



Canadian Broadcast Standards Council  
Conseil canadien des normes de la radiotélévision

# 2000 / 2001 Annual Report

**“Encouraging Excellence in Broadcasting”**

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## Message From The National Chair

This is my tenth annual Message as National Chair. As I look back on the growth of the Canadian Broadcast Standards Council, I realize that our journey has been marked by many distinguishing steps along the way.

More than anything, though, I must underscore the commitment of Canada's private broadcasters to the self-regulatory system. It is that commitment, above all else, that makes the Canadian approach such an excellent model. It is that commitment to an entirely voluntary system that enables the CBSC to deal consistently, effectively and exclusively with all content issues. In short, it is that commitment that ensures that the system works.

In addition to updating readers on facts and figures relating to familiar subjects, such as complaints, decisions and so on, there have been, in the current year, some new matters to highlight.

### THE NEW CAB CODE OF ETHICS

The Canadian Association of Broadcasters established its industry *Code of Ethics* in 1988. It is that Code that the CBSC has been using since its first decision, on April 26, 1991. Over the years, the various CBSC Panels have rendered hundreds of decisions, many of which have developed the concepts established in that Code and, for that matter, the 1990 *Sex-Role Portrayal Code* and the 1993 *Violence Code*, as well as the *RTNDA Code of (Journalistic) Ethics*. Many of those jurisprudential glosses remained inaccessible and obscure, except to those who were close followers of the CBSC decision process.

The initiative taken by the CAB to update the *Code of Ethics* to reflect the body of decisions taken by the Council over the previous decade was a welcome one. The principal document codifying the private broadcasters' standards now reflects ten years of thoughtful decision-making by the CBSC Panel Adjudicators.

There were many helpful small changes throughout the Code; however, the highlights of the revised Code include:

- the extension of the protection of the human rights clause to persons on the basis of their sexual orientation (first extended by the CBSC in 1993);
- the application of the principle of "full, fair and proper presentation" to all types of radio and television programming, including "news, public affairs, magazine, talk, call-in, interview or other broadcasting formats in which news, opinion, comment or editorial may be expressed by broadcaster employees, their invited guests or callers";
- recognition of the local nature of radio, its format and its market and, within that context, the requirement that programming does not contain gratuitous or glamorized violence, unduly sexually explicit material or unduly coarse and offensive language.
- importation into this Code of the application of the Watershed hour (established in the *Violence Code*) to all television programming that includes any type of content intended for adult audiences;
- confirmation of the principle that, whenever viewer advisories are required, they appear at the start of a show and coming out of each commercial break; and
- the assurance that radio or television contests "are not misleading, potentially dangerous or likely to give rise to a public inconvenience or disturbance and that any prizes offered or promises made are what they are represented to be."

The revised CAB *Code of Ethics* became effective August 1, 2002. No matters were decided under it prior to the end of the fiscal year.

## **CROSS-MEDIA CODE**

On the subject of codes, in a series of decisions relating to TVA, CTV and Global Television, the CRTC invited the CBSC to develop a code of conduct dealing with cross-media issues. During the course of the present fiscal year, the CBSC continued working with broadcasters on the development of that code, which it hopes to be in a position to submit to the CRTC early in the next fiscal year.

## **POSITIVE PORTRAYAL OF ETHNOCULTURAL GROUPS**

As a part of the successful application by Rogers Broadcasting for a second multilingual television station in the Toronto area, the CBSC has benefited from the licensee's plan to enhance the portrayal of ethnocultural groups. The Council has been granted the sum of \$1 million spread equally over the term of the new license to extend community access to the Council and its codes. The substance of the CBSC's English-French information brochure which lays out our role and processes will be translated into other languages that will explain portrayal issues and the Council's codes. The funding will also ensure that the CBSC will be better able to handle complaints regarding portrayal issues and, indeed, to respond to all matters of concern to ethnocultural communities in the areas of radio and television broadcasting.

## **DECISION VOLUME**

The past year set a record in terms of the number of decisions rendered by the CBSC. There were 88 in all; 25 of these were the traditional formal Panel decisions and 63 the Summary Decisions that have permitted the Council to cope with increased substantive demands without additional infrastructure.

As always, there were important issues dealt with in these decisions. They included the following matters:

- the scheduling of television programming containing violence, sexual activity, nudity, coarse language and other mature themes, including the specific issue of programming that straddles the Watershed hour;
- the conundrum created by the multiple time zones of Canada with respect to the scheduling of adult programming by single-feed services;
- whether documentaries and other television programming containing sexual themes were exploitative of men or women;
- the requirements of the Violence Code concerning the frequency, format and wording of viewer advisories in television programming;
- whether the use of images or voice-recordings of individuals without their prior consent constitutes a breach of their right to privacy;
- the repetition of graphic violent images in news reports and "news updates" during dramatic programming;
- the use of an expression based on an image of violence against women in sports programming;
- the broadcast of sexually explicit material on radio at times when children are likely to be listening;
- the fine line between ethnic humour and abusively discriminatory content.

## **BROADCASTER MEMBERSHIP**

Even in this area, there has been a "volume" increase. To the CBSC's base of broadcaster members of 470 at the end of the last fiscal year, we have added more than 50 new members; there are now 520 members adhering to the full set of private broadcaster codes.

## **CBSC OUTREACH**

This past year, I participated in the diversity-oriented conference of CRARR (Centre de recherches-action sur les relations raciales in Montreal) and the round table sponsored by MediaWatch in Ottawa. I also testified before the Standing Committee on Canadian Heritage of the House of Commons with the Executive Director. We also made a presentation on the work of the CBSC to the Conseil de l'Audiovisuel de la Catalogne and gave the Council's annual report in person to the new CRTC Chairperson, Charles Dalfen, as well as the other Commissioners and senior staff of the CRTC. I also presented reports at the annual business meetings of the Atlantic Association of Broadcasters, the B.C. Association of Broadcasters and the Western Association of Broadcasters. I also attended and participated in the annual meeting of the international Organization of News Ombudsmen. The National Chair also plays an ongoing role on the Department of Industry's Internet Hotline Advisory Committee and I sit on the Boards of Directors of the Academy of Canadian Cinema and Television and the AV Preservation Trust.

As a part of the CBSC's educational mandate under P.N. CRTC 1991-90, the Council is responsive to inquiries from educational institutions and the media. These reflect the constantly increasing public and academic interest in the achievements of the private broadcasters' self-regulatory system, which is manifested in the growing number of papers and studies done on the Council and its body of decisions. The inquiries also reflect the confidence of the media in the ability of the Council to respond to queries on all aspects of broadcast content, ranging from the decisions of the CBSC itself to general broadcast standards and related issues.

## **THE CBSC WEB SITE**

Our most effective information tool remains the CBSC web site. It never rests. It takes no vacation. It is richly endowed with data. Frequently praised by visitors, it is easy to navigate and supplies almost all the information concerning the Council that anyone could seek: the Codes, of course; the decisions (with transcripts and correspondence) from June 1993; Annual Reports from that of 1994-95 (with statistics, tables, complaint analysis); lists of radio, television and specialty service members, with links to their web sites; links to Canadian (and foreign) Government Departments and relevant bodies, agencies and NGOs, and pertinent American, British, Australian, New Zealand and South African web sites; and access to relevant statutes and regulations, CRTC Public Notices and Decisions, and numerous other relevant documents.

Statistically, we again rose from 127,000 "hits" per month (in 2000-01) to nearly 157,000. The amount of downloaded information grew slightly from 1,200 to 1,342 megabytes per month this year.

## **ACKNOWLEDGEMENTS**

The CBSC depends on its staff and its volunteers. Our Executive Director, Ann Mainville-Neeson, has created the systems and procedures that enable the Council to manage the substantial numbers of complaints, decisions and other information that are the heart of our work. Nicole Lafrance is our charming and effective interface with the public complainants and Teisha Gaylard our constant, dependable and detail-oriented Broadcast Analyst.

On the volunteer side, I am constantly extremely grateful to the talent and dedication of the Panel Adjudicators, whether they are representatives of the public or the broadcasting industry. They all cast aside their industrial or personal subjectivity when they review the program tapes and files. They consider the programming, the codified standards and right and wrong, as a function of them. They are conscious of the role that their conclusions have in the context of Canadian broadcast content policy. Consequently, any ideological perspectives are subsumed in reason and objectivity and Panel decisions tend toward unanimity. The process is the better for their focus and commitment.

**RONALD I. COHEN**  
National Chair

## Overview of Decisions Released in 2000/2001

The CBSC released a total of 71 decisions this year. The great majority of these (50) were "Summary Decisions", which is a testament to the CBSC's growing body of jurisprudence. Summary Decisions are determinations issued by the CBSC Secretariat which circumvent the more time-consuming and costly process of adjudication by a CBSC panel. Needing, of course, to be seen as dealing effectively, fairly and appropriately with public complaints, they are thorough and thoughtful letters which refer to past CBSC panel decisions but which explain why adjudication is not warranted in the case of that specific complaint. Summary Decisions are not made public, are not posted on our web site and are not summarized here since they present no new information as to the application of the CBSC Codes.

A total of 21 Panel decisions were publicly released by the CBSC this year. Of these, 20 dealt with substantive issues while one was a procedural decision only, albeit an important one, in which a broadcaster was found in violation of the CBSC's membership requirements by failing to preserve and provide logger tapes for adjudication when requested. Interestingly, none of the issues dealt with in CBSC Panel decisions this year related to journalistic ethics, previously a very important category. A new category, headed Adult Fare, has been added to reflect a change in issues of public concern.

### GENERAL APPLICATION OF CODES AND CONDITIONS OF MEMBERSHIP

While the substantive issues dealt with by the CBSC always far outnumber and outshine the more mundane procedural matters, some important principles have emerged on the procedural side this year which are worth noting. The first relates to the general application of the Codes and the other to the enforcement of conditions of membership.

#### **The Codes Apply to All Material Broadcast, Including Musical Content**

For the first time, the CBSC was called upon to render decisions about song lyrics. It did so in three decisions released this year, by making it clear that the private broadcaster Codes apply to musical programming content. In the first of these decisions, *CIGL-FM re a song entitled "The Bad Touch"* (CBSC Decision 99/00-0654, October 12, 2000), the Ontario Regional Panel reviewed various kinds of content for which it might have seemed that broadcasters do not have a responsibility. In this category, there might also be assumed to fall advertising, dramatic programming created by third parties, on-air telephone calls from the public and, generally any form of programming not created by the broadcaster or persons for whom the broadcaster has direct responsibility. The Panel concluded that "it is not the intention of the Codes that any material broadcast by any private sector programming undertaking be exempt from consideration thereunder." It further added that "[w]hether it is spoken word or set to music, the same rules apply. Music is, after all, no more or less a form of programming than other dramatic, documentary, news or, indeed, advertising material, all of which must conform to the terms of the various Canadian private broadcaster Codes."

The Panel noted that broadcasters often are provided with tools which facilitate compliance with the Codes.

Music recording companies, like distributors of motion pictures, generally create more than one version of their respective products. They understand that, in order to facilitate the responsibilities of broadcasters and to render broadcast markets more accessible to their products, they must provide versions that are susceptible of being aired. While broadcasters themselves frequently edit motion pictures, whether for content or to ensure that there are appropriate breaks for commercials, it is obvious that recorded popular songs are not as readily susceptible of broadcaster intervention. The decision for the broadcaster, when there is no edited version of a song, may, therefore, become, in black and white terms, whether to play or not to play. Knowing that, in order to assure air time, recording companies frequently provide a second version which they consider suitable for radio broadcast.

The concerns over songs have been with offensive language in two cases and, with violent and degrading lyrics in the other. These substantive issues are summarized below under the appropriate headings.

### **Loss of Logger Tapes: A Serious Issue**

In *CKX-FM re Announcer Comments* (CBSC Decision 00/01-0423, August 20, 2001), the Prairie Regional Panel reiterated and emphasized the importance of broadcaster members' obligation to retain logger tapes when a complaint is received by the CBSC and communicated to them within 28 days of the broadcast. The Panel reminded the broadcaster that the retention of logger tapes is a requirement under both the CBSC's terms of membership and the corresponding requirements of the CRTC.

The Panel explained that

its expectation is one of *result*, not of best efforts. Barring a natural catastrophe of the nature of a fire, broadcasters *must* retain and provide the tapes which are the essence of the self-regulatory, and regulatory, investigations. The failure to comply constitutes a breach of one of the broadcaster's fundamental obligations as a member of the CBSC.

Although the Panel did not have the required evidence to thoroughly investigate the substantive nature of the complaint, it found itself "in a situation in which it appears unfair to the complainant to simply decide that it can make *no* decision." The Panel therefore assumed, on the basis of the complainant's concerns, that the announcer comments constituted a breach of the human rights provision of the *CAB Code of Ethics* that no abusively or unduly discriminatory comments be made regarding persons identifiable on the basis of their mental disability. In that respect, the Panel concluded that:

If, on the face of the complaint, it does appear that the complainant's concerns could reasonably result in a finding of breach on the substantive issue, in addition to the obvious breach of broadcaster standards by reason of the failure to retain the tapes themselves, the Panel will find against the broadcaster on these grounds as well. While not on all levels a satisfactory resolution of the problem of lost logger tapes, it seems unreasonable to deny the complainant's allegations by the unilateral mishandling of the material which the broadcaster is *obliged* to retain and which, ironically, might work to its own advantage in defending its broadcasting choices.

## **ETHICS AND HUMAN RIGHTS**

Of the 21 Panel Decisions released by the CBSC in 2000/2001, ten dealt with human rights or other ethical issues. Discriminatory comment, including allegations of demeaning and degrading comment, topped the list of concerns this year, as it has in years past. As well, also under the general heading of broadcasting ethics, the CBSC was asked to consider whether a broadcaster's decision to cancel a program led to a breach of the so-called "balance requirement", i.e. the requirement that broadcasters provide a balance of views on controversial issues of public interest.

### **Women Get a Bad Rap**

Four decisions this year dealt with demeaning and degrading comments concerning women. The most serious of these comments, found in the lyrics of a rap song, led the adjudicating panel to link its decision to the provision of the *Violence Code* which prohibits the sanctioning, promoting and glamorizing of violence against women.

#### **Bad "Boyz"**

In its second decision relating to song lyrics, namely, *CIOX-FM re the song entitled "Boyz-in-the-Hood"* (CBSC Decision 99/00-619, October 12, 2000) (see the discussion above regarding the application of the Codes to all forms of broadcast material, including musical content), the Ontario Regional Panel considered the lyrics of a song by the band Dynamite Hack which was broadcast by Xfm station in Ottawa. A listener had complained, among other things, about the "violence against women" depicted in the song. The Ontario Regional Panel considered the songs under the Canadian Association of Broadcasters' (CAB) *Code of Ethics* and *Sex-Role Portrayal Code*, as well as, by inference, the CAB *Violence Code*. In this regard the Council concluded that there had been a breach. The Panel stated

The juxtaposition of lyrics such as "Gotta get my girl to rock that body" with such violent imagery as "I reached back like a pimp and I slapped the ho" clearly perpetuate the link between women in a sexual context and women as victims of violence. The lyrics portray the woman in question as a "stupid bitch" and a "ho", whose "talkin' shit" warranted the violent reaction by her partner. Whether the intention of the song is serious or satirical, the Council finds that the lyrics, in their sanctioning, promotion or glamorizing of violence against women, constitute abusive commentary on the basis of gender and are insensitive to the dangers of stereotyping generally and to the exploitative linking of sexual and violent elements in dealing with women.

### **Hands off Wrestling**

Interestingly, the National Specialty Services Panel's first look at professional wrestling, see *TSN re WWF Monday Night Raw* (CBSC Decision 99/00-0398, January 31, 2001) had nothing to do with concerns of violence. Instead, the Panel was asked to consider a very bizarre episode of *WWF Monday Night Raw* in which a wrestling manager named Mae, whose apparent age would not have suggested that she might even be pregnant, "gave birth" to a hand. A viewer complained that this content was "sick and obscene". The Panel agreed with the complainant that the challenged sequence was "repulsive and disgusting" but stated that such matters of taste must be left to the viewer to watch or ignore. On the more important issue of whether the segment in question was demeaning to women, the Panel concluded that the episode "[did] not demean or degrade women or even Mae in particular". In the Panel's view, "[i]t is clear that the situation in which an older woman is in the wrestling ring in the first place, gives birth at all in the second and has as her progeny a hand is far-fetched, to say the very least; however, the fact that the segment is absurd does not render it exploitative."

### **Wrestling with the War of Words**

In its second decision concerning professional wrestling, however, this time concerning a "Raw Is War" broadcast, the National Specialty Services Panel came to a different conclusion regarding the issue of the portrayal of women. A viewer complained that the content of the program was "vulgar, sleazy, sexist and violent," and gave such examples as "A wrestler dressed as a pimp with his "ho train", women dressed sleazily depicted as whores" and "a wrestler calling another scantily clad woman a slut." (The viewer also had concerns about the violent content of the program and that part of the Panel's decision is summarized below under the heading "Violence of Television"). In its decision, *TSN re WWF Raw Is War* (CBSC Decision 99/00-607, January 31, 2001), the Panel concluded that the broadcast contained references to women that were demeaning and degrading and in violation of the Code. In the Panel's view, the use of such language as "a two-dollar walking slut" in reference to a female character, "that little horny she-devil, Terry", in reference to another, and "stop being a filthy, dirty, disgusting, brutal, skanky, bottom-feeding, trashbag ho" constituted a breach of Article 4 of the *Sex-Role Portrayal Code*.

### **Stern Commentary on Women and Puerto Ricans**

In a decision reviewing two episodes of *The Howard Stern Show* broadcast on Q107 in Toronto, *CILQ-FM re the Howard Stern Show* (CBSC Decision 99/00-717, -739, June 28, 2001), the Ontario Regional Panel acted on two complaints, one from an individual concerning one episode and one from

MediaWatch enumerating examples of offensive programming collected in a month of monitoring the show. The complainants expressed concern about sexist and racist comments. These included Stern's expression of his views on immigration, a segment on the extent to which a Playboy Playmate was prepared to go to appear on the show and Stern's "verbal assault" of a call-in listener.

The Panel found that Stern's discussion of immigration issues did not constitute unduly discriminatory comment because it was nothing more than the expression of Stern's *political* opinion. Contrary to the complainant's contention, the Panel found that Stern had "made no comment whatsoever suggesting that American citizens of other national or ethnic groups be stripped of their citizenship and returned to their countries of origin. He does not wish *new* immigrants. It is a defensible view in terms of the freedom of expression."

As to the allegations of sexist and degrading comments, the Panel found that the "suggestions" made by Stern to the manager of a Playmate eager to appear on the Show had gone too far. The Panel concluded that "the cumulative effect of the suggestions that the Playmate smell underwear, be rolled up naked in a rug and forced to ride in an elevator, eat a carrot in Stern's lap while she is naked and eat food out of a dog dish while naked is demeaning and degrading in the extreme." In the view of the Panel, these comments are in breach of Clause 4 of the *Sex-Role Portrayal Code* and cannot be "'gotten away with' on Canadian airwaves."

Moreover, Stern's treatment of a caller who had phoned in to exclaim her disapproval of the Playmate dialogue also went too far according to the Panel. Stern had reacted, among other things, by suggesting that the caller, of Puerto Rican descent, "eat a taco out of [his] crotch", calling her a "big fat cow", then a "fat, ugly girl who can't get squat", suggesting she had a mustache, accusing her of living in an apartment with cockroaches and so on. The Panel concluded that "the comments of the host are both racist *and* sexist. These comments are not borderline. They are extreme. They have no place on the airwaves in *this* country."

In its decision, the Panel addressed the issue of repetitive breaches. The Panel considered the drop in complaints received since the new corporate ownership to be a "promising sign" but required that the broadcaster provide a written explanation of further steps which it will put in place to ensure that such "gaps" as occurred on July 12 will not recur.

### **Sexual Orientation: Not All Comments are Taboo**

Comments regarding sexual orientation in religious/moral right programming were the subject of two decisions this year. In those decisions, both the Ontario and Atlantic Regional Panels distinguished previous decisions of other Panels regarding the same programs (although not the same episodes), finding that the abusive and unduly discriminatory comments against gays and lesbians which had been found in other episodes of the programs under review, were not present in the cases at hand.

### **"Doctoring" Message and Tone: A CBSC Success Story**

In a follow-up to a joint decision of the Atlantic and Ontario Regional Panels regarding the *Dr. Laura Schlessinger Show*, the Atlantic Regional Panel found that the challenged episodes (unlike the previous episodes, which had been found in breach for their cumulatively aggressive negative comments concerning gays and lesbians) had not crossed the line. In its decision *CJCH-AM re The Dr. Laura Schlessinger Show* (CBSC Decision 99/00-0652, February 14, 2001), the Panel reviewed four episodes of the program which aired in June and August on CJCH-AM (Halifax). One of the complainants in the CBSC's previous decision regarding the same program, who stated that "Schlessinger had one of her normal tirades ... in which she emphatically repeated her moral and scientific authority for claiming that gays are 'biological errors'." Following its review of the broadcasts mentioned by the complainant, the Panel found that two of the episodes targeted by the complaint did not contain any commentary whatsoever by the host concerning homosexuality while the other two included the host's reading of a

supportive newspaper article comparing her comments to those of rap singer Eminem, as well as the host's explanation of the evolution of her position on gays and lesbians.

Without modifying in any way its previous decision regarding the *Dr. Laura Schlessinger Show*, the Atlantic Regional Panel found that the broadcaster had not aired comparable material during any of the episodes in question here. The Panel's consideration of the host's challenged statements and their context led them to conclude that, "[i]n this case, while some of the words used are similar to those spoken on the previous occasion, the way in which they are used is totally different here." In the Panel's view,

the host has not gone too far, indeed, that she has not gone *nearly* as far as she had in the earlier CJCH decision referred to above. As she said at one point in her monologue here, "if you call me for a moral framework, I can only give you the ultimate moral framework, as best I understand it." She elaborated, but carefully, and in a fashion limited to reproductive issues. ...

In that regard, the Panel considers that she is entitled to her opinion. She was quite careful to restrict her comments to that issue in a context which was not sweeping. It was more than the complainant wanted to hear, to be sure, but less, far less, than she had said before and not directed to the *group* of persons *on the basis of* their sexual orientation. There was no characterization of the group. There was no use of *any* of the offending adjectives: abnormal, aberrant, deviant, dysfunctional. Such limited opinion as was expressed here falls within the protected bounds established in the earlier decisions noted above. The broadcaster has done its job. There is no breach here.

The Panel noted that, in this case, the host's approach to the issue of gays and lesbians appeared to have softened and the broadcaster's involvement in ensuring compliance with the Code was of assistance:

The Panel has no doubt but that both the tone and tune of the host have changed. Perhaps as the result of the previous CBSC decision, perhaps as the result of other public commentary, perhaps on the basis of matured reflection alone, in the examples raised here, she is not as aggressive in dealing with the issues of deviancy as she had been. She is cautious, perhaps even defensive, but certainly quite limited and careful in dealing with that theme, an approach which the Atlantic Regional Panel applauds. The Panel also assumes that the Canadian broadcaster and/or the syndicating service for the program have played a role in assuring that the airing of the show in Canada would be tailored to respect Canada's private broadcaster standards and the CBSC applauds those industry members as well.

### **Focusing on Homosexuality**

This year, the Ontario Regional Panel dealt with an episode of the American religious program *Focus on the Family*, a program which had been considered by the Prairie Panel four years before in its decision *CKRD-AM re Focus on the Family* (CBSC Decision 96/97-0155, December 16, 1997). In the earlier Prairie decision, the Panel concluded that the episode in question had contained abusively discriminatory comments about gays and lesbians. The Ontario Panel, in *CFYI-AM re Focus on the Family* (CBSC Decision 99/00-0724, June 28, 2001), distinguished the earlier case and others in coming to the conclusion that the broadcast on a Toronto talk radio station did not breach the human rights provision of the *CAB Code of Ethics*. While a listener had found the broadcast "extremely offensive, prejudicial, and bigoted in [its] characterization of gays and lesbians," the Panel was of the view that the discussion in this episode never descended to the unacceptable levels of previous cases in which a breach of the Codes was found. The panel remarked that the comments "go to 'lifestyle' issues, 'root causes of homosexuality', the morality of single gender sexual relationships, the 'distinction between homosexual

and gay', the raising of children in gay or lesbian households, the relationship between homosexuality and Christianity and so on."

In the current matter, the Panel concluded that "there is no place in this entire episode where discriminatory comments *about persons in a group identifiable on the basis of their sexual orientation* can be found."

There is discussion about homosexuality but not about homosexuals and then it consists of legitimate points of discussion or debate. It was not, in the view of the Panel, "bigoted in its characterization of gays and lesbians," as argued by the complainant. It did not even go there. It was not "hate propaganda". It was a point of view on a lifestyle subject, not on its practitioners. It was a very conservative religious view. It was, it may fairly be observed on the basis of years of CBSC decisions, a view not shared by any Panel of the CBSC, but a view which its supporters were free to espouse in the terms in which they dealt with the issue.

Accordingly, the Panel concluded that there was no breach in this case. As for the issue of balance in the expression of opinion on a controversial public issue, the Panel pointed out that

there is no doubt but that the challenged program has a point of view; specifically, it is partial to a Christian world view. This does not, however, mean that it fails the balance test on that account since it is not necessary to have balance *within* a program.

Indeed, the expression of a point of view in and of itself does not immediately characterize a program as unfair and discriminatory. In evaluating the presence of balance in its overall programming, the Panel concluded that:

No suggestion has been made that, in the remainder of its programming, CFYI-AM does not offer the necessary balance to the conservative Christian perspective of *Focus on the Family* and *that* is the issue. The conservative expression should not be penalized but is equally part and parcel of presenting balanced points of view. Had the discussion become confrontational, abusive, or predatory, the Panel would likely have come to a different conclusion. It did not. There is no breach on this account.

### **Other Discriminatory Comments**

Sex and sexual orientation weren't the only grounds for discriminatory comment this year. Decisions released in 2000/2001 also dealt with comments about a prominent Quebec family, welfare recipients and paedophiles and the alleged portrayal of mobsters as an ethnic group.

### **Rich Man, Poor Man: Abuse of Microphone Power**

An episode of the morning show *L'heure de vérité* hosted by André Arthur on a Quebec radio station raised the ire of a listener who complained that the host had "defamed" and "ridiculed" the prominent Quebec Péladeau family and made "vicious and inflammatory comments against recipients of income security benefits as a whole." In its decision, *CJMF-FM re L'Heure de vérité* (CBSC Decision 99/00-240, August 29, 2000), the Quebec Regional Panel concluded that the host's criticism of the Péladeau family's efforts to raise money for the less fortunate, accusing the family, as a whole, of having "psychological" and other problems, as well as being a "family of crooks" were neither fair nor proper and thus breached Clause 6(3) of the *CAB Code of Ethics*. The Panel characterized the host's "inflammatory unjustifiable language" as "a travesty and the *worst* type of journalistic excess to which talk radio can succumb":

[The host's language] adds absolutely nothing remotely worthwhile to public discourse. It is petty, scurrilous and hateful. It is not full, but empty; not fair, but the most unfair use of a one-way microphone; and not proper, but improper and inappropriate. Whether any *one* of the comments *might* have a ring of truth with respect to a *single* member of the family (and the Council does not suggest that this is at all the case), there is no doubt but that the host has tarred the *entire* family with the broad brushstrokes he has used, capping them all off with the linking conclusion that they are a "family of crooks". Consequently, the Council has not the least hesitation in finding the broadcaster in breach of Clause 6(3) of the *CAB Code of Ethics* with respect to the challenged remarks.

The Quebec Panel also considered the comments made concerning social assistance recipients. The host's comments included the claims that, at the end of the month, they "sleep" and "burp their beers", while "in ten days, they'll begin accumulating debts again at the expense of their children's breakfast." The Council considered these comments under the human rights provision of the *Code of Ethics* and found no breach, confirming an earlier decision in which the Council held that social condition is not at present covered by the Code. In its view;

While the Council considers that the aggressive, mocking, arrogant style of the host does no justice to the medium of radio, it is of the view that the comments do not constitute a breach of the clause in question. In such circumstances, the Council is of the opinion that there is no violation and that freedom of speech must prevail.

#### **A Different View of Public Service**

The National Specialty Services Panel of the CBSC considered whether paedophiles as a group were protected under the human rights provision of the *CAB Code of Ethics* in *Comedy Network re Open Mike with Mike Bullard (Leah Pinsent film)* (CBSC Decision 99/00-482, January 31, 2001). In an episode of *Open Mike with Mike Bullard*, host Mike Bullard and his guest, actress Leah Pinsent, discussed the release of her latest movie, in which she plays a serial killer who preys on paedophiles. During the course of that interview, the host and guest joked that her character in the movie was performing a "public service" when killing paedophiles. A viewer complained that the comments were derogatory and "inappropriate", stating that, while he did not "condone paedophilia", neither did he "condone killing anyone who may be afflicted with any such tendencies." The Panel found no breach, concluding that paedophiles, as a group, are not protected against abusively discriminatory comment based on "mental handicap". In the Panel's view,

Since it is obvious that paedophiles as a group are not anticipated by Clause 2, the question is whether one might argue that they ought to be protected against discriminatory comments made on the basis of their "mental handicap". The Panel does not think that the codifiers had such a prospect in mind. The term "mental handicap" cannot, in the view of the Panel, be used to protect those who commit crimes against society from commentary related to those sociopathic activities. The purpose of the human rights provision is to protect those who may be subject to abusively discriminatory comment made as a function of *who* they are by reason of: 1) innate characteristics, such as their gender, the colour of their skin, their nationality, their ethnicity, their age, or a physical or mental disability; or 2) other characteristics which are changeable only at great personal cost, such as their religious affiliation or their marital status. The protection is not accorded to persons by reason of *what* they do, even where such activities or actions are lawful. It will no more be applied to protect comments made regarding those whose activities or actions are unlawful, even where the reason for such unlawful acts may be a mental illness.

The Panel also concluded that the comments could not reasonably be understood as being an incitement to violence against paedophiles.

[A]ny such suggestion is, in fact, a further step away from reality when one considers that the statement was made with reference to a *film* rather than a factual circumstance. The film which, like most other such cinematic endeavours, requires the willing suspension of disbelief, was the source of the dramatic concept which, one might imagine (without having seen the film), posits that the serial killing (customarily viewed as an antisocial activity) *might* be morally justifiable where juxtaposed with paedophiles as victims. Such dramatic tension would not be unlike that created by the John Grisham book (and film) *A Time to Kill*, to name but a single example of a sympathetic killer and unsympathetic victims. The host carries that dramatic proposition a small step further by making light of the idea. The dialogue between the host and guest is a flippant look at the moral dilemma posed by the dramatic thesis of the film itself, a matter wholly outside of their own creation.

### ***The Sopranos: A Bad Gangster Rag?***

The National Conventional Television Panel dealt with another interesting question relating to the human rights provision of the *Code of Ethics* when it was called on to determine whether the portrayal of Italian-Americans in the fictional mob story *The Sopranos* broadcast on the CTV Network constituted abusively discriminatory comment. The program tells the story of a dysfunctional family whose head, Tony Soprano, is a New Jersey Cosa Nostra (often commonly referred to as the Mafia) boss. The television series fully develops both the domestic family and the mob family lives of their common *paterfamilias*, thus going beyond the confines of a simple crime show. Numerous complaints were received concerning this program, many of which, in essence, alleged that Italians, as an identifiable group distinguishable by their national or ethnic origin, suffer discrimination as a result of this programming.

In its decision, *CTV re The Sopranos (CBSC Decision 00/01-130+, March 8 2001)*, which also deals with issues of depiction of violence and sexuality and the use of coarse language (and is thus further summarized under other headings below), the National Conventional Television Panel acknowledged that “no national or ethnic group would wish any of its members to be portrayed as criminal. That, though, cannot be the determinative matter since all criminals have gender, skin colour, national origin and other characteristics.” The Panel added:

In this respect, the Panel cannot fail to take into consideration the fact that this series constitutes a multi-dimensional and complex look at the notion of “family” on the two levels, criminal and domestic. Because the stories are neither shallow nor uni-dimensional, they depend on involved value systems in both areas. For those value systems to be credible, they require a cultural component. The creators needed to choose a nationality to weave their story. They chose the Italian nationality. Why? Perhaps because they, the creators, personally knew that cultural background better than any other. Perhaps because they believed that, on the criminal level at least, the Cosa Nostra was better known to the general public than other organized criminal groups. In some respects, it might be observed that the reputation of the Cosa Nostra is legendary, not *because* they were Italian but *because* they were, criminally speaking, successful and very public in their achievement of that success. It should not be ignored that, historically speaking, Lucky Luciano’s renowned partner in crime was the Jewish mobster Meyer Lansky. Success, not nationality, was the issue in the historical criminal reality.

In conclusion on the matter of alleged undue discrimination on the basis of nationality, the Panel stated:

It is an entire perspective of the good and the bad, seen as a whole, the domestic and “business” sides of the life, it should be remembered, of *one* family, not an entire community. And that family is hardly representative. *It* is, on the business side of its *paterfamilias*, a *criminal* family. ... The Panel does not consider that there has been any attempt whatsoever to suggest that the creators’ or broadcaster’s view of this microcosm is to be understood as reflective of the nature, habits or practices of an entire *people*.

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### **Controversial Public Issues: A Balancing Act**

One interesting case this year gave the Ontario Regional Panel an opportunity to opine on the so-called "balance requirement".

#### **Health: a Touchy Subject**

The Ontario Regional Panel dealt with an unusual complaint regarding the cancellation of the radio show *The Touch of Health* which had been broadcast on an all-talk Toronto radio station. The complaint came from the program host, who argued that, by cancelling the show, the broadcaster was not ensuring that all voices were heard on the controversy between traditional and alternative medicine. She complained to the CBSC that the "action against the show and it being taken off the air is a direct social and political assault against the natural / alternative health." In her view, "[w]ith the inevitable loss of *The Touch of Health* radio show, there will be a loss of 'balanced' broadcasting in this sector." The broadcaster defended its position, arguing that

the rationale for this is two-fold: first is the concern over legal liability with respect to giving medical advice. The second reason is our desire to improve the quality of our weekend programming in order to generate increased ratings and revenue.

In its decision, *CFYI-AM re The Touch of Health* (CBSC Decision 99/00-720, October 12, 2000), the Ontario Regional Panel took no issue with the broadcaster's decision.

While *The Touch of Health* was being broadcast by CFYI, balance was maintained between programs that provided traditional health information and those that provided alternative health information. Since CFYI's decision to cancel the program in question, the Panel relies on the broadcaster's statement that "[CFYI] has removed all medical (traditional and non-traditional) programs from [its] week-end programming."

On the issue of programming choices, the Panel made it clear that "such decisions are primordially the responsibility of the broadcaster."

They reflect a mix of commercial, creative and societal values and concerns, supplemented by a measure of programming instinct. They constitute the *formula* which is the basis of every broadcaster's carving of its niche in the marketplace. They are a part of every broadcaster's determination of those factors which will differentiate its programming from those of other licensees in order that it will be able to attract its own audience. Broadcasters are, needless to say, also entitled to make judgments as to the quality of their programming choices by *the marketplace*. It is hardly for the CBSC to supplant *that* quintessential broadcaster judgment unless the circumstances and apparent rationale for the broadcaster's decision are clearly so dire and egregious that CBSC intervention is, by any reasonable assessment, called for.

In this case, they found no reason to question the decision.

#### **ADULT FARE**

Concerns over what is generally referred to as "adult fare", i.e. programming which contains violence, sexual explicitness and coarse language and thus is intended for adult audiences, topped the list of concerns in 2000/2001. One program, *The Sopranos*, brought to network television by CTV network, received 145 complaints regarding its depiction of violence, sexual explicitness and extremely coarse

language. This year, complaints about television violence dealt with one program, the promos for this program and sports.

### **Violence: Getting Graphic**

*The Sopranos* topped the list for complaints about violence this year. Three decisions were released in this regard, one dealing with the broadcast of the program itself and two others dealing with the promos for the show. The CBSC also had its first opportunity to apply Clause 10 of the *Violence Code* which deals with violence in sports programming in a decision involving WWF wrestling.

#### ***The Sopranos: Singing the Black and Blues***

The National Conventional Television Panel of the CBSC watched eight episodes of *The Sopranos* as it had been broadcast on the CTV network. Numerous complaints were received by the CBSC concerning the program, which follows the life of a fictional New Jersey Cosa Nostra boss. Most of these focused on the extremely coarse language, violence and sex and nudity contained in the show. In addition, though, some complainants took issue with the series' portrayal of Italians (that aspect of the decision is above).

In its decision, CTV re *The Sopranos* (CBSC Decision 00/01-130+, March 8, 2001), the Panel took no issue with the use of coarse language, violence, sex and nudity in the program. In the Panel's view, such language and scenes all had "relevance to the story being told." With respect to the "occasional graphic brutality", the Panel noted that the "violence is relatively infrequent" and is not "either gratuitous or glamorized in the context of the challenged episodes." Moreover, the Panel was satisfied that the program was "relegated to a post-Watershed broadcast" and was "accompanied by very specific viewer advisories."

While the Panel lauded CTV for having gone beyond the prescribed wording of viewer advisories to warn viewers of the "extreme nature of the programming" and for having broadcast this advisory twice before the program begins, it found that CTV failed to meet all the requirements of Article 5.1 of the *Violence Code* regarding the frequency of the use of viewer advisories for all but the initial two episodes. The Panel noted that "where advisories are required, they must be shown coming out of each commercial break" and that this is not "a simple 'technical' issue." The Panel stated: "The foregoing rules are a *package*. They are not meant to be separated. They are collectively essential to the operation of the broadcasters' *Violence Code* safeguards for public viewing."

#### **Promoting Violence Through Advertising?**

In two decisions released simultaneously, the Prairie Regional Panel had to rule on the violent content contained in advertising. The first decision, CKCK-TV re Promos for *The Sopranos* and an Advertisement for *The Watcher* (CBSC Decision 00/01-58, August 20, 2001), concerning CTV owned and operated station CKCK-TV (Regina), dealt with a promo for the CTV television series *The Sopranos* as well as an advertisement for the theatrical feature film *The Watcher*. The second decision, CKY-TV re Promos for *The Sopranos* and *City Hall* (CBSC Decision 00/01-71, August 20, 2001), concerning CTV affiliate station CKY-TV (Winnipeg) also dealt with a promo for the CTV television series *The Sopranos* as well as a promo for the feature film *City Hall*. All were aired prior to the Watershed hour, 9 p.m. local time.

In *The Sopranos* promo, the audience saw Tony Soprano, the principal character, repeatedly punching a man already on the ground and then another unidentified person being executed by gunshot. The Prairie Regional Panel considered the promo under the *Violence Code*. In the CKY-TV decision, the Panel concluded that the content of the *Sopranos* promo (which was considered entirely separately from the content of the series) was intended for adult audiences.

While, due to constraints of time, it is not as graphic or lengthy as in the actual program, the violence is unequivocally present and aggressive. The Panel has no hesitation in

concluding that it is of the variety of violence that ought to play in a post-Watershed time frame.

Reaffirming this conclusion in CKCK-TV's broadcast of the same promo, the Panel also noted that "the rule is that, pre-Watershed, the promos must not be intended for adults; however, it is not required that they be *so refined* that they fall into the same more precise rating category as the show within which they are shown. That would constitute an impossibly difficult situation for the broadcaster traffic departments and is unnecessary, as long as the broader Watershed provisions are respected." Consequently, the Panel found that, by scheduling a program promo containing scenes of violence intended for adult audiences before 9 pm, both CKY-TV and CKCK-TV breached Article 3.2 of the *Violence Code*.

The advertisement for the film *The Watcher* included brief scenes invoking fear more than violence such as a close-up of a woman screaming for her life, another frightened woman hiding under a car and the same woman being yanked from under the car apparently about to be murdered. The promo for *City Hall* included a scene of a man about to be shot, a gun wrapped in a newspaper and an obscured dead body floating in a lake. The Panel was of the view that neither the ad nor the promo "contain any elements of violence which would relegate it exclusively to a post-Watershed viewing period."

### **In and Out of the Ring: Sports Meets WWF Wrestling**

The National Specialty Services Panel considered the issue of WWF wrestling as sport when it had to deal with complaints about the violent content of an episode of *WWF Raw Is War*. In its decision, *TSN re WWF Raw Is War (CBSC Decision 99/00-607, January 31, 2001)*, the Panel stated that, while it clearly understood the entertainment component in the WWF programming, WWF wrestling, however unorthodox, was sport for the purpose of the application of the provisions of the *CAB Violence Code*. Quoting from its parallel decision released the same day concerning *WWF Monday Night Raw* (summarized above under the heading "Women Get a Bad Rap"), the Panel stated:

Some may raise the question of the nature of this type of wrestling, arguing that it is rather entertainment than sport. While there is no doubt that it does not partake of the nature of Greco-Roman wrestling or even freestyle wrestling which audiences have been accustomed to watch as a part of, say, the Olympic Games or college sports or elsewhere, the National Panel has no doubt about its nature. It is sport. In the first place, that it may be *entertainment* does not exclude the possibility that it is also sport. Not many in the business of broadcasting would argue that, at the end of the day, they do not wish all of their programming to entertain that portion of the audience at which it is directed. That the rules have been modified from traditional collegiate or Olympic wrestling does not disqualify it from being considered as a form of sport. Nor is it an argument against wrestling being a sport that some part of the match has been scripted (as TSN advises it has). After all, from the *audience's* point of view, it appears to be a contest. They do not know the outcome. While they may watch the program in whole or in part for the shenanigans, the action in the ring involves athletics, competition (however unorthodox) and a winner and loser.

The Panel then applied Article 10.1 of the *Violence Code* which prohibits the promotion or exploitation of violent action which is outside the sanctioned activity of the sport. It held that

[w]hile freestyle wrestling may permit rougher tactics than traditional Greco-Roman style wrestling, the Panel does not consider that this Code provision anticipates the use of dangerous objects, in effect, weapons not customarily in use for the purpose of either style of wrestling. Whether this is or is not acceptable at actual ringside is not the concern of the CBSC, which deals only with the broadcast aspects of the wrestling contests. In this respect, the Panel has no hesitation in concluding that, in its airing of *WWF Raw is War*, the broadcaster is promoting or glamorizing the use of dangerous

objects or weapons in wrestling, something which falls outside of the allowable or sanctioned extent of the sport in violation of the provisions of Article 10.1 of the *CAB Violence Code*.

While the scheduling of the program was not an issue since it was aired post-Watershed, the Panel found that TSN's failure to provide viewer advisories coming out of *every* commercial break during the first hour of *Raw is War* was in breach of Article 5.1 of the *Violence Code*. Quoting an earlier CBSC decision, the Panel said:

The rationale underlying the requirement of viewer advisories is found in the background section of the Code. Therein it is stated that "... creative freedom carries with it the responsibility of ensuring ... that viewers have adequate information about program content to make informed viewing choices based on their personal tastes and standards." The repetition of viewer advisories in the first hour serves as a second chance for viewers to receive important information concerning the program they are considering watching. The Code takes into account that many viewers make their viewing choices in the first few minutes of a program, which at times leads viewers to miss an initial viewer advisory.

### **Sexual Content: Clarifying the Rules**

While no provision of the Codes currently administered by the CBSC explicitly deals with sexual content, the CBSC Panels have been relying on the general application of the Watershed by broadcasters to all adult-oriented programming content to deal with such concerns. Concerns over sexual explicitness on television were expressed with regards to dramatic as well as "reality-based", documentary style programming.

### **The Sexy Song of *The Sopranos***

In reviewing eight episodes of the television series *The Sopranos* broadcast on CTV, the National Conventional Television Panel noted that "while nudity is present in virtually every episode of *The Sopranos*, it is rarely seen in combination with sexual activity. In general, nude women are seen dancing on stage as a part of the business operations of Tony Soprano's Bada Bing! Club." In its decision *CTV re The Sopranos* (CBSC Decision 00/01-130+, March 8, 2001), the Panel concluded that "as long as the nudity is identified by viewer advisories, as it is here, its context in *The Sopranos* is not in violation of the Codes." The Panel was satisfied that the program was "relegated to a post-Watershed broadcast" and was "accompanied by very specific viewer advisories."

While the Panel lauded CTV for having gone beyond the prescribed wording of viewer advisories to warn viewers of the "extreme nature of the programming" and for having broadcast this advisory twice before the program begins, it found that CTV failed to meet all the requirements of Article 5.1 of the *Violence Code* regarding the frequency of the use of viewer advisories for all but the initial two episodes. The Panel noted that "where advisories are required, they must be shown coming out of each commercial break" and that this is not "a simple 'technical' issue." The Panel stated: "The foregoing rules are a *package*. They are not meant to be separated. They are collectively essential to the operation of the broadcasters' *Violence Code* safeguards for public viewing."

### **Ratting Out Some Sexy Business**

In *Showcase Television re the movie Rats* (CBSC Decision 99/00-772, August 23, 2001), the National Specialty Services Panel concluded that a scene depicting sexual activity, without actually showing any nudity, was in fact intended for adult audiences and should not have been aired prior to the Watershed hour. The decision dealt with the Canadian film *Rats*, whose story followed the course of a down-and-out documentary filmmaker's growing obsession with the rodents. A viewer complained that, upon tuning in

to Showcase, she saw an explicit sexual scene between a man and a woman which she deemed inappropriate for early evening broadcast. The National Specialty Services Panel considered the film under the Canadian Association of Broadcasters' (CAB) *Violence Code*.

The Panel first considered whether either of the two lovemaking scenes in the film *Rats* could be characterized as being "intended for adult audiences," the criterion which triggers the application of the Watershed provision of the *Violence Code*. Referring to previous CBSC decisions and noting that, in this case, the depictions of sexual activity do not include nudity, the Panel stated that

it is sexual activity and not nudity that drives the "adult" characterization. It is entirely clear that a scene may be sufficiently sexually explicit *without* nudity that it ought to be accessible to adults to the exclusion of younger family members. The Panel considers that the second love-making scene in *Rats*, which lasted for 1 minute and 25 seconds, falls into that category. It is not merely a romantic encounter or suggestive. It is erotic, actively demonstrative, extended, and climactic. It is inappropriate for airing at 7 pm.

The Panel concluded that, by broadcasting a movie with sexual scenes intended for adults in the early evening, at 7:00 p.m., rather than after the Watershed hour of 9:00 p.m., Showcase had breached the scheduling provision of the *Violence Code*. It also found that the advisories provided by Showcase were inadequate as they did not make any reference to sexual content. Finally, the Panel found the PG rating inappropriate for the film in question. In the Panel's view, the 14+ classification which provides that the program "might include scenes of nudity and/or sexual activity within the context of narrative or theme" would be more apt. Moreover, by failing to show the classification icon at the beginning of the second hour of the film, the Panel found the broadcaster in breach of Clause 4 of the *Violence Code*.

### Sex Bugs

In an episode of the humorous non-dramatic series *2000 ans de bogues* broadcast on TQS, the host presented a variety of topics dealing with sexuality, including the evolution of sexual practices throughout history, sex in the animal kingdom, sex tools and the pornography industry. The program included interviews with various "experts" on sexuality and included a series of images and video sequences of a sexual nature, including a number of scenes of nudity in which bare breasts were clearly displayed. The program also contained video clips taken during the filming of a pornographic movie, in which the broadcaster had superimposed digital pixillation over the actors' genitalia. Complaints were received by the CBSC concerning the early broadcast hour (7:30 pm) of the program.

In its decision, *TQS re the program 2000 ans de bogues* (CBSC Decision 99/00-116 and -345, August 29, 2000), the Quebec Regional Panel found the broadcaster in breach of the Scheduling provision (Article 3.1.1), which requires that certain programming only be broadcast *after* the Watershed hour of 9 p.m., and in breach of the Classification provision (Article 4) which requires that a rating icon be present during broadcasts of such types of reality-based programming. The Panel concluded that the scenes of nudity were presented in an erotic context and were clearly intended for an adult audience. It therefore ruled that the program should not have been aired prior to the Watershed hour of 9 p.m. The Panel stated:

In this case, the Council is of the opinion that the *symphony of images* presented in the program *2000 ans de bogues* is too risqué to be aired at 7:30 p.m. There are numerous illustrations of what concerns the Council. Among other things, despite the fact that they were run at double speed and digital pixillation had concealed the actors' genitalia, the sexual acts during the pornography segment were excessive. Moreover, in distinct contrast to the film *Strip Tease*, the scenes of nudity in this case are presented in an overwhelmingly erotic context, namely, in one part of the episode, during the making of a pornographic film. In *2000 ans de bogues*, not only are we able to see the actresses' bare breasts, we are also able to see them engaging in explicitly sexual acts. The Council has no doubt that such scenes belong to the category of programming

considered to be “intended for adult audiences” and must, consequently, be aired *after* the Watershed hour. The Council therefore concludes that the airing of the program at 7:30 p.m. violates Article 3.1 of the *Violence Code*.

As to the classification issue, it was clear to the Panel that *all* programming is subject to the classification requirement except that programming which falls under the “Exempt” category. That is limited to “news, sports, documentaries and other information programming; talk shows, music videos, and variety programming.” The Panel held that reality-shows such as *2000 ans de bogues* do not fall within the “documentaries and other information programming category”.

### **Not Everyone Should See to Believe**

In a parallel decision, *TQS re an episode of the program Faut le voir pour le croire* (CBSC Decision 99/00-460, August 29, 2000), the Quebec Regional Panel dealt with a reality-based caught-on-camera type of program which contained scenes of nudity and sexual activity. The program aired on TQS in a 7:30 p.m. time slot. The Panel noted that the potentially offending scenes were somewhat obscure due to their having been filmed in semi-dark circumstances or even as a result of the poor rather “home-movie” quality of some of the filming. Other clearer scenes included appropriate video distortion in the form of happy faces covering what would otherwise have been exposed genitalia.

The Panel came to the same conclusion on the issues of scheduling and program classification regarding this program as it did regarding *2000 ans de bogues* (summarized above). The Panel also commented on TQS’s “repeated disrespect for the *Violence Code*” noting three prior breaches of the scheduling provision of the *Violence Code*, one of which was particularly egregious as it dealt with violent advertising “not merely before the Watershed, but *within children’s television programming*.” [emphasis in original] The Panel stated:

In the circumstances, in addition to its finding regarding the specific breach in the case of the broadcast under consideration, the Council specifically concludes that the broadcaster must, within the thirty days following its receipt of the text of this decision, provide the CBSC with concrete indications of the measures which it intends to put in place in order to avoid the recurrence of the broadcasting of inappropriate sexual content prior to the Watershed. Failing that, the CBSC will determine whether there is any reason for which Télévision Quatre Saisons should be entitled to remain a member of the CBSC or whether TQS should become the first private broadcaster in Canada to be removed from the self-regulatory mechanism.

### **Sunday Night Early Show**

In contrast to the above-decision regarding distant signal importation, the National Specialty Services Panel applied the provision in the case of WTN’s broadcast of the *Sunday Night Sex Show* in British Columbia at 8:00 p.m. (PDT). The program, a call-in show on which the host answers questions and gives advice on matters relating to human sexuality, is broadcast by WTN (Winnipeg) throughout the country via a single feed out of Toronto at 11 p.m. A British Columbia viewer complained that “8:00 in the evening is too early for a show which displays sex toys, vibrators, advice about sex lubricants, diagrams of sexual positions and homosexual sex acts.”

In its decision *WTN re Sunday Night Sex Show* (CBSC Decision 99/00-672, January 31, 2001), the Panel concluded that, although the program was scheduled appropriately, the broadcaster had failed to provide sufficient viewer advisories. The Panel began by noting that, while “Sue Johanson’s explanations are positive, useful, focussed and helpful, and not salacious, gratuitous, exploitative or even titillating,” the program was “unquestionably directed toward adults.” Despite the show’s pre-Watershed availability in British Columbia, the Panel found that the exception provided in the *Violence Code* for signals originating

in a time zone other than that in which it is received exonerated the broadcaster from a Code breach in this case. In the Panel's view,

what the broadcaster has chosen to do in this case is to balance all the time zones, as well as anyone could reasonably expect. Rather than *just* respect the Toronto time zone (and one cannot lose sight of the economic fact that more than 50% of the Canadian population resides in that time zone), WTN has *stretched* its market by airing the *Sunday Night Sex Show* at 11 p.m. EST, thus remaining post-Watershed in nine of the ten Provinces, albeit barely viewable time-wise in the Atlantic Region. By choosing that hour for its broadcast of the challenged show, it has also placed itself in a post-dinner environment in the *one* time zone in the country where it is still pre-Watershed, namely, British Columbia, thus providing an easier opportunity for parents to regulate family viewing than in, say, a 6:00 or 7:00 p.m. local time slot.

The Panel found, however, that the broadcaster's failure to provide viewer advisories coming out of *every* commercial break constituted a breach of the Code. In its view, the Panel stated that viewer advisories were particularly important "when the broadcaster *knows* that a program containing adult content will be shown on a pre-Watershed basis in some parts of the country."

### Some Early Swinging

In *CTV re W-Five (Swingers)* (CBSC Decision 99/00-347, February 14, 2001), the Atlantic Regional Panel dealt with the 8:30 pm broadcast of an episode of CTV's public affairs program *W-Five* which included a segment about the resurgence of the swingers lifestyle in Canada. While the program did not contain any sexually explicit activity, the segment included suggestive scenes that revealed men's buttocks and women's breasts. The segment began with the following oral viewer advisory from the host himself, which was repeated midway through the broadcast: "We caution that this is a mature subject and it is intended for adults." A viewer complained that the segment is "highly inappropriate for the time slot allotted to the program."

The Panel considered whether the segment's subject matter was, in terms of the *Violence Code's* scheduling provisions, intended for adults. While the showing of bare breasts in a context unrelated to sexual activity has generally escaped this characterization, the Panel stated that "[h]ere, the bare breasts and buttocks were displayed precisely because they were related to sexual activity."

In fact, the discussion of that activity by third parties and by the very participants made it clear that this link was intended. The scenes of groping on the dance floor, the foreplay in the hot tub, the preliminary retirement to bed all make it clear to any viewer that what nakedness is shown is in a sexual context. The Council does not consider that it is necessary that the *purpose* of the show's producer is to titillate. It suffices that the link between nudity and sexual activity is sufficiently established.

Having concluded that the segment was intended for adults, the Panel had no difficulty in finding that its broadcast pre-Watershed was in breach of the scheduling provision of the *Violence Code*. With respect to the exception provided in the Code regarding "Canadian distant signal importation", the Panel explained:

It should be clear to broadcasters and members of the public that the exception provided in the *Violence Code* regarding "Canadian distant signal importation" only applies to the time zone in which the *signal* originates and not to the time zone in which the *programming* originates. The difference, in other words, is between the extension over two or three or more time zones of a signal which is *transmitted* at *one* instant in time to that broader audience, on the one hand, and the simple *delivery* of a program (whether by satellite, cassette or other means) on a non-time sensitive basis to the broadcaster

which will *then* deliver the signal to its local audience, on the other. In the first case, the Code protects the originator of the signal; in the second case, it does not.

In this case, the Panel accepted the point that the programming originated in Toronto where it ran at 10:30 p.m.; however, in the Atlantic region, the segment in question was broadcast at about 8:30 p.m., prior to the Watershed (although not resulting from the originating time zone broadcast) and, thus, contrary to the Code.

### **Offensive Language: A Growing Issue**

Complaints about coarse or offensive language have grown in the past year. Four decisions were released this year under this heading which encapsulates the use of coarse language as well as racy descriptions and suggestions. To deal with these matters, CBSC panels have referred to the third paragraph of Article 6 of the *CAB Code of Ethics* which recognizes that “full, fair and proper presentation of news, opinion, comment and editorial is the prime and fundamental responsibility of the broadcast publisher.”

### **Salacious Songs**

As a general principle, coarse or offensive language is considered more problematic on radio than television in the absence of “the safeguards available to television viewers, such as the classification system, viewer advisories and rating icons.” In the three decisions relating to the radio broadcast of songs this year, no breach was found on this basis.

In the first case, *CIOX-FM re the song entitled “Boyz in the Hood” (CBSC Decision 99/00-619, October 12, 2000)*, the Ontario Regional Panel acknowledged that the song in question was replete with examples of “street language”. In that case though, the Panel had no information regarding the time of broadcast which might enable it to evaluate the extent to which youth were the target audience. It was thus unable to find a breach on that count. (It did, however, find a breach as to the issue of the demeaning and degrading comments about women. See the summary above.)

In the second case, *CIGL-FM re a song entitled “The Bad Touch” (CBSC Decision 99/00-654, October 12, 2000)*, the Ontario Regional Panel concluded that the following lyrics were not problematic:

Love, the kind you clean up with a mop and bucket  
Like the lost catacombs of Egypt.  
Only God knows where we stuck it Hieroglyphics?

Let me be Pacific, I wanna be down in your South Seas But I got this notion that the motion of your ocean means "Small Craft Advisory" So if I capsize on your thighs high tide; B-5, you sunk my battleship Please turn me on, I'm Mister Coffee with an automatic drip So show me yours, I'll show you mine; "Tool Time" you'll Lovett just like Lyle And then we'll do it [edited words] so we can both watch "X-Files"

Do it now

You and me, baby, ain't nothin' but mammals So let's do it like they do on the Discovery Channel Do it again now You and me, baby, ain't nothin' but mammals So let's do it like they do on the Discovery Channel Gettin' horny now

In the Panel's view, the above lyrics, which happened to be the edited version of the song created by the recording studio, did not contain any individual words “which are in and of themselves problematic” and, while it agreed that the song “makes several references to sexuality,” it found that these consisted mainly

of “innuendo” and were “far removed from the explicitness of the graphic descriptions which led to a finding of breach” in a previous decision.

In the third case, CKMM-FM re a song entitled “The Bad Touch” (CBSC Decision 99/00-521, February 21, 2001), the Prairie Panel dealt with the same song as in the second case mentioned above but this time with an unedited version of the song and with specific indications of the time of broadcast, namely, 3 p.m. and 9 p.m. The Panel found no breach.

[T]he Panel considers it important to underscore the fact that there is a spectrum of content which ranges, in terms of the Codes, from the acceptable to the unacceptable and that there is, in the centre of that spectrum, a range of content which, although perhaps distasteful or inappropriate, must be judged to be sufficiently on the edge not to be found in breach of any Code provision. With respect to that middle range, the principle of freedom of expression must be allowed full vent. With respect to that middle range, the exercise of parental or similar authority must be exercised in lieu of a finding of Code breach. Where, in other words, the problem is not, in the view of the Panel, so egregious as to call for a negative finding, the airing of the material must be permitted to continue.

### **The Not So Sweet Sounds of *The Sopranos***

Numerous complaints were received concerning the extremely foul language used on *The Sopranos* broadcast on CTV at 10 pm. This dramatic series follows the life of fictional mob boss Tony Soprano in both his “professional” and “domestic” lives. With respect to the language, the National Conventional Television Panel noted the following:

It is fair to say that it is consistently foul, if not extremely coarse, at least in the discussions amongst the criminals. Four-letter words or their derivatives constitute the *lingua franca* of the group, who, it is abundantly clear, are uneducated and have vocabularies which do not appear to extend frequently to polysyllabic utterances. Viewers become accustomed to such communication on the mob side of the program. In some respects, the usage of such words, *far less* frequently, on the domestic side of the story, is more shocking when it occurs.

In its decision CTV re *The Sopranos* (CBSC Decision 00/01-130+, March 8, 2001), the Panel took no issue with the use of coarse language indicating that this language had “relevance to the story being told.” Moreover, the Panel was satisfied that the program was “relegated to a post-Watershed broadcast” and was “accompanied by very specific viewer advisories” (although CTV was found in breach for having used these advisories too infrequently).

### **Less than *Angelic* Word Spat**

The decision CFCF-TV re the premier episode of *The Dark Angel* (CBSC Decision 00/01-183, August 22, 2001) dealt with the debut episode of a television series about a young woman created as part of a new breed of genetically-engineered “super humans”. It had originally been scheduled to air from 8:00 - 10:00 p.m. but the station decided to “bump” it down to 7:00 - 9:00 p.m. due to the last minute scheduling of the *Pierre Elliott Trudeau Farewell Show* by the CTV network from 9:00-11:00 p.m. A viewer complained that the type of language in the program “seems entirely inappropriate for such an hour, perhaps at any hour on a network which broadcasts over the public airwaves.” The Quebec Regional Panel disagreed. The Panel concluded that

While the language in *The Dark Angel* may not be entirely appropriate, and is not to be condoned, it is neither profane nor obscene. The expressions “damn ass”, “kick ass” or “bitch” are used throughout the program in such a way as to emphasize the positive qualities of the persons to whom they refer. On the one occasion that the use of the word

“bitch” can be presumed to have been intended to have a derogatory meaning, it is used by a despicable character to insult the heroine of the program, thus a gesture without significant negative impact. In any event, the Quebec Panel does not consider that the language used amounts to programming intended for adult audiences. Consequently, the broadcaster is entitled to air the program in an early evening timeslot.

Although the Panel found that *The Dark Angel* did not contain language characteristic of programming “intended for adult audiences”, the Panel did conclude that it contained material which was not suitable for children. While such programming can be broadcast in the early evening, doing so necessitates the use of viewer advisories.

It goes without saying that viewer advisories need only attach to programming that can, according to the broadcaster Codes, be aired. Their purpose is to alert the audience to the content of programming which, although acceptable, *may offend* certain viewers.

The Panel found that “by failing to provide viewer advisories at any time during the early evening broadcast of *The Dark Angel*, CFCF-12 ha[d] breached the provisions of Clause 5.2 of the *Violence Code* with respect to the use of viewer advisories.”

## Summary of Complaints 2000-2001

### Overview

In 2000/2001, 1,725 persons lodged formal complaints with the CBSC. Some of these did so by signing a petition for which only one file was opened. The total number of files opened by the CBSC in 2000/2001 was 1,096.

- Of these 1,096 files, the CBSC actually handled 873 or 79.7%, since 82 files were referred to Advertising Standards Canada (ASC), 19 to the Cable Television Standards Council (CTSC), 121 to the Canadian Radio-television and Telecommunications Commission (CRTC) (of these 121 files, 83 related to non-member broadcasters and 38 dealt with issues which did not come within the parameters of the Codes administered by the CBSC, such as issues relating to Canadian content and simultaneous substitution). One file was referred to Industry Canada.
- The CBSC, nonetheless, responded to all the complaints including those sent elsewhere for ultimate resolution. In the case of petitions, however, the CBSC responded to only one appointed spokesperson for each group of signatories.
- Again this year, the CBSC received more complaints *directly* than from any other source of referral; 640 complaints (58.4% of the total files opened in 2000/2001) were received directly. The majority of these complaints came to the CBSC via email, accounting for 477 files (43.5% of the total files opened in 2000/2001); snail mail followed with 138 complaints (12.6%), then fax at 25 (2.3%). The CRTC referred 443 complaints to the CBSC in 2000/2001, accounting for 40.4% of the total files opened this year. A total of 13 other complaints were referred to the CBSC from such other agencies as ASC, the CAB or the CTSC.

### Adjudicating Panels

Of the 873 complaint files handled by the CBSC, the majority dealt with Ontario broadcasters, followed by broadcasters for which complaints would be adjudicated by the new National Panel. It should be noted that the National category in this report includes both complaints referred to the National Specialty Services Panel (regarding broadcasts on specialty services members) and complaints referred to the National Conventional Television Panel (regarding national broadcasts which have arisen in three or more Regions).

Region of Complaint (Adjudicating Panels)					
Adjudicating Panel	Radio	Television	Not applicable	Total	
Atlantic	6	11	0	17	
Quebec	21	63	2	86	
Ontario	86	299	6	391	
Prairie	35	62	1	98	
B.C.	36	31	1	68	
National	0	147	0	147	
Non-determined or not applicable	8	46	12	66	
TOTAL	192	659	22	873	

### Radio and Television Complaints

Of the 873 complaint files handled by the CBSC,

- 192 dealt with radio programming (22.0%);
- 659 dealt with television programming (75.5%);
- 22 dealt with general concerns about broadcasting or could not otherwise be categorized (2.5%).

### Language of Program

Of the 873 complaint files handled by the CBSC,

- 781 dealt with English-language programming (89.5%);
- 66 dealt with French-language programming (7.6%);
- 4 dealt with foreign-language programming (0.4%).
- 22 did not provide enough information to be language classified (2.5%).

Language of Program									
Language	Radio		Television		N/D or N/A		Total		
	#	%	#	%	#	%	#	%	
English	173	89.2	602	91.6	6	27.3	781	89.5	
French	19	9.8	47	7.2	0	0	66	7.6	
Foreign	2	1.0	2	0.3	0	0	4	0.4	
Not Specified	0	0	0	0	4	18.2	4	0.4	
Not Applicable	0	0	6	0.9	12	54.5	18	2.1	
TOTAL	194	100	657	100	22	100	873	100	

### Source of Program

Of the 873 complaint files handled by the CBSC,

- 428 dealt with Canadian programming (49.0%);
- 318 dealt with foreign programming (36.4%);
- 127 could not be so classified (14.6%).

Source of Program									
Source	Radio		Television		N/D		Total		
	#	%	#	%	#	%	#	%	
Canadian	162	83.5	262	39.9	4	18.2	428	49.0	
Foreign	17	8.8	301	45.8	0	0	318	36.4	
Undetermined	15	7.7	94	14.3	18	81.8	127	14.6	
<b>TOTAL</b>	<b>194</b>	<b>100</b>	<b>657</b>	<b>100</b>	<b>22</b>	<b>100</b>	<b>873</b>	<b>100</b>	

### Type of Program - Radio

As it announced last year, the CBSC now classifies the type of programming of its complaints in a non-exclusive manner, i.e. allowing for a program to be classified under more than one category. While this provides more pointed information to readers, the total for the number of radio complaints in the chart below, if given, would exceed the actual number of radio complaints received in 2000/2001.

Of the 192 radio complaints,

- the majority (114 files) dealt with open line/informal discourse programming (58.8% of radio complaints);
- music and news then follow with 22 and 25 complaints (11.3% and 12.9% of radio complaints respectively).

Type of Program - Radio			
Type of Program	# of Radio Complaints	% of Radio Complaints <sup>(1)</sup>	% of all Complaints <sup>(2)</sup>
Advertising	8	4.1	0.9
Children's Programming	0	0	0
Comedy	2	1.0	0.2
Contests	9	4.6	1.0
Education	3	1.5	0.3
Music	22	11.3	2.5
News	25	12.9	2.9
Open line/informal discourse	114	58.8	13.1
Promos	5	2.6	0.6
Public Affairs	2	1.0	0.2
Religious	0	0	0
Sports	3	1.5	0.3
Undetermined	10	5.2	1.1

Notes: (1) While the CBSC's non-exclusive categorization of programming results in some duplication, the percentage of complaints in each category is, nevertheless, calculated on the basis of the actual number of complaint files concerning radio programming (192). Accordingly, if given, the total number of the percentages would, of course, be greater than 100% for the reasons explained above.

(2) This percentage is based on the total number of complaint files handled by the CBSC (873). Accordingly, if given, the total number of the percentages would, of course, be greater than 100% for the reasons explained above.

### Type of Program - Television

As it announced last year, the CBSC now classifies the type of programming of its complaints in a non-exclusive manner, i.e. allowing for a program to be classified under more than one category. While this provides more pointed information to readers, the total for the number of television complaints in the chart below, if given, would exceed the actual number of television complaints received in 2000/2001.

In 2000/2001, no one type of programming accounted for a majority of the complaints of the 659 television complaints handled by the CBSC.

- Drama tops the list with 192 complaints (29.2 of television complaints);
- Comedy follows with 101 complaints (15.4% of television complaints).

<b>Type of Program - Television</b>				
<b>Type of Program</b>	<b># of TV Complaints</b>	<b>% of TV Complaints (3)</b>	<b>% of all Complaints (4)</b>	
Advertising	21	3.2	2.4	
Animation	20	3.0	2.2	
Children's Programming	11	1.7	1.3	
Comedy	101	15.4	11.6	
Drama	192	29.2	22.0	
Education	49	7.5	5.6	
Game Show	7	1.1	0.8	
Informal Discourse/Conversation	18	2.7	2.0	
Fantasy	4	0.6	0.5	
Feature Film	48	7.3	5.5	
Music	3	0.4	0.3	
News	87	13.2	10.0	
Open-Line	7	1.1	0.8	
Promotional Material	9	1.4	1.0	
Public Affairs	36	5.5	4.1	
Reality Programming	4	0.6	0.5	
Religious	2	0.3	0.2	
Science Fiction	2	0.3	0.2	
Sports	56	8.5	6.4	
Undetermined	30	4.6	3.4	

Note: (3) The percentage of complaints in each category is calculated on the basis of the actual number of complaint files concerning television programming (657). See the corollary note on previous page.

(4) See the corollary note on previous page.

### Codes and Clauses

Often, a complaint will relate to more than one code or clause. Thus, the number of complaints considered under the codes and clauses can be expected to exceed the number of complaints received by the CBSC.

#### **CAB Code of Ethics**

In 2000/2001, 334 complaints handled by the CBSC raised at least one issue to be considered under the CAB *Code of Ethics*. The majority of complaints raised at least two. Most of the complaints which involved a human rights issue often included a component of proper presentation of opinion, comment or editorial (also used for dramatic programming).

	<b>CAB Code of Ethics</b>	<b>Radio</b>	<b>TV</b>	<b>Total</b>	
	<b>Clause</b>	<b>#</b>	<b>#</b>	<b>#</b>	
	Program Selection	1	1	2	
	Human Rights	26	86	112	
	News	9	32	41	
	Advertising	1	7	8	
	Controversial Public Issues	2	2	4	
	Children's Programming	2	37	39	
	Contests & Promotions	2	4	6	
	Presentation of Opinion & Comment	58	71	129	
	Sex-role Stereotyping	2	17	19	
	Religious Programming	0	0	0	
	<b>TOTAL</b>	<b>103</b>	<b>257</b>	<b>360</b>	

#### **CAB Sex-Role Portrayal Code**

99 complaints handled by the CBSC in 2000/2001 raised at least one issue under the CAB *Sex-Role Portrayal Code*. The overwhelming majority of complaints considered under this Code related to issues of sexual explicitness on television which was alleged to be degrading, mostly, but not exclusively, to women.

	<b>Sex-Role Portrayal Code Clause</b>	<b>Radio</b>	<b>TV #</b>	<b>Total #</b>	
	Exploitation	11	85	96	
	Diversity	1	2	3	
	Commercial Messages	0	1	1	
	Changing Interaction	0	0	0	
	Demographic Spectrum	0	0	0	
	Visibility and Involvement	0	1	1	
	TOTAL	12	89	101	

### **RTNDA Code of (Journalistic) Ethics**

In 2000/2001, 70 complaints handled by the CBSC were considered under the RTNDA Code of (Journalistic) Ethics. The majority of these concerns related to television programming.

	<b>RTNDA Code of (Journalistic) Ethics Clause</b>	<b>Radio #</b>	<b>TV #</b>	<b>Total #</b>	
	Distortion	1	1	2	
	Sensationalism	1	5	6	
	Irrelevant Information	2	2	4	
	Respect for Privacy/Dignity	2	14	16	
	Accuracy	6	29	35	
	Errors	0	5	5	
	Balance/Comprehensiveness	3	5	8	
	Conflict of Interest	0	0	0	
	Decency and Conduct of Journalists	0	5	5	
	Interference with Right to Fair Trial	0	4	4	
	Reporting on criminal activities	0	1	1	
	Improper comment or editorial	1	0	1	
	TOTAL	15	55	87	

### **CAB Voluntary Code Regarding Violence in Television Programming**

126 complaints handled by the CBSC in 2000/2001 raised at least one issue to be considered under the CAB Violence Code. Most of the complaints considered under this code related to the scheduling of programs (before or after the "watershed" hour of 9 p.m.). Many of these concerns over scheduling dealt with adult content other than violence, namely sexual explicitness or coarse language.

	<b>TV Violence Code Clause</b>	<b>TV #</b>	
	Gratuitous or Glamorized Violence	46	
	Children's Programming	36	
	Scheduling of Programming	40	
	Scheduling of Promotional Material & Ads	16	
	Classification	5	
	Viewer Advisories	27	
	News	3	
	Violence in Sports	1	
	Violence Against Animals	1	
	Violence Against Women	24	
	Violence Against Specific Groups	1	
	<b>TOTAL</b>	<b>126</b>	

### General Complaints

In addition, the CBSC handled concerns of a general nature which could not engage its formal complaints resolution process (and thus for which Code provisions were not examined). Some of these complaints raised more than one issue and thus the total at the bottom of the chart below is greater than the actual number of general complaints.

	<b>General Complaints</b>	<b>Radio &amp; TV #</b>	
	Advertising	13	
	Children's Issues (other than categorized below)	21	
	Human Rights	97	
	News and Public Information	40	
	Offensive Language	103	
	Offensive Humour	54	
	Program Selection	93	
	Religious / Blasphemous Content	24	
	Sexual Content	97	
	Sports	42	
	Station Logos	1	
	TV Violence	61	
	<b>TOTAL</b>	<b>646</b>	

### Status of Complaints at Year End

Of the 873 files handled by the CBSC, 407 were code relevant and specific complaints, meaning that they (a) provided sufficient information concerning the broadcast in question to enable follow-up by the CBSC

and (b) related to a code provision administered by the CBSC. The remaining 466 complaints were considered "general" and thus the files were closed by the CBSC immediately following its response to the complainant.

Of the 407 "code relevant and specific" complaints, 263 (30.1%) of these will not require Regional Panel adjudication as they were resolved at the level of broadcaster and complainant communication; 33 complaints (3.9%) have been resolved through the release of decisions of the various adjudicating Panels and the CBSC Secretariat; 59 complaints (6.8%) have yet to complete the dialogue process with the broadcaster. The 52 remaining complaints are at various stages in the complaints review process.