



Broadcasting Decision CRTC 2009-184

Ottawa, 8 April 2009

Complaint regarding an election debate program broadcast by Rogers Cable Communications Inc. during the 2007 Ontario provincial election

*In this decision, the Commission finds that Rogers Cable Communications Inc. did not breach section 27(4) of the Broadcasting Distribution Regulations when it expelled a political candidate from an election debate program during the 2007 Ontario provincial election campaign. The Commission therefore **dismisses** the complaint by Mr. John Turmel.*

Introduction

1. On 24 September 2007, the Commission received a complaint from Mr. John Turmel regarding an election debate program broadcast by Rogers Cable Communications Inc. (Rogers) on its community channel, Rogers TV. In his complaint, Mr. Turmel submitted that Rogers breached regulations regarding the equitable allocation of time for programs of a partisan political character by expelling him from the program.
2. On 18 September 2007, Rogers taped a program involving a debate between six candidates in the riding of Brant, one of whom was Mr. Turmel. The program was to be broadcast a number of times in September and October 2007. The Ontario provincial election took place on 10 October 2007.
3. Rogers replied to Mr. Turmel's complaint on 27 September 2007. Mr. Turmel was not satisfied with Rogers' reply and on 1 October 2007, he requested that the Commission take action in relation to his complaint by directing Rogers to grant him an equitable share of airtime before election day.
4. On 4 October 2007, Mr. Turmel brought an application for judicial review in the Federal Court of Appeal in an effort to have the situation remedied before the further rebroadcast of the election debate program. A judge of the Federal Court of Appeal denied interim relief in November 2007. The Federal Court of Appeal dismissed Mr. Turmel's application on 17 December 2008 on the grounds that the Commission had not rendered a decision with respect to Mr. Turmel's complaint which could be the subject of judicial review or against which relief could be sought.¹
5. Subsequently, on 26 January 2009, Mr. Turmel requested that the Commission render a decision on his complaint.

¹ John C. Turmel vs. CRTC, 2008 FCA 405

The complaint

6. Mr. Turmel submitted that he had been denied an equal share of time in Rogers' election debate program as required by the regulations regarding the equitable allocation of time for programs of a partisan political character. Mr. Turmel stated that, in contrast to the other candidates who were invited to participate in the debate and who received an equal share of a two-hour debate, he was given only seconds before being denied any further time. Mr. Turmel requested that the Commission direct Rogers to grant him an equitable share of time in the debate program before election day. Specifically, Mr. Turmel requested that Rogers correct the situation by allowing him to tape a 32-minute segment to be added before or after the remaining broadcasts of the election debate program.

Rogers' reply

7. In its reply, Rogers denied that Mr. Turmel was not granted equitable time in the election debate program. Rogers stated that Mr. Turmel was provided with the debate rules and format in advance, and at no time prior to the debate had Mr. Turmel raised concerns with regard to them. According to Rogers, Mr. Turmel used his opening statement to take issue with the moderator and the debate format; he refused to remove a badge he was wearing despite the fact that the debate rules prohibited candidates from displaying promotional material on the production set; and he interrupted the opening remarks of a fellow candidate. In Rogers' view, Mr. Turmel was provided with an equitable opportunity to participate in the debate program and Rogers acted in a professional manner to ensure the coverage of the debate was balanced and not disruptive to its viewers.

Commission's analysis and determinations

8. Given that the election has already taken place, the Commission considers moot Mr. Turmel's request for relief, namely, that the Commission compel Rogers to provide him with an equitable share of time as part of the broadcasts of the election debate program.
9. However, at the heart of Mr. Turmel's complaint is his allegation that, by expelling him from the debate program, Rogers breached the Commission's regulations regarding the equitable allocation of time for programs of a partisan political character during an election period.
10. The regulatory provision regarding the equitable allocation of time for programs of a partisan political character that applies to Rogers is set out in section 27(4) of the *Broadcasting Distribution Regulations*:

If a licensee provides time on the community channel in a licensed area during an election period for the distribution of programming of a partisan political character, the licensee shall allocate that time on an equitable basis among all accredited political parties and rival candidates.

11. Similarly worded provisions exist in the *Radio Regulations, 1986*, the *Television Broadcasting Regulations, 1987*, and the *Specialty Services Regulations, 1990*.
12. In Public Notice [1995-44](#), the Commission clarified that the above provisions in the regulations do not apply to debate programs. In the same notice, the Commission further stated that it would not require that debate programs feature all rival parties or candidates in one or more programs. This notice followed the Ontario Court of Appeal's decision in *R. v. Canadian Broadcasting Corporation et al.*, [1993] 51 C.P.R.(3d), which held that debate programs were not programs of a "partisan political character" within the meaning of the Commission's regulations. In the Court's view, while the participants in a debate may very well be partisan, the program itself was not because it presented the views of multiple candidates. As such, the Court found that debate programs were not covered by the relevant provisions of the Commission's regulations. Leave to appeal this decision to the Supreme Court of Canada was denied.
13. The Commission reiterated these determinations in Broadcasting Circular [2007-5](#) in connection with the 10 October 2007 Ontario provincial election.
14. In light of the Commission's determinations in Public Notice [1995-44](#), the Commission considers that it is within Rogers' editorial discretion to set the rules and format for debates it chooses to air, and to exclude participants where, in its view, those rules are not being complied with.
15. Accordingly, the Commission finds that Rogers Cable Communications Inc. did not breach section 27(4) of the *Broadcasting Distribution Regulations* when it expelled Mr. Turmel from an election debate program during the 2007 Ontario provincial election campaign. The Commission therefore **dismisses** the complaint by Mr. John Turmel.

Secretary General

Related documents

- *Guidelines to all licensees of broadcasting undertakings serving the province of Ontario concerning the Ontario provincial election that will take place on 10 October 2007*, Broadcasting Circular CRTC 2007-5, 7 September 2007
- *Election-period broadcasting: Debates*, Public Notice CRTC 1995-44, 15 March 1995

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