

The Canadian Broadcast Standards Council

Journalistic Independence Code

Ronald I. Cohen
National Chair
Canadian Broadcast Standards Council

before the

Canadian Radio-television and Telecommunications Commission
September 19, 2007

Check against delivery



Canadian Broadcast Standards Council
Conseil canadien des normes de la radiotélévision

Mr. Chairman, monsieur le Vice-président, Commissioners, Conseillers, the CBSC is pleased to have the opportunity to appear before you today to clarify our role in that corner of the Canadian broadcasting system that content issues occupy. With me are our Executive Director, John MacNab, and our Director of Policy, Teisha Gaylard.

In our written Response to Interventions (filed on August 10th), we reviewed the background and purpose of the CBSC, the Codes we administer, our complaints and adjudication process, the accessibility of that process, and many aspects relating to the decisions we render, including their unanimity, transparency, and consistency. There is no need to repeat those details now, although we will be glad to respond to your questions on the points raised there or any other issues.

Since one of the matters raised by some of the interveners relates to the very *idea* of self-regulation and the assumption that self-regulatory bodies exist to serve one master, namely, their members, I would like to address that point straightaway. It's simply untrue. It's cynical. It's inaccurate. It flies in the face of reality. The numbers, the history, the precedents, do not bear that allegation out. But I do understand the source of the cynicism.

Let me tell you a story that will illustrate the assumption. In 1995 or 1996, the CBSC was visited by a contingent of Polish journalists. During the course of the presentation and free-wheeling discussion, one of them asked me how the CBSC was funded. I replied, "By the broadcasters." There was some murmuring back and forth among the visitors. A spokesman summed up the journalists' perspective by asking, "Well, in that case, why are we here?"

"Before you go," I inquired, "may I ask if you have heard of the *Mighty*

Morphin Power Rangers?” Puzzled looks resulted. I explained: “At the time of the CBSC decision that concluded that the program did not meet the standards in the *CAB Violence Code*, the *Power Rangers* was the most financially successful children’s program in the history of television. But the day after our decision, YTV took it off the air. TVA did the same thing a week later. And Global Television spent hundreds of thousands of dollars modifying the series to conform to private broadcaster standards. And they still took it off a few months later.” The Polish journalists understood the significance of the CBSC decision and the independence of the CBSC. They stayed.

The point is that the process *does* work. And it works because self-regulation is not a sop to the members. It’s not a shield to protect them. It’s not a purchase of favourable outcomes. It is a legitimate and effective alternative means of *regulation*, an alternative form of conflict resolution.

In fact, the CBSC may not endear itself to its broadcaster members in pointing out to the Commission at this time that 72% of the 228 formal public decisions rendered since 1999–2000 have gone against broadcasters.

Moreover, CBSC Panels render decisions that not only resolve differences between complainants and broadcasters, they set precedents. They strive to create a level of predictability of standards, so that broadcasters know what they can and cannot broadcast and so that members of the public know what they are entitled to expect from broadcasters. Associated with the issues of do’s and don’t’s is the great Canadian compromise. There is an acknowledgement that the primordial freedom of expression is not an invitation to “anything goes”. There is a balance between societal values and that fundamental freedom. After all, there is an expectation in the *Broadcasting Act* that there will be programming for a variety of tastes. In other words, we respect freedom of speech but we don’t worship it.

The CBSC finds that balance and makes decisions that are transparent, fully detailed, reasoned and accessible to the public. Moreover, the CBSC's rulings are respected and followed by the broadcasters. I wish I could say that the broadcasters agree with every one of those decisions. While that is too much to expect, the point is that they agree with the *process*. And that is the system's strength. It is why it has worked for 16 years and why it will continue to work, whether for the Codes that the Council already administers or the *Journalistic Independence Code*, under consideration this week.

The process also works because it is balanced. The Panels are composed of 50% representation from the industry and 50% from the public. No Panel ever sits with a majority of broadcast Adjudicators, although Panels are permitted to function with a majority of public Adjudicators. And it is anticipated that the Journalistic Independence Panel will always be formed of two-thirds representatives of the public and one-third the broadcast industry.

There are currently 70 Adjudicators. Their biographies are posted on the CBSC website. I can readily say that they are all hard-working, dedicated, unpaid and committed to their broadcast policy responsibilities. Of these, the 35 industry Adjudicators are Program Directors, General Managers, Executive Producers, and News Directors/Journalists. In fact, *ten* of the broadcast Adjudicators (nearly one-third) are journalists. In addition, as their biographies indicate, they have a wide range of other community involvements and associations.

The 35 public Adjudicators come from all walks of life: academe, accounting, law, engineering, business, medicine, publishing, acting, significant community volunteer activities; they include the former head of MediaWatch and ACTRA, a former Ambassador who is now a journalist, former CRTC

Commissioners, former politicians from each of the national parties, former Cabinet Ministers, a former provincial Premier, a former Lieutenant-Governor, a student in broadcast journalism, a former Law Dean, the former head of the Vanier Institute of the Family, the present head of an important human rights organization, renowned experts in media literacy and multiculturalism, and so on. And they are superbly representative, whether with respect to the Aboriginal community or other visible minorities (more than one-third of our Adjudicators come from those backgrounds) or persons with disabilities. All in all, they are a formidable group of Canadians.

It is one of the pleasant realities of the CBSC's adjudication process that the industry and public Adjudicators do not find themselves at loggerheads. Every Adjudicator listens to the reasoning of the others. Unanimity tends to be the result. At least it has been in 397 of the 404 decisions rendered to date, despite the fact that such a large number have gone against broadcasters. Far from overwhelming the public Adjudicators with their broadcasting experience, the industry Adjudicators tend to be proudly assertive of the standards that *they* would apply in their own stations.

As to the Council's experience with codified standards, we currently administer four Codes, one of which is the *RTNDA Code of (Journalistic) Ethics*, and we deal, among other matters, with journalistic and editorial issues on a constant basis. If anything, the addition of the *Journalistic Independence Code* will help to ensure consistency of standards, consistency of process, consistency of the regulatory treatment of public complaints, and consistency of public expectation. In other words, the playing field will continue to remain level. Moreover, for those who worry about the issue, none of this will derogate in any way from the ultimate regulatory authority of the CRTC in this area.

As to transparency, the CBSC record is clear. Our website is fulsome.

The Codes are there. The explanatory brochure is there. Both in 44 languages. All the decisions are there, together with the full letters of complaint, however unpleasant, and the full responses of the broadcasters, plus the transcripts of the challenged content. (Appended to a forthcoming decision, for example, the transcript is more than 500 pages long.) The names of the sitting Adjudicators are provided on every decision. Their biographies are on the website. The Annual Reports that provide the complaint statistics and additional detail, and the official and informative reactions from CRTC Chairs to those reports, are there. (In this respect, the CBSC fulfills its annual reporting obligation to the CRTC under PN CRTC 1991-90.) Links of relevance to Canadian and foreign organizations, articles, speeches, statutes, regulations, press releases and so on are provided. The CBSC is open, transparent, responsive and accountable, whether to the CRTC or the public. It will continue to be so pursuant to the *Journalistic Independence Code*.

We are available to answer your questions.