

Legislación y Autoregulación

Notes for an Address

by

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2o. Congreso Internacional “A Favor de lo Mejor de Los Medios”
Mexico City, October 7, 2003

Buenos días, damas y caballeros. I am very grateful to have the opportunity to participate in this important Congress. This is the second time I have been invited by A Favor de lo Mejor to this wonderful city. And look at this crowd ! What support for A Favor de lo Mejor and what it stands for ! I cannot imagine that we would succeed in Canada to assemble such a large and committed audience, even for such a relevant subject.

And let me say that you, the public, have a very important role in this process. And it begins with youth - in university and even in school. You need to be involved. You need to care about what you see and hear. You need to be media literate.

But, as Jim Steyer said yesterday, it is not either / or. You need to be literate BUT you are also entitled to rely on some regulatory control. Content matters cannot, and should not, be left to the marketplace alone.

The title of this panel, “Law and Self-Regulation”, establishes the two extremes of any process which deals with broadcast content, namely, law as administered by Government, on the one hand, and self-regulation, that is, codes or standards as administered by the industry itself, on the other hand. Populations often feel more confident in the likelihood that results will be achieved by the Government and less confident that self-regulation will do as well. But that is not the case. A strong and effective self-regulatory council can do just as well.

Scepticism might be reasonable where the self-regulated industry does not both support the self-regulating body *and endorse its decisions*. Where broadcasters do both, the self-regulatory approach is almost certainly a more effective solution to audience concerns than the generally slower and more formal

hand of Government. But it's not a contest. Both have their roles. The question for us today is whether, in *any* circumstances, the self-regulatory body can fulfil its role well, effectively and usefully.

Let me tell you about the experience with self-regulation in Canada, where we have both effective governmental and self-regulatory structures. Both systems have their place and their function. Moreover, I expect that each system works better because *both* types of regulation are there.

In Canada, everything begins with public involvement. We have no system of monitoring programs. We depend on complaints from the public. Whether they are sent to the Government regulator, called the CRTC, or to the CBSC directly, they end up in our hands if they concern any of the 540 private radio and television stations, services and networks that we oversee.

In Canada, people complain about many subjects. These include accuracy and sensationalism in reporting news, unduly discriminatory comments made about identifiable groups, crude or tasteless comments that someone thinks are funny, sexual content, coarse or offensive language, violence in dramatic shows, inappropriate content for children and so on.

Most complaints relate to material that can be dealt with on a self-regulatory basis. They do not require the formal intervention of the Government body. Only the most serious discriminatory comments, which amount to the dissemination of hate propaganda, or flagrantly defamatory comment, really require the CRTC.

Most public complaints can be dealt with by an effective, independent self-regulatory body that is taken seriously by the broadcasters, the Government regulator and the public. That body in Canada has, since 1990, been the CBSC. I want to tell you about our long and successful experience and how - and *why* - it works.

You will remember Jim Steyer's wish, expressed yesterday, that the FCC *should* be involved in content issues. But, as he said, it is not. You should also know that the United States does not even have a self-regulatory option, which might also be able to bring about the elimination of offensive content on the airwaves. It may be that the absence of any process, regulatory or self-regulatory, in the U.S. is related to American principles relating to freedom of speech, which are very different from the Canadian approach to that fundamental liberty.

Most of us are probably familiar with the American First Amendment to the *Bill of Rights*. It is famous but quite absolute; 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 far less absolute. Not better, perhaps, or worse, just different, and more balanced.

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 not absolute; it is subject “to such reasonable limits ... as can be demonstrably justified in a free and democratic society.” And, as Señor Vargas has just said, freedom of speech does not exist in a vacuum. It must be exercised with responsibility.

In Canada we also tend to accept the idea that freedom of expression, which is, to be sure, a cherished value, is *one* value, but not the *only* value, and it is the position of the CBSC that it, in broadcasting, it should be weighed against other values in society. Its exercise must be responsible.

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

The right to speak freely does not, in the view of the CBSC, supercede the right of identifiable groups to be free from unduly discriminatory comment.

The right to speak freely does not supercede the right of our children to be free from television programming containing violent material intended exclusively for the viewing of adults. You may also be interested to know that, in the Province of Quebec, for the past 30 years, *no* advertising may be directed at children in television or any other medium.

As I usually say, when I try to explain the difference between the American and Canadian approaches, in Canada, we *respect* freedom of speech but we do not *worship* it.

The result of this difference in attitude toward free speech is that we accept that there may be certain types of programming which are *not* beneficial for society, which may even be harmful to children or other members of the public. To arrive in an *effective* way at the restriction of such programming, Canada’s private broadcasters achieved consensus on what the substance of these rules or standards should be.

(I assume that it is not necessary to say to this audience that there are no restrictions on *political* speech. There is nothing which stops the expression of disagreement with Government policies or similar subjects. And there is no shortage of commentators wishing to express such disagreement in the broadcast media.)

So, returning to Canada's private broadcasters, they established codes which restrict what they can say and show. These Codes are public documents, accessible to everyone, on our web site, at the offices of the broadcasters. We send them to anyone who asks. All viewers and listeners should be aware of their rights.

For example, the *Code of Ethics* prohibits unduly discriminatory comments based on race, national or ethnic origin, skin colour, religion, age, sex, sexual orientation, marital status or physical or mental disability. The Code prohibits unfair or unsafe contests. It requires that news be presented accurately and without bias. It prohibits unfair and improper comments, even by third party callers to a radio talk show, who are not employees of the station. It encourages the presentation of programming on controversial subjects. It prohibits programming that contains gratuitous or glamorized violence, unduly coarse or offensive language, or unduly sexually explicit material *on the radio*.

The *Code of (Journalistic) Ethics* 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." 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.

In the television context, there is the *Violence Code*, which is as progressive as any in existence. That Code includes special protections for programming directed to children, including the basic rule that programs intended for persons under 12 years of age shall contain very little, if any, violent content. Animated programming shall not have violence as its central theme and shall not invite

dangerous imitation. Kids' preprogramming shall not threaten children's sense of security. It shall not contain realistic scenes of violence which suggest that violence is the preferred way to resolve conflict. And, very important, it must not minimize the effects of realistic violence.

Apart from the children's provisions, the Code forbids the broadcast of gratuitous violence at any time. It establishes a Watershed hour of 9pm, before which no programming intended exclusively for adult audiences may be shown. There are also requirements for viewer advisories and classification icons, which alert audiences to unusual content so as to enable the viewers to make knowledgeable choices regarding programs they might wish to watch or to avoid.

Unless these codes are enforced, though, they are only so many pieces of paper. Stories for bedtime reading. Theories for academics. Nice principles to put in picture frames.

In Canada, though, they are very real and, in an interesting way, almost elevated to the status of a law, because the CBSC decisions, which come out nearly every week, almost exclusively define content issues for our country. Here is how that happens.

The Canadian Broadcast Standards Council has Panels made up of 6 or 7 persons, half representatives of the industry and half representatives of the public. When there is a complaint that works its way through our process, it goes to one of these Panels for adjudication.

The Panel members each receive the complaint and the explanation of the broadcaster, as well as any other correspondence. They also receive a tape of the program, which they watch, if television, or listen to, if radio. They then meet and discuss the issues in order to decide whether the broadcaster has or has not breached any provision(s) of any of the Codes. That decision is then written up, like a Court decision would be, and it is released to the public and permanently placed on the CBSC web site.

If there has been a breach, the broadcaster must announce the CBSC decision (in terms that we draft) and, more important, cannot make the same mistake again. There are no other penalties and no loss of licence.

How, then, you ask, can this work?

The answer is really easy. It works because the private broadcasters want it to work. They buy into the process, to use the English expression. They play by the rules. They respect the CBSC decisions and they change their broadcasting policies when the CBSC makes a ruling.

When the CBSC said that radio discussions about explicit sexual activities in the morning could not be broadcast since children could be listening, the radio station which was at fault stopped using such examples, even though it had portrayed itself as a “macho” station, appealing to young men between 18 and 34.

When the CBSC said that the fighting on the Jerry Springer afternoon television show glamorized violence, all stations in the country dropped such episodes (and most dropped the entire show).

When the CBSC said that modern songs, particularly rap songs, using the f-word could not be played when children could be expected to be listening, the problem largely went away.

When the CBSC said that the extremely popular American Howard Stern radio show could not broadcast language offending women and identifiable ethnic groups in Canada, the Stern show was edited for a while to eliminate such language and then left Canada entirely.

When the CBSC decided that the most commercially successful children’s television show in history, the *Mighty Morphin Power Pangers*, did not conform to the *Violence Code* requirements for children’s programming, it left the Canadian airwaves.

When the CBSC said that Laura Schlessinger’s comments about gays and lesbians on her American talk radio show breached the human rights provision of the *Code of Ethics*, her discussions on that subject changed in the United States as well as Canada.

Why do Canada’s private broadcasters make such changes to their programming?

- Because they believe in the process that *they* established.
- Because they believe in the Codes, which they wrote with the approval of the CRTC and, in the case of the *Violence Code* and the *Sex-Role Portrayal Code*, with the input of other public and advocacy groups.

- Because they believe in the self-regulatory structure, balancing their representatives and public representatives.
- Because they know that the Panels take their responsibilities seriously; their decisions are almost always unanimous, and the written reasons for those decisions are carefully explained so that everyone in Canada and the world can read them.
- Because the broadcasters are members of the same community that sees or hears the broadcasts.
- Because, ultimately, they share the values.
- And because each station or network knows that no other station will take advantage of them by doing what they cannot do. The rules apply to everyone. Equally.

It goes without saying that not every broadcaster is happy with every decision. Nor is every member of the public. We could never hope to please everyone all the time. But no CBSC decision that has ever been appealed to the regulator has been overturned. So we must be doing something right.

There is a lot more I could say about the CBSC history and details about the process but, if you have questions, I will be glad to answer them, when that part of the program arises. I have brought a small number of brochures which describe the CBSC and our Codes in Spanish. The same information will be available in Spanish on our web site by the end of the month, as well as in 17 other languages.

These languages reflect 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. We must all take care of our sections of the global village. I hope that this overview of the Canadian corner of that global village has been useful and interesting to you.

Thank you for inviting me to Mexico and giving me the opportunity to tell you about it.