

**For information on
12 March 2007**

**Legislative Council
Panel on Information Technology and Broadcasting**

**Radio Television Hong Kong's
Compliance with Codes of Practice on Programme Standards
Issued by Broadcasting Authority**

Regulation of Broadcast Contents in Hong Kong

The Broadcasting Authority (BA) is an independent statutory regulator of broadcasting services established under the Broadcasting Authority Ordinance (Cap. 391). It comprises six to nine non-official members (including the Chairman) and three public officers appointed by the Chief Executive. Non-official members come from a broad cross section of the community such as social work, education, media, legal profession, and financial as well as business sectors.

2. One of the BA's main functions is to safeguard proper standards of television and radio programme contents. Following an extensive consultation with the public and the industry, the BA promulgated the Codes of Practice on television and radio programme standards pursuant to the Broadcasting Ordinance (Cap. 562) and Broadcasting Authority Ordinance. There are no pre-censorship requirements in Hong Kong and the editorial responsibility lies with the television programme service and sound broadcasting licensees. The BA is empowered to impose sanctions on licensees against their non-compliance with the relevant codes of practice.

3. The BA handles public complaints about broadcasting programme contents. According to sections 10 and 11 of the Broadcasting Authority Ordinance, the BA shall appoint a Complaints Committee consisting of not less than five members of the BA and other persons as it deems fit. The BA will refer complaints to the Complaints Committee, which will then consider the relevant factors including representations from the complainant and the licensee concerned and make recommendations concerning the complaint to the BA. Currently, the Complaints Committee comprises six non-official members from the BA and five non-official co-opt members from different sectors of the community.

Radio Television Hong Kong

4. Radio Television Hong Kong (RTHK) is a Government department that serves the role of a public broadcaster. Its aim is to inform, educate and entertain the general public and specific target audience through a balanced mix of high quality programming. Its editorial operation is mainly set out in three sets of documents:

- (a) Framework Agreement between the Secretary for Commerce, Industry and Technology (the Secretary) and the Director of Broadcasting (the Director);
- (b) Memorandum of Understanding among the BA, the policy bureau and RTHK; and
- (c) RTHK's Producers' Guidelines.

5. Under the Framework Agreement, RTHK is editorially independent and the responsibilities between the Secretary and the Director are clearly specified. The Secretary is responsible for providing policy guidance to the Director in defining the programmes of activities on radio, television and new media services, as well as agreeing the underlying activities. The Secretary also has the responsibility to review the policy aim of these programmes. The Director, on the other hand, is the Chief Editor responsible for managing the activities of each programme of activity. The Director is also responsible for ensuring that a system of editorial control in accordance with RTHK's Producers' Guidelines exists to provide fair, balanced and objective news, public affairs and general programming that inform, educate and entertain the public.

6. In 1995, the Chairman of the BA, the then Secretary for Recreation and Culture and the Director signed the Memorandum of Understanding, which was revised in 1999 (**Annex A**). According to the Memorandum, RTHK agrees to comply with the relevant codes of practice on programme standards issued by the BA; the BA shall investigate complaints about any programme produced or broadcast by RTHK; and the BA may impose on RTHK non-financial sanctions similar to those applicable to the licensed broadcasters.

7. RTHK's Producers' Guidelines, first published in 1998, aims to codify RTHK's editorial practices and operation to enhance transparency and accountability. RTHK's Producers' Guidelines also set out RTHK's undertaking to abide by the BA's codes of practice on programme

standards, and RTHK is answerable to any breaches of the codes. The relevant clause is extracted at **Annex B**.

Recent Incident

8. RTHK's television programme, "Hong Kong Connection – Gay Lovers", a documentary programme featuring interviews with two homosexual couples, was broadcast on the Jade Channel of Television Broadcasts Limited on 9 July 2006 (Sunday) from 7:35 pm to 8:00 pm. Following up a public complaint and after investigation including receiving representations from RTHK, the BA at its meeting on 20 January 2007 considered that RTHK had breached the Generic Code of Practice on Television Programme Standards, and strongly advised RTHK to observe more closely provisions of the code on family viewing policy, likely effect of all material shown on television on children and impartiality. The relevant extract of the BA's press release is at **Annex C**.

9. On the same day, RTHK issued a statement (**Annex D**), expressing its disappointment about the BA's decision. RTHK considered that BA's ruling would have an impact on the editorial deliberations for current affairs programmes, and it should be a topic for further public discussions.

10. The Secretary was concerned about RTHK's statement because it did not mention that RTHK would accept the BA's recommendation and would comply strictly with the relevant codes of practice issued by the BA. He therefore met the Director on 22 January 2007, with a view to ensuring that RTHK fulfils the responsibilities that it has undertaken with regard to the relevant codes of practice issued by the BA.

11. There is no question of the Secretary interfering with RTHK's programming arrangements. The Secretary's statement is at **Annex E**.

Communications and Technology Branch
Commerce, Industry and Technology Bureau
March 2007

Memorandum
of
Understanding

between

the Chairman of the Broadcasting Authority
for and on behalf of the Broadcasting Authority

and

the Secretary for Information Technology and
Broadcasting

and

Director of Broadcasting
for and on behalf of Radio Television Hong Kong

This MEMORANDUM OF UNDERSTANDING ("MOU")

**is made on the Twenty-Seventh of October
One Thousand Nine Hundred and Ninety-Nine**

between

**the Chairman of the Broadcasting Authority,
for and on behalf of the Broadcasting Authority ("BA")**

and

the Secretary for Information Technology and Broadcasting

and

Director of Broadcasting,

for and on behalf of Radio Television Hong Kong ("RTHK")

WHEREBY IT IS AGREED AS FOLLOWS:

Compliance with codes of practice on programme standards

RTHK shall ensure that except where prior exemption has been granted by the BA, all television and radio programmes it produces or broadcasts shall comply with :-

- (a) the relevant codes of practice issued by the BA to regulate the standards of programmes broadcast by broadcasters holding licences issued under the Television Ordinance or Telecommunication Ordinance or any other Ordinance enacted wholly or partially in modification or substitution

thereof ("the broadcasters"); and

- (b) any amendments to the codes of practice issued by the BA from time to time.

Handling of complaints

2. The BA shall investigate all complaints received by it, including complaints lodged by the Television and Entertainment Licensing Authority ("TELA"), against any programme produced or broadcast by RTHK.

3. For the purpose of such investigation, the BA may require RTHK to provide, free of charge, a true and authentic copy of the programme under complaint. RTHK shall comply with the requirement unless the notice of the requirement reaches RTHK more than 90 days after the broadcast of the programme. Where a programme has been broadcast more than once, the 90 days will run from the date of the last broadcast.

4. The BA may classify a complaint as trivial, frivolous, unjustified, partially justified or justified provided that the two last mentioned classifications may be made only :-

- (a) by the BA itself; and

- (b) after the procedures in Clause 5 have been followed.

5. Where there is prima facie evidence to support a complaint, except one which is trivial or frivolous, it shall be referred to the Broadcasting Authority Complaints Committee ("BACC"). The BACC, upon receipt of a complaint referred to it, shall :-

- (a) give RTHK a reasonable opportunity to make representations both orally and in writing;
- (b) consider any representations made, whether orally or in writing, by or on behalf of the complainant and RTHK;
- (c) consider any evidence received by it, whether tendered on behalf of the complainant or otherwise, which it considers relevant to the complaint; and
- (d) decide on the recommendations concerning the complaint which should be made to the BA.

6. The BA Secretariat shall inform RTHK, on a confidential basis, of the recommendations made by the BACC to the BA concerning the complaint. RTHK may, if it wishes, submit further representations, whether orally or in writing, to the BA, before the BA decides on the complaint.

7. Having considered the recommendations of the BACC and any further representations, if any, submitted by RTHK, the BA shall decide on the classification of the complaint and may impose on RTHK non-financial sanctions similar to those applicable to the broadcasters.

Publicity on complaint

8. The BA and RTHK may individually release to the public, after a complaint has been classified, the details of the complaint received by the BA, the decision of the BA and RTHK's response.

Delegation

9. Except where the contrary is stated expressly or by necessary implication in this MOU, the BA may discharge any of its functions stated above through the Commissioner for Television and Entertainment Licensing or his representative and RTHK may do so through the Director of Broadcasting or his representative.

MOU a public document

10. A copy of this MOU shall be kept, for inspection by members of the public, in each of the following offices :-

(a) head office of Information Technology and Broadcasting Bureau;

(b) head office of RTHK; and

(c) head office of TELA.

Review of MOU

11. The terms of the MOU may be reviewed from time to time, subject to the agreement of all parties.

For and on behalf of the Broadcasting Authority

Signature :

Name :

Title :



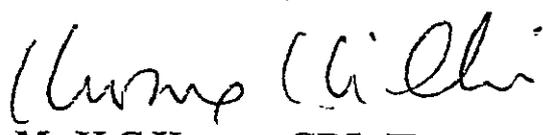
Mr Norman Leung, JP

Chairman, Broadcasting Authority

Signature :

Name :

Title :



Mr K C Kwong, GBS, JP

**Secretary for Information Technology and
Broadcasting**

For and on behalf of Radio Television Hong Kong

Signature :

Name :

Title :



Mr Chu Pui-hing, JP

Acting Director of Broadcasting

Extract of RTHK's Producers' Guidelines

5.5 Broadcasting Authority's Codes of Practice

RTHK has given an undertaking to abide by the Broadcasting Authority's codes of practice on programme standards. We are answerable for any breaches of the codes. RTHK's own internal producers' guidelines have to be read in conjunction with the BA's codes of practice, copies of which are attached at Annexes 1 and 2, which can be accessed at <http://www.hkba.org.hk/hkba/english/eframe1.htm>.

**Extract of Press Release for the Broadcasting Authority Meeting
on 20 January 2007**

In December 2006, the Broadcasting Authority (BA) considered one complaint case and one appeal case, concerning 23 public complaints, substantiated. (...) The second case was an appeal against the decision of the Commissioner for Television and Entertainment Licensing on the complaints about the television programme of Radio Television Hong Kong (RTHK) "Hong Kong Connection" (鏗鏘集) broadcast on the Jade channel of TVB on 9 July 2006 from 7:35pm to 8:00pm. Please see **Annex** for details.

(...)

Broadcasting Authority
Secretariat

20 January 2007

Annex

Summary of Substantiated Complaint and Appeal Cases

(...)

Case 2 - Appeal against the Decision of the Commissioner for Television and Entertainment Licensing on Public Complaints about RTHK's Television Programme "Hong Kong Connection" (鏗鏘集) broadcast on the Jade Channel of TVB on 9 July 2006 from 7:35pm to 8:00pm

A member of the public appealed against the Commissioner for Television and Entertainment Licensing's (CTEL) decision on 22 complaints concerning the RTHK's television programme "Hong Kong Connection"(鏗鏘集) broadcast on the Jade Channel of TVB on 9 July 2006 from 7:35pm to 8:00pm. The substance of the complaints was that –

- a. the programme was biased towards homosexuality, promoted homosexuality and contained discriminating elements;
- b. it was unsuitable for broadcast at the scheduled time and exerted a bad influence on children and youths;
- c. it was unfair to Christians as a whole as the reference to opposition from a Christian in the programme gave viewers a misleading impression that all Christians were irrational;
- d. it did not mention the undesirable aspects of homosexuality such as AIDS; and
- e. it did not contain a warning caption.

The BA noted that the programme, entitled "同志 . 戀人" and featuring the personal experiences of a pair of lesbians and a gay man, was produced by RTHK and broadcast on TVB Jade at 7:35pm-8:00pm during the family viewing hours (FVH), and that the broadcast of the programme was preceded by an advisory caption "本節目涉及同性戀題材，敬請留意" ("Please note that the programme concerned matters relating to homosexuality").

The BA considered the allegations (c) to (e), i.e., that the programme was unfair to Christians; that the programme did not mention the undesirable aspects of homosexuality such as AIDS; and that the programme did not contain a warning caption, unjustified. The BA upheld CTEL's previous decision that these aspects of the complaints were unsubstantiated as –

1. the programme did not contain anything which was misleading and unfair to Christians. The reference to opposition from one individual Christian shown in the programme did not amount to a generalization that all Christians were irrational;
2. the major cause of AIDs was unprotected sex rather than homosexual sex; and
3. a warning caption was provided at the beginning of the programme.

The BA, however, considered that the programme was presented in the form of a documentary and that the contents of the programme about homosexuality and the legalization of homosexual marriage were controversial in many societies including Hong Kong. The programme was therefore a factual programme dealing with matters of public policy or controversial issues of public importance in Hong Kong and should be subject to the impartiality rule under the relevant code. However, the programme presented only the merits of homosexual marriage and featured only the views of three homosexuals on the legislation of homosexual marriage, rendering the presentation unfair, partial and biased towards homosexuality and having the effect of promoting the acceptance of homosexual marriage.

The BA also considered the programme unsuitable for broadcast within the FVH as children and young viewers watching the programme might have no knowledge of homosexuality and might be adversely affected by the partial contents of the programme if parental guidance was not provided.

RTHK was **strongly advised** to observe more closely paragraph 2 of Chapter 2 (family viewing policy), paragraph 1 of Chapter 7 (likely effects of all material shown on television on children), and paragraphs 2 and 3 of Chapter 9 (impartiality) of the Generic Code of Practice on Television Programme Code.



香港電台

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Annex D

新聞稿 PRESS RELEASE

RTHK disappointed over BA ruling

Radio Television Hong Kong (RTHK) expresses disappointment about the Broadcasting Authority (BA)'s issue of a strong advice over the content of an episode of the television programme "Hong Kong Connection"-- "Gay Lovers" that dealt with homosexual issues. The programme, broadcast on 9 July 2006, featured interviews with two homosexual couples.

We consider that the comment made by the BA that the programme treated the issue in a partial and biased manner leave room for further deliberations. The programme did not debate sexual orientation from a legal or ethical perspective. Instead, it featured a story focusing on several aspects of homosexuals' life. It aimed to reflect social phenomena within the minority group that the public may not be familiar with. It conducted interviews with these couples through which the pressures faced by homosexuals were exposed. .

The BA's ruling will have an impact on the editorial deliberations for current affairs programmes. This should be a topic for further public discussions. In the meantime, we will continue to produce high quality programmes in an impartial and serious manner.

Programme revisits: <http://www.rthk.org.hk/rthk/tv/hkcc/20060709.html> (for Chinese)
<http://www.rthk.org.hk/rthk/tv/hkce/20061019.html> (for English)

Enquiries: Ms Kirindi Chan Tel: 23396348/98763162

Statement by Secretary for Commerce, Industry and Technology

The Secretary for Commerce, Industry and Technology, Mr Joseph WP Wong, issued today (23 January) the following statement on the Radio Television Hong Kong (RTHK) issue:

"The Broadcasting Authority (BA) made a ruling last Saturday (20 January) on a public complaint against an RTHK television programme. The BA strongly advised RTHK to observe more closely the provisions of the codes of practice on programme standards regarding impartiality, family viewing policy, and likely effects of all material shown on television on children. RTHK issued a statement afterwards in response to the ruling.

"I am concerned about the RTHK statement, mainly because it did not mention that RTHK would accept the BA's recommendation and would comply strictly with the relevant codes of practice.

"I met with the Director of Broadcasting yesterday (22 January), and reminded him that RTHK had an inescapable responsibility to fulfill its obligations under the Memorandum of Understanding signed with the policy bureau and the BA by being subject to the regulatory control of the BA.

"The Director made it clear to me that RTHK is committed to complying with the BA's codes of practice on programme standards, and this commitment is clearly stated in RTHK's Producers' Guidelines. There is no question of RTHK not complying with BA's ruling in the present case. The Director will take

appropriate measures to ensure that RTHK makes reference to BA's ruling during the process of their programme production.

"To avoid misunderstanding by the public, I wish to stress that the reason I handle the case is to ensure that RTHK fulfills the responsibilities that it has undertaken with regard to the relevant codes of practice. There is no question of interfering with RTHK's programming arrangements."

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