

Supplementary CBSC Filing

Pursuant to Commitments Made to the CRTC at the

CBSC Appearance of September 19, 2007

in connection with P.N. CRTC 2007-41

1. During the course of the appearance of the Canadian Broadcast Standards Council (CBSC) before you on September 19, 2007, the CBSC undertook to provide the Commission with several additional documents or details. There were also points discussed that seemed, on review of the transcript, to merit further details or explanation. Details for all of the foregoing follow.

The Decisions

2. The suggestion of some intervenors in their oral (and written) presentations to the effect that the CBSC decision process is necessarily or inevitably pro-industry because it is industry financed is an unfounded assumption. Any review of the very transparent CBSC website reveals that. The “raw data” in the form of program transcripts, program descriptions, complaint letters, broadcaster responses, Ruling Requests, and repliques are posted, as are the reasoned decisions of the CBSC. Anyone is free to consult all material aspects of every adjudicated file on the website to assess the *bona fides* of the adjudication process.
3. No table of the CBSC decision results is furnished on the website, nor is it the intention of the CBSC to provide any such tabulation in future. Those figures were raised in the CBSC’s written response to interventions and then again during the oral presentation only to make the point that any assumption that the process favours the funders is unjustified. The more significant issue, at the end of the day, is the *substance* of the decisions, in other words, the *principles* that emerge through those documents. While the numbers may be superficially impressive, it is the expansion and definition of the codified standards that represent the long-term value of the process.
4. The CBSC makes an effort to render decisions that add meaning to the general codified principles established in the Codes. It appreciates fully that codifiers cannot anticipate every circumstance, or set of circumstances, that might be encountered in broadcast matter. The Council considers that it is a part of its responsibility (as established in P.N. CRTC 1991-90) to clarify content substance rules on issues of social concern. Hence the expansion of the skeletal standards in its decisions, supported by the reasoning for those extended conclusions.
5. For this reason, the CBSC is in the process of preparing *annotated* versions of the Codes it administers. They will provide broadcasters, members of the public,

professionals, regulatory authorities, and all interested persons or bodies with the full substantive definition of each codified provision. The first of the four Codes should be completed during the present calendar year.

6. Even before that date, it can be stated that broadcasters regularly adopt the principles established in CBSC decisions in their programming and news reporting practices. It is, in fact, an obligation of membership in the CBSC that they do so. In addition, a number of these principles have (subsequent to their establishment in CBSC jurisprudence) been sanctified in amended codes administered by the CBSC, including, more specifically, the *CAB Code of Ethics* (amended in 2002) and the *RTNDA Code of (Journalistic) Ethics* (amended in 2000), as well as the *Equitable Portrayal Code* (currently out for public comment pursuant to P.N. CRTC 2007-89). Examples include: the extension of the Watershed hour from programming with violent content to all forms of adult program content; the provision for viewer advisories beyond programming that includes violent content; the extension of the list of identifiable groups in the Human Rights Clause to persons on the basis of their sexual orientation; the extension of the news provision of the 1988 *CAB Code of Ethics* to cover magazine and talk show formats; the creation of defined rules for radio broadcasting relating to violence, coarse language and sexual content; the clarification of the rules relating to contests; the definition of the circumstances in which hidden recording devices may be used in the development of news and public affairs stories; numerous provisions of the forthcoming *CAB Equitable Portrayal Code*; and so on.
7. Moreover, the CRTC itself has cited principles established in CBSC decisions in its own decisions relating to other broadcasters, whether public or private, on subjects such as sponsored programming, coarse language, the Watershed, and so on.

The Adjudicators

8. The list of CBSC Adjudicators is always evolving as new Adjudicators arrive and present Adjudicators retire from their CBSC duties. As of the date of this document (already updated from the date of the CBSC appearance before the Commission), the number of Adjudicators is 74, of whom 41 are industry representatives, and 33 members of the public. Of the industry Adjudicators, 13 are currently broadcast journalists and two others have that background (although those two are not at this time engaged in broadcast journalism). A set of all of the Adjudicators' biographical notes (as they appear on the CBSC website) is attached (one is incomplete).
9. It should be noted that the CBSC's website is not inaccessible. It is the first or second ranking response when Googled (whether in English or on Google français). When "broadcast standards Canada", "broadcast standards", or "conseil des normes" (to choose three imprecise but related examples) are

Googled, the CBSC is among the first couple of ranking responses. The CBSC website has more than 6 million hits annually. It can be found, it is transparent, and it is loaded with information about its processes, decisions and the Adjudicators themselves.

10. Although three examples were given during the CBSC's appearance, it was not made as clear as it might have been at that time that the appointment of Adjudicators is made upon the widest basis of consultation. As the biographies indicate in part (not every such detail would be apparent from each biography), the selection criteria include gender, ethnocultural background, reputation, commitment to public service, geographical representation, professional background (a balance of such backgrounds is sought, avoiding dominance of any one profession), and so on. Moreover, the Council has not been at all unwilling to ask persons from organizations that have been publicly critical of the CBSC or broadcasters to become Adjudicators.
11. Finally, the CBSC neglected to mention at the Hearings that the nomination process is not arbitrary. In addition to the wide consultation (on the basis of criteria such as those noted above) done before nominating Adjudicators, the names of those Adjudicators must be proposed to, and approved by, the Council's National Executive (its Board of Directors).

The Complaints

12. The CBSC had committed to provide, in response to Commissioner Langford's question, some detail regarding the ratio between complaints received and their ultimate disposition. In the nine fiscal years between 1997-98 and 2005-06, the CBSC received a total of 12,842 complaints. Of these, 2,087 were related to other agencies, whether Advertising Standards Canada, the CRTC (for broadcasters such as the CBC) that were not members of the CBSC, the (then existing) Cable Television Standards Council, and so on. Of the remaining 10,755 complaints, a total of 6,719 were considered "code relevant and specific" (contained sufficient information about the time of broadcast and identity of the broadcaster to permit retention of the logger tapes) and susceptible of treatment by the CBSC. On the basis of broadcaster responses (an obligation of CBSC membership), only 12% of these complainants were dissatisfied with the broadcaster's response/explanation and requested a CBSC Panel adjudication. The requests resulted in 300 formal public CBSC decisions and 519 administrative / Secretariat letters.

The Broadcasters' Responses

13. The importance of the requirement that the broadcaster co-operate fully with complainants by responding quickly and effectively to their concerns is a condition of membership in the CBSC. The expectation is that the response will be full and reflective of the complainant's concerns. Contrary to the suggestion

of one intervenor, no broadcaster ever “gets off” on the basis of a “good response”; however, broadcasters that do not supply such a response can be found in breach of CBSC membership requirements. Such a breach is as serious as the breach of a codified standard. That has occurred on ten occasions. It should be noted that this may occur even where no breach of a standard has been found. It should also be noted that this is consistent with the CRTC requirement in P.N. CRTC 1991-90, where the Commission stated: “The Council is committed to make every effort to resolve complaints at the level of the local broadcaster.” Broadcaster dialogue is, in the view of the CBSC, the first essential step in such resolution.

The “Appeals”

14. In response to a point raised by Commissioner Noël, the CBSC referred to the fact that there had been 22 “appeals” to the Commission from CBSC formal decisions or administrative / Secretariat letters. At the Hearing, the CBSC indicated that all of these had been supported by the Commission; a closer review of the CBSC’s records has revealed that seven of the 22 are still awaiting a CRTC determination. Of the 15 that have been approved, seven were rendered on the basis of CBSC formal / public decisions and eight on the basis of administrative / Secretariat letters. In the case of the seven formal decision “appeals”, the CRTC’s support was evidenced by means either of a CRTC staff determination in the form of a reply to the complainant (in the language of the complaint) or a decision of the Commissioners. Those decided by the Commissioners are linked from the CBSC website to the CRTC website.

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