LETTERS TO THE EDITOR

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Madame Editor:

The article "The Regulation of Broadcasting in Canada and the U.S.: Straws in the Wind" [this volume] is exemplary on two counts: first, it asks us to consider simultaneously provisions of the Broadcasting Act and the Charter of Rights and Freedoms, certainly a worthwhile exercise; and second it typifies neo-conservative analysis of an important policy issue. Neo-conservatism, of course, has for a number of years been blowing its chill wind through Parliament Hill and several provincial legislatures, making the article in tune with the times.

These well-deserved plaudits notwithstanding, the article's analysis is undermined, and in my view invalidated, by three faulty assumptions here adumbrated.

1. Unawareness that government apportions relative rights and freedoms

The article implicitly assumes that freedom is absolute, not relative and interdependent. Regulation, therefore, is erroneously seen as eroding, rather than as reapportioning, rights and freedoms. In fact, every law and regulation simultaneously enlarges freedom for some while reducing freedom for others. (Laws prohibiting automobiles on sidewalks enhance the freedom of pedestrians). Therefore, in analyzing *any* law or regulation one asks not whether freedom is being expanded or restrained in an absolute sense, but rather *whose* freedom is being enlarged at whose expense.

2. Misconception concerning the Charter

The Charter affirms the right to freedom of expression "to everyone". Since "everyone" is afforded this right, some are not guaranteed more rights than others to express themselves. In particular, the Charter does not say or imply that everyone has the right to own and operate a broadcasting station. Hence, in the Federal Court judgement in the New Brunswick Broadcasting case, the court wrote:

> The freedom guaranteed by the Charter is a freedom to express and communicate ideas without restraint, whether orally or in print or by other means of communication....The appellant's freedom to broadcast what it wishes to communicate would not be denied by the refusal of a licence to operate a broadcasting undertaking. It would have *the same freedom as anyone else* to air its information by purchasing time on a licensed station. [emphasis added]. (New Brunswick Broadcasting Co. Ltd. v. CRTC [1984] 2 F.C.)

In principle, therefore, the award or denial of a licence to broadcast is not governed by the Charter at all. On the other hand, if a licence is awarded or denied with the intent or effect of reducing freedom of expression broadly conceived (on grounds, say, of party affiliation or editorial position on an issue) that would be another matter, to be addressed by the facts of the case. That understood, let us turn to the New Brunswick case itself.

3. Misapprehension concerning the New Brunswick case

The New Brunswick case has close parallels with the U.S. Associated Press case of 1945 (326 U.S. 1, 65 S. Ct. 1416, 89 L. Ed. 2013), wherein the dispute concerned newspapers colluding to prevent rivals from utilizing AP news stories. In striking down the agreement, the U.S. Supreme Court ruled:

> It would be strange indeed however if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom...Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. Freedom to publish means freedom for all and not for some. Freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not. Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests.

Concerning the particular case at hand, the CRTC's licensing decision was a response to a Cabinet Decision (following recommendation from the Kent Royal Commission on Newspapers) that cross ownership of broadcasting and newspapers in the same community be reduced. [See Allan Bartley's paper, this volume]. Since the Irving family controlled both media in St. John, the CRTC issued a short-term (3 year) renewal for the TV station to allow time for the family to divest itself of one or other of its media outlets. The intent was to *increase* diversity of information sources and to lessen concentration of control. Here we see clearly how relative rights collide, that there is no absolute freedom: Irvings freedom to own broadcasting and newspapers collided with diversity of media ownership.

More generally, the current movement toward "deregulation" undoubtedly apportions increased rights to those privileged to broadcast, but it is axiomatic that it entails reduced rights (freedoms) for others. Without Canadian content quotas for example, freedom of expression for Canadian creative talent would be reduced. So would the "marketplace of ideas" if American programming were to push indigenous programming off the air. Laws and regulations can be used to increase (diffuse) freedom of expression. Such has been the purpose of Canadian broadcasting policy generally, and of the New Brunswick judgement in particular.