



Canadian Broadcast Standards Council
Conseil canadien des normes de la radiotélévision

Notes for an Address

by

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What an interesting time to have the opportunity to speak to the Canadian Ethnic Journalists' and Writers' Club. We have, over the last month or so, survived the Super Bowl and the emergence of Janet Jackson's right breast, Conan O'Brien's boorish Quebec City comments, and, last week, the decision by the colossal American radio chain Clear Channel to drop the Howard Stern Show from the six of its 1,200 stations that were carrying it.

What, you ask, is the relevance of these American phenomena to us in Canada? To us here on Queen's Park Crescent this evening? (And, of course, as a home-grown sub-text, we should not forget Don Cherry's comments on the users of hockey helmet visors.)

The relevance of these stories to us is that Canada is different. We're not the United States, great as that country is. We have our own values, our own standards, and our own subtle but effective ways of ensuring compliance. I want to tell you about those and give you lots of opportunity to ask questions.

The Americans seem to have suddenly awakened to "Virtue" and "Decency". And, as you know, they don't do anything in a small way. Some 200,000 complaints were sent to the FCC when Janet Jackson displayed a part of herself to the 100 million Super Bowl watchers. And the TIVO manufacturers have reported that that moment of the halftime

show was the single highest replay usage of their personal video recorders in history. Even Jay Leno commented on the event by saying that he had developed carpal tunnel syndrome on that account.

To cope with such matters on the Grammys and the Oscars, to be broadcast in the eye of the indecency storm, the broadcasters suddenly instituted 7 or 16 second delays. And, as I mentioned, Clear Channel chased the Stern Show from its stations, having just previously fired Ted Clem, aka *Bubba the Love Sponge*, on February 23.

Paul Cauchon of *Le Devoir* took note of the scurrying of the Americans in a column this past Monday. He said (in translation):

Here's a great example of hypocrisy. A broadcaster [referring to Clear Channel] permits its hosts to air the most insane material on the airwaves for years and years but, if the FCC now judges that content excessive, the network announces that it will no longer defend them.

Other remedies for dealing with profanity and indecency are in the works in Washington.

- A California Congressman introduced a Bill to provide for the punishment of the use of George Carlin's famous forbidden words.
- The FCC fined a San Francisco television station \$27,500 for a less than one second revelation of the penis of one of the performers in the stage production of "Puppetry of the Penis".
- On January 21, a Michigan Congressman proposed the increasing of fines for the broadcast of obscene, indecent and profane material from \$27,500 to \$275,000 per incident.
- On March 1, the Congressman proposed an amendment to H.R. 3717 to increase those fines to \$500,000 per incident.

Phew ! Amazing, isn't it? We deal with these matters so much more coolly in Canada. The CBSC rendered decisions dealing with exposed breasts 10 years ago in a series of *Fashion Television* decisions, deciding that they breached no Canadian standard. (I should add that we do distinguish between simple nudity and sexual explicitness.) The CBSC has accepted a segment of several minutes dealing with the rather sterile, but extraordinarily flexible, "Puppetry of the Penis" on the Comedy Network. Although Howard Stern, on the other hand, went well beyond Canadian private broadcaster standards, the show was dealt with clearly, quickly and effectively by the CBSC back in 1997. If I may quote from my letter to *Le Devoir* of this week:

[Stern's] degrading chatter about women, his unduly discriminatory comments about identifiable groups based on nationality, ethnicity, and skin colour, as well as his explicit sexual comments fell within the scope of the private broadcasters' codes. The show had to be edited by the broadcasters to meet the Canadian standards. They accomplished that goal willingly and effectively. The program lasted in that modified state for 11 months in

Montreal and 3 or 4 years in Toronto. It's long gone now. No CRTC intervention. No fines. Just an effective self-regulatory system, strongly supported by the private broadcasters who created it.

Canadian Diversity

You know, one of the great things about Canada (and I hardly need to tell *you* this) is that we are *proudly* diverse. We are not a melting pot. We are the sum of our parts, of our origins. 19% of us were born outside Canada and almost as many, 1 of every 6 of us has a mother tongue other than English or French. We have more than 200 ethnic origins and collectively speak more than 100 languages. In the English-speaking and French-speaking hubs of Vancouver and Montreal, more than 30% of the populations are visible minorities and in Toronto, perhaps the most cosmopolitan city in the world, that figure rises to 50%. And the CBSC is doing its best to reflect all of this - more about how shortly.

While many Canadians are concerned about how they, their interests and their cultures are reflected in the media, those media are working particularly hard to sort out those issues, but you have the expert, the leader of the Task Force on Cultural Diversity, Madeline Ziniak, right here among you and you don't need me to talk about that subject.

The CBSC

I prefer to tell you what role the CBSC is playing in the diversity area and that begins with the explanation of who we are and what we do. Simply stated, we administer, on behalf of Canada's private broadcasters, four industry codes of conduct : the *CAB Code of Ethics*, the *RTNDA Code of (Journalistic) Ethics*, the *CAB Voluntary Code Regarding Violence in Television Programming*, and the *CAB Sex-Role Portrayal Code for Television and Radio Programming*.

The *CAB Code of Ethics*, which dates from 1988 and was amended in 2002, 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 *CAB 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, which is a Condition of Licence for all broadcasters, 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 and a Condition of Licence for all television broadcasters. 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. We have a viewer-friendly **classification system** in place.

CBSC Origins

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, a viable model for the Canadian Broadcast Standards Council was proposed 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*. Its ready acceptance by the CRTC may have been

related to the prospect of decreasing some of their own workload as well as permitting Canada's private broadcasters to take care of their own shop the way other professional groups do.

The CBSC Decision Process

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. And that Canada's private broadcasters would buy into the process, which they have done ... in spades.

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 more than 300 decisions have had a dissent.

Without wishing to in any way disparage our Press Council friends, I think it is fair to observe that our decisions tend to have greater impact. 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 CBSC Structure

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

There are, when fully appointed, 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.

There is also 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. And we are now operating at a pace of more than 1,800 files in the current year.

Procedural Details

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 about 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, 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.

Possible 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.

Where the broadcaster is in breach, the Council faces two options: 1. the breach is a one-time occurrence; or 2. the breach is likely to recur. In either case, the broadcaster makes an

announcement. In the latter circumstance, the Council may require the broadcaster to take steps within a 3-day period to ensure that the problem does not recur, as it has done in the cases of the *Mighty Morphin Power Rangers*, the *Howard Stern Show* and the *Laura Schlessinger* radio show.

While our regulatory tools do not appear to be very powerful, we have found that *we do not need anything stronger*. As noted above, in the U.S. they are relying on penalties, in the form of large fines. The Canadian system works because it strikes a nice balance between the interests of the public, the Government regulator and the broadcasters. And because Canada's private broadcasters buy into the process.

Ethnocultural Outreach and Positive Portrayal Initiative

As a part of the successful Rogers application for its OMNI.2 licence, the CBSC was granted the opportunity to initiate an ethnocultural outreach program, one that emphasized two fundamental objectives:

- first, informing ethnocultural communities of the existence of broadcast standards and the private broadcasters' self-regulatory system;
- second, enhancing the positive portrayal of thnocultural communities.

The Information Component

The emphasis here has been to convey to *all* communities information about audience expectations - in positive portrayal, to be sure - but also in every area of broadcasting. Broadcasters are responsible for every second of what they air, including programming that they produce, programming that they purchase, advertising, promos, content of third party calls to talk shows, etc.

So whether it's accuracy in the news, human rights issues, violence on television, unfair comments on talk shows, sexual content and so on, everyone in the public should know his or her rights. And this without being handicapped because some of the many people of different linguistic backgrounds may be unsure of what their rights are. To help in this process (and with the financial support of OMNI Television), the CBSC has issued its informative brochure in 12 languages as of today, with another 19 to come in the next two months.

Translation of our brochure was done initially into Arabic, Chinese, Dari, Greek, Hindi, Innuinaqtun, Inuktitut, Italian, Pashtu, Portuguese, Punjabi, Somali, Spanish, Tamil and Ukrainian. (The Dari, Greek and Pashtu versions were delayed for production reasons.) And now they are also about to emerge in Amharic, Armenian, Czech, Farsi, German, Japanese, Korean, Polish, Russian, Tagalog, Turkish, Urdu and Vietnamese. And translations are in process into Cree, Mohawk and Ojibway.

There will be still others to come.

The new CBSC Website is a model. It is invitingly diverse, as the CBSC itself is. And we currently present important information in 15 languages (plus English and French), so that many many Canadian cultural communities can find comfort in our processes. And the website will soon

jump to 31 languages (in addition to the two official languages). I fully expect that, of all institutions in Canada in the business of purveying important information to Canadians, *none* provides its content in print *and* electronically in as many languages.

And we haven't stopped there. With Burhaan Warsame leading the charge, we have distributed the brochures to a range of ethnocultural institutions across the country. We pay particular attention to the role of the ethnic media and media practitioners as effective, indeed crucial, message disseminators of the informative brochures and the Codes.

The Portrayal Component

In due course, as the result of CAB's Multicultural Task Force's work, there will be a set of best practices, if not also a Code for ethnic portrayal, developed and I have every reason to expect that the CBSC will have the opportunity to administer it.

The CBSC as News

I hope that you will view the entire standards process and self-regulation as not only a multicultural benefit but as *hard news*. We issue press releases on an almost weekly basis. We frequently publish culturally relevant decisions, but bear in mind that the material in the press releases, whether it directly affects your community or not, will often be of interest, particularly because of the journalistic hats you wear. Get on our e-mailing list and receive these as they come out.

Canada's private broadcasters have found that the self-regulatory process is the most effective way for them to be responsive to public concerns. Graciously, willingly and without the need for regulatory pressures or penalties. 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 method of 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 rich multicultural Canadian corner of that global village has been useful and interesting to you.

Thank you.