

Controversial Broadcasting in Canada

Daniel J. Baum

Osgoode Hall Law School of York University

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/ohlj>
Commentary

Citation Information

Baum, Daniel J.. "Controversial Broadcasting in Canada." *Osgoode Hall Law Journal* 8.1 (1970) : 159-170.
<http://digitalcommons.osgoode.yorku.ca/ohlj/vol8/iss1/7>

This Commentary is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in Osgoode Hall Law Journal by an authorized editor of Osgoode Digital Commons.

CONTROVERSIAL BROADCASTING IN CANADA

By DANIEL J. BAUM*

Professor Baum uses political programming on television as an illustration of the complexity of issues involved in the regulatory control of controversial broadcasting. The author describes the direction Parliament has chosen and records the Canadian Broadcasting Corporation's attempt to achieve fairness and objectivity in the entire sphere of broadcasting controversial matters. The articles of Commissioners Johnson and Jones provide background to this discussion of policy within our national network.

INTRODUCTION:

The subject of controversial broadcasting brings into sharp focus the stated policy of the right to freedom of expression and the sometimes opposing right of a person to receive the programs of his choice. Parliament has responded to this problem, as to broadcasting generally, by the enactment of legislation, creating an administrative agency to regulate major facets of broadcasting activity. What follows is intended as an examination of the mode of regulation chosen and the concomitant impact upon a specific broadcaster, the Canadian Broadcasting Corporation (CBC).

In the field of political broadcasting, a specific offshoot of controversial broadcasting, the regulations enacted have been relatively specific, highlighting a policy of restricted access. However the broadcaster is left with discretion in the approach to be taken within these regulatory guidelines. In the more general sphere of controversial broadcasting *per se*, the primary responsibility to achieve fairness and objectivity has been left exclusively with the broadcaster. Neither Parliament nor the Canadian Radio-Television Commission (CRTC) has elaborated upon existing general directions with the specificity required for day to day programming by broadcasters. It is therefore not surprising that the broadcaster, operating in a regulatory hiatus, has developed his own controls. What is the content of these rules? How and why are they formulated? A beginning point in the quest for answers is with the CBC which remains the dominant national network by law, and for a time, stood as the designated regulator of broadcasting. What controls does it exert?

*Daniel J. Baum, Professor of Law, Osgoode Hall Law School, and Administrative Studies, York University.

A. CONTROVERSIAL BROADCASTING: POLITICAL PROGRAMS— AN EXAMPLE OF SPECIFIC CONTROL AND ITS LIMITATIONS

Surely, aside from religious controversy, the legislature can be no more sensitive to subject matter than that relating to political broadcasting. It is here that first by statute and later by regulation, *rules of general application* have set specific constraints on freedom of expression.

The beginning point for understanding is the *Aird Commission Report*.¹ Under the topic, "politics", the Commission declared:

"While we are of the opinion that broadcasting of political matters should not be altogether banned, nevertheless, we consider that it should be very carefully restricted under arrangements mutually agreed upon by all political parties concerned."²

This first Royal Commission on broadcasting did not want to *encourage* political programs. It wanted, on the whole, to discourage them without imposing an absolute prohibition. In sum, if there were to be political programs, the affected parties should first agree on the time allocation.

The approach taken by the Aird Commission was accepted by Parliament, the CBC, then the Board of Broadcast Governors (BBG), later the CRTC, and codified in law.³ Presently the *Broadcasting Act* of 1968 includes all the policy that preceded it as to political broadcasting, but goes further.⁴ A brief summary of the regulations promulgated by the CRTC will

¹ *Report on the Royal Commission on Radio Broadcasting* (King's Printer 1929) (Aird Report).

² *Ibid.* p. 11.

³ (a) In 1939 the CBC set forth detailed guidelines for political broadcasting applicable to Federal elections. These were later expanded in 1944 to provincial contests.

See, *Annual Report of the Canadian Broadcasting Corporation for 1944*, at p. 25.

(b) On December 18, 1961, with an effective date of January 1, 1962, the BBG issued Circular No. 51 titled, "Political and Controversial Broadcasting Policies". Section 11 of the Broadcasting Act, as it then was, gave the BBG authority to make regulations concerning the amount of broadcast time that could be given to programs, advertisements, or announcements of "a partisan political character, and the assignment of such time on an equitable basis to all parties and rival candidates". Section 17 of the Act denied to a licensee the right

(a) to broadcast a dramatization of a program, advertisement or announcement of a partisan political character;

(b) to broadcast any program, advertisement, or announcement of a partisan political character from two days before any Federal, provincial, or municipal election.

And, finally, the Act required disclosure on whose behalf any partisan political broadcast of the type permitted was made.

⁴ *Broadcasting Act*, S.C., 1967-68, c.25;

Section 16 of the 1968 Act allows the CRTC, on recommendation of its Executive Committee, to make regulations concerning the time that may be devoted to political broadcasting as it was described above, and, in this regard, to insure time allocation on an equitable basis for political parties and candidates. [section 16 (a) (iii)]. This same power extends to networks, and, therefore, would include the CBC. [Section 16 (a) (v)]. The CRTC also is given the right to make rules concerning the definition of dramatization of political broadcasts. [section 16 (a) (iv)].

demonstrate a policy of *restricting freedom to assure fairness*. It should be noted that this approach, being consistent in philosophy with the BBG's earlier attempt, reflects a maintenance of specific regulatory policy.

First, consider the agency's concern over dramatization, which after all, is only a vehicle for communicating. The BBG and the CRTC took the policy view of *banning* "all political broadcasts incorporating any device which would be unnecessarily theatrical".⁵ To achieve compliance with this standard the *sponsoring party* is required to accept the responsibility for what is broadcast. Controls are exercised not only in terms of program participants, who, for example, must appear in their own identity, but also extend to the use of visual materials.⁶

Of perhaps greater import than program control through dramatization limitations is the control imposed on the allocation of time. The BBG and then the CRTC made the flat statement that no network operator was under an obligation to allocate free time for political broadcasts.⁷ However, "if the network is not providing free time for political broadcasts, it must be prepared to sell time on the request of the parties".⁸ The network may decide the maximum time it will sell, and then *on agreement with the parties*, distribute it on an equitable basis.⁹ Failing agreement between the parties, the network operator must file with the [CRTC], a statement of the amount of time which is offered to each party.¹⁰ To resolve the problem of *parties* which have not achieved national stature in a national election, the agency has imposed on all networks the obligations of establishing subsidiary hookups within a province or other appropriate geographical areas.¹¹

In the 1961 *Parliamentary Hearings*,¹² there came an opportunity to test the meaning of the newly established BBG regulations and policy. Because the CRTC has adopted the BBG approach, the transcript still is important today. But before examining the hearing it is essential to refer to the BBG's (and the

⁵ Circular No. 51, *Political and Controversial Broadcasting Policies*, BBG and CRTC, Jan. 1, 1962 at p. 3.

⁶ *Id.*, 111 (1) (a), at p. 4 and 111 (b) (c), at p. 4: This might mean that an actor could not read the speech of a candidate. If so, this contrasts rather sharply with the use made of Hollywood by both the Republican and Democratic parties in the United States. It also implies that a candidate who simply is not able to work with television as a medium is put at a competitive disadvantage over his rival.

⁷ *Id.* iv at p. 4.

⁸ *Id.* v (1) (b), at p. 5.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Id.* v (1) (c). This again, meets part of the problem posed by the 1942 plebescite where the opposition was organized within Quebec, and found expression in a League. It does not answer the question posed by organized groups which may not have the dimension of a party. Quere: What would the CRTC position be in either a national or provincial election to a demand by groups of indians to speak in opposition to particular candidates or party programs?

¹² Minutes of Proceedings and Evidence, *Special Committee on Broadcasting*, House of Commons, Fourth Session, 24th Parliament, 1960-1961 hereafter referred to as *Parliamentary Hearings*.

CRTC's) position on controversial broadcasting. The statement, compared to that on political broadcasting, is quite short and its relevance stems from the fact that political broadcasting as distinct from controversial broadcasting *per se* is not always readily definable. Within this penumbra, problems of application arise which are highlighted in the *Parliamentary Hearings*. The BBG began with a firm statement of freedom of expression:

The Board does not exercise censorship. It does not restrict the nature of material to be broadcast, except that such material must conform with its printed regulations.

The policy of the Board, with regard to *controversial broadcasting*, is based on the following principles: (emphasis added)

1. *The air belongs to the people, who are entitled to hear the principal points of view on all questions of importance.* (emphasis added)
2. The air must not fall under the control of any individual or groups influenced by reason of their wealth or special position.
3. *The right to answer is inherent in the doctrine of free speech.* (emphasis added)
4. The full interchange of opinion is one of the principal safeguards of free institutions.¹³

The BBG then made an equally firm decision as a necessary corollary to freedom of expression, that there should be no sale of *network* time for the broadcast of opinion or propaganda. Non-commercial organizations interested in public affairs were allowed to purchase time on "subsidiary hookups or individual stations with the prior approval of the BBG".¹⁴

It might be said that the BBG was moving toward a *fairness doctrine*. There was to be full and free discussion of controversial issues while allowing for a right of reply by any criticized group or individual. Obviously this is not expressly stated in these general regulations; but it can reasonably be inferred. They declare:

In accordance with its policy of resisting any attempts to regiment opinion or to abuse freedom of speech, the Board lays down no specific rulings covering controversial broadcasting. The board itself supports the policy of the fullest use of the air for:

- (a) *Forthright discussion of all controversial questions;* (emphasis added)
- (b) *Equal and fair presentation of all main points of view;* (emphasis added)
- (c) The discussion of current affairs and problems by informed authoritative and competent speakers.

Broadcasting is a changing and evolving art and no fixed and permanent criteria can be set down for the best method of presenting controversial material.

These policies have been adopted in an effort to ensure that the medium of broadcasting may remain at the disposal of the nation, regardless of party, section, class or religion.¹⁵

The interlock between political and controversial broadcasting is clear. Thus its apparent right of reply was one that very much concerned the Parliament in 1961. Would, for example, the Communist or Nazi parties be

¹³ BBG Circular No. 51, Part II (i).

¹⁴ *Id.* Part II (1) (2).

¹⁵ *Ibid.*

able to claim such a right. And, it might be asked, if Professor Melville Watkins and others established their own party would they have the right to *national* reply?

DR. STEWART (Chairman of the BBG): But during a provincial affairs broadcast one of the other parties in their broadcast took time out to criticize the Social Credit Party in Manitoba. Whereupon, we had a complaint from the Social Credit people along this particular point, and we ruled on this that if a party was not given time, and if other parties in their broadcasts criticized the party which did not have time, then the party which did not have time must have the right to reply, because the right to reply is inherent in all of the principles governing both controversial and political broadcasts.

MR. PICKERSGILL: Does the communist party, which so far as I know, has no members in any elected legislature in Canada, have the right to reply under that ruling?

DR. STEWART: The ruling has reference to controversial broadcasts of which, perhaps, political broadcasts form a part. I think, however, that a controversial broadcast is wider than this.

We take the position that if any group of people are referred to detrimentally in a broadcast, then they have the right to reply, and it does not matter whether they are a political party or some other group. This is the essential principle; the right to reply in a controversial broadcast.

MR. PICKERSGILL: No matter how small that minority may be?

DR. STEWART: No, I would not say no matter how small the minority might be.

MR. MCGRATH: Let me use an extreme example. Let us suppose the nazi party should enter a candidate in every constituency. Then under this present regulation they could claim an amount of time proportionate to every other political party?

DR. STEWART: I believe so.¹⁶

Dr. Stewart had no difficulty handling "partisan political" broadcasts where one party commented on another. He had, however, considerable difficulty in the more meaningful day-to-day public affairs broadcasting where a program might have a "political slant". Where did the right of reply come into play as to this subject?

DR. STEWART: This section, of course, deals with partisan political programs which presumably involve the participation of political parties. . . . I think there are many programs which in a particular sense involve a political philosophy but which are not necessarily partisan political broadcasts. . . . But I think it is correct to say that as far as section 17 is concerned, it is the sponsored political program which we have in mind here.¹⁷

The primary responsibility in the area of controversial broadcasting, according to Dr. Stewart, was to be left to the broadcaster and such a position comports even with today's Act. But, what controls does the broadcaster exercise to bring the fairness and objectivity required? An examination of the CBC's response is appropriate in answering this question. What interpretation has Canada's national network, so established by statute, given to fairness in political broadcasting?

¹⁶ 1961 Parliamentary Hearings, [edited] *supra*, at pp. 68-69.

¹⁷ *Id.* at p. 353.

The regulations of the CBC covering political broadcasts are far more extensive than those promulgated by the BBG, and the Corporation has stated its rules as minimum criteria.

The CBC, both in political and in other controversial matters of public interest and concern, has always taken the view that in holding a broadcasting license the station assumes wider general responsibilities than those specifically required by these regulations. . . . The responsibilities include fair opportunity for the presentation of the principal points of view on issues of public concern.¹⁸

Dr. Stewart in his preceding testimony related the policy of the BBG as to the right of reply of an assailed party during a political broadcast.¹⁹ In response to this statement the CBC management made the policy decision that to achieve fairness in this context restraint was to be imposed. The CBC informed its staff that it is the Corporation's "*policy that broadcast appearances by candidates or potential candidates are controlled so that no candidate may gain an advantage over his opponents by unrestricted broadcast appearances*".²⁰

This policy confined the appearances of candidates to particular programs such as news, public affairs, and free-time election broadcasts, except where the CBC . . .

Department of Public Affairs has given explicit agreement to appearances on other types of programs — for example, a farm broadcast which might deal with the farm issues in the campaign. . . . *The essential point is that all such appearances must be under central supervision in each area.*²¹

The CBC has therefore taken the position of strict neutrality in matters relating to political broadcasts. But it must be emphasized that this neutrality is of a particular kind. It has chosen to set the rules for fairness. The Corporation, without exception in any election, has refused to sell advertising time to opposing parties. It has rejected the easier, more simplistic option of just allocating purchase time to contending factions.²² This alternative approach requires more supervision on the part of the CBC but obviously results in greater access. Its implementation would require the Corporation to allocate free time, to insure its fair apportionment; to control its use; and to regulate other network programming so that the free time allowed is used only for political broadcasts. The difficulties for the CBC as the nation's national

¹⁸ *Statement of Policy with Respect to Controversial Broadcasting*, CBC Board of Governors, July 8, 1939, p.1.

¹⁹ This opinion was with reference to a comment by the then premier of Manitoba (Hon. Duff Roblin), directed at the kind of criticism he was getting from the Social Credit League. The President of that League maintained that they (the League) should be given time to state their views since they were not represented in the particular CBC series. (Feb. 17, 1961).

²⁰ *CBC Programming: Policy and Procedure — Broadcast Appearances by Political Candidates*, Oct 1, 1965 (D. L. Bennett, CBC Director, Program Policy).

²¹ *Ibid.*

²² See, *CBC Programming: Policies and Procedures — Provision of Free Local Time for Political Broadcasts*, Oct. 18, 1965 (D. L. Bennett, CBC Director of Program Policy).

network, while far greater than local broadcasters would be jurally much the same. The question remains for the private sector of the Broadcast industry: if there is to be a modification towards greater accessibility for political broadcasts, must the CRTC play a greater role?²³

B. CONTROVERSIAL BROADCASTING: THE CBC AND CONTROVERSIAL PROGRAMS — RULES

The formal rules governing elections are not applicable to general controversial broadcasting. Whether they should be is another matter. Again, beginning with the CBC for the reasons stated in the introduction, the status of neutrality will be explored using the CBC's own policy statements.

E. S. Hallman, then CBC Vice-President — Programming, reaffirmed the Corporation's refusal to accept sponsorship in six enumerated types of programs:

- (1) News programs.
- (2) *Public affairs forums, discussions or commentaries* (emphasis added).
- (3) Talks or interview programs in which the full expression of controversial opinions may occur.
- (4) Programs dealing with consumer information or advice, including farm broadcasts.
- (5) Documentaries and dramatized documentaries dealing with social, political, economic or human relations questions in which contentious views or opinions may be explored.
- (6) Religious and certain institutional broadcasts.

The rationale for the CBC's position was fully stated by Bernard Trotter, CBC Supervisor of Public Affairs. Mr. Trotter's rationale, later adopted by the Corporation, was not in terms of abstractions, but in context of a hard proposal of opening a network public affairs program, "Close-Up", to sponsorship. He set out the argument of those within the Corporation favouring the proposal:

The Corporation needs revenue to meet the competition from private Canadian TV stations. Sponsors, watching the increase of public affairs programming in the United States, had developed heightened interest in aiding such efforts in Canada. Some of these sponsors had become sophisticated enough to understand that the dangers to them of being associated with controversy might have been exaggerated. As a result they may be willing to accept sponsorship on the condition of an absolute absence of any foreknowledge or control of program content.

Mr. Trotter answered the argument:

Some sponsors may, indeed, be sophisticated enough to buy a controversial program like a pig in a poke and sign a contract in which they forswear any interest in the content or any contact with the producer or other program officials.

²³ A verbatim view of these problems was presented in the 1961 *Parliamentary Hearings*.

²⁴ *CBC Programming: Policy and Procedures — Sponsorship of Opinion Broadcasting* (January 20, 1961).

It was suggested, for instance, that the acid test would be for a cigarette manufacturer to accept the possibility of sponsoring a "Close-Up" study of lung cancer. It was also, I think, suggested that the agency concerned had passed this test by agreeing that if the Corporation felt that such a program should be done, they would have no objection. It seems to me that we need to be rather sophisticated in assessing our real position if we were to contract with any sponsor for a program like "Close-Up". The sponsor would not need to be in touch with us. He would be very much on our minds in one way or another. First of all, we would be extremely unlikely to tackle any subject which we know give offence to the sponsor and/or his shareholders. It is simply bad manners to take someone's money and then deliberately slap him in the face. I don't think we would do this, and if we did, I think the sponsor would cancel at the earliest opportunity and would be completely justified in cancelling. But in a more subtle and all-pervading way, the existence of a sponsor would complicate our discussions about potential program material for a program like "Close-Up". It seems to me that our deliberations are often tortured enough without adding another incalculable factor. Even if the sponsor kept his part of the bargain and refrained from direct contact with the producer or program officials, the sponsor's agency would certainly be in constant touch with the CBC commercial department and the sponsor's view of the way the program was going would, inevitably, filter through. In summary, I think we would be naive to believe that we could carry on the planning and production of "Close-Up" as we have done for the past three years. . . .

. . . I would be opposed to the sponsorship of controversial and opinion programs under any circumstances, as a matter of policy. Aside altogether from matters of principle, I think it would be foolish to jeopardize the Corporation's esteemed position in the eyes of many Canadians for what could turn out to be a rather small financial return in the long run. If, on the other hand, the sponsorship of "Close-Up" opened the way to sponsorship, say of the news and other public service programs, then the Corporation would have taken, in my view, a long step towards its own destruction.²⁵

The CBC apparently wanted to place itself in the position where it would have a free hand in developing controversial programs. It did not want even the possibility of the Canadian public drawing an inference of control over such programming by commercial interests and so, placed itself in the same conceptual position, for certain purposes, as it assumed in the area of political broadcasting. In holding absolute power over controversial programming the CBC became that much more accountable in assuring fair, balanced presentation. The problem arises however, that fairness dispensed from such a position might tend to make the CBC rigid in the flexibility and creativity allowed its staff with regard to controversial programming. A measure of that rigidity became clear in the CBC policy statements issued between 1962-1967. The Corporation developed its policy in the light of specific program problems:

(a) ENTERTAINMENT: *Quiz Shows Based Upon News Events.*

In 1962 two popular entertainment programs, "Front Page Challenge" and "Edition Speciale", centred on the identification of headline events or personalities of a few years before. Designed as entertainment, the programs and their panels were not intended to supplant the CBC public affairs programming and for that reason the entertainment quiz panels neither represented different points of view, nor were they expert on the subject under discussion. Yet the nature of the program demanded questioning by the

²⁵ *Proposed Review of CBC Policy re Sponsorship of Controversial Programs*, December, 1960.

panel of guests in terms of their role in important events. How was CBC, in this context, to assure impartial handling of controversy and representation of conflicting views? The Corporation reacted by placing tight restrictions on the programs which would have the effect of limiting controversy to bring about fairness.

1. The head of Public Affairs was to be consulted each week concerning guests and program content.
2. Current controversies are best handled by public affairs programming, rather than entertainment.
3. Some individuals may not be "suitable" as guests. An example is war criminals.
4. The quiz programs should avoid frequent invitations to a given guest or individuals who represent a cause with which that person is identified.
5. The public affairs department should be consulted so that where the subjects to be discussed on the quiz programs are somewhat "involved" or of a "specialized nature" there can be adequate preparation.
6. Guests who though questioned as to the past may have an impact on current controversy such as an election should be avoided.
7. Where dispute develops between the public affairs department and the variety department concerning these rules, the network program director must resolve the issue.²⁶

(b) THE HANDLING OF SATIRE.

Four years after its rulings on quiz programs, the CBC dealt with a more serious, albeit general problem of satire. The Corporation referred itself to Webster's Dictionary and found satire defined as "(1) a work holding up human vices, follies, etc. to ridicule or scorn; (2) trenchant wit, irony or sarcasm used for the purpose of exposing and discrediting vice or folly." *This is entertainment whose substance is controversial matters.* Further, satire as a form is no recent invention. It has been a feature of the media for a very long time. Said the Corporation:

. . . The television medium has naturally adapted the satiric form to its own purpose. Apart from satirical dramatic productions, satire may characterize an entire series such as the late night show "Night Cap" or "Les Couche-tard", or a whole program within a series, e.g., the Ottawa produced election satire on "Public Eye", or it may be inserted in the form of items within a magazine show, e.g., "This Hour Has Seven Days" or "Aujourd'hui".

In almost every case the success of satire depends on revealing the ridiculous or the contradictory aspects of situations and human behaviour in a way which provokes wry amusement or laughter.

Satire is almost always painful to the people exposed to satirical treatment and often painful or offensive to the people who sympathize with its victims. Politicians and public figures tend to be the most frequently satirized personalities of our time, and these people are exposed to satire and often ridicule from a variety of different sources. Public men, whenever they are engaged in public controversy, become easy targets for satire.

Satire is often used to puncture the pretensions of people in places of power to deal with hypocrisy and to lay bear social injustice when the normal methods of attack are ineffective. Thus, satire serves an important and useful purpose in the public media of communication.²⁷

²⁶ *CBC Policy and Procedure Re Quiz Shows Based Upon News Events* — "Front Page Challenge" and "Edition Spéciale", Feb. 5, 1962 (Mr. E. S. Hallman).

²⁷ *Programming: Policy and Procedures — The Handling of Satire*, Jan. 3, 1966 (D. L. Bennett, Director, CBC Program Policy).

For the CBC there was *no policy* that could prescribe how to be successful in programming satire. Similarly there was no policy that could alleviate the hurt, offense or annoyance that satire might cause. But, for the CBC "*one principle seems clear: the risks of dealing satirically with subjects, institutions, symbols or people about which large numbers of the audience are emotionally or sentimentally involved are high indeed.*"²⁸ High for whom? For the network? For those producing the show? For the viewers who are hurt? Perhaps some of the answers may come from the comments covering satire as stated by the CBC:

1. The Corporation is concerned about audience response.
2. Where the subject dealt with touches upon "intense personal feelings" programs should avoid mixing satire with serious comment. "More often than not the public seems to be confused by this approach [the mix] or it reacts strongly and negatively to the satirical treatment of an issue which they expect to be treated with dignity, intelligence and care."
3. Accordingly, satire should be used most *sparingly* in programs whose main purpose is thoughtful consideration of important issues.
4. Any satire should not be inconsistent with established facts.
5. Whenever there is doubt as to the relevance or appropriateness of a piece of satire, "the wise course is to reject it as an element in the program".
6. In any event, satire should not depend for its effect on the ridicule of physical handicaps, race, colour or religion. The exceptions, such as Jewish, Scottish, and Irish humour, ought not be used as a base for unwarranted expansion.²⁹

These rules help to explain the rise and demise of CBC programs such as *This Hour Has Seven Days*. At its inception the CBC could boast of the controversy which its satire and serious comment could generate and of its rating. Each week in 1964-1965 more than two million Canadians viewed the show.³⁰ However, it was only in the *next* annual report of the CBC that the series was effectively emasculated through change in the program's hosts. Once these individuals were removed the "key" staff personnel either left the CBC or drifted to other jobs. The program was eliminated. The reasons given by the Corporation in its annual report merely summarize much that already has been written:

²⁸ Ibid.

²⁹ Ibid.

³⁰ (a) *CBC Annual Report for 1964-1965* at pp. 32-33.

(b) Consider the Corporation's own evaluation of *This Hour* and a similar show *Le Sel de la semaine*:

"The public affairs programs *This Hour Has Seven Days* and *Le Sel de la Semaine* also present idea and opinion about current events, but they do so using techniques that include comedy, music and satire. This, combined with fast-moving format and their controversial content, attracts very large audiences who greatly enjoy the programs. On the other hand, *Seven Days* has drawn criticism, for instance that by using entertainment techniques it has allegedly lowered standards of analysis and good taste, thereby "pandering to the masses". Yet CBC audience research has shown that these audiences watch the program critically, rejecting some items, enjoying most. Furthermore, the program does not appeal solely or mainly to lower educational groups: special studies show that an abnormally high proportion (over 40%) of the audiences have completed high school, which is among the highest percentage for any CBC television program. Again, one segment of *Seven Days*, *Summer in Mississippi*, has won seven international awards."

CBC Annual Report for 1965-66 at p. 33.

Basic to the controversy was management's judgment that the program, though lively and provocative, had come into conflict with Corporation policies and responsibilities in public affairs programming; had used journalistic methods which the Corporation could not permit; had exceeded the degree of authority the Corporation was prepared to grant programs of this nature; and had provided a continuing challenge to essential supervision, culminating in the unprecedented behaviour of its principals in publicly disputing with the Corporation.³¹

(c) GENERAL QUESTIONS OF GOOD TASTE.

Not unrelated to the problem of satire is that of good taste. What can be freely and dispassionately discussed in mixed company or in a faculty room at a university may well be considered outrageous in other circles. For the CBC, capable of reaching most Canadians, there was the decision as to whether some of its general audience should be offended by what otherwise might constitute proper discussion. This decision had to be considered in the light of the CBC's mission "to create and maintain an informed public who may hold a variety of lawful tastes, sentiments and attitudes".

Therefore, like in its treatment of satire, the CBC issued a four-page statement indicating good taste was considered a delicate matter but clear rules would not be formulated because values were unclear, and sometimes transitory. However, it was realized a breach of good taste could not only be dangerous, but disastrous. Thus, it was considered better to err on the side of caution if any doubt should arise. The Corporation relied upon its staff or more precisely, upon its leadership and reasonable discipline to bring about the requisite measure of "safety".

It is the responsibility of Network Supervisors to select and appoint producers and supervising producers in whose good taste and judgment they have confidence, to watch performance, and in cases where their confidence has been misplaced, to see that the *person concerned is moved to another and less potentially dangerous or sensitive field*. Producers, whether in Toronto or Montreal, or in regional production centres, must be in close contact with their Program Directors and their Network Supervisor, and be *ready to discuss with them any program about which the slightest doubt may exist in their minds*.³²

CONCLUSION

The CBC has taken upon itself full responsibility for that which is carried over the network. Therefore it cannot escape the heavy burden of imposing restraints in order that that power not be abused. The Corporation has not chosen to pass on that responsibility by encouraging its treatment as a common carrier. It has not chosen, to the extent possible within the law, to open its channels to the public and let the particular commentator bear the full

³¹ *CBC Annual Report for 1966-67* at p. 54.

³² *Programming: Policy and Procedure — General Questions of Good Taste*, Jan. 3, 1967 (D. L. Bennett, Director, CBC Program policy).

responsibility for what is said. Rather, the view seems to be that anything broadcast over the CBC bears the imprimatur of the CBC and thus restraint is necessary.

It is for the CRTC to examine the content and implications of the national network's policies in the light of the public interest. Has the CBC defined its broadcasting obligations in a direction consistent with producing the type of programming the public deserves and requires? Restraint and restricted access are not obvious or necessary corollaries to a declaration of "equal and fair presentation of all main points of view".