

**Self-Regulation in Canada:
Building on a Uniquely Successful System**

**Submission of the Canadian Broadcast Standards Council to
CRTC Notice of Public Hearing 1995-5**

June 29, 1995

CBSC SUBMISSION TO NOTICE OF PUBLIC HEARING 1995-5

Introduction

The Canadian Broadcast Standards Council (CBSC) is the organization responsible for self-regulation of Canada's private sector broadcasters. Created in 1990, the CBSC's objectives are:

- to assist in the application of programming standards,
- to provide a recourse for members of the public regarding the application of these standards, and
- to inform broadcasters of emerging societal trends and suggest ways to deal with them.

The CBSC's members include 320 radio stations, 61 television stations and 2 television networks from across Canada, programming in English, French and third languages, representing 96% of the broadcaster members of the Canadian Association of Broadcasters (CAB)¹ and about 80% of all of Canada's private broadcasters.

The standards applied are those laid down in the various Codes administered by the CBSC; namely, the *Sex Role Portrayal Code*, the *Violence Code*, and the *Code of Ethics*, as well as the Radio-Television News Directors Association (RTNDA) *Code of (Journalistic) Ethics*², the first two of which are mandated as conditions of license for all private conventional broadcast licensees upon the initial granting of the license or the renewal thereof.

The CBSC was created by the private broadcasters in the belief that broadcasters themselves could most effectively and most appropriately respond to issues of public concern regarding their programming by having an independent organization responsible for directing concerns to broadcasters, interpreting the standards, and adjudicating complaints that might not be successfully resolved directly between the broadcaster and the viewer or listener.

The experiment was far-sighted and, in the international scheme of things, unique in certain important respects. While *similar* bodies exist in the United Kingdom, Australia and New Zealand, they are *all* statutorily endowed and publicly funded. In Canada (and recently in the Republic of South Africa), the industry itself has been entrusted with the establishment of a body which is principally voluntary although possessed of some indirect persuasive authority.

That authority stems from an option which the private broadcasters alone have. As a general rule, public complaints relating to the performance of licensees in all sectors of the broadcast industry are dealt with by the Canadian Radio-television and Telecommunications Commission (CRTC). The case of the private broadcasters who are members in good standing of the CBSC is different. They are entitled to have the public's Code-related complaints which are originally submitted either to them³ or to the CRTC dealt with by the CBSC rather than the regulator. The

CBSC process is in principle less formal, less expensive and more expeditious. The Commission stated in its Public Notice establishing the Canadian Broadcast Standards Council:⁴

From the Commission's perspective, this initiative also reflects a new stage in the fulfilment of one of the CRTC's primary objectives: the streamlining of the regulatory process and increased reliance on a supervisory approach and self-regulation.

Furthermore, to the extent that the CAB Codes are established by the Commission as conditions of license for the broadcasters, the latter are entitled to request of the CRTC that they become *suspensive* conditions of license during the continuation of their membership in the CBSC. Should any CBSC member forfeit its ability to remain a member by systematically not abiding by the CAB codes, the Codes would become absolute conditions of license and all complaints from the public would be dealt with in the more formal regulatory environment. Such an undesirable set of circumstances has not arisen.

Since 1991, the first full year for which such statistics are available, the CBSC has responded to 645 complaints concerning a wide variety of issues, including news programming, open-line shows, sex-role portrayal, discrimination, and television violence.⁵

The Evolving Complaints Process

The complaints process was designed, we believe, to provide a simple and fair mechanism for concerned Canadian viewers and listeners to voice their complaints. The CBSC's only requirements are that the complaint be filed in writing, that it specify the station and date on which the program was aired, and that it be timely (thus enabling the CBSC to order the logger tapes which all stations retain for 28 days following the broadcast of the programming logged thereon).

The process is designed to be easy for complainants to use; they are not required to know the provisions or definitions of the codes or standards applied; they need not file evidence or even construct an argument about why their complaint is justified; they need not appear at a hearing. Their written complaints are forwarded by the CBSC to the station in question, which then has 14 days to respond to the viewer or listener. If the complainant is satisfied with this response, the CBSC's complaint file is closed. If the complainant is unsatisfied with the response, he or she may sign a ruling request form, asking that one of the CBSC's Regional Councils consider the matter.⁶ In such a scenario, the Regional Council will review the complainant's and the broadcaster's correspondence, view or listen to a tape of the program, and determine whether the broadcaster has respected the programming standards which the CBSC administers. Where the decision is in the complainant's favour, the broadcaster must read a text of the decision on air in prime time (for television) or during peak listening hours (for radio); in all cases, the decision is released to the national media and the CRTC.

Most complaints, however, do not reach this point. Of the 645 complaints which the CBSC has handled,⁷ only 30 (namely, 4.6 % of the complaints received) have left the complainant so dissatisfied that Regional Council adjudication was requested. The CBSC notes, nonetheless, that the number of complaints requiring adjudication has gradually increased; we attribute this increase to an increasingly simplified complaints process, a growing awareness of the existence and decisions of the Council, and as a result, an incremental number of complaints relating specifically to the Codes and standards which the Council administers.

In the context of maintaining as "user-friendly" a process as is reasonable, the ruling request form is sent to each complainant at the time the CBSC responds to the complaint, along with a stamped, self-addressed envelope to facilitate the complainant's response. To keep the public and the broadcast community as aware as is reasonable of developments regarding code compliance, decisions (whether in favour of or against the broadcaster) are released via overnight fax to the national media. As the number of decisions released by the Council grows, so, too, does public awareness of the Council and the Codes. As this awareness grows, viewers and listeners are able to express specific concerns which indicate the broadcaster and the program date and which relate to the Codes.

A Growing Body of Decisions

Indeed, the decisions have become an indispensable tool for the CBSC to increase public awareness of the complaints process and the Codes, to increase broadcaster awareness of societal trends and concerns, and to make both groups aware of the interpretation of the industry's programming standards. This growing body of decisions, as the CBSC stated in its most recent Annual Report, "will thereby become useful educational tools, enabling broadcasters and the public to better understand the standards applicable to the issues of concern to listeners and viewers. The body of decisions ... has become a modest informational base" (CBSC *Annual Report 1993-1994*). In its decisions, the CBSC has provided its interpretation of key provisions in the *CAB Code of Ethics* (concerning news, public affairs and open-line programming, for example), the *Sex-Role Portrayal Code* and the *Voluntary Code Regarding Violence in Television Programming*, and it has established broadcaster responsiveness to complaints as another standard to be applied in the adjudication of complaints.

In summary, then, the CBSC's complaints procedure and decisions have evolved as a function of the public's need for a simple and fair mechanism to deal with complaints, the broadcasters' need to understand the standards and issues of public concern, and the need of both to understand the application of the process and the standards to actual complaints.

Growing Levels of Responsibility

Moreover, the CBSC would likely not have attained this level of responsibility without the endorsement of the CRTC. The Commission's Public Notice 1991-90 (August 30, 1991) announced its "wholehearted support" of the CBSC and declared the Commission's satisfaction with the complaints process. To demonstrate its confidence in the Council, the CRTC has, since that date, referred complaints falling within the CBSC's mandate to the CBSC for resolution (while maintaining that interested parties can still approach the Commission with their concerns).⁸

Many of the complaints which the CBSC has handled have been referred from the CRTC, and, as the CBSC has become responsible for the administration of additional Codes, the Commission has correspondingly broadened the scope of complaints it refers to the CBSC. In his letter of May 9, 1995 to the National Chair of the CBSC, the Chairman of the CRTC stated:

Finally, in response to your memorandum of 17 January 1995, the Commission is prepared to consider enlarging the scope of referrals to the CBSC in the context of making changes ... to the CAB's Code of Ethics.

The Codes: Evolving Standards

Indeed, the Codes themselves have evolved, as has the CBSC's level of responsibility for complaints about broadcasting. When it was launched in early 1990, the Council was responsible for the CAB's *Code of Ethics* and its 1987 *Voluntary Code Regarding Violence in Television Programming*. Within several months, the CBSC also took on the administration of the CAB's *Sex-Role Portrayal Code for Radio and Television*. The CBSC also recognized the importance of news and public affairs programming to Canadians, and in 1993, the RTNDA provided the CBSC with its *Code of (Journalistic) Ethics* for application to this category of concerns. Over the course of 1992 and 1993, the CAB revised its 1987 *Voluntary Code Regarding Violence in Television Programming*, and by the end of October, 1993, finalized the revisions; the CBSC took on administration of the new *Violence Code* at that time and began applying it to complaints in January of 1994.

We are certain that, as the Codes evolve and as new Codes may be established to respond to societal trends, self-regulation will continue to be the most effective means of dealing with public concerns while educating and informing broadcasters as to the application of these Codes and standards. We believe that the CBSC will also evolve, becoming responsible for the application of more Codes and standards for a growing number of programming entities.

Television Violence and the CBSC

The *Violence Code* will doubtless be referenced many times during the course of the current CRTC proceedings; suffice it to say for the moment, then, that, in its revised form, it is as advanced a Code as exists anywhere in the world insofar as the interests of the public are concerned. It responds to the concerns of many Canadians who signed petitions, commented on the revisions to the Code, or appeared before various *fora* such as the House Standing Committee on Communications and Culture to demand stricter rules regarding the scheduling and content of television programming.

At the time, however, the CBSC had noted (and this was echoed in the Standing Committee's June, 1993 report, "Television Violence: Fraying our Social Fabric") the relatively small number of *specific* program-related complaints which it had received concerning television violence.⁹ The Committee recommended that the CBSC increase public familiarity with the Council and its Codes.

Perhaps with some prescience, the CBSC remarked in its *1993-1994 Annual Report* that, "it will not take more than one decision of major interest to the media for this familiarity to be fully realized." On November 1, 1994, the CBSC released its first (and, to date, only) decision regarding the 1993 *Voluntary Code Regarding Violence in Television Programming*. The decision, discussed and summarized in the CRTC's Notice of Public Hearing, concerned the American program, *Mighty Morphin Power Rangers*, as aired on CIII-TV (Global Television).

The Power Rangers Decision

No previous complaint or group of complaints received by the CBSC has given rise to the issues which flowed from the circumstances of the *Mighty Morphin Power Rangers* case. In almost every previous matter referred to the CBSC, the complaint related to a one-off¹⁰ broadcast which had offended a member of the viewing or listening audience. The individual matters generally arose in the case of a daily or weekly recurring program but they always related to a

specific incident or show *within* the context of the series and not to the series itself. Even where more than one complaint was laid in respect of a program, the grievances went to what had been said or done on the individual shows complained of and not to the essence of the series. In addition to having evoked more complaints about a particular series, the *Power Rangers* complaints were expressed as a function of the entire series rather than as a function of individual episodes. After the members of the Regional Council reviewed ten episodes of the series, a full two weeks of programming, more than a random sample, in other words, it was clear to them that a pattern of Code breaches was present.

The relevance of this consideration to the matter presently before the Commission is as follows. The system of complaints regarding one-off broadcasts can be dealt with adequately by the present infrastructures. A complaint relating, say, to a television news broadcast one night in Toronto, a radio talk show host in St. Catharines, a mid-morning radio show in Vancouver or even a segment of an episode of a non-children's cartoon show syndicated across Canada could be dealt with by the CBSC if the broadcaster was a member or by the CRTC if the broadcaster was not. In neither case would the implication for the rest of the industry or the rest of the population be more compelling than, perhaps, the explanation of, or the expansion upon, the principle behind the decision.

The modification of the *Violence Code* in 1993 increased the likelihood that an entire series of programs might be affected by a complaint or series of complaints. Concepts such as gratuitous violence or unacceptable forms of violent programming directed at children introduced there were more likely to have series implications. The private broadcasters themselves clearly understood this; shows such as the *Teenage Mutant Ninja Turtles* and *G.I. Joe* disappeared from the Canadian private broadcasters' schedules.¹¹ The case of the *Mighty Morphin Power Rangers* was thus the first involving a series *post*- January 1, 1994. As stated above, the Council clearly felt that the entire series breached the *Violence Code*.¹² In the CIII-TV (Global Television) decision, the Council, referring also to a similar case in New Zealand, said:

In the New Zealand case, the Council noted, the members of the Authority had viewed three of the 60 episodes which had been aired in the relevant time frame. (Some members had seen additional episodes.) In the CIII-TV (GLOBAL TELEVISION) case, members of the Regional Council screened ten episodes provided by the broadcaster pursuant to the request of the CBSC Secretariat (although some members have also seen additional episodes, including current ones). As in the New Zealand case, members of the Ontario Regional Council consider that their observations entitle them to take the generalized position that the approach of the entire series is such that it would likely be in breach of those articles of the *Violence Code* in the same manner as the episodes which the Council members viewed in order to render this decision.

The result of the CBSC's conclusion that the decision rendered could apply to the entire series had implications which extended beyond the program in question since, in a series environment, there is somehow the expectation that more than *one* broadcaster would be likely to be airing the program.¹³ That is, of course, what happened in the case of the *Mighty Morphin Power Rangers*. The show was available in English, every weekday morning, on the CanWest-Global System in Nova Scotia, Ontario, Manitoba, Saskatchewan and British Columbia and on a syndicated basis in Newfoundland and Alberta; in English across the country, every weekday afternoon, on YTV, a specialty service; in French, every Saturday morning, on TVA in Quebec; and in English across the country, every weekday afternoon, on the American network, Fox-TV, delivered on cable. For the first time, it was clear that a Code considered by the broadcasters

and the CRTC to be *essential* for Canada's children might be of marginal benefit in the end by reason of the broadly based availability of a program on services *not* covered by the ambit of the authority of the body fixed with the administration of the Code.¹⁴

Although the CBSC was unanimous in its view that the show violated several provisions of the *Violence Code*, it was extremely concerned by the availability of an offending program to Canadian children by other delivered services.

In rendering this decision, though, the Council is troubled. While it is entirely comfortable with the substance of its conclusions, it deplores the fact that there are no corresponding requirements for adherence to these principles on the part of YTV or the cable carriers of Fox Network programming. The Council's view of *Mighty Morphin Power Rangers* is a function of non-compliance with a set of principles established with the collaboration of the CRTC for the benefit of *all Canadians*. The issue is the *message*, not the *medium* by which it is being delivered.

Sufficient time has passed for the remainder of the broadcasting industry, which includes the cable sector, to have put appropriate systems of protection in place. This is, however, no longer an *abstract* question. The Council is faced with the reality of *Power Rangers*.

It is unreasonable to expect that Canadian children can be accorded protection against violent programming by a CBSC ruling against a series delivered on one channel which then remains available a push-button away on the same set. It is equally unreasonable to expect that conventional broadcasters adhering to *their* Code should be competitively disadvantaged vis-à-vis a specialty service delivered on extended basic cable service and a *foreign*-originating signal accessible to everyone with basic cable service.

If the self-regulatory model is of value, and the CBSC is certain that it is, steps *must* be taken to level the playing field. In an electronic environment in which only some of the viewing public is protected only some of the time, the effect is non-existent for most of the public most of the time. Indeed, it may be worse than that since those who have agreed to play by the rules may, understandably, find it difficult to be Code-abiding when their competitors are not obliged to be.

Adaptability of the Current Self-Regulatory System

We expect that some will see this as an opportunity to re-open the debate on television violence. They may come to this debate again expressing their generalized position that there is "too much violence on television" and that the current self-regulatory system does not work. They will cite as their evidence of this that the *Mighty Morphin Power Rangers* series is still on conventional Canadian broadcast airwaves. To these assertions, we would respond as follows.

First, a single complaint is sufficient to trigger a Regional Council decision. As we have underscored in another context, in the case of the *Power Rangers*, "[t]he CBSC was neither impressed by the large number of initial complainants nor the small number acquiescing to the process.¹⁵ A single complaint is either justified *or not* as a function of what is in the Code, not how *many* people do or do not like the program. *Popularity* is the commercial broadcasters' concern. Meeting the standards imposed by the broadcasters *on themselves* is ours."¹⁶

Second, the process is driven by viewers and listeners, members of the public, and not by an arbitrary censor. The CBSC does not monitor programming on its own initiative and strike that

which is unacceptable; concerned viewers and listeners tell *us* what *they* deem unacceptable. Thereafter, the complainants themselves determine whether the broadcaster's response to their complaint or explanation of the offending program's rationale is sufficient (as it most often is), or whether *they* would like the CBSC to take further action. Television viewers themselves are at the heart of the process.

Third, the *CAB Violence Code* is effective and respected wherever it has come to be known around the world. The CBSC has received no complaints regarding television violence which do not fall within its terms. The CBSC has also shown its willingness to render a difficult decision where the programming under assessment required it. The fallout has largely related to the reach of a CBSC decision.

Before one can suggest that the reach of the current self-regulatory system extend to the non-conventional broadcasters, as this Submission proposes, it is clear that the CBSC must itself deal with certain internal housekeeping matters. Despite the very positive reasons for having five Regional Councils, which effectively reflect local values in their relationship to locally generated programming, it is an unwieldy process when applied to nationally broadcast programming. It is currently awkward, to say the least, that a negative CBSC decision *technically* only has effect in relation to the station against which it has been rendered. In theory, at least, unless a complaint were made against a network program,¹⁷ it would be possible to have to repeat the decision with respect to each station carrying the offending series. Furthermore, it would be functionally untenable to decide that an English-language network series available nationally was acceptable in all regions of the country save, say, Atlantic Canada. It is also unduly demanding to ask that a single Regional Council carry the burden of making a national decision when the sole reason for *its* having to do so results from the geographic origin of the initial complaint.

It is clear that the foregoing anomalies must be resolved as quickly as possible. The CBSC had already determined, before the issuance of the current Notice of Public Hearing but following the *Power Rangers* decision, that it would establish a National Council made up of public and broadcaster members to deal with programming deemed to be of a national rather than regional nature. It had also concluded that revisions to its procedures would be required to ensure that any national decisions would be binding on the rest of the CBSC membership. Measures to institute these changes are currently in the works.

On the assumption that the foregoing changes to the CBSC's rules for its members are made, it is essential that the effect of CBSC decisions be extended to other sectors of the broadcasting industry, thereby levelling the playing field. Currently, the *CAB Violence Code* is applied by the Commission as the standard for all conventional private broadcasters as well as for the new specialty and other services which have not yet adopted their own violence codes. Even those sectors of the industry, such as pay/pay-per-view, which have their own codes, do not have codes which differ markedly from the CAB model which is administered by the CBSC. We assume that it is likely that the Canadian Broadcasting Corporation and the older specialty services will in due course have Codes of similar scope.

Furthermore, even if some or all of the codes were significantly different, their application or administration could easily be left to the CBSC, which is the only self-regulatory body in the country responsible for and experienced in the substantive complaint adjudication process. The CBSC's growing body of decisions, although not currently extensive in the area of violence, is a useful yardstick for broadcasters and the public.

Classification

The CBSC is not itself involved in the creation of a rating system. It has, however, certain limited comments to make regarding the questions put by the CRTC on page 8 of the Notice of Public Hearing.

First and foremost, the CBSC must underscore its view that there are significant issues to deal with in the course of the broadcast day which are not likely to be resolved by the application of a classification system, any of which would probably be limited in its focus to dramatic programming. Consequently, all news and public affairs programming as well as sports programming would, we expect, not be covered by a classification structure and would thus continue to be dealt with by the CBSC.¹⁸

There would still remain considerable scope for the CBSC's self-regulatory role in the area of dramatic programming even with the advent of a classification system. There are provisions in the *Code of Ethics* and the *Sex Role Portrayal Code* which must be considered and not even all of the *Violence Code* related issues in dramatic programming are thereby eliminated. If one were to envision all dramatic programming as finding a place on a continuum, beginning with children's programming on one end and ending with adult programming on the other, any classification system would only be applicable to the centre of the continuum.

At the children's end, there is already a body of principles developed with great care by the broadcasters in consultation with the CRTC and the many public groups participating in that 1993 process. These provisions in the *CAB Violence Code*¹⁹ are prohibitions, not measurements or gradations. They state, among other things, that children's programming shall contain "very little violence, either physical, verbal or emotional", that any violence portrayed must be "essential to the development of character and plot", realistic scenes of violence shall not "create the impression that violence is the preferred way, or the only method to resolve conflict" and so on. Thus, children's programming, which is defined as being directed to "persons under 12 years of age", either conforms to the standards or fails them. In the latter eventuality, it cannot be rated *within* the category. While it may then be eligible for viewing in a non-children's category, it ceases to have the same value to a broadcaster. The issue, then, remains one of suitability and not merely of classification. Complaints regarding potential breaches of these provisions remain matters for the CBSC's consideration.

Correspondingly, there is an issue of acceptability and not merely of classification at the other end of the continuum, namely, that of gratuitous violence. The question of whether a program "contains gratuitous violence in any form" or "sanctions, promotes or glamorizes violence" equally remains a matter for the CBSC.²⁰ Such programming is prohibited and is not either a question of measurement as to its rating.

For those parts of the programming continuum which do not run into the two foregoing prohibitions, the largest part of the broadcast day, ratings would, of course, be useful. That being said, the CBSC believes that broadcasters are fully able to make these initial decisions, leaving the CBSC to fulfil the role of arbiter in those circumstances where there is a rating conflict, as it does in its present role. The CBSC's considerable familiarity with the standards (regarding both scheduling and content) to which most Canadian broadcasters must adhere makes it the most appropriate organization to adjudicate disputes regarding classification.

In addition, the CBSC has the infrastructure to process complaints as well as the expertise in interpreting programming guidelines and drafting judgments. Here also, the National Council to be created will be the logical body to deal with national classification issues while Regional Councils could deal with regionally appropriate classification matters. In the CRTC Chairman's letter of May 9, 1995 to the National Chair of the CBSC, he spoke of the CBSC's decisions:

In conclusion, the Commission recognizes that the CBSC has undergone a number of positive changes.... These are clearly reflected in the plain and straight-forward language and careful detail found in the CBSC's decisions as well as in the CBSC's profile with the media.

In the overall balance between the need to protect children and the preservation of freedom of expression, the CBSC believes in the great value of the watershed hour. As important as the role of parental oversight in television viewing is at all times of the day, it is nowhere as important as at that hour which divides the broadcast day. Here, too, the role of viewer advisories is critical for they are the descriptive unabbreviated declaration of program content, essential both for parents looking out for their children and for adults who may themselves be offended by certain categories of programming.

The CBSC's belief in freedom of expression does not obviate its concerns in the foregoing respects. The CRTC must be vigilant in ensuring that the mechanism to measure programming against the children's standards and the non-gratuitous violence post- watershed standard remains firmly in place, both with respect to programming originating in Canada and that which crosses the border via cable or satellite-delivered signals.

Levelling the Playing Field

Equal Standards

As stated earlier in this submission (on page 8), steps *must* be taken to level the playing field, failing which the self-regulatory system which the private broadcasters erected with the approval, if not the enthusiasm, of the CRTC threatens to come apart. It is understandably difficult for the subscribing private broadcasters (as it would be for *any* sector of the broadcasting industry) to accept the occasional negative decisions of this Council.²¹ It becomes that much *more* difficult when the rest of the industry plays by a different rule-book. This becomes *particularly* sensitive when there are financial implications involved in a hard decision, such as that affecting almost any series, which could continue to be available on other services in the broadcasting system.

The obvious area of overlap occurs between Canadian network or syndicated series and American-delivered versions of the same shows. As has been seen in the case of the *Mighty Morphin Power Rangers*, this overlap can occur within Canada, between the CanWest-Global System and a specialty service. There are other shows which run in their current version on a private broadcaster and may be stripped²² on the public broadcasting system. The Commission appears to have adopted a principle of absolute congruence in terms of the essential issues of the elimination of gratuitous or glamorized violence and the wording of the children's section of the Code for all sectors of the broadcast industry thus far.²³ The CBSC believes that this approach of identical standards across the entire broadcasting industry is what the Commission must ensure.

Effective Solution

While viewer advisories and a classification system, whether buttressed or not by v-chip technology or encryption,²⁴ are essential components of programming choice-making in the future, they will not replace the need for special vigilance in the case of children's programming or the need to ensure that gratuitous violence is not present on Canadian television sets. The Commission has suggested in the Notice of Public Hearing that the "negative option" approach of v-chip or other similar blocking technologies, which permit signals to enter homes unless the consumer acquires and programs a decoder to prevent the intrusion of the offending signals, is insufficient. It is difficult to imagine that any meaningful percentage of the 1.3 million Canadians who signed Virginie Larivière's Petition would find any form of negative option an acceptable solution. Canadians have in various ways indicated that protecting children from violent programming, whatever the delivery source, is a social good. What is worrisome is that, in the case of parents who cannot or will not acquire the necessary blocking technology in the negative option environment, there will be *no* protection for their children.

Is the "positive option" of encryption (suggested at page 12 of the Notice of Public Hearing) the solution? While clearly better than the negative option prospect, it begs the fundamental question, what is the nature of the protection to be afforded to Canadian children under 12 years of age?

Canadians have made a number of choices as a society which reflect their attitude toward their children. It tends not to be a permissive attitude. Children (and it should be remembered that, for these purposes, they include persons under *18 or 19* years of age) cannot, *even with parental consent*, purchase cigarettes or alcohol. There are, in every province, movies which they *cannot* enter the cinemas to see, *even with parental consent*. The private broadcasters have, with the approval of the CRTC, established a set of principles in Section 2.0 of the *Violence Code* which are prohibitory, not permissive. In order to permit the adoption of a system other than straightforward excision of an offending program from the television schedule, there would have to be a change in the terms and approach of the *Violence Code*. In the light of the strong statements of purpose associated with the promulgation of that Code, it is difficult to imagine what support there would be for such a change of direction.

In the current Notice of Public Hearing, readers are reminded that "[t]he main objective of the Commission's approach to television violence has been to protect children from its harmful effects, while preserving freedom of expression."²⁵ The Commission adds that "in order to achieve its long-term objectives, it is essential to give individuals the tools to make informed programming choices of themselves and for their families."²⁶ While a classification system and viewer advisories are useful, if not essential, tools to enable knowledgeable choice-making, one assumes that these are not suggested as a degradation of the prohibitions contained in the codification of principles aimed at protecting programming directed at Canada's under-12 population, any more than as an opening of the door to gratuitous or glamorized violence at the other end of the continuum.

In the result, there can be only one solution to programming which does not meet the two basic tenets of the Commission's violence policy, namely, that there be special protection for children under 12 and that there be no gratuitous or glamorized violence on Canadian television, *whether on conventional television, specialty services, community channels, pay/pay-per-view services, cable-delivered signals or satellite-delivered signals*. The restriction on altering or curtailing "any programming service or radiocommunication in the course of distribution"²⁷ must be removed so that an offending signal cannot be delivered via cable or satellite²⁸ to Canadian

homes. The CBSC takes no position on whether the signal should be blacked-out or substituted but only that it should *not* be available in Canadian homes.

Equal Application

It is the view of the CBSC that it is the appropriate body to administer the *Violence Code* or Codes across all sectors of the broadcasting industry. It has had nearly four years of dispute resolution experience to date. Its decisions are detailed and straightforward and have, in general, been viewed as equitable. In the one recent case "appealed" by a complainant unhappy with the CBSC's conclusion to the CRTC, the CBSC determination was not overruled. Furthermore, the Commission commented on the CBSC's definition of appropriate broadcaster treatment of the depiction of grief in a news story. In its letter of October 21, 1994 to the complainant, the Secretary-General of the CRTC stated:

The Commission considers that it is reasonable to apply a standard of respect for the dignity and privacy of persons, and of permitting the infringement of privacy only to the extent necessary to report the news accurately. The Commission also considers that the CBSC determination represents a reasonable formulation of the standard that should be applied to the depiction of human grief. Therefore, if a broadcast satisfies the tests of not being intrusive or unduly exploitative, the CRTC could find that the matter satisfies the "high standard" requirement.

The CBSC has command of the substance of the Codes it administers, including the *Violence Code*, as well as matters of programming and scheduling, and broadcaster responsiveness to the public. Moreover, it has the experience of dealing with nearly 650 complainants and has developed a certain familiar profile with the public.

All of this experience can be turned to account for the benefit of the public and the broadcasting industry by having the complaint and dispute resolution mechanism of the Council extended to all sectors of the broadcasting industry with respect to the administration of the *Violence Code* and classification disputes. For both the programming and classification issues, it will be essential for the same rules to apply across the industry. It will be as disruptive on the classification side (as it has been on the programming side) for the conventional broadcasters to adhere to a set of rules not honoured by the other industry players.

There is no reason why all Canadian programming services could not fall under the same codified umbrella, even where the terms of some of the Codes may vary to accommodate the particular needs of a sector, such as pay/pay-per-view television. Overall, the value of uniformity of interpretation of a program's acceptability to the general public must be the paramount consideration. The possibility of differing interpretations of acceptability of a series such as the *Mighty Morphin Power Rangers* among conventional broadcasters, specialty services, cable and, say, the CBC is as unsettling a concept as the prospect of differing interpretations of the various CBSC Regional Councils on a national program in the current private broadcaster environment. That anomaly will shortly disappear for the CBSC's current members. For the self-regulatory system to work on a broader basis for the benefit of all Canadians, that anomaly must equally be eliminated nationally.

Whether this should be achieved by having the CBSC decisions apply directly (as in the case of the current broadcaster members) or indirectly via the mechanism suggested in Notice of Public

Hearing 1995-5 is indifferent to the CBSC. There may, however, be an implication with respect to the funding of the CBSC which will vary with the mechanism chosen.

It is reasonable to expect that complaints relating to violent content in programming across the *entire* broadcasting industry will be significantly greater in number than those emanating from the private conventional broadcasters alone. It would be pure speculation to attempt to gauge the numbers but the net broadly cast would add to the current CBSC oversight totals the 20% of the private broadcasters not presently in the CBSC, the public broadcasters, the old and new specialty services, the pay/pay-per-view services and the American services delivered by cable. There would be considerably more work for *some* body to do.

If, as we have suggested, that body is the CBSC which, with its experience, can probably do the job more efficiently per dollar expended, its operational costs would have to increase. If the decisions were directly applicable to new members (as they are to CAB/CBSC members), an appropriate fee structure could be established. If, however, the decisions were not directly applicable to members for, say, cable and other services, as proposed in the CRTC Notice of Public Hearing, some levy or user-pay system would need to be created to assure that the system could cope with the work generated by unrelated entities.

The CBSC thanks you for this opportunity to respond to the Notice of Public Hearing. It will wish to participate at the full hearing commencing October 11, 1995 and, via its Regional Councils, at the regional hearings when the schedule for these has been established.

Ottawa, June 29, 1995

Endnotes

¹ As matters currently stand, no non-CAB members are members of the CBSC. This, of course, means that public conventional broadcasters, specialty, pay/pay-per-view and cable delivered services are not parties to the voluntary process and the Codes administered by the CBSC, which are discussed at greater length below. Indeed, this is a significant part of the reason for the current CRTC Notice of Public Hearing in the first place.

² More details regarding the origin and nature of these Codes will be provided below in the section *The Codes: Evolving Standards.*, at p. 5.

³ In the event that they cannot ultimately resolve these directly with the complainant.

⁴ CRTC P.N. 1991-90, at p. 2.

⁵ Up to and including the last fiscal year (which ended August 31, 1994). Compilations of annual statistics are generally only done by the CBSC at the end of each fiscal year. This means, among other things, that the data for the current fiscal year will be available by the time of the CRTC Hearing currently scheduled for October 1995.

⁶ There are five Regional Councils: in British Columbia, the prairie Provinces, Ontario, Quebec and the Atlantic provinces.

⁷ For the three years for which annual reports are available, that is, through August 31, 1994.

⁸ A legally unavoidable situation.

⁹ Complaints relating specifically to the Violence Codes continue to account for under ten per cent of all Code-related complaints which the CBSC handles, while general complaints about television violence have accounted for up to 25 per cent of all complaints received by the Council. In contrast, complaints relating to the CAB Code of Ethics account for approximately two-thirds of Code-related complaints handled by the CBSC.

¹⁰ A single or individual program or episode, as opposed to a series.

¹¹ It should be noted that this observation does not reflect the attitude of the CBSC toward these programs since the Council has never been called upon to consider these series.

¹² Decision of October 31, 1994 in CBSC files 9394-270 and 9394-277.

¹³ The financing implications of television series in the 1990's are such that the *same* series could be expected to be available in Canada and the United States (hence *in* Canada delivered over two channels locally) and even on two "non-competitive" Canadian services on different cable tiers.

¹⁴ The show, in its then format, was voluntarily withdrawn by TVA in Quebec and by YTV, the specialty service available on extended basic cable, across Canada. Global Television arranged for a modified show to be shown in the Canadian market and no decision has been rendered by the CBSC with respect to whether or not this revamped show conforms to the *CAB Violence Code*.

¹⁵ There were originally five Ontario complaints with 88 signatures received by the CBSC. Of these, only two requested that the series be considered by the Ontario Regional Council.

¹⁶ Ronald I. Cohen, "TV's Violence Code: The System Works", *Globe & Mail*, November 24, 1994, p. A24.

¹⁷ There are two networks, namely, CTV and TVA, which are members of the CBSC.

¹⁸ It might be added that the CBSC agrees that it is unnecessary to rate or classify such programming. This is not to suggest that advisories may not be entirely appropriate from time to time to advise viewers of the nature of programming which some might find offensive but rather that the elaboration of a classification scheme for what are generally time-sensitive programs would likely be unnecessary.

¹⁹ In Section 2.0 of the Code.

²⁰ Section 1.1 of the Code. Specific provisions relating to the glamorization of violence against women, specific groups and animals are also provided in Sections 7.0, 8.0 and 9.0 of the Code.

²¹ Through the end of the last fiscal year, there had been six negative decisions. This figure does not include the *Mighty Morphin Power Rangers* decision made during the current fiscal year.

²² *I.e.*, run every weekday at the same time, generally in the afternoon.

²³ See, for example, the pay/pay-per-view Code accepted on December 21, 1994, CRTC P.N. 1994-155. To the best of our knowledge, all other new specialty service licensees have had the current *CAB Violence Code* mandated as a condition of licence, and, presumably, no Codes inconsistent with the CAB Code in these two major respects have been or will be accepted by the Commission.

²⁴ The v-chip technology is, of course, a negative option approach, permitting programming to be aired *unless* parental intervention intercedes, while encryption is a positive option, permitting that certain programming to be seen only if parental intervention permits decoding or unscrambling to occur.

²⁵ At p. 2. The principle is reiterated at p. 7.

²⁶ *Ibid.*, at p. 7.

²⁷ As provided in Sections 19 and 25 of the *Cable Television Regulations, 1986*.

²⁸ See, for example, the condition of licence "that the signals and program services provided to each affiliate shall not be deleted, curtailed or altered" in *Canadian Satellite Communications Inc.*, January 19, 1995, CRTC Decision 95-20, at p. 14.