by Telus is also often not the manner by which many public interest groups choose to present their policy views. In that same proceeding, the anti-poverty group ACORN compellingly used story-telling to highlight the personal challenges posed by high-priced broadband services (Shepherd, 2018, p. 241).

Research has highlighted the extent to which the privileging of certain forms of evidence can undermine public participation in policy development (Goven, 2003; Guttman, 2007). In these contexts, dominant internet service providers and global technology companies involved in Canadian internet policy development are able to wield the power to construct the 'reality' of the policy issue as gatekeepers. White (1950) described the capacity for a newspaper editor to ensure "that the community shall hear as a fact only those events which the newsman, as the representative of his culture, believes to be true" (p. 390). Similarly, through the favouring of 'technocratic discourse', some industry participants are able to shape and influence what are perceived to be the 'key facts' of the policy issues at hand.

These technocratic discourses are also employed by the regulator and elected representatives. Fenwick McKelvey, Associate Professor at Concordia University, described grappling with the legalese used by CRTC commissioners when he was questioned during a regulatory

proceeding. The Associate Professor, who was intervening as part of the Canadian Media Concentration Research Project, a scholarly initiative run out of Carleton University, said:

It was me trying to remember, at the time, I even remember at the hearing thinking about the difference between *ex ante* and *ex post facto*. You know, it was just me on the spot, trying to figure that out on the fly, a coordinated response.

Despite the formality of internet policy development settings, interviewees' comments point to the importance of striking a balance that allows non-lawyers to participate using language that speaks to their areas of expertise. These approaches include the discourses that characterize social science research and activism, as well as plain-language interventions that describe how a policy issue impacts the speaker on an individual level.

There is the additional challenge of making scholarly research, another facet of public interest advocacy in Canadian internet policy development, accessible to the norms, procedures, and gatekeepers that characterize modern policy-making settings (Braman, 2008; Shade, 2008). The sorts of expert submissions put forward by dominant service providers and global technology companies reflect the technocratic discourse favoured in these environments, which claims "rational objectivity and [promotes] action supposedly based on reason and fact" (McKenna & Graham, 2000, p. 226). There are also specific challenges to incorporating meaningful views from members of the public on internet policy issues (e.g., Obar, 2016). These realities raise questions about the real contribution of recent ad-hoc efforts from the CRTC to foster public participation, including the regulator's facilitation of a Reddit thread during the 2017 differential pricing practices proceedings (CRTC, 2017a). Moreover, work specific to Canadian internet policy development highlights the extent to which technocratic discourse remains a disproportionately valued source of evidence collected during the consultation phase (McMahon et al., 2017, p. 272), fostering "policy silences" whereby certain views that do not adhere to these norms and others are held back from the realm of decision-making (Freedman, 2010; Shepherd et al., 2014).

The development of a policy process that properly acknowledges, values, and incorporates the different forms of evidence presented in the consultation phase is undoubtedly a key structural change to Canadian internet policy development that would alleviate this public interest risk. Yet, at the very least, and until these broader structural reforms take place, if at all, finding ways to better mitigate the diverging funds behind different stakeholders' policy interventions

would enable civil society groups to more effectively participate using the terms of debate that dominate this sphere.

Deliberation and decision

The third phase of the policy development process outlined in this chapter is the deliberation and decision phase. In this phase, the policymaker considers the arguments and evidence outlined in the consultation period and issues a formal judgment. In the case of the CRTC, this judgment is usually a policy decision or framework (CRTC Rules of Practice and Procedure, 2010).¹⁵ In House of Commons committees, which feature in this dissertation's second case study, the outcome is typically a report to the House that outlines a series of policy recommendations.

The aim of this section is to outline and interrogate the factors that may sway policymakers' deliberations, and the implications of this influence for the policy recommendations and decisions that are subsequently made. With this goal in mind, I interviewed a range of stakeholders in decision-making roles in the Canadian internet policy environment, including four Members of Parliament from Canada's three major English-language political parties and three regulators. Alongside these conversations, I conducted primary documentary research, which draws on commentary from civil society, government, industry, and media sources, to further investigate decision-making and deliberation in the context of Canadian internet policy. Yet, more than other sections of this chapter, the subsequent paragraphs rely more on abstract or high-level discussions of elements that may *factor into* Canadian internet policy deliberations and decisions, including partisanship, appointment processes, and personal agendas, than quotes from research participants outlining specific examples of decision-making in action.

The following sections proceed in this manner because this phase is the least transparent of the four outlined in this chapter. The individuals interviewed who currently or previously held decision-making roles were extremely limited in what they could reveal about the practices that

¹⁵ Although in other cases the regulator has concluded this phase with another determination (i.e., that a certain issue is *not* a part of the regulator's mandate) (CRTC, 2018a).

characterize institutional deliberations. Subject matter experts who had not previously held such positions did often speculate on these processes which, while insightful and helpful, should be taken with some caution. There are also few public reports and transcripts that provide insights into deliberative conversations. Finally, as many interviewees noted, the rationale that the CRTC in particular provides in its policy decisions is often limited. At times, the regulator will make apparent why it is taking a position and based on what evidence while, at others, the judgment is not as clear.

Based on this research, the following sections examine three elements of the deliberation and decision phase, and the risks prevalent in each: (1) the role of partisanship in CRTC appointments, and the implications of this influence for decision-making, (2) the misuse of government interventions in CRTC decisions and lack of government policy in response to committee recommendations, and (3) the consequences of personal agendas and showmanship for Canadian internet policy action or inaction.

Partisanship and CRTC appointments

In different ways, partisanship plays an important part in the four phases of internet policy development outlined in this chapter. Political preference can influence what issues are identified, what questions are asked, and what arguments are put forward. Yet, when partisanship may be closest to the fore and most worthy of study is in the deliberation and decision phase. The issuance of a policy judgment can effectively enshrine political preferences. While partisan influences are present in the consultation phase, for instance, the power of these preferences is in flux. Partisan influences are at work, but no side has won out. It is when these preferences are preserved in recommendations, policy, regulation, or legislation, that social scientists can most clearly see which party or parties have gained the upper hand. Accordingly, this section examines the heightened role of partisanship in regulatory appointments and committee selections, with the aim to understand how these influences could implicate the deliberation and decision-making phase.

In Canada, the governing federal party and the regulator are connected in many different ways. For one, the governing party plays a role in selecting successful applicants for open chair and commissioner positions at the CRTC. To work in one of these roles, eligible applicants apply online for appointment opportunities (Canadian Heritage, 2018). Through an “open,

transparent, and merit-based selection process”, a selection committee is formed, which usually includes members of the offices of the Prime Minister, the Privy Council, the related Minister, and “a senior official of the responsible Minister’s department” (Government of Canada, 2019). The committee determines selection criteria, develops a recruitment strategy, facilitates the application process, and assesses candidates. At the end of this process, the chair of the selection committee advises the Minister of Canadian Heritage, who submits an appointment recommendation to Cabinet. Once Cabinet approves the appointment, an Order in Council, which outlines the terms of employment, is approved by the Governor General (Government of Canada, 2019).

In 2016, the Liberal government announced changes to governor in council (GIC) appointments, which include the appointment of CRTC chairs and commissioners, to a process that would result in “high-quality candidates who truly reflect Canada’s diversity”. But, despite the fact that this renewed process sought to amend a system characterized as partisan and opaque (Zimonjic, 2016), there is the potential for these appointments to be made with partisan considerations, which could influence how decisions are made at the regulator. According to Brock and Shepherd (2018) under “the guise of appearing to reflect societal values, GIC appointments have become more politicized” (p. 4).

One rationale for this concern is that the process does not readily incorporate the views of Canada’s opposition parties. As McLeod (2012) highlights in a related context, the probability that political appointers select judicial candidates with cross-party views “decreases when an opposition party does not control an approving body and is, therefore, not in a strong institutional position” (p. 271). In a Canadian context, such an approach would better reflect how the country appoints Supreme Court justices or, to a lesser extent, Officers of Parliament, which both involve some degree of opposition input (Barnes, 2019; Office of the Commissioner for Federal Judicial Affairs, 2019). Notably, the latter includes the appointment of some agents of quasi-judicial authorities (Stilborn, 2011, as cited in Brock & Shepherd, 2018), which is the structure the CRTC operates under. That said, given recent revelations that the Prime Minister’s Office uses a partisan database to vet candidates for judicial appointments, it is clear these processes are not immune from partisan considerations either (Leblanc & Cardoso, 2019).

The federal government's influence over CRTC appointments was noted by some research participants. According to Michael Geist, Professor at the University of the Ottawa, "when you've got the power to name people on the CRTC, you've got the power to hear from who you want to hear from, that to me makes you the most powerful institution in all this". Meanwhile, research suggests CRTC chairs may make some procedural decisions on the basis of the party that appointed them (FRPC, 2018a). In an analysis of panel appointees from 1998 to 2017, a study concluded that "commissioners who were not appointed by the party that appointed the chair had a lower chance of being chosen to attend hearings in general, and to chair panels when they did participate" (FRPC, 2018a, p. 26).

A level of partisanship in the appointment of certain public roles is not inherently negative. Some have highlighted the extent to which patronage can provide politicians with a "high-trust relationship mechanism to coordinate across issues" (Brock & Shepherd, 2018, p. 4). This rethinking of appointment processes is not about favouritism or reward, but about governance resources in a world where policy issues are quickly evolving and there is little coordination across increasingly complex governance structures (Brock & Shepherd, 2018, p. 4) Yet, whatever the rationale for patronage in GIC appointments, it is problematic if such considerations factor into appointments to "independent" institutions, such as the CRTC (2019c), as research suggests may be the case (Brock & Shepherd, 2018).¹⁶ Moreover, such changes to the appointment process reflect another gatekeeping mechanism whereby institutional processes are used to exert gatekeeping power. Such partisanship also runs contrary to the rhetoric that the Liberal government has used around these adjustments to the system, which suggests the process is more "open, merit-based and nonpartisan" (Thompson, 2017).

Government responses to decisions and recommendations

Another way that the governing party can hold sway over the regulator is in the amendment or overhaul of the legislation that underpins the CRTC's activities. Indeed, the federal government has plans to overhaul the key legislative documents that guide the CRTC's work, the

¹⁶ Indeed, CRTC policy stakeholders, such as engaged citizen Jean-Francois Mezei, have commented on the extent to which the regulator is not fully independent: "A lot of the decisions are shaped by political considerations . . . The CRTC is sort of halfway between being political and being neutral".

Broadcasting Act and the Telecommunications Act, in the near future (Pedwell, 2020). The governing party can also require the CRTC to reconsider a policy decision or change the regulator's policy direction, which underpins how the CRTC makes decisions and interprets legislation. In recent years, the Minister of the federal department of Innovation, Science, and Economic Development, Navdeep Bains, has sent several policy decisions back to the CRTC for review (Reuters, 2017). In 2019, the federal government formally changed the regulator's policy direction (Order Issuing a Direction to the CRTC, 2019). Such actions show plainly how the governing federal party can use institutional procedures to influence the regulator's priorities and mandate. As Geist said, the governing party has "got the ability to ask the CRTC to review certain things or even when they don't get what they want from the CRTC, [they've] got the power to legislate".

The prevalence of recent measures was not disputed by research participants. Yet, interviewees did differ in how they viewed the appropriateness of such government direction. Kenneth Engelhart, former Rogers Senior Vice-President of Regulatory said, "I think that under the Conservative government, and to some extent under the Liberals, the government wants to pick a fight with the incumbent carriers to show that they're pro-consumers". However, many public interest advocates have called the CRTC's recent change in policy direction a win for consumers against a regulator that does not act in their interests (Canadian Press, 2019). It does seem that some government intervention can democratize internet policy development in Canada. For example, Geist outlined an instance when the Innovation Minister of an earlier Conservative-led government instructed the CRTC to reconsider a decision about usage-based-billing (Cooper, 2011). According to Geist, "that was the wake-up call for the Conservatives that there was a constituency of Canadians that really cared about communications. This had emerged as a pocket-book issue". Such measures allow for elected officials to promptly respond to constituent concerns that are not being addressed in the formal, complex, and lengthy CRTC policy development process. I agree with the view expressed in a recent independent report on the state of Canada's telecommunications and broadcasting landscape, that such policy directions enable "the government to fine-tune policy in light of the rapid pace of change in the communications sector" (Broadcasting and Telecommunications Legislative Review [BTLR] panel, 2020, p. 47).

However, I am also aligned with the panel's suggestion that some government intervention mechanisms are used by powerful industry participants to create uncertainty in Canadian internet policy development. As the report states, "private parties have [...] made frequent requests when they are dissatisfied with a CRTC decision" (BTLR panel, 2020, p. 48). In November 2019, for example, major telecommunications service provider Telus asked for a government review of the regulator's decision on the rates competitors pay to access Telus's high-speed network. In a document obtained by the media, Telus suggests that the CRTC's decision will "depress future investment" and asks the government to "remedy this critical shortcoming" (Shekar, 2019). In quick succession, other dominant providers, Bell and Rogers, also petitioned the federal cabinet on this decision (McClelland, 2019). Highlighting the strategy behind these actions, a legal representative from Teksavvy, one of the smaller providers that benefitted from the regulator's decision, stated: "It looks like they're just trying to exhaust all possible appeal mechanisms to fight a decision that enables Canadians to benefit from competition" (McClelland, 2019). Rather than a good faith attempt to prompt a second look at the regulatory decision on transparent and well-founded grounds, the petitions appear to be a coordinated effort on the part of powerful actors to have a policy changed to better suit private interests. The panel also notes that inconsistencies in the regulatory process around the review of policy decisions further fosters a lack of certitude in the system, which is disproportionately burdensome on civil society groups, who have fewer financial resources and staff (BTLR panel, 2020, p. 48).

Thus, government intervention can have mixed outcomes at the CRTC and sometimes function as a gatekeeping mechanism to the detriment of the public interest. Yet, it is also important to highlight the *lack* of policy action that characterizes other venues of Canadian internet policy development, and the implications of this absence. Notably, policy recommendations that emerge from the House of Commons committee system, the other major focus of this project, are often seen by the federal government as "belonging within a group of influences normally having distinctly secondary importance" (Stilborn, 2014, p. 356). This lack is despite the fact that committees' mandate is to 'study' and 'report' on issues referred to them by the House of Commons (House of Commons, 2005). Moreover, Stilborn (2014) highlights that this albeit secondary influence is not so much from technical expertise and bipartisan collaboration but "the complex and highly political considerations [that] affect the positioning of parties in

committees, the positioning of committees in relation to individual ministers and governments, and the positioning of governments in their responses to committees” (p. 356).

This network of factors is especially troublesome when we consider the contentious role that global technology companies play in Canadian society and politics. As I have outlined earlier, many of these firms have been linked to the governing Liberal Party of Canada (Turnball, 2018b; Wilkinson, 2019b). Moreover, these companies play important roles in democratic electoral systems (Anstead, 2017; Bannerman et al., 2020; Levin, 2017). The risk that committee recommendations that run contrary to a political party’s interests around and relationships with these firms are readily ignored is real. The recent example of the Liberal party’s rejection of policy recommendations put forward by the ETHI committee that would have made political parties take greater measures to protect the privacy of Canadians is illustrative (Curry, 2018). As Charlie Angus, New Democrat Member of Parliament, stated that the Liberal Party is:

collecting massive amounts of data points on Facebook and they think it will give them a huge advantage in the election. No political party wants to give up their secret weapons coming into the next election.

In this way, government inaction on internet policy files that is driven by the political gain of a given party is undoubtedly another threat to the public interest that can emerge within and around the deliberation and decision phase. In this case, however, it is the lack of decision, or ‘policy silence’ (Freedman, 2010) that is notable and can be considered a gatekeeping practice.

The implications of personal agendas and showmanship

Another risk to the public interest that may factor into the deliberation and decision phase is the personal agendas and personas of key actors at the regulator and in the federal government.

These factors have the potential to unduly influence internet policy deliberations and decisions in ways that undermine the public interest. To illustrate the influence of a single CRTC chair’s agenda or approach, Michael Geist, University of Ottawa Professor, suggested:¹⁷

¹⁷ Another relevant quote from Geist:

Under Blais [CRTC chair from 2012-2017] you've got a pretty aggressive chair who basically said, 'this is the mandate as I see it, and this is what I intend to do, and that's that'. He was very strategic about ensuring he had the support that he needed from his fellow commissioners to make that happen.

In this interviewee's view and others, former chair Jean-Pierre Blais engaged in the role with a specific set of aims, and a strong willingness to fulfill them. Importantly, in these interviews, including the one quoted from above, participants rarely suggested that Blais acted in ways misaligned with the public interest. They rather raised the possibility that a chair who was so inclined could influence the organizational direction of the regulator in ways that disproportionately favoured private interests and reduced public participation, an activity that illustrates another gatekeeping practice. In fact, some researchers have commented on the extent that Blais' "stewardship opted to put Canadians 'at the centre of our conversations about the future of broadcasting and telecommunications'" (Blake, 2018; May & Middleton, 2019, p. 20).

By contrast, several interviewees raised concerns about the shift in direction prompted by current CRTC chair, Ian Scott, who took over from Blais in 2017. According to one civil society advocate, Scott "wants to rely more on fact-based submissions in CRTC hearings, which to me sounds like he wants to rely more on lawyers' submissions rather than the experiences of Canadians". This point raises concerns about the continued prevalence of 'technocratic discourse' in CRTC internet policy formation, which can factor into the 'spectral' or 'phantom' objectivity attached to policy decisions that are characterized as "eminently sensible, scientific and rational" (Freedman, 2015, p. 104; McKenna & Graham, 2000).

There was a sense that Blais went into most of these hearings or studies or whatever with a pretty good sense of where he wanted to go, and he was going to make it fit. At a certain level, if that was the case, you could say whatever you wanted and, of course he's open to persuasion you hope, but generally speaking he has a pretty good idea of where he wants to go.

Scott himself has highlighted how he differentiates his approach to the role from his predecessor by taking on the position of “arbitrer of the ‘public interest,’ being neither pro-consumer nor pro-industry” (Gordon, 2017). While at face value, this designation may seem benign, scholars have long-highlighted the entrenchment of market principles in Canadian communications policy development (Middleton, 2011; Rideout, 2003; Shepherd et al., 2014). When a playing field is already tilted, acting as mediator risks deepening existing rifts between parties. The role of a chair’s personal agenda in CRTC internet policy formation was also highlighted by several interviewees currently employed by the regulator. Philippe Tousignant, Research Director at the CRTC, tempering his comments by identifying norms of procedure at the regulator, said “the chairs do influence the overall approach to dealing with issues within the organization and they have their style. They do bring an angle.” Bill Abbott, CRTC counsel, suggested:

Something else that jumped out when it comes to policy development . . . is the influence that individual chairs have. The organization has 350 or 400 people in it, but a single individual at the top really projects a particular approach.

The ‘angle’ or ‘particular approach’ projected by a CRTC chair can pose a threat to the extent that public interest arguments are valued and incorporated into internet policy development. The degree to which Scott’s approach undermined the influence of public interest voices in CRTC internet formation will not be entirely clear until the completion of his tenure in 2022. Yet, several recent actions raise concerns about the ways his ‘arbitration’ does not duly account for the real issues raised by civil society advocates. In 2019, Scott rejected a request that the CRTC investigate providers’ sales tactics, a long-standing issue in the Canadian communications market, a decision which the federal government later forced the regulator to reconsider (Jackson, 2018). Not least, in 2018, the chair highlighted the need for ‘flexibility’ in Canada’s net neutrality regulations, rules that have been widely supported by the Canadian civil society community, including in the CRTC’s 2017 differential pricing practices proceedings (CRTC, 2017b, 2018b). At the same time, legitimate criticisms have been raised about the extent that Blais’s vocal emphasis on an “open and transparent deliberative process” functioned simultaneously as an element of ‘showmanship’ or public relations (Shepherd, 2018, p. 241).

Similar concerns can be raised about the personas of politicians active in Canadian internet policy development. Before losing her position in a Cabinet shuffle, former Heritage Minister

Sabrina Wilkinson

Melanie Joly dramatically stated “everything’s on the table” in reference to a planned overhaul of Canada’s broadcasting and communications legislative framework (Leblanc, 2016). Four years later and such legislation has yet to be tabled. Members of Parliament Charlie Angus (New Democrat) and Nathaniel Erskine-Smith (Liberal) have been vocal critics of the activities of global technology companies in traditional and social media (Angus, 2018, 2019; Erskine-Smith, 2020). These contributions are often helpful in shedding light on these policy issues and scrutiny towards the misbehaviours of these companies. However, some have questioned the extent to which these efforts are distinct from Blais’s ‘showmanship’ (Shepherd, 2018). Rather, critics raise the possibility that such moves may be designed to draw media attention and public praise (Thomson, 2019), despite being aligned with the public interest. In any case, sustained and rigorous efforts from any elected representative or political party to address the many risks posed by global technology companies through smart and forward-looking regulation are not readily apparent.

What is needed are a federal government and regulator that actually explicitly work in the public interest, regardless of the agendas or personal objectives of key members of these organizations. Unfortunately, given the market principles entrenched in historical and recent CRTC decision-making (Telecommunications Act, 1993; Order Issuing a Direction to the CRTC, 2006), the flawed economic system that underpins the domain of policy development (Harvey, 2005), as well as the ongoing influence of individuals chairs, it is challenging to envision such a CRTC in the near future. As for elected representatives, meaningful policy responses to the threats posed by global technology companies also seem distant, although recommendations are abundant (BTLR panel, 2020; Standing Committee on Access to Information, Privacy and Ethics, 2018b).

Recuperation

The final stage of the policy development process outlined in this chapter is recuperation, where eligible stakeholders recover costs incurred in engagement in the policy development process through public programs. Civil society groups and others who engage on behalf of the public interest may be eligible applicants for such programs. These are often groups that have minimal or no funds within their operating budgets to produce regular and comprehensive public policy interventions, or at least in comparison to the frequency and magnitude of industry participants’ contributions. By contrast, internet service providers, global technology

companies, and other industry actors, groups that fund the cost of regulatory involvement as part of their regular operating expenditures, are generally ineligible. This section focuses on a CRTC-facilitated program that plays an important role in Canadian internet policy development: the telecommunications costs award process. Initially established in 1978, the program operates with the recognition that, unlike industry participants, “individuals and groups [that represent consumer interests] often require financial assistance in order to effectively participate in such proceedings” (CRTC, 2009).¹⁸

The process is supported by two sections of the Telecommunications Act (1993), which state that the CRTC may allocate funds to policy development participants, and that the regulator may determine the sum of these costs and “by whom and to whom any costs are to be paid” (s. 56, 1-2). The CRTC can award costs on an interim or final basis (CRTC Rules of Practice and Procedure, 2010, s. 60, 65), although the latter is the approach most applicants take. To determine eligibility for final costs awards, the regulator follows several criteria: (1) the applicant demonstrates that they “represent a group or a class of subscribers that has an interest in the outcome of the proceeding” (2) the applicant helped the regulator better understand the policy issues at hand and (3) the applicant participated in a responsible manner (CRTC Rules of Practice and Procedure, 2010, s. 68a-c). As well, the applicant must not have ‘sufficient funds’ to adequately represent its interests, or the interests of its representatives, and its costs “shall not exceed those necessarily and reasonably incurred” (CRTC, 1978, s. 52, 1a, 5, as cited in FRPC, 2017, p. 3). The applicant must also identify which stakeholders should pay the costs (CRTC Rules of Practice and Procedure, 2010, s. 66, 1b) and include in their application as

¹⁸ An illustrative, albeit lengthy, quote from the CRTC decision that established the program reads: The Commission has concluded that if the objective of informed participation in public hearings is to be met, some form of financial assistance must be made available to responsible interveners, both active and potential, who do not have sufficient funds to properly prosecute their cases, particularly where such interveners represent the interests of a substantial number or class of subscribers. The complexity and importance of the issues which come before the Commission often demand that expert resources be available for their adequate treatment. Such resources are employed by the regulated companies. In the Commission’s view, it is critical to, and part of the necessary cost of, the regulatory process that such resources also be available to responsible representative interveners (CRTC, 1978, as cited in FRPC, 2017, p. 16).

many as six forms¹⁹ along with supporting receipts and invoices (CRTC 2015c). Within 10 days of the CRTC receiving the file, other stakeholders may respond to the application (CRTC Rules of Practice and Procedure, 2010, s. 67) and at a later unspecified date the regulator publishes a decision on the application, referred to as a ‘cost order’, which outlines whether and how much costs the applicant should recover (FRPC, 2017, pgs. 3-4). If costs are approved, they are paid to successful applicants by Canadian telecommunications service providers, based on providers’ total operating revenues (FRPC, 2017, p. 3) (CRTC, 2010b).

Despite these provisions and guidelines, however, the CRTC’s costs award program is limited in several key ways. Drawing on documentary evidence and findings from interviews with a range of stakeholders familiar with this program, this section argues that the contributions of the CRTC’s costs award process are undermined by both the regulator and Canada’s dominant telecommunications service providers. The lack of transparency and consistency in how the CRTC makes costs award decisions reflects a gatekeeping practice that has the potential to foster a ‘chilling effect’ on potential applicants and generate operational issues for Canadian civil society groups active in internet policy development. I also explore how the behaviours of dominant telecommunications service providers that respond to these applications are unnecessarily burdensome on public interest groups, which illustrates another gatekeeping practice that exacerbates existing inequalities between private and public interest stakeholders.

In contrast to the preceding sections, which explored internet policy development processes at the CRTC and within the House of Commons committee system, this section focuses on a single program run by the regulator. The rationale here is that witnesses summoned to provide testimony to House committee meetings are not compensated and have no recourse for payment (Parliament of Canada, 2020). Accordingly, there is no comparable cost mechanism to examine in House of Commons committee inquiries. While this scenario is not ideal,²⁰ a broader

¹⁹ A summary of legal fees, a summary of expert witness fees, a summary of consultant and analyst fees, an affidavit of disbursements, a summary statement of disbursements, and a summary of fees and disbursements.

²⁰ The lack of funds for groups and individuals testifying on behalf of the public interest before House of Commons committees prompts another asymmetry between civil society advocates and industry actors.

examination of this absence is beyond the scope of this dissertation. Rather, Chapter's 5 case study, which explores a House of Commons committee investigation into Facebook and Cambridge Analytica, defines and explains the *impact* of the inquiry's policy recommendations.

Needless complexities

Many interviewees who had previously participated in the CRTC's costs award process highlighted the onerous nature of the application, and the delays in the payment of awarded costs. Rather than a clear and straightforward process that provides disadvantaged parties the resources to engage in CRTC internet policy development, it was evident that, for many, the system further 'alienated' them from the policy formation process (Freedman, 2015).

Interviewees described the process as unwieldy, and several outlined the many different documents that needed to be completed and reviewed to submit a comprehensive and informed application. They also emphasized the extent to which first-time applicants needed to rely on expertise from other civil society organizations to determine how best to complete an application—a necessity that could be daunting or infeasible for those who are new to the internet policy community in Canada. Josh Tabish, former Campaigns Director at OpenMedia, described his experience submitting costs awards applications in the following manner:

It was a real nightmare. [...] Basically, there is no one place on the CRTC's website where a representative from an organization can go and find out how to file a costs award. It exists in disparate locations all over the Commission's website and the only way to figure out how to file one is to reverse-engineer another organization's' successful costs award and then phone people who have filed them for advice on timing, deadlines, submission protocols, formatting.

Now while there is at least one page on the CRTC's website that includes the costs assessment forms to be submitted with an application, and several relevant guidelines and documents (CRTC, 2015c), the breadth of materials actually needed to submit a comprehensive application is absent. For one, there is a lack of information for those applicants who seek to understand the key precedents that underpin the costs award process. The regulator states that cost orders are in part based on prior decisions (CRTC, 2010c). Yet, there is no accessible summary or guidance documents to support those who may not have the resources to review previously

published costs decisions. According to Tabish, the risks facing costs awards applicants who do not review relevant precedents are real:

If you haven't done some cursory assessment of every costs award decision that's been issued in the past decade then you could be setting yourself up for failure by not recognizing that certain types of activities are or aren't covered.

Other information that is necessary to understand and participate in the program is disparate, including the CRTC's Rules of Practice and Procedure and its associated guidelines (CRTC Rules of Practice and Procedure, 2010; CRTC, 2010a). Further, the decision that established the costs awards process is not accessible on the regulator's website, as only calls for comments and decisions from 1984 onwards are published online (FRPC, 2017, p. 3). Most importantly, however, the information in many of the abovementioned documents does not offer a straightforward understanding of the costs award program and process, particularly for first-time participants in CRTC policy development and for those without legal backgrounds. Many of these documents are lengthy, complex, and require legal expertise and knowledge of related documents and decisions. These realities are misaligned with the "rhetoric of 'openness and inclusion'" (McLaughlin & Pickard, 2005, p. 359) that is used to describe many internet policy development environments, including the CRTC (Ladurantaye, 2013).

A certain lack of consistency

Another limitation to the costs award program is the regulator's inconsistent interpretations of its governing laws and procedures. As several research participants explained, some recent decisions to deny costs award applications have been made on an unclear basis. An example that may reflect this point is the case of the DiversityCanada Foundation, an organization that has been denied costs awards on several occasions in recent years (CRTC, 2014c).

In the first instance, the organization, on its own behalf and on behalf of the National Pensioners Federation of Canada, made a costs award application for reimbursement for costs incurred in the development of a formal request to the CRTC to reconsider a section of the mandatory code-of-conduct for Canadian wireless carriers (the 'Wireless Code').

DiversityCanada's rationale was that the regulator did not provide adequate support for its decision, ignored pertinent evidence, and failed to consider a relevant legal principle (CRTC, 2014a). The CRTC rejected the organization's request and the supporting costs award

application, which included expenses of \$32,760.73 (CRTC, 2014a, 2014c). According to the CRTC, the costs award application was denied as the submission “did not assist the Commission in developing a better understanding of the matters that were considered” (CRTC, 2014c). The CRTC later rejected DiversityCanada’s request for a reconsideration of the cost order, stating that the formal request made to the regulator to review a section of the ‘Wireless Code’ “did not provide any argument of merit to support its position” making the groups ineligible for a costs award (CRTC, 2015b).

DiversityCanada is not the first costs award applicant to be denied a claim, and there may be questions to be raised about the organization’s applications. Yet, the denials of its costs award applications in the abovementioned instances highlight the potential ramifications of cost orders that deny public interest organizations costs awards solely on the perceived *merits* of their arguments. Basing a costs award decision on the success of an argument rather than its contribution to the discussion of a policy issue runs the risk of undermining the core mandate of the program. As DiversityCanada outlined in a governmental appeal:

The CRTC’s denial of costs on the basis that the Petitioners “raised no genuine issue for the Commission’s consideration” or “did not provide any argument of merit to support its position” was contrary to the intent and spirit of the CRTC’s own determinations in establishing its costs award procedure. (DiversityCanada, 2016)

In this quote, DiversityCanada refers to the fact that the costs award mechanism was designed to, unlike a court system, compensate those who add insight to the relevant policy dialogue, rather than those who present the ‘winning’ argument. To do otherwise could have a chilling effect on public interest participation in the process. As several research participants warned, even a small number of costs orders that rely on logic contrary to the spirit of the process has implications for whether and how civil society groups participate in the costs award program, and telecommunications policy development broadly. Israel outlined the implications of such a ‘chilling rule’, saying that it can:

ultimately [lead] to a record that’s less rich . . . and it’s an asymmetric lack of richness because again this is not an issue that the telcos, who are the most frequent representers on the other side of this issue, have to deal with.

Another concern is the extent to which decisions misaligned with the spirit of the program are made into precedents, particularly given dominant telecommunications service providers' familiarity with past regulatory decisions.

The CRTC also limits the effectiveness of the costs award program by taking long periods of time to make cost order decisions. While program applicants and respondents are required to promptly submit documentation (30 days and 10 days, respectively), the regulator is not bound to any public schedule. This discrepancy means that while applicants could be denied costs awards should they fail to adhere to the mandated deadlines, the regulator can opt to delay for months or even years with little, if any, recourse available to applicants. Part of the delay, Bill Abbott, current CRTC counsel and former Bell Assistant General Counsel, suggests, is related to the fact that the regulator waits until after the relevant policy has been decided, which often takes the better part of a year. Yet, there have been many recent cases where a cost order has been published significantly later than its related policy decision. In one example, an intervener was granted a costs award (December 4, 2017) nearly nine months after the publication of the policy decision (April 20, 2017) (CRTC, 2017i). Considering the final submission deadline for stakeholders involved in the case was November 23, 2016, the period between the completion of work on the policy intervention and the cost order was nearly a year (CRTC, 2016c).

Research suggests these delays have increased in recent years. In a survey of the 135 cost order decisions issued by the regulator between January 1, 2013 and November 10, 2017, a study shows that the time between a costs award application and cost order has more than tripled in the nearly five-year period, from 45 to 138 days, roughly (FRPC, 2017, p. 13). An update to this study suggests that these numbers continue to rise as applicants in 2018 waited on average 9.6 months, with "81% waiting more than six months and 19% waiting more than a year, after filing" (FRPC, 2018b, p. 20). Neither the sum of resources claimed, nor the number of costs award applications made in relation to a single policy proceeding, appear to influence the time taken to issue a cost order (FRPC, 2017, p. 13). These delays and other problems with the program have led to groups explicitly opting not to participate in policy development (Consumers Council of Canada [CCC], 2019, p. 2).

This latter finding in particular seems to run contrary to an e-mail from the regulator sent to Canada’s public broadcaster and published alongside an article about the costs award process. In the message, a CRTC representative wrote:

The time it takes for the Commission to [publish a cost order is] influenced by the number of applications received, and the length of the proceeding to which the cost application relates, as the CRTC evaluates the contribution of the cost applicants’ submissions before making its determinations. (Valladao, 2018)

It remains unclear what exactly is causing the substantial increase in delays in the issuance of CRTC costs awards. But this change has real implications for the operations of civil society organizations involved in Canadian internet policy development. The most obvious example is the Public Interest Advocacy Centre (PIAC) which has publicly stated that it would soon “run out of money” as a direct consequence of the regulator’s delays in the repayment of costs awards (Johnson, 2018).²¹ In January 2019, the organization submitted that it laid off two of its staff and moved to “a smaller, less desirable location in order to further economize while our cost claims awaited adjudication” (PIAC, 2019, p. 38).

Private interests’ influence on the costs award process

I think the cost recovery process in general—its existence is very critical. I think without it you wouldn’t have public interest participation in CRTC proceedings. It’s very specialized, it’s very labour intensive and there is no generalized funding for that type of work. So, if there was no cost-recovery mechanism for doing that, there just wouldn’t be expert input into proceedings on the public-interest side.

This statement, spoken by Tamir Israel, staff lawyer at the Canadian Internet Policy and Public Interest Clinic (CIPPIC), reflects the views of several research participants. These interviewees suggested that the costs award program is theoretically a valuable contribution to Canadian internet policy development in Canada. They also suggested that the program fosters a greater degree of civil society participation in Canadian telecommunications policy development than there would be had the mechanism not been created.

²¹ At the time of writing, PIAC is still in operation.

Yet, as research participants outlined in different ways, the process has been undermined by gatekeeping practices employed by the regulator, as I discussed in the preceding section, and dominant telecommunications service providers. In some cases, research participants felt that these providers deliberately seek to undercut the legitimacy of the process. Josh Tabish, former OpenMedia Campaigns Director, insisted:

The incumbents who have to foot the bill for the program really hate it and they are absolutely vicious in their efforts to discredit participants in the program. To chip away at the types of activity that are considered valid for funding and to ultimately smear and discredit anybody who makes an application through the program.

Indeed, dominant Canadian telecommunications service providers have long tried to influence the design and use of the costs award program towards private interests. In September 2009, a group of providers, including Canada's 'big three' (Bell, Telus, and Rogers) formally asked the regulator to initiate a public proceeding to review the program on the grounds that "there is a lack of incentive for costs claimants to control their own costs" (CRTC, 2010b). The application suggested that costs award claimants "should be required to submit a budget of estimated costs for a proceeding for the Commission to pre-approve when costs are expected to be \$10,000 or greater" and make a formal statement asserting that "without a costs award, their participation in the proceeding would cause them to suffer significant financial hardship" (CRTC, 2010b). While few of these proposals were taken up by the regulator, such examples do well to highlight how some providers envision a revised program and make efforts to influence changes to that effect. In interviews, members of these providers' regulatory teams also outlined perceived limitations of the program, including alleged excessive rates granted to civil society organizations. Kenneth Engelhart, former Rogers Senior-Vice President of Regulatory, suggested: "It seemed to me that the CRTC was fairly liberal about awarding costs."

Yet, many of these assertions seem irreconcilable with how civil society organizations participate in CRTC policy development, and the corresponding costs award process. As a number of interviewees revealed, costs award applicants regularly make claims for less work than was actually completed. According to Israel:

Even with this costs recovery stuff, we lose money on proceedings, staff money. We don't claim everything . . . There may be some NGOs out there, I've never heard of one

myself, that recover more in costs awards than they put in staff time. . . . That is 100% not the case for CIPPIC, we barely break even in terms of recovering the amount of time we put into the intervention. . . . That's because every hour we put into an intervention, you claim like one in five or something.

Moreover, in contrast to private-sector participants, including Canada's major providers, costs award applicants are generally within the not-for-profit sector, meaning there is little incentive to ask for additional funds in the first place. Israel described this fallacy in the following way: Non-governmental organizations "by definition are non-profit, so there's no real making money to begin with. It's not like if we get more costs awards, we get a bonus. There's no making of money at all". At the same time, research reveals that the majority of costs awards claims made are small, particularly in comparison to the resources behind dominant providers' policy interventions. According to one report, between January 1, 2013 and November 10, 2017, applicants sought on average \$24,586. Just over half of applicants (70 applicants, 51.9 per cent of those examined) requested less than \$10,000 (FRPC, 2017, p. 12).

The act of completing a costs award application is also a process of unpaid labour. Civil society organizations who apply for costs cannot account for the time spent on preparing the application and responding to challenges from providers in their costs claims. In contrast, the regulatory teams of dominant telecommunications service providers are fully-funded to participate in the process, which they actively do by regularly and extensively contesting costs awards applications made by Canadian civil society organizations. Furthermore, while allowing providers to reply to applications is theoretically fair, some interviewees commented on the burden prompted by challenges in the costs award process, especially those that are not 'meritorious'. According to Israel:

A lot of the objections to costs award claims . . . reiterate over and over the same kind of challenges . . . even ones that have been dismissed in the past. But you still need to respond kind of exhaustively, which takes time.

This labour, combined with the other burdens identified in this chapter, can have a real impact on the groups and individuals who participate on behalf of the public in Canadian internet policy development. Among other concerns, the costs award process seems to foster a system where consumer-focused policy participants are constantly on their back-foot. In this system,

these groups often find themselves completing unpaid work, waiting for payment, and dealing with bad faith challenges from well-resourced industry participants. These challenges are compounded by the fact that the costs award process is perhaps the least visible element of the CRTC policy development process, garners little media attention, and is largely unknown to the general public. My hope is that this research helps reveal dominant service providers' "principles of operation" around this program "whose effectiveness is increased by their being hidden from view" (Lukes, 2005, p. 63).

Conclusion: A dire situation

Although there are more phases to policy development than those outlined in this chapter, my aim has been to identify and explore four key 'moments' in Canadian internet policy formation: issue-identification and framing; consultation; deliberation and decision; and recuperation. I have explored how the public interest can be undermined during these phases, including through complex and opaque institutional norms and processes, and influence on the part of industry actors. Both these elements of the system exacerbate the lack of resources behind individuals and groups participating on behalf of civil society. These restrictions to public interest influence in Canadian internet policy development are illustrated in insights related to the gatekeepers, gatekeeping power, and gatekeeping practices and mechanisms that characterize these venues of policy formation. We can also observe the ways that these dynamic processes, actors, and tools undermine the 'gated', most often civil society policy participants.

My research shows that there are particular or heightened challenges that occur in each phase. In the issue-identification and framing phase, for example, private interests' disproportionate access to decisionmakers can make these organizations gatekeepers by providing them with "agenda-setting power and the ability to [...] alter the rules of the game that others have to interact within" (Olsen et al., 2014, p. 2585). In the consultation phase, 'technocratic discourse' is a gatekeeping practice that undermines the capacity of groups and individuals participating in the public interest to intervene on their own terms (McKenna & Graham, 2000). During the decision and deliberation phase, the extent to which the CRTC chair can guide the regulator's activities based on personal agenda reflects a form of gatekeeping power (Jackson, 2017). The delays in the CRTC's costs award program, and the implications of this lag for applicants (CCC, 2019, p. 2), reflect another gatekeeping practice.

Yet, these tools of analysis are only one part of the story. The practices and events examined in this chapter exist within an economic system already skewed towards private interests (Harvey, 2005). Canadian internet policy development is one microcosm of a broader sphere whereby dominant power is “ceaselessly working to maintain and extend its material control and symbolic reach” and subverted parties are “correspondingly devising strategies to thwart and reverse that appropriation” (Scott, 1990, p. 197). I have not yet explored these ‘thwarting’ strategies (Scott, 1990), although they are a crucial part of the struggles over power that manifest in these policy debates. The next chapter, which investigates a CRTC case where civil society groups ‘won’, will begin to address that absence.

Chapter 4: The CRTC's differential pricing practices consultation

Net neutrality has been at the forefront of many internet policy debates in recent years. India, the US, and the EU, among other countries and blocs, have legislated, and in some cases repealed, policies meant to ensure that internet service providers allow access to content without preference or discrimination to certain types or sources of information (Regulation (EU) 2015/2120, 2015; Order DA 17-127, 2017; Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016). Canada is no exception to the rule. Over the past 10 years, the Canadian Radio-television and Telecommunications Commission (CRTC), has introduced a number of regulations that have explicitly addressed this principle (CRTC, 2014b, 2015a, 2017b). Like many policy debates about this issue internationally, these regulatory dialogues have often been extremely contested in Canada, with a range of stakeholders advocating for conflicting positions (Braga, 2017).

This chapter is the first of two case studies that investigate the politics of Canadian internet policy development, and how forms of gatekeeping characterize these dynamics, with reference to a detailed and in-depth analysis of a policy consultation, and its subsequent decision. Whereas the preceding chapter reviewed a range of internet policy decisions, made by the regulator and Canada's federal government, the subsequent sections focus on the CRTC's differential pricing practices consultations, which resulted in a policy that comprises one part of Canada's net neutrality regulatory framework (CRTC, 2017b). In contrast to the earlier discussion of the norms typical to Canadian internet policy formation, this discussion seeks to examine where and how gatekeeping power is exercised within a bounded case

Among other questions, this chapter asks: What gatekeeping practices and mechanisms occurred within this particular context? How do these manifestations reflect, or differ, from Chapter 3's wider analysis? What do these similarities and variations mean for that chapter's conclusions? Using Chapter 3's delineation of the four phases of internet policy development,

this chapter examines the politics of this case's respective periods of issue-identification and framing; consultation; deliberation and decision;²² and recuperation.

I selected the CRTC's differential pricing practices proceedings, and subsequent decision, as this dissertation's first case study for four reasons. The first is that the period during which stakeholders prepared and took part in the proceedings (from roughly May to November 2016, with the publication of the decision in April 2017) means that the regulatory dialogue surrounding this case is closed, but still recent. As many of the stakeholders interviewed for this project frequently participate in CRTC and other policy proceedings, it was methodologically important that I select a proceeding they could readily remember and discuss during my fieldwork in late 2018 and early 2019. Moreover, as individuals employed by organizations involved in Canadian internet policy formation regularly change jobs, and sometimes industries, choosing a somewhat recent formal policy discussion meant greater access to interviewees.²³

The significance of net neutrality as a policy issue in Canada at the time of these proceedings is another reason why I selected this case. While issues like misinformation, algorithmic transparency, and electoral interference currently dominate discourse about internet policy (Bryden, 2019; Curry, 2018; Tunney, 2019), and feature in my second case study, net neutrality was at the forefront of the conversation about internet regulation in the mid-2010s and, in other countries, remains a dynamic topic of discussion in regulatory circles (Kelly, 2020; Reuters, 2019). Accordingly, a study addressing this issue in a Canadian context remains warranted and relevant.

Third, this is one of only a few cases where the CRTC facilitated a large-scale public engagement initiative, in this case via the online platform Reddit. As I discuss later in this

²² A discussion of deliberation in this case study proved challenging, for reasons described in the relevant section. Accordingly, my discussion largely speaks to the differential pricing practices decision rather than the decision *and* deliberations.

²³ For example, as policy interveners in CRTC cases are required to publicly share their e-mail addresses as part of policy submissions, I had access to a fairly up-to-date database of potential recruits' contact information.

chapter, over 1,000 Canadians voiced their views on differential pricing practices during the initiative (CRTC, 2017b), far more than the majority of public dialogues led by the regulator. Active and expansive efforts from the CRTC to engage citizens and people living in Canada in internet policy development are rare. As a focus of this project is whether and how the views of the public are incorporated in internet policy formation, the data provided by this endeavour, and the views of research participants who observed the initiative, provide valuable insights to questions that would have been difficult to tackle had I opted for another case.

Finally, I selected the differential pricing practices case because it is an example of a policy decision where public interest groups, for all intents and purposes, won. The CRTC ultimately sided with many of the arguments put forth by individuals advocating on behalf of the public (CRTC, 2017b). Consumer advocates, some interviewed for this project, held views in large part aligned with the decision (Braga, 2017; Public Interest Advocacy Centre [PIAC], 2017), although a number suggested that the regulator did not go far enough to support the public interest (OpenMedia, 2017). Given the forms of gatekeeping explored in the preceding chapter, and my discussion of how these actors, practices, and mechanisms have real implications for subsequent policy decisions, a key aim of this chapter is to determine why this particular policy decision initially seems misaligned with those findings. Was this instance an anomaly? Does it refute Chapter 3's findings? What factors contributed to this success?

As I discuss throughout this chapter, the factors behind civil society's success here include the efforts of public interest interveners to put this issue on the agenda, the international prevalence of net neutrality as a policy issue, and, to a lesser degree, the level of public involvement from certain groups in this particular proceeding. This case reflects the extent to which groups and individuals participating on behalf of civil society in Canadian internet policy development are not "passive, reactive" victims but actors with "existing power to initiate struggle" (Clever, 1979, p. 65). These forms of resistance occur at multiple entry points (Huke et al., 2015, p. 732) and can subvert the gatekeepers of a given environment, and how and whether these actors exercise gatekeeping power.

But the differential pricing practices decision is only a short-term win for Canadian public interest participants. As some consumer groups submitted, the decision does not acknowledge the breadth of policy arguments put forward by consumer advocates (OpenMedia, 2017)

Statements from the current CRTC chair and recommendations from a government-appointed panel also suggest that the principle of net neutrality may be at risk in Canada (CRTC, 2018b; Geist, 2020). The US, the country with the greatest influence over Canadian public policy, recently repealed federal net neutrality legislation (Evangelista, 2018). Canada's net neutrality framework, established in part through the differential pricing practices decision, is in no way guaranteed. In the words of Jean-Francois Mezei, an engaged citizen in Canadian internet policy development: "Like racoons trying to get into racoon-proof bins" dominant telecommunications service providers "will get smarter and smarter every time they try an assault" on net neutrality principles (Vaxination Informatique, 2015, p. 4).

Moreover, many of the problematic dynamics identified in broader internet policy development processes are also evident in this case. Well-resourced telecommunications service providers leveraged funds and existing expertise in regulatory processes to undermine public interest groups and advocates. A lack of transparency and concern for the operational realities of civil society stakeholders on the part of the CRTC is another reoccurring theme. I also explore the 'heterogenous' nature of Canada's civil society sector, and how it can manifest in "methods of exclusion" against less powerful members of the community (Godsäter & Söderbaum, 2017, p. 123).

These realities foster a system that steadily erodes the capacity for civil society participation in CRTC internet policy development. Certainly, there will be 'wins' for the public interest in the broader trajectory of regulatory decision-making. But these moments of resistance and subversion, which are themselves tenuous, do not erase the long-term implications of these politics and practices. Instances of civil society victory are also often co-opted by the CRTC to bolster the regulator's rhetoric around openness and inclusion (e.g., CRTC, 2017e), despite the forms of exclusion that characterize this domain. Private interests also use these moments to exaggerate public interest influence in Canadian internet policy development, and hide their dominance in this space. In particular, the challenges inherent to the recuperation phase of CRTC internet policy development remain hidden, despite their tangible ramifications to civil society groups' operations (Johnson, 2018; PIAC, 2019, p. 1). The differential pricing practices decision is a small triumph in the otherwise highly fraught state of public interest participation in Canadian internet policy formation.

In brief, the outline and findings of the subsequent sections are as follows. To provide the reader with some necessary context, the next section is mainly descriptive and provides a synopsis of the policy issues central to this case study. In broad strokes, it outlines an understanding of differential pricing practices within the Canadian internet policy environment. This is followed by a discussion of the events that prompted the initiation of the differential pricing practices proceedings, including two complaints put forward by a group of public interest organizations (CAC-COSCO-PIAC, 2015) and an engaged citizen (Vaxination Informatique, 2015), respectively, against telecommunications service providers employing the practice. I also discuss how the regulator framed the policy dialogue within the inquiry's notice of consultation (CRTC, 2016c). The subsequent section provides a detailed analysis of the range of stakeholders that took part in the case's public proceedings, including the arguments put forward and the strategies employed by groups to bolster certain positions over others. The next section outlines what stakeholders the CRTC publicly credited in the differential pricing practices decision (CRTC, 2017b). As is the case in the previous chapter, it was most difficult to collect information that pertains to this phase of the policy development process, which means that this analysis relies largely on publicly available documentary evidence and focuses on the regulator's decision rather than its formal and informal deliberations. Finally, I examine the interactions between the groups involved in the relevant costs award process and the outcomes of the submitted applications (CRTC, 2017f, 2017h, 2017g, 2017i).

Differential pricing practices within the Canadian internet policy ecosystem

Part of the broader conversation around net neutrality, differential pricing practices describe an internet service provider's provision of *select* internet access to a consumer at a discounted rate. An example is zero-rating, which includes instances where data used to access a specific application or website, or set of applications or websites, is not counted towards a user's monthly data cap (CRTC, 2016c). Facebook's recent efforts to provide free internet access to its own services, but not other data sources, to smart phone users in developing countries is one example of this practice (Banis, 2019).

Another illustration is 'sponsored data' where an agreement is made between a service provider and a content provider that allows smart phone users to access the latter's content without using any of their monthly data allotment. The concept applies both to instances where the content provider pays the internet service provider for this arrangement, and where there is no money

exchanged (Ravenscraft, 2016). (These practices can also occur in the delivery of internet to the home, but as data caps are generally more restrictive for cell phone users' monthly plans, the differential pricing practices consultations focused on smart phone users' data consumption (CRTC, 2016c).)

Over a period of several years, differential pricing practices became an issue at the forefront of Canada's internet policy dialogue. Public interest advocates made formal complaints against service providers' use of the strategy, and the firms employing these practices rebutted their claims (CRTC, 2015a; Federal Court of Appeals, 2016). An argument regularly put forward by stakeholders against the tactic was that differential pricing practices, and other similar strategies, "lead to a preference towards certain subscribers and content providers over others, and they put those not able to participate in the practice at a disadvantage" (CAC-COSCO-PIAC, 2015; CRTC, 2017b; Vaxination Informatique, 2015). Meanwhile, those in support of the approach argued that it was a legitimate marketing effort that supported a competitive market in Canada (Videotron, 2017).

The sorts of frameworks that might be best suited to regulate, if needed, the marketplace were also an element of the discussion. Several parties against the practice called for a firm prohibition on differential pricing practices. Their contenders, including some of the firms employing the strategy, submitted that alleged violations should be reviewed on a case-by-case basis. Between these poles were parties that called for a set of guidelines that could be used to consistently examine complaints (CRTC, 2017b).

This issue is especially contested in Canada because the country has low monthly wireless data caps and high overage rates in comparison to foreign jurisdictions, which means that inexpensive service provisions are particularly attractive to consumers. For example, in June 2016, the month that the differential pricing practices consultations were announced, Canada's public broadcaster reported that a 1 GB mobile wireless data plan from one of Canada's three major wireless carriers could cost a consumer from \$40 to \$75, depending on where in the country they are located (CBC News, 2016a). At the same time, charges for users who exceed

their monthly limit are often substantial (Harris, 2016).²⁴ Accordingly, differential pricing practices, which may not be an especially enticing offer to consumers in many European countries where data caps are comparatively high and overage rates low (Wall Communications Inc, 2020), can be a compelling pitch to Canadian users who regularly meet or exceed their monthly wireless data usage.

Raising, and defining, the issue of differential pricing practices

On May 18, 2016, the CRTC published a notice of consultation on its web site that initiated the differential pricing practices proceedings (CRTC, 2016c). Along with a synopsis of the regulatory context surrounding the case, the stated purpose of the proceedings, and a list of issues to be examined, the regulator stated that the consultation would focus on whether and how this tactic constituted “an undue or unreasonable preference, a disadvantage, or unjust discrimination” (CRTC, 2016c).²⁵ Interested stakeholders, including telecommunications service providers, global technology companies, public interest groups, scholars, and engaged citizens, were invited to answer a call for comments, composed of 15 questions. The deadline for these responses was June 17, 2016, later extended to June 28, 2016, and the hearing was set to begin on October 31, 2016 (CRTC, 2016c, 2016d).

These delineations are usual elements of a CRTC notice of consultation. Yet, what is relatively uncommon is the manner by which the inquiry was prompted. Whereas most major CRTC consultations are planned in advance as part of the organization’s regular examinations of reoccurring or emerging policy issues and outlined in the regulator’s three-year plan (e.g., CRTC, 2016b) or yearly report on plans and priorities (e.g., CRTC, 2016a), the differential pricing practices proceedings were prompted by two complaints against a telecommunications provider alleged to be making use of discriminatory pricing practices (CAC-COSCO-PIAC, 2015; Vaxination Informatique, 2015).

²⁴ While the situation has improved slightly, the country’s monthly cell phone packages still lag relative to its international counterparts (Wall Communications Inc, 2020).

²⁵ The inquiry would consider the policy issues with reference to Section 27(2) of the Telecommunications Act, the policy objectives set out in section 7 of the Telecommunications Act, and the regulator’s 2006 policy direction (Telecommunications Act, 1993; Order Issuing a Direction to the CRTC, 2006).

Indeed, the CRTC's 2016-2017 report on plans and priorities mentions neither the issue of net neutrality nor differential pricing practices. Rather, the regulator lists planned initiatives such as the completion of its review of basic telecommunications services and the implementation and monitoring of decisions related to a recently established regulatory framework for television in Canada (CRTC, 2016a). The regulator's three-year plan for 2016-2019 reflects similar concerns and also makes no mention of either of the two aforementioned policy issues (CRTC, 2016b).

Rather, the inquiry stemmed from two formal complaints²⁶ made in early September 2015 against the Unlimited Music program of Videotron, a Quebec-based telecommunications provider, and wholly owned subsidiary of Quebecor Media (CAC-COSCO-PIAC, 2015; Vaxination Informatique, 2015). In short, the provider's program enabled some consumers, typically those with 2 GB data limits, to stream content from the Unlimited Music app without penalty to their monthly data usage. In other words, under this system, a consumer would use up some (or all) of their periodically allotted data were they to stream music on Spotify or, perhaps more notably, an independent music app, where they could stream Unlimited Music continuously at no charge.

The first complaint, made together by the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, and the Public Interest Advocacy Centre, outlines several key positions (CAC-COSCO-PIAC, 2015). For one, the application suggests that Videotron favours its own content by making it less expensive for consumers, particularly in comparison to other music streaming services (p. 2, s. 6). This arrangement, the document outlines, discriminates against subscribers who consume content other than that on the Unlimited Music app, and producers whose content incurs regular data charges (p. 2, s. 7). Moreover, given that the offer is largely available to consumers with high data caps, the

²⁶ Such complaints are called Part 1 applications by the CRTC. Part 1 applications are interventions, or formal comments, initiated by parties outside the CRTC, "that [are] not the subject of a notice of consultation. [...] For telecom, this would include applications related to disputes between providers (e.g. network interconnection, unjust discrimination) and requests for forbearance" (CRTC, 2015e). For the remainder of this chapter, I use the terms 'complaint' and 'application' interchangeably.

program also disadvantages consumers who opt for lower-tier plans (p. 2, s. 8).

Consequentially, the service allows Videotron to:

not just pick winners and losers in terms of online content, therefore retrenching the absolute power of network owners, but it will allow network owners to shut out already marginalized citizens who struggle to be connected. (p. 2, s. 11)

The group requested that the CRTC declare these practices a violation of the Telecommunications Act's provision to guard against "undue and unreasonable disadvantages" and previous decisions against similar behaviours, and order Videotron to halt the practice (p. 3, s. 13).

The second application, put forward by engaged citizen Jean-Francois Mezei under the pseudonym Vaxination Informatique, offered some broadly similar arguments and conclusions (Vaxination Informatique, 2015). For instance, the document highlights the practices' misalignment with principles enshrined in the Telecommunications Act and recent CRTC decisions (p. 4, s. 8-9). The complaint also emphasizes that the Unlimited Music service unduly encourages consumers to switch to higher-tier plans, while simultaneously removing incentives for providers to lower data costs in Canada (p. 3, s. 6-7). In response to these two applications, alongside an investigation into the specific case of the Unlimited Music program, the regulator initiated a broader inquiry into differential pricing practices in order to "establish a clear and transparent regulatory approach" (CRTC, 2016c).

In this section, I argue that sustained public efforts by a variety of groups and individuals engaged in internet policy development, and most notably those behind the two applications, played a substantial part in pushing the issue of differential pricing practices onto the CRTC's regulatory agenda. These endeavors were, in part, shaped by interactions between different civil society advocates who, through their involvement in the process, prompted the regulator's decision to open a broader inquiry into differential pricing practices, beyond the Unlimited Music case. Yet, the regulator nonetheless took on an integral role in defining what issues would be examined, and under what terms, in the subsequent policy dialogue. While, in this instance, public interest interveners were able to act proactively "to force capital to reorganize and develop itself" (Cleaver, 1979, p. 65) and place the issue of differential pricing practices at the fore of the policy discussion, the regulator's framing of the public debate exemplifies the limits to public interest influence in this phase. Attempts by a group of consumer organizations

to silence the voice of one civil society participant's contribution also show that the employment of gatekeeping practices is not limited to regulatory, political, and private actors. Civil society participants in Canadian internet policy development are diverse and include legal groups, activist organizations, scholars, and engaged citizens. Alongside an exploration of how traditionally powerful parties act as gatekeepers in this arena, it is important to consider how certain civil society stakeholders can also take on this role.

Stakeholder community, familiarity, and animosity

I think you start by recognizing that no matter the issue, the overwhelming majority of Canadians will never speak out and become actively involved in policy. And that, as far as I can tell, is a perfectly rational thing to do. For one thing, they probably figure they can't impact the outcome anyways, so what's the point? For another, some of these issues are complicated.

This assertion was made in an interview by Michael Geist, Professor at the University of Ottawa. The idea behind the comment is that Canadians are not often involved in policy issues, let alone internet policy issues, for a variety of often logical reasons. While there are rewarding aspects (Shepherd et al., 2014), involvement in internet policy, especially when it comes to issues as technical as differential pricing practices, is time-consuming (Chhabra, 2018b) and often thankless. The complexity of these issues, and the resources required to participate in the policy formation process, are two barriers to robust public participation in internet policy formation.

Yet, there is a small community of consumer advocates who are interested and invested in Canadian internet policy development and are familiar and connected with others defending the public interest (Shade, 2008, 2014a). This familiarity, and sometimes comradery, has been a long-standing element of CRTC policy formation (Raboy & Shtern, 2010a), including on the issue of net neutrality (Blevins & Shade, 2010). Marita Moll, who was an active participant in this domain in the early days of the internet, said: "It was a very kind of coalescing kind of space. Everybody realized like, 'hey, there's a whole lot of other people who care about this—like us, who are thinking the same way'". Describing the interactions of these parties in the contemporary context, Ben Klass, activist and doctoral student at Carleton University, suggested:

It's a community of people who have expertise and who are constantly engaged. To a certain extent, it's a social network as well. People know each other, they may even have worked with each other in the past. So, the type of ideas that are floating around in these policy circles are ones that are shared amongst a community of people.

Rather than disparate actors working independently within these policy debates, these comments made clear the extent to which many civil society actors involved in Canadian internet policy development, including in the differential pricing practices case, share a sense of community, and sometimes comradery.

Other interviewees noted the role of Twitter as a tool to identify and communicate with other individuals similarly involved in CRTC policy formation. Catherine Middleton, Professor at Ryerson University, highlighted how the use of this platform has, in some ways, "reinforced the nature of the group and helped us understand who the allies are". Thus, there are also shared platforms and methods that these parties employ to understand, and sometimes foster, these connections. Not least, Middleton's reflection shows how the platforms and providers at the centre of many internet policy dialogues, despite their own gatekeeping powers (Laidlaw, 2010; Lynskey, 2017), can be used by civil society groups to build bonds and share ideas about the regulation of these firms. These connections, and the work that can flow from them, are one way that civil society advocates can subvert the skewed system they operate within (Scott, 1990).

While there are certainly factions and divisions between some of these parties, collaboration amongst this group of stakeholders is a way that many civil society advocates who might otherwise be left out of the process are able to participate. Stakeholders who may not have the capacity or desire to participate independently may opt to put their name on applications and interventions put forward by other parties with greater resources or different expertise. At the same time, interactions between civil society advocates who disagree on policy positions, or may have other disputes with each other, can also prompt increased activity, although these contentions can at times serve to undermine the public interest.

These activities, and their relevance, are especially evident in the initiation of the differential pricing practices case. In particular, the two applications reflect closely-timed efforts to identify and halt the practice in the Canadian communications market. Several public interest groups

involved from the outset of the differential pricing practices case collaborated, including by working together on documentary evidence and signaling their affiliation with other groups in formal documentation (CAC-COSCO-PIAC, 2015). In other instances, advocates may not have worked together, but they did show a familiarity with each other's activities and, through their participation, bolstered the public case against differential pricing practices in Canada (Vaxination Informatique, 2015). As the CRTC explicitly identifies, it was these complaints that led to the May 2016 notice of consultation, and broader inquiry into the marketing strategy (CRTC, 2016c).

As mentioned earlier, the first recorded complaint against Videotron's Unlimited Music marketing program was submitted by three consumer advocacy groups: the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, and the Public Interest Advocacy Centre (CAC-COSCO-PIAC, 2015). These organizations have distinct mandates and serve different constituents and, while they have cooperated before, do not as a rule work together on CRTC applications and interventions. In the view of the regulator, this cooperation signals a broad concern for the issue of differential pricing practices across multiple constituencies, rather than a single, isolated perspective. At the same time, it shows a readiness within these groups to work across organizational boundaries to ally themselves on an issue of concern, cooperation which has long been called for by observers of this domain (Raboy & Shtern, 2010a). In contrast to some of the gatekeeping practices that feature in other areas of this dissertation, this activity serves to include a broader range of voices than would otherwise be heard.

The second complaint, submitted by Jean-Francois Mezei three days after the first effort (Vaxination Informatique, 2015), reflects, not collaboration with the earlier complainants, but the breadth of parties actively engaged in efforts to counter differential pricing practices, including members of the public. The application also shows the close attention paid by many in this community to the activities of Canadian telecommunications service providers. Yet, Mezei's complaint also illustrates some of the contestations between civil society stakeholders involved in CRTC policy formation. Shortly after its submission, the public interest groups involved in the first application dismissed his complaint as "frivolous and vexatious" (CRTC,

2015d),²⁷ a move that highlights the disagreements that do exist between certain civil society stakeholders in Canada. Moreover, the event emphasizes the extent to which civil society advocates can also employ gatekeeping practices to attempt to undermine or silence less powerful groups or individuals. According to Mezei, “when you’re not accepted by [other interveners similarly opposed to the large service providers], even though you’re fighting on the same side . . . they don’t want you”. As this example shows, civil society is not a monolith and is oftentimes characterized by its own “competition for power, control and status” (Godsäter & Söderbaum, 2017, p. 122). In some instances members of civil society can thus take on the ‘gatekeeper’ role, as it appears the coalition of public interest groups sought to do in this case.

While these interactions do highlight the divergences between different civil society advocates in this field, this particular event does not seem to have had much of an impact on this specific case. While it appears that Mezei’s application was not considered meritorious by the earlier complainants, his application did widen the field of parties that made formal complaints against Videotron’s Unlimited Music program. Moreover, the CRTC viewed the second application as worthy of study. In a public letter, the regulator stated that that it “considers that it is neither necessary nor appropriate to strike Vaxination’s application as requested by the Consumer Groups” (CRTC, 2015d). By the request of another consumer advocate, Ben Klass, the regulator decided to consider the two complaints together and, when it eventually called for a larger inquiry to investigate the issue, cited both applications as prompting factors (CRTC, 2015d, 2016c). However the advocates behind these two complaints might have perceived the other’s efforts, the two distinct applications, together, played an important role in bringing the issue of differential pricing practices to the fore of the regulator’s agenda.²⁸

²⁷ As the original letter from these public interest groups does not seem to be publicly available, this quote is drawn from the CRTC’s response. It is not clear whether these exact words were employed by the groups, or whether this is a paraphrase on the part of the regulator.

²⁸ Indeed, as engaged citizen Marc Nanni said: “It takes people like [the Public Interest Advocacy Centre or Jean-Francois Mezei] or others to raise the issue. They wouldn’t have [initiated this inquiry] on their own, I don’t think”.

Shaping the frame

While the actions of public interest advocates may have helped put the issue of differential pricing practices on the regulatory agenda, the CRTC framed the issues and questions central to the corresponding policy discussion. The roughly 5,000-word notice of consultation that signalled the beginning of the broader inquiry outlined the regulatory context, purpose of the proceeding, issues to be examined, regulatory procedure, and questions that should guide respondents' policy interventions (CRTC, 2016c). Although at face value these aspects of the notice seem innocuous and, in many cases, instructional to stakeholders and other interested parties, what they include, and do not include, are telling reflections of how the regulator defined the development of the policy dialogue. The CRTC may have been pushed by outside parties to consider the issue, but it nonetheless outlines the rules of engagement, which restricts the breadth and scope of the policy arguments put forward. This section considers how the regulator framed the issue of differential pricing practices and the implications of these choices for the ways stakeholders developed their responding policy interventions.

For one, the regulator suggests that it will make its decision based on a range of different, and sometimes conflicting, regulatory provisions (CRTC, 2016c). As some interviewees explained, this breadth is in part explained by the regulator's unclear mandate. The consequence of this range is that it can be challenging for participants, particularly those without a legal background, to determine how best to craft and defend policy arguments that align with the regulator's various frames of reference. By contrast, the questions outlined in the regulator's notice of consultation, which were meant to guide respondents' interventions, are extremely narrow in scope (CRTC, 2016c). An upshot of this limited scope is that it restricts the issues participants can raise in policy proceedings, even if they are directly relevant to the inquiry's focus.

In the notice of consultation, the regulator cites three distinct sections of legislation that factor into its decision-making (CRTC, 2016c). The first is subsection 27(2) of the Telecommunications Act (1993), which, broadly, affirms that no Canadian telecommunications provider will "unjustly discriminate or give an undue or unreasonable preference towards any person, including itself, or subject any person to an undue or unreasonable disadvantage" in the provision of its services. The second reference is made to a set of policy objectives outlined in

section 7 (a-c, f-h) of the Telecommunications Act. These objectives are as wide-ranging as the promotion of an “increased reliance on market forces for the provision of telecommunications services” to a responsiveness “to the economic and social requirements of users of telecommunications services”. Finally, the regulator also notes that it will consider the 2006 policy direction, an order from the federal government, which foremost calls for a reliance “on market forces to the maximum extent feasible” (Order Issuing a Direction to the CRTC, 2006).

The outcome of this breadth, and the contradictory nature of these provisions, was noted by several interview participants. There was no clear sense of how their policy submissions would be evaluated, and which provisions took precedence in the regulator’s decision-making. While speaking to the process more broadly, a quote from engaged citizen Marc Nanni on his initial experiences in CRTC policy development is illustrative: “It was a maze to me, a real maze. All the policy, the rules of procedure and everything else”. Accordingly, some stakeholders suggested that the development of their interventions lacked a strong understanding of how to most effectively argue their position before the regulator.

The varied legislative provisions that the CRTC is required to reflect on in its decision-making process, and outline in its notices of consultation, reflect another gatekeeping mechanism that limits participating stakeholders from a fulsome appreciation of how the game is played. In this case, the outcome of the inquiry favoured many arguments put forward by public interest participants. Yet, some observers have outlined how the emphasis on market forces in the 2006 policy direction serves as a regular talking point for some of Canada’s largest service providers and impedes the regulator’s ability to act in the consumer interest (Order Issuing a Direction to the CRTC, 2006). As Geist, (2019b) writes: “While that does not mean that every outcome is fully consistent with the policy direction, it requires the regulator to grapple with the issue and provides a ready foundation for potential reviews or appeals [from these providers]”. Broadly, the reality is that neoliberal values have long been an important factor in how the regulator makes decisions (Middleton, 2011; Rideout, 2003; Shepherd, 2018).

At the same time, many interviewees suggested that the notice of consultation’s 15 questions, which were included to guide respondents’ policy interventions, were exceedingly narrow in scope (CRTC, 2016c). These queries asked stakeholders, “with supporting rationale”, to define differential pricing practices, identify any concerns with the strategy, and answer whether and

how to regulate the practice. In one sense, the set of questions was useful in that it provided some standardization to the submitted arguments, and a guide to first-time or irregular participants. Yet, as several interviewees outlined, they also constrained the scope of stakeholders' interventions. By asking a series of narrow queries, which focused, in the majority of instances, on the classification and identification of the relevant practices, their benefits and risks, and specific restrictions that should potentially be placed on their use, the regulator foreclosed a discussion of the larger context that this marketing strategy existed within. Prompting 'policy silences' (Freedman, 2010), the employment of this narrow scope is a gatekeeping practice that keeps participants from a debate about the reality of Canada's telecommunications environment, and the tangible implications of this system for people living in Canada. Relatedly, this set of questions undermined a dialogue about the high prices Canadians pay for their telecommunications services, and the low data caps common to service provisions (CBC News, 2016a; Wall Communications Inc, 2020).

Without too far broaching the subsequent discussion of this case's consultation phase, this point is bolstered by the prevalence of issues outside the scope of these queries in the submitted interventions. At least two civil society participants, OpenMedia and the Equitable Internet Coalition, the latter group which included the parties behind the first complaint that prompted the inquiry (CAC-COSCO-PIAC, 2015), argued that differential pricing practices are a function of data caps (i.e., limits on cell phone users' monthly allotments of data). Data caps, they suggested, should no longer be used by Canadian telecommunications service providers to limit subscribers' mobile data usage. As outlined in OpenMedia's intervention:

It means little to discuss how to regulate differential pricing practices when the mechanism that makes their very existence possible—data caps—remains of questionable wisdom or benefit to telecommunications users and Canada's telecommunications system as a whole. (OpenMedia, 2016, p. 1, s. 3)

In other words, these practices are possible only because there exists limits on the amount of monthly data available to Canadian cell phone users. Accordingly, a persuasive case was made that data caps, an important aspect of how Canadians consume and use mobile internet, constitute an integral and relevant part of the policy dialogue about differential pricing practices.

Together, the broad mandate of the regulator and the narrow scope of the inquiries outlined in the notice of consultation reflect how the CRTC acts as a gatekeeper by defining the issues at hand, and the terms with which they are understood. As is characteristic of CRTC policy development, the expansive mandate allowed the regulator to make a policy decision on a basis that was unclear from its very outset. This ambiguity is a source of frustration and confusion for participants and, given the extent to which the CRTC's guiding legislation has historically emphasized market forces (Middleton, 2011; Rideout, 2003), has routinely favoured service providers over the public. By contrast, and as some have noted in reference to other proceedings (Shepherd, 2019a, p. 4), the narrowness of the CRTC's scope, as reflected in the included questions meant to guide interveners, constrained the range of policy positions discussed in the proceeding. This limitation also restricted the contextual factors that participants could readily bring forward in the regulatory inquiry, despite their pertinence to the arguments being made.

Competing viewpoints

The deadline for interveners taking part in the differential pricing practices proceedings to submit their first intervention to the CRTC was June 28, 2016, roughly six weeks after the publication of the notice of consultation (CRTC, 2016d).²⁹ This process involved the submission of formal comments from interested stakeholders, via the CRTC's online submission tool (CRTC, 2015e), on the issues raised in the notice of consultation (CRTC, 2016c).³⁰ Stakeholders included "any interested party" (CRTC Rules of Practice and Procedure, 2010, s. 26, 1) who, for professional, personal, or other reasons, wished to put their views on the public record, and optionally provide supporting evidence for their position. In total, 123

²⁹ This period would be more constrained for participants who became aware of the public inquiry later than the publication of the notice of consultation. (As telecommunications service providers and public interest groups follow the regulator's activities closely, this limitation likely disproportionately impacted engaged citizens.)

³⁰ The mechanism, which many individuals interviewed for this project described as a challenge for regular Canadians to use, involves following a link from the webpage that hosts the CRTC's relevant notice of consultation, agreeing to a privacy statement, and filling out a form which requests information including the intervener's contact information, policy position (i.e., 'in support' or 'in opposition') and comments. Participants also have the option to attach files and request to appear at a public hearing (CRTC, 2015e).

interveners, including companies, engaged citizens, scholars, and public interest groups, submitted interventions through the online submission tool (CRTC, 2016h).

In September, parties were also given the opportunity to provide further information to the CRTC and respond to arguments from other parties (CRTC, 2016c). Most individuals who submitted independently did not participate in this later step, whereas many organizations submitted substantial contributions. The comments of Bell, one of Canada's largest providers, for example, were an additional 42 pages (CRTC, 2016h). Many telecommunications service providers, and other parties, also responded to CRTC requests for information, all which were included on the public record (CRTC, 2016h).³¹

The regulator also, unusually, facilitated a public Reddit thread to foster more robust participation from the broader Canadian population. Open between September 26 and September 30, 2016, the thread asked a simplified series of questions, derived from the queries included in the notice of consultation, and offered responses to questions of procedure (CRTC, 2016g). Over the week, more than 1,000 redditors commented on the thread, leaving roughly 1,200 comments. The respondents were overwhelmingly against differential pricing practices (CRTC, 2017a).

The arguments and views outlined in the interventions and responses submitted via the CRTC's submission mechanism, and on the Reddit thread, were publicly aired in a five-day hearing between October 31 to November 4, 2016 at the CRTC in Gatineau, Quebec (CRTC, 2016f). Twenty-six stakeholders, with a range of interests, who, in their initial interventions, had requested to present their findings before the CRTC, were invited to do so, and answer questions from a select panel of commissioners (CRTC, 2016f). Following the hearing, parties had the opportunity to submit final comments of no more than 15 pages, before a deadline of November 23, 2016 (CRTC, 2016c).

³¹ These requests, referred to as interrogatories, are to fulfill the CRTC's "objective of ensuring that all parties have the benefit of the maximum amount of information placed on the public record at the earliest appropriate stage, in order to facilitate a more efficient and effective proceeding" (CRTC, 2001).

In the subsequent paragraphs, I explore some aspects of the consultation phase that reflect the certain lack of stability of gatekeeping power in internet policy development. Through various means, gatekeeping mechanisms and practices can be mitigated or even sometimes overcome by subverted groups. In Chapter 3, I detailed the substantial inequities between parties involved in Canadian internet policy development. But I have also sought to emphasize that the wielding of gatekeeping power is not consistent across different internet policy dialogues. The power structures between gatekeepers and participants in the policy process are not fixed. Rather, domination is “porous, incomplete and unavoidably disrupted” (Huke et al., 2015, p. 732). The intention here is to learn more about the ways that domination was disrupted in this case. Yet, over the course of this chapter, I also show the extent to which this interruption is unfortunately less impactful than it initially appears.

I first assess stakeholders’ contributions to the proceeding, including the frequency of their participation and the volume of their interventions. This section provides the reader with a deeper understanding of the parties involved, and the extent of their involvement. Moreover, it also shows that several public interest interveners overcame the challenges outlined in Chapter 3 to submit substantial contributions to the public record. How do these findings reconcile with my earlier conclusions? They reflect the reality that “modern power-relations are thus unstable; resistance is perpetual and hegemony precarious” (Bordo, 2003, p. 28). The volume of these civil society contributions also hides the real challenges to sustained public interest participation in Canadian internet policy development that are reflected in later phases of this case study. The limitations of the regulator’s costs award process, for instance, meant that many participants had to wait lengthy periods for reimbursement, which has had tangible implications for their operating capacities (Johnson, 2018; PIAC, 2019, p. 1).

Second, I investigate the significance of the CRTC’s public engagement efforts in this case: the facilitation of a Reddit thread. I examine the rationale behind this initiative, the sorts of responses gathered, and whether this effort reflects the mitigation of gatekeeping practices in CRTC policy development. I find that the Reddit thread’s ad-hoc addition to the process does not highlight a regulator committed to regular and robust public participation. I also suggest that the use of Reddit is problematic as the platform is disproportionately used by young, white, male internet users. It accordingly seems likely that the views collected via the regulator-facilitated Reddit thread lacked input from a range of groups that reflects the diversity of the

Canadian population (McMahon et al., 2014; Rajabiun & Middleton, 2014; Shade, 2014b). This point is especially salient given the noted lack of female voices in Canadian internet policy development (Shade, 2016, 2014b). It is also possible that a rationale for this additional form of consultation may have been to further foster former CRTC chair Jean-Pierre Blais's 'showmanship' (Shepherd, 2018) around consumer advocacy, without proper consideration for the effectiveness of the methods employed.

On the record

Submissions to the differential pricing practices inquiry varied widely in length and depth. While individual members of the public offered submissions of a few sentences or paragraphs, major provider Bell submitted a 52-page intervention, a commissioned survey (26 pages), and a commissioned cross-jurisdictional review of the practice (20 pages) in the first stage of submissions alone (CRTC, 2016h).³² As Lithgow (2019) cautions, the length of CRTC submissions is only one part of the story. The regulator must recognize the value of submissions from Canadian citizens and residents in the aggregate to harness their "democratic energies, ideas, and potentials" (p. 107). I wholeheartedly agree with this sentiment, which factors into my understanding of the CRTC-facilitated Reddit thread, which features in the subsequent section. Yet, it is also useful to examine the capacity for civil society organizations involved in CRTC policy development to engage on the same level as the country's dominant providers, in the terms of debate favoured in this environment (McKenna & Graham, 2000). Accordingly, Table 1 below shows the contributions of the stakeholders that participated in the five-day oral hearing, organized in descending order based on the number of pages included in their submissions.

³² As discussed later in this section, many of the large companies involved in this proceeding, including Bell and Telus, advocated for the use of differential pricing practices in their interventions, while most public interest groups, and some service providers, such as Rogers and Teksavvy, asserted that the tactic, variously, reflects a form of undue preference and violates net neutrality principles (CRTC, 2017b).

Table 1: Contributions to the CRTC's differential pricing practices proceedings

| Stakeholder | Type of stakeholder | Pro or anti DPPs | First intervention (pages) | Expert report (pages) | Further comments (pages) | Final comments (pages) | Total pages |
|---|--|------------------|----------------------------|-------------------------------|--------------------------|------------------------|-------------|
| Barbara van Schewick | Professor of Law and Director of Stanford Law School's Center for Internet and Society | Anti | 18 | 27 & 10 | | 14 & 166 | 235 |
| Telus Communications Corporation | Service provider | Pro | 29 | 46 & 56 | 39 | 17 | 187 |
| Bell Canada | Service provider | Pro | 55 | 26 & 20 | 42 | 15 | 158 |
| Equitable Internet Coalition | Group of public interest organizations | Anti | 42 | 14 | 47 | 17 | 120 |
| Media Access Canada | Not-for-profit with mandate to increase the quantity and quality of accessible content in Canada | Anti | 11 | | 92 | 15 | 118 |
| Shaw Cablesystems G.P. | Service provider | Pro | 18 | 62 | 17 | 14 | 111 |
| OpenMedia | Digital rights advocacy group | Anti | 43 | 354 pages (consumer comments) | 51 | 16 | 110 + 354 |
| Canadian Media Concentration Research Project | Research group out of Carleton University's Communication department | Anti | 88 | | | 7 | 95 |
| Roslyn Layton | Visiting scholar at the American Enterprise Institute | Pro | 7 | 37 | | 35 | 81 |
| Quebecor Media Inc. | Service provider | Pro | 17 | | 23 | 18 | 58 |
| Canadian Network Operators Consortium Inc. | Industry association that represents Canadian independent internet service providers | Pro | 28 | | 6 | 17 | 51 |
| Rogers Communications Inc. | Service provider | Anti | 15 | | 19 | 16 | 50 |

| Stakeholder | Type of stakeholder | Pro or anti DPPs | First intervention (pages) | Expert report (pages) | Further comments (pages) | Final comments (pages) | Total pages |
|---|--|-------------------------|-----------------------------------|------------------------------|---------------------------------|-------------------------------|--------------------|
| Vaxination Informatique | Engaged consumer | Anti | 11 | | 15 | 15 | 41 |
| Xplornet Communications Inc. | Service provider | Pro | 17 | | | 15 | 32 |
| Cogeco Communications Inc. | Service provider | Pro | 7 | | 5 | 16 | 28 |
| Canadian Internet Policy & Public Interest Clinic | University of Ottawa legal clinic that supports fair and balanced policy making in Canada related to technology | Anti | 8 | | 7 | 11 | 26 |
| Competition Bureau | Federal government agency | Pro | 26 | | | | 26 |
| Teksavvy Solutions Inc. | Service provider | Anti | 10 | | 4 | 9 | 23 |
| Eastlink | Service provider | Pro | 14 | | 3 | 5 | 22 |
| John Roman | Engaged consumer | Tangential | 4 | | | 12 | 16 |
| Sandvine Incorporated | Waterloo-based networking equipment company | Pro | 13 | | | | 13 |
| British Columbia Broadband Association | Group of telecommunications service providers, equipment suppliers and infrastructure constructors in British Columbia | Anti | 8 | | | | 8 |
| Independent Broadcast Group | Group of independent conventional, specialty and pay television broadcasters | Anti | 5 | | 3 | | 8 |
| Facebook | Global technology company | Pro | 4 | | | 3 | 7 |
| Ben Christensen | Engaged citizen | Tangential | 3 | | | | 3 |
| Devin Lindsay | Engaged citizen | Anti | 1 | | | | 1 |
| All these documents are hosted on the CRTC's (2016h) website. | | | | | | | |

Table 1 reveals a number of important facts and insights about stakeholders' participation. First, it shows that public interest interveners, including OpenMedia and the Equitable Internet Coalition (EIC),³³ contributed substantially to the proceeding (CRTC, 2016h). The EIC, for instance, participated in every submission stage and hired an expert witness, submitting a total of 120 pages of interventions and evidence. OpenMedia also participated in every stage and submitted 110 pages of argumentation, while appending more than 300 pages of individual consumer comments to its intervention. Meanwhile, the Canadian Media Concentration Research Project submitted an initial intervention of 88 pages (and final comments of 7 pages). Media Access Canada's submissions totaled 118 pages (CRTC, 2016h).

The volume of these submissions rival some of Canada's major telecommunications service providers and advocates for differential pricing practices in the country's communications market. Bell participated in every submission stage and submitted two expert reports (its submissions totalled 158 pages). Telus submitted 187 pages of documentation, including two expert reports. Of course, the frequency and volume of submissions only provide certain information about stakeholders' participation. For example, these elements do not speak to the strength of the arguments submitted from a legal or economic perspective, which are the terms of debate privileged in policy environments (McKenna & Graham, 2000).³⁴ Yet, when placed within an understanding of the systemic barriers before public interest interveners (Johnson, 2018; Rideout, 2003; Shepherd, 2018), such an analysis does illustrate civil society's capacity to substantially contribute to CRTC policy development.

Despite the forms of gatekeeping described in Chapter 3, and the reality that CRTC consultations are "formal, legalistic, and dauntingly complex" (McMahon et al., 2017), public interest groups brought forward a significant amount of material and evidence to the differential pricing practices case. It is also apparent that these contributions often included external forms of evidence, which can be costly and challenging for under-resourced parties to gather.

³³ The EIC was a collaboration between the Public Interest Advocacy Centre, the Council of Senior Citizens' Organizations of BC, the Consumers' Council of Canada, and the National Pensioners Federation.

³⁴ Although by later awarding costs awards to four major public interest interveners, the CRTC does affirm the merit of these submissions (CRTC, 2017f, 2017g, 2017h, 2017i).

OpenMedia included in its submission comments from nearly 30,000 Canadians. The EIC hired an expert witness to contribute an independent analysis (CRTC, 2016h).

In light of the outlined context, civil society's contributions are impressive. The sheer quantity of these interventions, and the type of evidence provided, also raise important questions about how these groups are able to participate to this degree, given my findings in Chapter 3. Does the bulk of these submissions disconfirm my initial results? How do we reconcile these seemingly conflicting accounts of the state of affairs? The reality of the situation becomes clear in the latter half of this chapter, but it is useful to give insight into this reconciliation of my findings here. The volume of these submissions is laudable, and does reflect how some of these groups have been able to subvert the gatekeeping practices and mechanisms outlined earlier in this dissertation. As Bordo (2003) writes, "resistance is everywhere" (p. 295). Indeed, is it 'exciting and hope-inspiring' to take this view (Bordo, 2003, p. 295). For instance, as outlined in the previous section, some groups collaborated to submit interventions that reflected the views of a wide range of groups and signal solidarity in the civil society sector (CAC-COSCO-PIAC, 2015).

But, many of these groups and collaborations are necessarily participating in a way that is not feasible in the long-term and has alarming implications for their continued participation in this sphere. Alongside other major concerns, many of these stakeholders rely on the CRTC's severely flawed costs award mechanism to recuperate the real financial resources required to contribute at this level. As I discuss later, this reliance comes at a high cost that is often hidden from the broader discussion of CRTC policy development, which focuses more often on events characteristic of the consultation phase (Shepherd, 2018; Shepherd et al., 2014) or policy decisions writ large (Middleton, 2011). Moreover, even if we only consider the consultation phase, we must account for the working conditions that characterize many public interest interveners' contributions, especially those whose contributions are not part of their regular employment responsibilities. As engaged citizen Marc Nanni, who participated in the differential pricing practices proceedings as part of the Canadian Media Concentration Research Project, said:

I'm not a scholar, I have to learn it all from scratch . . . And you have to apply it to what's going on here in a Canadian context. And then it's another couple of weeks of putting your words down onto paper. . . . A lot of nights where you sleep two hours.

Sabrina Wilkinson

Thus, while, at least in terms of volume, public interest participants' submissions rival those of some of Canada's major telecommunications service providers in this case, the level and stability of resources behind the producers of these contributions still differs significantly. These divergences have detrimental lasting consequences for civil society participants in Canadian internet policy development, which are invisible when we consider only the contributions of the consultation phase. Without intervention to remedy the limitations to the costs award program, it is unclear how long these parties will be able to sustain such participation (FRPC, 2017, 2018b). Just because civil society interveners are sometimes able to participate robustly, does not mean there are not steep costs incurred to do so.

Opening the floor to Reddit

OpenMedia was not the only group that sought to incorporate the broader Canadian public into the discussion surrounding differential pricing practices. On September 19, 2016, nearly four months after the publication of the notice of consultation that signalled the beginning of the inquiry, the CRTC announced that it would facilitate a five-day open consultation with users of the platform Reddit³⁵ on the policy issue (CRTC, 2016c, 2016e). This section investigates what prompted the regulator to back this effort and what this initiative meant for the differential pricing practices proceedings. I argue that this added form of public consultation, while initiated with good intentions, was not an effective way to engage a wide breadth of Canadians in internet policy development.

This lack is due in part to the extent to which Reddit itself is another forum that perpetuates gatekeeping practices (Helberger et al., 2015; Laidlaw, 2010; Lynskey, 2017). This reality means that it is likely any consultation facilitated using the platform would disproportionately reflect views from certain groups, and exclude the voices of others. This is especially concerning given the regulator's emphasis on wide and diverse participation, and the existing lack of participation from women in this domain (Shade, 2016, 2014b). It also seems possible that one factor behind the Reddit thread's addition to the inquiry was to foster former chair Jean-Pierre Blais' persona as a defender of the public interest (Ladurantaye, 2013). The ad-hoc

³⁵ Reddit is a network of online communities connected by a main front page. Users of the platform can follow and contribute to each community as they choose.

nature of its inclusion in the inquiry, and the lack of recent initiatives to collect a wide range of public views, does not suggest that the regulator has a long-term commitment to robust public participation.

The idea behind the CRTC-facilitated Reddit thread during the differential pricing practices proceeding was well-intentioned. This element of consultation was prompted by the suggestion of a web developer employed at the regulator, Natasha Zabchuk, who noticed the relatively low number of comments submitted by Canadians to the CRTC via its online submission mechanism.

When we were doing this . . . there was already a round of comments and I looked at them and the proportion of industry to Canadians was so small. It was so disproportionately industry. I was like if ‘we really want to get comments from Canadians, this is one way to do it’.

Reaching out to her direct superiors with the idea, and then eventually presenting it to CRTC commissioners, Zabchuk garnered approval for the initiative, which she then led. Admirably, the developer sought to ameliorate the discrepancy between the type and level of participation by industry members against Canadian citizens and residents (although there are public interest advocates who strive to represent the latter’s voices). Zabchuk’s aim was to find ways to rethink the process to better incorporate these individuals’ voices: “Using their language in their environment, instead of forcing them to go through our website—I think it’s really important. If we can, we should.” Roughly 1000 users commented on the Reddit thread, nearly all in support of regulation against differential pricing practices (CRTC, 2017a).

Despite Zabchuk’s good intentions, the Reddit thread was less of an effective method to collect a wide range of views than it initially appears. While there are few statistics on Canadians’ use of Reddit, an analysis of Americans’ use of the platform is illustrative. Only 11 per cent of the American population uses Reddit (Pew Research Center, 2019). In term of gender, 15 per cent of American men use the platform, versus eight per cent of women. Users also skew younger, with 22 per cent of the American population aged 18 to 29 using the platform, 14 per cent of 30 to 49-year-olds, six per cent of 50 to 64-year-olds, and one per cent of Americans over the age 65. Users of the platform are disproportionately white, with 12 per cent of white Americans on the platform in comparison to four per cent of Black Americans (Pew Research Center, 2019). The breakdown of these demographics seem misaligned with assertions from former CRTC

chair Jean-Pierre Blais, who held the role during the differential pricing practices proceeding, about the importance of gender and other forms of equity in the Canadian communications and cultural industries (CRTC, 2017c; Ladurantaye, 2013).

Indeed, it seems improbable that the Reddit-thread would have collected views truly reflective of the range of groups that are potentially implicated by net neutrality issues and that make up the Canadian public sphere broadly, including first nations communities (McMahon, 2014), people living in rural and remote communities (Rajabiun & Middleton, 2014), and women (Shade, 2016). As Shepherd (2019b) writes, “Reddit is not an adequate stand-in for the public or even for the internet” (para. 17). In interviews, CIRA Senior Policy Advisor Alyssa Moore suggested the CRTC’s Reddit thread was “a bit of a gimmick”, and Ben Klass, a doctoral student engaged in internet policy development, said the effort was “like a temperature-taking of the white male 18 to 30-year-olds who have enough money to afford a connection to the internet”.

To be fair, some would suggest that the effort was to mobilize an existing online community. That being the case, collecting a broad diversity of views is of less concern than gathering perspectives from groups that are already aware of and interested in these issues. According to Philippe Tousignant, Research Director at the CRTC,

In that particular instance, we were facing an issue that we thought lent itself to a specialized, a niche interest. It made sense for us to go out of our way to try to find a forum that we could instantly (low-resource) use and see if we could use that community to help us parse out fact from fiction through the record.

But, if we are to believe that the CRTC depends “on you to tell us what you want and need, and to let us know what is and isn’t working for you” (CRTC, 2017e), should it not be the case that the regulator aims to educate and consult those who reflect the wide diversity of the country? These efforts are especially important given the lack of representation of certain groups in CRTC decision-making (Shade, 2016, 2014b) and the extent to which net neutrality violations negatively affect some parties more than others (CAC-COSCO-PIAC, 2015; OpenMedia, 2016; Vaxination Informatique, 2015).

Rather, it seems possible that the regulator's decision to move ahead with this form of consultation may have been more about conveying the illusion of a diversity of views, rather than the actuality. Catherine Middleton, Professor at Ryerson University, highlighted the reality that public engagement measures can be used to suggest that the regulator has consulted with Canadians to a greater extent than it actually has:

I think any way of engaging raises awareness of the issues, but I think it's a double-edged sword. I think then there's a possibility that the CRTC can then say, 'we've engaged, we've done these things, we've ticked the box'.

Indeed, the Reddit thread, while a step in the right direction, does not encompass the breadth of the public interest, even as described by those working at the regulator, who define the concept as "broad-based, inclusive" and reflective of "the interests of all stakeholders" (Lithgow, 2019, p. 90). Rather, the initiative reflects the fact that the regulator, and other decision-makers in Canadian internet policy development, define the modes of participation "under which [only] some conflicts and interests are allowed into politics" (Jayasuriya & Rodan, 2007, p. 790).

Other questions should be raised about the ad-hoc nature of this addition to the differential pricing practices inquiry, and the lack of public engagement activities in the regulator's regular operations.

According to Katy Anderson, former OpenMedia Digital Rights Campaigner, the civil society group has called for such efforts over a period of several years:

After years of participating, we've been asking time and time again for the CRTC to make it easier for Canadians to participate, really emphasizing how important it is to make sure that people in Canada's voices are heard.

Yet strategies that aim to include a greater breadth of Canadians have been few and far between. Moreover, the ones that have been initiated, such as the Reddit thread, have emerged on an inconsistent basis, rather than through a structured and sustained program. This lack of commitment may reflect the possibility that former chair Jean-Pierre Blais' rhetoric around inclusion and diversity was in part "a dramatic gesture, a public relations exercise" (Shepherd, 2018, p. 240). There are also questions to be raised about the priorities of current chair Ian Scott. As Anderson suggested, Scott's preference is a reliance on 'fact-based submissions'. This technocratic notion runs contrary to the breadth of views, and modes of expressing these

views, that characterize public participation, which may be “less coherent, more contradictory [and] less evidence-based” though nonetheless important (Lithgow, 2019, p. 106).

The negative implications of this ad-hoc approach are varied. In particular, such a tactic means that the regulator can pick and choose which hearings warrant a concerted public engagement effort. There does not appear to be a process to ensure consistency across any element of the CRTC’s public consultation efforts, nor a guarantee that they will take place in any number of proceedings. The regulator can also dictate the parameters, such as the medium over which the consultation would take place, and the length of the period during which the initiative would occur. These media can include Reddit or Facebook, which “present themselves as neutral platforms in order to elide the politics they produce through their interfaces, algorithms, content moderation practices, and exploitative business models” (Shepherd, 2019b, para. 18). These online gatekeepers that already play a part in “forms of meaning-making in democratic society” (Laidlaw, 2010, p. 267) can thus also influence how and whether Canadian citizens and residents engage in internet policy dialogues.

Credit where credit is due

The CRTC published its decision on differential pricing practices on April 20, 2017, nearly six months after the conclusion of the public hearing (CRTC, 2017b). The policy was broadly consistent with many positions taken by civil society advocates, smaller telecommunications service providers, and one major provider, Rogers. Among other things, the decision outlined the framework and evaluation criteria the regulator would use to determine whether future instances of the practice are aligned with, or violate, the Telecommunications Act (CRTC, 2017b). The regulator suggested that practices that treat data equally, include all classes and groups of subscribers, encourage openness and innovation, and do not involve financial transactions between providers or other sponsors, are unlikely to raise regulatory concerns (CRTC, 2017b). Rather, and in explicit disagreement with proposals outlined by major telecommunications service providers, including Bell, Telus, and Videotron, practices that favour data from a certain source or of a certain nature, that exclude particular subscribers, affect innovation in Canada’s telecommunications market, and involve financial compensation, will likely prompt regulatory inquiry. The CRTC also stated that the decision comprised one component of the regulator’s net neutrality policy framework (CRTC, 2017b).

In the public dialogue around the debate, the decision was readily hailed as a win for consumer advocates (Public Interest Advocacy Centre [PIAC], 2017), although some groups highlighted further steps the regulator could have taken (Braga, 2017; OpenMedia, 2017). A headline from Canada's public broadcaster read "Your internet provider can't pick which apps and services count against your data cap, says CRTC" (Braga, 2017). PIAC, the organization that led a consortium of non-governmental organizations' participation in the proceedings, said that the decision "is a clear win for Canadian consumers that future-proofs their internet access from arbitrary control by their internet provider" (PIAC, 2017). OpenMedia welcomed the decision but highlighted that "the CRTC declined to abolish data caps on fixed and wireless Internet services" (OpenMedia, 2017). By contrast, Videotron, the provider behind the Unlimited Music program that prompted the CRTC's inquiry expressed disappointment, stating that the organization "believed in Unlimited Music and felt the service was responsive to the needs and interests of today's consumer" (Videotron, 2017).

Yet, despite these reactions, the decision, and how it was made, leaves many unanswered questions that raise doubts about the long-term feasibility of continued civil society participation in CRTC internet policy development. As outlined in Chapter 3, to many participating stakeholders, the ways that the regulator weighs evidence, and decides whose arguments to amplify in its decision, and whose to downplay, is unclear. There is also little information available on the CRTC's website that sheds light on the regulator's decision-making process. Even Canada's Federal Court of Appeals has commented on the process's lack of transparency: "the CRTC could do a much better job than it has in ensuring that complainants [understand] the CRTC's administrative processes and procedures for dealing with complaints, and who may make decisions in its name" (CEP v. CanWest MediaWorks Inc., FCA 247, 2008). This ambiguity is compounded by the reality that current or former regulators are not often willing or available to speak to scholars or students seeking more information about this process. In the recruitment stage of this research, some current and former CRTC commissioners shared insights confidentially, but many others declined to comment. While research can prompt new ways of thinking about elements of the policy development process that are already somewhat visible, such as the consultation process, where stakeholders' arguments are clearly articulated on the public record, some aspects of policy formation remain difficult to discern through conventional methods.

Accordingly, the subsequent section uses a range of methods to study how the CRTC aligned with and distanced itself from certain parties in the differential pricing practices decision. Due to the reasons outlined in the previous paragraph, the focus of this section is the case study's decision rather than the process through which it was made. While I did not have the opportunity to speak to any of the commissioners who developed the policy on-the-record, I do include comments from participating stakeholders who described their understanding of CRTC decision-making, with reference to this decision in particular. As a key way that participating stakeholders appreciate the impact of their contribution to policy decisions is in the regulator's explicit mention of their position or proposal, attributed to them by name, I also compile and analyse all references to stakeholders made in the differential pricing practices decision (CRTC, 2017b).

Despite broadly aligning itself with public interest participants, I find that the regulator disproportionately credited some interveners' contributions to the inquiry and entirely ignored others. While it is unclear why that was the case, such discrepancies have implications for stakeholders' continued participation in CRTC policy development. Civil society advocates who feel as though their labour has been unduly ignored are sometimes inclined to lessen or discontinue their involvement in communications policy formation in Canada. While the outcome of the differential pricing practices case may at face value be a win for consumers, an investigation of the processes behind its development highlights the precarity of the long-term operations or participation of civil society organizations that work in this environment. In spite of the policy outcome, which recent events have shown is in no way fixed or guaranteed in the long-term (CRTC, 2018b; Geist, 2020), the policy development process that led to this decision only further eroded the capacity for public interest influence in Canadian internet policy development on an ongoing basis.

Smoke and mirrors

Little is known about how the CRTC makes decisions. As an analysis of this phase of the policy development process describes the process as superficial at best and suggests "the people of Canada are able to learn who has been appointed to the CRTC, but not how the CRTC's decision-making process works [and] who is making or has made decisions . . . (FRPC, 2018, p. 48). In large part due to this ambiguity, whether and how the regulator references participating stakeholders' arguments is a fundamental way that participants understand their

contribution to have made a policy impact. Jean-Francois Mezei, the engaged citizen who submitted one of the complaints (Vaxination Informatique, 2015) that led to the differential pricing practices proceeding, suggested that recognition in policy decisions is an important motivation for his participation, and shows that his labour had a real effect on policy development: “When you do this [as an engaged citizen], you don’t get paid. The reward is saying you had an impact”.

Not only is recognition in policy decisions the pay-off for some stakeholders, but participants who feel they are ignored by the regulator are often less inclined to continue their involvement in CRTC policy formation. As Monica Auer, executive director of the FRPC, said:

When the Forum takes the time to write a 150-page submission, with data, with evidence, with arguments [...] and none of it is even reflected in the final CRTC policy decision, you’re left to wonder: “Was there any point?”.

With respect to the differential pricing practices proceedings, Mezei stated that “even though [the CRTC] used my arguments, they were attributed to other people”. A regular participant in Canadian communications policy development since 2008, Mezei suggested that this lack is part of a broader trend that has his arguments being attributed to him less frequently in regulatory policies. According to the engaged citizen, this pattern emerged in January 2015, roughly. In his words, that is “when I started to notice my name no longer, even though I judge my arguments to be very valid, my name less and less often brought up in the decisions”. This illustration highlights how CRTC decisions reflect which views and debates are “expressed, mediated or marginalized” (Jayasuriya & Rodan, 2007, p. 779) in policy outcomes. Mezei did continue his involvement in regulatory proceedings for several years. But his contributions became far less frequent in the subsequent years, in part as a result of this shift.

While it is difficult to assess Mezei’s claim that CRTC decision-makers purposefully underplayed his contributions to the policy process, his statements are given more weight by the fact that several other research participants anonymously highlighted certain interveners’ lack of recognition. In other policy development phases, such as the recuperation phase, research has also highlighted what appear to be regulatory biases against certain groups (FRPC, 2018b). For instance, this work shows that PIAC, the group leading the EIC’s intervention to the differential pricing practices proceedings, has regularly received decisions on its costs awards applications later than its peers in recent years (FRPC, 2018b, p. 14). These events raise

concerns about the extent to which the identity of interveners may influence how the regulator incorporates and engages with their policy views in regulatory decisions. Unfortunately, the lack of transparency around the CRTC's decision-making processes makes a fulsome understanding of these perceived biases impossible (FRPC, 2018a).

Yet, an analysis of the interveners that the CRTC referenced in its differential pricing practices decision, and at what frequency, sheds light on the gap between stakeholders' contributions and recognition. Although it is unclear what motivated decision-makers at the regulator to bolster certain arguments and downplay others, and in ways that are misaligned with their view of the merit of the contribution, my assessment does suggest that discrepancies exist. Alongside other gatekeeping practices that occur in the decision and deliberation phase, this exercise reflects one way that regulatory decision-makers exclude the voices of "dissenting social forces" (Gerard, 2015, p. 379) or parties against whom they may hold other less clear biases. While the differential pricing practices decision does reflect an alignment with public interest values, a continued lack of acknowledgement for certain parties can have a negative effect on robust civil society participation in the long-term.

Table 2 below outlines which stakeholders the regulator referenced in the differential pricing practices decision, the number of times it referenced each of these participants, and whether these references were aligned or misaligned with the CRTC's decision.³⁶ Stakeholders are in descending order based on the total number of times they were referenced in the decision. Notably, several interview participants suggested a reference from the CRTC, even to highlight the regulator's disagreement with the stakeholder's proposal, reflects a recognition of their contribution to the policy process. (Although an acknowledgement that shows the regulator's agreement with the participant is obviously preferred.) Such references can also lead to recognition from peers in this community, media commentators, colleagues, or, in the case of legal experts, clients. As engaged citizen Mezei suggested, "it's a competition of who gets their submission noticed, and it's only one at a time". This type of acknowledgement can thus contribute to civil society's ability to "convince key stakeholders about their legitimacy and

³⁶ Appendix 1 lists the full references in the CRTC's differential pricing practices decision.

prove that they can significantly and efficiently contribute to common goods” (Laurent et al., 2019, p. 2).

Table 2: Stakeholders referenced in the CRTC’s differential pricing practices decision

| Stakeholder | Type of stakeholder | References aligned with CRTC’s decision | References misaligned with CRTC’s decision | <i>Total references</i> |
|--|--|--|---|-------------------------|
| OpenMedia | Digital rights advocacy group | 5 | 2 | 7 |
| Telus Communications Corporations | Service provider | 2 | 5 | 7 |
| Shaw Cable Systems G.P. | Service provider | 0 | 5 | 5 |
| Professor Barbara van Schewick | Professor of Law and Director of Stanford Law School’s Center for Internet and Society | 4 | 1 | 5 |
| Sandvine Incorporated | California-based networking equipment company | 2 | 3 | 5 |
| Bell Canada | Service provider | 1 | 3 | 4 |
| Canadian Network Operators Consortium | Industry association that represents Canadian independent internet service providers | 3 | 1 | 4 |
| Videotron | Service provider | 1 | 3 | 4 |
| Bragg Communications Inc. | Service provider | 1 | 2 | 3 |
| Cogeco Communications Inc. | Service provider | 1 | 2 | 3 |
| Media Access Canada | Not for profit that supports accessible broadcast content | 2 | 1 | 3 |
| L’Association québécoise de l’industrie du disque, du spectacle et de la vidéo | Non-profit that supports the independent Quebec music industry | 1 | 1 | 2 |
| Independent Broadcast Group | Group of independent conventional, specialty and pay television broadcasters | 2 | 0 | 2 |
| Facebook | Global technology company | 1 | 1 | 2 |
| Canadian Media Concentration Research Project | Research group out of Carleton University’s Communication department | 1 | 1 | 2 |
| Rogers Communications Inc. | Service provider | 2 | 0 | 2 |
| Teksavvy Solutions Inc. | Service provider | 1 | 1 | 2 |
| Vaxination Informatique | Engaged consumer | 1 | 0 | 1 |

Table 2: Stakeholders referenced in the CRTC’s differential pricing practices decision

| Stakeholder | Type of stakeholder | References aligned with CRTC’s decision | References misaligned with CRTC’s decision | <i>Total references</i> |
|---|--|--|---|--------------------------------|
| Reddit respondents | Engaged consumers who participated in the CRTC-facilitated Reddit thread | 1 | 0 | <i>1</i> |
| Centre for Democracy and Technology | Washington-based non-profit that aims to strengthen individual rights via internet policy | 0 | 1 | <i>1</i> |
| Roslyn Layton | Visiting scholar at the American Enterprise Institute | 0 | 1 | <i>1</i> |
| Distributel Communications Limited | Service provider | 0 | 1 | <i>1</i> |
| Saskatchewan Telecommunications | Service provider | 0 | 1 | <i>1</i> |
| Canadian Internet Policy and Public Interest Clinic | University of Ottawa legal clinic that supports fair and balance policy making in Canada related to technology | 1 | 0 | <i>1</i> |
| Canadian Media Producers Association | National trade association for independent English-language media producers | 0 | 1 | <i>1</i> |
| The British Columbia Broadband Association | Group of telecommunications service providers, equipment suppliers and infrastructure constructors in British Columbia | 1 | 0 | <i>1</i> |
| Information Technology and Innovation Foundation | Research and educational institute that focuses on the intersection of technological innovation and public policy | 1 | 0 | <i>1</i> |

These references can all be found in the CRTC’s (2017b) differential pricing practices decision.

The data collected show that the CRTC paid attention to certain public interest participants, while downplaying the perspectives of others who nonetheless contributed substantially to the proceeding, including stakeholders whose views were aligned with the CRTC's ultimate decision.³⁷ OpenMedia, Canada's major digital rights advocacy organization, and Telus, one of Canada's dominant providers, are referenced the most of any participating stakeholders: seven times each. In contrast, another frequent participant in Canadian communications policy formation, the Canadian Internet Policy and Public Interest Clinic, was only referenced once, despite sharing many of the same views as OpenMedia. Similarly, Vaxination Informatique, the name under which Jean-Francois Mezei submitted his CRTC interventions, is only mentioned once, although Mezei played an important role in prompting the inquiry into differential pricing practices.

But perhaps the most notable absence is the Equitable Internet Coalition (EIC). Members of the EIC were the first to formally submit a complaint to the regulator against Videotron's Unlimited Music program (CAC-COSCO-PIAC, 2015). The organization that led the intervention, PIAC, is one of the longest-standing civil society organizations in the Canadian communications policy environment (CanadaHelps, 2020). Together, the four groups that made up the coalition represent a broad swath of constituencies across Canada (EIC, 2016c, p. 1). Moreover, as outlined in the section on the consultation phase of these proceedings, the EIC actively participated in the inquiry. They submitted interventions in each phase that totalled 120 pages, including an external expert report (EIC, 2016a). This contribution was among the highest of all stakeholders, including well-resourced telecommunications service providers (see Table 1).

Most importantly, the contributions found within those pages were meritorious, as affirmed by the CRTC's approval of the majority of the group's costs award in the recuperation phase of the process (CRTC, 2017i). This point is bolstered by my review of the EIC's documentary

³⁷ As service providers' participation in CRTC policy development is a funded and required component of the organizations' business operations, this analysis focuses on the contributions of public interest interveners. As **public interest** interveners actively choose to participate in communications policy formation, an undue lack of recognition holds greater implications for their ability and willingness to continue regulator participation.

submissions (EIC, 2016a). These interventions raise many of the proposals put forward by other groups that do receive recognition in the decision. Moreover, a good number of the policy positions taken are aligned with the CRTC's decision in this case. For example, the EIC (2016c) suggested that the differential pricing practices "are a symptom of a lack of competition" in the Canadian communications market and describes the negative effects differential pricing practices could have on the state of the market (p. 9, s. 33-34). On this point, the regulator notes contributions by the Association québécoise de l'industrie du disque, du spectacle et de la vidéo, the Independent Broadcast Group, and Professor Barbara van Schewick, but not the EIC (CRTC, 2017b, s. 35-7). The EIC (2016c) also detailed the implications of differential pricing practices on consumer choice (p. 23, s. 97). The CRTC's decision clearly supported the EIC's position, but the document only identifies its alignment with arguments made by OpenMedia and van Schewick (CRTC, 2017b, s. 62-3). In contrast to many other public interest participants, the EIC also suggested that the regulator should address differential pricing practices through a complaints-based approach, rather than in a strict prohibition (EIC, 2016c, pp. 17-18 s. 60-61). While 14 parties were referenced on both sides of this debate, the coalition was again absent (CRTC, 2017b, s. 117-121).

Even in instances where the EIC is misaligned with the CRTC, the group receives no mention. Both the interventions of the EIC and OpenMedia used the issue of data caps in the Canadian telecommunications market to foreground their contribution to the debate on differential pricing practices (EIC, 2016c; OpenMedia, 2016). But neither stakeholder, nor other parties against the practice, are named in the decision. Instead, the regulator describes these interveners as "opponents of data caps" (CRTC, 2017b, s. 141). Given the prevalence of this argument to both interveners' submissions, it would have been a highly relevant and informative addition to the public record to have included their names, as is the case in the earlier examples mentioned.³⁸ The EIC (2016b) also contributed a substantial expert analysis of the U.S.'s 'open internet rules', which goes unreferenced in the regulator's assessment of "international evidence submitted by various parties" (CRTC, 2017b, s. 38-9).

³⁸ As OpenMedia does receive regular mention elsewhere in this decision, this point is especially pertinent to the contribution of the EIC.

It is not clear why the CRTC did not acknowledge the EIC's contributions. (Moreover, compelling arguments can be made in relation to other groups' lack of recognition.) However, for the reasons outlined above, it does seem apparent that this lack is purposeful. In the least transparent phase of policy development, the absence of certain participants' arguments reflects the exercising of gatekeeping power by the regulator. Whether or not this perception is accurate, in the view of many stakeholders, this absence signals the regulator's aversion towards certain participants. It also effectively silences the contributions put forward by ignored parties. Of all the documents produced through the policy development process, the decision will be used by the regulator, media, politicians, federal government, advocacy organizations, and general public to understand the outcome of this proceedings and the views of key stakeholders.

Accounting for the reality that civil society groups are competing for all forms of resources (Godsäter & Söderbaum, 2017), deficient recognition undermines a group's ability to attract credit and attention from individuals and groups that play an important role in its funding, such as media outlets, members, and donors. This lack can diminish the extent to which these parties can highlight "demonstrated performance and expertise", a key measure of a group's perceived legitimacy (Brown, 2008, p. 11). Notably, PIAC, the group that research shows has routinely, and without clear rationale, received costs awards decisions later than its peers in recent years (FRPC, 2018b, p. 14), led the EIC in the differential pricing practices proceedings. Together, these findings illustrate the possibility that PIAC, for what ever reason, has been actively marginalized by the regulator in recent years. Yet, they also show the extent to which multiple levels of gatekeeping can occur within a single case. PIAC, which was one of the groups that sought to exert gatekeeping power to formally throw out (CRTC, 2015d) Jean-Francois Mezei's complaint against differential pricing practices (Vaxination Informatique, 2015) in the issue-identification and framing phase, can simultaneously be disadvantaged by the regulator's own gatekeeping practices.

Table 2 also shows decision-makers' interest in arguments contributed by foreign participants. Barbara van Schewick, Professor of Law and Director of Stanford Law School's Center for Internet and Society, is referenced five times by the CRTC. This number is far more than any other individual participating on their own behalf and just as much as some of Canada's major

telecommunications service providers. Four of the references are aligned with the CRTC's decision. An international expert in net neutrality, van Schewick's recognition is not necessarily surprising or unwarranted but rather notable in juxtaposition to the lack of references to the EIC, for one. Moreover, it reflects the appeal of foreign, and particularly American, participation or viewpoints (Hoberg, 1991) in Canadian policy development to decision-makers.

Foreign expertise and participation in communications policy development in Canada should not be denigrated. International involvement can signal the wider importance or implications of policy issues, as was the case with respect to van Schewick's participation in the CRTC's differential pricing practices inquiry. However, particularly given the dominance of American media and research in Canada (Hoberg, 1991, p. 110), there is the possibility that foreign public interest interveners may receive disproportionate acknowledgement for their contributions. Such an exaggeration can work to undermine the voices of Canadian civil society participants that make similar arguments but have neither the novelty, appeal, nor resources of foreign, and often elite, voices. Given the similarity of many of the well-informed arguments made by van Schewick to those of Canadian public interest stakeholders, including the EIC, which received no recognition from the regulator, it appears that such a scenario may have occurred in this particular case.

The battle continues

As outlined in Chapter 3, many participants of the CRTC's costs award process suggest that the program is fraught with limitations. The program was developed with the intention to "facilitate the informed participation of [stakeholders working in the public interest] in its telecommunications proceedings" (CRTC, 2009). Yet, today it reflects many of the tensions that characterize the interactions of stakeholders involved in Canadian internet policy formation. Delays in the regulator's issuance of costs awards have also increased significantly in recent years (FRPC, 2017, 2018b). This section examines the dynamics of this program within the context of the CRTC's differential pricing practices proceeding. Four civil society groups or coalitions, the Equitable Internet Coalition (EIC), the Canadian Internet Policy and Public Interest Clinic (CIPPIC), OpenMedia, and Media Access Canada (MAC) submitted costs for their participation in the inquiry (CRTC, 2017f, 2017g, 2017h, 2017i). As is the norm,

major telecommunications service providers, who would be directed to reimburse successful applicants, formally responded to the applicants in efforts to reduce the costs claimed. The regulator ultimately awarded two of the interveners virtually full costs, while reducing the claims submitted by the EIC, by a relatively minor amount, and OpenMedia, by a relatively significant sum (CRTC, 2017f, 2017g, 2017h, 2017i).

At face value, these outcomes are favourable to participating civil society groups and coalitions. Yet, the subsequent section suggests that, despite the reimbursement of most of the costs claimed in this instance, the mechanics of the program nonetheless fostered a process that was unnecessarily burdensome on public interest participants. The political nature of the program meant that many of the disputes that embodied the consultation phase continued into the recuperation phase. The regulator's lengthy decision period for the awarding of costs has had tangible negative consequences for the operations of participating groups (Johnson, 2018; PIAC, 2019, p. 1).

These findings highlight one of this chapter's central themes. That is, even though the CRTC ruled, broadly, in favour of arguments put forward by civil society stakeholders in the differential pricing practices case, gatekeeping power was nonetheless exercised throughout all four phases of the case. Public interest interveners were able to overcome some of these barriers and limitations through forms of subversion and resistance. But these moments of opposition and struggle, which are themselves fragile, are only temporary triumphs in the long-term erosion of civil society participation in Canadian internet policy development. This case illustrates the enormous effort that these participants must expend to have their views reflected in policy decisions, and the other factors that must line up in order to prompt such an outcome. With respect to the recuperation of funds, it also shows how short-term gain in the form of positive policy outcomes still comes at the cost of robust and sustainable civil society advocacy (CCC, 2019, p. 2; Johnson, 2018; PIAC, 2019, p. 1).

Overpower and delegitimize

The process that characterizes eligible participants' recuperation of funds is tense, fraught, and politicized. In the differential pricing practices proceedings' associated costs award process, applicants received responses to their costs claims from Bell and Telus, two of Canada's largest

and most well-resourced telecommunications service providers. A review of the arguments used against the public interest interveners' claims suggests that the reality of the process is in many ways misaligned with the spirit of the program. For one, industry groups appear to use the program to unnecessarily increase claimants' workload. Tamir Israel, counsel at CIPPIC, noted that respondents' criticisms of legitimate claims require fulsome responses from public interest interveners, even when identical or similar claims have been accepted by the CRTC in previous costs orders.

In a 2010 review of the costs award process, the CRTC suggested that, in spite of some allegations from costs respondents that the amounts claimed by public interest interveners were excessive, an analysis of claims made between 2005 and 2010 revealed "few instances in which the Commission has reduced or denied costs because the costs claimed were excessive" (CRTC, 2010c). Yet, in the decade since that statement, research participants highlighted that industry groups have increasingly rebutted claims that have previously been deemed meritorious by the CRTC. One example of this gatekeeping practice is persistent assertions that digital rights organization OpenMedia should be deemed ineligible for costs awards on the grounds that the organization has "sufficient interest to participate in the proceeding without an award of costs and that it receives financial contributions from for-profit ISPs" (CRTC, 2017d).³⁹ Such assertions were put forward by Bell and another internet service provider, Xplornet, in relation to OpenMedia's participation in an inquiry related to broadband provision in Canada. OpenMedia provided fulsome responses to these assertions and the regulator rejected both these claims (CRTC, 2017d). Yet, less than a year later, in the differential pricing practices costs award process, Bell argued against OpenMedia's eligibility "for costs since it is a non-commercial entity that had sufficient incentive and resources of its own to participate in the proceeding" (CRTC, 2017g). Again, the civil society group responded robustly and the regulator disregarded the assertion (CRTC, 2017g).

³⁹ In the 2019-2020 fiscal year, only eight per cent of OpenMedia's revenues were from businesses. The organization has strict policies on their funding to ensure that "no single organization or set of aligned funders are permitted to unduly influence our work" (OpenMedia, 2020).

This practice is problematic because it increases the unpaid work of civil society stakeholders, as these groups cannot claim the labour input towards lengthy costs award applications. Alternatively, industry groups' regulatory teams participate in this aspect of the policy development process as a regular part of their operations. According to Israel, while it is fair to allow service providers, the companies charged with paying for the approved costs, to respond to the submitted applications, certain challenges raise questions about the spirit of their involvement.

[The process is] time-consuming in a disproportionate way because a lot of the ways in which costs awards are challenged require a fair amount of effort to respond to, and legal analysis, factual analysis, etc. . . . I would say the vast majority of costs award challenges do not end up being meritorious in the end.

In brief, these insights and examples suggest that the vigorous challenges put forward by service providers in the recuperation phase may not be good faith concerns about the legitimacy of the costs claimed. Rather, these responses extend the politics reflected in other phases of a process that is, broadly, "exclusive, unequal, distorted and fundamentally undemocratic" (Freedman, 2008, p. 80).

Interviews with participating stakeholders reveal that rebuttals from major telecommunications service providers are taxing to public interest groups' operations and participation in the context of Canadian communications policy development. In particular, service providers' responses often undermine public interest participants' employment of external experts or counsel. (This is despite the fact that these firms regularly hire costly lawyers, economists, scholars, and consultants to submit reports in CRTC policy proceedings, including in the differential pricing practices case.) In responses to CIPPIC's costs award submission, both Bell and Telus called for significant reductions to the hours claimed for external counsel (CRTC, 2017h), a tactic that is regularly employed by these firms (e.g., CRTC, 2017d, 2017g, 2017f). In an interview, Israel, CIPPIC counsel, explained that his decision to hire outside support was due to the fact that all telecommunications work at the organization is allocated to one lawyer:

When they announced the proceeding . . . I didn't know it was coming so I didn't know to allocate time for it in advance. . . . I thought that having an external counsel was really the only way we were going to be involved in this one.

By targeting public interest interveners' capacity to hire external support, service providers attack an integral tenet of civil society groups' participation in communications policy development. The size of these organizations and the often uncertain and overlapping schedule of policy proceedings at the CRTC and within the federal government (Geist, 2017) mean that the employment of outside resources is often the only way these parties can contribute to the process. These directed and varied efforts against costs award applicants only weaken the possibility of "linking and integrating communication concerns to larger efforts to bring heretofore underrepresented segments of the citizenry into the political arena" (McChesney, 1996, p. 118).

Lengthy and unexplained waits

Applicants to the costs award process are also undercut by lengthy delays in the issuance of costs decisions by the CRTC. The regulator took roughly nine months to issue decisions for MAC, CIPPIC, and OpenMedia (CRTC, 2017f, 2017h, 2017g). The CRTC's decision on the EIC's application, which was the first group to submit claims, was published nearly a full year after submission (CRTC, 2017i). As interviewees outlined, and as discussed above, these delays are generally unexplained and unpredictable, and can have implications for the extent to which these stakeholders can hire external resources. Israel, CIPPIC counsel, stated that he tries to make it clear to external counsel that CIPPIC has no control over the costs award process, which can take as long as year, or even longer. In the case of the differential pricing practices case, he noted that "our external lawyer had challenges because the cost recovery took so long".

Such challenges reflect the very different ways that these organizations need to operate, in juxtaposition to their well-resourced counterparts. Public interest interveners have no recourse for late payments. There is no accountability for civil society groups from the CRTC, neither is there interest accrued. Groups are incentivized to accept late payments without complaint because the same entity that directs to them these funds has the power to deny them costs. Thus, the regulator's use of gatekeeping power in this process prompts and maintains "barriers to the public airing of policy conflicts" (Bachrach & Baratz, 1962, p. 949). Undoubtedly, some parties have been vocal on the regulator's mismanagement of the costs award process (e.g., FRPC, 2017, 2018b), but there remains a "hidden transcript" whereby applicants offer "a critique of power spoken behind the back of the dominant" (Scott, 1990, p. xii). Notably, the

CRTC is also the institution that will decide the next communications policy debate. In this context, the regulator is undoubtedly a gatekeeper, a powerful actor “whom we can judge or can hold to be responsible for significant outcomes” (Lukes, 2005, p. 66). Bill Abbott, former Assistant General Counsel at Bell, describes the tensions in this element of the costs award process in the following terms:

If this was a private firm, you would go after your client to pay or you would have gotten a retainer or something, but they do the work and they’re not sure if they’re going to get paid or what they’re going to get paid. That is a hell of a way to run any kind of organization.

This gatekeeping practice has raised important questions for participants about whether the regulator genuinely respects and values their involvement in the process. As the FRPC (2019) submitted to a review of Canada’s broadcasting and telecommunications environment, the program “is working so poorly, in fact, that it offers the appearance of an active desire by the CRTC to discourage (by which we mean, end) informed, public-interest participation in telecommunications” (p. 14). If the only way that civil society groups can adequately participate is with the support of the costs award program, the failures of the system have perhaps the most direct and severe implications for the continued involvement of these parties (CCC, 2019, p. 2; Johnson, 2018; PIAC, 2019, p. 1).

The situation may not be entirely dire. The regulator has at several points, as noted earlier, pushed back against service providers’ efforts to reduce the legitimate costs claimed by civil society advocates. In this particular case, the CRTC awarded significant sums to all four parties, although it did reduce the amounts claimed by two applicants. These actions reflect the extent to which the regulator is sometimes ready to reject disingenuous arguments from providers and support public interests’ costs award claims when they are due. Yet, this reality does not negate some of the key burdens imposed upon public interest actors during this phase. The program is currently set-up in a manner that assumes respondents are acting in good faith. Unfortunately, it does not seem as though that is always, or even mostly, the case. While the CRTC may at times throw out flawed arguments submitted by major service providers, the process still requires civil society parties to wait lengthy and unexplained periods before being awarded costs. There are also the other limitations to the program identified in Chapter 3,

including the challenges applicants have in navigating the process and the extent to which the regulator has in the past disallowed costs on an irregular or uncertain basis.

Conclusion: The long-term view

I selected the CRTC's differential pricing practices proceedings as this project's first case study in large part *because* the regulator's policy decision reflected many arguments put forward by public interest participants. I sought to investigate whether hearings with such an outcome disconfirm Chapter 3's findings, which suggest that the Canadian internet policy development is fraught with gatekeeping practices and mechanisms that undermine the extent to which policy reflects the public interest. Was this case an exception? Are the gatekeeping practices and mechanisms outlined in Chapter 3 less prevalent than in actuality? How were civil society groups able to overcome the barriers in this instance? These are all questions I have explored in this chapter. Indeed, I have found that this case was not so much an exception as an instance where routinely undermined groups were able to temporarily subvert dominant forms of power (Huke et al., 2015; Scott, 1990). The gatekeeping practices and mechanisms described earlier in this dissertation were nonetheless very evident and had tangible implications for the participation of certain groups in this case, and on an ongoing basis.

There are a few factors that seem to have contributed to the outcome of this proceeding, including the involvement of foreign civil society participants, the efforts of Canadian public interest interveners, and involvement from select members of the Canadian public. At face value, the policy is a 'win' for consumer advocates and a loss for some of Canada's major telecommunications service providers. This result is a positive outcome for Canadian consumers in the short-term. Yet, the process that led to the policy was characterized by many of the barriers described in Chapter 3.

Gatekeepers wielded power in all four phases of the process, despite the final policy decision. In the issue-identification and framing phase, public interest advocates' success in pushing the issue of differential pricing practices onto the regulator's agenda was undermined by the CRTC's capacity to define the rules of the policy dialogue. In this case, the consultation phase did reflect the extent to which public interest advocates were able to overcome many of the existing barriers to their participation to contribute substantial interventions to the formal public

debate. The regulator's facilitation of a Reddit thread to garner further citizen participation may be a step in the right direction, but it includes a severely limited segment of the Canadian population. The decision and deliberation phase shows that, while the policy ultimately aligned with arguments put forward by public interest interveners, the regulator disproportionately credited some interveners' contributions and ignored others'. While it is unclear why that was the case, such discrepancies have implications for stakeholders' continued participation in CRTC policy development. Finally, and most pressingly, the recuperation phase reflects the reality that positive policy outcomes still come at the cost of serious operational concerns for interveners that rely on the regulator's costs awards program (Johnson, 2018, PIAC, 2019, p. 1), which includes most of the key public interest contributors.

These limitations have dire consequences for the long-term sustainability of public interest interveners and their continued involvement in Canadian internet policy development. It is telling that PIAC, the lead member of the EIC, the coalition that waited nearly a year for reimbursement for their participation in the differential pricing practices proceeding (CRTC, 2017i), submitted a policy intervention to a major policy review of Canada's telecommunications and broadcasting environment in January 2019 with a cover note that apologized for the "quality" of its intervention and highlighted that it "left out very many points" (PIAC, 2019, p. 1).⁴⁰ The organization's "only consolation is that the task was in a sense virtually impossible given our present resources constraints" (PIAC, 2019, p. 1).

This chapter reveals that public interest advocates' success in CRTC policy development can hide the reality that gatekeeping power is persistent and ongoing. The manifestations of this power can certainly be overcome to some degree but their elimination entirely will require substantial and systemic changes to the policy formation process (Freedman, 2008), and the flawed economic system it exists within (Harvey, 2005). While the policy outcome in this instance favoured public interest interveners in the short-term, the broader process that it

⁴⁰ In full, PIAC's statement reads:

It is with a heavy heart and a very real sense of betrayal of our predecessors at PIAC that we are able to submit comments only on the telecommunications questions and have left out very many points. (p. 1)

evolved from poses a range of risks to public interest interveners in the long-term, which can reverse the positive impact of any individual policy decision. Indeed, recent comments from the current CRTC chair and recommendations from a major review of Canada's telecommunications and broadcasting environment signal that Canada's net neutrality framework is in no way secure (CRTC, 2018b; Geist, 2020).

Chapter 5: The ETHI committee's inquiry into Cambridge Analytica and Facebook

While net neutrality, in one way or another, has long featured in policy dialogues in Canada, and around the world, other discussions about the implications of relatively new, large, global technology companies, such as Facebook and Google, have also emerged in recent years. Debates around privacy, competition, misinformation, the global reach of these companies, and many other issues have grown in prominence (Alba, 2017; Owen, 2017; Taplin, 2017). In the public sphere, these conversations have prominently taken place in the press, formal policy settings, and political campaigns (Bryden, 2019; Schleifer, 2020). In Canada, one of several key policy domains where these issues have recently been addressed is in the House of Commons' Standing Committee on Access to Information, Privacy and Ethics' (ETHI committee) inquiry into Cambridge Analytica and Facebook.

This chapter is the second of two case studies that examine the politics of internet policy in Canada and the ways that gatekeepers navigate and, at times, control these dynamics. This case study focuses on the committee's inquiry, which took place from April to December 2018, and saw testimony from 58 witnesses across 25 meetings (Parliament of Canada, 2018a). Where applicable, this investigation also briefly explores an additional three international grand committee meetings which brought together members of parliament from over 10 countries, including members of the ETHI committee, to meetings in London, Dublin, and Ottawa, respectively (Bryden, 2019). While distinct from the ETHI committee's inquiry, these meetings dealt with a similar set of issues, and reflect the international scope of this policy discussion.

This chapter aims to answer a range of questions: What gatekeeping practices and mechanisms were present in this inquiry? How do forms of gatekeeping in this case study differ from or resemble those that were apparent in the differential pricing practices case? Similarly, how do gatekeeping practices occur in different ways in policy settings where issues are global, rather than domestic, in scope? I use a similar structure to that used in Chapters 3 and 4 in that I study the issue-identification and framing, consultation, and deliberation and decision phases of the inquiry. Unlike the previous chapter, however, I do not examine the recuperation phase of the committee's investigation as House of Commons committee witnesses cannot formally seek recuperation for their participation (Parliament of Canada, 2020). Instead, I study an element of

the policy development process that has not yet been addressed in this dissertation: impact. In particular, I investigate the extent to which the recommendations from the committee's final report (ETHI committee, 2018b, p. 17) are reflected in the six major Canadian federal party platforms in the 2019 federal election.

I selected this case study for three key reasons. First, the dialogue around the regulation of technology companies is still evolving and, accordingly, an analysis of the role of gatekeeping in these conversations has pertinency and potential for impact. The operations of Canadian telecommunications service providers, for example, have long been regulated by the Canadian Radio-television and Telecommunications Commission (CRTC). Among other policy issues, these regulations have addressed net neutrality, competition, basic service broadband provision, and geographic access (CRTC, 2015a, 2016i, 2017b). By contrast, global technology companies such as Facebook and Google are largely unregulated, in Canada and elsewhere, although there have been vigorous and ongoing domestic and international discussions about if and how they should be regulated and subject to public scrutiny (Bryden, 2019; Ip, 2018). There are also related concerns about the potential for political parties and third-party political organizations to misuse personal information collected from these technology firms (Bannerman et al., 2020; Bennett, 2015). Choosing to study this case during this period of flux not only means that my interviewees are closer to the subject at hand, but also that I may contribute to a conversation that is still underway.

Second, internet policy in Canada is developed by both the CRTC and federal government and, accordingly, this dissertation should study both domains. Whereas my first case study examined the workings of CRTC, it is just as important that I investigate how legislation, which is sometimes based on recommendations made by committees, is (or is not) developed in the House of Commons. Given that the governing party has the power to change the CRTC's policy direction and ask the regulator to re-examine policy decisions, which has been a relatively common occurrence in recent years, politicians arguably have the greater level of influence over Canadian internet policy development (Geist, 2019b). In any case, it is only with an examination of internet policy formation in both domains that we have a full picture of the situation.

Finally, in contrast to my first case study, and many other recent internet policy dialogues in Canada, this debate is global in scope, which offers a distinct frame of analysis from that provided in Chapter 4. Whereas the CRTC's differential pricing practices decision applies largely to Canadian telecommunications service providers, the policy recommendations proposed by the committee are intended to target, chiefly, US companies, that operate globally, and Canadian political parties and third parties (CRTC, 2017b; ETHI committee, 2018b). Moreover, in large part due to the international nature of these technology companies, Canadian politicians unusually opted to collaborate with their counterparts in the UK and a range of other democratic nations, in a series of international grand committee meetings (Bryden, 2019). At the same time, industry executives, including Facebook CEO Mark Zuckerberg and CFO Sheryl Sandberg, used the issue of jurisdiction to avoid a summons by Canadian politicians to appear and testify during one of these meetings (O'Sullivan & Newton, 2019). International borders clearly factored into various gatekeeping practices in this case and, especially given the increasingly globalized nature of communication technology, it is useful to integrate such an analysis into this dissertation.

I argue that the ETHI committee's inquiry into Cambridge Analytica and Facebook reflects the prevalence of rhetoric over action in Canadian internet policy development. Despite some politicians' genuine efforts to address the challenges posed by technology giants, including in the unprecedented level of international collaboration between parliamentarians of different countries, no meaningful action has been taken by the Canadian government to address the pressing problems prompted by these companies and readily raised by public interest advocates. In particular, recommendations related to privacy, algorithmic transparency, and data sovereignty, which are central to the ETHI committee's (2018b) report, have been roundly ignored.

Rhetorical maneuvers have also been employed by industry groups to, as one former opposition staffer suggested, persistently delay and deny firms' actions and inactions. At the same time, public interest advocates who were called as witnesses before the committee were forced to distill complex ideas into digestible soundbites, often on short notice. While the ETHI committee's report (2018b) does reflect many of the ideas put forward by civil society groups and advocates, it was not followed by any significant pieces of legislation in the House of

Commons. More recently, there was a shift in rhetoric in the major political parties' official platforms in the October 2019 federal election (CBC News, 2019; Conservative Party of Canada, 2019; Green Party of Canada, 2019; Liberal Party of Canada, 2019). However, the federal government showed a lack of commitment to policy action in its formal response (Parliament of Canada, 2019) to the ETHI committee's final report (2018b). Coupled with the emergence of a global health crisis, it seems unlikely that any tangible, and smart, policy action will occur in the near future. What steps the federal government *has* recently committed to take on matters related to global technology companies focus on cross-subsidizing Canada's cultural sector through the taxing of these firms, rather than addressing the alarming privacy and transparency concerns raised by the committee (Shecter, 2020; ETHI committee, 2018b).

The methods that inform this chapter include interviews and an analysis of primary documentation. I interviewed four current and former members of parliament who sat on the committee during this inquiry, from each of English-Canada's three major parties. Two of these members served as vice-chairs of the committee during the investigation. I also spoke with an opposition staffer and several committee witnesses, who offered valuable insights into the mechanics of this process. I had less success securing interviews with industry representatives, such as those employed at Facebook and Google, companies that have notoriously been reticent to speak publicly about their involvement in the Cambridge Analytica scandal and similar events (Turnball, 2018b). I did have the opportunity to speak with several subject matter experts and public interest advocates involved in this case. Yet, as I focus more prominently on the tensions between domestic public representatives and global technology giants, this chapter more readily speaks to politicians' attempts to advocate for the public interest in this policy domain. Alongside interviews, I studied committee press releases, transcripts, and reports, as well as video documentation of the meetings (Parliament of Canada, 2018a).

I begin this chapter with a contextual understanding of the ETHI committee's inquiry into Cambridge Analytica and Facebook. I discuss the significance of the case, given Canadian lawmakers' prior disinterest in engaging in the dialogue around the regulation of Facebook and other large technology companies. This section is followed by an exploration of how the inquiry was initially prompted, namely, the public concern around the Cambridge Analytica revelations, and the more than 600,000 Canadians who had their information improperly shared

(Boutilier & Nanji, 2018). Next, I investigate the series of meetings that took place between April and December 2018 in Ottawa and, where applicable, the three additional international grand committee meetings that occurred in November 2018, and May and November 2019. I address what factors played into the selection of witnesses and the raising of issues within the inquiry. I then examine how parliamentarians engaged with policy views and actors through questions and procedural innovation, and how some industry witnesses contested these strategies. What follows is an exploration of the extent to which the committee's final report reflected public interest viewpoints. The chapter closes with a discussion of how the committee's recommendations were received by the House of Commons and reflected in the six major party platforms of the Canadian 2019 federal election.

The straw that broke the camel's back

Canadians may have had their personal data sold or breached countless times before this point, but the Cambridge Analytica scandal struck a chord in the public and political discussion around data protection, in Canada, and globally (Tunney, 2019; Wong, 2019). The scandal came to light in early 2018 with the revelation that the UK-based data analytics company had, without the consent of users, harvested the data of up to 87 million Facebook profiles, including more than 600,000 Canadians (Boutilier & Nanji, 2018). The data had non-consensually been used for targeted political and commercial advertising. To make matters worse, Facebook executives responded slowly and inadequately to the scandal. Five days after the news broke, the company's CEO, Mark Zuckerberg, acknowledged a "breach of trust" but only showed a "qualified openness to testifying before [the US] Congress" and cautiously "said that he was not entirely opposed to Facebook being subject to more regulations" (Wong, 2018).

Looking back on the event a year later, a Guardian headline reads, in part, the "Cambridge Analytica scandal changed the world" (Wong, 2019). More than anything else, perhaps, the event heightened fears held by the public and politicians about data, control, and power, and the extent to which major technology companies like Facebook, but also Google, Amazon, and others, wield them. It also highlighted the breadth and gravity of the policy challenges posed by these massive companies. The scandal showed the inadequate measures these firms had implemented to protect users' privacy and the need to draw lines around if and how political advertisements should run on these platforms. It brought to the fore the possibility that these

companies are simply too big, and that anti-trust legislation may be needed to increase competition in the markets within which they operate. Moreover, the events underscored how political parties, political groups, and companies could exploit the data held by these global technology companies. Lawmakers and regulators across the world had yet to substantially tackle these questions, and the scandal played an important role in starting many dialogues that remain active today.

But there was also a Canadian angle to the story. Christopher Wylie, the Cambridge Analytica whistleblower, is a Canadian citizen (Canadian Press, 2018). While tangential to my focus on the broader politics and forms of gatekeeping that characterize this case, his testimony proved immensely useful to Canadian and foreign parliamentarians' understanding of the event. Another Canadian element is AggregateIQ, a technology company based in Victoria, British Columbia, which had various connections with the parent company of Cambridge Analytica, SCL Group. AggregateIQ was also found to have harvested users' data non-consensually, in particular for clients in the UK who advocated for Britain's departure from the EU (Cadwalladr, 2018). Two of the company's chief executives, both Canadians, were also important witnesses to the committee, although the interactions between these individuals and parliamentarians were exceptionally less amicable than those had with Wylie (Turnball, 2018a). While these three actors remain relatively peripheral to my study, the nationalities of these individuals undoubtedly factored into the Canadian federal government's decision to so quickly initiate an inquiry into the Cambridge Analytica scandal through the ETHI committee.

What prompted and guided the ETHI committee's inquiry

The ETHI committee's inquiry into Cambridge Analytica and Facebook is also worthy of note because it marks a departure from the Canadian federal government's rhetoric around global technology companies up until that point. The Liberal Party of Canada, which held a majority in the House of Commons between 2015 and 2019, and currently holds minority power, has had close ties with these firms, including Facebook and Google, for some time. Prime Minister Justin Trudeau has been criticized for his part in bringing Sidewalk Labs, a sister-company of Google, to Toronto to build a 'smart' neighborhood (Wilkinson, 2019b). There have been many reports on Kevin Chan's, Head of Facebook Canada, connections to the federal Liberal Party (Turnball, 2018b). As an opposition staffer said, "the Liberals had spent a lot of time and

energy cultivating [the tech giants]. There were a lot of really close ties between the Liberals and Facebook, and the Liberals and Google, especially those two”. According to New Democrat MP Charlie Angus, and former vice-chair of the ETHI committee, these global technology companies:

are deeply intertwined with this government in terms of policy. There are serious questions about an innovation agenda, privacy rights, development, digital identity. But we have a government that is in bed with the key lobbyists from Facebook, Google. Putting Facebook at the centre of a committee inquiry seemed to reflect the seriousness of the matter, and a shift in tone for the party.

In contrast to the extensive press coverage and international collaboration that characterized the later stages of the inquiry, its inauguration on April 17, 2018 was relatively low-key.

(Although, there certainly still were some media reports (Major, 2018; O’Malley, 2018).)

Moreover, as several research participants indicated, it was unclear how long the inquiry would be, or what exactly it would entail. Even during my fieldwork, in fall 2018, near the end of the inquiry, parliamentarians expressed uncertainty around the scope of the proceedings, and the issues related to large technology companies broadly. Peter Kent, Conservative MP and committee member, said that the committee’s impression was that “this is just the tip of the iceberg in terms of massive media quasi-monopolies having a greater focus on profit than on protecting the privacy of the people they need to make their social media actually work”.

This section addresses how parliamentarians ultimately addressed these quandaries in the committee inquiry into Cambridge Analytica and Facebook. It discusses which issues made it to the fore of the committee’s agenda and investigates how these policy concerns were set out and framed. I also evaluate the decisions that contributed to the scope and breadth of the inquiry. This chapter finds that, in contrast to the CRTC’s differential pricing practices proceedings, issues were regularly brought forward by witnesses, who were selected collaboratively by parliamentarians and Library of Parliament analysts. Accordingly, a range of issues did emerge throughout the committee’s inquiry, even though members did not begin the study with a wholly blank slate.

Yet, the witnesses selected to take part in the study, who played an important role in raising and framing issues, were sometimes chosen for reasons misaligned with the public interest. While some members explicitly sought to champion the views of certain public interest advocates, these scenarios were also prompted by politicians' own desire to garner public attention and recognition. This reality can pose challenges for public interest positions on internet policy issues that are particularly complex. As technical or nuanced viewpoints are more challenging to defend in simple terms, and accordingly may less readily prompt external attention, politicians may have been less inclined to support them in this case. There are also questions to be raised about the digital methods political staff, and potentially other actors, used to develop witness lists.

Bringing issues to the table

Although committee members brought their views to bear on policy concerns during the inquiry into Cambridge Analytica and Facebook, the process was not initiated with a firm idea of the issues that would be addressed. As one opposition staffer said, the investigation:

was quite unusual in the degree that it was essentially a fishing expedition. We didn't really know going in exactly what we were going to get out of it. We had a set of themes we wanted to work through. Privacy was one, competition was another. . . .

Other than that, we were kinda willing to let it go where it went.

This notion of a "fishing expedition" does aptly characterize the broad nature of this particular inquiry. Rather than a tightly defined policy issue, such as differential pricing practices, the committee sought to study a range of overlapping and sweeping policy concerns, including privacy, competition, misinformation, and election interference. Although the inquiry *was* focused on a series of key actors and their involvement in these activities, including a set of global technology firms, such as Facebook and Google, and political parties and third parties. At first glance, thus, it appeared as though the investigation was more open and diverse than the differential pricing practices decision, and without a scope limited to "safe issues" (Bachrach & Baratz, 1962, p. 952).

This breadth also meant that the inquiry was characterized by fewer established protocols and more ignorance on the part of the lawmakers. These elements of the proceeding furthered the appearance that the investigation was at least somewhat immune to the "established political

procedures and rules of the game” (Bachrach & Baratz, 1962, p. 952). As former vice-chair of the committee, Charlie Angus, suggested:

Initially on the committee, it felt like we may only have a few days at this. And then we found out about the role of AggregateIQ, which is a Canadian company and Christopher Wylie being a Canadian, that there was a direct Canadian link. And at the time AggregateIQ were being uncooperative with the British investigation so our committee morphed into a much larger and broader investigation, which is not normal in Parliament.

Unlike the differential pricing practices proceedings, which outlined a rigid set of ideas for discussion from the outset, the committee’s inquiry ranged from a relatively abstract discussion of deepfakes⁴¹ to an interrogation of two of AggregateIQ’s chief executives on the company’s relationship with Cambridge Analytica (Parliament of Canada, 2018a).

In many ways, this flexible approach did allow public interest advocates who acted as witnesses to undermine gatekeeping practices inherent to many policy development processes. As is the case in CRTC policy formation, industry groups interested in shaping the government’s response to internet policy issues, such as Facebook and Google, are far more active lobbyists than civil society groups (Office of the Commissioner of Lobbying of Canada, 2020c, 2020a, 2020b, 2020e, 2020f). This can create a scenario whereby “deals or promises may be made outside the glare of publicity and the formal democratic process” (Freedman, 2008, p. 12). Yet, the facilitation of a broad inquiry allowed public interest participants relative freedom over the issues they raised to parliamentarians, and the ways these concerns were framed, alongside giving them the opportunity to do so in the first place.

For instance, Elizabeth Dubois, then Assistant Professor at the University of Ottawa, critically discussed analog versus digital voter-targeting strategies, political advertisements, platform regulation, and artificial intelligence, in the time allotted to her as a witness (Parliament of Canada, 2018a). By contrast, representatives from technology firms, like Facebook, Google, and AggregateIQ, that participated in the inquiry, were given little leeway, and instead were

⁴¹ Deepfakes are videos that have edited to replace the person in the video with someone else.

generally asked to account for corporate misbehaviours (Parliament of Canada, 2018a). Internet policy issues, particularly those posed by global technology firms, are complex and multi-faceted. Allowing public interest participants to openly address these concerns, in ways that align with their areas of expertise, and with the needed context of Canada's broader digital ecosystem, is welcome. Such a tack contrasts sharply with OpenMedia and other public interest groups' attempts to smuggle in the issue of data caps to the CRTC's differential pricing practices proceeding, for example, a topic that was ultimately left unaddressed by the regulator's decision (CRTC, 2017b).

But did this breadth ultimately mean that more public interest viewpoints were incorporated into legislation or policy? Unfortunately not. A retrospective examination of the actual impact of this inquiry highlights the limitations to this approach. As I discuss in greater detail later in this chapter, despite the breadth of information gathered from public interest witnesses during this period, the committee's investigation ultimately prompted no substantial policy change on the pressing issues raised. There are many reasons why this was the case. I argue that one of them relates to the fact that the scope of this inquiry was too sweeping to be effective. It is important that policy formation operates with some degree of openness. In the previous case study, and as others have highlighted (Shepherd, 2019a, p. 4), we saw how the employment of a narrow process can be a gatekeeping practice that silences certain positions that are relevant but deemed outside the regulator's purview. However, the inquiry into Cambridge Analytica is an instance where decision-makers took on more than they could chew.

By trying to look at all the problems posed by technology companies, including those that relate to privacy, electoral interference, and competition, without consideration for the extent to which these ideas might and should fit underneath a broader national data strategy, the committee's recommendations accorded little if any action from the federal government. There is also the question of whether the federal government ever had any intention of incorporating the committee's recommendations, which I will also address later. Allowing civil society to influence the agenda in internet policy development processes is critical, but the effort loses its meaning when that input is not translated into policy action.

Who gets to speak?

The elasticity of the ETHI committee's approach to the Cambridge Analytica inquiry meant that witnesses played an important part in what and how issues were raised and framed.⁴² Yet, there nonetheless remained gatekeeping practices and mechanisms at play in how these individuals were chosen. For one, while the witnesses who were invited to testify at the inquiry had the opportunity to frame their concerns before the committee, only a limited number were asked to participate in the first place. As the below quote from former Liberal MP Michel Picard's shows, witness selection in this context is a collaborative process between partisan and nonpartisan facets of House of Commons committees.

So how it works is that we put a motion forward in committee that we should study Facebook and Cambridge Analytica. And then the analysts and the clerk start to look at the names of those who represent companies and stakeholders and if members have names to suggest we give them to the clerk.

A gatekeeping mechanism within the House of Commons' committee system, this process certainly does not by default "expand the range of contributions made to the process" (Freedman, 2008, p. 90).

Analysts, subject-matter experts and public servants who have often worked with a single committee over a long period, are an important source of input in this step of an inquiry, and later ones. In the words of Conservative MP Peter Kent, "analysts have access to the expertise, so we'll meet in a pre-committee and sort of talk about a study, what witnesses, and the analysts will suggest—they'll know experts of record". While analysts surely offer valuable insights, these actors are nonetheless gatekeepers in this context, not least in their tendency towards the selection of 'experts of record' that may discount the potential contributions of

⁴² Notably this section, like the corresponding section in Chapter 4, does not thoroughly engage with the specific policy proposals put forward by witnesses. The reasons for this decision are threefold. First, this project is about the extent to which Canadian internet policy development processes effectively integrate public interest viewpoints, rather than the specific policy options presented and adopted. Second, there were many different policy proposals presented in this inquiry and it is thus infeasible to coherently summarize them in this chapter. Third, later sections of this chapter do clearly outline the recommendations put forward by the committee, which effectively sheds light on the key policy positions advocated for by witnesses.

activist, radical, or non-traditional voices. As Shoemaker and Vos (2009) write, gatekeepers “determine what becomes a person’s social reality” (p. 3). In this case, analysts and the other actors involved in developing witness lists, which dictate who can and cannot speak, influence how the committee, and the broader public, understand the internet policy issues being studied. As identified by MP Picard and other research participants, parliamentarians also play a part in this process. Thus, partisan considerations can too influence who is given a voice, even though members and affiliated staff did highlight the relative bipartisan nature of the inquiry.

Indeed, partisan politics inevitably remain present to some degree, as do other motivations that can be misaligned with the public interest. For example, that same opposition staffer highlighted the extent to which witnesses that can readily garner media coverage are desirable choices for politicians: “There are witnesses you want to get clips and headlines. And there are witnesses you want to get substantive recommendations and information to the report.” At the same time, some of the ways those involved in developing the witness list found experts to propose to the committee limits the breadth of diversity in individuals selected. The opposition staffer described his method as, in part, the use of Twitter: “You sort of find out who to talk to just by, you know, you follow a couple people, they retweet people, you follow them.” While it is certain that many civil society advocates involved in Canadian internet policy development would find themselves on Twitter, this approach runs the risk of encouraging witness lists that privilege voices from existing clusters or networks. It is not an effort to actively seek out witnesses that may exist and work outside mainstream discourse and established groups. In this instance, we can see how gatekeeping practices that manifest online can also influence policy development processes. Here, in the role Twitter plays in witness selection, the platform acts as an ‘internet information gatekeeper’ that can “impact participation and deliberation in democratic culture” (Laidlaw, 2010, p. 266).

These elements of the witness selection process have real implications for who gets chosen to testify at committee meetings and play a part in shaping the narratives around Canadian internet policy formation, and who does not. Of course, in an inquiry such as this, there are certain industry groups that will unquestionably be asked to testify (Facebook and AggregateIQ, the Victoria-based organization with ties to Cambridge Analytica, are two obvious examples in this case). Yet, it is in the selection of the external experts, including activists, scholars, public

interest lawyers, and engaged citizens, that these aforementioned factors, such as partisanship and media considerations, come into play. As MP Picard suggested in the quote below, it is these ‘professionals’ who help parliamentarians (who are not often experts in the issues under their purview) understand the challenges of a digital society. This relates directly to the frames that witnesses use to examine the ‘problems’ they are called on to explicate.

We always try to have one working session where we have an objective explanation of the context of the issue. In this case, [information technology]. And then **professionals explaining . . . their view on the problem that has been revealed in the news.** [bold mine]

It is not possible nor feasible to determine which voices were left unheard in the ETHI committee’s inquiry, but it seems certain that the gatekeeping mechanisms built into the House of Commons committee system and the gatekeeping practices employed by people working within this environment played a role in determining “*what* issues [or voices] are generally agreed to be significant” (Bachrach & Baratz, 1962, p. 949).

Asking the right questions: The consultation phase

The consultation phase of the inquiry into Cambridge Analytica and Facebook included 25 meetings held between April and December 2018.⁴³ Like the CRTC’s differential pricing practices proceedings, witnesses who participated in the inquiry worked in a range of sectors and represented many different interests. Public servants, including members of the CRTC, the Office of the Privacy Commissioner of Canada, Elections Canada, and the Competition Bureau, featured most prominently, with 23 participants. The committee also invited 17 public interest witnesses, including scholars from Canada, the US, and the UK, and civil society advocates working at organizations with a variety of mandates and interests. Seven industry representatives also took part in the inquiry, yet, in most cases, the interactions these actors had with parliamentarians were combative rather than amicable. Finally, five members of political

⁴³ Three related international grand committee meetings, which took place between November 2018 and 2019 and included members of the ETHI committee, are also referenced where applicable.

groups spoke to the committee, largely on the topic of privacy and political parties, which also arose as a notable issue in the inquiry⁴⁴.

In this section, I take a closer look at these witnesses' participation in the inquiry into the Cambridge Analytica scandal. I examine the tactics employed by chiefly industry and public interest witnesses in their testimonies before, and interactions with, members of the committee. I find that the style and content of these different actors' involvement is highly divergent. Industry groups generally sought to downplay their companies' role in the digital ecosystem and the related social and political implications through obfuscation and denial. Their intention was not to garner attention for their participation in the regulatory process, nor any corresponding regulation. On the other hand, public interest participants sought to clearly and persuasively make their case, typically in outlining the risks associated with these firms. Their goal was to promote their position, and to justify the need for regulatory action. Public sector participants advocated for a range of regulatory goals, although they were united in emphasizing the need for coordination across federal departments, agencies, and regulators. Meanwhile, representatives of political parties ranged in the extent to which they called for regulatory changes based on their different stated or implied motivations.

I also investigate the procedural innovation employed by the committee in this inquiry. I examine how committee parliamentarians used creative and unusual methods to attempt to hold industry actors to account, including serving subpoenas to representatives of Facebook and collaborating with members of similar committees in other countries. While laudable, these efforts were unsuccessful in bringing certain key actors to the table, which highlights some industry participants' continued capacity to wield gatekeeping power.

Tactical testimony

When it comes to the big companies, I found that their strategy was to make it really boring. . . . You have Google, Facebook, Microsoft, and Amazon coming in and being

⁴⁴Notably, some of these witnesses testified twice, which accounts for why the total number of these individuals is less than the number of witnesses the ETHI committee suggested participated in the inquiry (58).

as boring as possible. As dry and technical as they possibly could be. Partially their resources let them do that. They can just grab a report that's 70 pages long and kinda just read it off and hope everyone gets bored to death. That's an advantage that they have where the activist needs to cut through a lot of the noise.

This statement was provided in an interview with an opposition staffer, who emphasized the role of strategic deception in some witnesses' testimonies before committees. In part, these efforts are linked to the economic resources behind these individuals' participation. Global technology companies can hire lawyers, strategists, and other experts to craft complex and dry policy responses that are inaccessible to parliamentarians without a technical background. This is an effective approach, as most MPs do not have such experience and knowledge. It is illustrative that Charlie Angus, former vice-chair of the committee, said: "There are elements that are extremely technical and I'm not technical. I've decided to leave that out. It's not something that I can sink my teeth into". By employing this gatekeeping practice, these firms are able to determine, in part, "what events the public knows about" and how they understand them (DeJuliis, 2015, p. 8).

Unlike industry actors in CRTC policy proceedings, the aim of this approach is not so much to counter arguments from other parties, but to make companies' operations less transparent. At another point in the interview, the opposition staffer said, "they basically obfuscate as much as they can and delay when they can't. I found they really use everything in their toolkit to turn the heat down". This has been a noted approach of several well-resourced technology companies that have appeared before regulators in Canada and elsewhere in recent years (Kang et al., 2019).

By contrast, public interest advocates that participated in the Cambridge Analytica inquiry had the challenge of making their voices and views impactful in a short period of time. As the opposition staffer said, "it's about being able to really demonstrate to people why [these issues] matter". Yet, much like civil society advocates that take part in CRTC policy development, making such an impact can be challenging for public interest witnesses not least because of the resource constraints that characterize their work. Fenwick McKelvey, the Associate Professor involved in the CRTC's differential pricing practices proceeding, was also invited to testify before the ETHI committee. But, unlike groups with staff regularly allocated to regulatory

work, such as the technology companies referenced above, it was understandably more challenging for him to independently prepare for his appearance when he was only provided two full business days to prepare.

Despite these constraints, McKelvey and many other public interest advocates put forward clear arguments before the ETHI committee, in part by speaking in straightforward terms and proposing tangible solutions. This strategy was often in sharp contrast to those employed by industry actors, and reflects one way that public interest advocates can subvert the gatekeeping power wielded by global technology firms in this context.

A review of transcripts from the proceeding show that while public service, public interest, and political witnesses at least generally rely on the clear identification of issues and proposals towards regulatory action, industry participants often take one of two approaches. In the first, taken most readily by Facebook, representatives apologize or take responsibility for bad practices that have previously been reported by the press. As Kevin Chan, Head of Facebook Canada, said before the committee: “With hindsight, it is clear that Facebook had not invested enough in the security of our platform, and, for that, we are responsible” (Parliament of Canada, 2018c). In this way, company representatives effectively silence information about other activities that have not already come to light. Next, representatives emphasize how the company will change its behaviours going forward. As Robert Sherman, Deputy Chief Privacy Officer of Facebook, said in his testimony, “we've undertaken a series of steps to increase the protections we're providing for people's information” (Parliament of Canada, 2018c). This tactic allows the firm to keep the focus away from other such other activities or bad practices, by shifting attention to what ever new policies or measures are put forward. These strategies also reflect other ways that powerful global technology companies, who take on the gatekeeper role in the online sphere (Laidlaw, 2010), can also employ gatekeeping practices to manage, shape, and influence information in policy development processes.

The other approach, employed by AggregateIQ, the Canadian company with ties to Cambridge Analytica, is a denial of any illegal activity or malpractice. This method is best exemplified in Zackary Massingham's, CEO of AggregateIQ, affirmation in witness testimony: “[w]e have never managed, had access to, or used any Facebook data allegedly improperly obtained by

Cambridge Analytica or by anyone else” (Parliament of Canada, 2018d), a statement which was roundly criticized by parliamentarians as a lie (Turnball, 2018a). Through this strategy, which is notably less sophisticated and successful than that employed by Facebook, executives attempted to exert gatekeeping power by lying.

The implications for industry witnesses who adopted these two approaches in the Cambridge Analytica inquiry were different. Chan’s and Sherman’s testimonies framed Facebook as accountable to its users and governments. Their statements also affirmed that company executives understood the real changes needed to be made to the company’s operations. Apologizing for activities that had already been exposed by the media is not fulsome corporate accountability. But, by taking this tack, representatives made the company appear cooperative and supportive of government efforts. As the next section shows, while the company faced tough questions from parliamentarians after their testimonies, the firm ultimately left the inquiry with no discernable financial and legal damage, if some reputational damage. Moreover, no significant regulation has been enacted by the Government of Canada towards global technology companies or the organizations who benefit from their dominance (e.g., political parties and third parties) since the conclusion of this inquiry. This is despite the arguments put forward by public interest witnesses and the committee’s recommendations. While AggregateIQ did not leave the inquiry without immense reputational and likely financial damage (Cadwalladr, 2018), the gatekeeping practices employed in Facebook’s representatives’ testimony appear to have achieved the company’s goals.

Procedural innovation

I have been on all manner of committees in fourteen years, I’ve seen everything. I have never seen anything that’s even close to AggregateIQ. I mean they were not going to tell us anything. They showed absolute contempt for the facts and Parliament.

New Democrat MP and former vice-chair of the committee, Charlie Angus, said the above words in an interview, describing the behaviour of the Canadian technology company with connections to Cambridge Analytica. As it became clear that some industry actors would not cooperate independently, members of the committee used some creative measures to bring them, or try to bring them, to the table. According to the opposition staffer, one thing that set this inquiry apart was the “procedural innovation or rediscovery of long disused tactics”. These

innovations reflect how parliamentarians sought to resist and undermine the gatekeeping practices employed by industry participants in this case. At the same time, however, the events outlined in this section suggest that MPs also used such efforts to draw attention to themselves for their own political gain. Thus, these initiatives should not necessarily be viewed altruistically, but rather as part of the theatre and showmanship of political activity, which can sometimes be aligned with the public interest.

Parliamentarians employed at least four such tactics in both regular committee meetings and those of the international grand committee: heightened media coverage, aggressive questioning, the use of subpoenas and affirmations to incentivize witnesses' participation and truthfulness, and international collaboration. While many of these strategies were ultimately unsuccessful, together they do reflect a level of creativity on the part of parliamentarians that is not often on display in House of Commons committee meetings. Moreover, the exploration of these methods further highlights how gatekeeping power manifested in this case study's consultation phase.

In the first instance, committee members sought to garner media attention around the inquiry and their interactions with industry participants. According to the opposition staffer:

There are actors who deserve close and frankly hostile scrutiny, and we gave it to them. It's kinda part of parliament's role. There's definitely a self-serving interest to some degree here, but we do think it's a legitimate part of parliament's function.

Several committee members delivered this "hostile scrutiny" in op-eds and social media posts about their views on these firms' misbehaviours, and in declarative and combative comments about these companies to the media (Angus, 2018, 2019; Proudfoot, 2019). During the Cambridge Analytica inquiry, MP Angus wrote in a major Canadian newspaper that the "domination of the digital realm by an oligarchy consisting of a few massive firms raises many disturbing questions for legislators, regulators, and the public" (Angus, 2018). Later in the op-ed, Angus called for a "national conversation" on the risks posed by large technology companies (Angus, 2018). A year later, in advance of the international grand committee meeting in Ottawa, Angus wrote another opinion piece slamming Facebook's lack of participation in the committee's work thus far and highlighting the message it would send if Zuckerberg opted not to attend the meeting. Legislators, he wrote, are "becoming much less

amused by the antics of the golden boy of Silicon Valley” (Angus, 2019). In an earlier international grand committee meeting, held in London, where Zuckerberg also did not appear, an image of the CEO’s empty chair and nametag was strategically taken, which was later widely distributed by the press (Cook, 2018).

This strategy was successful in drawing media attention, but less effective in prompting active and transparent participation from industry actors. Moreover, it reflected the ways that media attention can be doubly used by politicians to self-promote *and* act in the public interest. Certainly, at face value, these media interventions seemed to at least be a valuable way to highlight the policy issues exposed by the Cambridge Analytica revelations. Yet, as identified in the quote from the opposition staffer above, they were also used by parliamentarians as a means to capture positive headlines. In other words, these very visible calls for accountability from large technology giants often reflected a degree of performativity and posturing on the part of politicians more than an expectation of policy change. Similar to comments raised about former CRTC Jean-Pierre Blais’ “showmanship”, these decision-makers’ actions may also be part “dramatic gesture” and “public relations exercise” (Shepherd, 2018, p. 241).

At the same time, interrogation techniques used by various parliamentarians, including most prominently Liberal MP and former vice-chair of the committee Nathaniel Erskine-Smith, a lawyer by training, made for antagonistic interactions between committee members and industry representatives. While these tactics are not especially uncommon for politicians, the breadth of these efforts did surpass those employed in many other inquiries facilitated by the committee during this period. However, the aggressive inspection provided by parliamentarians’ involvement in the press and their style of questioning in committee meetings was contested by industry members, sometimes in similar ways to those described in the previous section. In the case of Facebook representatives, the approach used to answer tough questions was often to reiterate points raised in witness testimony, with little to no acknowledgement of bad practices that seem likely to have occurred but were not independently raised in testimony (Parliament of Canada, 2018c). Alternatively, representatives

opted to evade queries by instead emphasizing recent actions taken since the scandal and, where applicable, promised to provide requested information at later undefined dates.⁴⁵

In instances where these actors were overtly asked to account for company misbehaviours that had not been laid bare by the Cambridge Analytica scandal, they were reticent to acknowledge fault on behalf of the firm.⁴⁶ Yet, consistently, and somewhat ironically, Facebook's representatives emphasized the extent to which they were willing to support lawmakers and regulators.⁴⁷ Another approach, employed in multiple instances by AggregateIQ, again involved overt lies, typically by claiming a lack of knowledge about an event or person when pressed by parliamentarians (Parliament of Canada, 2018d).

Another procedural innovation, the use of summons and affirmations, seemed to have been prompted in part by this dishonesty. In contrast to the invitations delivered to most witnesses, Zackary Massingham, CEO of AggregateIQ, was formally summoned before the committee. He was also sworn in at the beginning of his second appearance (Parliament of Canada, 2018f), an event that several research participants noted was quite unusual for a House of Commons committee meeting. Despite this formality, however, the truthfulness of the executive's testimony did not improve markedly. After Liberal MP Nathaniel Erskine-Smith's questioning, the politician concluded:

I'm going to leave it there, Mr. Massingham, but I'll say this: frankly, I haven't gotten any answers from you. You appeared before this committee and you lied. You're appearing before us again, and you're just not telling any part of the truth whatsoever. (Parliament of Canada, 2018f)

⁴⁵ In response to a straightforward request for information from MP Nathaniel Erskine-Smith, Facebook representative Robert Sherman replied: "We are still in the process of developing that information, but we will follow up" (Parliament of Canada, 2018c).

⁴⁶ An illustrative quote from MP Nathaniel Erskine-Smith: "You've indicated the importance of building the trust of your user base, but the only reason you're talking about LocalBlox and 48 million users having their information scraped is that I asked you about it" (Parliament of Canada, 2018c).

⁴⁷ For example, in his introductory testimony, Facebook representative Robert Sherman said: "I appreciate the committee's attention to this important matter, and we appreciate the opportunity to provide information to support your study" (Parliament of Canada, 2018c).

In another instance, legal measures were used to try to force the appearance of Facebook CEO, Mark Zuckerberg, and CFO, Sheryl Sandberg, at an international grand committee meeting in Ottawa after the attendance of both executives was requested, and subsequently ignored. Members then issued a subpoena; if either executive were to enter Canada, they would be forced to testify before the committee. The missive was disregarded by the executives (O’Sullivan & Newton, 2019). According to a research participant, the subpoena expired at the end of that session of Parliament (September 2019).

Both these examples show the extent that, despite the committee’s efforts and creativity, gatekeeping practices on the part of industry actors still prevailed and allowed some key industry players to continue to evade responsibility. These practices included the overt lies of AggregateIQ, which kept information from the committee and the public. They are also reflected in the literal absence of individuals best-placed to provide information to decision-makers, like Zuckerberg and Sandberg. In some cases, such as that of AggregateIQ, these practices had consequences for industry actors, including significant reputational and likely financial damage. However, for more powerful and sophisticated companies, like Facebook, it is the public interest that is negatively implicated. Indeed, these examples again show how global technology firms have the “capacity to act both as facilitators of and impediments to democratic discourse” (Laidlaw, 2010, p. 265), both in the online sphere and in the domain of policy development.

Finally, procedural innovation was reflected in the international coordination that characterized the committee’s work. MP Angus made this point in the following terms:

[We] felt that we had touched on something bigger and much more disturbing [in this inquiry], and that it required us using the full extent of our parliamentary powers to try and get evidence. I’m not sure that we would have spoken to committees in another country, but this is cross-border.

In fact, none of the four MPs interviewed for this dissertation could note an inquiry they had participated in before that involved such collaboration. By many accounts, the three international grand meetings, which were closely linked to the inquiry into Cambridge Analytica and Facebook, were “unprecedented” in their level of cooperation (Kates, 2018). But while these efforts did bring significant media coverage, alongside a lack of Canadian

legislation, there remains no coordinated regulation between these countries. At the conclusion of the London international grand committee meeting, members from participating nations signed a non-binding agreement that affirmed they would hold technology companies to account (UK Parliament, 2018). But little beyond the symbolic has been done.

Drawing policy conclusions

The ETHI committee's (2018a; 2018b) inquiry produced two reports that outline the testimonies provided by witnesses and the subsequently developed recommendations. The first report was published mid-way through the series of meetings and, while it was presented to the House of Commons, did not require a response from the federal government. This interim document, which was 56 pages long, offered eight recommendations, related broadly to transparency in the collection and use of data, the need for stronger data privacy measures in Canada, and the implementation of data ownership and sovereignty rules (ETHI committee, 2018a).

The second report, the more substantial of the two documents, was adopted by the committee after the inquiry's completion, on December 6, 2018, and was shortly thereafter presented to the House. This final document, at about 100 pages, provided 26 recommendations,⁴⁸ which include many of the initial report's eight, with additional considerations related to many other issues. These included the regulation of certain social media platforms, political advertising, data portability, competition, cybersecurity, digital literacy, the addictive nature of some digital products, algorithmic transparency, privacy and political parties, and several others (ETHI committee, 2018b). The government's response, which came four months later, will feature in the next section (Parliament of Canada, 2019).

This section focuses on the conclusions drawn out in the committee's final report, which had the stated purpose of enabling "the federal government to better understand the issues Canada is facing and encourag[ing] it to take action" (ETHI committee, 2018b, p. 9). I explore which stakeholders' voices were reflected most prominently in the report's recommendations and

⁴⁸ A list of these 26 recommendations can be found in Appendix 2.

what the study actually concluded about the state of internet policy in Canada at the time of publication. Like the differential pricing practices proceedings case study, I am unable to speak in detail about the deliberations behind these reports due to interviewees' adherence to committee confidentiality. However, an analysis of the final report is useful in illuminating how certain actors' testimonies influenced parliamentarians' understanding of these policy issues over other witnesses.

With respect to the voices and views reflected in the report, I find that the study *does* rely on many arguments and evidence put forward by civil society advocates who had the opportunity to take part in this dialogue. This occurrence reflects the extent to which gatekeeping power can swing between different gatekeepers within a single policy dialogue. While industry participants employed gatekeeping practices in the consultation phase to limit the information collected by parliamentarians, MPs were able to restrict industry viewpoints in the final report developed in the deliberation and decision phase. In part, this seems to be linked to the willingness of one Liberal MP to take positions contrary to his party's long-standing amicability with global technology companies. But, keeping in mind that this report ultimately prompted no policy action, this section also begins to address the question: Why was that the case? I suggest that part of the reason for this lack may be the wide breadth and lack of focus of the report's recommendations, which may have undermined pressure on the federal government to take quick and substantial regulatory action on these issues.

In contrast to CRTC policy decisions, which enact specific and precise regulations, House of Commons committees only provide a set of recommendations for consideration by the House. In some cases, the House then offers a formal response to the committee and develops legislation based on any number of the included recommendations. But the high number of recommendations the committee proposed in this case and, more importantly, the fact that they relate to an array of different agencies, departments, and pieces of existing legislation, without a guiding strategy or framework, may have played a role in the federal government's ability to

evade its responsibility to act.⁴⁹ The proposals in the committee's final report reflect a wide array of aims, that would require a range of different and sometimes overlapping policies.

While instructive, these proposals do not necessarily draw a clear path forward, nor put pressure on the government to act quickly on one or a few key goals. Certainly, parliamentarians agreed, in interviews, that a central aim of the inquiry was to 'fact-find'. But a key objective of the report was also to encourage the government to "take action" (ETHI committee, 2018b, p. 9) against well-resourced and powerful global technology companies whose behaviours have real and harmful implications for Canadian citizens and residents. The report also highlights the urgent risks posed by political parties' and third parties' use of personal data collected from these firms and other sources. Recommendations that accounted for the need for a national strategy would have more readily put pressure on the government to prompt change and better allowed public advocates to champion a coherent set of proposals.

The views reflected in the ETHI committee's report

The committee's final report paints an alarming picture of the state of internet policy in Canada. It begins by outlining the events that led to the inauguration of the inquiry, the Cambridge Analytica revelations, stating:

The scandal quickly brought to light much broader questions relating to the self-regulation of platform monopolies, the use of these platforms for data harvesting purposes, and their role in the spreading of disinformation and misinformation around the world. (ETHI committee, 2018b, p. 36)

From there, in eight chapters, the report outlines, in stark terms, the lack of regulation around the Canadian government's approach to a wide range of internet policy issues in the face of diverse and increasing policy risks. Throughout, related assertions are supported by quotes and evidence provided by many public interest and public service witnesses that participated in the inquiry.

⁴⁹ Another factor was likely a desire to hold off on new regulations until the conclusions of a review of communications and broadcasting legislation that was happening **concurrently**. That said, this report has since been published, and itself includes 95 wide-ranging recommendations (BTLR panel, 2020), which have yet to be acted upon by the federal government.

The views prevalent in each section draw a picture of the situation as one where large technology companies have introduced and exacerbated challenges to Canada's electoral and democratic processes, alongside the privacy of individual Canadians. In other instances, the report suggests that political parties' collection and use of personal data reflects risks to Canadian society. These issues are made worse by the limited powers of some Canadian agencies, namely, the Office of the Privacy Commissioner of Canada (OPC), and the lack of coordination between different government bodies, such as the OPC and the Competition Bureau. As highlighted in the interim report, evidence from witnesses prompted "grave concerns" from the parliamentarians about vulnerabilities linked to the "improper acquisition and manipulation of data" (ETHI committee, 2018a, p. vii). Speaking directly to the Government of Canada, the report asserts it "must act urgently to better protect the privacy of Canadians" (ETHI committee, 2018a, p. vii).

Significantly, the groups or individuals the committee appears to rely on most in order to understand the state of the situation in Canada primarily include public service and public interest witnesses, both Canadian and foreign (ETHI committee, 2018b). The views of the OPC are referenced multiple times and seem to factor prominently into the committee's comprehension of the Canadian internet policy ecosystem, as are those of academics Elizabeth Dubois, Michael Pal, and Fenwick McKelvey, among others. The perspectives of these parties are given disproportionate space in the report in comparison to industry representatives, including those from Facebook and Google. For instance, the actions that Facebook representatives promised the company would take in response to the Cambridge Analytica revelations in witness testimony are not mentioned in the final report, although they are included in the interim report. This absence suggests that parliamentarians chose not to give these assertions much authority, particularly in comparison to contrasting arguments outlined by other witnesses, most of whose comments directly implicate or involve the company. Rather, the report explicitly highlights that Facebook "has not been the best corporate citizen in recent years" (ETHI Committee, 2018b, p. 71).

Positions put forward by Google representatives are also limited to some degree, a fact that is notable because, while the company has received criticism from Canadian authorities, it was not implicated in the Cambridge Analytica scandal. Accordingly, as a firm with a greater

degree of public trust, it seemed possible that parliamentarians would give Google's policy positions more weight than the social media company. While policy positions put forward by Colin McKay, a Google representative, can be found in the report, they are minimal in comparison to statements included from public interest and public services witnesses. In fact, overall, the committee overtly expresses its misalignment with industry representatives in the final report. One example is the following statement related to the risks associated with the regulation of social media companies: the "committee has taken the comments from industry representatives and some academics into account, but still believes that some type of regulation is necessary" (ETHI committee, 2018b, p. 37). In this context, those actors that developed the report, including parliamentarians and Library of Parliament analysts, exerted gatekeeping power in their editorial decisions whereby "certain types of stories [and narratives] will be selected, while others will not" (Soroka, 2012, p. 515).

In some ways, this approach is in clear contrast to the CRTC decision studied in the previous case study (CRTC, 2017b). While the regulator ultimately adopted a position aligned with civil society advocates, the decision did show some orientation towards industry representatives on key elements of the policy. Moreover, broadly, the CRTC decision engaged with arguments put forward by industry stakeholders to a far greater degree than committee parliamentarians, and in some cases entirely ignored substantial contributions made by civil society groups. In this way, the CRTC's differential pricing practices decision seems to reflect a far greater effort to balance competing views from varied stakeholders (CRTC, 2017b). By contrast, the committee report overtly aligns itself with a concern for democratic principles, which it suggests are more compatible with the arguments put forward by public interest and public service witnesses (ETHI committee, 2018b). The problem is that these positions were not tangibly reflected in any meaningful regulatory measures after the report's publication. This outcome tellingly highlights the "inherent contradictions and enduring tensions" of Canadian communications, including "between democracy and elite accommodation" (Barney, 2011b, p. 29).

At first glance, it is somewhat surprising that the committee's final report reflected minimal partisan differences. Aside from divergences in how the three major political parties of the time understood the potential need for privacy legislation that oversees political parties' activities, there is little clear indication of how partisan influences factored into the report's development.

This finding is particularly unexpected given recent criticisms about the Liberal Party of Canada's connections with global technology companies, like Facebook and Google (Turnball, 2018b; Wilkinson, 2019b). Conservative MP Peter Kent noted that Facebook executives had access to the Prime Minister and senior cabinet officials and, for a period, used that access even while not being registered on Canada's official lobbying database. MP Kent said:

That's very concerning as I think there should be a lot more transparency in how a multi-billion-dollar enterprise with an interest in minimizing regulation and oversight interacts directly with the people who make decisions on whether or not there will be regulation and oversight.

Moreover, in several initial committee meetings, partisan politics did clearly colour some members' inquiries to witnesses. In the questioning of Christopher Wylie, the Cambridge Analytica whistleblower, MP Kent brought up the witness's former work with the Liberal Party of Canada (Parliament of Canada, 2018e). New Democrat MP Charlie Angus raised the Liberal Party's close ties with Facebook, including the fact that Kevin Chan, Facebook Canada's chief lobbyist, was also previously employed by the party. In an awkward exchange about Chan's access to top liberal ministers, Angus asked: "You have enormous access. You're very friendly with [the governing Liberals]. Why would we expect government to regulate you when you're so nice?" (Parliament of Canada, 2018c).

Yet, in the final report, viewpoints that might have aligned with the Liberal Party of Canada's proximity to these firms were absent. This is a point that does reflect many committee parliamentarians' assertions that the group worked well together, despite overarching partisan differences. One of the drivers behind this unusual level of consensus can be explained by the political attitudes and activities of one Liberal MP, and former vice-chair of the committee, Nathaniel Erskine-Smith. In the press, Erskine-Smith has variously been called a "maverick", "genuine rebel" and "rogue operator" (Connolly, 2019; Mangat, 2020; Thomson, 2019). Between 2015 and mid-2019, the first-time MP had voted against the Liberal Party 37 times, far more than any other member of his party. He independently apologized to Canadians when the Liberal Party broke a substantial campaign promise and voted in favour of hearing the ethics commissioner appear in another ETHI committee inquiry to comment on a major Liberal

scandal (Thomson, 2019). For a party whose power is especially consolidated, these diversions are even more notable (McCue, 2019).

Given that the key Liberal parliamentarian on the committee seems to have few qualms about publicly distancing himself from his party's actions, which he implicitly did multiple times in his tough questioning of technology companies' representatives, it is less surprising that Facebook and other firms' views factored less prominently in the committee's final report than is reflective of the Liberal Party's actual ties to these companies. At the same time, it makes more sense that the committee's first listed recommendation in the final report calls for increased privacy restrictions around political parties' use of personal data, a position that Erskine-Smith's party officially opposes (ETHI committee, 2018, pp. xii, 21).

Also notable is the fact that key members of the committee have openly commented on their admiration for Erskine-Smith. MP Angus has said, "I have great respect for my honourable colleague. I've worked with him for four years. He's very complex" (Thomson, 2019). In this inquiry and others, Erskine-Smith's actions effectively show how commonly employed gatekeeping practices linked to partisan and ideological preference can be undermined by individuals acting for the public interest over the interests of the organization they represent. Such practices are not fixed or inevitable, just as domination "never quite exists and never quite manages to stabilize itself" (Bailey et al., 2018, p. 4). It is of course unclear whether part of MP Erskine-Smith's motivations for diverging from his party's implied and overt views on global technology firms may have been to further develop his personal and political brand as a "maverick". But, in any case, the outcome seems to have been some form of genuine consensus on the risks posed by these companies in the committee's final report, reflected in a "common identity as members of parliament" (Stilborn, 2014, p. 346).

What should be done?

Given the previous analysis, the report's recommendations unsurprisingly, and laudably, reflected an alignment with many of the positions advocated for by public interest and public service witnesses (ETHI committee, 2018b, pp. 1–6). Key issues raised and explored by these parties were readily included, such as the need to expand the powers of Canada's Privacy Commissioner and regulate global technology companies, particularly in the areas of privacy

and transparency. Moreover, legislation that would allow diverse government agencies to work together on these issues was proposed, alongside regulatory measures that would increase political parties' and organizations' use of personal data. Albeit slightly vaguely, the report concludes with the assertion that "no effort should be spared so that Canadians can participate in the digital economy and the democratic process without fear" (ETHI committee, 2018b, p. 75).

It is impossible to know why exactly the federal government opted not to act on the ETHI committee's key recommendations, particularly those that relate to privacy, the issue at the centre of the Cambridge Analytica scandal. As Scott (1990) suggests, the powerful also "develop a hidden transcript representing the practices and claims of their role that cannot be openly avowed" (p. xii). What is certain, however, is that there were multiple factors at play. I argue that one of them may have been the immensely wide-ranging scope of, and lack of strategy underpinning, the 26 recommendations proposed in the report (ETHI committee, 2018b, pp. 1–6). One rationale behind this range is relatively obvious. The issues raised by the Cambridge Analytica scandal are disparate, as are those provoked by the operations of large technology companies broadly (e.g., Noble, 2018; Pasquale, 2015; Taplin, 2017). These firms do not simply mediate information, rather they fulfil a range of roles: to provide platforms for both good and bad actors, to collect and use information on users, and to manipulate the information that users do see, among many other activities. As Laidlaw (2010) writes, these types of online gatekeepers warrant regulatory scrutiny because they attract "human rights responsibilities" (p. 268). Moreover, their prominence in various markets poses many competition and antitrust concerns (Mansell, 2015). At the same time, there were some issues raised in the inquiry that are adjacent, though highly relevant, to the operations of these companies, including the privacy practices of political parties and foreign funding in domestic elections.

Yet, these policy concerns are united in many ways, not least by their relation to the collection, use, and manipulation of personal data. Certainly, this is a substantial undertaking from the perspective of policy development, but it remains one that could be encapsulated under a broader strategy or policy framework. As Teresa Scassa (2019), law professor at the University

of Ottawa, compellingly outlined in a public policy study published a month after the release of the committee's final report:

Canadians need a national data strategy that provides a common framework for data security and privacy, that prioritizes transparency and oversight in the processing of data, and that transcends silos and jurisdictional barriers. Such a strategy must embrace an innovative future and, at the same time, protect our society's most deeply held values. (p. 2)

According to Scassa (2019), this strategy should entail many legal reforms, including to Canada's public and private sector data protection laws, as well as "greater transparency and oversight of the algorithms used to process data and decision making" (p. 6). Interestingly, many in Canada's business community have long been calling for strategy, and regulation, too.⁵⁰ The same month the federal government's response was published, Ben Bergen, executive director of the Council of Canadian Innovators, called for a national strategy and regulations "with some teeth" (Tunney, 2019). Of Facebook, Google, and other large technology companies, he told Canada's public broadcaster: "I think that the government does have the capacity to make sure that the large giants are playing fair" (Tunney, 2019). By recommending ad-hoc reforms to existing Canadian legislation, without a broader commitment to devise a strategy responding to the many issues laid bare by the Cambridge Analytica scandal, the committee report is a missed opportunity. Instead of outlining a tangible vision for change, the document contributes to the "dramatically increased volume of reports, recommendations and response being generated by [parliamentary committees] since the mid-1980s" (Stilborn, 2014, p. 355). This glut is especially pertinent to Canadian internet policy where the number of parliamentary and other inquiries on these issues have prompted concerns about "consultation theatre" (Geist, 2017).

Given this lapse, press coverage of the final report's release necessarily focused their headlines on a single issue raised by the committee, rather than to a broader view to structural change in

⁵⁰ These calls should be interrogated for the extent to which they conflates Canadian citizens' and residents' public interest with the interests of the Canadian business community; however, such an investigation goes beyond the scope of this section.

the form of a national strategy. Despite including a summary of the broad number of recommendations outlined in the report, an article from the *National Post*, a major Canadian newspaper, was headlined “MPs ‘very nervous’ about Canadian election meddling as final report on Facebook data breach released” (Thomson, 2018). Another report had a rather different focus “Regulate social media, says Canadian parliamentary committee”, while a third read, “Watchdog expects ‘outdated’ Canadian privacy laws to be key election issue” (C. Meyer, 2018; Solomon, 2018). These examples also highlight the role of journalists and editors as gatekeepers in policy development contexts, whereby routines, organizational and industry norms, and other factors (Shoemaker & Vos, 2009) contribute to what policy information is disseminated to the public. As Ali and Puppis (2018) highlight, there is an “interdependence between media policymaking and media policy coverage” (p. 271).

Without a clear overarching strategy, the committee’s final report was also arguably less accessible to the Canadian public. While a key aim of the report was to inform government decision-making, it is also a publicly available document that informs civil society groups and members of the public. In taking up their committee roles, parliamentarians represented and spoke on behalf of Canadians in the inquiry and its subsequently published reports. Individual Canadians are also those directly implicated by regulatory action, or lack thereof, and civil society groups and members of the public can be key champions of regulatory change. Such advocacy may have been complicated by the report’s lack of focus and limited any meeting of calls for “increased coordination and involvement of civil society in the policy process” (Raboy & Shtern, 2010a, p. 224).

We can see how the recommendations’ breadth and lack of central strategy might lead to subsequent ambiguity in overall press coverage and public interest advocacy measures. Ad-hoc recommendations are more likely to lead to similarly ad-hoc media reports and civil society activities. At the same time, there is the possibility that had some committee recommendations been implemented without such a framework, they would have faced implementation barriers. Indeed, experts have pointed out how sporadic government or agency guidelines in the area of data governance may encounter legal challenges if not “addressed by government policy within a national data strategy” (Geist, 2019c).

Certainly, there is merit to the argument that a proposed national strategy goes beyond the scope of the committee's mandate (McKelvey, 2018). Yet, the inquiry was a substantial undertaking and included interviews with nearly sixty witnesses over the better part of a year and liaisons with counterparts from more than ten other countries. Rather than a clear framework that addresses the societal and other challenges brought about by the digital age, underpinned by proposals for specific reforms, the committee's varied recommendations outlined a medley of competing priorities. This reality lines up with a quote from a former minister who suggested that House of Commons committees are an important "vehicle for conveying political messaging" but that it "was rare that I was provided with quality policy insights" (Stilborn, 2014, p. 354). As we see in the subsequent section, this lack of coherency may have more readily allowed the federal government to employ gatekeeping practices to bar or delay any tangible policy change, as the government could more easily pick and choose which issues to address. In this instance, despite what may have been well-intentioned efforts, committee parliamentarians missed the forest for the trees.

Impact and rhetoric

Unlike the CRTC, parliamentary committees do not offer witnesses who participate on behalf of the public interest any opportunity for recompense for their time and preparation.⁵¹ For this reason, this section does not focus on the recuperation phase of the policy development process. Instead, it outlines one element of the *impact* of committee's recommendations, specifically their influence on the rhetoric employed by the government and opposition parties about the relevant policy issues. In the first instance, I examine what impact the committee's final report (ETHI committee, 2018b) had on the federal government's stated understanding of the risks associated with global technology companies, and the other related policy issues that emerged in this inquiry. While, at the time of writing, no substantial regulations have been enacted to address these risks, the federal government did provide a formal response to the committee's final report (Parliament of Canada, 2019). In this section, I investigate that response, asking

⁵¹ Many of these individuals (e.g., some activists) are not paid by their employer to take part in such activities and, accordingly, their participation is unpaid. Others (e.g., employees of civil society groups) receive a salary that would include participation in such activity but the organization for which they work relies on dedicated project funds so unfunded participation in such consultations may pose operational concerns for these groups in the long-term.

such questions as: What recommendations did the response acknowledge, or ignore, and why? What gatekeeping practices did the government use to delay any regulatory review or action?

Perhaps not remarkably, the government largely highlighted recommendations that were aligned with its existing mandate and activities and marginalised those that challenged its current agenda. Recently enacted regulatory efforts were highlighted to signal that the government had, in some ways, responded to the policy issues raised in the report. In many cases, these referenced activities pale in comparison to the related committee recommendation. As Stilborn (2014) writes, such government responses to House of Commons committee recommendations are often “devoted to enthusiastic descriptions of what the government is already doing” (p. 351). Not only does this gatekeeping practice hide whether and how the government plans to address real limitations in Canadian policy, but this exercise “leaves it open to conjecture whether or not [the committee’s recommendations] contributed materially to the deliberations and actions of government” (p. 351). At the same time, recommendations that were misaligned with the government’s goals are often responded to in an ambiguous manner or ignored.

Next, I examine the extent to which the committee’s recommendations were reflected in the six major party platforms of the fall 2019 Canadian federal election. Six months after the federal government’s response to the committee’s final report, Canada’s 42nd Parliament broke for an election. After a short campaign period, the Liberal Party of Canada was re-elected, although with a minority, rather than majority, balance of power. Despite the lack of Canadian legislation that relates to global technology companies, these political platforms are telling illustrations of the shifting ways that politicians talked about digital policy issues and their implications for Canadian society.

The government’s response

The federal government’s formal response to the committee’s final report was presented to the House of Commons in April 2019 and signed by the Minister of Democratic Institutions and the Minister of Innovation, Science and Economic Development (Parliament of Canada, 2019). The letter thanks the committee for their work and categorizes the recommendations into eight sections based on topic. Each section identifies the relevant committee recommendations and

describes how the government has responded to them in recently enacted legislation⁵² or how it will continue to assess the need for further measures.⁵³ Potentially reflecting “a more durable erosion of the efficacy of the mandatory government response procedure” (Stilborn, 2014, p. 351), at no point does the government explicitly commit to fulfilling any of the committee recommendations beyond those addressed in existing legislation. Neither does the government establish a firm timeline to study the possibility of enacting some form of proposed legislation. These are both tactics that remind of Facebook representatives’ hesitancy to deeply engage with the questions posed by parliamentarians and establish firm timelines to support the committee’s work.

Indeed, the federal government used gatekeeping practices to advance its existing aims, and deter other policy options, despite the committee recommendations’ alignment with many public interest views, particularly in the areas of privacy and transparency. Of the 26 total committee recommendations, only five are fulfilled. All five of these recommendations had been met because recent legislation or existing government programs or research included measures or efforts that approximate those proposed by the committee. These fulfilled recommendations are among those that least tangibly address the policy shortcomings laid bare by the Cambridge Analytica scandal. Recommendations that relate to the regulation of global technology companies in the areas of privacy and transparency, including the clear labeling of content produced algorithmically, the creation of a body to audit algorithms, and the implementation of general data protection rules, are left ignored. Instead, the government highlighted continued engagement with and monitoring of these firms to ensure they are acting in the best interests of the public. Recommendations that relate to increased restrictions around political parties’ personal data practices are also not readily addressed. Through carefully-chosen and vague rhetoric, the government effectively closes the door on regulatory action in

⁵² Generally, the referenced legislation is the Elections Modernization Act (2018), which became law several days after the committee’s report final report was presented to the House of Commons.

⁵³ Appendix 3 shows the tactics employed by the government to respond to each set of recommendations and identifies the number of these proposals the governments has, roughly, fulfilled in recently passed legislation.

these areas. Rather, the expectation seems to be that self-regulation, through “greater action and specific measures”, will solve these policy issues (Parliament of Canada, 2019).⁵⁴

These statements do not account for the extent to which global technology firms have already acted in a manner contrary to these principles (Pasquale, 2015; Wong, 2019), and their increased bulk in society and the economy (Forbes, 2020a, 2020b; Matney, 2020), nor that the inquiry showed executives’ unwillingness to meaningfully engage with Canadian lawmakers in the first place.⁵⁵ As Jim Balsillie, former CEO of major Canadian technology company RIM, said in an interview with Canada’s public broadcaster: “I don’t blame the corporation for exploiting a gap in regulation. Just don’t pretend they’re interested in the public good. The job of governments is to regulate for the public interest” (CBC Radio, 2019). The government’s decision not to regulate is consequential and political, in the sense that it “involves favouring some people and values at the expense of others” (Streeter, 1996, p. xii).

Similarly, the government did not engage with the substantive recommendations that relate to the powers of the Office of the Privacy Commissioner. Despite witnesses’ repeated assertions that the Privacy Commissioner’s reach and capabilities are limited by existing legislation (ETHI committee, 2018b, pp. 19–26), the government’s answer is lacklustre and makes no tangible commitment to policy action. Rather, the response enthusiastically emphasizes that the government has “committed to examining all options” and “will assess the need for additional measures” (Parliament of Canada, 2019).

In particular, this approach is employed to respond to the recommendations that relate to increased restrictions around political parties’ personal data practices, controls that were

⁵⁴ The full quote from the government’s response reads:

It is incumbent upon these companies to understand the societal responsibilities that accompany the creation and operation of these platforms. The Government will continue to engage with online platforms and to monitor their behaviour. The Government is expecting greater action and specific measures to increase transparency, authenticity, integrity, and to combat the spread of disinformation. (Parliament of Canada, 2019)

⁵⁵ Or, in the case of Facebook executives Mark Zuckerberg and Sheryl Sandberg, even appear to testify when summoned (O’Sullivan & Newton, 2019).

urgently highlighted by witnesses,⁵⁶ and are broadly understood to be lacking in Canada (Bannerman et al., 2020; Campaign Research Inc., 2019), including in comparison to international counterparts (Bennett, 2015; Bennett & Bayley, 2012). Indeed, this literature shows multiple instances where Canadians have been harmed in part due to this lack of regulation (Howard & Kreiss, 2010; Wilkinson, 2019a).

The response suggests that the government will continue “to reflect on the extension of Canada’s privacy protection frameworks to political parties” (Parliament of Canada, 2019). Yet, this answer seems dubious given that the Liberal Party of Canada, the majority party at this time, explicitly stated in testimony that the party does not support any such changes.⁵⁷ Moreover, the Liberal Party, as well as other political parties, though seemingly to a lesser extent, have benefitted immensely from Canadians’ personal data, including in the federal election that took place half a year after this government response was published (Fionda, 2019; J. McLeod, 2020). Nonetheless, by employing noncommittal and vague rhetoric to suggest that there is a continued *interest* in studying this already well-examined issue that holds near universal consensus in the public interest community, the government limits criticisms that it is avoiding making legislative changes that better the public interest for its own political gain. Indeed, this examination shows the ways that these formal responses additionally serve as “communications products in which affirmations of the value of a committee’s work primarily may reflect strategic objectives” (Stilborn, 2014, p. 349).

⁵⁶ Elizabeth Dubois, then Assistant Professor at the University of Ottawa, told the committee that “privacy laws [should] be updated and applied to political parties [and] the Privacy Commissioner to have increased power to enforce regulations . . .” (Parliament of Canada, 2018g).

These views were reflected by Associate Professor Michael Pal (University of Ottawa), Associate Professor Fenwick McKelvey (Concordia University), Information and Privacy Commissioner for British Columbia Michael McEvoy, Privacy Commissioner Daniel Therrien, Professor Colin Bennett (University of Victoria), Professor Thierry Giasson (Laval University) (ETHI committee, 2018a, 2018b).

⁵⁷ As Michael Fenrick, Constitutional and Legal Adviser to the Liberal Party of Canada’s National Board of Directors, told the committee:

We would not support the application of PIPEDA [one of Canada’s key pieces of privacy legislation] en masse and en bloc to political parties in the sense that, as it’s currently drafted, it’s intended to address commercial activity. It’s not intended to address political activity. (Parliament of Canada, 2018h)

Rather, many of the recommendations the government cited as being met in recently enacted legislation emphasized further research and digital literacy initiatives over the regulatory action called for by many of the public interest and public service witnesses that participated in the inquiry. For example, the response references significant investments in “citizen-focused activities to build citizen resilience against online disinformation and building partnerships to support a healthy information ecosystem” (Parliament of Canada, 2019c). While valuable, these initiatives place the burden of responsibility on Canadian citizens and residents (the gated in this context), rather than global technology firms and political parties (the gatekeepers in this context). These efforts suggest that the ‘gated’, “the entity subjected to a gatekeeping process” (Barzilai-Nahon, 2008, p. 1493), should be accountable in a significant way for how these varied gatekeepers control, manage, and use their personal information. Certainly, it is important that individuals know how to parse through misinformation or take appropriate steps to protect their privacy online, for example, but, digital literacy alone is not an effective deterrent to the various risks posed by global technology companies and other parties raised during this inquiry. Instead, these projects allow governments, or companies, to signal action on behalf of the public interest, despite the limitations of the formal response described herein.

Rhetorical choices in party platforms

For many governments around the world, the Cambridge Analytica scandal was a pivotal moment in the dialogue around global technology companies. The conversation quickly shifted from one predicated on the opportunities offered by these firms, to citizens, governments, and businesses, to the risks they pose to liberal democratic states (Angus, 2018; Kang et al., 2019; Kates, 2018). In Canada, the inquiry into Cambridge Analytica and Facebook is also reflective of that turning point. Politicians did begin to ask tough questions to the representatives of these firms, and demanded transparency on how they and other groups that collect and use personal data, such as political parties and third parties, operate.

The Canadian government’s response to the proposals put forward by the committee was disappointing. But the question remains as to whether the committee’s findings influenced changes in other ways, and whether these changes contributed to meaningful policy action. Or, rather, if these choices only *signaled* real policy change and ultimately hid a lack of commitment on the part of political actors and organizations to meet the needs of Canadian

citizens and residents. Most markedly, the final report’s recommendations seem to have played a part in shifting politicians’ and political parties’ rhetoric about the digital policy issues raised in the study. Four of the five major Canadian federal parties that were operational in 2015 increased their political platform’s discussion of the regulation of global technology companies between the 2015 and 2019 electoral campaigns and other related forms of regulations (e.g., increased restrictions around political parties’ use of personal data). In 2015, the New Democratic Party of Canada was the only major Canadian federal party that included substantial calls for regulations related to the digital policy issues raised in the inquiry in its platform (CBC News, 2015). But, as Table 3 shows, by 2019 the tone and substance of major party platforms’ policy proposals related to these issues had evolved substantially.

| Table 3: Canadian federal parties’ platforms as they relate to select internet policy issues | | |
|---|--|---|
| Federal party | Policy positions in the 2015 federal election campaign | Policy positions in the 2019 federal election campaign |
| Liberal Party of Canada | No substantial discussion of privacy and monopoly issues related to global technology companies and the related activities of political parties and third-party political organizations. | The creation of a digital charter that dictates digital rights and data privacy. New legislation for social media platforms, including fines for hate speech that these firms leave online. Suggests that the powers of the Privacy Commissioner will be increased. |
| Conservative Party of Canada | While the platform does highlight the risks posed by cybercrime and online propaganda broadly, there is no substantial discussion of the issues later raised by the Cambridge Analytica inquiry. | New legislation that requires plain-use contracts for the collection of data and ensures that “only data that is necessary to provide the service can be collected”. |
| New Democratic Party of Canada | Implement legislation that would “create mandatory data breach reporting [...] increase the enforcement powers of the Office of the Privacy Commissioner.” | The creation of a working group to deter hate speech online and pressure social media platforms to delete “hateful and extremist content”. Strengthen the powers of the Privacy Commissioner. |
| Green Party of Canada | No substantial discussion of privacy and monopoly issues related to global technology | The implementation of right to be forgotten legislation. |

| Table 3: Canadian federal parties’ platforms as they relate to select internet policy issues | | |
|--|--|---|
| Federal party | Policy positions in the 2015 federal election campaign | Policy positions in the 2019 federal election campaign |
| | companies and the related activities of political parties and third-party political organizations. | Regulation that would force social media companies to verify users’ identities. Strengthen the powers of the Privacy Commissioner. Require political parties to follow the Privacy Act. |
| Bloc Quebecois | No substantial discussion of privacy and monopoly issues related to global technology companies and the related activities of political parties and third-party political organizations. | |
| People’s Party of Canada | The People’s Party of Canada became a federal party in 2019. | No substantial discussion of the issues raised in the Cambridge Analytica inquiry. |
| (CBC News, 2015, 2019; Conservative Party of Canada, 2019; Green Party of Canada, 2019; Liberal Party of Canada, 2019) | | |

As an opposition staffer said about the Liberal Party’s recent positions⁵⁸ on the issues discussed in the ETHI committee’s final report:

I was really interested to see how much they had moved rhetorically and quietly towards a lot of the positions we had put into the report . . . It’s surprising how much they’ve moved in the last six months to a year on this.

This shift *is* notable given the Liberal Party’s ties to global technology companies in Canada outlined earlier in this chapter, including its relationship to Kevin Chan, Head of Facebook Canada, and connections to a recently cancelled smart city project in Toronto run by a sister-company of Google (O’Kane, 2019a; Turnball, 2018b; Wilkinson, 2019b). It is unclear whether the rhetorical movements were prompted by Liberal members who advocated for these

⁵⁸ Illustratively, the most recent Liberal Party (2019) platform recognizes that: the lack of regulation for online platforms like Facebook and Google – as well as companies that possess large amounts of data, like banks and credit card companies [...] means that people have less control over their own personal information.

changes,⁵⁹ findings from the committee's inquiry, or perhaps it is more likely that these changes were part of a broader political and public shift in sentiment towards these companies and the operations of other groups that use personal data, such as political parties.

However, it is apparent that it was becoming increasingly untenable for the Liberal Party to hold these associations without damage to the organization's political brand. In Canada and elsewhere, Facebook, Google, Amazon and other large global technologies are no longer perceived as benevolent innovators but, rather, real threats to western liberal democracies (Boutilier & Nanji, 2018; Taplin, 2017; Wilkinson, 2019b). At the same time, the use of personal data by political parties is not favoured by the public, although this issue is less often covered in the media (Campaign Research Inc., 2019). At least rhetorically, it had become necessary for the Liberal Party to create space between itself and these firms and practices. In recognition of the idea that "the power to control the flow of information is a major lever in the control of society" (Bagdikian, 1983, p. 226), the party's 2019 federal election platform was in part a communications product used to develop that distance.

Other parties include similarly overt statements in their 2019 party platforms to those contained in the most recent Liberal Party's manifesto. For example, the Conservative Party of Canada (2019) asserted that it would "employ sensible regulation, rigorous standards, and strong oversight over the personal information, data, and privacy of Canadians". The party also highlighted the need for government to modernize policy to address quickly evolving technology. In comparison to the relative lack of engagement with digital policy issues in Canada's major federal parties' 2015 platforms, these assertions do rhetorically acknowledge the changing technological environment, and often signal the need for regulatory intervention. Most of the major federal parties' 2019 platforms reflected some number and variation of the recommendations submitted in the committee's final report. The Liberal Party of Canada (2019) notes that a digital charter will be "overseen and enforced by a more powerful Privacy Commissioner". The Green Party of Canada (2019) said that it would significantly increase the

⁵⁹ Given the regularity with which Liberal members toe the party line, it is likely that this factor was the least prominent of the three; however, members such as 'maverick' Nathaniel Erskine-Smith do show that these partisan lines can be tested (Thomson, 2019).

powers of the Privacy Commissioner and “require political parties to follow the Privacy Act, without exceptions”.

But, without action, rhetorical change to what end? Canada entered its 43rd Parliament in December 2019 with a Liberal minority government. Yet even with many parties aligned on the need for regulatory action on digital policy issues, in the area of privacy specifically, there has been virtually no movement in this domain. More studies and reports have been published since the government’s response to the ETHI committee’s final report, including the long-awaited outcome of the government-appointed Broadcasting and Telecommunications Legislative Review (BTLR) panel (2020). However, no relevant bills have been presented to the House of Commons. Rather than a genuine interest in promptly addressing these pressing internet policy issues, these manifestos seem more like an effort to shape the narratives around how the Government of Canada will act at some undefined point in the future. Similar to how media policy ideas, actions, and discourses, are silenced through dominant frames, narratives, and assumptions (Freedman, 2010), movement on these issues can also be suppressed by the repeated kicking of the proverbial football down the field.⁶⁰

Spring 2020 did see the Canadian government focus immense energy and resources on responses to the coronavirus pandemic. But this crisis has also led to the heightened prevalence of global technology companies in Canadians’ personal and working lives, greater profits to these firms (Forbes, 2020b, 2020a; Matney, 2020), and increased associated risks to individuals’ privacy and online use. These consequences only further highlight the importance of ready regulatory action in this realm. Rather, the federal government has instead initiated efforts to tax global technology companies to cross-subsidize Canada’s cultural sector, a move which experts have asserted is “inconsistent” with the country’s trade obligations and ignores the alarming privacy and transparency concerns raised by the committee (Shecter, 2020; ETHI committee, 2018b).

⁶⁰ It should also be noted that despite rhetorical shifts in major federal party platforms, which reflected some acknowledgement of the ETHI committee’s recommendations, these manifestos did not address the breadth of issues addressed in this inquiry. Most notably, the Liberal Party does not suggest that it will expand privacy legislation to include political parties (Liberal Party of Canada, 2019).

Conclusion: Inaction and deferrals

This chapter concludes this dissertation’s study of how forms of gatekeeping manifested in, first, the CRTC’s differential pricing practices proceedings, and, more recently, the ETHI committee’s inquiry into Cambridge Analytica and Facebook. In the latter case, I find that despite drawing on public interest witnesses in the development of report recommendations, the inquiry has yet to have any tangible impact on Canada’s internet policy environment. Rather, the government deterred meaningful regulatory action through various gatekeeping practices, including by focusing on recommendations that called for research over policy action, and making vague promises to “reflect” on recommendations that were not aligned with its existing mandate (Parliament of Canada, 2019).⁶¹

I argue that in part the lack of uptake of the committee’s recommendations by the federal government can be attributed to the extent to which the inquiry acted as a “fishing expedition”. The committee cast its net widely and sought to address a wide range of issues related or adjacent to the Cambridge Analytica scandal. While the group’s efforts were admirable, this wide scope translated into a set of wide-ranging recommendations, rather than a cohesive strategy or framework. It seems possible that this range led to similarly ad-hoc media coverage, which may have allowed the federal government to more easily deter meaningful action and made it more challenging for civil society groups and members of the public to understand and champion the needed regulatory changes.

⁶¹ While anecdotal, further comments from Canadian Jim Balsillie, former technology CEO, are helpful in highlighting the extent of the government’s inaction. In June 2019, several months after the publication of the formal response to the ETHI committee’s final report, Balsillie was asked whether the government had taken adequate steps to address the risks posed by technology companies. He responded:

No, they haven’t even begun [...] There's nothing of substance here: no regulation, no legislation, no standards, no strategy, no policy.

We don't need a digital charter or a declaration, we urgently need a data strategy designed to deal with the economic effects of data so that we can protect our elections and our society... (CBC Radio, 2019)

Beyond government inaction, tactical moves by firms to deny misbehaviours or avoid appearing before parliamentarians reflect how these companies use gatekeeping practices to their own advantage too. Certainly, there were instances where gatekeeping practices were undermined. Several members of the committees engaged actively with the media in attempts to hold industry representatives to account, although it must be remembered that politicians and their staff generally view media engagement in this context as a way to simultaneously advocate for the public interest and self-promote. Moreover, Liberal MP Nathaniel Erskine-Smith, and former vice chair of the committee, for example, seems to have played an important role in consensus-building by diverging from Liberal Party lines to actively interrogate representatives of global technology companies. It also seems likely that his willingness to stray from his party's views may have contributed to the report's tough stances on these firms' activities and other recommendations misaligned with the Liberals' stated and implied positions, such as the suggestion that political parties be governed by privacy legislation.

Yet, despite examples of gatekeeping being overcome, the realities of this process, unfortunately, contributed more to a deliberative mess than any sort of instrumental precision. In contrast to the CRTC case study, which ultimately showed how gatekeeping practices can be employed in processes that are especially narrow in scope, this second study reveals how gatekeeping can manifest in policy dialogues that are just the opposite. This breadth made for a situation where forms of gatekeeping, largely employed by industry parties and the federal government itself, once again undermined the public interest.

Conclusion

One of the most obvious lessons to be drawn from this study is that the difference in resources between civil society and industry participants in Canadian internet policy development is significant and consequential. For Canada's dominant telecommunications service providers and global technology companies with operations in the country, robust and strategic engagement in policy development, through public and private channels, is a regular and well-resourced part of business and one gatekeeping practice used to undermine the voices and views of public interest participants (Geist, 2018; Office of the Commissioner of Lobbying of Canada, 2020a, 2020b, 2020c, 2020e, 2020f; Turnball, 2018b). By contrast, civil society groups, scholars, and engaged citizens have extremely limited access, if any, to decision-makers outside the formal policy development process. These stakeholders' participation in policy formation is limited by their lack of resources (Johnson, 2018; Public Interest Advocacy Centre [PIAC], 2019, p. 1), precarious operating models (Canadian Internet Policy and Public Interest Clinic, 2020; OpenMedia, 2020), and, for some, a lack of legal or technical expertise, which is privileged in these environments (McKenna & Graham, 2000).

These challenges are exacerbated by the excessive number of recent and current consultations facilitated by gatekeepers such as the Canadian Radio-television and Telecommunications Commission (CRTC), House of Commons committees, independent panels, and other parties, that require the duplication of work by these under-resourced participants (BTLR panel, 2020; Geist, 2017; ETHI committee, 2018). These overlapping inquiries can create redundancies, as there is limited cooperation between the various facilitating parties (BTLR panel, 2020, p. 51). This reality also raises concerns about 'consultation theatre', whereby the high number of consultations serves as a "validation exercise at best or as theatre with no intent to act on submissions at worst" (Geist, 2017). In any case, Canadian civil society groups active in internet policy development often must pick and choose which dialogues to focus their energies on, and ignore or limit their participation in others (Geist, 2017; PIAC, 2019, p. 1), despite the relevance of these inquiries to their mandates, and the need for robust participation to protect the public interest.

The consequences of this uneven distribution of resources are real, many, and varied. Public interest groups often compete with each other for resources and media coverage (Godsäter &

Söderbaum, 2017, p. 123). This competition can make it difficult for these groups to work together on initiatives, let alone build “organizational infrastructure; [reinforce] a media justice agenda; and [reflect] critically on research and policy impacts” (Shade, 2014a, p. 159). The strategies of well-resourced groups active in the internet policy development process deepen the chasm between private interests and civil society interveners. Dominant Canadian telecommunications service providers and global technology firms regularly keep information that would be of value to the public record confidential (BTLR panel, 2020, p. 70; Pasquale, 2015). Reflecting another gatekeeping practice, representatives of global technology companies often rely on approved speaking points in dialogues with decision-makers, and delay responding to queries for which they do not have vetted answers. Private executives who can readily answer these questions have ignored requests for testimony from international groups of public representatives (O’Sullivan & Newton, 2019). Other less sophisticated technology companies, like AggregateIQ, overtly lie to politicians (Cossette, 2018; Turnball, 2018a). Major Canadian telecommunications service providers use strategies to intimidate civil society interveners, including formally naming individuals in appeals (CBC News, 2016b).

These disparities are made even worse by internet policy development processes that are not well-suited for vigorous civil society participation. Measures from the CRTC to engage members of the public, the ‘gated’ in this environment, are inconsistent and use platforms, like Reddit, that are favoured by certain groups over others (Pew Research Center, 2019; Shepherd, 2019b). Within individual inquiries or proceedings, there is the risk that decision-makers will engage with internet policy issues for political gain or media coverage (Ladurantaye, 2013; Shepherd, 2018; Thomson, 2019). While such engagement is sometimes aligned with public interest goals, the approach taken by these actors can cloud the policy arguments with theatrical rhetoric meant to draw attention to the speaker. Political will in instances where politicians are not wholly and genuinely dedicated to policy change may also more readily fade. Moreover, political groups that would lose power with certain regulatory changes are often less inclined to take such policy actions for the greater public good. One example is the Liberal Party’s rejection of calls to restrict political parties’ personal data practices (Curry, 2018), despite the reality that such initiatives are supported across Canadian civil society (Bannerman et al., 2020; Campaign Research Inc., 2019).

With respect to the CRTC, there is concern about the extent to which a single chair, particularly those whose views are not aligned with the public interest, can change the direction of the organization. There is also little clarity around how policy decisions and recommendations are made across internet policy decision-making venues, and to what extent stakeholders' views and evidence have been accounted for (FRPC, 2018a). Even when the policy views of public interest interveners are considered, they can ultimately be ignored by the federal government, with little, if any, consequence. Such occurrences are especially problematic given that these companies have only become more powerful and central to social and political life during the coronavirus pandemic (Matney, 2020; Newton, 2020). These policy issues are also quickly evolving and changing, and politicians around the world have long highlighted the need for action (Angus, 2018; Curry, 2019; Ip, 2018), despite their slowness to fulfill these affirmations. After civil society groups have participated in internet policy proceedings, measures enacted so that they can recoup costs, notably the CRTC's costs award mechanism, limit these stakeholders' continued participation in policy development through extensive and unexplained delays (FRPC, 2017, 2018b; Johnson, 2018). Major telecommunications service providers also use their resources to create burdensome and needless work for public interest groups that use this program.

Forms of resistance

Yet, my two case studies show that there are instances where civil society groups and members have been able to subvert these forms of gatekeeping power. Two formal complaints from public interest advocates prompted the CRTC's review of differential pricing practices (CAC-COSCO-PIAC, 2015; CRTC, 2016c; Vaxination Informatique, 2015). Despite challenges to Canadian civil society groups' sustained participation in policy development, public interest groups were able to contribute substantially to the proceeding's consultation phase and the views of *some* Canadian citizens and residents were collected in the regulator-facilitated Reddit thread (CRTC, 2017a). The CRTC's decision on the matter also ultimately aligned with many views put forward by civil society (OpenMedia, 2017; PIAC, 2017). These examples illustrate the capacity for public interest advocates to use "possible passageways and points of departure for resistance or emancipation" (Huke et al., 2015, p. 745).

There are also examples of traditional policy actors acting in the public interest, although the motivations for this work may be linked to a range of conflicting factors. In the ETHI committee's inquiry into Cambridge Analytica and Facebook, members of parliament across party lines scrutinized the activities of global technology companies with operations in Canada (Curry, 2019). Despite questionable practices in witness selection, a relatively wide range of views was presented over the course of the inquiry, many of which were incorporated in recommendations to the federal government (ETHI committee, 2018b). In some instances, these recommendations were reflected in 2019 federal election party platforms (CBC News, 2019).

But we must not take these as 'wins' without some further reflection. Drawing on a critical theory of gatekeeping to which I will return later in this chapter, we need to look more closely at the key gatekeepers, gatekeeping practices, and gatekeeping mechanisms that ultimately managed and manipulated power and control within these two cases. Moreover, these case studies do not exist within a vacuum but are rather part of the broader history and environment of Canadian internet policy development (CMCRP, 2019; Middleton, 2011; Rideout, 2003). We must consider how these events fit within that history, and what they tell us about the future of this form of policy formation.

Despite the forms of subversion and resistance against gatekeeping power outlined above, the CRTC's differential pricing practices decision did not adequately address the breadth of relevant issues that characterize the Canadian internet policy environment, including the prevalence of data caps, and punishing overage fees (CBC News, 2016a). The current CRTC chair has suggested that the regulator plans to add some 'flexibility' to Canada's net neutrality laws, which could weaken the decision (CRTC, 2018b). Recommendations from the recent BTLR report (2020), the outcome of a broad independent survey of Canada's broadcasting and telecommunications environment, run the risk of similarly watering down Canada's current net neutrality framework (Geist, 2020a). Given these events and others, there are concerns to be raised about the longevity of this framework and the capacity of a single CRTC chair to undo years of civil society efforts.

Relatedly, events that took place in the differential pricing practices proceedings highlight the precarious nature of Canadian civil society involvement in these efforts, and the gatekeeping practices that characterize the interactions between different groups in the sector. For reasons that are unclear, a group of consumer organizations sought to have an engaged citizen's complaint against the practices struck from the record (CRTC, 2015d), despite the fact that both parties' applications espoused similar policy views (CAC-COSCO-PIAC, 2015; Vaxination Informatique, 2015). This example is reflective of a reality where civil society interveners are constantly in competition with each other for media attention, public credit, and resources (Godsäter & Söderbaum, 2017, p. 123).

Gatekeeping power exercised by the regulator and private interests against civil society participants diminishes the capacity for these interveners to engage in the process. A lack of recognition from the CRTC towards groups that contributed substantially to the regulator's and participants' understanding of differential pricing practices is concerning, particularly given that these parties rely in part on such recognition to justify their efforts (Laurent et al., 2019). Unreasonable and unexplained delays on the part of the CRTC in reimbursements to participants in the costs award process has tangible implications for the operations of these groups and their ability to pursue this work (CCC, 2019, p. 2), most notably PIAC (Johnson, 2018; PIAC, 2019, p. 1). Unjustified and redundant complaints against participants in the program also created additional unpaid labour for these parties, including the digital rights organization OpenMedia.

At the same time, despite the strength of many of the recommendations found in the ETHI committee's (2018b) report, these suggestions seem to have had a negligible impact on federal government policy development. As mentioned earlier, federal political parties, including the governing minority Liberal government, did – at least rhetorically – reflect some of the ETHI recommendations in their 2019 federal election party platforms (CBC News, 2019). Yet, there has been virtually no action on these policy issues. The government's formal response to this report was also lacking (Parliament of Canada, 2019), with no firm promises to develop policy outside of provisions previously developed in the Elections Modernization Act.

The power exercised by various forms of gatekeepers, including politicians, regulators, private interests, and even powerful civil society groups who may undermine other organizations or individuals, often moves in covert and diverging ways. It is not uniform across proceedings and inquiries. Yet the patterns and trends that emerge in this research project do tell us some things about the balance of power in policymaking environments. For one, the public record that decision-makers purportedly rely on to make decisions (CRTC, 2019b) will increasingly reflect arguments and evidence put forward by private interests if there are not ready and rapid changes to these policy development processes. The capacity and will for some public interest advocates to participate is at serious risk and in some instances these parties' involvement has overtly diminished (Johnson, 2018; PIAC, 2019, p. 1). By contrast, the funds and efforts that private interests employ in these processes are substantial. At the same time, in the ETHI committee's inquiry, a certain lack of action on the part of decision-makers reflects another way that forms of gatekeeping can be used to undermine civil society proposals. These realities highlight tangible threats to the extent to which Canadian internet policy is made in the public interest and suggest that, without intervention, the gatekeeping practices and mechanisms that have long characterized these policy development venues will persist and heighten.

Theoretical advances

An expansive and critical adoption of gatekeeping theory illuminates how gatekeeping in internet policy development encompasses a dynamic and multi-faceted set of actors, behaviours, and tools. In this domain, power is exercised in varied and shifting ways, but there are nonetheless dominant actors who regularly take on the gatekeeper role. An examination of the ways that gatekeepers exercise this power, and the institutions and norms that allow them to do so, offers an innovative approach to the study of internet policy development. There is also novelty in the application of gatekeeping theory to online gatekeepers within the context of internet policy engagement campaigns.

These activities, persons, and processes can be identified by a five-part typology of gatekeeping, drawn in part from Barzilai-Nahon (2008), which has been used in this dissertation to animate my discussion of Canadian internet policy development. Gatekeepers, most often private, regulatory, and political actors, are those groups or individuals who have the capacity to allow a policy intervener or view into the realm of decision-making, and influence

the terms under which these participants engage, or ideas proliferate. Yet, as my case study on the CRTC's differential pricing practices proceedings shows, gatekeepers can also be civil society groups that are hostile towards other interveners. These instances can reflect "ideological rivalry and competition for material resources" (Godsäter & Söderbaum, 2017, p. 123). Certainly, this antagonism can and often is prompted by the fraught environment that civil society groups operate within. But these actors can take on a gatekeeper role, nonetheless. Gatekeeping practices are the discourses, exercises, and methods that gatekeepers use to engage in the aforementioned behaviours. One illustration is Facebook representatives' tactical testimony in my second case study, which sought to underplay the company's misbehaviours. Gatekeeping power is the capacity gatekeepers have to employ such practices. Gatekeeping mechanisms are long-standing institutional processes or provisions that privilege or undermine certain actors or ideas. An example is a section of Canada's Lobbying Act (s. 7, 1b) that has allowed private interests to meet with elite decision-makers without having to record these interactions in the official lobbying registry (Turnball, 2018b). The gated are those actors whom gatekeeping power is exerted upon.

Where applicable, I have also used these concepts to study how the services and platforms that are at the centre of these regulatory dialogues can act as gatekeepers (Laidlaw, 2010; Lynskey, 2017; J. Wallace, 2017) within policy development processes, and be subverted by those who use them. Twitter, for example, is used by Canadian civil society groups to foster connections and share ideas, which can undermine gatekeeping practices that destabilize their participation and collaboration in policy development processes. Yet, the platform was also used to develop witness recommendations for the ETHI committee's inquiry into the Cambridge Analytica scandal. In this way, Twitter may have predisposed the committee to witnesses within an existing circle of contacts and filtered out voices that would have offered novel or innovative contributions to the policy dialogue. Although it is impossible to know whether that was indeed the case in this instance, the illustration does remind of Freedman's (2010) 'policy silences' whereby certain "voices are privileged inside and [others] are frozen out of policy debates" (p. 355). This concern also applies to other online tools that are likely used in the design of policy development processes, not least to create witness lists. Google's search algorithm, which research shows is biased by race, gender, and other factors, is a key example (Noble, 2018).

Using the political economy of communication, I have also sought to highlight the extent to which these gatekeepers operate within an environment that is skewed against the public interest (Rideout, 2003). Dominant internet service providers and global technology companies exist within an economic system premised on neoliberal values (Harvey, 2005). The CRTC's decisions have long been governed by legislation and federal government policy that explicitly call for a reliance on market forces (Telecommunications Act, 1993; Order Issuing a Direction to the CRTC, 2006), although a recent government order goes some way to rectify this reliance (Order Issuing a Direction to the CRTC, 2019). Broadly, Canada's communications environment is concentrated with high levels of vertical and diagonal integration (CMCRP, 2019). The country's internet prices are high in comparison to international counterparts (Wall Communications Inc, 2020), and many areas in rural and remote Canada continue to have poor and inconsistent broadband connectivity (Dickson, 2020; McMahon, 2014). The governing Liberal Party of Canada has been linked to major global technology companies including Facebook and Google (Turnball, 2018b; Wilkinson, 2019b). While the fact that Canada is now led by a minority government may contribute to a situation where the federal government expresses a greater degree of skepticism towards these firms, the continued lack of action on the policy front is not a hopeful sign.

Indeed, the employment of the political economy of communication in this study is what allows me to use gatekeeping theory 'critically' to interrogate the norms, actors, and activities that colour Canadian internet policy development. It is the political economy of communication that readily offers a view of the real and extreme disparities in this particular environment (Winseck, 1995), in Canada's communications system (CMCRP, 2019), and in the broader economic system these spheres exist within (Harvey, 2005). Certainly, gatekeeping theory helps me to meaningfully identify and understand these inequities, but, as I sought to identify in my literature review, proponents of gatekeeping theory do not often and deeply take economic and other imbalances into account in scholarly analyses.

Rather, the adoption of the political economy of communication in this project has encouraged me to think more profoundly about the dynamics of Canadian internet policy development under capitalism. This theoretical framework has also allowed me to operationalize the view that there is such a thing as 'democratic communications' (Murdock & Golding, 2016), and that

this ideal is something scholars should explicitly identify and champion. Finally, this approach has prompted me to consider the forms of resistance that participants in these processes take part in, and how this subversive behaviour can, at times, result in, if only temporarily, policy actions that align with the public interest (Huke et al., 2015). It is this broader view of policy stakeholders, communications, the state, and the economy that characterizes my understanding of the events and actors described in this dissertation, although it is gatekeeping theory that allows me to investigate and understand *specific* elements of Canadian internet policy development in new and different ways.

Leveling the playing field, somewhat

This research project's findings prompt several key recommendations, that relate to various phases of the internet policy development process. While the implementation of these suggestions will only go so far to mitigate inequities within a fundamentally flawed system (Harvey, 2005), they would undoubtedly improve the extent to which civil society interveners can participate in Canadian internet policy development. As Carpentier (2011) writes, "hegemony can never be total, and fantasy can never fully attain reality". Rather, they can be "frustrated and dislocated" (p. 114). In other words, there are ways that these dominant forms of power can be resisted and undermined. Given the reality of the current situation, it is thus imperative that critical scholars pursue ways to support these forms of resistance and opposition, even if these actions cannot create a truly equitable system within the current economic framework.

The key aim of these recommendations is to support a more democratic, transparent, and open internet policy development system in Canada, an important element of which is ensuring that civil society participation, in all its forms, is robust. As the CRTC's (2017e) website states, speaking directly to Canadians and people living in Canada, "we depend on you to tell us what you want and need". We must find ways to increase participation from Canadian citizens and residents at the CRTC, and in consultations on these issues facilitated across the federal government. In the words of one OpenMedia founder, "once media and communications issues are explained outside of the policy rhetoric, average people are almost immediately upset and engaged in these battles" (Anderson in Shade, 2014a, p. 158). We also need civil society organizations that are able to robustly and *sustainably* participate in the process, and who are

appropriately acknowledged by the regulator. Ensuring that the critical work that public interest groups “do and could be doing [can] be better supported and accounted for by public authorities” is vital (Raboy & Shtern, 2010a, p. 224).

In the issue-identification and framing phase, there need to be changes that better allow civil society to influence what internet policy issues make it onto the agendas of the federal government and the CRTC, and how they are framed. Measures to diminish and make transparent the regular and often covert ways that industry participants wield agenda-setting power are also critical (Geist, 2018). There should foremost be changes to Canada’s Lobbying Act (1985) that ensure that all organizations register with the Office of the Commissioner of Lobbying if its employees, or hired consultants, communicate with designated public office holders (DPOHs).⁶² Such requirements do exist; however, they are limited only to instances where lobbying activities “constitute a significant part of the duties of one employee or would constitute a significant part of the duties of one employee if they were performed by only one employee” (s. 7, 1b). This threshold should be removed from the Lobbying legislation to ensure that *any* organization that communicates with a designated public office holder must report these interactions to the Office of the Commissioner of Lobbying.

Moreover, there must be a review at the CRTC to ensure that members of the organization capable of influencing policy are listed as DPOHs and that all relevant communications are reported. As a major recent report on Canada’s broadcasting and telecommunications environment⁶³ outlines:

Commissioners who are not a chair or vice-chair as well as most senior CRTC and ISED regulatory staff, are not DPOHs. Moreover, communications that are not directly

⁶² Designated public office holders include “ministers, ministerial staff, deputy ministers and chief executives of departments and agencies, officials in departments and agencies at the rank of associate deputy minister and assistant deputy minister, as well as those occupying positions of comparable rank” (Office of the Commissioner of Lobbying of Canada, 2020d).

⁶³ This report, which is also referenced in Chapter 5, served as an important resource for the recommendations outlined in this conclusion. In total, the document, which was developed by a federal government appointed independent panel, produced 97 recommendations, many on issues pertinent to this dissertation. Where relevant, I highlight report recommendations that I am aligned with based on my own research and how I would revise other suggestions.

...tied to regulatory and policy proposals, or to the award of financial benefits, are not generally reportable. (BTLR panel, 2020, p. 46)

This reality is extremely concerning given that these individuals play important roles in the internet policy development process, yet organizations who interact with these parties are not required to register these contacts. As this dissertation shows, dominant Canadian telecommunications service providers have the resources to lobby these parties (Office of the Commissioner of Lobbying of Canada, 2020a, 2020b, 2020c), and it is critical that these interactions, if they take place, are put on the public record.

At the same time, there should be routine informal meetings (i.e., outside the context of public hearings and proceedings) between members of civil society and the federal government and regulator. To be sure, some such meetings have occurred in the past. When former CRTC chair Jean-Pierre Blais initially assumed the position, several public interest-focused research participants stated that they had the opportunity to meet with him and raise policy issues of concern to their organization. Yet, such access is partially linked to the approach of the chair in question, and not a routine component of the CRTC's operations. It is imperative that the regulator ensures that the access dominant telecommunications service providers, in particular, have through lobbying is mitigated in regular meetings with public interest groups who are active in this space but do not have the resources to hire a government relations staff member, let alone a team. Similarly, members of parliament and political agencies, especially the department of Innovation, Science, and Economic Development, should proactively grant access to these groups and individuals.

With respect to consultation, there need to be measures to ensure that the regulator systemically and accountably supports interventions from members of the public. The CRTC should develop consistent public engagement campaigns and public opinion surveys that reach a wide swath of Canadians. While initiatives like the CRTC's (2017a) differential pricing practices proceedings' Reddit dialogue are a good first step, they do not account for the extent to which Reddit is a platform used by a certain segment of Canadians, and relatively untouched by others (Pew Research Center, 2019). Not only does this approach limit the diversity of voices contributing to internet policy development, but it also puts these efforts at risk of legitimate

criticism from stakeholders against any form of public engagement at all. Representative public opinion surveys should be conducted by the CRTC to provide independent sources of data to all participating groups and individuals, and the public. Moreover, a combination of digital and analog media, both mainstream and alternative, should be used to collect the public's views on specific policy issues under consideration. New and innovative methods should be employed across these media, including those that focus on engagement with and education around these issues (e.g., Nisker et al., 2006). These initiatives should be replicated by federal government departments and agencies that facilitate related consultations.

In House of Commons committee inquiries into internet policy issues, Members of Parliament, Library of Parliament analysts, and political staff need to ensure that the manner by which they seek out witnesses is expansive and captures views that are outside the mainstream dialogue. Moving away from methods such as collecting the names of proposed witnesses from Twitter, which predisposes users towards voices within their existing networks, is a good first step. Wherever possible, committees should also give ample time for witnesses, particularly public interest witnesses, to prepare for appearances. In the ETHI committee's inquiry into Cambridge Analytica and Facebook, some civil society witnesses had only a couple of business days' notice, despite the fact that this study took place over the better part of a year. Advance notice would allow those groups or individuals whose participation in policy development is not a well-funded and consistent element of their work enough time to consider the complex issues at hand and prepare accordingly.

To reduce the duplication of efforts from the regulator and federal government departments and agencies, there also needs to be much more collaboration between the CRTC, the Competition Bureau, the Office of the Privacy Commissioner, the department of Innovation Science and Economic Development, and other parties as required. As I have identified, over the past several years, each of these groups have initiated related investigations into internet policy issues (Geist, 2017), yet there has been limited collaboration between them. The upshot of this overlap is a form of redundancy where, among other things, civil society participants are forced to continuously repurpose their arguments and pick and choose between which consultations they have the resources to take part in (Geist, 2020; PIAC, 2019, p. 1).

Moreover, the regulator and federal government should collect and publicize more information on the operations of internet service providers and global technology companies. The regulator has long been criticized for the inconsistent ways it releases data around the Canadian telecommunications market, including the delays and regular changes to its annual Communications Monitoring Report (CMCRP, 2019, p. 91).⁶⁴ As well, these reports only publish partial known information about this market, often on the grounds that certain data are held confidentially by the regulator or Canadian telecommunications service providers (BTLR panel, 2020, p. 70; CRTC, 2019a, p. 322). Accordingly, a significant limitation to the contributions of civil society groups in Canadian internet policy development is their lack of access to information that is readily available to industry participants, and sometimes known by decision-makers.

This information asymmetry allows private interests to make claims that may be disingenuous as public interest participants do not have the necessary knowledge to refute them. It also means that these civil society groups often must rely on limited, spotty, and outdated information to comment on the operations of these firms. As the BTLR report (2020) states, with respect to the CRTC specifically, the regulator “must have the resources and expertise to analyze large data sets and release reports in machine-readable format that redress information asymmetries between providers and users” (p. 43). This need is perhaps especially salient in the case of global technology companies whose algorithmic software is broadly opaque to decision-makers and civil society groups internationally (Pasquale, 2015). Collaboration between federal governments and representatives of different countries and blocs to pressure these firms to make this information readily available is crucial.

At the same time, the regulator and House of Commons committees should ensure that they have in-house expertise on internet policy issues. These are arguably some of the most pressing policy issues of our times, yet the CRTC and elected representatives acting in committee

⁶⁴ An illustrative quote in this regard reads:

The Commission’s ever more parsimonious view of its public obligations with respect to the timely, public release of complete and credible data on these issues also needs to be turned around and put on a footing that is more respectful of the Commission’s public interest obligations. (CMCRP, 2019, p. 91)

contexts often have limited research capacity (BTLR panel, 2020, pp. 42–43). The consequence of this reality is that evidence from well-resourced private interests can end up serving as the basis for policy decisions and recommendations because there are no readily available independent sources of data. I agree with the BTLR's (2020) suggestion that "the CRTC should be mandated and funded to undertake and publish third-party research reports and analyses. These would serve as a primary enabler of evidence to ensure informed participation in regulatory processes" (p. 42). I also believe that there should be an additional Library of Parliament analyst with expertise specific to internet policy issues assigned to House of Commons or Senate committee inquiries into these matters.

The deliberation and decision-making phase requires far more transparency from groups making decisions with such great implications for whether and how Canadians citizens and residents use the internet. It is telling that I had so much trouble gaining access to information about these processes from research participants and publicly-available documentation. Yet, I received few good reasons as to why this information should be held confidentially. Free and open debate is a fundamental component of democracy. However, because of this lack of transparency, it is unclear to what extent these characteristics of democratic dialogue are reflected in the deliberations of our elected representatives and appointed regulators (FRPC, 2018a). Despite statements to the contrary from the regulator (CRTC, 2019b; Lithgow, 2019, p. 107), some research participants raised the concern that CRTC decisions are to some extent "pre-written". To rebut these concerns, and give interveners and the public access to information that is integral to a robust understanding of internet policy development processes, the CRTC, House of Commons committees, and other decision-makers should better outline the deliberations behind policy decisions, recommendations, and other policy outputs for public inspection. In particular these parties need to be clear on the methods they use to ensure that input for Canadian citizens and residents is incorporated into policy decisions. Certainly, this task is not an easy one as these submissions reflect a "rich tapestry of experience, aspiration, and observation" (Lithgow, 2019, p. 106). But this work is imperative if we are to have internet policy that better reflects the diverse communications needs of this country (Hudson, 2014; McMahon et al., 2014; Shade, 2014b).

This release of information should be published alongside the final policy output and should include documents that illuminate how the policy product was developed and competing views incorporated or barred from inclusion. In particular, participants in internet policy development processes need to know whether and how their contribution and evidence was weighed and included. It is clear that many current and historical participants in the process did not have knowledge of when and how their views influenced internet policy decisions and recommendations. For civil society groups and individuals intervening on behalf of the public interest in CRTC policy development, this lack contributed to feelings of disillusionment as participants had little clarity around whether their often-underpaid labour factored into policy decisions at all. Unlike industry participants, such as Canada's three largest telecommunications service providers, this policy work is not a well-resourced component of civil society interveners' operations. Moreover, for some individuals, this labour is nearly entirely unpaid. This is generally the case for Jean-Francois Mezei, who severely diminished his participation in part due to a lack of recognition from the regulator. Indeed, this opaqueness runs the risk of pushing public interest participants towards disengagement.

Considering the 'recuperation' phase, the CRTC should review and revise its costs award process to make it more transparent, timely, and consistent. As my research shows, the program is an inadequate form of support for public interest participants, findings which are explicitly reflected in the BTLR report (2020). While lengthy, it is useful to include the entirety of the quotation.

[Neither the CRTC's telecommunications nor broadcasting participation funding mechanism fund offer] cost awards outside the context of CRTC proceedings, including [Governor in Council] and court appeals of CRTC decisions. There are also challenges related to the timeliness of payments. The cost award process in telecommunications proceedings has become lengthy, resulting in increased delays in the adjudication of cost claims and negatively impacting public interest participation. More focus and attention must be brought to this issue, along with a streamlined reimbursement process.

The process to obtain funding is also adversarial and cumbersome. Current CRTC practice is to conduct a process in which the industry participants in the proceeding can challenge the claimant's expenses, contributing to conflict and delay. (p. 55)

As this statement highlights, the CRTC's costs awards process is needlessly adversarial. This reality leads to increased, and redundant, work on the part of civil society participants who have to respond to arguments from private groups that have already been disproven by the regulator in previous proceedings. I accordingly support the BTLR report's (2020) recommendation that the costs awards process "be administered by dedicated staff with expertise in this area in order to ensure consistent claims determinations" (p. 55). I believe that the rebuttal function currently provided by industry participants' formal responses to CRTC costs award claims is an important mechanism. That is, there should be a party who identifies costs that may be excessive, inflated, or exaggerated, although it is not my understanding that such occurrences have been apparent in this process thus far. However, it is my view that this function should be fulfilled by an objective third-party, who does not have a strong incentive to misconstrue real and reasonable expenses. Accordingly, alongside administration, this role should be taken up by those dedicated and expert CRTC staff.

I also find that the costs awards process is especially inaccessible to new civil society entrants to Canadian internet policy development as, among other reasons, there are multiple disparate documents explaining the process across the CRTC website and no clear summary of precedents. This is despite the fact that these prior determinations factor into the regulator's decisions on costs awards (CRTC, 2009). The regulator should develop clear and easily accessible guidelines for this process, which include a summary of key precedents, proactively distribute these guidelines to current and interested civil society participants, and provide training and fulsome one-on-one guidance for first-time applicants, especially those without access to legal expertise.

As several research participants highlighted, the CRTC's awarding of costs has not been wholly reliable in recent years, with some parties having costs reduced for reasons that are not always clear or consistent with previous awards. A public consultation on this issue as well as the timeliness and transparency of decisions on costs claims should be facilitated by the regulator

in the near future. This hearing would allow current civil society participants the ability to air their concerns to the regulator and groups that may have been dissuaded from participating in the past, based on the limitations to the costs award program, the chance to outline how their participation can be better supported. The BTLR report (2020) calls for such a consultation, among other things, to focus on the development of a costs award process “subject to three-month service standard with a six-month upper limit for the completion of costs awards” (p. 22). Given the quick turnaround the regulator often asks participants to work under in policy proceedings, these timelines should be shortened (two-month service standard, four-month upper limit). Quarterly reports on the status of claims and annual reporting on standard compliance, as the BTLR report recommends (p. 22), are critical, and participants should collect interest on funds not disbursed by that four-month upper limit.

I also support another recommendation from the BTLR report (2020) that there should be amendments to the Telecommunications Act that ensure that civil society groups get reimbursed for appeals they make to CRTC decisions, as such activities are undoubtedly part of the broader internet policy development process. Moreover, I am behind the report’s suggestion that further amendments to the Act be made “to include public interest participation funding in the operational funding requirements of the CRTC” (p. 22), and that operational funds be dedicated to civil society participation in consultations facilitated by the federal government. In particular, I would suggest that groups or individuals acting in the public interest who are invited to contribute to House of Commons committee inquiries, not least on internet policy issues, who can demonstrate financial need, be given some level of resources, beyond the travel reimbursement currently offered, for their expenses.

In the author’s view, substantial structural reforms to the institutions and processes, as well as the economic system they exist within, are necessary for Canada to have a system whereby the use of, and experiences on, communication technologies truly allow for an equitable “exercise of informed citizenship” (Murdock & Golding, 2016, p. 765); however, improvements to the existing situation can still offer “possible passageways” for civil society to wield some influence (Huke et al., 2015, p. 745). These recommendations would at least go some way to alleviate existing barriers.

Where to go from here?

A first step towards fulfilling these recommendations and pursuing future impactful research in this area is acknowledging and embracing the idea that public policy should reflect the views and wills of the people it affects. The consistent and ready portrayal of internet policy as inherently “highly specialized, and sometimes numbingly technical” is misleading (Mueller et al., 2004). Certainly, as with any policy issue, there are extremely specialized and technical elements of this type of regulation. However, there are ways that decision-makers can make these issues accessible and engaging to the general public. Too often is technocratic discourse and official jargon used to undermine the extent to which members of the public get involved in policy discussions that implicate their lives (McKenna & Graham, 2000; McMahan et al., 2017, p. 272). In the words of the CRTC (2017e), “our activities have a direct effect on you”. Despite this acknowledgement, policy development at the regulator and in House of Commons committee inquiries are laden with gatekeeping practices and mechanisms that influence whether and how civil society groups and members of the public can participate. By implementing the abovementioned suggestions and finding other ways to meaningfully incorporate these parties’ views, we can move closer to an internet policy that works in the public interest.

Future research could also consider this project’s understanding of policy development as a phased process, within which there exists heightened risks to the public interest at different points. Research on internet policy development in other jurisdictions reflects many of the challenges raised in this study (Freedman, 2008; McLaughlin & Pickard, 2005). Researchers of these environments might apply similar analyses of the threats to civil society involvement in internet policy development that emerge and proliferate within phases of the process. Such studies could show which countries’ or blocs’ processes exhibit heightened forms of gatekeeping power in comparison to Canada, and which reflect fairer and more equitable practices. In particular, this work could highlight what forms of resistance and subversion are more or less effective methods in these domains, knowledge that could inform civil society efforts in Canadian internet policy development and elsewhere.

It is also useful to highlight how the gatekeeping power that characterizes Canadian internet policy development is also present in the activities of the companies that this regulation so

often seeks to rein in (Laidlaw, 2010; Lynskey, 2017; J. Wallace, 2017). Internet service providers are gatekeepers to internet access; Facebook and Twitter have gatekeeping power over social connections and news consumption; Google is a gatekeeper to online information. This investigation has examined how the gatekeeping practices of these firms are implicated in policy. However, future work should also address the ways these companies' activities in the realm of policy development could broadly bolster the extent to which these firms can act as gatekeepers to and on the internet. If it is the case that these firms have an outsized say in Canadian internet policy, as I suggest, it is worth considering how this reality implicates whether and how these firms wield the influence to alter or further how they act as gatekeepers in the digital world. A fulsome investigation into the relationship between the gatekeeping power of these companies in the provision of their services and the ways they act as gatekeepers in policy development environments goes beyond the scope of this dissertation. However, these are critical questions that should be addressed in future research in the discipline of media studies. It is my hope that this study and other works that follow will help build ideas for a better and more equitable digital future.

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Appendix 1: Stakeholders referenced in the CRTC’s decision

| Stakeholder | Content of references |
|-----------------------------------|---|
| OpenMedia | <p>Aligned with CRTC decision</p> <p>(1) submit DPPs could limit users’ ability “to participate in online creation and innovation-fuelled or -fuelling activities”</p> <p>(2) “argued that the Commission must ensure that access and content remain structurally and conceptually distinct”</p> <p>(3) nearly all consumers whose comments were brought forward by OpenMedia “were opposed to such practices because of their long-term consequences”</p> <p>(4) “argued that the Commission should not make an exception for short-term promotion”</p> <p>(5) “submitted that zero-rating Canadian content would represent an erroneous conflation of content and access”</p> <p>Misaligned with the CRTC decision</p> <p>(1) “opposed the availability of [DPPs] for the purpose of managing service accounts”</p> <p>(2) “argued for a strict ex ante prohibition on all differential pricing practices, with no exceptions”</p> |
| Telus Communications Corporations | <p>Aligned with CRTC’s decision</p> <p>(1) “cautioned that vertically integrated firms that zero-rate their own affiliated content have strong incentives and significant opportunity to stifle innovation and consumer choice, further entrenching their market power”</p> <p>(2) argued that use of DPPs’ “compliance with subsection 27(2) should be determined on a case-by-case basis”</p> <p>Misaligned with CRTC’s decision</p> <p>(1) submit that DPPs “allow carriers to attract more customers, spread their costs over a larger customer base, and reduce prices”</p> <p>(2) “largely support(s) allowing such practices”</p> <p>(3) argued that consumers can decide whether to subscribe to a plan with a DPP component</p> <p>(4) suggested that a condition related to DPPs be added to digital media exemption order</p> <p>(5) argued that “a governing set of guidelines or principles is not required” to evaluate the use of DPPs</p> |
| Shaw Cablesystems G.P. | <p>Misaligned with CRTC’s decision</p> <p>(1) submit that DPPs “are examples of innovation and competition at work”</p> <p>(2) “largely support(s) allowing such practices”</p> <p>(3) submit market research in support of DPPs</p> <p>(4) suggested that DPPs “could facilitate access to the Internet and/or certain applications for” marginalized groups</p> <p>(5) in response to suggestions that DPPs “related to applications that serve social needs could be justified [...] Shaw submitted that it</p> |

| Stakeholder | Content of references |
|---------------------------------------|--|
| | would be an enormous challenge to define and identify which Internet services address a social need” |
| Professor Barbara van Schewick | <p>Aligned with CRTC decision</p> <p>(1) submit “that allowing ISPs to zero-rate selected applications would systematically increase barriers to entry and the cost of innovation, make it more difficult for start-ups and small businesses to compete, and marginalize certain voices.”</p> <p>(2) submit that DPPs “would end the era when entrepreneurs are free to innovate without permission, which is a core net neutrality principle”</p> <p>(3) submit that DPPs limit consumer choice</p> <p>(4) submit that DPPs harm content providers</p> <p>Misaligned with CRTC decision</p> <p>(1) “submitted that the Commission should adopt bright-line, ex ante guidelines that ban three types of differential pricing practices”</p> |
| Sandvine Incorporated | <p>Aligned with CRTC decision</p> <p>(1) submit that “it does not need to collect or store any personal information [when using DPPs] beyond what is needed to charge or bill its customers accurately”</p> <p>(2) “proposed that the Commission establish a set of guidelines or criteria that would apply to complaints under subsection 27(2)” which would include complaints against DPPs</p> <p>Misaligned with CRTC decision</p> <p>(1) suggested that DPPs “could facilitate access to the Internet and/or certain applications for” marginalized groups</p> <p>(2) submit that the virtual private networks “could result in consumers not being able to access content” made available through DPPs</p> <p>(3) argued that DPPs, applied in certain ways, “would not result in undue preference or unjust discrimination and should be permitted”</p> |
| Bell Canada | <p>Aligned with CRTC decision</p> <p>(1) argued that use of DPPs’ “compliance with subsection 27(2) should be determined on a case-by-case basis”</p> <p>Misaligned with CRTC decision</p> <p>(1) “argued that innovation need not be based on technologies but can also be based on processes, business models, or marketing improvements” (e.g., DPPs)</p> <p>(2) Submit market research in support of DPPs</p> <p>(3) suggested that DPPs “could facilitate access to the Internet and/or certain applications for” marginalized groups</p> |
| Canadian Network Operators Consortium | <p>Aligned with CRTC decision</p> <p>(1) “submitted a list of over a dozen categories of online services, many of which share overlapping characteristics” which exemplify the difficulties of fairly applying DPPs</p> |

| Stakeholder | Content of references |
|----------------------------|---|
| | <p>(2) “proposed that the Commission establish a set of guidelines or criteria that would apply to complaints under subsection 27(2)” which would include complaints against DPPs</p> <p>(3) in response to arguments against data caps, “supported the use of data caps as an effective [internet traffic management practice] for managing congestion to sustain network quality”</p> <p>Misaligned with CRTC decision</p> <p>(1) argued that DPPs, applied in certain ways, “would not result in undue preference or unjust discrimination and should be permitted”</p> |
| Videotron | <p>Aligned with CRTC decision</p> <p>(1) “proposed that the Commission establish a set of guidelines or criteria that would apply to complaints under subsection 27(2)” which would include complaints against DPPs</p> <p>Misaligned with CRTC decision</p> <p>(1) “argued that wireless service providers [...] like itself must adopt new strategies to improve and differentiate their services in order to attract new customers”</p> <p>(2) argued that DPPs, applied in certain ways, “would not result in undue preference or unjust discrimination and should be permitted”</p> <p>(3) “stated repeatedly that it wants its Unlimited Music program to include as many music streaming services as possible”</p> |
| Bragg Communications Inc. | <p>Aligned with CRTC decision</p> <p>(1) “proposed that the Commission establish a set of guidelines or criteria that would apply to complaints under subsection 27(2)” which would include complaints against DPPs</p> <p>Misaligned with CRTC decision</p> <p>(1) “largely support(s) allowing such practices”</p> <p>(2) “submitted that a framework for differential pricing practices could incorporate exceptions for short-term promotions”</p> |
| Cogeco Communications Inc. | <p>Aligned with CRTC decision</p> <p>(1) “proposed that the Commission establish a set of guidelines or criteria that would apply to complaints under subsection 27(2)” which would include complaints against DPPs</p> <p>Misaligned with CRTC decision</p> <p>(1) “largely support(s) allowing such practices”</p> <p>(2) argued that DPPs, applied in certain ways, “would not result in undue preference or unjust discrimination and should be permitted”</p> |
| Media Access Canada | <p>Aligned with CRTC decision</p> <p>(1) DPPs “would counteract [the organization’s] broader effort to improve broadband access”</p> <p>(2) submitted that DPPs used to serve social needs is “perceived as having the potential to harm rather than help consumers” as it exacerbates existing internet issues</p> |

| Stakeholder | Content of references |
|---|---|
| | <p>Misaligned with CRTC decision (1) “argued for a strict ex ante prohibition on all differential pricing practices, with no exceptions”</p> |
| <p>L’Association québécoise de l’industrie du disque, du spectacle et de la vidéo</p> | <p>Aligned with CRTC’s decision (1) submit that DPPs “could have a negative effect on the creation of cultural content”</p> <p>Misaligned with the CRTC’s decision (2) “suggested that the Commission re-evaluate the ISPs’ status as broadcasting distribution undertakings”</p> |
| <p>Independent Broadcast Group</p> | <p>Aligned with CRTC’s decision (1) submit that DPPs “could have a negative effect on the creation of cultural content” (2) argued that DPPs could force content providers to conform to several different sets of different technical specifications</p> |
| <p>Facebook</p> | <p>Aligned with CRTC decision (1) “proposed that the Commission establish a set of guidelines or criteria that would apply to complaints under subsection 27(2)” which would include complaints against DPPs</p> <p>Misaligned with CRTC decision (1) suggested that DPPs “could facilitate access to the Internet and/or certain applications for” marginalized groups</p> |
| <p>Canadian Media Concentration Research Project</p> | <p>Aligned with CRTC decision (1) submit that the monitoring aspect of DPPs “raise concerns with respect to privacy and personal information”</p> <p>Misaligned with CRTC decision (1) “argued for a strict ex ante prohibition on all differential pricing practices, with no exceptions”</p> |
| <p>Rogers Communications Inc.</p> | <p>Aligned with CRTC decision (1) “submitted that subjecting all data to standard data charges, regardless of the nature of its content, would further broadcasting policy in Canada” (2) “proposed that the Commission establish a set of guidelines or criteria that would apply to complaints under subsection 27(2)” which would include complaints against DPPs</p> |
| <p>Teksavvy Solutions Inc.</p> | <p>Aligned with CRTC decision (1) “proposed that the Commission establish a set of guidelines or criteria that would apply to complaints under subsection 27(2)” which would include complaints against DPPs</p> <p>Misaligned with CRTC decision (1) “proposed a net neutrality code” that would include regulations for DPPs</p> |

| Stakeholder | Content of references |
|--|---|
| Vaxination Informatique | Aligned with CRTC decision (1) noted that DPPs do not reflect innovation in telecommunications |
| Reddit respondents | Aligned with CRTC decision (1) nearly all consumers who submit comments on Reddit “were opposed to such practices because of their long-term consequences” |
| Centre for Democracy and Technology | Misaligned with CRTC decision (1) suggested that DPPs “could facilitate access to the Internet and/or certain applications for” marginalized groups |
| Roslyn Layton | Misaligned with CRTC decision (1) suggested that DPPs “could facilitate access to the Internet and/or certain applications for” marginalized groups |
| Distributel Communications Limited | Misaligned with CRTC decision (1) submit that the virtual private networks “could result in consumers not being able to access content” made available through DPPs |
| Saskatchewan Telecommunications | Misaligned with CRTC decision (1) submit that the virtual private networks “could result in consumers not being able to access content” made available through DPPs |
| Canadian Internet Policy and Public Interest Clinic | Aligned with CRTC decision (1) submit that DPPs subvert innovation on the internet |
| Canadian Media Producers Association | Misaligned with CRTC decision (1) DPPs “could be used to promote the discoverability of, and consumer access to, Canadian programming” |
| The British Columbia Broadband Association | Aligned with CRTC decision (1) in response to arguments against data caps, “supported the use of data caps as an effective [internet traffic management practice] for managing congestion to sustain network quality” |
| Information Technology and Innovation Foundation | Aligned with CRTC decision (1) in response to arguments against data caps, “supported the use of data caps as an effective [internet traffic management practice] for managing congestion to sustain network quality” |
| These references can all be found in the CRTC’s (2017b) differential pricing practices decision. | |

Appendix 2: The ETHI committee's final report recommendations

Recommendation 1 on the application of privacy legislation to political parties: That the Government of Canada amend the Personal Information Protection and Electronic Documents Act in order to subject political parties to it, taking into account their democratic outreach duties.

Recommendation 2 on the application of privacy legislation to political third parties: That the Government of Canada amend the Personal Information Protection and Electronic Documents Act in order to subject political third parties to it.

Recommendation 3 on personal information protection oversight powers over political parties and political third parties: That the Government of Canada grant the Office of the Privacy Commissioner and/or Elections Canada the mandate and authority to conduct proactive audits on political parties and political third parties regarding their privacy practices and to issue orders and levy fines.

Recommendation 4 on the financial resources of the Office of the Privacy Commissioner: That the Government of Canada provide necessary new resources to the Office of the Privacy Commissioner, so it can address modern privacy concerns and efficiently exercise the additional powers granted to the Commissioner.

Recommendation 5 on the foreign funding of political activities: That the Government of Canada take all steps to prevent the foreign funding and influence in domestic elections, including foreign charitable funding.

Recommendation 6 on political advertising: That the Government of Canada amend the Canada Elections Act to require an authorizing agent to submit identification and proof of address when placing political ads online.

Recommendation 7 on the creation of an online political advertising database: That the Government of Canada amend the Canada Elections Act to require social media platforms to create searchable and machine-readable databases of online political advertising that are user-friendly and allow anyone to find ads using filters such as: the person or organization who funded the ad; the political issue covered; the period during which the ad was online; and the demographics of the target audience.

Recommendation 8 on regulating certain social media platforms: That the Government of Canada enact legislation to regulate social media platforms using as a model the thresholds for Canadian reach described in clause 325.1(1) of Bill C-76, An Act to amend the Canada Elections Act and make certain consequential amendments. Among the responsibilities should be included a duty:

- to clearly label content produced automatically or algorithmically (e.g. by 'bots');
- to identify and remove inauthentic and fraudulent accounts impersonating others for malicious reasons;

- to adhere to a code of practices that would forbid deceptive or unfair practices and require prompt responses to reports of harassment, threats and hate speech and require the removal of defamatory, fraudulent, and maliciously manipulated content (e.g. “deep fake” videos); and
- to clearly label paid political or other advertising

Recommendation 9 on algorithmic transparency: That the Government of Canada enact transparency requirements with respect to algorithms and provide to an existing or anew regulatory body the mandate and the authority to audit algorithms.

Recommendation 10 on the taking down of illegal content by social media platforms: That the Government of Canada enact legislation imposing a duty on social media platforms to remove manifestly illegal content in a timely fashion, including hate speech, harassment and disinformation, or risk monetary sanctions commensurate with the dominance and significance of the social platform, and allowing for judicial oversight of takedown decisions and a right of appeal.

Recommendation 11 on data portability and system interoperability: That the Personal Information Protection and Electronic Documents Act be amended by adding principles of data portability and system interoperability.

Recommendation 12 on modernizing the Competition Act: That the Government of Canada study the potential economic harms caused by so-called “data-opolies” in Canada and determine if modernization of the Competition Act is required.

Recommendation 13 on collaboration between the Competition Bureau and the Office of the Privacy Commissioner: That the Personal Information Protection and Electronic Documents Act and the Competition Act be amended to establish a framework allowing the Competition Bureau and the Office of the Privacy Commissioner to collaborate where appropriate.

Recommendation 14 on cyberthreats for political parties and the Communications Security Establishment’s recommendations: That political parties follow the recommendations made by Communications Security Establishment that pertain to them regarding electoral cybersecurity.

Recommendation 15 on the need to study cyberthreats: That the government of Canada continue studying how cyber threats affect institutions and the electoral system in Canada.

Recommendation 16 on research regarding online disinformation and misinformation: That the Government of Canada invest in research regarding the impacts of online disinformation and misinformation.

Recommendation 17 on education and digital literacy: That the Government of Canada increase its investment in digital literacy initiatives, including for initiatives aimed at informing Canadians of the risks associated with the online prevalence of disinformation and misinformation.

Recommendation 18 on the addictive nature of some digital products: That the Government of Canada study the long-term cognitive impacts of digital products offered by social platforms which create dependence and determine if a response is required.

Recommendation 19 on transparency: That the Government of Canada enact transparency requirements regarding how organizations and political actors, particularly through social media and other online platforms, collect and use data to target political and other advertising based on techniques such as psychographic profiling. Such requirements could include, but are not limited to:

- The identification of who paid for the ad, including verifying the authenticity of the person running the ad;
- The identification of the target audience, and why the target audience received the ad; and
- Mandatory registration regarding political advertising outside of Canada.

Recommendation 20 on implementing measures in Canada that are similar to the General Data Protection Regulation: That the government of Canada immediately begin implementing measures in order to ensure that data protections similar to the General Data Protection Regulation are put in place for Canadians, including the recommendations contained in the report on the Personal Information Protection and Electronic Documents Act tabled in February 2018.

Recommendation 21 on data sovereignty: That the Government of Canada establish rules and guidelines regarding data ownership and data sovereignty with the objective of putting a stop to the non-consented collection and use of citizens' personal information. These rules and guidelines should address the challenges presented by cloud computing.

Recommendation 22 on the Privacy Commissioner's enforcement powers: That the Personal Information Protection and Electronic Documents Act be amended to give the Privacy Commissioner enforcement powers, including the power to make orders and impose fines for non-compliance.

Recommendation 23 on the Privacy Commissioner's audit powers: That the Personal Information Protection and Electronic Documents Act be amended to give the Privacy Commissioner broad audit powers, including the ability to choose which complaints to investigate.

Recommendation 24 on the Privacy Commissioner's additional enforcement powers: That the Personal Information Protection and Electronic Documents Act be amended to give the Privacy Commissioner additional enforcement powers, including the power to issue urgent notices to organizations to produce relevant documents within a shortened time period, and the power to seize documents in the course of an investigation, without notice.

Recommendation 25 on the sharing of information between the Privacy Commissioner and other regulators: That the Personal Information Protection and Electronic Documents Act be amended to allow the Privacy Commissioner to share certain relevant information in the

context of investigations with the Competition Bureau, other Canadian regulators and regulators at the international level, where appropriate.

Recommendation 26 on the application of privacy legislation to political activities: That the Government of Canada take measures to ensure that privacy legislation applies to political activities in Canada either by amending existing legislation or by enacting new legislation.

Appendix 3: Government’s response to ETHI committee’s recommendations

| Category, as per the government’s response | Tactic employed by government to assert its action on these policy issues | Explicit commitment to fulfil committee recommendations, or number of recommendations that recent legislation has fulfilled |
|---|--|---|
| Privacy and political parties (recommendations 1, 2, 3, 26) | Referenced recently enacted legislation that does not actually reflect the full extent of the measures proposed by the committee. Promised continued “reflection”. | 0 / 4 recommendations |
| Transparency in political advertising (6, 7, 19) | Referenced recently enacted legislation that reflects some of the measures proposed by the committee. | 1 / 3 recommendations |
| Use of foreign funds in Canada’s election (5) | Referenced recently enacted legislation that roughly reflects the measures proposed by the committee. | 1 / 1 recommendations |
| Online platforms in the era of disinformation (8, 10) | Places regulatory responsibility on the platforms and suggests the government “will continue to engage with online platforms to monitor their behaviour” | 0 / 2 recommendations |
| Cyber security (14, 15) | In one instance, places regulatory responsibility on political parties. In the other, the response outlines recent measures that reflect committee’s recommendation. | 1 / 2 recommendations |
| Digital literacy and research (16, 17, 18) | Referenced recently enacted legislation that reflects some of the measures proposed by the committee. | 2 / 3 recommendations |
| Enhancing marketplace frameworks (9, 11, 12, 13, 20, 21) | Referenced recent consultations and stated the government “will continue to engage stakeholders and Canadians with a view to bringing forward future options to address these issues”. | 0 / 6 recommendations |
| Enforcing marketplace frameworks (4, 22, 23, 24, 25) | Among other similar statements, referenced a commitment “to examining all options” for meeting some of the recommendations and an assessment “for additional measures”. | 0 / 5 recommendations |

| | |
|---|------------------------|
| Total recommendations the federal government has fulfilled in recently enacted legislation and existing programs and funded research: | 5 / 26 recommendations |
| Total recommendations the federal government committed to fulfilling in the future: | 0 / 26 recommendations |
| The above information can be found in the federal government's formal response to the ETHI committee's final report (Parliament of Canada, 2019). | |

Appendix 4: List of research participants

| Scholars | | | | |
|---------------------|--|--|--------------------------|------------------------------|
| Name | Position of relevance to project⁶⁵ | Institution of relevance to project | Date of interview | Location of interview |
| Michael Geist | Professor | University of Ottawa | 09/20/2018 | Ottawa, Ontario |
| Ben Klass | doctoral candidate | Carleton University | 09/21/2018 | Ottawa, Ontario |
| Fenwick McKelvey | Associate Professor | Concordia University | 05/10/2018 | Phone |
| Catherine Middleton | Professor | Ryerson University | 18/12/2018 | Skype |

| Civil society advocates and/or members of non-profits | | | | |
|--|---|--|--------------------------|------------------------------|
| Name | Position of relevance to project | Institution of relevance to project | Date of interview | Location of interview |
| Katy Anderson | Digital Rights Campaigner | OpenMedia | 29/11/2018 | Phone |
| Monica Auer | Executive Director | FRPC | 03/10/2018 | Ottawa, Ontario |
| Tamir Israel | Counsel | CIPPIC | 31/10/2018 | Phone |
| Matthew Johnson | Director of Education | MediaSmarts | 04/10/2018 | Ottawa, Ontario |
| Marita Moll | President | Telecommunities Canada | 24/10/2018 | Barcelona, Spain |
| Alyssa Moore | Senior Policy Advisor | CIRA | 10/10/2018 | Ottawa, Ontario |
| Josh Tabish | Campaigns Director | OpenMedia | 30/11/2018 | Phone |
| Anonymous | --- | --- | 27/08/2018 | Ottawa, Ontario |

| Private-sector actors | | | | |
|------------------------------|---|--|--------------------------|------------------------------|
| Name | Position of relevance to project | Institution of relevance to project | Date of interview | Location of interview |
| Kenneth Engelhart | Senior Vice-President of Regulatory | Rogers | 17/12/2018 | Phone |

⁶⁵ This column lists the position (and related work) that the research participant most readily spoke to in the interview, not necessarily that which they held at the time of the conversation. The same applies to the “institution of relevance to project” column.

| | | | | |
|--------------|--|-------|------------|-----------------|
| Ted Woodhead | Senior Vice-President of Federal Government and Regulatory Affairs | Telus | 08/10/2018 | Ottawa, Ontario |
| Anonymous | --- | --- | 27/09/2018 | Ottawa, Ontario |
| Anonymous | --- | --- | 04/10/2018 | Ottawa, Ontario |
| Anonymous | --- | --- | 04/10/2018 | Ottawa, Ontario |
| Anonymous | --- | --- | 20/11/2019 | Phone |

| Journalists | | | | |
|--------------------|---|--|--------------------------|------------------------------|
| Name | Position of relevance to project | Institution of relevance to project | Date of interview | Location of interview |
| Rose Behar | Journalist | MobileSyrup | 20/08/2018 | Phone |
| Sameer Chhabra | Journalist | MobileSyrup | 03/08/2018 | Phone |
| Ahmad Hathout | Journalist | The Wire Report | 10/09/2018 | Phone |
| Bryson Masse | Journalist | The Wire Report | 14/09/2018 | Phone |
| Anonymous | --- | --- | 02/08/2018 | Phone |
| Anonymous | --- | --- | 13/08/2018 | Phone |

| Policymakers, regulators, and political staff | | | | |
|--|--|--|--------------------------|------------------------------|
| Name | Position of relevance to project | Institution of relevance to project | Date of interview | Location of interview |
| Charlie Angus | Member of Parliament for Timmins-James Bay | New Democratic Party of Canada | 26/09/2018 | Ottawa, Ontario |
| Nathaniel Erskine-Smith | Member of Parliament for Beaches East-York | Liberal Party of Canada | 16/09/2018 | Ottawa, Ontario |
| Peter Kent | Member of Parliament for Thornhill | Conservative Party of Canada | 09/26/2018 | Ottawa, Ontario |
| Michel Picard | Member of Parliament for Montarville | Liberal Party of Canada | 09/21/2018 | Ottawa, Ontario |
| Anonymous | --- | Regulator | 12/10/2018 | Ottawa, Ontario |
| Anonymous | --- | Regulator | 01/10/2018 | Ottawa, Ontario |
| Anonymous | --- | Regulator | 17/10/2018 | Ottawa, Ontario |
| Anonymous | Staff member | Opposition political party | 04/11/2019 | Phone |

| Public servants | | | | |
|------------------------|--|--|--------------------------|------------------------------|
| Name | Position of relevance to project | Institution of relevance to project | Date of interview | Location of interview |
| Bill Abbott | CRTC Counsel / Assistant General Counsel and Privacy Ombudsman | CRTC / Bell | 10/12/2018 | Phone |
| Greg Lang | Major Case Director and Strategic Policy Advisor | Competition Bureau | 11/10/2018 | Ottawa, Ontario |
| Christopher Prince | Senior Policy Analyst | Office of the Privacy Commissioner of Canada | 28/09/2018 | Ottawa, Ontario |
| Philippe Tousignant | Director of Research | CRTC | 14/11/2018 | Paris France |
| Natasha Zabchuk | Web Project Manager | CRTC | 28/09/2018 | Gatineau, Quebec |

| Engaged citizens | | |
|-------------------------|--------------------------|------------------------------|
| Name | Date of interview | Location of interview |
| Jean-Francois Mezei | 03/10/2019 | Phone |
| Marc Nanni | 17/09/2019 | Phone |

Appendix 5: Recruitment message⁶⁶

Hello _____,

My name is Sabrina Wilkinson and I'm a doctoral student at Goldsmiths, University of London in the UK where my research focuses on the politics of internet policy. I'm writing to ask whether you might be willing to participate in a 45-minute interview, at your convenience, as part of this research.

My dissertation project includes interviews with journalists, public servants, policymakers, politicians, private actors, activists, academics and engaged citizens involved in recent internet policy debates in Canada. I am interested in determining how these individuals or groups work with other actors in these policy dialogues, how they understand the role of the public interest in these discourses, and how their involvement reflects the public interest. I hope that this research will help academics, policymakers, students, and the public understand the complex dynamics at play in the development of internet policy.

I would be particularly interested in speaking with you about your work related to the policy formation process, including your experience taking part in _____. If you agree to participate in this research, you may opt to speak on-the-record or anonymously, or a mix of both.

If you are interested in speaking, I am available _____.

Thank you for your consideration, and please do let me know if I can provide any further information about any element of this project.

Warmly,

Sabrina Wilkinson

⁶⁶ This message was often tailored to address my existing relationship with the potential recruit.

Appendix 6: Consent form⁶⁷**Project title:** Networks and Gatekeepers: The politics of internet policy in Canada**Researcher:** Sabrina Wilkinson**Institution:** Goldsmiths, University of London

This form is asking you to give permission to Sabrina Wilkinson to record an interview with you concerning your involvement in and understanding of the internet policy environment in Canada.

Before you agree to take part, please review the below statements concerning the use of data collected from this interview.

I agree and understand that:

- The research project named above has been explained to me to my satisfaction and I agree to take part in this study.
- If I decide at any time that I no longer wish to take part in this project, I can notify the researcher involved and withdraw immediately.
- My personal information will be processed for the purposes of this research and such information will be treated as strictly confidential.
- If I have asked to remain anonymous, it will not be possible to identify me from the quotes included in this PhD dissertation and any related publications.⁶⁸
- If I have agreed to speak on the record, my name and occupation will be disclosed in this PhD dissertation and any related publications.
- I have been given a copy of this consent form to keep and refer to at any time.

Participant name :

Participant signature :

Date :

⁶⁷ This form was accompanied by a more expansive conversation about the project and terms of consent.

⁶⁸ e.g., books, academic journal articles, magazine articles and blog posts