

Notes for an Address

by

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I'm here to talk to you today about an extremely successful experiment which we have been enjoying in Canada; namely, self-regulation with respect to content on television (and radio). I know that, thanks to Brian, it's a subject that isn't new to you.

And, actually, this Canadian experiment is getting to be better known around the world. People in other countries see what has been accomplished here to focus their efforts to cope with similar issues.

I have, for example, just returned from two conferences in Mexico City, one a round table on international relations with representatives from Mexico, Spain, Argentina, Colombia, Chile, Ecuador, Canada and the United States, and the other a two-day conference put on by a media-watching entity called A Favor de lo Mejor and attended by roughly 10,000 Mexican inhabitants.

While the primary focus of the conferences was the improvement of the media, there was considerable interest in that part of Canada's activities that relate to self-regulation. After all, quality in the media of communication involves both incentives for the creation of better programming and the

establishment of processes for that programming that does not measure up to established standards.

Another group, called Dombali, has invited me to join a conference of Brazilian, South African, American and Canadian representatives in Brasilia next month to talk about the same subject.

The point is that the Canadian self-regulatory process has attracted the attention, possibly even the admiration, of people in other countries who view it as a possible model for their dealings with programming content issues.

I propose to tell you something about the Council, how we are organized, how we work, and what codes we administer. I know that some of you are interested in radio, some in television and some in broadcast journalism. The CBSC has examples that touch each of these areas and, perhaps not surprisingly, British Columbia examples in each such area.

The History of the Council

First suggested by the Canadian Association of Broadcasters (the CAB) in 1986 and encouraged by the CRTC, which favoured the development of *industry-generated* guidelines, the idea was proposed by the CRTC in 1987. The CAB proposed a viable model for the Canadian Broadcast Standards Council in 1988. It was incorporated in 1990 and began functioning in 1991 in order to, in the words of the CRTC, “encourage high standards of professional conduct on the part of private radio and television broadcasters by ensuring that social concerns and values are reflected in their programming decisions.”

There were actually very few obstacles to its creation at that time. The idea was innovative as it had come *from the private broadcasters* and was readily accepted by the CRTC. Among other things, the Commission undoubtedly saw a way of decreasing some of their own workload as well as permitting the broadcasters to take care of their own shop the way other professional groups do.

For the process to actually work, though, you need a broadcast industry which is prepared not only to acknowledge the value of the process but will be willing *to abide by its rulings*. The CBSC began to earn its credibility when the Council began to issue careful, logical, thoughtful, user-friendly decisions which also had an impact. The text of each decision explained the reasoning we had gone through. To be effective, it was our view that the decisions had to look legal but feel accessible. We hoped that non-industry people could understand them and digest them.

As a part of ensuring credibility, it was important that the Panels which made the decisions were made up of 50% broadcasters and 50% public representatives. Moreover, we have always strived to ensure that the appointment of Adjudicators was such that we never had public members who believed that broadcasters were always wrong any more than we had industry representatives who were certain that broadcasters were always right.

We have tried, where possible, to have our decisions be unanimous but have never *required* that. The fact that broadcasters and ordinary citizens could agree on meaningful, tough, even negative decisions with financial implications enhanced the credibility of the process. Only three of the roughly 300 decisions have had a dissent.

We issue a public press release with every decision, whether it favours the broadcaster or the complainant. It gives profile to the process and credibility to the broadcasters themselves because it is clear that they can face the public. We also use the web site to maximum advantage. For the past several years we have had over a million “hits” annually.

The Structure of the Council

1. Infrastructure

Structurally, the CBSC consists of five Regional Panels, representing the Atlantic Region, Quebec, Ontario, the Prairie Region, and British Columbia.

There are, in principle, ten members on each Panel, half of whom are representatives of the broadcast industry and half representatives of the public. Each Regional Panel has a Chair and a Vice-Chair, one of whom represents the industry and the other the general public.

At the national level there are also a National Chair and an Executive Director. Although there is no such requirement, both are lawyers.

We also have two National Panels, one to deal with Conventional Television programs and the other to deal with Specialty Services.

We also have an Ottawa-based Secretariat which receives complaints from the public directly or on referral from the CRTC and often from the stations themselves. In the early years, we opened about 250-260 files

opened annually. After the arrival of Howard Stern on Toronto and Montreal radio in 1997, we began operating at a rate of about 1,200 files per year. In the year just ended, though, that figure has jumped to more than 1,550 files.

2. Funding

The Council's funding, like that of most, if not all, professional associations, is provided directly by its members or indirectly by other associations on their behalf. Other than those individual broadcasters who participate on a personal basis in the adjudications of the CBSC, the corporate members of the Council and their management have no involvement of any kind in the deliberations of the CBSC.

On those occasions on which an individual Panel Adjudicator has any relationship with a station or service whose complaint is being decided, that member does not participate in the adjudication of the complaint. Just recently, for example, in a decision involving the discussion of the practice of snowballing on Xfm, the Business Manager of the station, who was sitting in the other matters decided by the BC Panel on that date, withdrew from participation on the *Pepper and Crash Show* decision.

3. The Codes Administered by the CBSC

The CBSC administers four industry codes of conduct: the *CAB Code of Ethics*, the *Code of (Journalistic) Ethics*, the *Voluntary Code Regarding Violence in Television Programming*, and the *Sex-Role Portrayal Code for Television and Radio Programming*.

The *CAB Code of Ethics*, which dates from 1988 and was amended last year, deals with an array of issues. It prohibits unduly discriminatory comments based on race, religion, national or ethnic origin, skin colour, gender, sexual orientation and so on. It prohibits unfair or unsafe contests. It requires that news be presented accurately and without bias. It prohibits unfair and improper comments, even by callers to a radio talk show. It encourages the presentation of programming on controversial subjects. It restricts the use of unduly coarse or offensive language and the discussion of unduly sexually explicit material *on the radio*. In the case of television, it extends the Watershed and advisory provisions of the *Violence Code* to other adult material. The Code also includes rules relating to advertising and the basic provision on sex-role portrayal.

The *Code of (Journalistic) Ethics*, created by the Radio and Television News Directors Association of Canada in 1970 and updated in 1986 and 2000, deals with all kinds of news gathering and reporting and public affairs issues. Among other things, it provides that reporting must not unreasonably infringe privacy except when necessary in the public interest. It insists that broadcast journalists govern themselves so as to avoid any real or apparent conflict of interest. It requires that reporting on criminal activities such as hostage-takings or terrorist acts be done in a fashion that does not knowingly endanger lives or provide vital information to the perpetrators. It provides that errors be quickly acknowledged and corrected.

The *Sex-Role Portrayal Code* states as its *raison d'être* that it seeks to “advance the awareness of, and sensitivity to, the problems related to the negative or inequitable sex-role portrayal of persons.” The Code sets out quite specific guidelines for programming content. For example, it provides

that a realistic balance should be achieved in the use of men and women in voice-overs and as experts and authorities in news and public affairs programming. It requires that both sexes should be portrayed as equal beneficiaries of the positive attributes of family and single-person life. Men and women must be portrayed as intellectual and emotional equals. It goes without saying that negative or degrading comments are to be avoided.

The *Violence Code*, which came into force on January 1, 1994, is formally approved by the CRTC. Its basic tenets are:

1. There shall be **no gratuitous violence** on Canadian television at any hour;
2. There is a **Watershed hour**, 9 p.m., before which no programming showing violence intended for mature audiences, shall be aired (note the exception for programming based on the time zone of origination of the broadcast);
3. To aid viewers in making viewing choices, **program advisories** must be shown at the beginning of and during the first hour of any programming which contains scenes of violence;
4. There are **special rules for programming for young children**, which require, among other things, that very little violence be shown, that violence shall not be the central theme of such programming, that dangerous imitation shall not be encouraged, that violence shall not be shown as the preferred method of

conflict resolution and that scenes of realistic violence shall not minimize the consequences of the violent acts; and, finally,

5. A viewer-friendly **classification system** was to be, and now has been, put in place.

In summary, there are rules to ensure that children, the most vulnerable members of society, benefit from certain protections against the exploitation, whether purposeful or accidental, of those vulnerabilities.

There are also rules to ensure that some types of violent programming which may be fine in cinemas, which we make a conscious choice to enter by leaving our homes, travelling to the movie-house and plunking down our money to enter, are not seen in programming which comes into our homes at its will, not ours.

There are also protections to ensure that programming which may be acceptable to broadcast shows up at an appropriate hour with enough information attached to it to enable persons who may not wish to see it to make their own programming decisions on the basis of knowledge.

4. Decision Procedures

It is essential to the process that it is complaints-driven. The CBSC does not initiate inquiries. The system is not one of censorship or pre-clearance. It is expected that broadcasters will shape their own programming pursuant to the industry's standards. It is only *if* a member of the public

expresses a concern about broadcast material in writing that the CBSC's involvement is triggered.

When a complaint is received, either directly from the public or indirectly from the CRTC, which forwards all, or almost all, such complaints when they concern CBSC members, it is relayed to the broadcaster. At the same time, the CBSC provides the audience member with a form, called a Ruling Request, which it can return to the CBSC in the event that the broadcaster fails to satisfy him or her. The station or network has three weeks to respond to the complainant, either indicating where it has erred or why it believes that it has not.

In the event of dissatisfaction, the complainant returns the Ruling Request, and the adjudication procedure begins. Logger tapes of the program, which have been held by the broadcaster since the filing of the complaint, are forwarded to the CBSC. The Secretariat then considers whether the complaint concerns a subject matter frequently dealt with before or is frivolous, vexatious or harassing. In those cases, a Summary Decision will be rendered.

Otherwise, the tapes and correspondence go to the Panel Adjudicators together with a memorandum from the Secretariat. Panel members review the material and a meeting is held, and a decision is reached.

The Secretariat then drafts the decision, which is circulated to the Panel adjudicators for review, comment and the assurance that it reflects the conclusions of the meeting. When satisfactory, the decision is prepared for release.

5. Results

There are two possible results: 1. the broadcaster is in breach of one of the Codes; or 2. the broadcaster is not in breach of one of the Codes.

Where the broadcaster is not in breach, there is nothing which it or anyone is obliged to do although the decision is publicized by the CBSC. Occasionally, the challenged broadcaster will itself announce the result where the CBSC decision arose from a particularly controversial local issue, as in a Victoria decision involving a CHEK-TV news report on the firing of an ersatz shopping mall Santa Claus six years ago.

Where the broadcaster is in breach, the Council may decide two things: 1. the breach is a one-time occurrence; or 2. the breach is likely to recur. If the former, the broadcaster makes an announcement. If the latter, the Council may require the broadcaster to take steps to ensure that the problem does not recur.

- *Mighty Morphin Power Rangers*
- *Howard Stern Show*
- *Dr. Laura Schlessinger*

While our regulatory tools do not appear to be very powerful, we have found that we do not need anything stronger. The system works because it strikes a nice balance between the public, the Government regulator and the broadcaster needs.

The Government Authority

In Canada, the CRTC is responsible for all regulatory matters in the broadcasting and telecommunications area although they have decided not to become involved with any regulation relating to the Internet. Whether that position will change under the leadership of Charles Dalfen, the current Chair, remains to be seen.

The Commission's powers include the right to establish classes of licences, issue licences for up to 7 years, impose and amend Conditions of Licence, renew licences, and suspend or revoke any licence.

The *Broadcasting Act* makes it clear that broadcasting undertakings are responsible for *everything* they broadcast (whether they have created or purchased the programming, whether it is dramatic programming, news or public affairs, advertising or comments made by a caller who is not an employee of the station).

The Act also requires that television (and radio) "programming ... should be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes." It also provides that "the programming ... should be of high standard."

Permit me a tangential observation at this point. The suggestion in the expression of the Parliamentary will is that no single part of society should be treated in a preferred manner. There should be something for everyone. While there are, as the legislation provides, *standards* (and high ones, at

that), there should be types and styles of programming that appeal to parts of society. There is no need for pabulum or lowest common denominator material that is designed to appeal to everyone. There may, of course, be programming designed on that basis for commercial reasons. Fine. No problem. There is, however, every entitlement for a broadcaster to provide niche programming which it believes will appeal to some segments of society, even though it *knows* that others will be offended by it.

Until the CBSC was created, the CRTC dealt with all issues of complaints about content. The regulator maintains a “public file” for every broadcaster and any correspondence the Commission receives is filed there. That public file is considered by the CRTC at licence renewal time.

The existence of the self-regulatory body, though, means that the private broadcasters are taking care of their own complaints and none of these are left on the CRTC’s public files, once they are in our hands.

Freedom of Expression

One of the important points to bear in mind when looking at Canada’s broadcast legislation and the role of the regulator is, as you can see, that the Government broadcasting authority has some important responsibilities relating to *content*. So speech is not *absolutely* free on Canadian airwaves.

Let me give you some context regarding this issue by a comparison of Canada and the United States, the home of constitutional free speech.

Most of us are probably familiar with the American First Amendment to the *Bill of Rights*. It provides that “Congress shall make no law ... abridging the freedom of speech, or of the press.” Canada’s right to freedom of expression, by contrast, is not stated as an absolute; rather, the *Canadian Charter of Rights and Freedoms* provides that “freedom of opinion and expression, including freedom of the press and other media of communication” is subject “to such reasonable limits ... as can be demonstrably justified in a free and democratic society.”

In Canada we tend to accept the idea that freedom of expression, a cherished value, is *one* value, but not the *only* value, and that it, in broadcasting, it should be weighed against other values in society.

The right to speak freely does not, for example, supercede the right of society to be free from hate speech, which, as you probably know, is a *criminal* offence.

The right to speak freely does not, in the view of the CBSC, supercede the right of identifiable groups to be free from abusively discriminatory comment on the basis of, among other things, their race, their religion, the colour of their skin, their mental or physical handicap, their gender or their sexual orientation.

The right to speak freely does not supercede the right of our children to be free from television programming containing violent or other material intended for the viewing of adults. You may also know that, in the Province of Quebec, *no* advertising may be directed at children in television or any other medium.

So, while it is clear that freedom of speech is a *precious* right, it does not mean that Canadian audiences should be subject to absolutely *any* form of speech. Because the Canadian system does not permit excessive violence during children's programming, because it does not allow hateful comments on the basis of people's religion or the colour of their skin, because it does not allow imbalance in the portrayal of men and women does not mean that our free speech is unduly restrained or that the Canadian social fabric is weakened.

As I usually say, when I speak before American audiences, in Canada we *respect* freedom of speech but we do not *worship* it.

To be more specific, in the United States, neither the American *Communications Act of 1934* nor the *Telecommunications Act of 1996* contains any provisions, except in the case of indecency, which purport to restrict freedom of speech whereas the Canadian *Broadcasting Act* and the regulations created under it do.

In addition to the constitutional framework I have just discussed, you should know that an aspect of the logic of those restrictions begins with the principle that "the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, *makes use of radio frequencies that are public property ...*"

It follows that the CRTC, as the body administering the Act, the Regulations and the licences granted under those instruments, could be expected to impose standards which would have the effect of *restricting* access to those licences by imposing both positive and negative

proscriptions. One of the most fundamental positive requirements is, as I have observed, that “the programming originated by broadcasting undertakings should be of high standard”.

There are also negative restraints, one of which, Section 5 of the *Television Regulations*, (mirrored in the *Radio Regs* and the *Specialty Services Regs*) clearly restricts untrammelled freedom of expression. It says:

A licensee shall not broadcast

(a) anything in contravention of the law;

(b) any abusive comment or abusive pictorial representation that, when taken in context, tends or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;

(c) any obscene or profane language or pictorial representation;
or

(d) any false or misleading news.

Self-Regulation in Canada

The question, then, is who makes the rules and how. Clearly, Parliament and the CRTC rule. The *authority* to make the rules is laid out in our *Broadcasting Act* and in the television, radio, pay television and other

broadcasting regulations. The body with the legal power to enforce content in the interests of all Canadians is the CRTC but they don't generally do it. We do.

When we made the ruling in 1994 which led to the removal of the *Mighty Morphin Power Rangers*, the most financially successful children's program in the history of television (in Canada and the United States, if not elsewhere), our national newsmagazine wrote in their headline, "Power to the People".

When we prevented the Howard Stern Radio Show from spreading across Canada and forced the New York broadcast to be edited in Toronto and Montreal, the headline of the article by one of Canada's most respected journalists was "Canada has different ways of dealing with Howard Stern's show".

When we decided that the equally popular, but very different, Dr. Laura radio show could no longer make abusively discriminatory comments about gays and lesbians, the headline on another major Toronto story was "Bravo for broadcasting curbs on Dr. Laura".

Our decisions define the issues raised in the Codes. They put meat on the bones.

A prohibition of "unduly sexually explicit material" on the radio has less meaning until you distinguish between sexual innuendo, on the one hand, and that which is "precise, explicit, even graphic", on the other.

The Watershed provision on television sets 9:00 pm as the hour before which no programming showing scenes of violence intended for adult audiences may be shown. We have explained that this means no scenes of violence intended *exclusively* for adult audiences. We have also explained that this means that any programming that begins before 9:00 pm cannot contain exclusively adult material, even if that material airs after 9:00. Examples abound.

We deal with dramatic programming, children's programming, news and public affairs, animation, comedy, feature films, advertising, education, talk shows, game shows, etc.

We receive all kinds of complaints. For example, we had a radio complaint which dealt with a nude bicycle contest in the winter in Winnipeg.

We deal with allegations regarding nudity and sexual content, sometimes at hours before our Watershed of 9 pm.

We have dealt with the movie *Strip Tease* shown at 7:30 pm and with promos for *SexTV* shown in the early evening.

We recently ruled that the feature film, the *Thomas Crown Affair*, could be rated 13+ in Quebec, despite the fact that, in the rest of Canada, an 18+ rating would apply (the broadcaster had only rated it 8+).

We have dealt with fighting and disgusting practices on the *Jerry Springer* television show.

We have dealt with the *Tom Leykis Show*, formerly broadcast on MOJO Radio here, and decided in favour of CHMJ on one occasion and against it on the other.

We have dealt with animation clearly intended for adults, such as the *Kevin Spencer* show.

One broadcaster ran commercials for theatrical films with very violent themes in the middle of Saturday morning children's programming.

In news reporting, we have looked at questions relating to child pornography and the service of a search warrant at the home of the Premier of a Province.

We have even dealt with Bugs Bunny.

Sometimes the newspapers are amused by what we do but, at the end of the day, what is important in our self-regulatory system is that the broadcasters believe in the system and they follow our decisions, without the need for Government intervention.

A New Initiative

In recent months, the Council has also been very active in supporting cultural diversity and minority community accessibility, an area which has been a high priority for both the Minister of Canadian Heritage and for the CRTC.

Earlier this year, we took a ground-breaking step, launching the CBSC information brochure in a wide variety of languages – 15 in all. These include Arabic, Chinese, Somali, Hindi, Punjabi, Tamil, Italian, Portuguese, Spanish and Ukrainian, as well as the Aboriginal languages Inuktitut and Inuinnaqtun. A second round of languages is contemplated in the current fiscal year. These will likely include Japanese, Korean, Urdu, Gujurati, Russian, German, Polish, Cree and Ojibway, among others.

These will in short order be accompanied by a new PSA and increased information on our website. Through these measures we are making the self-regulatory process more accessible to a large variety of Canada's cultural communities whose primary languages of comfort are neither English nor French.

The Future

Ten years ago, the private broadcasters in Canada decided that they should be a part of the solution and not a part of the problem. They believe that their interests are better served when *all* broadcasters are accepting and applying the same standards. They also say that, when their business day finishes, they go home to their local communities, in which they broadcast. Like most other professional groups, they prefer to be responsive to their own self-regulatory system. Lawyers do it that way in Canada. So do doctors, accountants, psychologists, architects and so on.

Canada's private broadcasters have found that this is the most effective way for them to be responsive to public concerns. I think that they are not alone in this perspective. The CBSC's language outreach initiative reflects

our belief that we have a very successful process for dealing with public complaints about broadcasting, which more people should know about.

In our view, self-regulation is the way of the future, particularly as borders disappear and the “village” becomes truly global. I hope that this overview of the Canadian corner of that global village has been useful and interesting to you.