



Broadcasting Regulatory Policy CRTC 2011-308

PDF version

Route references: 2010-931, 2011-14

Ottawa, 11 May 2011

Proposed amendments to the Commission's false or misleading news provisions

The Commission announces that it will not amend the false or misleading news provisions set out in various Commission regulations.

The Commission reminds the public that complaints that arise regarding the news content aired by broadcasters should be addressed to the Canadian Broadcast Standards Council (CBSC). The Commission will typically intervene in the complaint process only if the broadcaster in question is not a member in good standing of the CBSC or if the complaint has not been satisfactorily resolved by the CBSC.

The Commission further reminds the public that for the Commission to take action on a complaint relating to the broadcast of false or misleading news, the breach of the false or misleading news provisions must be flagrant.

Introduction

1. In Broadcasting Notices of Consultation 2010-931 and 2011-14, the Commission called for comments on proposed amendments to certain of its regulations. Among other things, the Commission proposed an amendment that sought to address concerns raised by Parliament's Standing Joint Committee for the Scrutiny of Regulations (SJC) regarding various provisions in Commission regulations that prohibit "false or misleading news."
2. The sections that deal with the prohibition on false or misleading news are:
 - section 8(1)(d) of the *Broadcasting Distribution Regulations*;
 - section 3(d) of the *Radio Regulations, 1986*;
 - section 5(1)(d) of the *Television Broadcasting Regulations, 1987*;
 - section 3(2)(c) of the *Pay Television Regulations, 1990*; and
 - section 3(d) of the *Specialty Services Regulations, 1990*.
3. Generally speaking, these provisions prohibit licensees of radio and television programming undertakings and broadcasting distribution undertakings from

broadcasting programs that contain false or misleading news. Citing the Supreme Court of Canada's *R. v. Zundel* judgment¹ (the Zundel judgment), the SJC expressed concerns that the existing false or misleading news provisions might not be in keeping with the freedom of expression provision under section 2(b) of the *Canadian Charter of Rights and Freedoms* (the Charter).

4. To address these concerns, the Commission proposed in Broadcasting Notices of Consultation 2010-931 and 2011-14 to amend the relevant provisions such that the above-noted prohibition would be narrowed to "news that the licensee knows is false or misleading and that endangers or is likely to endanger the lives, health or safety of the public."
5. The Commission received approximately 350 comments in response to Broadcasting Notice of Consultation 2010-931 and approximately 3,300 comments in response to Broadcasting Notice of Consultation 2011-14. In both cases, the vast majority of the comments addressed the proposed amendment to the false or misleading news provisions. Most criticized the proposal, noting that the change would permit a wide range of false or misleading news to be broadcast. The Commission received eight comments that were supportive of the change, arguing that it was more in keeping with freedom of expression.
6. On 10 March 2011, the Commission received a letter from the SJC in which it informed the Commission that it no longer saw the Zundel judgment as an impediment to the continued application of the current regulations.

Commission's analysis and determinations

7. The Commission notes that the current provisions on false or misleading news have existed for many years and fulfil an important purpose. In this regard, the wide reach of broadcasting means that the impact on the public of false or misleading news can be very serious. The public interest therefore requires the continuation of the prohibition as currently enacted (see paragraph 2 of the present regulatory policy). This will ensure that the Commission's regulations continue to fulfill the objectives of the *Broadcasting Act* (the Act), including the requirement set out in section 3(1)(g) of the Act that the programming originated by broadcasting undertakings be of a high standard.
8. As a result, the Commission announces that it will not proceed with the proposed amendments on the provisions prohibiting false or misleading news set out in Broadcasting Notices of Consultation 2010-931 and 2011-14.

¹ *R. v. Zundel* [1992] 2 S.C.R. 731. In that judgment, which related to a charge against Mr. Ernst Zundel for spreading false news, contrary to section 181 of the *Criminal Code of Canada*, the Supreme Court of Canada struck down the *Criminal Code of Canada* provision prohibiting the publication of false information or news on the basis that it violated the freedom of expression provision under section 2(b) of the Charter.

9. The Commission reminds the public that complaints or issues that may arise regarding the news content aired by broadcasters should be addressed to the Canadian Broadcast Standards Council (CBSC). The CBSC has the mandate to ensure that broadcasters respect a number of codes, such as the Canadian Association of Broadcasters' *Code of Ethics* and the *Code of (Journalistic) Ethics of the Radio and Television News Directors Association*. These codes ensure that broadcasters adhere to a high standard of programming, while guaranteeing their ability to report independently about matters of public interest and to present a wide range of opinions and ideas.
10. The Commission will typically intervene in the complaint process only if the broadcaster in question is not a member in good standing of the CBSC or if the complaint has not been satisfactorily resolved by the CBSC.
11. Moreover, in regulating and supervising the Canadian broadcasting system to achieve the policy objectives of the Act, the Commission is always mindful of section 2(3) of the Act, which provides that the Act "shall be construed and applied in a manner that is consistent with the freedom of expression and journalistic, creative and programming independence enjoyed by broadcasting undertakings." In this regard, the Commission noted the following in Decision 90-772:

[...] the Commission is not prepared to conclude that the limits to freedom of expression have been overstepped in cases other than those of the most flagrant excess; in grey areas, where it is not obvious that the requirement of high standard has been breached, the Commission will settle in favour of freedom of expression. The aim is to provide a minimum level of protection to persons in situations where freedom of expression, a very powerful freedom when exercised using the public airwaves, comes at their expense.
12. In light of the protections afforded by section 2(b) of the Charter and the objectives set out in the Act, the Commission reminds the public that for the Commission to take action on a complaint relating to the broadcast of false or misleading news, the breach of the false or misleading news provisions must be flagrant.
13. The Commission will announce at a later date its determinations regarding other issues relating to amendments to its regulations as a result of other comments received in response to Broadcasting Notices of Consultation 2010-931 and 2011-14.

Secretary General

Related documents

- *Call for comments on amendments to the Radio Regulations, 1986, Television Broadcasting Regulations, 1987, Pay Television Regulations, 1990, Specialty Services Regulations, 1990, and the Broadcasting Information Regulations, 1993, Broadcasting Notice of Consultation CRTC 2011-14, 10 January 2011*
- *Call for comments on amendments to the Broadcasting Distribution Regulations, Broadcasting Notice of Consultation CRTC 2010-931, 10 December 2010*
- Decision CRTC 90-772, 20 August 1990