

Should Lying Be Illegal? Canada's Broadcasters Debate

By Lane Wallace

Honesty seems like such a no-brainer of a requirement. But it's caused a great deal of controversy in Canada over the past few weeks--controversy heightened by the upcoming launch of a new, politically conservative Canadian television channel called Sun TV.

The controversy centered on Section 1.1, Subsection 3 of [Canada's Broadcasting Act of 1986](#), which specifies--among other things--that:

A Licensee shall not broadcast ... d) false or misleading news.

At first glance, it seems such an obvious, common-sense requirement that I was a little surprised that the Canadians had felt a need to put it in writing, or that anyone could possibly argue against it. But with a little more thought, I realized how profound the stricture really was. I also began to wonder why we don't have a similar requirement here in the U.S.--and how different our public discourse might be if we did.

The controversy over the Canadian rule erupted in January, when the Canadian Radio-television and Telecommunications Commission (CRTC), Canada's equivalent to our FCC, proposed amending the rule to prohibit only:

...any news that the licensee knows to be false or misleading and that endangers or is likely to endanger the lives, health or safety of the public.

The root of the proposed amendment apparently goes back 10 years to a Canadian Supreme Court ruling that affirmed the free speech right of a Holocaust denier named Ernst Zundel to espouse those views. The Canadian Joint Parliamentary Committee on the Scrutiny of Regulations subsequently asked the CRTC to review its "false and misleading news" prohibition to determine if it violated free-speech guarantees.

The CRTC dragged its feet for 10 years. But then, this January, the proposed amendment was announced. Why the sudden action after 10 years of inaction? That's part of the controversy. The CRTC chairman says they were ordered to do it by the regulatory committee, but one of the committee co-chairmen says that's not true.

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The controversy was also heightened by the impending launch of a new, privately-owned Canadian television station called Sun TV, now scheduled to go on-air April 18th. Sun TV is owned by Quebecor, the same company that owns the *Toronto Sun* tabloid newspaper, which has a reputation as a right-wing publication. The station is being promoted as a feisty, "controversially Canadian, hard-news" television version of the paper (according to Quebecor's president) and an outlet that will "take on mainstream media" (according to its vice president).

Critics accused the CRTC of looking to change the rules to give Sun TV more leeway in what it broadcasts. But both the CRTC and the parliamentary committee deny any correlation between the two events. And it *is* true that the committee had been requesting a review of the rule for a decade. In any event, a huge public outcry ensued, and the parliamentary committee finally looked into the matter itself and concluded that a broadcast station did not have the same rights and freedoms as an

individual and, further, that a broadcasting license was a privilege, not a right. The committee pointed out that stations already had to comply with numerous restrictions and conditions to get and maintain their licenses, including limits on the content of their broadcasts. Consequently, the CRTC [withdrew](#) its proposed amendment. Canada will continue to require stations to refrain from broadcasting "false or misleading news."

Or, at least, the rule will remain on the books. Apparently, the CRTC has never actually taken any action against a station pursuant to that rule. One of the arguments for the amendment, in fact, was that the CRTC lacked enforcement capability, and had never enforced the rule anyway. But the CRTC *does* have the ability to revoke a station's license--which might give a station owner at least a little pause before allowing its on-air talent to present unsupported theories as fact or get too overzealous in their conclusions or spin on the news.

But the question remains ... why don't we have a similar requirement here in the U.S.? Traditionally, both broadcast radio and television and cable television stations have been subject to regulation, including content regulation, by the FCC. Although that regulation originated from the fact that airwaves were extremely limited, and not accessible to everyone, the regulation continued even after the birth and expansion of cable television, because courts recognized that television and radio are "uniquely pervasive" in people's lives, in a way print media are not. Indecent speech is already prohibited on broadcast television and, at least in theory, on cable (although courts' opinions on the best remedies for enforcing that goal seem to vary). Before its repeal in 1987, both broadcast and cable stations were both subject to the "Fairness Doctrine," which required the stations to present a balance of both sides to any controversial issue.

So given that we've long recognized that a broadcaster or cablecaster has power beyond an individual citizen or even print media, and therefore does not warrant quite the same "free speech" or "free press" rights without restriction (as the Canadian parliament just concluded) ... why can't we have a restriction on broadcasting (or cablecasting) false or misleading news?

One reason is probably the same reason the Fairness Doctrine no longer exists. It's laughable now, with the explosion of narrow-interest fringe websites and narrow-audience, right-wing and left-wing cable shows on Fox News and MSNBC, but in the deregulation atmosphere of the 1980s, the FCC's rationale for getting rid of the Fairness Doctrine was twofold: first, that the Fairness Doctrine inhibited the broadcasters' right to free speech, and second, that the free market was a better regulator of news content on television than the government. Specifically, the FCC said that individual media outlets would compete with each other for viewers, and that competition would necessarily involve establishing the accuracy, credibility, reliability and thoroughness of each story ... and that over time, the public would weed out new providers that proved to be inaccurate, unreliable, one-sided, or incredible.

One wonders, really, if the FCC had ever studied human behavior or the desire of people to have their individual points of view validated. Far from "weeding out" providers of one-sided, or even incredible information, we now revel in what *New York Times* columnist Nicholas Kristof once called "[The Daily Me](#)"--a selection of news outlets that never *ever* challenge our particular points of view.

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Contrary to the FCC's theory, our particular public seems to reward, rather than punish, outrageous or one-sided news providers. And while that may make each of us feel nice and righteous as we pick and choose our news broadcasters and commentators, one would be hard-pressed to argue that it enhances the quality of our public--or even our personal--discourse. Especially given the questionable "truth" of many of the statements or inferences made on those highly targeted outlets. In theory, we could all fact-check everything we hear on the TV or radio, of course. But few people have the time to

do that, even if they had the contacts or resources.

But forget about the Fairness Doctrine. Imagine, instead, if all those broadcasters were simply prohibited from broadcasting (or cablecasting) "false or misleading news." Is it unacceptable censorship to require someone to be basically honest in what they broadcast as "news"--and which we are more likely to accept as truth, because it comes from a serious and authoritative-sounding news anchor?

Think about it. We prohibit people from lying in court, because the consequences of those lies are serious. That's a form of censorship of free speech, but one we accept quite willingly. And while the consequences of what we hear on television and radio are not as instantly severe as in a court case, one could argue that the damage widely-disseminated false information does to the goal of a well-informed public and a working, thriving democracy is significant, as well. What's more, if we really thought everyone had the right to say whatever they wanted, regardless of truth or consequences, we wouldn't prohibit anyone from yelling "fire" in a crowded theatre that wasn't actually on fire. We wouldn't have slander or libel laws. We wouldn't have laws about hate speech. And we'd allow broadcasters and cablecasters to air all words and all images, no matter how indecent, at all times.

Ah. But what if a broadcaster or cablecaster didn't *know* the information was false? I suppose you could prohibit only *knowingly* airing false or misleading information. But on the other hand, if a station were at risk for sanction or a license revocation for getting it wrong (even if the FCC rarely enforced the measure), it might motivate reporters and anchors to do a bit more fact checking--and even, perhaps, a bit more research into alternative viewpoints--before seizing on and running with a hot or juicy scoop or angle.

It's odd, really, that the idea of requiring news broadcasters to be fundamentally honest about the information they project across the nation and into our homes sounds radical. Surely we wouldn't argue that we *want* to be lied to and misled, would we?

Would we?

Radical or not, it's worth thinking about.

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