RESPONSIVE BROADCASTING

A REPORT ON THE MECHANISMS TO HANDLE COMPLAINTS ABOUT THE CONTENT OF BROADCAST PROGRAMS

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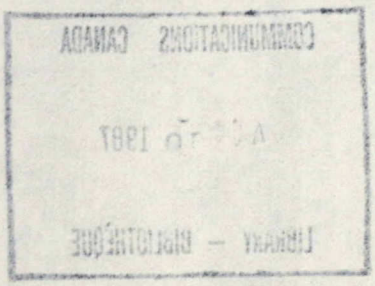
For Pat Pearce
CRTC Commissioner 1968-79

whose dedication to "responsive broadcasting" resulted
in the strengthening and enriching of the
Canadian Broadcasting System



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SUMMARY AND RECOMMENDATIONS

In April 1984, the Department of Communications commissioned a study on the mechanisms to handle complaints about broadcast program content. Their action came after both the Department and the Canadian Radio-television and Telecommunications Commission (CRTC) had received literally thousands of complaints in particular about abusive or potentially offensive programming.

The study team was to investigate current mechanisms for handling complaints and to make recommendations, should any new approach be seen as necessary. The study was conducted by means of interviews, with the Department, with officials and Commissioners of the CRTC, with members of the industry and with members of the public and advocate groups. The study was not intended to be a public opinion survey, nor to constitute an official representation of the positions of any of the above-mentioned groups. The recommendations included are those of its authors. The authors acknowledge the co-operative, helpful and frank discussions held with many people.

The issue of censorship confounds the discussion about how to handle complaints about the content of broadcast programs. The authors found it was possible to avoid any problems of potential censorship by considering the problem of complaints and their resolution in two different lights. First, with respect to program content, an approach that centres on the development of standards for broadcast content avoids any possible measures that border on censorship.

Second, it appears that there are four distinct types of complaints, each amenable to different kinds of resolution. The authors chose to approach the problem of complaints in terms of complaints about personal misrepresentation, complaints about the adequacy of the representativeness of media content, complaints

about abusive or potentially offensive programming and complaints about the adequacy of coverage of controversial public issues. Recommendations have been made with respect to the redress of each type of complaint. Only in the case of violence on television, is the problem of censorship relevant to the discussion in this report.

The authors have one overriding recommendation: resources must be made available to handle the existing mechanisms for the resolution of complaints. Nothing generates cynicism and public backlash faster than an existing process that fails to accommodate public concern because it lacks the necessary resources to do so. The current mechanisms are in all cases but one generally sufficient to handle most types of complaints. The full resources made available for their implementation are not.

The study begins then with an assumption that public comment and complaint is simply another type of audience survey, tapping the responses of minority audiences in most cases. We believe that the broadcaster or agency that receives no complaints is one whose actions have had little impact upon the public or one whose activities have provoked quiessence or cynicism.

In seeking better ways to handle comment -- to make the broadcasting system more responsive -- we are seeking mechanisms to make public feedback and response a critical part of the broadcasting system. We regard such public participation as an essential element of a properly functioning system, a system that is capable of producing interesting and innovative programs.

RECOMMENDATIONS

1. General

1. Resources must be made available for the existing mechanisms for handling complaints about the content of broadcast programs.

2. Consistency and co-ordination in handling questions of broadcast program content should be actively sought in the development of standards and their implementation.

3. When voluntary standards ("self-regulation") are sought, the model chosen should be based on that used by the Advertising Standards Council and the approach taken should reflect a commitment to participation and consensus among the various interest and advocate groups.

4. Standards for pay television should be reviewed to take account of the kinds of concerns raised by the House of Commons Sub-committee on Sexually Abusive Programming. Standards should be developed for specialty and community programming.

5. The industry should strengthen its own handling of public comment, through such mechanisms as a "Social Issues" committee within the various industry organizations.

6. The voluntary standards extending the provisions of the regulation on abusive, potentially offensive and discriminatory programming should be made conditions of licence for all licensees in the Canadian broadcasting system.

7. In handling complaints about the adequacy of representation in the media of any group or segment of society, the approach taken should build upon the model developed with the Task Force on Sex Role Stereotyping and the work of implementing the recommendations of the Task Force itself should continue.

8. The current policies on controversial programming and "bias" should be collected into a single document and distributed widely as a basis for all further decisions by the CRTC and the industry.

9. A media council should be established to deal exclusively with complaints about the misrepresentation of persons in the broadcast media. This council should be established on a consensus basis and funded by all its participants. It should provide an administrative mechanism for handling complaints.

2. The CRTC Role

There are now many different policies and standards dealing directly with issues of broadcast program content. **The CRTC should work towards placing all of these into a single comprehensive document which can be made available to members of the public and interested groups at a nominal charge.**

Licensees should be required to announce not only any upcoming application to the CRTC but also all relevant CRTC notices and decisions which pertain to its licence. This is particularly important for members of the public who are unlikely to receive or read newspaper announcements.

Finally, the CRTC has been an innovator with respect to public participation and intervention. **It is important that the CRTC reaffirm its commitment to an open hearing process,** since recent media reports have suggested that the CRTC intends to curtail some aspects of public participation and intervention.

3. The Department of Communications Role

To ensure consistency in the production and exhibition of Canadian broadcasting, all existing standards which apply to broadcasting (including those on abusive comment and sex-role stereotyping) should be extended to the broadcast programming activities that are funded under programs administered under the Department of Communications' jurisdiction.

4. The Public Role

A new Task Force has been mandated by the Minister of Communications. If significant concerns exist with the current standards, regulations or decisions of the CRTC or of the broadcasting, cable, pay television or specialty service industries, these should be raised with the Task Force.

5. The Broadcasting Industry

The various sectors of the industry have made significant progress in the development of codes and standards. There is still only limited co-ordination of these standards throughout the industry, however. From the public perspective, the differences between broadcast, cable and pay television are difficult to discern. **Consistency of approach throughout the broadcasting industry would serve the public needs well.** In addition, **it is important that the new sectors of the industry, specialty services, for example, become involved in a similar process to that of the other sectors.** They too need standards, guidelines on sex-role stereotyping, for example, and an effective approach to their adequate enforcement.

INTRODUCTION

In April 1984, the Department of Communications commissioned a study on mechanisms to handle complaints about broadcasting content. Their action came after both the Department of Communications and the Canadian broadcast regulatory agency, the Canadian Radio-television and Telecommunications Commission, had received thousands of public comments, in particular potentially abusive and offensive programming.

The study has two goals:

1. to explore existing mechanisms for handling complaints about broadcasting content;

2. to make recommendations, if appropriate, about new mechanisms to handle complaints about broadcast content.

Mandate of the Study

The project team was originally asked to explore and make recommendations with respect to options for some form of national process to handle the increasing volume of broadcast content complaints. It was noted in the original mandate that emphasis would be given to the identification of existing models for such a process and of existing organizations equipped to handle or co-ordinate any new process. A proposed model to be examined was that of a National Broadcasting Complaints Council.

The study team was asked to examine the following with respect to any recommended new national process: mandate, terms of reference, membership and structure, relationship to existing complaints councils, authority to deal with complaints, budget and staffing and sources of financial support. In addition, the study team was to examine the nature of the complaints now received (to the extent that information was available) and related policy issues. It was noted that the CRTC received annually some 8500 complaints related to broadcast content and especially dealing with programming issues like violence, stereotyping etc. The Department of Communications has received 6000 complaints -- who also include those on distribution and access to programming services and which may come from many of the same sources.

The Research

In these statistics and for the purpose of this study, a "complaint" is considered to be any comment originating from members of/or groups within the public about any aspect of the content of broadcast programming. Public comments take many forms, only some of which are actually complaints, of course. The question about how to handle complaints, then, must address the variety of comments and complaints that might be received. We will speak of complaints, even when the comment from the member of the public does not reflect dissatisfaction per se. Our choice of the term "complaint" is dictated by the lists of "complaints received", the existing mechanisms for "handling complaints" and the mandate of the study which dealt specifically with "complaints". For the purposes of this study, broadcasting is

considered to include over-the-air broadcasting, cable production, specialty and pay television. Mechanisms to handle complaints about advertising content are also considered.

The study team conducted several rounds of consultations, in some cases returning for a second visit to an organization, agency or group. Documents were solicited and analysed. Legal information was sought (although a formal legal opinion is not provided within the framework of this report).

Information was solicited on the various press councils in Canada and in other countries on mechanisms for handling complaints in other national jurisdictions. Time restraints precluded any effective survey of all relevant advocate groups. Letters were sent and followed-up when possible, but the analysis here does not reflect a community or public opinion survey or a survey of public interest groups.

Finally, in the original research design, several suggestions were made about possible new mechanisms that might be established to handle complaints. For example, it was proposed that a National Broadcasting Complaints Council, modelled closely upon the Press Councils in various provinces should be considered. The experience of broadcast regulatory agencies in other countries was cited as potentially useful. The new procedures and regulations adopted by the CRTC were certainly worthy of consideration and possibly sufficient in themselves to handle complaints. Those interviewed were questioned about each of these alternatives. The study team took the position that no action, including inaction, should be ruled out in advance.

As noted above, the study was commissioned by the Department of Communications. Immediately the study team sought and received the co-operation of the various agencies and organizations involved in dealing with complaints from the public. Although the CRTC was not involved directly in the development of the study, they gave generously of their time in order to be consulted. Members of industry groups and spokespeople for advocates were equally helpful. In each case, opinions were expressed freely. Individuals were assured that their comments would not be quoted with attribution here, unless these comments had appeared in print or been submitted to us in a letter. The purpose of our discussions was to explore the problems in depth and the options for any proposed recommendations. This report begins a discussion that will be continued by the submission of more formal or "official" responses from the various groups and organizations we met at some later date.

A list is appended of all the people and organizations contacted by the study team. It is important to state that the analysis offered in this report and the views expressed by its authors do not necessarily reflect the views of any group or individual nor a consensus among those consulted. Consensus would be difficult to reach, given the wide divergence of opinion that exists.

The Direction of the Study

The study has taken a somewhat different direction than was originally intended. A number of mechanisms for the handling of complaints about broadcast programs are, in fact, in place. More

are currently being developed. It is clear that some time is required before one can know with any certainty about the effectiveness of current mechanisms to handle complaints about broadcast content. For this reason, we chose not to evaluate any specific mechanism for handling complaints as such. In doing so, we were forced to reorient the goals of the study somewhat.

In our view now, the study will be a success if the result is that members of the public are better able to evaluate progress in developing mechanisms for handling complaints over the next few years. It will be a success if any gaps in the current process are identified, even if the recommendations made here are not implemented. It will be a success to the extent that it contributes to a public debate about the quality of programming in the Canadian broadcasting system.

It is important to state at the beginning that this report is not intended as an assessment of the activities of any specific council, agency, department or member of the industry -- as a report card. Even when problems have been identified, it is for the purpose of strengthening the existing mechanisms for handling complaints and supplementing them when necessary.

Finally, there is much talk now about deregulation and about various forms of self-regulation. We took the position that the jury is still out on the value of both. Thus, we examined self-regulatory approaches along with more traditional regulation, each in its own terms. As will become evident from our assessment, one of the most effective approaches we found for handling complaints was a self-regulatory council. Another

relatively successful example of handling complaints about broadcast program content involved both government regulators and voluntary participation by industry. In both cases, however, the spectre of regulation was a positive impetus for action.

Overview of Recommendations

In conducting the study, we were struck with two problems: First, public concerns are not well matched with the mechanisms for handling complaint. Either the public is relatively uninformed, or there is no single place to lodge all kinds of concerns or the kinds of concerns being raised cannot be addressed within the current structures, institutions and approaches used in the Canadian broadcasting system.

Some of our recommendations address this first problem. Taken as a whole, these recommendations seem -- even to us -- like piecemeal measures. No one recommendation commands attention as a "solution" to many problems. In effect, what we found is that many of the problems that exist are themselves "piecemeal". They are many small problems, each amenable to solution. Yet taken together these small problems form a considerable barrier for the public who seek to register and redress their complaints. Their solutions, require no major new policies or processes. Ignored, however, these relatively small problems can constitute a major source of public dissatisfaction.

Second, we have come to believe that the complaints mechanisms are as good as the resources made available to implement them. There is a significant lack of resources to

deal with the kinds of problems discussed in this report. In part, the resolution of this second problem lies with those who now handle complaints. But the decision to allocate more resources is also often not made by them. That is, each of these groups is dependent upon government or its own membership to provide the resources necessary to implement the procedures now in place for handling complaints.

Nothing generates backlash and public cynicism faster than an existing process that fails to accommodate public concern because it lacks the necessary resources to do so. This lack of resources, or competing demands on existing limited resources, is the single most serious problem that councils, corporations, agencies, departments and industry associations have in dealing effectively with complaints. Our single most important conclusion is that resources must be made available to staff and maintain the existing mechanisms for handling complaints. We envision no special allotments or funding schemes. Simply, those involved must take seriously the need to provide a mechanism for dealing with public comment about the content of broadcast programs and allocate resources accordingly.

Public Controversy

When public controversy is seen from the perspective of "complaints", it is often viewed negatively. However, controversy reflects an attentive audience, an audience who cares about the quality of programming in the Canadian broadcasting system. Public comment and complaint is just another type of audience survey, tapping the responses of minority audiences in most cases.

We have regarded the existence of a large body of comments and complaints as a positive feature of the broadcasting system. In spite of the obvious need for redress of many of them. We believe that the broadcaster, council or agency that receives no complaints is one who has little impact upon the audience or one whose activities have provoked cynicism or quiessence.

In seeking mechanisms to handle complaints, then, we are exploring ways in which to make public feedback and response a critical part of the broadcasting system and the design of broadcast programs. We should be clear about our own values: we regard public participation as an essential element of a properly functioning broadcasting system, a broadcasting system capable of producing important and interesting programs.

IS THERE A PROBLEM?

In Volume 2 of this report are tables illustrating the number and range of complaints received by some of the agencies, departments and organizations that now handle them. These tables are useful, but they do not serve to answer the question of whether a problem exists or not.

First, the statistics themselves are misleading. For example, although the CRTC does record telephone complaints and complaints received at the regional offices, those statistics are not made available. A comparison between complaints received by the CRTC and the CBC is an illustration of the different record-making and public disclosure policies of the two organizations, rather than an indication of the relative number of complaints received.

Second, complaints are not always identified as such or separated from other correspondence. General public comment is not distinguished from complaint and both are included under the designation "complaint" in the records of most organizations.

Third, we very much doubt that the complaints received reflect public sentiment accurately. A true story from another field of government activity will serve to illustrate the problem.

> The Canadian Bureau of Medical Devices did not until recently have the resources to regulate such devices which include everything from contact lenses to heart valves. As well, it has always operated on what the Bureau calls a "complaints instigated" basis. That is

> until recently the Bureau has taken no regulatory action unless it has received indication of public dissatisfaction usually in the form of complaints.
>
> A few years ago, the head of the Bureau received a visit from a manufacturer of heart valves who stated that his company was recalling a faulty heart valve that has been on the market for several years. Needless to say, the Bureau had received no complaints.

The Canadian public is unlikely to suffer a fatal blow from the content of any broadcast program, but in the opinion of most interviewed, the social fabric of Canada is indeed affected by the content of programs. Whether or not pornography leads directly to violent behavior and increased sexual assault (which it may), the quality of life is influenced by the portrayal of reality and the dissemination of images seen nightly by Canadian television viewers. Quality of life concerns are more difficult to raise than specific complaints, of course.

We take the following as evidence of a "problem" to be solved:

- the mandating of more than ten special national committees to examine issues relating to the content of broadcast programs since 1966;
- the continuing concern expressed through parliamentary committees;
- the existence of more than ten national advocate groups, some of which are really coalitions of many more smaller groups, dealing with issues related to program content;
- the creation of press councils in every provincial jurisdiction in Canada and the breadth of the complaints received by those councils, despite their limited mandate:

- the existence of several thousand complaints yearly in the files of the CRTC and DOC and of organizations designed to receive and channel such complaints to both;

- the existence of "campaigns", which build upon and are sustained by public opinion, on issues relating to the content of broadcast programs;

- the existence and findings of a number of surveys conducted by various community groups which demonstrate concern with program content and public ignorance of the ways in which to register their complaints;

- the willingness of the CRTC and the industry to engage in a process like that of the Task Force on Sex-Role Stereotyping;

- the existence of a massive volume of public comments with respect to the CBC, the only programming organization which maintains an extensive public liaison function and public records of all incoming comments, however received.

Our identification of a "problem" is supported by the report of the Sub-committee of the Standing Committee on Communication and Culture. Although it was dealing mainly with sexually abusive programs, its comments are of interest with respect to the more general problems of complaints with broadcast program content. With respect to pornography it states that:

> The reason that representations of the kind of abuse just described are objectionable is not just that they may offend some or many sensibilities, but that they do offend another important principle adopted by our human rights codes and entrenched in our constitution -- the equality of men and women. Moreover the offence does not lie in the fact that representation of sexual abuse is inconsistent with our beliefs about equality; rather that it risks undermining these beliefs. (SAB 28-6-1984, p. 6)

In dealing with the new pay television industry guidelines, the Committee continues their analysis by stating:

> This position explains the Sub-committee's reaction to the pay television industry's guidelines regarding adult programming published in February 1984. We find that the assumptions behind these guidelines are wrong-headed, as applied to sexually abusive programming at least. The industry has assumed that the only reason for the guidelines is to avoid showing offensive material, as determined by community standards. To that end the guidelines attempt to inform viewers fully of the program content, and to restrict certain programs to late night hours in order to keep them from children... We state again that the problem posed by sexually abusive broadcasting is not the problem of regulating offensive material so that it is shown only to those who are in fact not offended by it. That kind of control may well be appropriate for certain sexually explicit material. We agree that there should be some choice in determining how much one wants to be confronted by representations of sexuality per se. But the freedom to do as one pleases, and the freedom to see what one wants to see is not absolute. To draw an analogy, one is not free to yell "fire" in a crowded room. To distribute and to be confronted with by sexual representations that involve the abuse of one of the participants is not, we feel, simply a matter of personal choice. (SAB 28-6-1984 pp. 6-7)

The Sub-committee not only makes recommendations for changes in legislation but deals with the problem of its enforcement and the handling of complaints:

> No matter how well-conceived this legislation is, it will not be effective if it is not enforced. Government officials must be willing to prosecute violations. Fines actually imposed must be high enough so that they cannot be written off as the costs of showing sexually abusive material. The CRTC also has responsibilities in this area. It must be firm in holding hearings and revoking licences where the evidence would warrant it.

> It must also have a system in place for gathering evidence of non-compliance on a yearly basis. This could be done by using existing community groups (or financing the creation of other groups if necessary) to prepare reports on programming for the Commission. The system should provide for prompt scrutiny of individual complaints. All reports and complaints should be the subject of Parliamentary debate and should be widely publicized... (SAB 28-6-1984 p. 8)

Since the Sub-committee conducted a much more widely cast survey of public opinion than was possible under the terms of this report, their considered findings should be taken as part of the mandate for the research we have conducted. From their perspective, a problem exists and is serious; their concern -- and ours -- is to identify existing and new mechanisms for resolving the problems.

THE NATURE OF COMPLAINTS

Introduction

In the original mandate for this study, no distinction was made between different types of complaints. Common sense suggests that complaints do differ significantly. For the purposes of this report we have found it useful to distinguish four different kinds of complaints about broadcast program content:

1. complaints about the misrepresentation of persons in broadcast programming;

2. complaints about programming depicting individuals or segments of society in a negative light or without sufficient regard for their accurate representation as part of Canadian society;

3. complaints about abusive of offensive programming;

4. complaints about the adequacy of the portrayal of public issues and controversy.

Each of these types of complaint represents a different public concern. Each is addressed by a different kind of action or form of redress. It is useful to address why we consider that four different types of complaints exist:

First, complaints about misrepresentation of persons are normally dealt with in the civil courts, or through such mechanisms as a press council or ombudsman. Complaints about negative stereotyping, on the other hand, are much more diffuse and concern the practices and assumptions of the broadcasters themselves. Quite often they are "sins of omission" rather than commission. What is not being shown is often of more concern than what has been portrayed. The Task Force on Sex-Role Stereotyping was an attempt to deal with this second type of complaint but not the first. Press councils on the other hand, have been much less successful in handling complaints about the adequacy of representation (with respect to press coverage) than they have in dealing with misrepresentation.

Second, some advocate groups have suggested that a connection can be drawn between abusive programming and negative stereotyping, between two of the types of complaint we have described. We will argue that this connection may exist, but that abusive programming and negative stereotyping nonetheless represent two different types of complaint.

Our argument rests on two grounds:

- in dealing with the airing of abusive material, we assume that a programming decision has been made by the licensee with respect to this material and that the licensee has a legal responsibility for all such decisions. Programs containing negative stereotypes may be of high standard and good taste and nonetheless constitute an inaccurate portrayal of many segments of Canadian society.

- with abusive programming both the harm and its victims can be clearly identified. In the case of negative stereotyping or underrepresentation of particular segments of Canadian society, the harm is diffuse and, indeed, the victims may be all members of Canadian society.

Finally, we would argue that some kinds of programming are controversial by nature. The issues they present generate not only wide-ranging public debate, but also a strong expression of diverse opinion. Not surprisingly, in the emotionally charged atmosphere surrounding many controversial public issues, some will complain that particular views have not been properly represented or that the programming was "biased". What is at issue here is not the public presentation and reputation of individuals, but the accurate representation of the spectrum of public views through the media.

The Dilemma Facing Those Handling Complaints

Although we will rely upon the distinction between four different types of complaint in assessing the current mechanisms for handling them, it is important to keep several factors in mind.

First, there is an active interplay between legal and regulatory measures, even when complaints about issues other than the misrepresentation of persons are involved. For example, in other countries, equal time provisions take questions about the adequacy of coverage of controversial issues into the courts. Abusive programming can -- and with the new Charter probably will -- result in court action. The relationship between what is done by industry, by a regulatory agency, by government and by the public always has a potential legal component. Mechanisms of handling complaints invariably are designed with legal consideration in mind, regardless of the apparently non-legal nature of many of them.

Second, it is much easier for the analyst to identify and separate four different types of complaint than it is for the member of the viewing public. From an individual's point of view, however, the four types of complaint do overlap. An individual can feel wronged if he/she has been personally misrepresented, if he/she has been ignored in programs or advertisements, if he/she feels like a victim of abuse or if particular views are not included in a controversial public affairs program.

The legal distinction between personal and social issues makes sense to lawyers and academics, not to members of the public. Invariably a press council or task force set up to deal with one kind of complaint will be asked to deal with others. Nonethless there are good reasons to isolate different kinds of complaints:

- seen together, the complaints pose a significant barrier to those seeking redress. They become a wholesale attack on the media system itself.

- the issue of censorship (which will be discussed below) is much more relevant to some types of complaint than others. Seen together, the issues are confused and any action appears to be censorship, regardless of whether it is or not.

- although connections may be made between the issues, a program of advocacy that focusses on all types of complaint often raises issues that are so diffuse and so clearly of a wide social nature that remedial action seems inappropriate. What might reasonably be handled in terms of public complaints -- without resorting to a massive restructuring of either the media system or Canadian society -- is neglected because the problems -- and their possible solutions seem so wide-ranging.

The Question of Censorship

No one -- or at least very few -- wants censorship. Even those groups calling most vigorously for control of offensive and abusive programming are concerned with the negative consequences of censorship, however much they are portrayed as its advocates. For most people, the concern is over the nature of their television fare. The issue of censorship creates a dilemma -- about how this concern will be resolved in pratice -- for those worried about the quality of programs. The existence of a dilemma does not remove worries about the quality of television programming. Even when people are very concerned about censorship, often they still seek changes in the available television programming.

Public debate appears to have come to a standstill. The issue of quality of programming has been cast in terms of two extreme positions, neither of which are amenable to easy action. When conceived of as "censorship vs civil liberties", issues about the quality of programming become unresolvable. Any political or social response become impossible.

A great number of people interviewed for this study expressed serious concern about what they saw as a change in the quality of television programming being made available to Canadians. They are concerned, as was the Sub-committee of the House of Commons, that abusive programming (the "hate literature of the airwaves") will be made available to Canadians because of a commitment to "freedom of choice". They are concerned that not only young children but also teenagers and adults are being exposed to

programming depicting values that have no place in a country which has recently adopted a Charter of Rights. They are concerned that those with highly marginal tastes are shaping the Canadian Broadcasting System and the television that is made available to Canadians. Their question, and ours, is how to address these issues without falling into an often sterile debate about censorship vs civil liberties.

We have proposed two methods for resolving the conundrum, for dealing with public concern while avoiding the debate about censorship vs civil liberties. The first is noted above: we distinguish different kinds of complaint, each amenable to different kinds of redress. The issue of censorship arises only with reference to some kinds of complaints. And second, we want to place emphasis on the development of standards for all television and radio programming.

Our Working Assumptions

This report begins, then, with several working assumptions:

1. that various types of complaint will require different kinds of solutions;

2. that any approach to resolving public complaints will have to take the legal ramifications of that action into account;

3. that public response to any proposals or mechanisms of handling complaints will be conditioned by a general unease with the quality of programming as a whole and thus any mechanism for handling complaints must be intelligible to the public and visibly responsive to its concerns, however wide-ranging;

4. that complaints can be resolved (and are currently being resolved in many cases) without challenging fundamental assumptions about the importance of free expression. This is not a report about censorship.

Some Important Background Considerations

We note a change in the perception of the problems associated with the quality of television. It is difficult, but necessary to identify what has caused this change. Perhaps the best way is to quote (without attribution) a comment made by a member of the industry in one of our interviews. He notes that programming that is capable (i.e. designed for) less than thirty percent of the population with a single identifiable taste is inherently more profitable than programming designed for a heterogeneous audience, simply because it was much easier to produce such programs, and to target them to the "special interest" groups within the audience.

We note that pay and specialty programming can be seen as especially suitable for this kind of "targeted programming". One need not reach a proportionately large share of the audience to develop a profitable service, as long as the targeted audience is relatively homogeneous in the tastes being catered to in the

programs. Especially if advertising is permitted on any pay and specialty services, it is a reasonable business decision to produce "targeted" programming for "special interest" audiences.

Pay television was licenced as a general interest service. Even specialty channels are supposed to appeal to any member of the audience, regardless of his or her tastes, who seeks programming with a special emphasis. To the extent that these services can be profitable when they program to the general audience, there is no special incentive to "target" audiences and program specifically to them.

But what happened, we conclude, is that -- rightly or wrongly -- the public has come to perceive at least pay television as a "special interest" service, or as we have described it here, as programming for "target audience" primarily. Not surprisingly, this has created a backlash, whether justified or not. Almost by definition, programming designed for "special interests" and targeted to relatively homogeneous groups within the population will seem inappropriate to others. Add to this picture the perception, again correct or not, that the "special interest" being served is a prurient one and that the targeted audience is one that appreciates abusive or offensive programming and you have the makings of a serious controversy indeed.

It is important to put the current controversy into perspective from a regulatory point of view. Of course, abusive and offensive programming are of serious concern, if indeed pay and other broadcast services are currently airing it. But beyond this concern are two others. First, any time programs are aired

on a general interest service that are designed for those with "special interests" and targeted to relatively homogeneous groups within the population, there is likely to be a significant negative response. Public expectations and regulatory assurances are upset. To take two extreme examples: imagine a program of esoteric poetry or a foreign language film on prime time television. The negative reaction from the public would be immediate.

Second, any time programming is aired that does not meet a generally acceptable standard of quality, public response is negative. The best example comes from community cable, which in spite of its importance and relevance to members of the Canadian public, still has demonstrated a potential to create a public backlash and negative response.

In other words, to the extent that the public perceives that the programming now available, primarily through pay television, is designed, in fact, for special audience and targeted to them or that they believe that the programming made available does not meet an acceptable standard of quality, there will be a negative response. If this programming is also seen, by some at least, to be abusive or offensive, the problem will be compounded many times over.

We are not suggesting (even indirectly) here that pay television currently is programming abusive or offensive programming or that any management decision has been made to accept low quality fare or to target audiences for "special interest" programming. If such questions have been raised, it is

in the complaints we have analysed and these are questions best answered by the industry, the regulatory agency and the public, not ourselves. We have done no assessment of the content of any currently available programming.

What we have learned, however, is that the source of the public concern and of many of the complaints we have surveyed comes from a perception that changes have occurred in what is available for viewing, partly as a result of the introduction of new services. We have, therefore, identified the changes that the public feels have occurred and the reasons for at least some of the public controversy.

Public Concerns Re-identified

If the problem arising in the complaints is not program content per se (but a perception of changes in the orientation of particular broadcasting services) and the solution is not censorship, then what is to be done? It makes sense to return to the roots of the public concern we have identified through our interviews and the complaints. We think that public concern can be phrased in terms of several questions that the public ask. These questions are:

1. How can we be sure that a channel licensed as a general service and available to the public indiscriminately does not become one designed for "special interests" and does not target its programming accordingly?

2. More important, how can we be sure that our expectations of any service (and of the Canadian Broadcasting System as a whole) are fulfilled when we turn on a channel randomly (even a discretionary service) and without seeking out a particular program?

3. How can we be sure that the quality of programming we can receive is consistent with our expectations of television. With the promise of performance offered by the broadcasters, with the Broadcasting Act and with the use of a public resource?

4. How can we be sure that the programming we can receive adequately reflects both the society in which we live and also the diversity and range of views within it?

5. How can we be sure that any "special interest" service licensed by the CRTC meets public expectations for Canadian broadcasting, both in terms of its specific content and in terms of the available resources within the system as a whole?

The report is designed to answer these questions. If our answers -- or others -- are satisfactory to the public, the current high levels of public controversy over the content of broadcast programs would be reduced.

A QUESTION OF STANDARDS -- RECOMMENDATIONS (I)

What are Standards?

At the root of the public concern about the content of broadcasting content is the question of how the quality of service will be maintained. No one questions the central role and mandate of the CRTC in this regard. At the same time, questions about the quality of programming raise the spectre of censorship and thus call for a variety of approaches.

A most constructive approach is one that is familiar in many contexts, that of setting standards. Standards have many meanings of course but one is most useful one for our purposes. Standards are simply criteria applied in the judgement of quality.

Standards also seem to imply some notion of "standardization" as if criteria or standards were always applicable in all similar situations. This is a mistake for standards can be flexibly applied. Standards also often mistakenly imply high quality and even public well-being. Nothing in the concept of standards, however, demands that programming which meets "standards" is necessarily high quality programming, though one would hope the existence of standards would be beneficial in many ways.

In fact, there is a good deal of variety in the ways standards are defined, how they are set and who is involved in setting them. It will be helpful for the discussion to illustrate this variety, as different things are often meant when one recommends standards.

Definition of Standards

Sometimes, for example, standards can be the same thing as regulations. At other times, standards refer to "rule-making". The latter is a common use of the term "standards" in the United States. When standards involve rule-making, decisions are made about the criteria to be applied in all cases, independent and in advance of their application to any particular case. Quite often however, standards simply involve guidelines for action.

Examples of the three types of standards will be helpful to show the differences between them. In the Canadian case, the amount of commercial time in any broadcasting hour is a standard used as a regulation. The FM policy is rule-making activity on the part of the agency and some of the FM regulations, in this case, are standards too. The CRTC policy on community programming on cable, on the other hand, is a guideline. Of course, cable companies ignore this guideline at their peril, but the community channel policies are not regulations.

Who Sets Standards?

There is also a great deal of variety in who sets standards. For example, regulatory agencies are only sometimes involved in the development of standards. Sometimes, standards are developed within government departments (or councils like the Medical Research Council or the National Research Council). Quite often, departmental-based standards are set with the participation of several departments and levels of government, who actively consult on what the standard should be.

Some standards are set instead by "consensus" organizations, groups whose membership balances the demands made by different interest groups. Quite often, government representatives, and representatives from labour, major producers and major user groups will be included in a consensus organization. The resulting standards represent an accommodation of all of their interests.

Finally standards can be set by voluntary organizations (including professional associations and others). In this case, standards often take the form of codes of conduct or ethics. The signatories to these codes agree, on a voluntary basis, to abide by the provisions of their agreement on standards. All of these approaches -- or any of them -- could be used to deal with complaints about the content of broadcast programs.

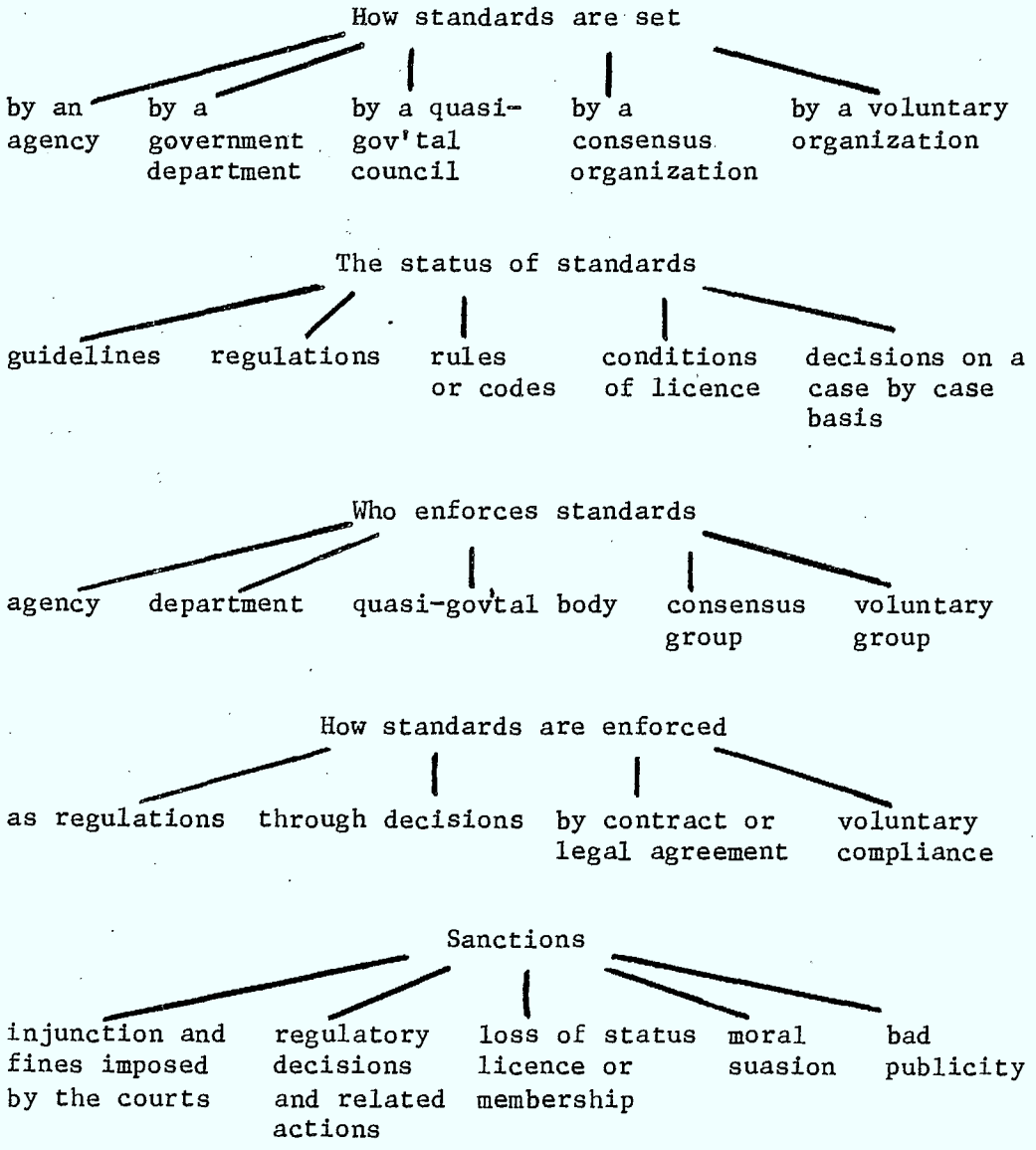
Implementing Standards

The question of implementation of standards is separate from that of their status or how they are set. That is, one can envision standards that are set in a consensus organization, for example, that are "adopted" as regulations and enforced by an agency. Similarly, an agency might set standards and then ask members of the industry to create the mechanism through which they will be enforced.

Overview of Choices

It makes sense to review the options available to policy makers if a standard setting approach is to be used to deal with complaints about the content of broadcast programs.

CHOICES FOR POLICY MAKERS IN USING STANDARDS



Each time a decision about standards is made, about how to proceed, that reflects the options illustrated on this chart. Thus, for example, an agency could be involved in setting a guideline that was later adopted by a consensus organization and used as a basis for an agreement between its members about compliance. Similarly, a voluntary or professional association might well develop codes which were then adopted by an agency and used as "conditions of licence".

A Comparison

Given the wide range of choices, it makes sense to weigh some of the advantages and disadvantages of each:

(a) What kind of standards should be used?

All standards except guidelines necessarily involve some form of government intervention and supervision. Guidelines may be set either by government agencies or by voluntary or consensus groups and require no necessary governmental involvement or supervision.

Both guidelines set by government and conditions of licence, however, leave the government agency or department with maximum possible flexibility to make a separate decision in each particular case. The disadvantage of both is that they create a sense of unpredictability and fail to reassure the public that the standards will actually be used.

Rule-making, on the other hand, provides the maximum possible opportunity for consultation and for public involvement, since often a hearing will be called to explore the possible rules that might be applied. The disadvantage of a rule making approach is its inflexibility.

(b) Who should set standards?

If an agency is involved in setting standards, one can expect standard decisions to reflect due process. In all likelihood, those affected by the standard will have a formal opportunity to make known their concerns. Members of the public are likely also to receive notice and, usually, to have an opportunity to participate in the development of standards. Agencies often draw upon the expertise of witnesses in the hearings, of their own staff or of agency consultants. On the other hand, in a deregulatory atmosphere, many agencies are reluctant to become involved in extensive standard-setting activities.

The advantage of departmental or council-based standard setting is that many departments, agencies and levels of government can be consulted. Expert committees can be used extensively. But only rarely is a departmental standards setting process public. At most, the public and affected groups are given notice and an opportunity to submit comments or hearings are held at the Minister's discretion.

The advantage of consensus standards is that consensus organizations formally recognize all interests, without regard for their relative influence. The assumption is made that each must be satisfied with any decisions that are made. Decisions represent a compromise and the best practicable course of action.

The disadvantage of consensus-based standards is that not all interest groups are usually represented. The process itself often becomes one of bargaining among interest groups. Quite often the public interest, in the more general sense of the term, is neglected. In a consensus procedure, as well, there is little room for expert opinion or research.

Finally, a voluntary standard setting process has the advantage of the willing compliance in the process by all those who are members of the voluntary group. Usually, voluntary standard setting is what is meant by self-regulation, although in some cases, governmental officials may be part of the voluntary groups that set standards. Unless they are specifically invited to join the voluntary organization (a rare situation), members of the public are seldom included in the process of setting voluntary standards, however. Public concern is allayed by voluntary standards only to the extent that the resulting standards are seen to be vigorously enforced by members of the voluntary group that set them.

(c) How standards should be enforced

Normally, departments or agencies that set standards will have responsibility for enforcing them. Generally, this

enforcement will take the form of lines. In the case of agencies, however, a number of other informal and formal regulatory sanctions are also available to achieve compliance.

Vigorous enforcement of standards responds to public concern but is difficult to achieve, particularly in a deregulatory atmosphere. Quite often, agencies or departments will actively seek voluntary compliance through various forms of moral suasion, leaving formal sanctions to the very last stage. In effect, those violating standards are asked to "clean their own house" before the agency or department becomes involved.

Sometimes either voluntary or consensus standards are adopted by regulatory agencies or government departments. The obvious advantage of this procedure is that it combines a degree of self-regulation with maximum potential for enforcement. The disadvantages are equally obvious.

Compliance is not necessarily easier to achieve because standards have been set voluntarily, especially if those involved in standard setting have no continuing responsibility for ensuring they are applied. Indeed they may actively campaign against or avoid the standards they themselves designed once those standards are adopted and used by the regulatory agency.

As well, neither members of the public nor experts are involved in any way in developing the standards which will be applied, at government expense, to judged actions taken by various groups.

(d) How sanctions are applied

To some extent, the existence of standards and an administratively oriented process of implementing them is a way of avoiding costly and burdensome court involvement. This is carried to an extreme in the case of press councils, who set standards only in the sense of using criteria to decide on each complaint they receive.

Complainants to most press councils in Canada must sign a waiver (a legally questionable procedure) that they will not engage in actions to seek redress through the courts if they bring their complaint to the council for the same purpose. Press councils make every attempt to keep their proceedings out of the legal process.

Nonetheless, both agencies and departments can usually impose fines (although not damages), at least as a last resort. More often, both will draw upon formal and informal sanctions when standards are breached.

Members of a consensus group, on the other hand, often create "self-enforcing" standards. Either through contract, or through the signatories to their standards agreements, they have the means to ensure enforcement.

At the opposite extreme are the voluntary organizations, whose main powers are exclusion of members, bad publicity and moral suasion. Because the public is generally not involved, the

more extreme of these sanctions is generally only applied when a threat of legal action exists or significant public controversy has occured.

The lack of credibility of many "codes of ethics" and "conduct" from the public perspective, lies with the relative infrequency of the application of any significant sanctions against members of voluntary organizations who violate the codes of their organizations.

These, then are the choices if a standard setting approach is to be used. How are standards now developed in the various sectors of the broadcasting industry? How might they be developed? The next section of the report explores these questions and, in doing so, locates several problems in the current approaches to standard setting.

Standards in Broadcasting

Having illustrated the range of choices available for the setting of standards, it is possible now to identify just which of these choices have been made in the Canadian Broadcasting System. A chart will be useful:

STANDARDS IN THE CANADIAN BROADCASTING SYSTEM

Broadcasting: how standards set: by agency, and by voluntary organization

the status of standards: codes, regulations, rules (FM) conditions of licence and case-by-case decision making

who enforces standards: industry, CRTC

sanctions: injunction and fines, regulatory decisions and actions, moral suasion, bad publicity

Cable: how standards set: agency

the status of standards: guidelines and regulations

who enforces standards: the agency

sanctions: failure to grant rate increases, moral suasion, regulatory decisions

Pay Television: how standards set: industry and agency

the status of standards: codes and regulations

who enforces standards: industry and agency

sanctions: not yet known

Specialty Services: no standards exist yet (except for multilingual pay television which is regulated as pay television)

Standards and Complaints about Broadcast Content

It is also now possible to illustrate the relationship between different kinds of complaints and the standards which now exist to deal with them. Again, notice the existence of many standards already and the great variety in approaches taken to different kinds of potential complaints.

STANDARDS USED TO HANDLE VARIOUS TYPES OF COMPLAINTS

1. **Misrepresentation of persons:** no standards exist, generally referred to private parties to resolve disputes, case-by-case review based on precedent set in particular decisions

2. **Adequacy of representation:** guidelines for one type of representation set in Task Force process, some reference in voluntary codes to issues relating to representation

3. **Abusive Comment:** regulation, but details of implementation or interpretation not yet specified, code of ethics, CBC journalistic policies

4. **Adequacy of Coverage:** case-by-case decisions establishing and implicit rule-oriented set of standards, regulations concerning political campaign coverage, voluntary codes with respect to some advertising, CBC journalistic policies.

Recommendations

There are three questions that must be answered by recommendations: (1) are additional standards necessary to handle any sector of the industry or any kind of complaint? (2) are the current procedures for setting and implementing standards adequate? and (3) is the overall picture one likely to engender

public confidence in mechanisms to handle broadcast complaints (assuming the public was aware of all procedures, that is)? The third question is easiest to answer:

Is the overall picture likely to engender public confidence?

Lack of public confidence in television was recently noted in a Gallup Poll released in July, 1985. Only 27% of Canadians felt television was a good influence. This can be compared with 1956, when 66% felt is was a good influence or even 1976, when 41% felt it was a good influence. Although standards and mechanisms for handling complaints exist for most kinds of programming and complaints, it is clear from the illustrations above that no consistent approach is used, either for different sectors of industry or for different kinds of complaints.

From an industry and agency point of view, this inconsistency of approach is the logical result of the way standards have been developed over the years and of the different conditions that seem to apply in different sectors of the industry.

From a public perspective, the inconsistency of approach causes much confusion. Quite conceivably, it also causes a lack of trust in the system. Even when the reasons for the differences in process are understood -- and they rarely are -- the public receives no sense that a coherent strategy to resolving the public concern is in place.

More importantly, from a public perspective, pay, cable, broadcast and specialty services are all simply channels on the subscriber's system. From the viewer's vantage point, one turns on the channel to receive programming, regardless of its source or type of regulation. The differences between services, which make so much sense from an historical and agency point of view, are quite often meaningless to members of the audience.

When this inconsistency of approach extends to different types of complaints as well as different sectors of the industry, the problem is compounded. As noted above, it is easy for the analyst, but almost impossible for the member of the audience, to sort out his/her complaint by kind. And without making these distinctions between different kinds of complaints, it is impossible to know which standards (developed and implemented by whom) should apply.

What can be done? Obviously, the current approaches to standard setting are, to some extent at least, "grandfathered" into the system. In the very short term, it would be unreasonable to expect members from all sectors of the industry to sit down together to agree to a common approach to standard setting, regardless of the virtues of such action.

But certainly, from an agency and public point of view, **any movement towards greater consistency of standards among sectors of the industry and with reference to different types of complaint — towards a co-ordinated approach — should be encouraged. In cases where new standards are to be set, the priority should be on integrating new approaches to standard setting with one or more of the existing approaches.**

Thus, for example, in dealing with new specialty services or with the licensing of any possible "special interest" services, the CRTC should encourage the use of an approach to standard setting similar to that now taken by the Advertising Standards Council (see rationale below for choice). For all new services a consistency of approach should be encouraged.

Second, although it may be premature to suggest a joint consultation among all sectors of the industry to seek a common approach to setting and implementing standards, (pay television standards have just been put into place and members of that industry are unlikely to want to experiment with new approaches until they have had time to adjust to and experience the standards they have just adopted), co-operation among sectors is possible.

The Task Force on Sex-Role Stereotyping is an excellent example of such co-operation among the sectors of industry. There all sectors joined forces in dealing with a specific type of complaint. As the CRTC moves to consider other types of complaint (that are now addressed by existing standards), the Task Force provides a useful example of how to encourage a consistent approach among the various sectors of industry.

Finally, because so many approaches are used in different sectors of the industry and with respect to different kinds of complaints all participants in handling media complaints -- **the agency, Department of Communications, members of the concerned public, press councils and industry -- should co-operate in the production of a guide for the public on how (and to whom) to comment on media content.**

The material for this guide can draw upon the research done for this report and upon other concerns expressed in its development by the various participants.

Although such a guide will not make the current system fully intelligible to members of the lay public, it will constitute a good first step. At the very least, it will illustrate what is being done, by whom as a means of encouraging public debate about how to handle comments about media content.

Are the current procedures for setting and implementing standards adequate?

This second question is somewhat more difficult than the previous one, since the question arises immediately: "adequate for whom?". What might be fully satisfactory from an agency or government or industry point of view might fail when judged from a public perspective.

Rather than assess each approach in its own terms, it is preferable to isolate several examples of what we think are successful approaches to standard setting and implementation. Once that task is done, it is also possible to identify those approaches that we think are likely to cause significant problems.

As noted within the body of the report, we have been impressed with three areas of standard setting:

(1) The Advertising Standards Council

The Advertising Standards Council uses a consensus procedure to arrive at its standards. While government is not directly involved, advertisers are subject to laws and regulations beyond their own standards. These law and regulations -- with respect to misleading advertisements, for example -- ensure that the consensus procedure operates with an eye to the general public interest.

A number of groups and individuals are involved in the Advertising Standards Council's consensus procedure. Thus, although the setting of standards is not done through a public process, the public can be confident that the process itself is relatively sensitive to public concerns.

In some areas of the Advertising Standards Council's work -- children's toys, specifically -- the Council itself engages in some preliminary research to ensure that false or misleading advertising does not occur. This "ounce of prevention" lends credibility to the process of standard setting.

Finally, the Advertising Standard Codes are self-enforcing. Signatories to the code agree to abide by it and members from the media ensure that they do not carry advertisements which break the code. While criticisms have been raised of the

standard setting activities of the Advertising Standards Council, then, and of the images conveyed by advertising, we have become convinced that the situation would be considerably more problematic were the Council not as effective as it has been in the past.

When voluntary standards are being contemplated, we recommend an approach similar to that of the Advertising Standards Council.

(2) The Task Force on Sex-Role Stereotyping

The Task Force on Sex-Role Stereotyping was a truly innovative initiative in an attempt to deal with a highly controversial issue, one that necessarily could involve questions about censorship.

The Task Force operated as a consensus body, with members of the public, of complainant groups, of industry and from the CRTC.

Yet, even as a consensus body, the Task Force operated with an appreciation of the public's general interest, in part because governmental officials were included among its members and in part because of the serious possibility of regulation if the Task Force had failed.

The Task Force itself had no direct sanctions and saw itself as an educator as much as a standard setting body. At the same time, because the CRTC has required a report from all

broadcasters at the end of the Task Force tenure (as to their compliance with the Task Force report guidelines), a mechanism for implementation has been in place and aided the Task Force work.

The danger is that the Task Force will have been, at best, a temporary solution to a long term problem. If the Task Force is permanently disbanded, it will be difficult to ensure that the education continues and promised measures are implemented. Again, while criticisms can be (and are) raised about the results of the Task Force process, we have been convinced that the level of awareness about sex-role stereotyping in the media has been raised significantly and that the current situation -- whatever remains to be done -- is an improvement over what would exist had the Task Force not been conducted.

When issues arise about the adequacy of the representativeness of Canadian media programming, we recommend a Task Force approach, if not the creation of other special task forces to deal with these concerns.

(3) Balance in Controversial Broadcasting

Balance in Controversial Broadcasting: Surprisingly, because so much controversy over "balance" still exists, the authors of this report consider the CRTC's approach to problems of balance in controversial broadcasting to be an excellent one.

The fact is that any attempt to encourage balance is likely to backfire or cause public controversy. Either broadcasters will seek equity in the presentation of all issues on any program and the result will be programs that lack "spark" or a capacity to engage their audiences and social commitment. Or alternatively, broadcasters (and indeed the courts) will scream that censorship (or government interference in freedom of information) has occured. The experience in other countries has not been encouraging.

Starting with its decision on the program "Air of Death" and continuing with the CFCF decision, the public hearing on the bias in the CBC, the CKVU decision etc, the CRTC has tried to steer a middle ground.

They have stated that (1) the station, not its individual programs, should be "balanced"; (2) controversial public debate should be preceeded by the accurate presentation of information; (3) bias often reflects what was missing in a program, thus more attention to developing strong program content is required of licencees; (4) comments that violate the criminal code or advocate actions which violate the code are not "fair comment" and cannot be tolerated; and (5) fair comment should be encouraged.

No other regulatory agency in any country has gone further or done so well with the specification of standards for the handling of controversial information.

What is lacking, however, is the collection of these "standards" under a single policy (possibly as "guidelines for the handling of controversial issues and problems of bias"). We suspect that even the most well-informed broadcasters or members of the public do not know of the existence of a body of reasonably coherent standards which apply in the case of "bias and controversial programs.

If these three approaches are worthy of emulation, can one also identify the problem areas? The answer is found in making some general statements about problems in standard setting.

It is important to note that approaches to standard setting identified here as problematic are not necessarily inadequate. Simply, we feel that these approaches are unlikely to satisfy public concern, regardless of how adequate they may be from other perspectives. What, then, are the approaches to standard setting that we feel are likely to cause problems?

1. A series of regulations or standards is not likely to satisfy the public concern if they are so general as to leave open the question of their applicability.

2. Voluntary standards are likely to be regarded with suspicion if they have been designed by organizations which make no provision for participation from members of the public in the development of their standards.

3. Voluntary standards that are simply adopted (without comment, or modification) by the CRTC as regulations are not likely to engender public confidence, since it cannot ever be made clear how the public interest was served in the development of the regulated standards.

4. Standards that lack any reasonable mechanism for implementation or self-enforcement are also likely to lack public credibility, especially if they are set by voluntary organizations whose membership is drawn from a single sector of the industry and who have no public members.

As should be evident from the preceeding discussion, the problems with the current approaches to and mechanisms for setting and implementing standards for broadcast content are more ones of process than of content. In almost all areas of broadcast content and all sectors of the industry, standard setting mechanisms are in place.

Some attention might be given to the development of standards for community programming. Specialty services and "special interest" channels, if licensed, will require standards, just as broadcasting and pay television now have standards in place. The standards now used for pay television (see Appendix C) seem insufficiently responsive to the range of concerns that might be raised by its program content and should be reviewed, particularly in light of the evaluation of the Task Force implementation.

In general, however, the first steps have been taken with all sectors of industry and all types of complaint. It remains to build upon and improve the approaches now in use.

THE RIGHT OF REDRESS IN THE CASE OF MISREPRESENTATION OF PERSONS - RECOMMENDATIONS (II)

A Different Kind of Complaint

There is another, quite different kind of complaint than the ones being discussed with reference to standard setting. This is the complaint about misrepresentation of persons in and through broadcast program content.

There are three reasons why misrepresentation is a different kind of complaint. First, of course, although it is a complaint about broadcast program content, it is one that affects individuals, not (except in the case of repeated complaints about one licensee) the quality of programming in the broadcasting system as a whole. Moreover, it is possible for a licensee to function in a generally responsible manner and still face occasional complaints about the misrepresentation of persons in the content of broadcast programs.

Second, misrepresentation can, and sometimes does lead to legal action unlike other forms of complaint. Third, and finally, misrepresentation has immediate personal consequences for the complaint. Other kinds of complaints are more likely to have social consequences, only a few of which are subject to redress in any immediate sense.

The Nature of the Response Required

A standards approach is less useful as a consequence with respect to misrepresentation. No level of misrepresentation is either inevitable nor acceptable in a properly functioning media system. Thus, developing standards by which one judges the relative acceptability of different kinds of misrepresentation is also inappropriate.

At the same time, however, not all instances of misrepresentation require legal action. Many could be resolved, quickly and fairly within a relatively informal administrative procedure, were such a procedure to exist. Only a few complaints about misrepresentation require greater sophistication of approach, and inclusion of some level of due process within the context of an administrative procedure and others yet are very serious indeed. Only these require the full panoply of legal procedures and remedies in order to ensure fair arbitration.

The Press Council Approach

The press councils in Canada have been set up to deal primarily with complaints about misrepresentation although they often receive and consider much more broadly based complaints about press coverage and press content. There are several advantages and several significant disadvantages to the press council approach.

The advantages are the relative informality (and thus capacity for immediate response) of most press council procedures. A complainant need have access to few financial resources to seek redress and present his/her case (especially in Manitoba where an individual complainant's costs are covered).

Lawyers are usually barred from the press council process; cross-examination is precluded; no formal record of the proceedings is kept; the evidence is submitted to the administratively-oriented council only. It has been argued by the councils themselves that neither their proceedings nor their decisions can be used in a court of law.

The problem with the press council approach arises when more serious complaints about misrepresentation are being considered. As it stands, in Canada (although not in all national jurisdictions), individual complainants must choose between seeking redress through a press council or seeking redress through a court of law.

The use of an administrative procedure as an intermediate stage of conflict resolution is precluded.

Second, the councils generally provide little opportunity for due process. The hearings are generally closed to the public; often the evidence is not discussed in the decisions; the individual complainant debates with members of the industry as if they were equals. For some kinds of complaints, this informal, highly discretionary exercise of administrative power is appropriate. For other complaints -- those of a more serious nature -- the procedure is inadequate. A "staged" procedure, providing progressively more formal opportunities for administrative resolution of complaints would likely meet the public concerns more effectively.

Third, the press councils are well-designed to handle at least some individual complaints, but in fact deal with social issues, like "bias" and "fair coverage". The procedures used to deal with these issues are less than satisfactory. In effect, press councils are dealing with social problems as if they were individual complaints. In the current press council procedures, individual complainants are asked to represent a class of individuals or indeed, the general public interest at large. Yet, they can only do so when they have a specific complaint, involving their own immediate interests.

Misrepresentation of persons is quite a different kind of issue than those arising from coverage of controversial issues. Although press councils attempt to deal with both misrepresentation of persons and coverage of controversial issues ("bias") -- admirably in some respects and cases -- their organizational structure, mandate and powers and procedures are inadequate to the real task of handling complaints about coverage of controversial issues.

Press councils are not designed to be standard setting bodies. When press councils attempt to create standards, as they have done in Quebec for example, they worry about being "rigid". Some press councils have developed documents on "ethics", but their work is most impressive, in our view, in their administrative handling of complaints from individuals with respect to misrepresentation.

Finally, it should be noted that not all press councils have public members. Even those public members that now contribute generously of their time and effort may not be sufficiently

accountable to the public. Several press council members have commented upon the need for a more accountable method of ensuring public representation. But by and large, press councils -- even those with public members -- are voluntary not consensus organizations.

Lessons from Press Councils: Towards a New Approach

The question of how the work of press councils might be extended and developed is beyond the scope of this report. The purpose of our research and the comments here is to determine the usefulness of the press council approach in handling broadcast content complaints.

The answer lies in the design of a simple administrative procedure somewhat akin to (but also different from) that of the press councils to handle issues of personal misrepresentation.

The first question to be addressed, however, is the role of the CRTC in handling cases of individual misrepresentaion. We feel that an administratively oriented procedure should be set up to co-ordinate with and complement the CRTC's work in this area. The CRTC should not, itself, handle this kind of complaint, unless of course, many such complaints are received about a single licensee.

There are a number of reasons for our recommendation:

(1) questions of standards and policy are not involved;

(2) questions about the general performance of a licensee are only involved to the extent that there are repeated occurences of misrepresentation from a single licensee;

(3) the complaints procedure should be administrative and consensual in nature. It should deal with complaints on an individual, case-by-case basis;

(4) Complainants should have the right to complain without calling into question the licence status of the licensee; at the same time, justice should be seen to be done;

(5) Redress should be available to the complainant, not just as a consequence of the supervisory actions of the CRTC with respect to the licensee;

(6) The procedure should be quickly responsive and not constitute a "regulatory delay" from the perspective of the licensee (unless many such complaints have been received, of course).

(7) It is questionable whether the CRTC has jurisdiction to handle complaints about misrepresentation separate from those about the quality of programming generally, since these are civil matters falling within provincial jurisdiction and outside the current mandate of the CRTC.

For all of these reasons, our recommendation is that the work of the CRTC should be complemented by an external body whose sole task is to handle complaints about the misrepresentation of individuals by broadcast media.

Recommendations

The Design of a Broadcast Media Council

We are proposing the introduction of a new body designed to handle complaints about personal misrepresentation in the broadcast media. This body would operate on a consensus procedure, drawing its membership from all segments of the Canadian broadcasting community, including the CRTC and the public. It would develop procedures for dealing with specific complaints about misrepresentation, allowing for such complaints to be dealt with at a level appropriate to the seriousness of the complaint. The procedure we envision is intended to function as an intermediate step, prior to the current civil law process and as an opportunity for broadcasters and the public each to avoid costly legal battles. Legal action should be precluded while the complaint is in progress.

The Design of the Process

The process we envision can best be presented by illustration:

Stage One

Media Council President - Complaints received and assessed, resolved by parties under supervision of the Council President, if possible.

Stage Two (optional)

appointment of Ad Hoc Panels by the President of the Council from the membership of the Council to consider complaints that are not of a potentially legal nature.

Stage Three (optional)

creation of special formally constituted committees, as required, appointed by the President from the membership, to handle complaints that are very serious and that could result in significant measures of redress.

Initially, complaints would be received by the Media Council President, who would have responsibility for all direct liaison with the complainant, respondent and public.

In all cases, initially the President would oversee an attempt to resolve the complaint directly between the parties, without intervention by the Council. In some of these situations, the President or his/her delegate would be empowered to act as a mediator at the request of the parties.

The President of the Council would recommend further action if and when the complaint could not be resolved by the parties. He/she would recommend the level of consideration necessary (stage two or stage three).

In most cases, complaints would proceed to stage two of the process. An ad hoc panel would be established by the President from among members of the Council. The membership on this panel would be balanced with respect to representation from different sectors of the industry and community. The procedures used would be informal, following the current practices now adopted by most press councils in Canada. The ad hoc panel would recommend any possible redress to the President, who would be responsible for implementing it. Redress at stage two would be limited to private or public apology, retraction and/or publicity of decision.

If -- in the opinion of the President of the Council, in some cases acting on the recommendation of an ad hoc panel -- the complaint is of a very serious nature, one that is, potentially, the basis for a legal action by the complainant, the complaint could be dealt with at stage three. The President's decision about the level of consideration would be final.

Membership on a stage three special committee would be chosen as representative of the complainant, the respondent and a nominee acceptable to both. At stage three, the procedures used would still be administrative in nature, but either the complainant or the respondent could request an open hearing, the use of representation by lawyers, cross-examination and other measures taken to ensure due process. The President of the Council would determine which of these measures was appropriate. At stage three, a full range of sanctions would be available -- if the complaint was sustained -- from private apology to fines. The decision of the special committee would be final and no appeal would be permitted, since complaints can be raised through the civil courts after the Council decision.

Powers of the Council

The Council would be empowered to deal with complaints concerning the misrepresentation of persons in the broadcast media. All other complaints about broadcast content would be referred, without comment, by the President to the CRTC.

Only in the case of recurring complaints of the same kind against a single licensee would the President submit a report to the CRTC, to be included in the file of the licensee. In deciding whether to submit such a report, the President of the Council would act upon the advice and recommendation of the Council at large.

Appointments

Membership on the Council at large would be open to every sector of the broadcasting industry. Members would also be drawn from the CRTC, professional associations (journalist associations and relevant unions) and from the public. The public members would be appointed, on a regional basis, by the Governor in Council, in consultation with provincial departments, the federal Department of Communications and citizen groups. The Council itself would not deal directly with complaints, but would serve instead as the basis for committee and panel appointments.

The Council at large would operate generally through committees which would be structured to ensure balanced representation from all sectors of the industry and community. The Council itself would be an advisory body and would operate mainly through a mail canvass of opinion on general issues to be decided. To handle stage two complaints, the President of the Council would appoint members of the ad hoc panel from among the Council members. To handle each stage three complaint, a three person special committee would be set up from the membership, but appointed by the complainant, the respondent and including a

chairman acceptable to both. Thus, membership on a special committee would also be balanced. The President of the Council would sit, ex-officio, on each ad hoc panel and each special committee but would not vote.

The President of the Council would be nominated by a committe of the Council. This committee would be chosen to represent all interests within the Council at large. The President's nomination and election would then be ratified by the membership of the Council at large.

Hearings

Hearing at stage two of the complaints process would be organized by members of the ad hoc panels. In most cases, they would be closed to the public and press.

Hearings at stage three of the process would be more formally constitued. Each special committee would develop procedural guidelines -- industry whether the hearings should be open or closed -- in consultation with the President of the Council, the complainant and the respondent.

Relationship with Existing Councils

Few of the existing provincial press councils have a mandate to deal with broadcast media. Even those that do, seldom deal extensively with complaints about broadcast program content. The issue of jurisdiction is difficult but can be resolved by the creation of a consensus-based, but voluntary organization within

which any level of government or other body can seek membership or formal liaison. As a voluntary body, the new Council would serve to extend and support the work of the CRTC, acting to establish a co-operative self-regulatory approach in conjunction with existing regulatory procedures. Only with the recommendation of the Council or one of its Committees would complaints about misrepresentation be submitted to and included in the file of the licensees with the CRTC.

The Authority of the Proposed Council

The authority of the Council would extend only to complaints about misrepresentation of persons. Other complaints and comments would be referred, without recommendation, to the appropriate bodies.

The authority of the Council would stem from the signatories of its members, who, by joining, would agree to abide by the procedures established for mandating committees or panels and for resolving disputes. As wide a membership as possible should be solicited, since it is in the interest of all parties to have a "staged", intermediate mechanism for the resolution of complaints about misrepresentation.

Budget and Staffing

Consistent with its limited mandate, only a small staff and budget would be required. Expenses of public members should be paid for their participation on committees and ad hoc panels. Expenses of complainants should be assigned, as costs, when the

complaint is found to be justified. The organization model and the financing of the Advertising Standards Council should be examined as a possible model for the new Council. All participants should be expected to carry their portion of the limited costs involved, however, assessed on the basis of ability to pay. Other than the membership assessment, the Council should function without government support.

RATIONALE FOR RECOMMENDATIONS

(A) Introduction

Four different kinds of complaints were identified as causing public concern. They were:

1. complaints about misrepresentation of persons or their views in the context of broadcast programming;

2. complaints about programs depicting individuals or groups negatively and without regard for their representation in society at large;

3. complaints about abusive or offensive programming;

4. complaints about the adequacy of portrayal of public issues and the presentation of controversial programs.

It was noted that misrepresentation of an individual can also reflect upon a group, can be abusive and can occur within the context of controversial programming. Nonetheless, each of these complaints is different in orientation and in terms of who is affected. The distinction between these four types of complaints is necessary if one is to develop an adequate complaint mechanism, since redress is different in each case.

In this section, the current policies of the CRTC with respect to each of these kinds of complaints will be identified

and discussed. It is important to note that these "policies" may not be official policy positions of the CRTC but appear to the authors of this report to be inherent in specific decisions by the CRTC. It is also important to state that the distinctions between different kinds of complaints is one being made by the authors of this report, not the CRTC.

(B) Complaints about Misrepresentation

B.1 Definition of the Problem

Misrepresentation occurs in the case when persons (individuals and legal persons, such as incorporated groups, companies, associations or institutions) are presented in a manner which contradict their stated views or positions on specific issues.

It can be argued persuasively that individuals quoted by the media have a right to an accurate presentation of their views, regardless of the editorial comment that may accompany this presentation. Legal remedies are cumbersome and expensive and are only useful in the most extreme cases when damages can be proven. Quite often, what is a issue are the practices of the journalists involved.

B.2 Current Policies as Illustrated in Selected Decisions

(i) The W5 Affair

Public controversy developed after a program on CTV called W5 aired a segment entitled "Campus Giveaway" (September 30, 1979). This segment depicted specific individuals of Chinese ethnicity as foreign students and presented foreign students in a negative light with respect to their role in Canadian society.

Two kinds of complaints resulted from the airing of the program, one having to do with the specific misrepresentation of individuals (the other dealing with racism). The individuals and several community groups sought legal advice and mounted a public campaign to seek redress for the misrepresenation (as well as for the general portrayal of the issue: see below).

The CRTC chose not to intervene formally but left it for the parties to the dispute to find an adequate resolution. A public apology was offered by CTV and the question of misrepresentation was dropped.

(ii) The World Council of Churches

In 1976, officials from several major church organizations complained to the CRTC about the presentation of their views on the CTV program W5 in conjunction with a program on the World Council of Churches. They sought a special hearing or other consideration by the CRTC of the journalistic practices involved.

Their request for a special hearing was denied and the group intervened in the licence renewal hearing of the CTV Network. The group did not seek suspension or revocation of the licence but redress for the inaccurate portrayal of individuals on the program.

The group also did not seek a "balanced" program, arguing themselves about the serious negative implications of any form of program censorship. Finally, although the group has legal representation, members of the group did not feel the complaint warranted legal action, given the possibility of administrative redress.

Our viewing of a videotape from the licence renewal hearing illustratred vividly to us the difficulties currently faced by the CRTC with respect to misrepresentation of individuals and journalistic practices of broadcasters.

Given the potential for legal action on the part of all parties (even though the church groups had chosen not to exercise or threaten it), the hearing operated on a "stop/go" basis and required private consultations be conducted during the hearings themselves. It cannot be said that the complaint was resolved fully as a result of the hearing. Nor can it be said that the mechanism of intervention in the case of licence renewal hearings is likely to result in a satisfactory resolution of disputes from the perspective of any party, including the CRTC.

(iii) Miles for Millions

In 1972, the CRTC received a complaint against CHNS from the Halifax-Dartmouth Committee of Miles for Millions. The program contained material which misrepresented the group and group members were not given an adequate and equitable opportunity to present its own views. The decision stated:

> ...where a broadcast commentary constitutes an attack on an organization which will have immediate profound effect on the plans or objectives of the organization, exceptional care will be required to ensure that the organization is given equitable opportunity to present its views... While there is no specific penalty provided for a breach of this nature, it is one of the matters for consideration in determining whether a licence should continue to be renewed.

The policy established here does not deal with misrepresentation, per se, but with balanced opportunity to present differing views and with the obligations of licensees to ensure that opportunity, especially when an organization is likely to be affected by the coverage of its objectives or plans.

(iv) The Doug Collins Commentary

In addition to the question of the appropriateness of the comments made by Doug Collins in a broadcast by CKVU on the Vancouver Show (CRTC 1983-187), members of an advocate group, MediaWatch, had their views presented in a manner that was inconsistent with their published statements.

Neither the group itself nor the CRTC appear to have chosen to deal directly with the issue of misrepresentation in dealing with the complaint about CKVU, given the other issues involved. The censure of CKVU issued by the Commission was concerned with the presentation of abusive comments advocating actions that fell within the scope of prohibitions of the Criminal Code.

B.3 The CRTC Role

One might argue that the "supervision and regulation of all aspects of the broadcating system" includes dealing with complaints about misrepresentation. In the case of misrepresentation of person in broadcast programming, the CRTC does not normally intervene. As was stated in the policy on complaints and requests for tapes and transcripts of broadcast programs (May 22, 1980): "The CRTC, in the normal course, depends upon members of the public to bring to its attention incidents which may offend the Broadcasting Act or Regulations". But misrepresentation, per se, is not included in either the Act or regulations, even though it can be argued -- occasionally by sketching the point -- that programming containing misrepresentations is not of "high standard".

Thus the CRTC has dealt with the issue of misrepresentation in three ways: (1) in terms of seeking to ensure balance in the coverage of issues; and (2) as complaints concerning private parties; and (3) as an issue raised by interveners or the CRTC (as a result of a complaint filed in the public record) at a licence renewal hearing. It is worth noting that CRTC position with respect to these options:

> The CRTC is of the opinion that its mandate does not extend to becoming a party in a private dispute between a member of the public and a broadcaster or a person appearing on a program, where the subject of the dispute does not bear directly on the broadcaster's responsibilities under the Broadcasting Act or Regulations or where the remedy being sought is clearly extraneous to the proper exercise of the Commission's powers. The proper forum for the resolution of such disputes, including related questions such as the preservation of evidence of the program, is the court or otherwise specialized tribunal.

This statement of the CRTC does not preclude a complaint being filed and raised either by the CRTC or as an intervention at a licence renewal hearing. Nor does it preclude considerations of "balance" and "high standards" in broadcasting, although the remedies in this case are unlikely to affect the individual complainant. The CRTC has indicated that it is prepared, in some cases at least, to act as a mediator for private parties. In this regard, however, the CRTC policy on copies of tapes and transcripts should be noted:

1. In the event of a complaint to the Commission by a member of the public including a request for tapes or transcripts, where the reasons for the request are unspecified or unclear, the Commission will contact the complainant for further details.

2. The Commission will obtain tapes from its licensees where it has received evidence from a complainant which indicates that the licensee may have breached either the Broadcasting Act or the Regulations.

3. The Commission will not ask for tapes where there is no direct connection between the licensee's responsibilities under the Act or Regulations, and the alledged infraction.

   For example, if a lawyer were to write to the Commission asking for a tape merely for the purpose of gathering evidence for a coming trial, the request would be refused; if someone were to ask for a tape because during a public affairs program a union leader made statements which could be considered to be a breach of the Canada Labour code, this would be refused; if a complaint alleged that a defamation was committed on a public affairs program and it was obvious that the alleged defamation was not committed through any action of the licensee, this would be refused; if a law enforcement officer requests a copy of a tape in order to file charges against an advertiser for breach of federal or provincial statute, this would be refused.

4. In circumstances where there is any ambiguity about the applicability of guidelines 2 or 3, the Commission will request the tape in order to satisfy itself and resolve the question.

5. In cases where the Commission's decision whether to obtain the tape cannot be made within the period set forth in the regulation (i.e., four weeks), the licensee will be notified to preserve the tape pending the Commission's decision.

6. Where the Commission decides to request the tape, a letter will be written immediately to the complaining person stating that the Commission is requesting the tape for its own purposes and that the complainant should not rely upon the Commission to hold the tape for him/her or to be a guardian or custodian of the tape for the purposes of any private legal actions. The complainant will be advised that he/she should immediately seek whatever remedies he/she has through the appropriate forum.

7. Where a request for a tape has been made pursuant to a complaint, the licensee will be provided with a copy or summary of the complaint and asked for comments, prior to any determination by the Commission of further action.

8. The question whether tapes will be made accessible to persons outside the Commission will be determined by the circumstances of each case. There may be certain instances in which tapes will be played for interested parties for the purpose of allowing the Commission to gather evidence to determine whether or not there has been a prima facie breach of the Act or Regulations. In other cases, such as allegations of breaches of regulations where compliance is objectively determinable (e.g., number of commercials, Canadian content), outside assistance is not usually required.

In sum, then, complaints about misrepresentation, which are the result of journalistic practices or ethics and which are not likely to be raised in a court of law, are generally left to the parties to resolve. The CRTC receives such complaints and may choose to act upon them in some cases but does not generally operate in an ombudsman role with respect to the misrepresentation of persons in broadcast programs.

B.4 The Broadcaster's Role

In the section of this report on mechanisms for handling complaints, information is provided on each of the sectors of the industry. It is worth noting here, then, that the code of the CAB is voluntary and self-enforcing and that most disputes are left to the parties to resolve. In some cases, this resolution is effective. If requested, the CAB Ethics Committee will intervene.

But an individual who has been misrepresented on the media, either in a manner not serious enough to warrant legal action or who lacks resources to bring an action through the courts must rely on the goodwill of the industry and its members to obtain redress.

B.5 The Public Role

Currently if individuals or legally incorporated groups wish to complain about personal misrepresentation, they can, of course, file an action as a civil matter, in the courts. The procedures for doing so and the range of remedies are clearly specified in the provincial acts, as is the definition of libel (but not defamation). The problem with a legal approach is that it can be used effectively only by those with the most serious complaints and the resources to pursue those complaints in court action (contingency fees may not be used in B.C. in libel cases).

B.6 What Should be Done

There is currently in Canada no right of redress -- except for that available under libel laws -- in cases of personal misrepresentation. Given the seriousness of the offence and/or the resources necessary to launch a court action, this represents a lacuna in the mechanisms for handling complaints of a less serious nature or from members of the public who lack such resources.

It is not clear, given the decision in N.I.B. vs Juneau, whether the CRTC has the authority alone to establish a mechanism

for dealing with complaints about personal misrepresentation without the collaboration of Parliament. In turn, questions of libel and defamation are matters of provincial jurisdiction. The CRTC currently has policies and mechanisms to deal with complaints concerning the adequacy of coverage of public issues. It has used those policies and mechanisms to handle the Miles for Millions issue, for example.

As the matter now stands, however, the CRTC has neither the mandate nor the mechanisms to handle complaints about personal misrepresentation in their own terms, except by taking such complaints into account at the time of licence renewal. For the person misrepresented, such CRTC action -- although necessary and commendable -- provides neither redress nor satisfaction. Although the current CRTC approach causes some public frustration, there are reasons for the agency's reluctance to institute a right of redress beyond those of its limited mandate to act in such cases.

Complaints about personal misrepresentation are dealt with most effectively at the moment by the consensus-based press councils. But in Canada, press councils do not normally deal with complaints about the broadcast media. To review the reasons for press council involvement are:

- they provide an accessible administrative mechanism for the resolution of complaints and the provision, when justified, of redress;
- they operate -- in the best situations -- with the active participation of all parties;
- they have -- again the best examples -- ways of dealing with complaints of different degrees of seriousness;
- they can be developed as consensus organizations and involve members of the public industry and governmental officials directly.

The current mechanisms for handling complaints about personal misrepresentation are unlikely to result in a public perception of fairness, however adequate they may be judged in other terms. They are very much dependent upon the goodwill of the parties. It is clear to the authors of this report that either a mechanism within the CRTC to deal with complaints about personal misrepresentation of persons is required, or some administratively oriented non-CRTC council or Ombusdman is necessary. Given the problems with developing such a mechanism within the CRTC, the latter course of action is recommended.

Most complaints about personal misrepresentation pass without notice of any official body. Instead they are heard in a deep-rooted cynicism about the credibility of the media and its reporting. Whether or not they cause damages in the legal sense of the word, they are damaging to the credibility and reputation of those whose views or person have been misrepresented. The issue is not one of balance, but of individual rights and the status of media as an institution in society.

It is for this reason that we have recommended a Broadcast Media Council, whose powers of investigation and dispute resolution extend only to the handling of complaints about the misrepresentation of persons.

(C) Complaints about Balance with Respect to the Representation of Canadian Society

C.1 Definition of the Problem

Complaints about balance with respect to the representation of persons differ from those concerned with the misrepresentation of individuals in two ways: (1) unorganized groups, classes or sectors of the population are affected; (2) individual rights are affected only indirectly.

Complaints about balance in representation are complaints about the portrayal of unorganized groups or classes of individuals in society. They include complaints about negative stereotyping and complaints about the exclusion or underrepresentation of groups.

Such complaints rest on the premises that media images have an influence on society and that the media have a duty to represent the society within which they operate. The latter premise is based in provisions in the Broadcasting Act.

In the case of the first premise, the prevailing scientific and public opinion is that media do indeed have such influence. Nonetheless, questions about the significance of media influence have been debated in the context of issues like children's programming, violence in programs and pornography. Public debate exists about how that media influence on society can, or should be related to specific regulations with respect to program content.

C.2 Current Policies as Illustrated in Selected Examples of Decisions

(i) National Indian Brotherhood et al. vs Juneau et al.

The National Indian Brotherhood lodged a complaint about a program on the CTV Network that was to be repeated by the network, despite its allegedly racist and historically inaccurate portrayal of native people. Receiving no immediate satisfaction from the CRTC, the NIB took their case to court in 1971 ([1971] F.C. 127) seeking an injunction to restrain re-broadcast. The group failed when Justice Kerr found that the Parliament of Canada had not intended to bestow upon that court the power to enjoin particular programs, because that would have the effect of the court exercising functions of regulation that Parliament had seen fit to grant the CRTC. The case was referred to the Federal Court of Appeal to determine if the Court of Appeal had jurisdiction to hear an application to review the decision of the Commission ([1971] F.C. 66). The Federal Court of Appeal held that the Trial Division had the right to determine the jurisdiction of the Court of Appeal when the issue came before the Trial Division Court. A decision on the merits of the motion to have the CRTC decision reviewed was made by Mr. Justice Walsh of the Federal Court Trial Division. He held that the Federal Court of Appeal had no jurisdiction to review the decision of the CRTC based on provisions of the Federal Court Act. He went on to state:

> ...I find it difficult to conclude that Parliament intended to or did give the Commission the authority to act as a censor of programs to be broadcast or televised. If this had been intended, surely the Act giving the Commission authority to order an individual station or a network, as the case may be, to make changes in a program deemed by the Commission, after an inquiry, to be offensive or to refrain from broadcasting same (sic). Instead of that, it appears that its only control over the nature of programs is by use of its power to revoke, suspend or fail to renew the licence of the offending station. ([1971] F.C. 498 at 513)
>
> With respect to the efficacy of holding a hearing, he says:
>
> ...it is very difficult to see what could have been gained by a public hearing since there is no provision in the Act to the effect that during such a hearing the broadcast or re-broadcast of a program shall be prohibited. While a public hearing would have enabled the applicants to make their side of the question known to the public, it would not apparently have accomplished their primary objective. (Ibid at 515)

The wording of these decisions is important since it sets the frame of reference used by the CRTC with respect to any potentially discriminatory programming and appears to limit, at least until a different type of case is brought, the scope of action of the CRTC.

(ii) CJVB Editorials

In 1976, the licence for a multi-ethnic radio station, CJVB in Vancouver, came up for renewal. At the hearing, the CRTC heard an intervention concerning the presentation of comments -- in this case on South Africa -- which seemed to the intervening groups as

"racist" and in contravention to the standards of performance to be expected of a multi-ethnic station. The comments were presented to the audience as the personal editorial opinion of the owner of the station, not as station policy, in a program entitled "The Way I See It".

The CRTC response was:

> The Commission has taken note of an intervention concerning a series of editorials by the licensee broadcast on the CJVB program "The Way I See It", and has considered the adequacy of the steps taken by the licensee to provide opportunitities for the presentation of differing views on the subject matter of the editorials. The Commission reminds the licensee of its responsibility to provide reasonable, balanced opportunity for the expression of differing views on matters of public concern. The Commission will continue to follow the measures taken by the licensee to discharge this responsibility.

There is no public record of the measures taken by the CRTC, but this would not mean that the situation was not monitored. The options open to the CRTC with respect to monitoring and acting upon a licensee's performance have been discussed above.

(iii) Radio Rogers

In a decision in 1976, the CRTC expressed their concern about the nature of news reporting, given the intended audience of the station CFTR in Toronto. The Commission stated (CRTC 76-712):

> With respect to the news coverage provided by CFTR, the Commission was concerned that the station treated news in a manner which was inconsistent not only with the

> station's responsibility to the almost one-third of its audience which is less than 18 years of age, but also with the requirement of the Broadcasting Act, that... "the programming provided by each broadcaster should be of high standard..." At a public hearing the licensee responded:
>
> ..."We do not try to use sensationalism or vulgar language, or that sort of thing to gain an audience... it is not a corporate or a station policy..." The Commission will follow closely the station's practice in this regard.

(iv) Religious Programming: Community Communications

In a decision in 1977 (CRTC 77-204), the CRTC dealt with the question of balance in relation to the diversity of groups of different religious persuasion by stating:

> The Commission considers it important that a station supplying programming of this nature (religious programming) attempt to maintain a balanced offering of programmes which will serve the diversity of religious needs, interests and beliefs represented in the particular community it is licensed to serve... At the time of the next licence renewal, it will wish to learn what steps have been taken in this regard.

(v) Religious Broadcasting: General

The cornerstone of the decisions on religious broadcasting is the contention that such programming must be reasonably reflective of the community's beliefs, needs and interests. Thus, as a result of its decision to consider a general policy for religious

broadcasting, the CRTC refused an application from Crossroads Christian Communications Inc. in April 1981 and issued a call for a hearing in August of that year.

The policy issued from the hearings in June 1983 reiterated the CRTC concern that religious broadcasting be reflective of the religious views among groups within the population at large. An application by Canadian Interfaith Network was filed with the CRTC in 1984, but the hearing has been postponed. An application for a foreign religious service will be considered if and when a decision has been made on the Canadian Interfaith Network application (or other proposed Canadian religious service) or that application has been withdrawn.

(vi) Children's Programming

The CRTC has received a number of applications for a service targeted to children, using a basic cable channel or the mechanism of pay television or a specialty service. Several of these applications were originally withdrawn by the applicants and several have been withdrawn by the CRTC, mainly for financial reasons.

The question of whether a children's service produced in Canada may indeed be one of financing as "the Commission also emphasise(d) its concern both with the start-up financial capability of the applicants and the continued viability of the proposed services" (CRTC-Notice of Public Hearing 1, January 16, 1985).

A fundamental issue is whether any proposed children's service, using a form of user-pay or advertising revenue, can be sustained, given the nature of its intended audience. If not, then the choice will be among (1) a children's service funded on a universal basis; (2) no children's service licensed in Canada (3) the importation of a children's service or the combination of a foreign-produced children's service with a general pay television service.

The CRTC invited all interested parties who are not applicants and who wish to comment on children's and family services to a special hearing to discuss their concerns. Such hearings were held in March in six locations. However, in keeping with a recommendation of the Minister of Communications' Task Force on Broadcasting, the CRTC is not expected to make a ruling on applications for a specialty service for youth until early next year.

(vii) Ethnic Broadcasting

Commencing in January 1985, the CRTC has held a series of hearings on ethnic broadcasting. The emphasis in the proposed policy is on ensuring that ethnic programming is reflective of the community at large.

Thus, for example "the Commission confirmed its licensing approach, stating that "frequency spectrum scarcity will not permit the licensing of a single language service to each ethnic group in a given market" and therefore "that the Commission will

not license over-the-air single-language transmitting undertakings and will require that a licensee provides a broadly-based service to the ethnic communities within the coverage area of the undertaking". (Information Notice I, October, 1984) It is proposed that applications for single-language discretionary services would be considered on a case-by-case basis.

(viii) CBC Inquiry

The following excerpts from the summary of the report (June 20, 1977) on the Inquiry into the National Broadcasting Service (CBC) will be of interest inasmuch as they deal with the need and the then apparent capacity of the CBC to be representative of the various groups and segments in Canadian society:

1. The difference in French and English treatments of Canadian content news are striking. The main thrust of French television newscasts is Quebec, almost half of the newscast time being devoted to Quebec stories. Then again, at least a third of the national Canadian stories have a marked Quebec point of view, and much of the news classified as "other Canadian provinces" involves reactions to developments in Quebec. (p. 18)

   English newscasts have a low coverage of Quebec, considering its importance: about 12 per cent of their content, or 17 per cent in terms of time. (p. 18)

   In an examination of English and French national evening radio news-scripts during the four-month period from September through December of 1976, it was found that only 3 per cent of the CBC French newscasts dealt with any part of Canada other than Quebec. The CBC English newscasts devoted 18 per cent of their coverage to parts of Canada other than Quebec, and 9 per cent to Quebec stories, and this at a time when a general election campaign was taking place in that province. The extremities of the country, British Columbia and the Atlantic Provinces, fared worst. (p. 18)

2. The mandate of unity has nothing to do with managing or distorting news, or inserting pro-federalist editorializing into the news. It is a very old principle that example is better than precept, and CBC television will do most for the unity of the country, not by editorially supporting federalism, but by regaining the presence in Canadian life that CBC radio had a generation ago, and to a considerable extent still has. (p. 62)

   It is also possible to make too great a virtue of detachment. To think of the current political situation in Canada as just one more federal-provincial argument will not do, and will be widely misinterpreted if it is held. The sheer force of its appearance on CBC radio and television gives a news item some credence in itself, and, if the item is a mere expression of spite or of an insignificant minority view, no responsible broadcasting unit should be satisfied with an objectivity that isolates it and exaggerates its importance by doing so. The news media tend to compete for items of immediate concern, but an organization devoted to the public interest needs to see all such items in the perspective of long-range developments. For most Canadians, the PQ stand on the independence of Quebec is a crisis, and crisis demands a response which is neither alarmist nor propagandist, but employs the greater vigor and energy in assisting citizens to gain fuller knowledge of it.

   In the sense described above, the CBC has a positive obligation to contribute to the development of national unity and provide for a continuing expression of Canadian identity. This is the direct obligation of management, which through appropriate controls must assure that it is adhered to by all personnel. (p. 62)

3. We have bias whenever anyone attempts to cut off essential information or balance from someone else, and so tries to force the listener's opinions into line with his or her own interests. Such bias, which runs counter to the principles of democratic debate, is a form of journalistic malpractice. The expression of an opinion or point of view is sometimes, as above, called "honest bias", but it is confusing to use the same word in both an approving and pejorative sense.

> If this definition of bias seems reasonable, the damning statistics that emerge from Professor Siegel's study, in particular, indicate that the electronic news media in Canada, English as well as French, are biased to the point of subversiveness. They are biased because, so far as they are able, they prevent Canadians from getting enough balanced information about Canada to make informed decisions regarding the country's future. They are biased by their assumptions about what is newsworthy and what their audiences want to hear. These assumptions really amount to two. First, only Canadians living along the St. Lawrence axis, from Quebec to Hamilton, belong in the news; all others are some kind of Canadian fauna living in the "boondocks", to be noticed only when they do something picturesque. The second assumption is that English Canadians could not care less about what happens to French Canadians, and vice versa. These assumptions are intolerable. They are also extremely stupid.

(ix) Task Force on Sex-Role Stereotyping

The establishment, work and implementation of the Task Force has been dealt with in detail elsewhere. It is sufficient to note its following characteristics here:

- the Task Force dealt with both specific and highly diffuse issues about the representation of one segment of the population;
- the Task Force involved the CRTC in a pro-active development of policy, but also can be considered a "self-regulatory" effort;
- the Task Force carried out its work without the question of censorship of program content becoming a serious obstacle to further progress or later implementation;
- while the mechanism of a task force is probably too burdensome for dealing with all cases of representation, it exists as a means of resolving serious issues in the public interest;

- the final impact of the Task Force cannot, however, be evaluated fully until several years after the final reports have been submitted and analysed by the CRTC.

It is quite possible that a task force approach, with or without a task force specifically, might be taken to ensure adequate representation of the visible minorities.

C.3 The CRTC Role

In examining the decisions made by the CRTC over the years, it appears that there is both a policy and an approach to dealing with issues of inaccurate or inadequate representation of groups or segments within Canadian society. Most of this policy has not been formally released however, and can only be implied from the decisions made by the CRTC.

First, there is a general policy, enunciated in the Act, about the balanced nature of the Canadian broadcasting system and, by implication, of the licensed activities of each licensee within it. This policy has been articulated effectively in many decisions of the CRTC.

This policy has also been applied in the case of assessing new applications and in evaluating the performance of existing licensees.

Second, there are a variety of mechanisms available to the CRTC for implementing this policy: through questioning at licence renewal hearings, monitoring performance after hearings, private

and public discussions with licensees, specific conditions on licences and development of different classes of licence for specific kinds of broadcasting (e.g.: ethnic broadcasting) etc.

Third, the CRTC has experimented, relatively successfully to date, with an approach to ensuring that licensees program material that is representative of the audiences they serve. The Task Force on Sex-Role Stereotyping deserves praise as do the efforts of all its participants -- the industry and the advocate groups included -- during the period of implementation. It is clear that women are not yet adequately represented in the media and that stereotyping continues, but the situation has been altered and improved through the active participation of the Task Force and those who implemented its recommendations.

Two problems remain unresolved. The first can be raised in conjunction with the discussion of children's programming as a question: what if there are significant groups in society whose needs are unlikely to be represented in media images or adequately served given the market conditions that apply to the development of broadcasting?

Put another way: Can the needs of the Canadian broadcasting system for Canadian programming and for a diversity of programming serving all segments of the population be met in the case of children's programming? If the public and the CRTC are actively concerned to answer these questions affirmatively, it may be that some different approaches to the provision of programming (and its financing) will be required.

Second, given the commitment required for an approach like the Task Force on Sex-Role Stereotyping, could the public expect other issues to be dealt with as successfully? The answer lies, perhaps, with adopting some key components of the Task Force approach, particularly its means of implementation, without necessarily creating a Task Force on every issue similar to sex-role stereotyping. One need not commission a Task Force on every issue of underrepresentation in order to develop a mechanism to improve the situation.

C.4 The Broadcaster's Role

The CBC is, necessarily, very much preoccupied with the adequacy of the representativeness of its programming. There is little likelihood that issues of inadequate representativeness will go unnoticed for long.

In the case of private broadcasters, especially those providing the new discretionary services, the question of representativeness is somewhat more complex. For the over-the-air broadcaster, the impetus for representativeness has come from the CRTC and the Broadcasting Act and, occasionally, from the spectre of regulation. Nonetheless, actions have been taken to improve the quality of service from the perspective of its representativeness.

Questions have not yet been addressed fully about the representativeness of the new discretionary services. Undoubtedly these issues will surface, regardless of the discretionary nature of pay or specialty services, as they have already with respect to

sex-role stereotyping. From the public perspective at least, the discretionary nature of these services does not exempt them from the provisions of the Broadcasting Act.

C.5 The Public Role

CRTC action need not be (and is not always) dependent upon complaints from the public. At the same time, it would be a mistake to discount the role of the public in raising issues about the adequacy of representation. Public comment, complaint and intervention are critical in raising issues about the adequacy of representation, if these problems are to be addressed.

C.6 What is to be Done?

The existing CRTC policies on representation and balance should be made more accessible and the range of options available for handling and redressing complaints better publicized. All of the required policies, approaches and mechanisms of implementation seem to be in place.

Actions within the CAB to develop the Code of Ethics to include an explicit statement about representativeness would be welcomed by many of the groups we interviewed. As well, a "social issues" committee that was responsible for continuing the impetus of the Task Force implementation would serve as a public marker of the industry's commitment to increasing the balanced representativeness of the programming through education of its members.

Finally, there is a need for public debate about the role of all the discretionary services in fulfilling the mandate of the Broadcasting Act with respect to the representativeness of their programming images.

(D) Abusive or Offensive Programming

D.1 Definition of the Problem

The portrayal of inaccurate or negative images of any group in society is offensive to most. And many scholars have argued that negative stereotyping is related to the development of abusive attitudes. Yet there is a significant difference in kind and degree of offence in the case of stereotyping and abusive programming.

Abusive programming might best be defined as programming that is not of high standard which includes demeaning comments and incitement to violence towards any identifiable group. (See CRTC Public Notice 1983-187) High standard might be interpreted in terms of the CAB Code of Ethics which is restated here:

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

In practice, there are three kinds of comments that might fit within a regulation on abusive comment. The first is most clearly recognizable as "abusive". It is the provision of comments that exhort members of the audience to violence and/or degradation towards any recognizable groups or segment of society. The second are those comments which contain such violence or illustrations of degradation, implying acceptance of the activities involved without exhortation to action. The third are similar to comments received by the various human rights commissions in Canada. Discriminatory remarks are made about an individual or groups, without reference to violence or actions of degradation. These distinctions are critical to an interpretation of any regulation on abusive comment.

Questions have been raised about regulation of abusive comment. The CRTC policy is clear:

> Under the provisions of the Act, ultimate responsibility for all programs broadcast on a television station rests with the person who is licensed to operate the station, whether or not the program represents or reflects the editorial position of the licensee.
>
> Secondly, the Commission notes that the responsibility imposed on each broadcaster for the program it broadcasts includes the requirement that the programming provided on its undertaking be of high standard. In assessing whether or not a broadcaster has discharged that duty, the Commission will take into consideration the circumstances of each case, including the programming context in which a statement which is the subject of a complaint was made, the extent to which the broadcaster had an opportunity to determine, prior to broadcast, whether a statement did not merit airing and, failing that, its willingness to accept responsibility and offer an apology for the airing of a statement which failed to satisfy acceptable standards of broadcasting.

Thirdly, the Commission emphasizes that the right to freedom of expression on broadcasting stations is not absolute. As noted above, it is expressly limited by various laws aimed at protecting other cherished values. The Broadcasting Act declares that radio frequencies are public property. Accordingly, a licence to operate a broadcasting undertaking constitutes a public trust that must be used in the public interest and on behalf of the public the undertaking was licensed to serve. Freedom of expression of one member of that public cannot displace the right of others to receive broadcast programming of high standard. It is the broadcaster's responsibility to achieve the required balance between private freedoms and its public service obligations under the Act.

In the Commission's view, broadcasters fall short of discharging their responsibilities and of attaining the high standard of programming required when the frequency entrusted to them is used, not to criticize the activities of a particular group but to advocate sexual (or other) violence against its members.

D.2 Current Policies as Illustrated in Selected Decisions

(i) CKVU

The CKVU case is discussed at length in Volume Two. It is important to note for the purpose of the discussion here that the abusive commentary in the CKVU case included an exhortation for members of the public to break the law. In other words, the comment requiring investigation and action was one of a most obviously abusive and serious nature.

(ii) Pay Television

Some of the original impetus for amending the regulations on abusive comment came from public response to programming on pay television and specifically, with the advertising of the Playboy programming that was to appear on First Choice, one of the pay television licensees. Playboy programming, unlike some the movies that have unfortunately been shown on pay television in the past, does not exhort viewers to violence or acts of degradation, but does contain images that appear -- to some commentators -- to be demeaning to identifiable groups and accepting of degradation.

The CRTC held a "fact-finding" meeting in conjunction with these complaints. Questions of community standards were raised, as was the question of how the service as a whole was to be marketed. The pay television licensees were reminded of their obligation to fulfill overall programming commitments. (CRTC Public Notice 1983-16)

It was also made clear at that time that the CRTC would not act as a censorship body and would not act pre-emptively with respect to events that have not yet occurred or programs that have not yet been aired and that it would be left to the courts to determine the meaning of key terms like "obscenity". The pay television industry was asked to develop a code of voluntary standards.

In February 1984 (Public Notice 1984-46), the CRTC received the industry draft code of standards. The code contained provisions for classification of programs and the industry

undertook to discuss issues like sex-role stereotyping with the producers of programs and reiterated their responsibility as licensees for all material carried on their service. The draft code did not deal with abusive or offensive programming otherwise.

In July 1984, the CRTC issued proposed pay television regulations which included the general regulation prohibiting abusive programming that applies to all broadcasters.

In January 1985, the CRTC announced that it had accepted the final version of the Programming Standards and Practices Code prepared by the pay television licensees. In that code (found in Appendix C), it notes that all programming will be pre-screened by management before being scheduled, that the discretion of the programming personnel will be exercised responsibly and in good taste. In particular, no material will be selected that is:

a) contrary to law, including the Broadcasting Act and the CRTC Regulations; or

b) offensive to general community standards.

"Community standards" will necessarily change over time and therefore will be subject to continuing review and evaluation. Pay television licensees will not select programming that would go beyond an "R Rating" or its equivalent.

An "R rating" means "Contains material that is suitable for adult viewing only". A classification code is appended to the document. The last item in the classification system is the

warning: "The following program contains scenes of extreme violence, nudity and coarse language. Therefore this film is recommended for mature audiences only" Despite this item in the classification system, the pay television licensees' code provides a commitment to abide by the CAB Sex-Role Stereotyping Guidelines and states:

> The portrayal of violence which when taken in context is gratuitous will not be shown and pay television licensees will relfect this policy in their selection process described in these guidelines.

The main emphasis in the policy is on classification and scheduling of potentially offensive (but not abusive as defined within the standards) programming.

It is stated that a pay television committee will be set up to oversee the implementation of the guidelines and to deal with complaints. The CRTC has also announced its intention to monitor the programming in light of these guidelines and possible complaints.

(iii) Advertising to Children and Feminine Sanitary Products Advertising

In response to complaints, the CRTC has encouraged the development of industry standards to deal with both issues and now makes the industry standards on advertising to children a condition of licence (see above).

D.3 The CRTC Role

At the time of the House Sub-committee on Sexually Abusive Broadcasting a number of groups sought an amendment to the CRTC regulations that would include abuse on the basis of gender within the ambit of the regulations. The regulations have now been amended.

Two questions remain: the first is whether the CRTC has the necessary mechanisms to deal with a breach of the regulations. The answer must clearly be yes. The regulation on abusive comment is no different in kind from any other regulation adopted by the CRTC and the CRTC has the full range of enforcement powers with respect to it.

The second question is more difficult: how will the CRTC chose to interpret the regulation itself. Abusive comment can be seen as limited to comment like those made by Doug Collins, comments which clearly advocate actions which contravene the Criminal Code of Canada. Or alternatively, discriminatory remarks and actions -- such as those covered by the Human Rights Code (not applicable to media content) -- might be the subject of CRTC action. Putting the alternatives on a continuum, the choices faced by the CRTC become clearer.

Abusive Comment/Stereotyping

exhortation to violence and/or degradation	implicit acceptance of violence and/or degradation	discrimination against identifiable groups or individuals	negative stereo-typing of particu-lar groups	underrepre-sentation of particular groups
Choices (1)	(2)	(3)	(4)	(5)

abusive comment ◀ ..... ▶ stereotyping

Choice (1) represents the past status of CRTC policy as reflected in decisions taken before the amendment. Choice (2) represents the position implicit in the broadcast industry voluntary codes. Choice (3) represents the minimum demands and expectations of almost all advocate and public groups, as illustrated in the testimony before, and the reports of, the House Sub-committee. Choice (4) represents the position taken by a number of advocate groups participating in the Task Force Process. Choice (5) represents the position being advocated by some advocate groups today.

It is our view (based in part on interviews, in part on the reassurances given the industry at the time the amendment to the regulation was introduced, and in part on the CRTC position with respect to possible censorship) that an interpretation of the regulation that goes beyond the position implied in choice (1) is unlikely, and that the CRTC would be reluctant to act in the case of alleged discrimination. It is our view that the CRTC is depending upon the implementation of the voluntary codes to deal with choices (2) and possibly (3). If we are correct -- it is still too early to judge -- the regulation on abusive comment will

not meet the expectations of the members of the House Sub-committee or many public groups. If we are correct, the stage is now set for more serious public controversy and direct intervention by Parliament, the latter contingent on the proposed Bill C-20.

D.4 The Broadcasting Industry

All segments of the broadcasting industry -- both public and private -- except the newly licensed specialty services have now developed codes or standards. Some of these codes are self-enforcing; others are voluntary. The question always remains in the public mind about voluntary standards: will these standards actually be implemented? This question will be answered in time by the actions of members of the industry.

The current mechanisms for handling complaints vary in the different sectors of the industry but mechanisms to handle complaints are necessary to ensure public confidence in the efficacy of any voluntary standards.

D.5 The Public Role

Many of the recommendations made to the Sub-committee focussed on the amendment to the regulation on abusive comment. The assumption was made by some that the existence of a regulation, and the obvious availability of mechanisms to enforce regulations generally, would resolve the problems associated with what was seen as abusive programming. It is our view that the situation with respect to program content on pay television has

improved considerably notwithstanding the continuing complaints. Public pressure, regulatory scrutiny, and the maturing of an industry have all played a role in this improvement. Nevertheless, there remains a significant task for public groups: to determine whether the current regulation, as it is interpreted by the CRTC, meets their concerns. It is our view that the regulation will not, and that the problems lie with the definition of abusive programming.

D.6 What is to be Done?

It is our view that the development of standards in the past few years has been a significant improvement. These standards have the potential, if they are implemented to satisfy some of the public concerns. At the same time, however, some serious problems remain.

The amendment of the regulation on abusive comment and the development of standards have created expectations of the CRTC and of industry which will be difficult to fulfill. Only by interpreting its mandate with this regulation very broadly could the CRTC deal with all cases of alleged discrimination and abuse. Only with vigorous implementation of their codes will the industry retain its credibility as the institution capable of ensuring high standards in broadcasting.

There are some immediate steps that could be taken, without yet changing the orientation of the CRTC to their interpretation of abusive programming (as we have interpreted it to date):

- First, as we have recommended above, the creation of a capacity for redress in the case of personal misrepresentation would address at least some of the public concerns (see above).

- Second, the CRTC has demonstrated its commitment to dealing with the negative and inadequate representation of Canadian society in the media. Significant attention to continuing implementation and publicizing these efforts could allay any public concern that the CRTC was failing to respond to complaints about discriminatory programming.

- Third, as the CAB has discussed in its submissions to the House Committee **adherence to the voluntary codes can be made conditions of licence for all sectors of the broadcasting industry.** (Self-enforcing codes need no further enforcement). Since the voluntary codes are developed by the industry itself, their provisions should not be burdensome to its members.

- **Fourth, we have recommended a review of the industry standards for pay television, because of the orientation of those standards and their implicit mismatch with public expectations. This review need not take place immediately, but should be scheduled now so that all parties can be prepared for the review when it occurs.**

The question of discrimination in broadcast programming is one that the CRTC, and indeed the courts, have found it difficult to deal with. While discrimination is a serious problem, quite often it stops short of abusive comment. The public seems to expect that the Human Rights Commission is not seeking jurisdiction over cases concerning discrimination in media content and; indeed, only a very broad reading of their current mandate would allow them to act in the current situation. It is not clear whether the Charter of Rights will be used in cases of alleged discrimination in broadcast program content.

The proposal made above with respect to misrepresentation of persons in media content deals with those instances of discrimination that affect identifiable individuals. The proposal for a vigorous follow-up to the Task Force on Sex Role Stereotyping, dealing with other kinds of discrimination as well, is an important step. The question will remain in the public mind: why are other forms of discrimination in the media exempt from investigation while discrimination is fully investigated in other contexts? This is a question the new Task Force created by the Minister of Communications must answer.

(E) Balance and Adequacy of Coverage on Public Issues

E.1 Definition of the Problem

The handling of public issues and controversy by broadcast media is invariably a matter of public concern. One approach is to seek equity in all aspects of coverage, an equal representation of all points of view. Another to seek "balance" and means of dealing with both "honest bias" and the misrepresentation of issues.

The latter is what is meant by adequacy of coverage of public issues. It is the cornerstone of the Broadcasting Act and the policies developed by the CRTC with respect to the coverage of public issues by the broadcast media.

It is important to note that public controversy over the coverage of public issues is inevitable regardless of the approach chosen. The kinds of decisions made by broadcasters and by the

CRTC in supervising the broadcasting system involve questions of judgement. No single set of criteria will suffice to demonstrate the adequacy of coverage. Instead, it is easier to specify approaches that are likely to cause problems and to propose measures designed to avoid or alleviate those problems.

E.2 Current Policies

(i) Air of Death

In February 1969, the CRTC announced a special hearing in conjunction with complaints about a program entitled "Air of Death" produced by the CBC. The purpose of the inquiry was to determine whether the CBC had exercised sufficient regard for the maintenance of high standards of public information and to develop more generally applicable standards for the "balanced opportunity for the expression of differing views on matters of public concern".

The hearing did not deal with the merits of the proposed program content but only with the methods and techniques used in the presentation of information. The report of the special committee was issued on July 9th, 1970.

The CRTC found that the measures taken by the CBC were consistent with the "high standard" required of all broadcasters but that a number of issues with respect to potentially controversial programming were raised.

The CRTC statement on the handling of such issues is worth reprinting in full:

> There is a need for honest, objective reporting. However, an "honest bias" in the sense of a point of view may well exist on the part of the persons involved in the preparation and production of informational programming.
>
> Broadcasters should identify personal, subjective or honestly biased opinions. The credibility of broadcast journalism cannot be maintained if exaggeration is accepted as a legitimate technique in the making of documentaries.
>
> It is suggested that broadcasting organizations consider the formation of program policies for informational programs which take a "position" for or against an issue of public concern. An adequate distinction must be made between television and radio broadcasting, taking into account the visual impact of telecasts in evoking immediate empathetic responses from the audience.
>
> The requirement for "balance" in the Broadcasting Act need not be interpreted as a directive that every program must of necessity, describe all sides of an issue, provided that in the context of total programming legitimately controversial issues are dealt with fairly and honestly.
>
> The Canadian Radio-television and Telecommunications Commission in its regulatory and supervisory responsibility for Canadian programming must not curb or limit the broadcaster's right to discover and identify problems of public concern.

Several elements to the policy can be identified clearly:

1. that "honest bias" must be identified;

2. that "honest bias" is a legitimate part of informational programming;

3. that "honest bias" does not include exaggeration;

4. that television's power to evoke images must be taken into account in deciding whether balance has been achieved;

5. that individual programs need not be balanced, but that balance, honesty and fairness is required of all broadcasters in fulfilling their licence obligations.

(ii) Open-line Programs

A number of decisions have dealt with the handling of public issues on open-line programs. In the case of CJAV in a decision in 1976 (CRTC 76-336), the CRTC approved the renewal of the licence but stated that it had heard interventions charging the licensee with discrimination in its selection of callers and that it remained concerned about the treatment of public issues by licensees. A similar concern was expressed in the renewal of the licence for CJOB (CRTC 76-372).

In 1976, the CRTC renewed the licence of CJOR but noted in its decision (CRTC 76-337) that open-line programs can become "robust, argumentative and emotional" and that "the highly subjective nature of some of the opinions expressed on such programs... can on occasion have potentially serious consequences".

Again in 1976, the CRTC renewed the licence of CKNW but issued a lengthy statement about the coverage of issues and "investigative reporting" on open-line programs. The CRTC stated:

> The licensee stated due to greater activity on the part of consumer groups it no longer dealt with small specific incidents on its open-line programs, but rather dealt now with broader questions affecting the public good. It further stated that this new policy avoided the irresponsibilities and intemperate statements which admittedly had occured in the fairly recent past.
>
> While the Commission strongly encourages the airing of programs which deal with issues of importance to the community, it is concerned about the dangers it sees as being inherent in open-line programming of an investigative nature. Investigative reporting requires the use of professional techniques in assembling as fair and accurate an account of a given event as possible. Ascertaining and presenting the facts takes time, care are reportorial skills and high editorial standards.
>
> Open-line programming on radio usually occupies a significant number of hours of the station's broadcast week but is produced by a relatively small staff for such a large and serious undertaking... The open-line host in order to make his program attractive to listeners, considers that he must handle many controversial matters each week in an exciting and entertaining manner. In doing so, he must rely upon the unverified and often unverifiable statements of individuals with whom he communicates while he is on air.
>
> The Commission is concerned that in the context of open-line programming there is little opportunity to develop and maintain the high standards of investigative reporting necessary to deal adequately and fairly with certain issues. Accordingly, a licensee broadcasting open-line programming of an investigative nature has an important duty to ensure the prevention of any errors, carelessness or lack of professionalism which have potentially serious consequences to individuals and groups in the community...

The issue of controversial programming came to peak in January 1976 in a report on an investigation of the promotional campaign on Quebec Bill 22 conducted by radio station CFCF in Montreal in September 1975.

In response to a number of complaints the CRTC requested tapes of the programming on Bill 22 and analysed those tapes that were audible. They found that the station has allocated an unusually high amount of its broadcast time to programming related to the campaign and that 28% of the time allocated to the campaign was spent on editorializing and that only 4% of the time was devoted to news and information about the campaign and events relating to the circulation of the petition. The Bill in question was never read or explained to the audience although members of the audience were being asked to sign a petition against it. Finally, the host's comments were almost entirely in favour of the campaign and very little of the opposing point of view was presented over the air.

The CRTC stated that its consideration of the issue of balance had to be made on a case-by-case basis, but in the case of the coverage of CFCF, the "preliminary view is that the station has failed to provide a sufficient degree of balanced programming..." The licensee was notified that the matter would be raised at the time of licence renewal.

In judging whether the responsibility of the broadcasters had been met with regard to the coverage of controversial issues the CRTC stated that it would take into account a number of factors:

- an appraisal of the number of other broadcast media in the areas served by the licensee through which differing points of view may be expressed;
- the sensitivity of the public issue under discussion;
- the availability of spokesmen representing differing points of view;
- the broadcasting techniques employed by the station in conducting a campaign;
- the identification of editorial opinion as such;
- the type of opportunities provided on the licensee's station for the expression of differing views taking into account the nature of the program, its scheduling, and the freedom allowed for such expression.

(iii) Controversial Programming

After the CFCF licence renewal hearing the CRTC issued a policy statement on controversial programming. (CRTC, February 4, 1977). The statement was addressed to all broadcasters and CRTC's stated objective was "to encourage and stimulate broadcasters to experiment with and find new approaches formats and standards for controversial programs".

In that statement, the CRTC reiterated the history of the CFCF case and gave its conclusion based on information received at the licence renewal hearing that CFCF "failed to provide adequately in its own programming for a reasoned and responsible discussion of the subject. The CRTC then raised a number of issues about the coverage of controversial issues including: the adequacy of the open-line format for the discussion of controversial issues and the need for special precautions by broadcasters in the case of this type of programming of controversial issues the possible need for a

distinction in any station's programming between public service campaigns and informational programming on controversial issues; the possible need for an "arm's length relationship" between those promoting and those reporting on a campaign; the extent of a licensee's responsibility to offer differing views on controversial issues and the possible need for a right of reply.

The CRTC also reiterated its fundamental principles with respect to the coverage of controversial issues: that radio frequencies are public property and holding of a licence is therefore a public trust; the need for full information on matters of public concern, the duty of the broadcaster to devote a reasonable amount of broadcast time to the coverage of public issues and to cover controversial issues of public importance fairly by providing the opportunity for the presentation of contrasting views.

The CRTC noted that:

> The licensee's right to freedom of expression must not supercede the public's right to receive programming which provides a reasonably balanced opportunity for the expression of differing views on matters of public concern... It is a denial of this right by a broadcaster which is a form of censorhsip.
>
> In this day of intense competition in radio for audience loyalty to stations rather than programs the broadcaster has a heightened responsibility... It is a matter of editorial judgement on the part of each broadcaster to determine the gravity of the controversy. The statement that broadcasting is a changing and evolving art and no fixed permanent criteria can be set down for the best method of presenting controversial material. (See BBG circular 51 of 18 December 1961)
>
> ...The Fowler Commission Report also reminds us that the concept of balance "rejects the notion that broadcasters can limit themselves to giving the public what it wants"

> defining the public as being "the majority" or the average viewer or listener (which is a very useful myth). On this point the 1960 Pilkington Report, which studied British Broadcasting stated:
>
> "to give the public what it wants seems at sight unexceptionable. But when it is applied to broadcasting it is difficult to analyse. The public is not an amorphous mass; however much it is counted and classified under this or that heading, it is composed of individual people... "Those who say they give the public what it wants begin by underestimating public taste and end by debauching it". (Pilkington Report, p.p. 16-18)

The CRTC then enumerated the principles developed during the Air of Death hearing and gave notice of a Task Force on Freedom of Broadcast Information which was set up mid-1976. It is not clear whether the Task Force ever reported or whether its recommendations were adopted as policy.

(iv) News Coverage and Reporting

In approving the licence renewal of station CJOY (CRTC 77-60) the CRTC noted that the news director of the station was also the Mayor of the city of Guelph. "In this regard the licensee has advised the Commission of the steps it has taken to guarantee fair and balanced reporting of news and public affairs programs, particularly in relation to civic and election coverage.

In 1979, the CRTC renewed the licence for CIGM-FM (CRTC 79-276) but noted an intervention from the Member of Parliament for the area citing incidents of biased political coverage allegedly committed by an official in the licensee company who was a city alderman in the area. Again, the CRTC stated that the licensee has provided evidence of the steps taken to ensure balanced coverage.

(v) The Instapoll

Radio station CFCF conducted an "instapoll" after the tragic events in the Quebec National Assembly on May 8th, 1984. An instapoll is an audience survey conducted on a matter of public interest by telephone and broadcast during the same day. With regard to the instapoll conducted by the station, the CRTC found that:

- the question was poorly worded;
- Instapoll is a most inadequate device for dealing with fundamental public issues of great sensitivity, particularly given the scientific invalidity of the technique;
- the inviting of extreme sentiments to be expressed just after a tragic event ignored the possibility of aggravating the situation and adding to the grief of the families of the victims.

The CRTC considered that the situation has made a serious error in judgement and thus has failed its responsibilities under the Broadcasting Act. There were, however, in this case, some mitigating circumstances, including the responsible nature of the on-air commentary, the issuance of a public apology and the admission of the error in judgement in a report to the CRTC. Thus, the CRTC concluded that no public hearing was required and that the specific issue would not be raised at the time of the licence renewal. The CRTC did state that it would request of the licensee that it provide evidence of the safeguards it had established in dealing with controversial public issues, especially where such coverage had the potential for serious consequences for individuals and groups within the community.

E.3 The CRTC's Role

Handling the supervision and regulation of the Canadian broadcasting system with respect to the issues of balance and adequacy of coverage of public issues is a very difficult task indeed. No agency wants to be in a position of stifling creative effort or the discussion of controversial issues. No agency wants to function as a censorship body. At the same time, the Broadcasting Act calls for a system that is of "high standard" and mandates the CRTC to supervise and regulate in light of this criterion.

It is clear from the above that the CRTC has an extensive and indeed well-conceived and articulated policy with respect to the adequacy of coverage of public issues. The elements of that policy range from a definition of "honest bias", to standards for open-line programs, to standards for techniques to be used in the case of covering public issues.

The CRTC has accomplished the development of this policy without ever intervening directly in the content of the programming itself, without ever telling a broadcaster what can (and cannot) be said before a program is broadcast. It has developed ways of setting standards for "high quality" without censoring any information.

At the core of the CRTC policy is a fundamental notion about the role of media in a democracy: a democratic society demands a free exchange of ideas as informed as possible, by those empowered to provide information on public issues and taking into account

the rights of individuals to receive programs that reflect a reasonably balanced opportunity for the expression of differing views on matters of public concern.

It is also clear that the CRTC has chosen to act in terms of this policy on many occasions, often in response to public complaints. Individuals and groups might wish the CRTC to act with greater frenquency in response to complaints, of course. The CRTC must balance these demands against other demands on its resources. It must also ensure that other resources are available for the monitoring of performance once decisions have been made that call for such monitoring.

This does not mean that the CRTC will call a public hearing each time members of the public consider that a serious imbalance has occured and of course, the judgement of the CRTC can sometimes be questioned in deciding whether action on complaints is required. Nonetheless, it is clear that the CRTC has both the policies and the mechanisms for action and that these policies have been implemented in many instances in the past.

E.4 The Broadcaster's Role

Standards for journalistic practice are better articulated in the case of the CBC than they are for private broadcasting. With a variety of policies in place for CRTC supervision of the adequacy of coverage of public issues, however, the need for other standards is less urgent than it is in other instances.

E.5 The Public's Role

Ironically, the debate about censorship has done a disservice to those seeking "high standards of quality" in program content. Censorship involves formal or informal pre-clearance of programming and the screening out of particular ideas or viewpoints from broadcast program content. Even if no attempt to censor programming is made, there is still scope for supervising and regulating the content of broadcast programming so that the Canadian broadcasting system is one that serves the needs of all Canadians well. The public is not well informed of existing methods of dealing with inadequacies of program content other than censorship. Too easily, concerned members of the public are dissuaded from making their views about broadcast program known because they fear any form of censorship.

E.6 What is to be Done?

The policies on the adequacy of handling public issues are not collected in any one document, especially considering decisions that have occurred since the public announcement on "Controversial Programming in the Canadian Broadcasting System" was released in 1977.

There is a clear need for a collection of these policies into one document and its distribution through the normal procedures of the CRTC. A publication of this sort would be a significant step in resolving public concerns about the role of the CRTC in supervising the adequacy of media coverage of public issues.

Of course, such a publication, besides providing an overview of existing policy, might stimulate a demand for more hearings on the adequacy of coverage of public issues. Our point is simple. That demand already exists in the literally thousands of complaints received by the CRTC. In our opinion, the "policy" on balance is a dramatic example of a creative response to a difficult problem. What should be demonstrated to the public then, is that the CRTC already has both a policy framework and a mechanism to respond to those complaints that it regards as serious and worthy of particular consideration.

QUESTIONS OF IMPLEMENTATION

(A) Introduction

In the previous sections of this report, information has been provided on current mechanisms for handling complaints about broadcast program content. The policies of the CRTC have been examined and the role of the CRTC and of broadcasters identified in terms of each type of complaint.

Recommendations have been made with respect to the four types of complaints identified at the beginning of this report: complaints about the misrepresentation of persons, complaints about the adequacy of the depiction of segments of the population complaints about abusive programming and finally complaints about the adequacy of the coverage of public issues. Each of these recommendations is specific to the type of complaint being discussed. In the case of some types of complaint, the recommendations are simply for the publicization of existing policies and procedures.

It remains in this section to survey the recommendations to determine: (1) whether the issues raised in the complaints have been dealt with adequately; (2) whether the legal authority exists to carry out the recommendations; (3) whether there are other problems with respect to its implementation.

(B) Complaints about Misrepresentation of Persons: The Need for a Mechanism of Redress

B.1 The Adequacy of the Recommendation

The proposed recommendation for a Broadcast Media Council would extend and supplement the capacity of the broadcasting system to handle complaints to include those of personal misrepresentation.

B.2 The Legal Authority

There are significant questions whether the CRTC as currently constituted has the legal authority to perform this task, except in relation to questions like "balance" and the presentation of differing views on matters of public concern.

There is also some question about whether Parliament has jurisdiction to create a facility to deal with complaints about the misrepresentation of persons. These complaints are civil matters that fall within the jurisdiction of the provinces. The press councils are all organized on a provincial basis and even broadcast media are included in terms of reference of one provincial press council.

We have recommended the establishment of a consensus-based organization to handle complaints about personal misrepresentation in the broadcast media. Such a body would be established by its members drawn from the public, the industry, the CRTC and would operate on the basis of being a voluntary organization. As

such, it would be empowered by the terms of its own incorporation and its by-laws. No legal barriers exist to the establishment of such a body, nor to the participation of different groups within it.

B.3 Problems in Implementation

Proposals for such a Council have been made in the past without success, although in that case, the proposals were made by an interested party. We have taken the position that there is no a priori reason why self-regulatory approaches cannot work, provided they are implemented and enforced. Even with a self-regulatory approach, however, it is not clear yet that all members of the industry or the CRTC are convinced of the need or the possibility of instituting a means of redress in the case of personal misrepresentation.

(C) Complaints about the Adequacy of the Depiction of All Segments in Society

C.1 The Adequacy of the Recommendation

Provisions proposed within Bill C-20 attest to the need as do comments from the House of Commons Sub-committee on Sexually Abusive Broadcasting.

Bill C-20 includes the following:

> 3. Section 3 of the said Act is amended by adding thereto, immediately after paragraph (c) thereof, the following paragraph:
>
> "(C.1) the programming provided by the Canadian broadcasting system should respect and promote the equality and dignity of

all individuals, groups or classes of individuals regardless of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability"

4. Subparagraph 16(1)(b)(i) of the said Act is repealed and the following substituted therefor:

"(i) respecting standards of programs for the purpose of giving effect to paragraph 3(C.1) and standards of programs and the allocation of broadcasting time for the purpose of giving effect to paragraph 3(d)".

The House Sub-committee on Sexually Abusive Programming also took a position on the depiction of women (and by implication other groups) in the media:

> ...we stress the role of the CRTC in encouraging more balanced representations of women. The Commission must be responsible for monitoring the initiatives of broadcasters and distributors... The reports and the Commission's assessment should be made the subject of Parliament debate and be made available to the public for criticism.

These comments of an all-party Parliamentary Committee reflect the depth of Parliamentary concern for the resolution of complaints about the adequacy of the depiction of any segment of society.

Our report calls for a strengthening of existing activities to rectify the inadequate depiction of any group within society in the media. It recommends an extension of the Task Force approach to other issues, with or without the necessity of an actual task force as required.

Our report draws attention to the market realities that sometimes underlie the inadequate depiction of groups within society, children for example, and suggests that alternative approaches to the licensing and funding of services designed to reach and reflect these audience may be required.

C.2 The Legal Authority

No measures are proposed that go beyond the legal authority of the CRTC as currently mandated, and certainly as the CRTC would be mandated if Bill C-20 were passed.

C.3 Problems in Implementation

The Task Force on Sex-Role Stereotyping was a response to public controversy and to the concerns raised by a number of groups. What will happen if the preoccupations of these groups shift (for whatever reason) and the current level of controversy is reduced? What about those groups for whom there is now no controversy and no active lobby for change?

The proposed Bill C-20 seems to call for an active engagement of the CRTC in promoting equality of individuals through the media. This approach is consistent with recent initiatives by the CRTC (the Task Force, for example). On the approach of the CRTC with respect to issues of program content -- and in particular activities that actively promote equality -- it is worth noting a recent speech by CRTC Chairman André Bureau, speaking to the Association of Financial Analysts in Montreal (Information Release

April 3, 1985). Mr. Bureau said, "Broadcasting and telecommunications must be seen and treated as industries like any other and not simply as cultural forces or vehicles." The Information Release also noted:

> the initiatives the Commission has taken to effectively respond to the needs of an industry that is rapidly evolving and internationalizing. He (Mr. Bureau) confirmed that the Commission is ready to consider relaxing regulations on cross-ownership, on a case-by-case basis, if that is what it would take to ensure strength and long term viability; moving towards a more supervisory approach and away from heavy-handed regulation...

Nothing in a competition-oriented approach necessarily precludes the CRTC from dealing actively with programming content and implementing measures designed to ensure the adequacy of the depiction of all segments in society. It remains to be seen what direction the CRTC will seek with respect to its activities connected to program content.

(D) Complaints about Abusive Programming

D.1 The Adequacy of the Recommendation

There is no question about the seriousness of public concern. The recommendations of the House Sub-committee leave little room for doubt. For example, in responding to the first draft of the pay television code (since changed), the Sub-committee dealt with the proposed classification system:

> The classifications would be made by pay television distributors themselves, people who have not shown an adequate understanding of the issue. The guidelines also state that portrayal of gratuitous violence will

> be avoided. However there is no attempt to identify this material more specifically or to ensure that licensees understand what the term "gratuitous violence" refers to in some other systematic way.

After supporting the proposed amendment to the CRTC regulation on abusive programming and the proposed new Bill, the Sub-committee states:

> ...However, we think it is important that the provisions of any proposed legislation and regulations should not only affirm the principle of equality between men and women; it should also indicate that broadcasting sexually abusive material seriously compromises that principle. The term sexually abusive programming should be defined...

In connection with the proposed Bill C-20, the Sub-committee notes that:

> No matter how well conceived this legislation is, it will not be effective if it is not enforced. Fines actually imposed must be high enough that they cannot be written off as the costs of showing sexually abusive material. The CRTC also has responsibilities in this area. It must be firm in holding hearings and revoking licences where the evidence would warrant it... The system should also provide for prompt scrutiny of individual complaints.

In this connection, it notes that the provisions of the new Bill would allow the Minister of Communications to give directions to the CRTC, to ensure that the CRTC acts with respect to sexually abusive material.

In the preceeding section it was noted that the CRTC had a fundamental choice with respect to its orientation to the amended regulation on abusive comment. The CRTC could choose to interpret the regulation narrowly and deal with abusive comment, for example, only to the extent that an offence under the Criminal Code was committed. There is some evidence that the public expects the CRTC to take a different approach, to act as an investigatory body, much like a human rights commission would, only with respect to complaints about broadcast program content.

The House of Commons Sub-committee leaned more towards the second approach, in seeking a clear definition of abusive programming and vigorous enforcement of the regulation.

If the CRTC intends to pursue the former course, the recommendations made here provide for an increased range of response from the CRTC for complainants. At the same time, it must be noted that they do not create a complete equivalent to a human rights commission, except with respect to complaints about personal misrepresentation. Discrimination of other kinds is dealt with, instead, by seeking more adequate representation of all segments of society in broadcast programs.

D.2 The Legal Authority

There is no question about whether the CRTC has the power to enforce its regulation and to interpret this regulation is a broad manner without engaging in censorship, since complaints would be investigated after the fact.

D.3 Problems in Implementation

All organizations, governmental or not, tend to act when they are pushed. This places a heavy burden on members of the public and voluntary groups to sustain the pressure on issues of concern to them. Members of Parliament represent a liaison between the public and government, but there are limits to the pressure that legislators can legitimately put upon regulatory agencies, except in Parliament or as members of Parliamentary Committees mandated to hold hearings on particular problems. Thus, unless pressure comes directly from the public and through Parliament itself, it would be unrealistic to expect any governmental body to act pro-actively, given the competing demands upon its resources.

(E) Complaints about the Adequacy of Coverage of Public Issues

E.1 The Adequacy of the Recommendations

The recommendations support the existing policies of the CRTC and their publicization. These policies deal effectively with questions of balance and diversity of information, but less effectively with other issues of content. Questions about potentially offensive -- in the sense of abusive or obscene -- programming are dealt with by law and under regulations. Questions about issues like violence on television are not.

E.2 The Legal Authority

There is no question that the CRTC possesses the authority to deal with issues of balance and the representation of differing views on issues of public concern. The Court has confirmed the CRTC's power to deal with programming and even with broadcasting techniques. (See CKOY Ltd. v. The Queen (1978), 90 D.L.R. (3d) 1, p. 10)

What about other kinds of issues of content? Here the picture is more complex. To determine how the depiction of excessive and gratuitous violence, for example, might legitimately be the subject of regulation is difficult; to do so without suggesting the CRTC become a censorship body is even more difficult yet.

John Lawrence, former CRTC Counsel and now Vice Chairman of the CRTC, argued in 1975 that the CRTC would have trouble creating regulations on the depiction of excessive and gratuitous violence. (CRTC Symposium on Television Violence, 1975) In his view, the provision in the Act that broadcasting should "strengthen and enrich..." would be difficult to implement in terms of a general regulation prohibiting excessively violent entertainment on television, in part because it would be impossible to define excessive violence in a manner that did not include legitimate program content by any standard.

At the time Mr. Lawrence spoke in 1975, it was thought by some people that the CRTC might act on the question of the depiction of excessive and gratuitous violence against persons on the basis of provisions in the Bill of Rights. Mr. Lawrence argued that the CRTC would not fall under those provisions. Whether his arguments about the scope of the Bill of Rights will be sustained in light of the new Charter remains to be seen. Without a Charter decision on the question, it is likely the CRTC would be reluctant to act, since they have no clear legal authority to do so.

E.3 Problems in Implementation

Unless the orientation of the CRTC changes dramatically and unless significant changes occur in the Broadcasting Act (different changes than are now proposed), little change should be expected in the approach now taken by the CRTC with respect to issues of content like violence on television. For this reason, the recommendations offered here simply reinforce the current policy approach of the CRTC.

APPENDIX A

CANADIAN ORGANIZATIONS FROM WHOM WRITTEN COMMENTS AND INFORMATION WERE SOLICITED

Federal Government

Canadian Human Rights Commission, Ottawa
Canadian Radio-television and Telecommunications Commission, Ottawa
Department of Communications, Ottawa
Department of Consumer and Corporate Affairs, Ottawa
Secretary of State, Multiculturalism Directorate, Ottawa

Provincial Governments

British Columbia - Ministry of Universities, Science and Communications, Victoria
British Columbia - Office of the Ombudsman, Victoria
Alberta - Ministry of Utilities and Telecommunications, Edmonton
Saskatchewan - Ministry of Communications, Regina
Manitoba - Ministry of Culture, Heritage and Recreation, Winnipeg
Ontario - Ministry of Transportation and Communications, Toronto
Québec - Office de la Protection du consommateur, Montréal
New Brunswick - Department of Transportation, Fredericton
Nova Scotia - Ministry of Transportation, Halifax
Prince Edward Island - Department of Transportation and Public Works, Charlottetown
Newfoundland - Department of Communications, St.John's

Advertising Industry

Advertising Advisory Board, Toronto
Advertising Standards Council, Toronto
International Business Council of Canada, Montreal
Telecaster Committee, Toronto

Broadcasting Industry

Canadian Association of Broadcasters, Ottawa
Canadian Broadcasting Corporation, Ottawa
CTV Television Network, Toronto
Knowledge Network of the West Communications Authority, Victoria
Alberta Educational Communications Corporation, Edmonton
Saskatchewan Educational Media Services, Regina
TVOntario, Toronto
Radio-Québec, Montreal

Cable Television Industry

Canadian Cable Television Association, Ottawa
Rogers Cablesystems Inc., Toronto

Pay Television Industry

First Choice Canadian Communications Corporation, Toronto
Allarcom Pay Television Limited, Edmonton

Press Councils

Mississauga News Community Advisory Board, Mississauga
British Columbia Press Council, Vancouver
Alberta Press Council, Calgary
Manitoba Press Council, Winnipeg
Ontario Press Council, Ottawa
Quebec Press Council, Quebec City
Atlantic Press Council, Halifax
Windsor Media Council, Windsor

Labour Organizations

Alliance of Canadian Cinema, Television and Radio Artists, Toronto
American Federation of Musicians of U.S. and Canada, Toronto
Canadian Actors' Equity Association, Toronto
Canadian Association of Broadcast Employees, Hamilton
Canadian Union of Public Employees (Broadcast Council), Ottawa

Labour Organizations (cont'd)

International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the U.S. and Canada (Local 58), Toronto
National Association of Broadcast Employees and Technicians, Willowdale
B.C. Federation of Labour, Burnaby
Canadian Labour Congress, Ottawa

Public and Professional Organizations

Assembly of First Nations, Ottawa
Canadian Arab Federation, Etobicoke
Canadian Advisory Council on the Status of Women, Ottawa
Canadian Association for Better Broadcasting, Outremont
Canadian Association in Support of Native Peoples, Toronto
Canadian Civil Liberties Association, Toronto
Canadian Coalition Against Violent Entertainment, Hamilton
Canadian Coalition Against Media Pornography, Ottawa
Canadian Council of Christians and Jews, Toronto
Children's Broadcast Institute, Toronto
Chinese Canadian National Council, Toronto
Committee for Racial Justice, Vancouver
Consumers' Association of Canada, Ottawa
Council for Yukon Indians, Whitehorse
Dene Nation, Yellowknife
Federation of Saskatchewan Indian Nations, Regina
La Fédération Professionnelle des journalistes du Québec, Montréal
Indian Immigrant Aid Services, Toronto
Metis Association of the Northwest Territories, Yellowknife
National Action Committee on the Status of Women/Comité Canadien d'action sur le statut de la femme, Toronto
National Association of Japanese Canadians, Vancouver
National Black Coalition of Canada, Brossard, P.Q.
National Watch on Images of Women in the Media Inc./Évaluation Nationale des images des femmes dans les médias Inc. (Media Watch/Évaluation médias), Vancouver
Native Council of Canada, Ottawa
Saskatchewan Association on Human Rights, Saskatchewan
Tribal Chiefs Association, St.Paul, Alta.
Union of British Columbia Indian Chiefs, Vancouver

ORGANIZATIONS OUTSIDE CANADA FROM WHOM COMMENTS AND INFORMATION WERE SOLICITED

Australia

Australian Community Television
Australian Press Council
Broadcasting Council

Europe

Commission of European Communities, Brussels, Belgium
European Broadcasting Union, Geneva, Switzerland
International Institute of Communications, London, U.K.

France

Antenne 2
TéléDiffusion de France

Sweden

Konstnors Nammden (The Arts and Grants Committee)
Sveriges Radio

United Kingdom

British Broadcasting Corporation
Independent Broadcasting Authority
U.K. National Consumer Council

West Gernamy

ARD German Television
Protestant Association for Media Consultation
Zweites Deutsches Ferneshen

United States

Federal Communications Commission
Cable Television Bureau
Private Radio Bureau
American Broadcasting Companies, Inc.
CBS Inc.
National Broadcasting Co. Inc.
Public Broadcasting Co. Inc.
Public Broadcasting Service
Eastern Educational TV Network
Central Educational TV Network
Pacific Mountain Network
Southern Educational Communications Association
Action for Children's Television
American Council for Better Broadcasts
Corporation for Public Broadcasting
Council on Children, Media and Merchandising
National Association for Better Broadcasting
National Citizens' Committee for Broadcasting
National Telemedia Council Inc.

APPENDIX B

LIST OF CANADIAN ORGANIZATIONS INTERVIEWED

Federal Government

Canadian Human Rights Commission, Ottawa
Canadian Radio-television and Telecommunications Commission, Vancouver and Toronto
Department of Communications, Ottawa

Provincial Governments

Ontario - Ministry of Transportation and Communications, Toronto
Ontario - Ontario Theatres Board, Toronto
Québec - Commission des droits de la personne, Montréal
Québec - Conseil du Statut de la femme, Montréal
Québec - Ministère des Communautés culturelles et de l'immigration, Montréal
Québec - Ministère des Communications, Québec
Québec - Office de la Protection du consommateur, Montréal
Québec - La Régie des services publics du Québec, Ste-Foy

Advertising Industry

Advertising Advisory Board, Toronto
Advertising Standards Council, Toronto
La Confédération générale de la publicité, Montréal

Broadcasting Industry

Canadian Association of Broadcasters, Ottawa
Canadian Broadcasting Corporation, Ottawa
CTV Television Network, Toronto
Radio-Canada, Montréal
Radio-Québec, Montréal
TVA Television Network, Montréal

Cable Television Industry

Canadian Cable Television Association, Ottawa
Rogers Cablesystems Inc., Toronto

Pay Television Industry

First Choice Canadian Communications Corporation, Toronto

Press Councils

Le Conseil de Presse du Québec, Quebec City
Ontario Press Council, Ottawa

Public and Professional Organizations

Canadian Coalition Against Violent Entertainment, Hamilton
Consumers' Association of Canada, Ottawa
La Fédération Professionnelle des journalistes du Québec, Montréal
Institut Canadien d'éducation des adultes, Montréal
La Ligue des droits et libertés, Montréal
National Association on the Status of Women, Toronto
National Watch on Images of Women in the Media Inc./Évaluation Nationale des images des femmes dans les médias Inc. (Media Watch), Vancouver

APPENDIX C

PAY TELEVISION PROGRAMMING STANDARDS AND PRACTICES

A. Introduction

Pay television network licensees in Canada are committed to the presentation of programming services which are well-balanced, of high quality, and of interest to a wide number of Canadians. The programming so presented is intended to appeal to a variety of interests and tastes.

A major appeal of the premium pay television services in Canada as well as in the United States is the ability to see feature films and other programming material in their original theatrical form, uninterrupted by commercials.

Pay television is distinguished from conventional television as it requires an affirmative decision by a subscriber to receive it "unscrambled" in the home. As a discretionary service, pay television has more latitude to program material that is intended for mature audiences than is the case with conventional television.

Therefore, pay television network licensees have a responsiblity to ensure that the programming they provide is of high quality and meets general community standards within the context of a discretionary service.

B. Selection of Programs

1. Responsiblity for Selection

As provided in the Broadcasting Act and in the conditions of licence, selection of programs is the responsiblity of the particular pay television licensee. The network licensee is by law responsible for what is distributed and will not delegate this responsibility.

2. Relationship with Producers

In the course of approving the production, particularly prior to commencement of filming or taping, or in approving any changes during production, pay television licensees can influence producers positively in their exercise of good judgment and taste. In order to raise issues of concern with independent producers, pay television network licensees will distribute a copy of this document to all independent producers who apply for script and concept development funding, for pre-licensing of product, and to all regular program suppliers, whether Canadian or foreign.

3. Exercise of Discretion

The discretion in the selection of programs will be exercised by the programming personnel of the pay television network licensee, as directed by this policy statement, and by the management of the licensee. All material will be fully screened prior to airing.

4. Basis of Discretion

The discretion of programming personnel will be exercised responsibly and in good taste. In particular, no material should be selected that is:

a) contrary to law, including the Broadcasting Act and CRTC Regulation; or

b) offensive to general community standards.

"Community standards" will necessarily change over time and therefore will be subject to continuing review and evaluation. Pay television licensees will not select programming that would go beyond an "R rating" or its equivalent, as established under Part C hereof.

5. Previews

Notwithstanding the above, where the program is aired in preview periods (i.e. when the programming is unscrambled and may be received whether or not the subscriber ordered it), pay television licensees will select programming that meets the same standards of scheduling and content that apply to conventional broadcasters.

C. Classification and Cautionary Warnings

1. Program Guide

In order that viewers will be able to exercise an informed choice on what they wish to watch on pay television, pay television licensees will provide a monthly program guide to the cable companies for distribution to their subscribers. They will also send out program information to all media for inclusion in their television listings. In addition to the single-letter classifications described below, pay television licensees will provide in their program guide where possible appropriate and adequate descriptive warnings as to the nature of the material, e.g., "Adult situations and language", "graphic violence", "some nudity".

2. Single-Letter Classification

In order to provide broad guidance as to the suitability of the programming, pay television network licensees will regularly provide at least the following classification in their guides for each of their programs;

First Choice and Superchannel:

G: Suitable for viewing by a general audience of all ages;
PG: Parental Guidance suggested. Some material may not be suitable for children;
A: Parents are stongly cautioned that some material may be insuitable for children and young teenagers. Discretion is advised;
R: Contains material that is recommended for adult viewing only.

Super Écran

Tous - For all
14 and over
18 and over

3. On-Air Warning

Where appropriate, pay television licensees will provide a cautionary warning on-the-air at the beginning of the program, indicating the information set out in Appendix "A".

4. Decision on Classification

The decision as to classification will be made by the particular pay television licensee involved, based on screening the particular version intended to be aired. However, pay licensees will attempt to coordinate ratings of films so that the same types of classification are used on all pay networks where material is duplicated. In making this decision, licensees should take into consideration any ratings or classifications that may have been given to the program by other appropriate industry or government bodies. In some cases, however, there may be no other ratings upon which a comparison can be made; in such cases, the pay television licensee will use its best judgment in assigning an equivalent rating. All programs will be rated. X-rated films will not be shown. Descriptions of the meaning of classifications will be included in the program guide each month.

D. Program Concerns

1. Sex-Role Stereotyping

This question has been extensively explored in the Report of the Task Force on Sex-Role Stereotyping to the CRTC. While pay television networks depend on major studios as the primary source of their movie product, licensees have a responsibility to raise the issue with producers who seek script and concept development funding and the pre-licensing of product. Pay television networks will seek to fund programming that provides a balanced view of sex roles and will adhere to the CAB Sex-Role Stereotyping Guidelines in this respect.

2. Gratuitous Violence

The portrayal of violence which when taken in context is gratuitous will not be shown and pay television licensees will reflect this policy in their selection process described in these guidelines. (Programming personnel will exercise particular care and discretion in pre-screening material and considering the context of any possibly objectionable material).

E. Scheduling of Programs

1. Scheduling

Pay Television generally includes fewer programs per month than conventional broadcasting, but such programs are repeated more frequently to suit the convenience of the schedules of the subscribers. At the same time, pay television licensees are sensitive to the concerns expressed by some that mature material should not be scheduled in periods when school-age children are home. There may also be certain mature material that should only be programmed in the late evening or early morning hours.

2. Family Viewing

Pay television licensees will exercise particular care for all time periods in the scheduling of programs that are likely to be considered as not suitable for viewing in a family context.

3. Adult Movies or Programming

In addition, pay television licensees will exercise their discretion carefully in regard to programs of which sexually explicit and/or violent material is the dominant element, so that such programming will be scheduled in the late evening or early morning hours only.

These guidelines will be reviewed after one year for adequacy.

Pay television licensees will establish an industry committee to oversee the implementation of the guidelines and to deal with complaints received.

(Appendix C - cont'd)

APPENDIX A

1. "Pay licensee" is proud to present this program which is suitable for viewing by all ages.

2. The following program contains scenes of violence and therefore viewer discretion is advised.

3. The following program contains scenes which use coarse language. Viewer discretion is advised.

4. The following program contains scenes of nudity. Viewer discretion is advised.

5. The following program deals with mature subject matter. Viewer discretion is advised.

6. The following program contains scenes of extreme violence. Viewer discretion is advised.

7. The following program contains scenes of violence and coarse language. Viewer discretion is advised.

8. The following program contains scenes of nudity and violence. Viewer discretion is advised.

9. The following program deals with mature subject matter and contains scenes of violence and nudity. Viewer discretion is advised.

10. The following program contains scenes of nudity and coarse language. Viewer discretion is advised.

11. The following programs deals with mature subject matter and contains scenes of nudity and coarse language. Viewer discretion is advised.

12. The following program contains scenes of extreme violence and coarse language. Viewer discretion is advised.

13. The following program contains scenes of explicit sexuality and nudity and may be offensive to some viewers. Therefore, this film is recommended for mature audiences only.

14. The following program contains scenes of extreme violence, nudity and coarse language. Therefore, this film is recommended for mature audiences only.