

LAW REFORM COMMISSION OF BRITISH COLUMBIA

REPORT ON CABLE TELEVISION AND DEFAMATION

LRC 50

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TO THE HONOURABLE L. ALLAN WILLIAMS, Q.C. ATTORNEY GENERAL FOR BRITISH COLUMBIA	

The Law Reform Commission of British Columbia has the honour to present the following:

REPORT ON CABLE TELEVISION AND DEFAMATION

Cable television has become a significant medium of communication in this province. Its importance will likely continue to grow in the coming years, as evidenced by government initiatives in establishing the "Knowledge Network." With this growth has come an increased vulnerability of cable operators to defamation proceedings and an increased danger to persons who may be defamed in an imputation disseminated by cable.

The *Libel and Slander Act* contains special provisions that define the legal position of conventional broadcasters but these do not apply to cable television operators. In this Report it is recommended that the legal position of cable television operators under the *Libel and Slander Act* be assimilated to that of conventional broadcasters so they share corresponding benefits and burdens.

CHAPTER I DEFAMATION GENERALLY

The law of defamation is concerned with the protection of reputation, the right of a person "to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit." The torts of libel and slander, collectively referred to as defamation, exist to enforce this right.

Defamation occurs when a person "publishes" to a third party words, images or other matter containing a defamatory imputation against the reputation of another. In this context, "publication" is a term of art which comprises almost any communication of information that may be received by the third party. An imputation is said to be defamatory if it tends "to lower the plaintiff in the estimation of rightthinking members of society generally, to cut him off from society, or exposit him to hatred, contempt or ridicule."

In its simplest terms, the distinction between libel and slander turns mainly on the permanence of the form in which a defamatory imputation is published. Where the form is permanent such as printed or written words, or a picture it is libel. Where the publication is in a transitory form such as spoken words or gestures it is a slander.

The significance of the distinction is that libel is actionable *per se* and the person defamed need not prove any special damage as a result of the publication. Such damage is presumed. An action for slander, however, requires proof of damage except in three special cases where a presumption of such damage arises.

One reason that is said to underlie the common law distinction between libel and slander is that "a greater degree of mischief is probable in the case of a libel, owing to its more durable character and the fact that it can be more easily disseminated. Modern broadcasting technology, however, calls this rationale into question.

Even where all the facts necessary to support an action for defamation are present, the plaintiff's right to a judgment is not absolute. The law also recognizes a number of circumstances in which the plaintiff's right to protect his reputation must give way to competing interests of society in the free communication of information, opinion or belief.

Where a publication is a fair comment on a matter of public interest this may be raised as a defence. That the publication was made on a privileged occasion may also constitute a defence. The defence of privilege may be absolute, as where a statement is made in the course of judicial or parliamentary proceedings. In other cases the defence of privilege may be qualified by a requirement that the imputation have been made without malice or an improper motive. The circumstances which will amount to an occasion of qualified privilege are not easily stated in summary form as the existence of the privilege rests on the somewhat elusive question of whether public policy demands that it exist.

- (a) Statements made in the discharge of a public or private duty.
- (b) Statements made on a subjectmatter in which both the defendant and the person to whom the statements are made have a legitimate common interest.
- (c) Statements made by the defendant in the conduct of his own affairs in a matter in which his own interest is concerned.
- (d) Statements made by the defendant to obtain redress for a grievance.
- (e) Statements made by the defendant in reply to inquiries by, or on behalf of, the plaintiff, or at his invitation.

- (f) Reports of parliamentary proceedings.
 - (g) Extracts from, or abstracts of, parliamentary reports, papers, votes, or proceedings published by the authority of Parliament.
 - (h) Extracts from registers kept pursuant to Act of Parliament and which by law the public are entitled to inspect.
- (i) Reports and broadcasts of judicial proceedings. *See* Gatley *ibid.* para 442.

____11. *See Libel and Slander Act*, R.S.B.C. 1979, c. 234, ss 6 to 10. The Act is set out as Appendix A to this Report.

Another factor that may affect the plaintiff's entitlement to damages is any steps taken by the defendant to mitigate the consequences of the defamation. This might include the offer or publication of an apology or retraction, or the payment of money into court by way of amends." Such steps do not create a defence to an action based on the defamation but may significantly reduce the damages to which the plaintiff is entitled.

CHAPTER II THE SPECIAL POSITION OF THE PRESS AND BROADCASTERS

One interest of society that is frequently in competition with the protection of reputation is the value that is placed on freedom of the press. It seems unarguable that a free and responsible press is a vital component of a democratic society. Therefore, it is particularly important that a balance be struck which permits the individual to vindicate his reputation but which, at the same time, ensures that the press is not deterred from carrying out its role by oppressive defamation laws.

It is important to note in this context that the press is in a particularly vulnerable position. Much news content consists of words that emanate from other sources and this medium is very much at the mercy of those sources as to their accuracy. However careful or conscientious the press may be about verifying the information it publishes some mistakes will inevitably occur. Moreover, there are a number of circumstances in which it is in the public interest to publish a report of things done or said, irrespective of the fact that it may be defamatory.

The law has adopted two techniques which acknowledge these difficulties and attempt to achieve the balance referred to earlier. The first involves identifying special circumstances in which there is a strong public interest in publication and defining these as occasions when privilege exists.

Sections 3 and 4 of the *Libel and Slander Act* provide:

3. (1) A fair and accurate report in a public newspaper or other periodical publication or in a broadcast of proceedings publicly heard before a court exercising judicial authority if published contemporaneously with the proceedings, is privileged.
 - (2) This section does not authorize the publication of blasphemous or indecent matter.
4. (1) A fair and accurate report published in a public newspaper or other periodical publication or in a broadcast of the proceedings of a public meeting, or, except where neither the public nor a news reporter is admitted, of a meeting of a municipal council, school board, board or local authority formed or constituted under any Act, or of a committee appointed by any of the above mentioned bodies or of a meeting of commissioners authorized to act by letters patent, Act or other lawful warrant or authority, or select committees of the Legislative Assembly, and the publication at the request of a government office or ministry, or a public officer, of a notice or report issued for the information of the public, is privileged, unless it is proved that the report or publication was published or made maliciously.

(2) This section does not authorize the publication of blasphemous or indecent matter, and the protection intended to be afforded by this section is not available as a defence in proceedings if it is proved that the defendant has been requested to insert in the newspaper or other periodical publication, or to broadcast in the same manner as that, in which the report or other publication complained of appeared, a reasonable letter or statement by way of contradiction or explanation of the report or other publication and has refused or neglected to insert it.

(3) This section does not limit or abridge a privilege now existing by law or protect the publication of matter not of public concern and the publication of which is not for the public benefit.

Subject to the requirement of fairness and accuracy. The privilege conferred by section 3 with respect to judicial proceedings seems absolute. Sedition 4, which concerns reports of public meetings, sets out additional requirements that must be met to claim its protection. It also calls for an absence of malice, and the failure of the defamer to publish a contradiction or explanation will limit its availability. In the result, the protection conferred by section 4 is virtually identical to the qualified privilege that exists at common law for such reports.

The second technique is to give special status to a timely retraction or apology published by the defendant. Sections 6 and 7 of the *Libel and Slander Act* provide:

6. (1) In an action for libel in a newspaper or other periodical publication the defendant may plead in mitigation of damages that the libel was inserted in the newspaper or other periodical publication without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, be inserted in the newspaper or other periodical publication a full apology for the libel; or if the newspaper or periodical publication in which the libel appeared be one ordinarily published at intervals exceeding one week, that he offered to publish the apology in a newspaper or periodical publication to be selected by the plaintiff in the action.
- (2) In an action for a libel in a broadcast, the defendant may plead in mitigation of damages that the libel was broadcast without actual malice and without gross negligence and that before the commencement of the action, or at the earliest opportunity afterwards, he broadcast a full apology for the libel.
7. In an action the plaintiff shall recover actual damages only if it appears on the trial of the action that the article was published in good faith, and that there was reasonable ground to believe that it was for the public benefit, and if it did not involve a criminal charge, and if it appears that the publication took place in mistake or misapprehension of the facts, and that a full and fair retraction of a statement in it alleged to be erroneous was published either in the next regular issue of the newspaper or other periodical publication aforesaid, or in any regular issue of it published within 3 days after the service of the writ, and was published in as conspicuous a place and type as was the article complained of or, if the alleged libel was broadcast, the retraction was broadcast within a reasonable time and at the latest, 3 days after service of the writ and was broadcast as widely and as often as was the alleged libel, and a transcript of the retraction broadcast was delivered or mailed by registered letter addressed to the plaintiff within that period.

It will be seen that these provisions differ from sections 3 and 4 in that they go to the mitigation of damage rather than the existence of a privilege for the publication.

To identify the publishers that are protected by these provisions it is necessary to consider the definitions in section 1 of the Act. Relevant to the print medium is the following definition:

"public newspaper or other periodical publication" includes a paper containing public news, intelligence or occurrences, or any remarks or observations in it printed for sale and published periodically, or in parts or numbers at intervals not exceeding 31 days between the publication of any 2 papers, parts or numbers; and also a paper printed in order to be dispersed and made public weekly or more often, or at intervals not exceeding 31 days, and containing only, or principally, advertisements;

The kind of publication that constitutes a "broadcast" is determined with reference to the following definitions.

"broadcasting" means radio communication in which the transmissions are intended for direct reception by the general public, and includes the broadcast by means of amplifiers or loudspeakers of tape recordings or other recordings;

"radio" or "radio communication" means a transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by means of electromagnetic waves or frequencies lower than 3000 GHz per second propagated in space without artificial guide.

The significance of these definitions will be considered in greater detail in the following chapter.

The definition of broadcasting is relevant to one other very important provision of the *Libel and Slander Act*. Section 2 provides that "defamatory words in a broadcast are deemed to be published and constitute libel." In the absence of this provision the legal position of a broadcast would be ambiguous. The common law concerning the legal position of broadcasters had little time to develop before statute intervened. It has been suggested that where a broadcast is from a source that has some kind of "permanent" manifestation, such as a recording or written script, it is libel, but where the broadcast is "live" and extemporaneous it is slander.

CHAPTER III

CABLE TELEVISION

A. Introduction

"Cable television" and "community antenna television system" are compendious terms often used to describe a communication facility whereby television and radio signals are brought to the receiving apparatus of the ultimate viewer or listener through coaxial cable. These signals are fed into the cable system from a common source and serve a large number of users. The viewer that does not have access to, or does not wish to subscribe to, a cable television system can only receive these signals by means of a conventional antenna.

Cable television has penetrated British Columbia to a remarkable extent. The most recent figures available indicate that 85% of the homes in the greater Vancouver area are cable subscribers. The potential audience for programming transmitted by cable is therefore close to a million persons.

The popularity of cable television is not difficult to understand. In many cases, with respect to local broadcasting, it yields a picture which is superior to that obtained with a conventional antenna. In areas where large buildings or natural geographic features impair signal quality this is an important advantage.

Cable television also makes available to the user signals from broadcasting stations that might otherwise be unavailable to him except at extraordinary expense. For example a Vancouver television viewer with a VHF receiver and a modest antenna would be able to receive two local VHF channels. However if he subscribed to a cable television service he would also be able to receive six American channels and three additional Canadian channels, two of them local stations broadcasting in the UHF band. In addition to the television channels that, in theory, are capable of reception by any nonsubscriber having adequate receiving equipment, the subscriber can also receive certain programming that is made available exclusively through cable television. This includes channels devoted to community programming, multicultural programming, educational programming news and weather and parliamentary debates.

Cable television will also provide its subscribers with a richer variety of radio programming. In Vancouver cable service permits the reception of 16 additional FM radio stations.

B. Cable Television and Defamation

It is trite law that every person who assists in the original publication or in the republication of a libel is answerable to the same extent as if it had originated with him. Under this principle not only is the author of a libel published in a newspaper liable, but also the publisher, editor, printer and seller are *prima facie* liable.

The way in which this principle applies to define the legal position of cable television is not totally clear. A useful starting point is a closer examination of the definition of "broadcasting" in the *Libel and Slander Act*. This turns on the definition of "radio communication" which requires transmission of electromagnetic waves that are "propagated in space without artificial guide." The use of a cable as a means of transmission constitutes artificial guidance of the signal thus the service provided by a cable television undertaking does not fall within the definition of "broadcasting."

Since section 2 of the Act, which provides that a broadcast constitutes libel, is not applicable the common law governs. As we pointed out in the previous chapter the legal position of broadcasters at common law is ambiguous. A defamatory imputation transmitted through cable may be a slander that is actionable only on proof of damage notwithstanding the wide audience it reaches.

The limited definition of "broadcasting" also means that the statutory privilege for reports of judicial proceedings and meetings provided by sections 3 and 4 of the Act will not apply to those reports if transmitted by cable. The right to mitigate damages through the broadcast of a retraction or apology provided by sections 6(2) and 7 is similarly unavailable, although an apology may be pleaded in mitigation independently of the Act.

It should be noted that a cable television undertaking is particularly vulnerable to defamation that originates with others. With respect to programming that originates with other broadcasters, it acts as a mere conduit and it is not in a position to exercise any control over program content. It is prohibited from doing so by the Regulations which govern such undertakings:

No licensee shall alter or curtail any signals in the course of their distribution, except as required or authorized by its licence or by these Regulations.

A significant amount of original programming also emanates from cable television undertakings. In this context there is some opportunity for "control" of program content but the exercise of that control must be considered in the light of current policies concerning the regulation of cable television undertakings.

Cable television undertakings are regulated under the *Broadcasting Act* by the Canadian RadioTelevision and Telecommunications Commission, an agency of the federal government. Early in this project we asked an experienced observer to describe the regulatory and business environment within which cable television undertakings operate. He offered the following comments:

With the enactment of the *Broadcasting Act* in 1968, the Canadian RadioTelevision Commission (now the Canadian RadioTelevision and Telecommunications Commission) was established ... to regulate ... broadcasting ...

A cable television system which receives and distributes at least one conventional broadcasting signal, that is to say, a signal which has been broadcast into the air, falls within the scope of a broadcasting receiving undertaking and is so licenced by the CRTC.

In 1968, the services provided by the vast majority of cable television systems in Canada consisted of delivering via cable the signals of conventional television stations received offair by means of sophisticated antennae. Local programming or "closedcircuit programming" (i.e., originated at the cable television company's headquarters and fed directly into the cable) was almost non existent. The CRTC felt, however, that cable systems should

be more than mere conduits for the distribution of Canadian stations and, of greater concern, an increasing number of U.S. television stations. Based in part upon the broadcasting policy declared in section 3 of the Act, the CRTC began, by policy pronouncements, to "encourage" cable television licencees to provide at channel on their cable systems for "community programming." Then in 1976 the CRTC, pursuant to section 16 of the Act, enacted "Regulations Respecting Broadcasting Receiving Undertakings." The effect of these regulations was to codify many of its previous policies and policy statements concerning cable television systems and to require the licencees of all systems to comply with them or face the substantial penalties set out in the *Broadcasting Act* for violating the provisions of a regulation.

In the public announcement [that accompanied the Regulations], the Commission reiterated that the providing of a community channel was mandatory for all licencees. It further stated that the licensee must "generally provide a reasonable, balanced opportunity for the expression of differing views on matters of public concern." Turning to the Regulations themselves, "community programming" is defined as programming which is produced, inter alia,:

"(b) with or without the assistance of the licensee, *by members of the community ...*"

Since becoming a mandatory service under the Regulations the Commission's criteria in judging the quality of the community programming service has clearly been to encourage what is euphemistically termed a "hands on" approach. That is to say, the role of the cable television licensee is primarily to provide the financial and technical resources and facilities to enable groups and individuals to produce their own programming for distribution on the community channel. Further, the Commission encourages and places a higher qualitative standard on live programming. It is the fact that the community channel is a mandatory service coupled with the emphasis on community produced live programming which exposes the cable licensee to the hazards of defamation suits.

I might add that the providing of cable companyoriginated or "cablecast" programming will be an ever increasing factor in the type of programming services offered by cable television companies. Faced with competition from the unauthorized reception of programming from U.S. satellites, cable companies are looking to the addition of specially programmed channels to satisfy subscriber demand for alternative programmes. Recently several of the cable systems in the lower mainland area of B.C. have started to provide a channel devoted to multicultural programming, the majority of which is programmed in foreign languages. The attendant difficulties in "screening" such programming for possible defamatory content and the virtual impossibility of screening in the case of live programming broadens the potential risk.

The policies of the CRTC therefore seem to discourage control by cable television undertakings over the content of community programming that originates with it, even though the lack of control might render it liable in defamation proceedings.

CHAPTER IV

REFORM

A. The Issue

The previous chapter indicates that cable television undertakings occupy no special place in the law of defamation despite the special functions they perform, their particular vulnerability to defamation proceedings, and the greater damage to reputation that can arise where a slander is widely disseminated by cable. In particular, their legal position differs from broadcasters under the *Libel and Slander Act* in the following ways:

1. Words "broadcast" constitute a libel *per se* under section 2. The position of information disseminated by cable is ambiguous at best, and it may be either a libel or a slander depending on the circumstances of its transmission.

2. Fair and accurate "broadcasts" of judicial proceedings and public meetings are privileged under sections 3 and 4. Cable television operators must rely on the qualified privilege at common law.
3. "Broadcasters" may plead an apology or retraction in mitigation of damages under sections 6 and 7. These provisions are not available to a cable television operator, who must rely on whatever effect the apology may have at common law.

It is difficult to see why the law should maintain this distinction between conventional broadcasters and cable television operators.

That there should be no such distinction was the substance of a resolution adopted by the Media and Communication Law Section of the British Columbia Branch of the Canadian Bar Association in 1978:

[L]et it be resolved that the Government of British Columbia be asked to amend the "Libel and Slander Act" so as to include cable television programming in the definition of "broadcasting" and to amend section 4 so as to give cable television broadcasters the same protection as is given to publishers and broadcasters, relative to their local access channel which the cable television broadcasters are required to provide pursuant to their licenses with the Canadian RadioTelevision and Telecommunications Commission.

A similar view has prevailed in Ontario. In 1980 The *Libel and Slander Act* was amended by substituting the following definition:

"broadcasting" means the dissemination of writing, signs, signals, pictures and sounds of all kinds, intended to be received by the public either directly or through the medium of relay stations, by means of,

- (i) any form of wireless radio-electric communication utilizing Hertzian waves, including radiotelegraph and radiotelephone, or
- (ii) cables, wires, fiberoptic linkages or laser beams, and "broadcast" has a corresponding meaning.

This provision came into force on June 19, 1980.

These measures contemplate a total assimilation of the position of cable television to that of conventional broadcasters for the purposes of defamation law. A "qualified" assimilation has also been suggested:

The Act should be amended to protect a cable television company which provides its technical facilities to a community group, but has not control over non-personnel involved in the content of the program, always provided that an announcement to this effect is made before each such program, or, in the case of continuous transmissions, at regular intervals.

Thus, whether a cable television undertaking could take advantage of legislation available to conventional broadcasters, and whether the person defamed could maintain an action without proof of damage, would depend on whether an appropriate "disclaimer" had been aired.

B. Recommendation

We can see no justification in logic or policy in placing cable television undertakings in any different legal position, for the purposes of the law of defamation, from that of conventional broadcasters. The two should be assimilated and we recommend that the *Libel and Slander Act* be amended accordingly. A more difficult issue is to develop the specific amendment appropriate to implement this policy.

Broadly speaking, two approaches to such an amendment are possible. The first is to follow the example of Ontario and widen the existing definition to encompass dissemination by means of "cables, wires, fibreoptic linkages or laser beams." An alternative technique is to expand the definition with reference to federal licensing.

At an earlier stage of this project we gave limited circulation to a draft research paper which adopted the second approach. Specifically, it was suggested that the definition of "radio" or "radio communication" be expanded so as to include a transmission "by a person licensed to carry on a broadcasting receiving undertaking under the *Broadcasting Act* (Can.)."

There were two reasons for this tentative preference for the second approach. First, the reference to licensing more clearly identified the intent of the amendment and the parties sought to be brought within the notion of "broadcaster." Secondly, the language of the Ontario amendment seemed both too wide and too narrow at the same time.

It is too narrow in the sense that it specifies only certain types of artificial guidance technology. New technologies may emerge in the future that may be suitable to carry the kinds of information now disseminated by cable but which fall outside the Ontario definition.

It is too wide in that it may presently encompass kinds of communications facilities not presently thought of as serving a "broadcasting" function. For, example, the Ontario definition of "broadcasting" potentially extends to information disseminated by telephone through a dial-a-message type of communications device.

Our paper was circulated among a number of persons experienced in communications law and the comment which we received was most helpful. It was unanimously supportive of the basic policy of the paper, the assimilation of the legal position of cable television operators to that of conventional broadcasters in respect of defamation. Response was divided on the secondary issue of implementation.

A number of the reservations expressed concerning the suggested approach set out in the paper were essentially drafting concerns. Others were more substantive in nature and call for specific comment.

Questions were raised whether the suggested amendment would be *intra vires* the Province, touching as it does on a federally regulated activity. Our own view is that the amendment, in pith and substance, relates to defamation rather than communications and thus would be at valid exercise of provincial power to legislate with respect to property and civil rights. It is difficult to say more. In any event, any constitutional uncertainty concerning the suggested amendment would also extend to the existing provisions of the *Libel and Slander Act* that concern broadcasters. As far as we are aware, such provisions have not been called into question either in British Columbia or in any other province having similar legislation.

A second reservation related to the possibility that the federal regulation of cable television may not be a permanent feature of the law in this area. These commentators foresee some transfer of jurisdiction to the provinces, with the result that the suggested provision would become obsolete or ineffective. While we recognize this possibility, we believe that for present purposes we should take the constitutional position as we find it and frame our proposals accordingly. Any transfer of jurisdiction of this kind would almost certainly lead to fresh legislation at the provincial level. Any amendments to the *Libel and Slander Act* that are necessary to accommodate these developments could form part of that legislation.

A final concern relates to obsolescence of a different kind. Suggestions were received that federal licensing practices might change, with the result that the kinds of communication facilities caught by the provision may be of a different character than those contemplated when the provision was enacted. In part this concern can be minimized by appropriate drafting. Changed circumstances can also be met by appropriate amendments.

The concerns raised with respect to the licensing approach are not so formidable that we feel a retreat from the earlier view is called for. The comments have, however, considerably sharpened our views. To the extent that they can be accommodated, they are reflected in the formal recommendation set out below. It is, we believe, a substantial improvement over our earlier draft.

In particular, we have arrived at an expanded definition of "broadcasting" that incorporates both cable television and conventional radio and television broadcasting. It also carries forward the reference to amplified recordings that is part of the present definition. A separate definition of "radio" would no longer be necessary as it would be subsumed in the new version. In the process we have met the technical deficiencies of the existing definition described in Appendix B.

A final modification concerns the test in the general limb of the definition of "broadcasting" which calls for "direct reception by the general public." Arguably, a cable television service that is available only to subscribers does not satisfy that requirement. We have therefore specified availability on subscription as an alternative test.

The Commission recommends that:

Section 1 of the Libel and Slander Act be amended by

(a) *deleting the definition of "broadcasting" and substituting the following:*

"broadcasting" means the dissemination of writing, signs, signals, pictures, sounds or intelligence of any nature intended for direct reception by, or which is available on subscription to, the general public

- (i) *by means of a device utilizing Hertzian waves of frequencies lower than 3000 GHz propagated in space without artificial guide.*
- (ii) *through a community antenna television system operated by a person licensed under the Broadcasting Act (Can.) to carry on a broadcasting receiving undertaking, or*
- (iii) *by means of an amplifier or loudspeaker of a tape recording or other recording and "broadcast" has a corresponding meaning.*

(b) *repealing the definition of "radio" or "radio communication."*

C. Postscript

This report has been deliberately confined to a very narrow aspect of the law of defamation. This does not mean that we regard all other aspects of this body of law as satisfactory. Nothing could be further from the truth. The *Libel and Slander Act* and the body of law to which it relates both call for substantial modification. Our work on this project has heightened our appreciation of the defects and needless complexity that have emerged in the law of defamation. Moreover, a number of the persons who responded to the research paper suggested broader changes were desirable.

Unhappily, this is a call for reform we are not able to meet at present. We see such a project as one to which we may well be able to give priority in the future when work now in hand is brought to completion. However, we do not see the desirability of a general review of the law of defamation as foreclosing the Commission from proposing reform to remedy a particular deficiency in this body of law which is readily identifiable as calling for early attention.

The recent rapid growth of cable penetration in British Columbia lends the recommendation we have made a sense of urgency. This is heightened by the circumstances in which the legal position of cable television was brought to our attention, a letter from a member of the legal profession who cited the Canadian Bar Association resolution and stressed the need for early action.

In conclusion, we would like to thank those who took the time to read and comment on our earlier paper for their assistance in connection with this study.

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March 26, 1981.
APPENDIX B

THE DEFINITION OF RADIO

The 1979 Revision of the *Libel and Slander Act* sets out the following definition:

"radio" or "radio communication" means a transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by means of electromagnetic waves or frequencies lower than 3000 GHz per second propagated in space without artificial guide.

This definition was added to the Act in 1969 in the following form:

"radio" or "radio communication" means any transmission, emission, or reception of signs, signals, writing, images, sounds or intelligence of any nature by means of electromagnetic waves or frequencies lower than three thousand gigacycles per second propagated in space without artificial guide.

The 1969 definition was intended to reproduce the definition of "radiocommunication" in the federal *Broadcasting Act* in force at the time.

This aim was not fully realized. A typographical error occurred and has been carried forward. The word "or" where it appears before "frequencies" should be "of", both to reproduce the federal definition and to make sense.

The 1979 Revision introduced further changes. As part of the "metrification" of the British Columbia statutes, the revised definition adopts the convention of defining frequency measurement in Hertz (Hz). Unfortunately the result gives rise to redundancy. The words "per second" have been retained after "3000 GHz" but they are unnecessary as they are already implied in the unit used. The statutory definition of Hz is:

the frequency of a periodic phenomenon of which the periodic time is one second.

In other words, one Hz equals one cycle per second.

Finally, if one is going to use Hz as the unit of frequency measurement it may be more appropriate to refer in the definition to "Hertzian waves" rather than "electromagnetic waves." This is the terminology employed in Ontario and in the older *Radio Act*.

Any revision of the *Libel and Slander Act* that touches on broadcasting might deal with these technical points.