

BY COURIER

April 9, 2001

Ms Ursula Menke
Secretary General
Canadian Radio-television and Telecommunications Commission
Les Terrasses de la Chaudiere
Central Building
1 Promenade du Portage
Hull, Quebec J8X 4B1

Re: Complaint in relation to Bell ExpressVu Broadcast of Obscene Material

Dear Ms Menke:

Please accept this letter as a complaint pursuant to the Broadcast Act, C.R.T.C. Act and regulations pursuant to both statutes against Bell ExpressVu, a license holder, for its broadcast of programming in contravention of its license and the above-noted statutes and regulations.

As I'm sure you are aware, on March 28, 2001, the *Fifth Estate* exposed the improper content of programming provided by Bell ExpressVu to Canadian subscribers. Specifically, as the *Fifth Estate* (video enclosed) confirmed, the license holder purchases programming channels, True Blue and Extasy, from New Frontier Media, an American film production company.

Based on the content of the *Fifth Estate* program, it would appear that Bell ExpressVu either chose to, or was negligent in permitting, sexually violent and degrading material to be broadcast to Canadian viewers. This was, of course, only possible because of it holding a broadcast license issued by the CRTC. The issuance of a license is neither unconditional nor absolute and the CRTC possesses both the authority and statutory obligation to ensure licensees are in compliance with the terms of their license and the governing statutes and regulations.

Although I am not familiar with all relevant provisions, the following appear to me to indicate that the CRTC must review the conduct of the licensee in these circumstances and determine, after a public hearing, whether its license should be suspended and/or revoked.

Broadcast Act

3. (1) *It is hereby declared as the broadcasting policy for Canada that...*

(h) all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast; ...

9. (1) *Subject to this Part, the Commission may, in furtherance of its objects...*

(e) suspend or revoke any licence;

12. (1) *Where it appears to the Commission that*

(a) any person has failed to do any act or thing that the person is required to do pursuant to this Part or to any regulation, licence, decision or order made or issued by the Commission under this Part, or has done or is doing any act or thing in contravention of this Part or of any such regulation, licence, decision or order, or

(b) the circumstances may require the Commission to make any decision or order or to give any approval that it is authorized to make or give under this Part or under any regulation or order made under this Part, the Commission may inquire into, hear and determine the matter.

16. *The Commission has, in respect of any hearing under this Part, with regard to the attendance, swearing and examination of witnesses at the hearing, the production and inspection of documents, the enforcement of its orders, the entry and inspection of property and other matters necessary or proper in relation to the hearing, all such powers, rights and privileges as are vested in a superior court of record.*

17. *The Commission has authority to determine questions of fact or law in relation to any matter within its jurisdiction under this Act.*

18. (1) *Except where otherwise provided, the Commission shall hold a public hearing in connection with...*

(b) the suspension or revocation of a licence;...

(3) The Commission may hold a public hearing, make a report, issue any decision and give any approval in connection with any complaint or representation made to the Commission or in connection with any other matter within its jurisdiction under this Act if it is satisfied that it would be in the public interest to do so.

24. (1) *No licence shall be suspended or revoked under this Part unless the licensee applies for or consents to the suspension or revocation or, in any other case, unless, after a public hearing in accordance with section 18, the Commission is satisfied that*

(a) the licensee has contravened or failed to comply with any condition of the licence or with any order made under subsection 12(2) or any regulation made under this Part;

32. (2) *Every person who contravenes or fails to comply with any regulation or order made under this Part is guilty of an offence punishable on summary conviction and is liable*

(a) in the case of an individual, to a fine not exceeding twenty-five thousand dollars for a first offence and not exceeding fifty thousand dollars for each subsequent offence; or

(b) in the case of a corporation, to a fine not exceeding two hundred and fifty thousand dollars for a first offence and not exceeding five hundred thousand dollars for each subsequent offence.

33. Every person who contravenes or fails to comply with any condition of a licence issued to the person is guilty of an offence punishable on summary conviction.

CRTC Rules of Procedure

9. Where a person wishes to lodge a complaint with or make any representation to the Commission with respect to any matter within the powers of the Commission that is not directed to any application, he shall mail or deliver to the Secretary a brief written submission signed by him setting out the nature of his complaint or representation.

10. Where the Commission determines that a complaint or representation made pursuant to section 9 constitutes an application or an intervention, it may require the person who made the complaint or representation to comply with the procedure relating to applications or interventions, as the case may be.

11. Where the Executive Committee is satisfied that it would be in the public interest to hold a public hearing in connection with a complaint or representation made pursuant to section 9, the Secretary shall notify the person who made the complaint or representation and the person against whom it is made of the date and place of the hearing.

Pay Television Regulations

3. (2) No licensee shall distribute programming

(a) that contains anything in contravention of the law;

(b) that contains any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;

Specialty Services Regulations

3. No licensee shall distribute programming that contains

(a) anything in contravention of the law;

(b) any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;

(c) any obscene or profane language or obscene or profane pictorial representation

Broadcasting Regulations

5. (1) A licensee shall not broadcast

(a) anything in contravention of the law;

(b) any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;

(c) any obscene or profane language or pictorial representation;

Clearly, there is ample authority for the CRTC to hold public hearings to determine whether Bell ExpressVu should have its broadcast license revoked as a result of its deliberate or negligent broadcast of the channels described in the *Fifth Estate* program.

It is interesting to note that there is a mandated consideration of the public interest in determining whether to hold public hearings following a complaint such as this one. In this specific instance, I urge you to consider the following factors that pertain to the public interest inherent in this case:

- **The credibility of the CRTC as a regulatory body:** Bell ExpressVu only obtained its ability to broadcast as a result of a CRTC review and decision. Such egregious circumstances thus call into question the credibility of the CRTC process.
- **The self-regulatory nature of the broadcasting industry:** Over some objections, Canada has chosen a self-regulatory mode of enforcement for the broadcast industry which is especially challenged in consideration of the impugned material. Equally, the manner by which such material was broadcast, having been purchased from a foreign producer, merits public scrutiny.
- **The purported involvement of the Ontario Film Review Board:** By invoking the regulatory authority (or failure to employ it) of another important public institution, the licensee's actions have necessitated a public review of the process and deficiencies within the current arrangements.
- **How the material came to be broadcast:** The CRTC should explore this important factual issue to assess future procedural improvements which may be warranted.
- **The multiplicity of channels, providers and licensees:** Canada has seen an explosion of available broadcast material and this case provides an excellent opportunity to review the sufficiency of procedural safeguards in this environment.

- **The nature of the broadcast material:** As Canada redoubles its public efforts to eradicate violence against women, the broadcast of this material by a major industry player licensed by a public institution is a stark and disturbing incident that merits public review lest Canadians conclude that such actions and material are acceptable.

Finally, I wish to confirm that I am not interested in any form of 'mediation' or referral pursuant to the Canadian Broadcast Standards Council. What has transpired merits the intervention of the public institution charged with maintaining the public airwaves. Nothing less is remotely appropriate. I look forward to hearing from you with respect to this complaint.

Sincerely,

Valerie Smith

Encl Videotape, *Fifth Estate*, March 28, 2001

cc The Hon. David Young, Attorney General of Ontario
Murray Segal, Assistant Deputy Minister, Criminal Law
Ministry of the Attorney General, Ontario
The Hon. Norm Stirling, Minister of Consumer and Business Services
The Hon. Dianne Cunningham, Minister Responsible for Women's Issues
Scott Newark, Special Counsel, Office for Victims of Crime, Ontario
Robert Warren, Chair, Ontario Film Review Board
Michael Bryant, M.P.P., Liberal Critic, Attorney General
Peter Kormos, M.P.P., NDP Critic, Attorney General
Marie Bountrogianni, M.P.P., Liberal Critic, Women's Issues
Francis Lankin, M.P.P., NDP Critic, Women's Issues
Steve Gilchrist, M.P.P.
The Hon. Sheila Copps, Minister of Heritage
Members and Associate Members, Standing Committee on
Canadian Heritage
David Colville, Chairman, CRTC
Jean-Pierre Blais, Executive Director, Broadcasting Directorate, CRTC
Tony Lacombe, Director General, Licensing & Operations Group, CRTC
Priscilla de Villiers, President, CAVEAT
MediaWatch