

**Making the Link:**  
**The Model of Self-Regulation, enforcement and collaboration**  
**between regulators and the broadcasting sector**

**Notes for an Address**

by

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

Telecommunications Authority of Trinidad and Tobago  
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Members of the TATT Board of Directors, fellow presenters, honoured guests, ladies and gentlemen, it is a great honour to be invited to Trinidad at a time when you are in the formative stages of re-drafting your *Broadcasting Code*. While you face a daunting task, the rewards associated with your inevitable ultimate success will be huge.

I speak from the vantage point of a country which has considerable experience in this area -- we have operated with four broadcast codes since 1993. And yet, less than three months ago, we have added a brand new code dealing with the complication of cross-media ownership and the preservation of diversity of voices in the journalistic area, and still another code dealing with extended, and extensive, ethnocultural portrayal issues just two weeks ago.

I am pleased to have the opportunity to tell you something about the Canadian broadcast regulatory experience. First, some explanation of the complaints we encounter and the tools with which we respond to those public concerns, and then the reasons for which I believe that the Canadian system may provide useful examples to a country considering the development of codified standards in a broadcast regulatory environment.

I have brought some visual aids in the form of informative CBSC brochures and would invite you to visit the CBSC website, which is chock-a-block with valuable information about the Council, its codes, decisions, papers, speeches, members, Adjudicators, links and so on.

This Seminar on International Broadcast Regulation Practices is also a great opportunity for your visitors to compare experiences from jurisdiction to jurisdiction. We are after all living in a world that is exploding with communications opportunities. When I was at a similar seminar in Johannesburg a little over two years ago, I was surprised to learn that, despite the range of cultural differences between North America, eastern and western Europe, Australasia and Africa, the broadcast content issues and concerns were remarkably similar.

## **The Canadian Context**

Canada is, of course, geographically huge (only Russia is bigger), with six separate time zones. Significantly, Canada borders on the United States, whose broadcast and cultural output generally have an immense impact on our country. Our respective cultures, public concerns, and methods of responding to potentially problematic content are, however, very different and I will address some of these differences in explaining the Canadian way. Which option may be of greater interest to Trinidad is not, needless to say, something for me to assess. I can only confirm that the Canadian approach works extremely well for us.

Delivery of clear television signals to Canadians was always an issue, particularly because American television broadcasting understandably developed more quickly than our own, with ten times the population to serve, and undeniably talented individuals creating their programming. Cable television developed in Canada in the 1950s as the primordial distribution platform, and Canada has been one of the most cabled countries in the world. We also have a vibrant satellite distribution system for television programming. As domestic cultural concerns developed, policies to ensure the survival of Canadian content on television came into force (and you have heard mention of Canadian content rules yesterday).

Radio was never culturally threatened in the same way, since, as we say in Canada, it is a service that is “live, local and up to the minute”. It remains the primary source of local traffic reports, weather predictions and news information, and its omni-accessibility makes it a dominant force during what we call morning and afternoon drive periods.

On the programming side, Canada has conventional radio and television stations and networks, specialty television services, pay television, video on demand, satellite radio, and all of the foregoing in our two official languages, plus an additional large number of Canadian services broadcasting in about another 70-80 languages or so, including Aboriginal tongues, and European, Asian and African languages. All of the Canadian services, whatever their language of broadcast, are regulated by the Canadian Radio-television and Telecommunications Commission (the CRTC), our equivalent of the Telecommunications Authority of Trinidad and Tobago.

Then there are the non-Canadian services, foremost among them the four principal American networks and numerous super-stations, and specialty (or cable) services. There are also many foreign language television services, some of which, like the Arabic Al-Jazeera service, have raised special concerns in Canada and resulted in very particular solutions. Such non-Canadian services are not content-regulated.

## **The Canadian Players**

In Canada, we have a regulator and a self-regulator. The regulator, as just noted, is the CRTC, which has plenary authority in all broadcasting and telecommunications issues; its authority is derived from Parliament. It is statutorily created and funded via the Government of Canada. In the area that interests us here today, it administers the

*Broadcasting Act* and creates the regulations under that Act that apply specifically to the various sectors, such as radio, television, the specialty services and pay television.

The self-regulator is the Canadian Broadcast Standards Council. We deal only with the content area of broadcasting, *private*, not public, broadcasting to be more precise. This is in fact the lion's share of broadcast matter since, by agreement, the CRTC forwards all of the complaints it receives concerning the CBSC's 630 broadcaster members to the Council for treatment and, where necessary, adjudication.

The Council's mandate and funding emanate from Canada's private broadcasters, who proposed the CBSC 20 years ago, with the intention that the Council would administer the codified standards the broadcasters had then developed. When the Council began functioning in 1990, it administered a *Code of Ethics*, a *Violence Code* and a *Sex-Role Portrayal Code*. Since then, the CBSC has added a *Code of (Journalistic) Ethics*, and, as I mentioned in my introductory comments, the diversity of voices code, called the *Journalistic Independence Code* and, just two weeks ago, the *Equitable Portrayal Code* (which has entirely supplanted the *Sex-Role Portrayal Code*).

### **Complaints: Volume and Types**

Most important, in a content-regulatory environment, regulatory authorities must distance themselves from censorship. The CBSC, like the CRTC, solves this by being complaints-driven. We do not monitor broadcasts independently. We do not accept complaints before broadcast. We do not pre-clear programming. When, and only when, a member of the public *who has seen a television program or heard a radio program* sends a written complaint (to either the CRTC or the CBSC directly) does the CBSC open a file and begin its process.

It is also critically important that complaints be made promptly, since broadcasters are only obliged to retain recordings of their programs for 28 days following the broadcast, and adjudications ultimately depend on the ability of the adjudicators to see or hear the challenged broadcast. There is no magic to 28 days, particularly in the digital era, when material can be stored in bytes on relatively small hard drives without the accumulation of warehouses' worth of physical video or audio tapes.

The CBSC responds to complaints about content on Canadian programming services, whether the complaint is about a broadcast in English, French or any of the other languages in which Canadian licensees broadcast. And we publish an informative brochure telling people about our codes and how they may complain in 44 languages, both in hard copy format and on our website.

In its early years, the Council dealt with about 250-275 files per annum. In 1997-98, that figure jumped to around 1,200 files annually. In the past decade, we have generally remained in the 1,000-2,000 file range, although, in the current year, we appear to be running closer to 2,500 files.

In contrast to the TATT experience, which Dr. Hassanali described yesterday, where there are five times as many radio as television complaints, the CBSC experience is the reverse. We find that there are usually twice as many television as radio complaints.

In television, the most frequent public concerns relate to scheduling and sexual content. Children's issues, violence, biased or unfair commentary, inaccurate news, coarse language and improper comments are not far behind.

In radio, no category of complaints comes close to what we call informal discourse and open line programs. The additional issues that are of concern to listeners are discriminatory comments, other improper comments, sexual content, coarse language, and inaccurate news reporting.

Let us have a closer look at how the CBSC deals with some of these areas.

### **Sexual Content**

The major source of television complaints is sexual content, and two programming genres give rise to concerns; the first is the dramatic film or television series. Our complaints occasionally touch on relatively innocent sexual innuendo but it is nudity and unsubtle sexual activity that give rise to more of these complaints. Innuendo and nudity are not considered particularly problematic by the CBSC. Explicit sexuality is another matter.

The second genre involves documentaries and informational programs that treat sexual subjects and feature frequent explicit depictions of nudity and sexual activity. Series such as *Kink*, *Real Sex*, *Sex TV*, *Sex Shop*, and *Sexual Century* have ventured into rather explicit areas, which I ought not to describe to you here, before the 9:00 pm Watershed hour.

How, then, does the CBSC deal with questions of sexual content on television? Let me begin by saying, first, very differently than the United States, and, second, with considerable flexibility.

For example, it has been the position of the CBSC that nudity alone does not constitute exclusively adult fare. This is in stark contrast to the American reaction to the split-second revelation of Janet Jackson's right breast in the course of the afternoon broadcast of the American Super Bowl four years ago. It generated 540,000 complaints to the American regulator, the Federal Communications Commission, but 200, or less than 1/1000th of that number, to the CBSC. And the consequent fine levied against the broadcasters of the game was \$550,000. In Canada, we found no breach of our codes.

The CBSC applies several straightforward "tools" established by the private broadcasters (like those mentioned by Eve Salomon yesterday) to assist audiences in making informed viewing choices: there is a Watershed hour that runs from 9:00 pm to 6:00 am, before which no adult subject matter can be shown; broadcasters also air on-screen ratings icons and viewer advisories; finally, they encode ratings for the operation of the V-chip and other program-blocking devices.

I should add that we also have problems of sexual content in the area of radio, particularly during “morning drive” radio. Clearly, some radio stations have found that they can attract audience with jokes or stories with a sexual component, while their audience is driving to work, sometimes with children in the car. And I know that you have a similar problem in Trinidad. While relatively innocent, if occasionally distasteful, sexual innuendo is acceptable to us, more explicit sexual content is not permitted at that time of day.

### **Coarse Language**

Coarse language is another common area of concern for audiences of both television and radio programming. In the television context, the CBSC has determined that what we euphemistically refer to as the f-word (and the manifold variations thereof) must not be aired before the Watershed hour.

While there is no similar definitive hour for “adult” programming in the radio context, the CBSC has stated that the f-word should not be broadcast during daytime hours when children could reasonably be expected to be listening, whether in the context of talk radio or even music lyrics. This is not a problem since most record companies produce alternative, edited versions of songs with potentially coarse or offensive language.

### **Violent Content**

Violent content is of greater concern to Canadians. Consequently, we have more stringent rules in this regard. For example, neither gratuitous nor glamorized violence are permitted on television at any time of the day or night.

Once one accepts that violence that plays a *legitimate* part in the development of plot or character is acceptable, the biggest responsibility for the CBSC is to determine at what hour it may be broadcast. The rule is simply that violent matter intended exclusively for adult audiences can only be broadcast *after* the Watershed.

While there is no mathematical formula applicable to the assessment, the more graphic the images, the likelier the program will be to fall into the adult category. The presence of the combined elements of fear, suspense, gore and explicitness may also define programming containing scenes of violence as *adult*. This principle applies to non-fictional or informational programs as well as dramas.

I understand that inappropriate programming for children is an issue of as much concern in Trinidad as it is in Canada. I have no idea, though, whether there will be solutions presented in your forthcoming *Broadcasting Code*. You will, however, be interested in knowing that our *Violence Code* has a detailed set of provisions dealing with programming directed at children, who are defined as under 12. Very little violence, if any, can be included in such programming. Animated programming cannot have violence as its central theme. Nor can it invite dangerous imitation. Kids' programming cannot threaten children's sense of security. Nor can it contain realistic scenes of violence which suggest that violence is the preferred way to resolve conflict. And, very important, children's programming must not minimize the effects of realistic violence.

## **Discriminatory Comment**

One of the CBSC's greatest sources of complaints is the area of discriminatory comments made against groups on the basis of their race, national or ethnic origin, colour, religion, age, gender, sexual orientation, marital status or physical or mental disability.

That being said, a line may be drawn between legitimate discussion of issues, on the one hand, and abusive comment, on the other. To cite an example, broad political debate has surrounded same-sex marriage in continental North America. As a result, many talk shows and religious programs in Canada and the US have quite reasonably raised the matter as an issue for discussion. Fair enough. The difference appears to be that the apparently more conservative American talk show hosts and televangelists have often used extreme forms of language to describe gays and lesbians as an identifiable group -- with impunity and without consequence there -- while in Canada such abusive comment is unacceptable. And since most of the evangelical programs are imported from the United States, Canadian broadcasters have the burden of vetting that material to ensure that it meets Canadian standards.

The CBSC also continues to receive complaints about the representation of Arabs and Muslims, which appears to remain a sensitive issue since the 9/11 attacks. Needless to say, neither the events of that day nor the subsequent terrorist attacks in Britain or Spain, nor the conspiracy threat in Canada last year convey any licence to broadcasters to make ugly jokes or abusive comments at the expense of Muslims in general.

The CBSC also receives complaints about discrimination against other groups on the basis of the qualities noted above. The Council has made particularly strong efforts to be pro-active in this area by, among other things, launching the multilingual brochure and website mentioned earlier. The CBSC's language outreach initiative reflects our belief that we have a very successful process for dealing with public complaints about broadcasting, which works best when more people know about it.

There are of course other issues we encounter with frequency, including news and public affairs problems. Time does not, however, permit any discussion of these at this moment.

## **The Canadian Process**

Skipping the bureaucratic detail, suffice it to say that the CBSC renders decisions on complaints that qualify.

Complaints must be filed reasonably quickly, within the 28-day period mentioned earlier, since decisions ought only to be made on the basis of actual recordings of the material as broadcast. Once notified by the CBSC that a program is the subject of a complaint, its broadcaster is under a stringent obligation to retain the recording of the challenged program until such time as the Council calls for the tape and the program has been adjudicated.

The decision will be taken by one of the Council's seven Adjudicating Panels, each of which is composed of *equal* numbers of representatives of the public and the broadcast industry. The Adjudicators are appointed for a term; they are selected, among other things, on the basis of their non-ideological or non-doctrinaire views regarding broadcasting and broadcasters. Public Adjudicators cannot begin with the view that broadcasters can never be right and industry Adjudicators will not be chosen if they believe that broadcasters can never be wrong. Reasonableness is the key.

The CBSC process does not include formal "hearings" with lawyers and witnesses. It is our view that we would never be able to get through the workload on a timely basis and that the interests of the public would be smothered by the resources of the broadcasters. We depend entirely on the Adjudicating Panels' assessments of the actual broadcast, the correspondence of the parties, the Codes and the precedents.

Decisions are of course reasoned, thoughtful and detailed. They are also transparent, in the sense that a transcript of the adjudicated program, the complaint, and the broadcaster's response are all posted on our website. Lest this be thought of as inconsequential, we are about to release a decision based on 18 hours of programming, with a transcript of about 560 pages.

Over time, a jurisprudence develops, and a degree of predictability is built into the system. Broadcasters come to know what their obligations and limitations are and members of the public know what they may expect of those who have the privilege of a license to broadcast over publicly-owned airwaves. The CBSC now has a base of over 400 published decisions, all to be found on our website. I should add that the CBSC's jurisprudence is even relied on from time to time by the regulator in its infrequent content decisions.

Our decisions are publicly released and posted immediately on the CBSC website, where they and the associated documents remain forever. I should add that, since the year 2000, more than 70% of the CBSC's formal decisions have been rendered against broadcasters.

In the event that a broadcaster is found to have breached a code, it is obliged to read an announcement of the Council's decision, drafted by the CBSC, twice at defined times. Such an admission is, I assure you, an unpalatable proposition, and broadcasters do not wish to be so obliged. Also, repetitive violations result in a form of injunctive order by the CBSC. That said, there are no financial penalties, nor is there any need of them. The heavy fining artillery of the American FCC (to the tune of half or three-quarters of a million dollars) is not present in Canada, either in the hands of the CBSC or the CRTC. And even those FCC decisions for fleeting expletives or fleeting nudity have recently been successfully challenged before their Federal Courts of Appeal and are currently on further appeal to the Supreme Court of the United States.

### **Free Speech Issues**

It is important, particularly in the context of this seminar, to touch on the issue of free speech, which is a principal theme of the Seminar.

Here we again see a large distinction between the United States and Canada. We are all familiar with the American First Amendment. It provides that “Congress shall make no law ... abridging the freedom of speech, or of the press.”

Canada's right to freedom of expression, by contrast, is not stated as an absolute; rather, the *Canadian Charter of Rights and Freedoms* provides that “freedom of opinion and expression, including freedom of the press and other media of communication” is subject “to such reasonable limits ... as can be demonstrably justified in a free and democratic society.”

I, of course, cannot know how absolute Section 4(i) of the Trinidad and Tobago Constitution is interpreted to be, but compromise and balance are the key to understanding the Canadian approach. In Canada we tend to accept the idea that freedom of expression, a cherished value, is *one* value, but not the *only* value, and that, in broadcasting, it should be weighed against other values in society. It is, as the title of this Seminar, an issue of “balancing the airwaves”. There is no free speech without responsibility. Speech without responsibility is licence. Of course, each country must pick its own issues, its own limits.

On the cultural side, the Americans appear to be more fundamentalist, on the one hand, and more accepting of violent content, on the other, than Canadians. There is, needless to say, nothing wrong with that. It is a valid option, one reflecting a different set of values. Seeing a naked person is more of a problem for the Federal Communications Commission than shooting one on television. *Coarse* language is a no-no there although *insulting* language is acceptable. Ranting on talk radio about immigrants on the basis of their nationality or about any individuals on the basis of a physical or mental disability, their religion, nationality or sexual orientation generally passes muster. Obscenity over ethnicity. Canadians are more concerned about violence than nudity or even sexuality, and they are more committed to the protection of identifiable groups.

Thus, in Canada, the right to speak freely does not supersede the right of society to be free from hate speech, which is a *criminal* offence in Canada.

The right to speak freely does not, in the view of the CBSC, supersede the right of identifiable groups to be free from abusive or unduly discriminatory comment on the basis of, among other things, their race, their religion, their colour or their gender.

The right to speak freely does not supersede the right of our children to be free from television programming containing violent or other inappropriate material intended solely for the viewing of adults. You may also find it interesting to learn that, in the Province of Quebec, as well as in Sweden, *no* advertising may be directed at children on television or in any other electronic or print medium.

So, while it is clear that freedom of speech is a *precious* right, it does not mean that Canadian audiences should be subject to absolutely *any* form of speech. Because the Canadian system does not permit excessive violence during children's programming, because it does not allow hateful comments on the basis of people's religion, sexual orientation or colour, because it does not allow imbalance in the portrayal of men and

women does not mean that our free speech is unduly restrained or that the Canadian social fabric is thereby weakened.

In short, in Canada we *respect* freedom of speech but we do not *worship* it.

### **Why Self-Regulation Works**

Fundamentally, when broadcasters can agree on a system of codified rules or standards, those rules belong to them. The rules are not imposed from on high; they are theirs. The rules apply to each of them equally; they level the playing field. The rules secure no advantage for any one of them.

If the broadcasters all buy into the system, they know that that system will be the stronger for their unity of purpose. They also know that decisions that may not work in their favour on one particular occasion will be balanced by others that will on another. They are also strongly conscious that the failure to effectively regulate *themselves* today may entice others, for political or other reasons, to do so in the future.

It is also true that, for the system to motivate this form of periodic self-flagellation, there must be confidence in the fairness, balance and credibility of the decisions and the decision-makers. Once that is assured, all will be well.

In Canada, the community of 630 private broadcasters does buy into the process and the licensees do adhere to the rulings of the CBSC, despite the absence of fines or other pecuniary impositions. I think it is fair to observe that we have been able to achieve more effective and long-lasting results for the conservation of Canadian values by the mere imposition of broadcaster announcements following a finding of code breach than the FCC has by the imposition of large fines. I can only hope that the solution you choose here will work as well.

I hope that this brief look at the Canadian corner of the self-regulatory global village has been of interest and utility. Thank you for inviting me to Trinidad to tell you about it.