

## **Notes for Panel Remarks**

**by**

**Ronald Cohen  
National Chair  
Canadian Broadcast Standards Council**

at the

CRARR Round Table  
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Now that Andrew Cardozo has provided the CRTC background for you on dealing with public complaints, let me fit the CBSC piece of the puzzle into that background.

As you already know, the CRTC represents the full governmental authority on all aspects of broadcasting. The Broadcast Standards Council, which was contemplated as far back as 1986, proposed in 1988, and incorporated in 1990, became operational in 1991 and received the blessing of the CRTC at that time.

The regulator's blessing was a critical component for several reasons. First, everyone knew the CRTC and no-one knew the CBSC. It would have taken eons to generate a complaint base on which to work. Having the agreement of the CRTC to forward complaints it initially received was crucial. Second, the CRTC had then, in what may have been a leap of faith at the time, to sanction the self-regulatory process. There may have been some hearts in mouths then but I would like to believe that

they have largely descended to their proper anatomical locations by now. Third, there had to be some trade-offs for the exercise to be worthwhile all around. They were these. The broadcasters would adhere to the codes and the decisions of their self-regulatory Council and, in return, the Commission would suspend their COLs for the *Sex-Role Portrayal Code* and the *Violence Code* and would keep complaints being dealt with by the Council off the broadcasters' public files.

So there we were, the regulator, with the weight of governing authority and the power of licence-granting, renewal, modification and withdrawal, on the one hand, and the self-regulator, with the authority to require a broadcaster announcement after a finding of Code breach, on the other. Could it work?

Yes, it could. There were about a dozen decisions of a page or so released before the first two decisions were rendered against broadcasters, both against Toronto powerhouse CFRB in 1993. They tested the process but in no way as significant a fashion as the *Mighty Morphin Power Rangers* in 1994. The most financially successful children's television program was pitted against the new *Violence Code*, which had come into effect on January 1, 1994. The Ontario Panel ruled against the broadcaster and, to the credit of the industry, YTV (then not even a CBSC member) pulled it from their daily schedule the following day, as did TVA from their weekly grid. Global spent considerable money modifying the show to try to make it conform to Canadian standards and then dropped it at the end of the season.

The point was that the private broadcasters did not defy the rules. Although compliance was costly, they bought into the process, thus preserving it for continued public service.

A quick word about the rules before getting to other important examples. There are four Codes: the *CAB Code of Ethics*, the *Sex-Role Portrayal Code*, the *Violence Code* and the *RTNDA Code of (Journalistic) Ethics*. If you have questions about these, I'll be glad to answer them. For current purposes, though, let me specifically only mention Clause 2 of the *CAB Code of Ethics*, which provides:

Recognizing that every person has the right to full and equal recognition and to enjoy certain fundamental rights and freedoms, broadcasters shall ensure that their programming contains no abusive or unduly discriminatory material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status or physical or mental disability.

The next significant test was the *Howard Stern Show*, which came to Montreal (on CHOM-FM) and to Toronto (on Q-107) on September 2, 1997. As you no doubt already know, Stern was a shock jock, who had already been on New York radio for about a dozen years. Although francophone Quebec had already had plenty of indigenous shock-jock experience, it was of a different style. Stern used locker-room banter to denigrate women, gays, persons suffering from mental disabilities, and all identifiable minorities on the basis of their nationality, ethnicity, religion and skin colour. He labelled himself an equal-opportunity offender.

The Council spoke quickly. On November 11, it ruled against the broadcasters. It said, among other things, that freedom of expression

is and must be subject to those values which, in a free and democratic society, entitle all members of society, on the one hand, to speak freely while, on the other hand, remaining free from the abrogation of those other values in which they and other Canadians believe. Free speech without responsibility is not liberty; it is licence. The freedom to swing one's arm ends where it makes contact with one's neighbour's nose. The length of that arc is what the CBSC must determine from case to case.

Thereafter, the Stern Show was edited daily to conform to Canadian standards, which included the excision of sexist, racist and homophobic comments. The show left Montreal after 11 months and Toronto after 3-4 years and never went anywhere else in Canada.

Recently, American authorities are finally getting after Stern for his sexually explicit dialogue, although not his racially offensive comments. In the last two weeks, ClearChannel has dumped Stern from the six of its stations that carried the show and the FCC has proposed fines of \$495,000 against ClearChannel for Stern broadcasts. The shock jock has publicly declared himself surprised, "I'm just doing what I've been doing for the last 20 years." My surprise relates to where the FCC has been for 20 years. We solved the Stern problem here with a small self-regulatory body, with no punitive or tough regulatory tools. Just willing broadcasters.

Let me mention quickly a couple of other decisions dealing with our human rights clause. In the *Laura Schlessinger* decision, the Ontario and

Atlantic Regional Panels preserved the interests of gays and lesbians and ruled against the broadcasters.

While there may be uses of the terms “abnormal”, “aberrant”, “dysfunctional”, “disordered”, “deviant”, “an error” and so on which could, in some circumstances, be reasonable, their sheer weight in these programs and the host’s unremittingly heavy-handed and unambiguously negative characterisation of those sexual practices is abusively discriminatory and in breach of the Code.

In a 2002 decision dealing with a St. Catharines radio host, the Ontario Panel decided that,

John Michael’s blanket condemnation of all Palestinians as hating persons of the Jewish faith and wishing to drive Israel out of existence is excessive. That *some* Palestinians hold such views is undoubtedly true. [...] [T]o tar *all Palestinians* with a brush of hatred constitutes, in the view of the Ontario Panel, an unduly discriminatory comment based on their national or ethnic origin.

It also found that the talk show recommendation that Ariel Sharon should take everything “you got and *blow the Palestinians, Yasser Arafat included*, to kingdom come” targets *all* Palestinians and was an excessive and improper comment under Clause 6 of the *CAB Code of Ethics*.

In a Prairie decision released in the last three months, the Panel was called upon to deal with a Muslim joke, which I would rather not repeat. In ruling against the Calgary radio station, it said:

There are times in the life of a society when it is far too easy to single out an identifiable group as a recipient of harsh discriminatory comment. Society is frequently ready to find a scapegoat for segments of its ills, perhaps as a catharsis for their resolution. It is perhaps when such solutions come most easily that society ought to be most vigilant. Since the shocking events that have come to be known simply as '9/11' and the proliferation of incidents of terrorism both before and after that date, it has been all too easy to target the Muslim communities with comments that are generalizations which are negative, hurtful and utterly unjustified. [...] To put it in perspective, the failure to distinguish between the Muslim community and terrorists is no more acceptable or justifiable than a failure to distinguish between (to choose one of many possible examples) white persons and the Ku Klux Klan. The Muslim community bears no more responsibility for persons within its ranks who break the laws than all white persons bear responsibility for the illegal actions of Klan members.

I believe that it is fair to conclude that the CBSC is vigilant with respect to the preservation of the human rights of audiences. Let me add that we preserve those rights for audiences which receive their programming in any language and we tell audiences about their rights in as many languages as possible. Our website currently provides information about the CBSC and its Code provisions to Canadian communities in the following languages of comfort: Arabic, Farsi, Dari, Pashto and Turkish; Amharic and Somali; Hindi, Punjabi, Tamil and Urdu; Chinese, Japanese, Korean, Tagalog and Vietnamese; Armenian, Czech, Polish, Russian and Ukrainian; German, Greek, Italian, Portuguese and Spanish; as well as Inuktitut and Innuinaqtun, and translations are in the works in Cree, Mohawk and Ojibwa. And hard copies of brochures in those languages are available here and, at all times, from the CBSC and CRARR.

We also have print PSAs which are running in many of the ethnocultural publications across the country and the brochures themselves are being distributed to our own developed and defined list of ethno-specific communities across the land. Some, like *Thamilar Senthamarai* (Tamil) have gone the extra mile by printing the full text of the brochure in their newspaper.

The CBSC has a role to play in all broadcast content issues and a message to convey regarding human rights and portrayal. We are doing our best to ensure that that message gets into every corner of the Canadian ethnocultural village.

Thank you.

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