

AN ANALYSIS OF CANADIAN LEGISLATION
ON TELEVISION ADVERTISING DIRECTED AT CHILDREN

by

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ABSTRACT

The topic of this thesis is an analysis of Canadian legislation on television advertising directed at children. The purpose is to present an in-depth analysis of the present legislation and to discuss the relevance and effects it has on the advertising industry, the broadcasting industry and society as a whole.

This thesis is divided into three parts. The first is concerned with a literature research of the major empirical studies done in the fields of education, psychology and sociology on the effects of television on children. The apparent lack of research data on the effects of television advertising on children is a loss but it is believed that due to the similarities of variables studied and the close interdependence of television and advertising, it is possible to infer from the evidence on effects of television on children to the effects of television advertising on children. The inference forms the major background material upon which the analysis is made. The second part is a discussion of legislation controlling advertising in general and whether it is adequate in providing protection to children. The third part is devoted to a discussion of the two provisions that deal specifically with the control of advertising directed at children, the Consumer Protection Act of Quebec and the Broadcast Code for Advertising to Children, to ascertain whether

these are successful in granting the desired protection to children from objectionable advertising and whether this has been done adequately and relevantly.

It is found that children devote more time to watching television than to any other activity; that they are highly imitative, especially of people they can identify with; that they are curious about almost everything and are most willing and ready to try out what they learn; that they are gullible and credulous and they do not interact the same way with television as with their parents, indicating that parental guidance and opinions are important deciding factors in their behavior patterns.

While adults are usually defensive about advertising and legislation controlling advertising also takes into account our tendency to expect and condone a certain degree of puffery from advertisers, children in general lack the commercial knowledge and sophistication of cognitive development to acquire this defensive instinct and their simple mindedness and credulity make them 'preys' to advertisers. The standards of regulation of advertising directed at children are therefore necessarily higher than those used in general.

There is no doubt that objective and verifiable standards of regulation are necessary. However, the tendency of present legislation to police opinions and values presented in advertising is dangerous. What we need in this society is a

balanced presentation of everything and advertisement, being a reflector of society's values, should reflect all in a truthful manner.

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INTRODUCTION

Historians tell us that man and with him the society has changed over the last quarter of a century. Researchers have been unsuccessful in trying to determine exactly what has brought about these changes. However, there seems to be little doubt of the dramatic effects of the advent of telecommunication. Marshall McLuhan claimed that the civilization of man took a major step when the printing press came into existence. After the Gutenberg Revolution, and with the dominance of electronic media in society, an equally far-reaching revolution is now taking place. Technology and industrialization bring to a society unfathomable changes transcending those of pure materialistic and superficial importance. The Director - General of the I.L.O. has pointed out :

Successful industrialization implies a social revolution . To set up industry and introduce new technology is not only a matter of acquiring capital and a knowledge of techniques. Modern industry calls into being its own kind of society It (technology) functions at a different pace , and makes people organize their lives in a different way ; it challenges old values , it creates new values. This social transformation which must accompany industrialization affects indeed , a man's whole view of meaning and purpose of life and of his relations to his fellow man.¹

Before radio and television , before photography and motion pictures , most of the concepts of individuals were shaped by

visual and aural perception and touch directly from the environment.² We saw what our eyes saw , heard what our ears heard , sensed what our bodies touched. Then , man's concept of reality derived directly from his environment.

Today , we still maintain our autonomy over all our senses. But reality no longer reaches our senses directly. It has to pass through facades and filters. It is edited. The electronic media bring to each of us comfortably couched in our own living rooms an expanded environment of reproduction. There is seemingly no limit to this environment or the events within it which can be conveyed to man's perception.³

Today an average child spends more time watching television than an average student spends in four full years in his classroom in a Liberal Arts College.⁴ Television is the most penetrating medium that reaches the child. We do not really know what it is doing to him.

Today a seven year old points to his luncheon companions and taunts : "You are eating chemicals ".

A fourth - grader celebrated Earth Day 1970 by writing : "In 1985 the day got older. The sun got darker and was old. The people were dying , little by little. I was scared to death. One day I coughed and coughed. Then I died."⁵

Whether these remarks are typical of the American children or not , (or the Canadian , for that matter) one is appalled by

the cynicism , the skepticism , the fear , and the distrust placed in the future and the wisdom envisioned in them. These children are questioning every formerly stable area of life. The family no longer functions as the value center for the growing child. Whatever is missing , is gone , perhaps forever. There is just not enough in our modern urban society to give back to the child what is lost - a world in which he can grow as a child. The television is his 'third parent'. The environment in which he lives is that which the broadcasters and advertisers offer to him. The world to which he adapts , the world in which his emotions and his brain are largely shaped is the world which television selects and brings to him. In a child - centered society such as ours , we are concerned about what kind of adults 'they ' are making our children to be. We are alarmed at the early exposure of our children to most of our vices , whims and weaknesses as portrayed by the medium. We make constant demand on the legislators of this country to curb the irresponsible influence which the advertisers have on our children. The result is a trend towards stringent control over this particular aspect of our technological world .

An analysis of the present Canadian Statutes and Regulations relating to advertising to children will be presented in this paper. The emphasis is not on the meaning or administration of the law , but on how far the legislation can go in the controlling of such advertising

Results of research studies on the effects of television on children over the decades undoubtedly lead to the enactment of most of the present legislative provisions in this area. An analysis of the legislation concerning advertising directed at children will not be complete without a glance at these empirical studies. The first part of this paper is therefore devoted to an inventory of most of the studies done in the years 1953 to 1973. Although the statutes studied in this paper deal with advertising and children , most of the studies cited are concerned with television and children. This is a result of the lack of empirical data on the effects of television advertising on children. However , the similarities of the essential variables studied and the interdependence of television and advertising enable one to make some intelligent inferences from studies on effects of television on children to effects of advertising on children.

The second part of this paper will be devoted to a survey of the present legislation aimed at controlling advertising in general. As there is a trend towards a separate legislation concerning advertising directed at children , it would be helpful to analyse whether the present legislation in general is adequate in providing protection to children.

The third part of this paper will be devoted to an analysis of the present legislation which is directed at controlling advertising for children specifically and a discussion of how

these provisions try to deal with issues not amply dealt with by other statutes . A final word on the alternatives available to the Canadian legislative bodies will be made in the final chapter of this paper.

CHAPTER 1

When television first came into prominence in the early fifties , researchers , most of them from the field of education, were concerned about the effects of television on the physical well being of the child. There were studies on the effects on eyesight , passivity of the child , the way he spends his leisure time, his relationship with his family and his peer-group, the effects on his school work and so on. Later researchers are more interested in the effects of television on the child's out - look on life, on his social and moral values, on his intellectual and personality development. The most comprehensive and extensive studies were made by Himmelweit , Oppenheim and Pamela Vince (1958) ; and that of Schramm , Edwin & Parker (1961).¹ Other minor studies and essays mostly emphasize specific issues brought to light by these two studies. In this chapter , a summary of the research done in the two decades from 1950 to 1973 will be presented .

PHYSICAL EFFECTS OF TELEVISION

Most studies do not confirm the idea that television - watching causes eye - strain if children view under proper conditions and guidance.² There is little evidence of serious loss of sleep or energy as a result of television.³ Average sleeping time is about 15 minutes later in homes with television.⁴

EFFECTS ON LEISURE TIME SPENDING

When children have television available , they do make a phenomenal amount of use of it. In the United States , where the most extensive measurements of viewing by children of different ages have been made , it is estimated that a child of three is already averaging about 45 minutes a day on television viewing. By the time he is five or six , he will be spending about two hours a day in front of the television set. The amount of time spent slowly increases and arrives at a peak at about twelve , when the time spent is about three hours a day. Television viewing tends to diminish in high - school years.⁵ The pattern is somewhat similar in both England and Western Europe , except the time spent on the whole is probably less when compared with the United States.⁶

Television viewing obviously dominates the leisure time of children. They most often have to choose between television and other forms of activities. The activities most readily sacrificed are those which satisfy the same needs as television, but probably less effectively. For example, children will spend less time on cinema-going, on comic books reading, magazine-fiction reading and radio - listening. But newspaper and non-fiction reading are hardly less because they tend to satisfy different needs than television. According to Dr. Himmelweit's findings :

1. There is consequent reduction of leisure itself as

children's lives become more crowded.

2. When there is television, functionally similar activities will be replaced, where functionally different ones will not.
3. Certain activities will be transformed in function. (eg. from drama to popular music listening on radio) .
4. Marginal or unorganized activities will be replaced before purposeful or organized ones.⁸

GENERAL KNOWLEDGE, SCHOOL PERFORMANCE

Japanese children spend about 14 minutes less on their homework when they have television at home ; while Canadian children spend also less time , the difference between viewers and non - viewers is not significant.⁹

Children can undoubtedly learn from television , but viewing takes time and some of it might be spent on books or other sources of information. Most of the researchers suggest that television proves to be neither a hindrance nor a help as far as general knowledge is concerned , except that for the really young (who may not be able to read as yet) , television proves to be an advantage. For these children , television provides information in the form most suited to them, being in dramatic and visual form. However , most of the learning in these years is incidental increment from fantasy programmes. It sends the bright and th vocabularies one grade higher than non -

viewers. With more years of viewing to their credit , due to repetitiveness and the low intellectual value, any initial lead soon disappears.¹⁰ Schramm et al did find that grammar school children are on the whole less knowledgeable than the control group (those without television at home) because television viewing takes them away from other sources of information, such as radio and newspapers.

For children with television at home , there seems to be no impairment in school work. Coffin did find that greater parental control and shorter viewing time tend to be found among children with higher IQ.¹¹ There is no significant difference between viewers and non-viewers in :

- a. Children's subjective assessments of tiredness in the morning ;
- b. Ratings by class teachers of each child's concentration ;
- c. Children's interest in school or school societies ;
- d. Frequency with which they took part in extra - curricular activities ;
- e. Attitude to school and school work as judged by teachers.¹²

Children may be more knowledgeable on some general topics , such as entertainment and popular music , than non - viewers. Since viewing takes them away from other sources of information

generally , their information input may be unbalanced. The fact that viewers are not necessarily inferior in their school performance , even though viewing takes up much of their time , may be explained by television being constantly used as an encouragement incentive or means of punishment. Children may be told to finish their school work before switching on the television at home. It can be said that ' television children ' are quite well adapted to the dilemma of television viewing and the pressure for satisfactory school work performance.

EFFECT ON READING AND SKILL IN READING

Children, once they start viewing, certainly read less than before. By how much depends on the type of child and how long he has been viewing. But as children get used to viewing they gradually revert back to books , so that after a few years the viewers are once again reading as many books as the non - viewers , and the duller children have even increased their share of reading.¹³ Schramm et al suggest that television stimulates interest in reading through its serial dramatisation of books. It also rouses the child's interest and curiosity so that he becomes interested in a wider range of books than before.

From the research results , it would seem to suggest that television has a 'novelty' impact on children. But as it subsides , any 'abnormality' will begin to disappear. It leads

one to question whether the effects of television on children are long - term ; whether any effect can be studied in its singularity , without regard to other variables at all . The child cannot be viewed as static ; he is developing within himself and it is hardly fair to study the effect of television on him without giving credit to the internal development that goes on within him .

EFFECT ON PEER - GROUP AND FAMILY RELATIONSHIP

Television does keep members of a family at home more . But it does not bind the family any more than this physical sense. Many researchers suggest that mothers tend to use television as a baby - sitter for their young children. Mothers have often expressed the idea that with television, children can be left to their own viewing and thereby making child-care easier.¹⁴ Also it is expressed that television viewing keeps the child more at home and less inclined to trouble - making outside the house. It is also suggested that television viewing reduces peer - group activities to a certain extent.¹⁵

WHY CHILDREN WATCH TELEVISION ?

What is the appeal of television to children ? For one thing , it is convenient and easy to use. When researchers go deeper into the psychological reasons behind it , it always ends up something very similar to the reasons for going to the

cinema: the desire to escape from everyday life and the desire to get to know real life better .

Himmelweit et al conclude :

"It gives the chance to be in the know to go behind the scenes ... learning about the world and about people. On the emotional side , televisionoffers security and reassurance through the familiar format and themes of many of its programmes , notably the family serials and the Westerns. It offers constant change , excitement and suspense. It provides escape from everyday demands with lightheartedness , glamour , and romance , and permits the child to identify himself with different romantic heroes ".¹⁶

Schramm et al also conclude that there are two main reasons:

"First , the obvious reason : the passive pleasure of being entertained , living a fantasy , taking part vicariously in thrill play , identifying with exciting and attractive people , getting away from real life problems and escaping from real - life boredom - in other words , all the gratification that comes from having a superlative means of entertainment in one's own home , at one's command ...But there is nevertheless a significant component of information which children also get , usually without seeking , from television The girls say that they learn something about how to wear their hair , how to

walk and speak , how to choose garments for a tall or a short or a plump girl , by observing the well groomed creatures on television. They learn some details of manners and customsSome of the boys say they learn how young men dress in California or New York,..... it is more real when you see where it happens".¹⁷

Schramm et al also suggest another reason for television viewing among the young teens . It provides a social utility. Teenagers use it often as a means to get together and it also provides a common ground for discussion and shared experiences .

Maccoby suggests that television viewing is linked ultimately with the viewer's personality. If he finds one programme interesting , it is because it strikes a responsive chord within him - satisfies a particular need , supplies wanted information , or perhaps offers release from general tension.¹⁸

In summary, it would seem that most researchers suggest that children view television as a vehicle to their fantasy land, to escape from reality, to be entertained , to get certain information , and to be satisfied in certain needs. For the younger children (pre - school , for example) the reason for television viewing is simply because it is there .

WHAT KINDS OF PROGRAMME ?

Undoubtedly most researchers are interested in the content

of programmes most often watched by children. Japanese researchers analysed the content of seventy television programmes originating in both Japan and United States which were the favorites of Japanese children. It was found that aggressive - hero type programmes tended to stress justice , courage and self - confidence , while the villain usually employed cruelty , selfishness and violence. Socially desirable characteristics such as fairness , diligence and good manners were seldom portrayed. In these shows, good invariably overcame bad, and in the majority of cases studied , violence was the means to accomplish justice.¹⁹

Greenberg testified before U. S. Senate Sub - Committee to Investigate Juvenile Delinquency that in more than 200 television programmes he studied , almost three out of five problems presented were solved by violent tactics, with verbal, physical and mechanical means.²⁰

Head also investigated more than 200 network programmes in the early 50's. He found that crime - aggression index for children's plays were higher than any other types of programmes and found an emphasis on professional criminals in these shows. Characters also over -represented the middle and upper class of society.²¹

Himmelweit et al performed a content analysis of programming available to British children. He found that it mostly consisted of plays , particularly Westerns , crime and

adventure. In a typical week , 18 plays were shown which dealt with some aspect of law - breaking , most of them were shown in the pre - 9pm. period even though they were obviously designed for adults . The values depicted were similar to those cited in the Japanese studies. Despite moments of tension, violence was disguised to look remote, to be a game. However , there seems to be a great deal of variation in preference. Even among children of the same age , sex and intelligence , there is a considerable difference in the choice of favorite programmes.²²

Gentile et al found that prime - time television programmes featured mainly upper and middle class characters. Less than one in ten characters were classified as working class and these typically were portrayed as 'crude' and 'negative' in various respects.²³

Abram found that most 8 to 15 year - old children , in a sample of 1500, preferred adult to juvenile programmes. This tendency was more pronounced for working class children.²⁴

In summarizing these findings and those not reported here , it seems that both television programming and the programmes preferred by children are mostly violence - orientated and portray over - represented upper and middle class values in society ; seldom emphasize socially desirable values and also that children prefer adult to juvenile shows. It seems that children seldom find programmes directed at them stimulating. Instead they tend to look for satisfaction in adult programmes

which are not geared for a child audience .

However, the question whether 'children see what they like' or 'like what they see' has been raised. Most researchers cannot come to any conclusion. In the Himmelweit et al study , when there was only one channel available in England at that time , children were faced with the choice of not viewing or viewing some programmes they did not expect to find very interesting. They often chose to see that programme and became interested in it. With more variety of programmes , they tended to view those they found previously interesting. This shows that children's preference is narrow and conditioned by earlier experience .

DOES TELEVISION MAKE CHILDREN PASSIVE ?

The term 'passivity' is vague and it means a lot of things to different people. Schramm et al claimed that:

1. The assertion that children absorb television like a sponge is proved to be untenable.
2. There is no evidence of the view that television viewing leads children to prefer an edited version of life to the real thing.

However, Greenberg found that fifth and eighth graders believed certain film violence episodes to be 'realistic'. Lower class children are more inclined to think this way.²⁵

LeScicito also claimed that most young viewers see dramatic television programmes as generally realistic portrayals of the world as it is.²⁶ Lyle, Hoffman et al found the opposite in their study.²⁷

Maybe there is no evidence to suggest that young children do prefer the edited version of life to reality, but it would not be unreasonable to assert that for younger children whose mental ability is not yet developed fully, and who tend to fantasize at a young age, they may not be able to differentiate between what is real and what is fantasy as shown on the television screen. Experience with real life and age tend to help them to develop some sort of a discount system. A unstable environment is also a determining factor in the child's tendency to believe the 'make - believe' world of television.²⁸

3. Schramm et al assert that television viewing leads to loss of initiative and that children make room for viewing by cutting down on other forms of activities. However, brighter children tend to be heavy viewers until the age of eleven and then turn away to other activities, supposedly having greater intellectual

challenge.

4. Television viewing tends to stimulate children's interest in a wider range of subjects .
5. Finally , there seems to be no difference between viewers and non-viewers in their being rated as 'unusually' or 'moderately' imaginative or 'unimaginative' by their teachers.

In summary , there is no great evidence for the assertion that television viewing makes a child passive in all of the meanings of the word usually explored. Whether a child's imagination is dulled or not , whether he lacks initiative or not , whether he is inclined to fantasize a lot or not , television viewing is not the sole determining factor involved. It is important to take into account each other's own internal development , his personality and the environment around him in the determining of the effects of television on his well being.

TELEVISION AND SOCIALIZATION

We have seen that television offers a great opportunity for coming into contact with a broad spectrum of experience. We have also seen that one of the reasons children watch television is to obtain ' information ' about life , the world and the style of living . Undoubtedly , television's ' proximity ' adds to the dramatic influence it has on children in their developing years. For the two and a half decades since it came into

prominence , it has gained the importance of being a major socialization agent of the child , in addition to the family , the school , the church , the peer - group and the community at large. Its proximity probably makes it as equal , if not more important , as the family and the school , as an agent in the child's process of socialization. Does research evidence bear this out? Do young viewers tend to have values substantially different from those of non - viewers? Since television programmes are very much unbalanced in the life - style and values they portray , do television viewers take on these values more readily than non - viewers ?

The answer, according to Schramm et al is yes. They found a number of instances where viewers and non-viewers differed in their outlook on life. The young viewers were more ambitious, more middle - class orientated and more inclined to stress self-confidence as the most important factor in success. Note that all these values and outlook on life are being constantly portrayed in television programmes. The young viewers also tended to make fewer value judgements about foreigners (maybe as a result of exposure to programmes about foreign countries) and they tended to think of foreigners as stereotyped by television. However, when one comes to information about subjects which they can get from other sources, television makes no impact on children.

In summary , television is most influential in the process

of socialization when no other sources of information are available to children. This is the case because , like it or not , television is easily available. By switching on the set by pushing a button , the child is exposed to another environment , interesting and entertaining and capable of attracting and absorbing attention .

Halloran in his book , Attitude Formation and Attitude Change concluded that the main sources of attitude formation are direct experience with objects and situations , explicit and implicit , and learning from others. The television medium affects the child's socialization by teaching norms , status and position and institutional functions. He is also presented with models of behavior and information beyond the child's own immediate experience. However, group and parental influences , the child's personality and his susceptibility to persuasion are still important factors in socialization and attitude formation and change.²⁹ It is only when the family and the school relinquish their roles in the process of socialization that the television is more powerful and probably more dangerous.³⁰ The responsibility , in this respect , reverts back to the parents and not solely to the broadcasters .

TELEVISION VIOLENCE AND CHILD AGGRESSION AND IMITATION

As most content analyses of television programmes point out the fact that most of the entertainment a child sees on

television is violent , special attention has been paid by researchers to the possible effects of these violent programmes on the child .

The original hypothesis was that television violence might rid the child vicariously of frustrated aggression. This was the conclusion of an earlier study by Feshbach.³¹ This was also suggested by Maccoby , who claimed that televised violence may reduce frustration momentarily , but at a later time , when the need arises , children who have been exposed to violence on the television screen may resort to aggression and imitate such behavior.³²

However, later experiments do not really bear out this hypothesis. If anything , the opposite is always the result , that television violence tends to build up aggressive behavior.³³

The typical method used in such experiemnts is to frustrate a group of children so that they develop a high level of aggression. Then they are shown a film or a television recording of a drama in which aggressive behavior plays a prominent part . Similar group of children , who have not been frustrated , are shown the same programme. Then the two groups of children are given a chance to show their frustration , either by behavior or in a test. The children who were not frustrated (control) seem no more aggressive than before. But the group who have been frustrated do not reduce their

frustration : if anything , they have built it up. They have always found some ways of expressing it (eg. hitting a doll). Such experiments may have only shown that children let out their aggression on targets as shown on the programme and any generalization beyond the conditions of the experiments may prove to be too broad and dangerous. However , such result is not entirely reassuring , because it shows that television violence seldom releases frustration as suggested by Feshbach , but tends to encourage it .

These experiments do suggest that children tend to imitate what is shown on the television screen. The question , whether they imitate unquestionably or selectively , arises. It would seem that the capacity to imitate does not imply performance . However , violence on television increases the likelihood of aggressive behavior seems to be indisputable .

Studies show that the relationship between exposure to television violence and aggressive tendency is positive , but the correlation is usually of low magnitude (ranging from a null relationship as shown in the study of Lefkowitz to a modest range of 0. 17 to 0. 23 in the study of McLeod).³⁴

The low magnitude of correlation between television exposure and aggressive behavior tendency leads one to speculate on the variables involved other than that of the medium .

Lefkowitz suggests that the tendency to aggressive behavior

after television violence exposure is higher among aggressive boys. Both Greenberg and McLeod claim that the relationship is higher among girls and junior high school boys.

McLeod also suggests that parental affection is unrelated to aggression , and so is parental punishment but there is a strong negative correlation between aggression and exposure and

- a. Parental emphasis on non - aggression
- b. Stable family communication pattern

There is also strong evidence suggesting that children imitate more readily the behavior of characters shown on television whom they can identify with.³⁵ It has been shown that they tend to be more disturbed if aggressive acts are directed at children of similar age and social background .

In sum , the experimental studies bearing on the effects of aggressive television entertainment content on children support indications that :

1. Violence depicted on television can immediately or shortly thereafter induce mimicking or copying by children. But whether imitation will actually be carried out depends on a large spectrum of other variables which include the child's personality , his family's environment and parental values on non - aggression .
2. Under certain circumstances , televised violence

can instigate an increase in aggressive acts.

The variables cited in (1) above, also operate here.

Such conclusion does not of course suggest that televised violence has a uniformly adverse effect on children nor asserts that it has an adverse effect on a majority of children in society.

It would seem that the impact of televised violence can be modified or nullified by parental control , stable family environment and satisfying peer - group relationship. Dr. Maria Piers , psychologist and Dean of the Erikson Institute for Early Education in Chicago , speaking in the annual meeting of the American Association of Psychiatric Services for Children, Inc. in Chicago in 1973 said that it is not television which makes young people violent , or keeps them from relating to others. It is the absence of other ingredients which make for a fulfilling life. Palombo , a social worker and director of the Child Therapy Programme at the Chicago Institute for Psychoanalysis also said in the same meeting that children do not interact with television the way they interact with their parents , who are crucial in the development of the child's conscience , ideals and values.³⁶

TELEVISION ADVERTISING AND CHILDREN

There are only a handful of research studies on the effects

of advertising on children. Ward found that older children are very skeptical of television commercials. He asserted that this skepticism is related to 'consumer awareness' formed from the child's experience with advertising generally and with television advertising specifically. He stated that : "It is possible to speculate that early experience with questionable television advertising engenders a high degree of cynicism among youthful viewers which may reflect itself ultimately in a general sense of distrust and alienation. In contrast , these kinds of early experience may very well be viewed as helping to develop the kind of healthy skepticism that will serve to immunize viewers against propaganda".³⁷ In another paper , Ward also suggested that the understanding of the content and purpose of advertisements increases with age and that children's response to commercials may be related to stages in their 'cognitive' development.³⁸ He suggested that younger children do not understand the content and purpose of advertisements and can only differentiate programmes and commercials by the fact that the latter are shorter .

In a study conducted for Metropolitan Broadcasting Television by R. H. Bruskin Associates , it was found that young children (age 4 to 12) stated their food preferences in terms of brands rather than categories and that there is a high correlation between these brands and those advertised on children's programmes. 76 percent of them said that they have asked their parents to buy food or drink products they have seen

on television. 91 percent of the mothers of these children interviewed said they ' on the average ' brought the brands as requested by their children.³⁹

In one study by Berey & Pollay , it was found that child-centered mothers tended not to buy pre - sweetened cereals for their children even when requested by them.⁴⁰

SUMMARY

Summarising all the studies discussed in this chapter , it is not inconceivable to conclude that :

1. Children usually spend more time watching TV than on any other activity ;
2. Children are usually left to their television viewing on their own , unattended by adults or parents ;
3. Children are highly imitative;
4. The tendency to believe the 'make - believe' world of television varies with personality , environment , parental guidance and cognitive development ;
5. Children have great potentialities to 'learn' from television ;
6. Children usually enjoy adults' programmes .

These , coupled with children's susceptibility to persuasion , simple mindedness and their credulity , make them

'prey' to the highly skilled , sophisticated and persuasive advertising messages. They , as a group , need protective measures to guard them against the bombardment of advertising which are using them as no more than selling tools for the companies involved.

CHAPTER 2

While Canada does not have any federal legislation directly dealing with advertising to children, advertisers are subject to broad control as stipulated in federal laws regulating advertising in one form or another. These include the Bank Act,¹ the Hazardous Products Act,² the National Trade Mark and True Labelling Act,³ the Precious Metals Marketing Act,⁴ the Textile Labelling Act,⁵ the Food and Drug Act,⁶ the Trade Marks Act,⁷ the Broadcasting Act,⁸ the Consumer Packaging and Labelling Act,⁹ and the Combines Investigation Act.¹⁰ Over the years since the enactment of these statutes, there have been few reported cases dealing with false advertising except those brought under the Combines Investigation Act, which undoubtedly is the most important federal legislation in this area.

The Canadian provinces have drafted little significant legislation dealing with consumers and less with false advertising. The Consumer Protection Act of Quebec, is the first and only provincial statute which contains a section dealing with advertising directed at children. As such, it reflects the trend of social consciousness in the late sixties concerned with the effects of television on children, especially in the area of advertisements. Most of the other provincial statutes deal only with consumer credit, with the Consumer Protection Act of British Columbia going a little further to cover the issues of referral sales,¹¹ the rescission

of door - to - door transactions,¹² and unsolicited credit cards or goods.¹³ However , these provincial acts are almost universal in their lacking any provisions dealing with false or misleading advertising .

Besides federal and provincial legislation , there are also extra - legal organisational codes of advertising standards. These are usually voluntary codes and not mandatory. But because of the extensive membership of these organisations , these codes do provide very significant self - regulatory standards adopted by most advertising practitioners. The most important codes are the Broadcast Code for Advertising to Children of the Canadian Association of Broadcasters and the Canadian Code of Advertising Standards of the Canadian Advertising Advisory Board .

In this chapter , a general survey of the federal laws dealing with advertising with special emphasis on the Trade Marks Act , the Food and Drug Act , the Hazardous Products Act , the Broadcasting Act and the Combines Investigation Act ; of the provincial statutes in this area , covering the Consumer Protection Act of Quebec,¹⁴ the Consumer Affairs Act of Alberta,¹⁵ the Consumer Bureau Act of New Brunswick,¹⁶ the Consumer Protection Act of Ontario¹⁷ and the Consumer Protection Act of British Columbia;¹⁸ and the extra - legal organization voluntary codes of advertising standards as cited above will be presented. The emphasis in this chapter is on the general

provisions , the administration , the jurisdiction , the penalties and the remedies involved. More detailed analysis of the relevant statutes dealing solely with advertising directed at children will be discussed in later chapters .

PROVINCIAL STATUTES

As cited above , most of the provincial statutes in consumer protection tend to deal exclusively with consumer credit and contracts in general. In the area of advertising , the statutes can be described as 'primitive' and in most cases, the provinces are content to be the administrative bodies of federal legislation without enacting any significant regulations on their own initiative. For example , the Consumer Affairs Act of Alberta merely establishes a Consumer Affairs Bureau without giving it an act of its own to administer. The main duties of this bureau are to receive and investigate complaints of practices that are in violation of acts for the protection of consumers and to disseminate information to advise consumers.¹⁹ Under the Consumer Bureau Act of New Brunswick and the Consumer Protection Act of Ontario , bureaux with similar functions are also established.²⁰ The Nova Scotia Consumer Services Act establishes a bureau with a more creative and assertive role than those discussed above. It is empowered to :

1. to administer Acts designed to protect consumers ;
2. to counsel and advise consumers ;

3. to educate consumers on consumer protection ;
4. to do research in the related area.²¹

Most of the sections in the provincial statutes studied in this paper dealing with advertising concern the advertising to credit only. For example , the New Brunswick Act provides :

"Where any registered lender makes false , misleading or deceptive statements relating to the extension of credit in any advertisements , circular , pamphlet or similar material , the Minister may order the immediate cessation of the use of such material".²²

The Acts of Prince Edward Island,²³ Newfoundland,²⁴ and Nova Scotia,²⁵ also contain similar provisions relating to false or misleading advertising but only limited to the advertising of the extension of credit. Disclosure of terms of credit and cost of borrowing must be made in the advertisement under the Nova Scotia and Newfoundland Acts.²⁶ Such a provision is also set out in the legislation of Ontario,²⁷ British Columbia,²⁸ and Manitoba.²⁹

The two most important provincial statutes which have separate sections dealing with advertising in general are the Consumer Protection Act of Ontario and the Consumer Protection Act of Quebec.³⁰

Section 31 of the Ontario Consumer Protection Act reads as

follows :

"where in the opinion of the Registrar , any seller or buyer or lender is making false , misleading or deceptive statements in any advertisement , circular, pamphlet or similar material, the Registrar may order the cessation of the use of such material and any such order is subject to review on appeal in the same manner as an order respecting registration made under Part I " 31

However , this section is limited in scope due to the interpretation of 'seller' and 'buyer' given in an earlier section.³² It therefore extends coverage to consumers only and does not include advertising directed by manufacturers to wholesalers or retailers or any person who buys goods for the purpose of carrying on his business.

The Consumer Protection Act of Quebec was enacted in 1971. Like almost all of the other provincial statutes , it deals extensively with credits and contracts. Section 60 of the Act is concerned with advertising in a broader context than that of credit and borrowing of money. However , this section is worded vaguely and for practical purposes, it is probably insignificant in controlling false advertising. This section reads :

"Any goods furnished by a merchant must comply with the description of them given in the contracts and in catalogues , circulars or other means of advertising".

The concern is with truth in advertising , deceptive and misleading advertising. Its major emphasis is on published and written materials and television advertising, in most cases, seldom comes within the jurisdiction of this Act. The reason is that in television , description and factual information about the product are seldom employed as means of persuasion .

In October 1972 , an amendment to the Consumer Protection Act of Quebec was made. A Division XI - A was added and it represents a major step taken by the legislative body of Quebec to control advertising directed at children.

There are two separate subsections in this division , dealing with two separate offences. In S. 11. 52 , it is stated that it is an offence to publish , to use or cause to be published or prepare in Quebec advertising intended for children which is 'unfair , false , deceptive or misleading'.³⁴ Nowhere in this amendment of the Act are the terms 'unfair , false , deceptive or misleading' defined. As a result , this section is given a very wide interpretation of these terms. Presumably, it will have to depend on the judges of the courts to decide what is considered to be unfair, deceptive, false or misleading. The cases brought to court under the Combines Investigation Act

may provide a significant case law reference for this section , since the two statutes are worded in similar fashion.³⁵

In S. 11. 53 , fifteen specific forms or techniques of advertisement directed at children are prohibited by this Act. These are advertisement which :

- a. exaggerates the nature , characteristics , performance or length or life of a commodity ;
- b. de - emphasize the skill , age , strength of dexterity necessary to use a commodity ;
- c. makes use of superlatives to describe the characteristics of a commodity or makes use of diminutives to describe the price thereof ;
- d. makes use of a comparative claim or establishes a claim ;
- e. expressly urges children to buy , or to request another person to buy , a commodity ;
- f. belittles parental authority , judgement or preferences ;
- g. portrays reprehensible family life or customs ;
- h. concerns a product , which , by its nature , quality or ordinary usage ought not to be placed at the disposal of children ;
- i. concerns a drug or a proprietary medicine ;
- j. concerns a vitamin in liquid , powdered or tablet form ;

- k. portrays a person performing any unsafe act ;
- l. portrays a commodity in a manner suggestive of improper or dangerous use thereof;
- m. employs a person or personage known to children, except in the case of a professional actor or announcer who is not featured in any publication or programme intended for children ;
- n. employs cartoons ;
- o. suggests that the possession or use of a commodity will endow a child with physical, social or psychological characteristics superior to those of his peers , or conversely that the lack of possession or use thereof will have the opposite effect except if such suggestion , in so far as it concerns education or health , be true ;
- p. introduces a commodity in such a context that a child would be falsely led to believe that , for the price of such commodity , he could obtain all the commodities or assessories advertised.³⁶

As can be seen from the above , this section of the Act spells out in specific detail what certain types of advertising techniques are deemed to be undesirable and harmful for the children (a child , as defined in this Act , is a person under the age of 13 years³⁷).

Loosely , this part of the section can be grouped under five headings :

1. misleading advertising which exploits children's immaturity in understanding and their inability to differentiate between fantasy and reality at a young age. (clauses a, b, c, d)
2. advertising which is considered to be undesirable because it makes the upbringing of a child more difficult at home. (clauses e,f,g,o)
3. advertising which is considered to be undesirable because it portrays a dangerous act or product deemed to be unsafe for children. (clauses i, j, k, l)
4. advertising which exploits children's susceptibility to persuasion by people they can identify with. (clauses m, n, o)
5. advertising which is considered to be undesirable because it teaches undesirable social values. (clauses o, f, g)

This subgrouping may appear to be superficial and in some cases , the clauses in the Act do overlap. It does not set out explicitly the criteria to determine whether a commercial is directed at children or not. It only suggests that the time and context of presentation , the nature and intended purpose of the commodity and the time and place the advertising is shown have

to be taken into consideration.³⁸

In summary , the Consumer Protection Act of Quebec contains the most interesting section in dealing with advertising. This section which controls advertising directed at children appears to be extremely inclusive in comparison with the one section dealing with advertising in general. It is interesting to note that a single type of advertising demands so much attention in the legislation whereas a greater majority of advertising appears to be more tolerably regulated at the provincial level. The only explanation for this is the fact that the federal legislation in respect to the latter appears to be adequate while stricter control of the former is considered to be necessary.

Before leaving the Quebec legislation , a word has to be said about the administration of the Act. The Consumer Protection Bureau was established in the Department of Finance , Institutions , Companies and Corporations. It deals with receiving and acting on complaints received from consumers. It forms a liason between federal and other provincial departments and it educates and informs consumers on matters of consumer affairs and protection.³⁹ The Act also empowers the Attorney - General in Council to make any regulations to determine standards for advertising goods, especially all advertising intended for children.⁴⁰ Summary proceedings under the Act can be brought by the Attorney - Genral.⁴¹ Besides the penalties of

finances and imprisonment , (in the case of an individual , a minimum fine of one hundred dollars rises to a maximum of \$2,000 and/or imprisonment of not more than one year ; in the case of a corporation , a maximum fine of \$2,500 per offence. This appears to be the same in most of the provincial statutes discussed here) the Act also provides civil remedies to consumers suffering damages as a result of any violation of the Act.*2

Summarizing this section on Canadian provincial statutes dealing with advertising , it is fair to say that the provisions are almost minimal in most provinces. Ontario and Quebec are the only two provinces that have any provision dealing with advertising in general other than that of extension of credits and borrowing of money. While Consumer Protection Bureaux established by the statutes are concerned with the administration of Acts designed to protect the consumers , they usually serve as advisory bodies to the public. It would seem that the greatest function such a bureau can perform is to educate the consumers. Other than the provision in the Consumer Protection Act of Quebec, where the Attorney - General - in - Council is empowered to set up regulations to control advertising standards, the statutes lack such initiative devices. The civil remedies available to the consumers under the Quebec legislation probably give the consumers more incentives to bring complaints to the court.

CANADIAN FEDERAL LEGISLATION

In this section , the federal legislation in the area of controlling advertising will be discussed. Special emphasis will be made on the Trade Marks Act , the Food and Drug Act , the Hazardous Products Act , the Broadcasting Act and the Combines Investigation Act.

The Trade Marks Act

Section 7 of the Trade Marks Act provides that ;

7. No person shall

- a. make a false or misleading statement tending to discredit the business , wares or services of a competitor ;
- b. direct public attention to his wares , services or business in such a way as to cause or likely to cause confusion in Canada , at the time he commenced so to direct attention to them , between his wares , services or business of another ;
- c. pass off other wares , services as those ordered or requested ;
- d. make use , in association with wares or services , of any description that is to mislead the public as to
 1. the character, quality, quantity or composition ;
 2. the geographical origin

3. the mode of the manufacture , production or performance of such wares or services or
- e. do any act or adopt any other business practice contrary to an honest industrial or commercial usage in Canada.⁴³

The Act deals mostly with false and misleading information in advertising. Section 7 (a) has its origin in common law tort of injurious falsehood but its provision is narrower than that of the Combines Investigation Act. In this section, competitors' wares or business have to be discredited by the misleading advertising , while in the Combines Investigation Act (Section 37) detriment to competitors need not be proven at all. Therefore , if competitors have suffered damages , it would be wiser to bring action under the Trade Marks Act under which the court has greater power to grant relief.⁴⁴

Most of the cases litigated under the Trade Marks Act so far have been brought under Subsections 7(b) and 7(c). Violation of 7(b) includes packaging⁴⁵ and the action is maintainable against any kind of business⁴⁶ and not merely businesses of the same general character. As far as Subsection 7(c) is concerned , it was held by the Supreme Court of British Columbia that the passing off test is not whether the buyer has been misled by the packaging but whether a buyer of reasonable apprehension and eyesight would in fact be deceived.⁴⁷ The principle of 'reasonable man' therefore applies here.

Under Subsection 7(d) misleading description of certain specific things about a product is prohibited. These are the quality , quantity , composition , character , mode of manufacturing , and the geographical origin of the product or service. As such , this subsection is limited and of little significance in taking action against modern advertising techniques which go beyond the mere description of a product and hinge more on the psychological effect produced on the public.

Subsection 7(e) covers everything and is left wide open to the interpretation of the court. Few cases have been litigated so far under this subsection.

The Trade Marks Act this provides quite an alternative to the Combines Investigation Act especially in respect to the greater relief power granted to the court under the Act.⁴⁸

The Food and Drug Act

Like most of the federal provisions in the area of controlling advertising , the Food and Drug Act tends to overlap with the Combines Investigation Act .

Section 9(1) of the Food and Drug Act provides that :

"No person shall label , package , treat , process , sell or advertise any drug in a manner that is false , misleading or deceptive or is likely to create an erroneous impression regarding its character , value ,

quantity , composition , merit or safety".⁴⁹

Section 10 (1) provides that :

"where a standard has been prescribed for a drug no person shall label , package , sell or advertise any substance in such a manner that it is likely to be mistaken for such a drug , unless the substance complies with the prescribed standard".⁵⁰

The same provisions for food are set out in Section 5 and Section 6 respectively.⁵¹ This is administered by the Food Division of the Standards Branch which carries out constant review of advertising in the broadcasting media. The one significant difference in administration from that of the Combines Investigation Act is that warnings are usually given to the advertiser about his wrong doings prior to presecutions. In this respect , close cooperation between the Consumer and Corporate Affairs Department and industry brings about greater compliance under the Act and regulations. One example is the Department's guide for manufacturers and advertisers in 1961. It set out certain guidelines suggested by the Department. The use of comparatives such as 'better' or 'richer' without qualifying words are advised against. Where geographical terms are used , the products should be labelled in such a way so as to remove deception (for example , 'home-made' is objectionable while the term 'home-made-style' is all right). The use of scare techniques is also advised against.

It is important to note that under Section 9(1) of the Act, the public need not be deceived to have actions brought under the Act, but an erroneous impression is enough.

THE HAZARDOUS PRODUCTS ACT

The Hazardous Products Act restricts advertising of certain products rather than merely prohibiting misleading advertising in general.⁵² It prohibits the advertising of such things as furniture and other articles intended for children which are coated with paint containing harmful amounts of lead, varnishes and paints and paint removers for household use which are highly inflammable and also jequirity beans or any substance or article (such as toys or jewelry) made with such poisonous beans.

Under this Act, advertising includes any form of representation by any means for the promotion of sale or use of such products directly or indirectly.

Both the Food and Drug Act and the Hazardous Products Act are concerned about the 'safety' of the public directed at by any form of advertising.

The Broadcasting Act and the Regulations thereto ⁵³

The Broadcasting Act and the Regulations thereto are mostly concerned with the taste and techniques used in advertising. Emphasis is on prevention rather than prosecution. Preclearance

with the Canadian-Radio-Television-Commission ensures voluntary compliance and guidelines are usually issued from the Commission to broadcasters, advertisers and manufacturers. Violation of the Act and Regulations will make the parties involved liable to be prosecuted under the Act and in the case of broadcasters, their licences will be revoked.

The most controversial subject dealt with by the Regulations is in the area of alcoholic beverages advertising.

The federal government, through the C.R.T.C. has jurisdiction over :

1. whether or not liquor advertisement will be allowed access to the broadcast media;
2. and control over
 - a. the content of the liquor advertisement;
 - b. the type of alcoholic beverages which may be advertised;
 - c. good taste in presentation;
 - d. the amount of advertising which will be permitted for alcoholic beverages.

The provincial government has essentially the same power as the federal government with the exception that it has control over both the amount of advertising shown and the time such advertising be aired.

The policy followed by the Canadian-Radio-Television-Commission is that advertising should not be designed to promote the general use of beer or wine. Only the promotion of brand name preference is allowed. Alcoholic beverages advertising should only be directed at those who are legally entitled to consume and who in fact do consume (ie. advertising should not persuade non-drinkers to drink). Advertising which is designed or created to establish to show or infer that the consumption of beer or wine is a necessary or desirable part of any social activity will not be approved. Any attempt to establish the product as a status symbol or a necessity for the enjoyment of life or an escape from life's problems will not be permitted.⁵⁴

The above policy guidelines deal with the general 'undesirable' social values attached to drinking. Further, the following regulations relate to the specific techniques and means of persuasion used in alcoholic beverages advertising :

Advertising should not :

- a. show the product , except , incidentally in describing the manufacturing process ;
- b. show family or other scenes which include minors or persons who appear to be minors ;
- c. show glasses, bottles or cans except that these may be shown in sequences of cartoon animation or puppetry;
- d. show cartoon animation or puppetry ;
- e. show persons engaged in activity in which the

consumption of alcohol is prohibited, consumption of alcohol is prohibited, either prior to or during such activity (eg. drinking while driving a motor car).

The above discussion of the regulations concerning the advertising of alcoholic beverages is an attempt to show the power of the C. R. T. C. in the controlling of advertising in general. Unlike other provisions, both federal and provincial, these regulations tend to lay more emphasis on good taste and techniques of presentation. Preclearance with the Commission is helpful in ensuring voluntary compliance but the task of the Commission is therefore phenomenal. However, such regulations more or less amount to self-regulations of the broadcasting industry and, together with the code of standards adopted by advertisers, prove to be useful in relieving the burden of the federal agencies in policing objectionable advertising.

The Combines Investigation Act

The Combines Investigation Act, in the area of controlling false advertising, is the most extensive and significant of all, encompassing the advertising of all goods in all media and by almost all means.

Due to the imminence of the passing of Bill C -227 in the House of Commons, the relevant amendments to the present Act will also be discussed in this section.

The provisions concerning false advertising are set out in Section 36 and Section 37 of the Act . Section 37 creates an indictable offence whenever an advertisement is published which contains a statement purporting to be a statement of fact but which is misleading , deceptive or untrue or is intentionally so worded or arranged that it is misleading or deceptive. Section 37(4) creates a summary offence in the case of inadequate or improper testing of anything about which a statement or guarantee of the performance , efficacy or length of life is made in an advertisement. Section 36 creates a summary offence in the case of any material representation to the public concerning the price at which any article has been , is or will be ordinarily sold.

The actual text of these sections is :

36(1) Everyone who , for the purpose of promoting the sale or use of an article , makes any material misleading representation to the public , by any means whatever , concerning the price at which such or like articles , have been , are , or will be ordinarily sold , is guilty of an offence punishable on summary conviction

(2) Subsection (1) does not apply to a person who publishes an advertisement that he accepts in good faith for publication in the ordinary course of his business.

37(1) Everyone who publishes or causes to be published

an advertisement containing a statement that purports to be a statement of fact but that is untrue , deceptive or misleading or is intentionally so worded or arranged that it is deceptive , or misleading , is guilty of an indictable offence and is liable to imprisonment for five years , if the advertisement is published

a. to promote , directly or indirectly , the sale or disposal of property or any interest therein , or

b. to promote a business or commercial interest.

(2) Everyone who publishes or causes to be published in an advertisement a statement or guarantee of the performance , efficacy or length of life of anything that is not based upon an adequate and proper test of that thing , the proof of which lies upon the accused, is, if the advertisement is published to promote, directly or indirectly, the sale or disposal of such thing, guilty of an offence punishable on summary conviction;

(3) Subsections (1) and (2) do not apply to a person who publishes an advertisement that he accepts in good faith for publication in the ordinary course of his business.

(4) For the purpose of subsection (2) , a test that

is made by the National Research Council of Canada or by any other public department is an adequate and proper test , but no reference shall be made in an advertisement to indicate that a test has been made by the National Research Council or the other public department unless the advertisement has , before publication , been approved and permission to publish it has been given in writing by the president of the National Research Council or by the deputy head of the public department , as the case may be.

- (5) Nothing in Subsection (4) shall be deemed to exclude , for the purpose of this section , any other adequate or proper test.⁵⁵

Section 36 deals with price advertising. The reason for the insertion of this provision has been stated by Mr. David Henry , the then Director of Investigation and Research , in the following terms :

"This provision was inserted after the Combines Investigation Branch had a number of cases brought to its attention where a vendor , in order to make it appear that the price at which he was offering an article was more favorable than was actually the case , misrepresented the price at which the article was ordinarily sold at the market generally. Besides being dishonest and likely to mislead the buying public , this kind of tactics was regarded as unfair as a

basis of competition".⁵⁶

Also , the intention of the section is clearly not to inhibit price competition , but "merely to protect the public from being misled as to the extent of the bargain advertised when reliance is placed on the word of the seller as to the ordinary price at which the goods are sold".⁵⁷

The purpose is to protect a gullible and often stupid public who rely on the good faith of merchandisers , a reliance often misplaced.⁵⁸

The essential elements of the offence under this section are :

1. the representation must be made to the public ;
2. for the purpose of promoting the sale or use of an article ;
3. concerning the price at which such or like articles have been , are or will be ordinarily sold ;
4. that the representation must be materially misleading.

The first issue to be discussed is the element of 'to the public'. The court has to determine whether a representation is made publicly or not and to define the 'extent' of the public to which the representation is made.

It has been established that any representation made in an

establishment which 'is open to the general public' qualifies.⁵⁹ This applies even if the communication is made orally one person to another;⁶⁰ and an officer attached to the Federal Department of Justice has also been held to be a member of the public.⁶¹ The fact that the representation is made to an investigator who is not deceived will not be a bar to prosecution.⁶²

The question 'who is the public' was raised by Judge Beaulne in the Simpsons - Sears case.⁶³ He said:

"I have been referred to a compendium of reported and unreported decisions prepared by the Department and from my reading of all these cases, the public was equated to the consumers or shoppers in the limited geographical area where the accused store or business was operating, comparable shopping prices in the limited area were being presented as evidence of the prices at which each of the items in question were ordinarily sold. If I were to interpret public in this restricted sense, there would be no doubt that the accused should be found guilty; however, in the case at bar, the problem is not so simple".

In this case, the presentation involved was made in the accused company's catalogue which indicated a \$20 saving on the ordinary price. The accused had 32 retail stores in Canada and 355 mail order sales offices across the nation. The Judge decided that the ordinary price has to be determined from the entire area where the catalogue was distributed, asserting that the representation was directed not at the retail store consumers but the catalogue public. The charge was dismissed.

The dismissal had far reaching effect since it suggested that the wider the circulation of the advertisement, the more difficult it would be to determine the 'ordinary price' and thus for the Crown to get a conviction. The Crown appealed and Mr. Justice Doyle of the County Court reversed the earlier decision. He stated that :

"Admittedly, the catalogue is designed to reach prospective consumers in all of Zone 2. The advertisement is directed to the consumers in Chicoutimi as well as to the consumer in Ottawa. The Chicoutimi consumer is not misled by the advertisement as it would appear to be true that the article in question sold in his area for a price of \$149.95 or higher. The same advertisement, however, would mislead an Ottawa consumer as the article did not sell ordinarily for \$149.95 or higher".

He also continued that :

"I am unable to agree with the definition of 'public' used by the learned Provincial Judge. The 'extent' of the public in each case must be limited to each area where the goods are sold and the area would be extended to include an area in which price competition would exist as between the business establishments of the particular area".

As for the other essential element of the offence : 'for the purpose of promoting the sale or use of an article', it has never been difficult to get over by the Crown. It has been presumed that any representation made has its purpose to promote the use or sale of the article involved. No other indication need to be sought other than the publication of the

advertisement.⁶⁴ This section includes representation by whatever means , not just advertisements.

The third issue concerns the price at which such or like articles have been , are or will be ordinarily sold. The establishment of the ordinary price is the most important and most difficult job of the Crown

It has been held that the phrase , 'have been , are or will be ordinarily sold' only creates one offence and not three in the leading case of Morse Jewellers (Sudbury) Ltd.⁶⁵

The Court does not have to determine one specific price with which the competitors in the area comply. But it has to be proved that the ordinary price against which the bargain price stated in the advertisement is compared , is not correctly represented. When , as in the Colgate - Palmolive case,⁶⁶ no specific ordinary price is mentioned , the Crown needs only to show that the ordinary price of the article was not higher than the special price stated.

The ordinary price is to be determined by calling on witnesses who are doing business in the area, selling the article or like articles to testify as to the price at which such are sold during the time period when the representation is made. The records of the accused will also be examined. The area of business remains to be an important element to be determined.

As determined in the Breck Shampoo case ,⁶⁷ if 90 % of the sales of the product in the area were at the special price and 10 % at the 'ordinary price', the special price is the ordinary price and the advertiser is deemed to be liable. Also the use of '17% off/en moins' label over a period of three years resulted in the establishment of the lower post - cents - off price as the ordinary price ,as decided in the Products Diamant case.⁶⁸

Further the Court is not concerned about the value of the article. The fact that the merchandize was of the best value at the price was not a defence since the issue dealt with here is that the public is misled into believing that the 'bargain' is better than it is. The price is the focal point , not the value of the product.⁶⁹ The fact that what was being advertised was the best price available in the area was also of no concern as indicated in the Advance case.⁷⁰ Even though the seller did not make a profit in the sales , he was convicted in th Beamish case.⁷¹

The use of words like 'regular price' , 'value' , 'comparable value' , 'compare to' , 'compared at' , 'save' , 'retail price' , all of which are held to be synonymous with 'ordinary price' , as the term is employed in Section 36 of the Combines Investigation Act , will not exclude the section.

It was held that there is no evidence of dishonesty or bad

faith on the part of the manufacturers in suggesting the retail price and the use of the words is not misleading.⁷² However if the price is brought to the attention of the consumer and used as a basis of comparison with the price at which the advertiser is offering the product for sale, there exists an intention on the part of the seller to indicate that the consumer is getting a bargain at all, the advertiser is guilty under this section.⁷³

The last issue to be dealt with is the words 'material representation'. It has been decided that these words must be accorded their normal meaning since there is no definition set out in the Act.⁷⁴ In R.V.Patton's Pace Ltd. Case, the magistrate Carson stated :

"...I think the word 'material' used here must bear its normal meaning and that is a representation which is calculated to, and in effect does, lead a person to a certain course of conduct because he believes the information put before him indicates that this would be advantageous to himself".⁷⁵

A difference of between 5 and 10 % is sufficient, although the court has not laid down a guideline as to this percentage.

Under the proposed amendments to the Act (which consolidates the two sections into one section 36), 'services' will also be covered by the Combines Investigation Act. The new Section 36 will also be applied to prices shown on the article itself, expressed on anything attached to, inserted in or accompanying an article offered for sales, or any other forms

of advertisement , including direct-mail materials, door-to-door sales, home delivered promotional pamphlets. It also refers to imported articles or imported displays. Statements made by salesmen on telephone and in the store will also be included. Bill C - 227 also provides that it is an offence to sell an article at a price higher than the lowest price indicated on it by the seller (ie. double - ticketing). Also if any seller advertises at a bargain price for a product that he does not or cannot supply in reasonable quantities , he is liable to be prosecuted.

There are two offences created under Section 37 of the Combines Investigation Act. It is an offence to publish or cause to be published an advertisement containing a statement which :

- a. 1. purports to be a statement of fact
 2. but which is deceptive , false or misleading ; OR
- b. 1. is so intentionally worded or arranged
 2. that is misleading

Under the second alternative , where the Crown has to prove beyond reasonable doubt that the advertisement involved is intentionally so worded or arranged to be misleading , litigation is difficult. Unless by manipulation of presumption , these words seem to have little effect.

Under the first alternative , a statement purporting to be a statement of fact violates this section if such statement is false. The statement may be factually true but it may contain

implications that are deceptive or misleading. It is not what is said that matters but what is unsaid that counts. For example , a cigarette company claims that its own product has less tar content than its leading competitor's product. This is factually true , but it leaves the impression that its cigarettes have low tar content , which is not the case. On a list of 118 cigarette brands , it ranks midway , with the competitor's two ranks lower. Such advertisement is considered to be misleading under this Section of the Combines Investigation Act.

This leads us to another issue. How much information is considered necessary and sufficient and specifically , what information should be supplied , given the size and time limitations in most advertising promotions? Whatever the characteristics of the product advertised , some may be relevant to some people but not to others. Must everything be disclosed? A common practice is that advertisers will advertise the general usefulness of a product but fail to disclose the limitations , as cited in the case above. The general guideline is not to go too far in the puffery. If what the advertiser does not disclose will give the impression of the opposite to what has been disclosed , the provision in this section has been infringed.

The essence of the offence is that the advertisement published is misleading , deceptive or false. By whose standard

are the advertisements to be judged? Are they to be judged from the viewpoint of advertisers or consumers? Are the standards of judgement subjective or objective? Who, the reasonable man or the slow-witted consumer, requires protection? The Imperial Tobacco case ⁷⁶ has at least provided some sort of an answer. Mr. Justice Sinclair of the Alberta Supreme Court said that: "the protection of the Act is for the public - that vast multitude which includes the ignorant, the unthinking and the credulous".⁷⁷ The 'credulous man' principle is now generally used in the Canadian courts. The defence that any reasonable man will not be fooled by the ads can no longer operate. Dr. Fryburger stated at a Congressional hearing:

"There is the notion that consumers should be able to turn to advertising for the whole truth, for all the facts, for a balanced presentation of pros and cons. As commendable as this might be, consumers generally look upon advertising as biased communication. They expect advertising to be one-sided, to extoll only the virtues of their brand, not its weaknesses; to promote not threaten. This does not mean that consumers expect to be, nor should they be, shortchanged on useful information. In our competitive system, consumers get information from a variety of sources - eg. sellers of competing products, consumer information services, and government agencies. They do not need, nor do they rely upon single manufacturer's advertising to give them all the relevant information".⁷⁸

The court has decided that such argument will not suffice as a defence at all. The 'credulous man' standard therefore provides protection to the ignorant and also to children who lack the ability and the sophistication in consumer knowledge to

protect themselves as referred in the Fryburger's testimony.

The question of whether 'mens rea' is required as an essential ingredient of an offence under this section or not has been decided by Mr. Justice Jessup.⁷⁹ He laid down the rule that has since been almost universally followed : ".... that it is an offence of strict liability and that mens rea ... is not an ingredient of the offence". His argument was based on the fact that an exculpatory clause of the publisher (Subsection 2 of Section 37) would not be necessary if knowledge is an essential ingredient of the offence. This does not apply to the second circumstance stated in the section .

Although the use of 'advertisement' in this section has not so far prevented any prosecution against labels , pamphlets etc. , the proposed amendment to this section substitutes 'representation' for 'advertisement' , thus enlarging its scope to apply to any form of communication , including the oral selling messages of salesmen in the store. Further , under the amendment , anyone who supplies misleading advertising to the distributor, is guilty of an offence.

Under the proposed amendment, the warranty or guarantee to repair or replace an article is a misrepresentation if there is no prospect of it being carried out , or if it does not confer any material advantage on the consumer or if it limits the liability of the suppliers to a standard lower than what would be provide by civil law unless it is so stated in the warranty

or guarantee. Testimonials and guarantees as to the performance or length of life of the product have to be supported by written permission of the one giving the testimonial.

The essence of these sections , and in fact , of the Combines Investigation Act, is that a violation of the Act is a criminal offence. The burden is on the prosecutor to prove beyond reasonable doubt that an offence has been committed. Also the only remedy available is fine and/or imprisonment of the violator and consumers , who have suffered damages , will have no other relief. The proposed amendment to the Act as set out in Bill C - 227 , introduces a civil action remedy available to consumers.⁸⁰

The administration of this Act takes the form of complaints and investigation. Complaints are received by the staff of the Director of Investigation and Research. Investigation can also be initiated by the Director himself or as the Minister of the Restraint of Trade Commission directs. Reports of investigation of violations under Section 36 are to be submitted to the Attorney - General within six months.

Prosecution is carried out by the Attorney - General. Fines under Section 37 are generally higher than those under Section 36 and average from \$650 to about \$3,000.

EXTRA-LEGAL ORGANIZATIONS

In Canada , part of the burden of curbing objectionable advertising is in the hands of two large extra - legal organizations. The first is the Canadian Advertising Advisory Board and the second is the Canadian Association of Broadcasters. The Canadian Advertising Advisory Board , is probably the most influential , being an all - industry body which acts on behalf on the advertising industry in such matters as ethics , government and consumer relations , education research and public information.⁸¹ Its main objectives are :

1. to develop, promote and encourage adherence to approved national advertising standards and practices, including the Canadian Code of Advertising Standards ;
2. to sponsor and support research into advertising, including its social and economic effects ;
3. to contribute to the continuing improvement of advertising effectiveness by assisting in the development of appropriate educational and training programmes ;
4. to improve public awareness of the contributions of advertising to Canada's economic and social well being;
5. to serve the common interest of the Canadian Advertising Industry.⁸²

The main medium through which the Board receives complaints is the Canadian Code of Advertising Standards. It was compiled in 1963 and republished in 1967 after some revisions. It is

approved in principle by all of the Corporate Members of the C.A.A.B., and in addition, by the Canadian Better Business Bureau Inc. , Association of Industrial Advertisers , the C.B.C. , Canadian Weekly Newspaper Association and the Periodical Press Association. These together represent a major and substantial part of the advertising industry. The Code is supervised by the Advertising Standards Council (English) and the Conseil des Normes de Publicite (French). The purpose of the Code is , as set out in the pamphlet : "Through the adoption of the Code of Advertising Standards , the participating organizations undertake to apply the highest ethical standards to the preparation and execution of Canadian advertising. It is their desire and intention to make advertising more effective by continuing to raise the standard of advertising excellence and by ensuring integrity in advertising content",⁸³

In the actual text of the Code, the section dealing with false advertising reads as follows :

"No advertisement shall be prepared , or be knowingly accepted , which contains false , misleading , unwarranted or exaggerated claims - either directly or by implication. Advertisers and advertising agencies must be prepared to substantiate their claims".

The use of words such as 'unwarranted' , 'exaggerated' , 'claims' and 'implication' makes the scope of this Code substantially wider than that of the sections of the Combines

Investigation Act. It is able , then , to catch advertisements based on opinion rather than statement of fact.

The sections dealing with testimonials, price comparisons, guarantees, professional or scientific claims are essentially the same as the Combines Investigation Act. Further , it contains three sections dealing with the 'alleged exploitation' of human weakness by advertising. The first deals with public decency , and it states that "no advertisement shall be prepared, or be knowingly accepted, which is vulgar, suggestive or in any way, offensive to public decency".

The second : "... which is calculated to exploit the superstitions , or to play on fears to mislead the consumers into the purchase of the advertised commodity or service".

The third : "... which offers false hope in the form of a cure or relief for the mental or physically handicapped , either on a temporary or permanent basis".

Some other techniques used which might be imagined to be linked to these exploitations appear to be left out of the Code (for example , is the play on a woman's fear of growing old or losing affection considered to be under the second clause mentioned above ?).

There is another section dealing with advertising to children which states : ".... which would result in damage - physical , mental or moral - to children". This , of course is

extremely vague and wide. To determine specifically what constitutes moral or emotional damage to children would appear to be a formidable job placed on the Advertising Standards Council. However , this clause , does give the idea that the Board and its members are concerned about the effects of advertising on children and are willing and eager to control advertising in such respect.

The Council will investigate once a complaint is received and if violation is revealed , the advertiser is notified immediately in an effort to correct the infraction. In most cases , this result is voluntary compliance. If agreement is not reached , the Council will review the case and decide on the changes deemed to be necessary. If the advertiser refuses to make any change , the media group are then advised not to accept the advertisement until a correction is made. Such a case is rare.

The effect of this Code may be somewhat diminished because complaints are made usually after the advertisement has been published or aired. Correction of the advertisement may not be effective. Preclearance of copies would be more useful in this respect.

THE BROADCAST CODE FOR ADVERTISING TO CHILDREN

This Code was put out by the Association of Broadcasters and in May 1973 was adopted by the following associations :

Canadian Association of Broadcasters
Association of Canadian Advertisers Inc.
CTV Television Network
Institute of Canadian Advertising
Radio Sale Bureau
Television Bureau of Canada
and in principle by the C.B.C.

The Code is designed to complement the Canadian Code of Advertising Standards and supplement all federal and provincial laws and regulations governing advertising.

The Code undoubtedly marks the trend of social consciousness among broadcasters, advertisers and consumers. The concern about the probable effects of advertising , especially television advertising to children , is the major incentive for establishing this Code.

The enforcement of this Code is also carried out by the Canadian Advertising Standards Council and le Conseil des Normes de la Publicite. It was set out in the Code that there are to be five members in the Children's section of the Council/Conseil and two of these must be public representatives. The Code provides that no broadcasters shall accept any advertising directed at children without the prior approval of the Council or Conseil. Preclearance is not mandatory for advertising that is local. In the case of a violation , the broadcasters will agree that such an advertisement shall not be re - run and the

advertiser shall be notified.

The text of the Code is divided into nine headings :

1. Factual presentation - Advertisers are urged not to abuse the power of the child's imagination and not to exaggerate claims about the products so as to stimulate unreasonable expectations of product or product performance ;
2. Product prohibition - Certain products are deemed to be unsafe for use by children and should not be advertised to them ;
3. Undue pressure upon parents to purchase - Since children seldom possess the purchasing power to buy what is advertised , advertisers should not exploit their weakness in wanting things and to encourage a purchase ;
4. Promotion by programme characters and personal endorsements - Since children may not be able to distinguish between a broadcast programme and commercial and between the personal influence of performers and the intrinsic value of the product , products should be promoted on their own merits.
5. Price and purchase terms - Children lack the ability to compare prices at their young age and prices used should be clear. Words like 'just' and 'only' should be avoided.
6. Comparison claims - This is dealt with in (5).

7. Safety - Dangerous acts should not be portrayed. Exposure to commercials about hazardous products may lead children to misuse them and these products should therefore not be advertised to them.
8. Social values - Advertisers should recognise that they should not replace parents as the main source of socialization at home .
9. Substantiation - This is in line with the other advertising regulations. When advertisers make claims about their products , they should be ready to substantiate them.

It is recognized that the term 'children' is a relative term and children sometimes do enjoy adult programmes. The Code therefore refers to commercial messages directed at children under 13 specifically , whether such commercial messages appear on children's or adults' programmes.

SUMMARY

Canada has a considerable amount of statutes , both provincial and federal , in the area of controlling advertising. However , even with these statutes and the voluntary codes adopted by the advertising industry , false or misleading advertising is extremely difficult to litigate. The law up to now has been concerned mostly with the objective issue of truth in advertising and the subjective issues such as taste in

advertising have been successfully avoided. This line may never be crossed because even with factual information , the infringement of the laws has been difficult to detect. Besides, the legislative bodies are still reluctant to curtail freedom of expression in the communication industry. However , the burden of safeguarding the integrity of the advertising industry without compromising its own right of expression is on the advertisers themselves. Self - regulation may still prove to be the best means of maintaining this balance.

CHAPTER 3

As can be seen from the discussion in the last chapter , Canada does have a considerable body of legislation controlling advertising in one form or another. However these statutes are usually worded in general terms , as in the case of the Combines Investigation Act , that protection offered by these statutes is aimed at the general public. They are insignificant in rendering any special protection to children from objectionable advertising.

As discussed in the first chapter of this paper , adults generally realize that advertising is biased communication and expect it to be one - sided , extolling only the virtues of the brand, not the weaknesses. When we are exposed to a commercial, we usually 'discount' the truthfulness of it in one way or another. A certain degree of puffery on the part of advertisers is tolerated. The standards used in regulating advertising directed at the general public also take into account this 'discounting effect'. However , young children (age 2 to 6) seldom understand the content and purpose of advertising.¹ That means that they are exposed to it without our usual 'defensive instinct' to qualify it as a selling message. To them, a commercial is indifferentiable from the programme, perhaps different from it only by the fact that it is shorter.² All this means that the standards to be used in regulating advertising

directed at children need to be much higher than the general provisions set out in most of the statutes studied..

In this and the following chapters , the question of how the two provisions , the Consumer Protection Act of Quebec and the Broadcast Code for Advertising to Children , try to deal with controlling advertising directed at children will be discussed. Three aspects of the issue will be examined. The first is misleading advertising , the second is safety and product acceptability and the third is social values and socialization.

MISLEADING ADVERTISING

Under the Consumer Protection Act of Quebec and the Broadcast Code for Advertising To Children , the followings are prohibited :

1. unfair , false , misleading or deceptive advertising ;
2. making use of superlatives to describe the characteristics of a product or diminutives to describe the price ; words like 'only' and 'just' should not be used ;
3. exaggerating the nature , characteristics , performance or length of life of commodity ;
4. de - emphasizing the skill , age , strength or dexterity necessary to use a commodity ;
5. the use of comparative claim or establishing a comparison;

6. employment of cartoons or personalities known to children and who are featured in children's programmes to expressly promote commodities ;
7. moreover when the price is stated in the advertisement, it should be made clear that any accessory of the product will only be obtained at an additional price.

The provisions here are very specific in prohibiting the use of certain techniques that are generally employed in advertising. Comparison , exaggeration , the use of diminutives and superlatives , cartoons in general and personalities featured in children's programmes to promote the commodities are forbidden in advertising when it is directed at children. By prohibiting the use of such techniques , the legislature is going beyond the control of misleading advertising and is recognizing the vulnerability of children and the tendency of advertisers to exploit such vulnerability.

The first issue dealt with in these provisions is the lack of sophistication in commercial knowledge among children. When they are young and their mental ability still developing , understanding of the operating mechanisms of the market place is obviously lacking. They seldom realize that the purpose of commercials is to sell the products promoted and that they are subjects of persuasion. Words like 'best' , 'finest' , 'cheapest' , 'loveliest' , 'only' , 'just' will have for children

their literal meanings because they do not realize that these words should be discounted when they are applied to the description of the commodities advertised. Children are usually more credulous and gullible than most average adults because they lack the necessary knowledge about and experiences with the world in general and the commercial world in particular.

The second issue is the protection of children from gross exaggeration of the products or the de - emphasis of the dexterity and skill required in the use of them. The reasons for these provisions are that children are credulous and gullible and should be protected from experiencing unnecessary disappointment resulting from advertisers' 'sophisticated' and 'subtle' selling messages. Advertisers should not exploit the trust and simple - mindedness children place in the adult world around them. It is being recognized that young children are building confidence in parents , in family and in the world outside them and they view this world as having some order and dependability. Irresponsibility of advertisers which will shatter such trust and confidence should be curtailed.

The third issue is children's susceptibility to persuasion by 'identification'. Empirical studies indicate that children tend to imitate the behavior of persons shown on television when they identify with such persons. Also , they are unable to distinguish between the personal influence of performers and the intrinsic values of the products promoted. The prohibition of

the use of cartoons in general rather than the use of cartoon characters featured in cartoon programmes seems to suggest that cartoon, being exceptionally welcomed and accepted by children, is a uniquely powerful persuasive technique in advertising directed at children. The trend in advertising regulation as revealed by these provisions makes the prohibition of the use of 'catchy tunes' to promote a commodity far from being an impossibility! Note also that in the Broadcast Code for Advertising to Children ³ the prohibition of the use of cartoons and puppets does not extend to public service announcements or to factual statements about nutritional or educational benefits. This suggests that such exploitative persuasion techniques can be used to promote certain things and not others and that certain advertising messages are desirable while others are not. The question whether the legislative body should have the power to determine what the information input of children should be remains a controversy. This issue seems to be more explosive when social values are concerned.

Some critics of the legislation assert that these provisions are too protective.. S. Ward , for example plays with the idea that early exposure of children to commercials makes them cynical and such cynicism protects them from being misled by false or misleading advertising when they grow up.⁴ This is often cited as being a step in the process of 'commercial socialization' and children should not be over-protected. It would seem that children should not be molded to

suit the vices of the world. If the commercial world a child grows up to meet is full of falsehood and misrepresentation, such 'imperfection' should be mended and we should not expect to teach our children to be cynical and thus equipped for survival in this world.

Moreover, it would seem that such a view is negative in the sense that one learns from experiences but it would not be necessary to learn from 'bad' experiences. Cynicism is hardly a valuable trait to have in order to grow up to be mature and responsible adults.

SUMMARY

There is no doubt that young children spend a lot of time watching television and that they are in general lacking in the mental ability to understand the world outside their homes. They are credulous, imitative and easily persuaded. There is also no doubt that these traits make them easy 'preys' to sophisticated commercial selling messages.

In order to protect children from objectionable advertising, the legislation studied in this chapter goes beyond general prohibition against misleading advertising and prohibits specific advertising techniques commonly used. This is a simple recognition that children are not merely 'young adults' but are a group of 'disadvantaged people' in the sense that they do not

have the understanding nor the knowledge of the commercial world which are so highly demanded of us in modern living.

CHAPTER 4

In this chapter , regulation that deals with product acceptability and safety for children in advertising directed at them will be discussed. The main statutes that have such provisions in one form or another are the Hazardous Products Act,¹ the Broadcast Act,² the Food and Drug Act,³ the Consumer Protection Act of Quebec,⁴ and the Broadcast Code for Advertising to Children.⁵

Of these statutes , the Food and Drug Act is the oldest. The main concern as reflected in this Act is the health and safety of individual. The composition and nutritional content of the food and drug advertised have to comply with regulations set out in this Act. In later statutes , for example , the Broadcast Act and the Hazardous Products Act , the emphasis is shifted to the prohibition of specific products due to either research results showing danger involved in consumption or evidence indicating hazards resulting from misuse of products. With the newer statutes like the Quebec Act , the concern is with the notion that certain product classes should not be advertised at all. The trend is definitely towards more stringent control in this area over the years.

SPECIFIC PROHIBITION

Certain products are specifically prohibited from being

advertised. The Hazardous Products Act prohibits the advertising of such things as furniture and other toy articles intended for children which are coated with paint containing harmful amounts of lead. Varnishes , paints and paint removers for household use which are highly inflammable ; jequirity beans or any substance or article made with such poisonous beans are similarly prohibited. The concern expressed in this Act is that these products named are dangerous for use by anyone and children specifically.

The Regulations of the Canadian - Radio - Television - Commission in connection with the advertising of alcoholic beverages set out specifically that such advertising should not be aimed at people not legally entitled to drink (ie. minors). Family or other scenes which include minors or persons appearing to be minors should not be shown.

GENERAL PROHIBITION

The Consumer Protection Act of Quebec enacts in its Division XI that advertising is prohibited which :

1. concerns a product , which , by its nature , quality , or ordinary usage ought not to be placed at the disposal of children ;
2. concerns a drug or proprietary medicine ;
3. concerns a vitamin in liquid , powdered or

tablet form ;

4. portrays a person performing any unsafe act ;
5. portrays a commodity in a manner suggestive of improper or dangerous use thereof.

The Broadcast Code for Advertising to Children also provides in similar terms that :

1. Drugs , proprietary medicine , and vitamins in liquid , powdered or tablet form must not be advertised to children.
2. Products not intended for use by children must not be advertised to children , either directly or indirectly through the advertising of promotions that are primarily child - oriented.
3. Advertisements, except specific safety messages, must not portray adults or children engaging in unsafe acts, eg. playing inside a refrigerator or with matches , ignoring traffic regulations , accepting gifts from strangers , or under the influence of alcohol or narcotics.
4. Advertisements must not show products being used in an unsafe or dangerous manner , as for instance , when they show adults transferring hazardous products from their original containers into other containers which children associate as safe or related to food or drink , eg. pouring a hazardous product into cups ,

glasses or soft drink bottles.

The phrases , 'product which by its nature , quality or ordinary usage ought not to be placed at the disposal of children' , 'products not intended for use by children' , 'suggestive of improper or dangerous use' , indicate the wide scope intended for these two provisions. Drugs , proprietary medicine and vitamins are not certainly bad for consumption but they are not to be advertised to children. The concern is with the hazards involved in the misuse of these products by children. Further , children in their developing years are curious about the outside world and are highly imitative . Dorothy Cohen in her book , The Learning Child stated that five-year-olds are great imitators and their interests cover an amazingly broad scope. Almost everything captures their curiosity and interest. 'Almost everything' refers to anything that is available to them through their eyes , ears , nose , mouth , fingers or anything that can be conceived in concrete sensory terms.⁶ Since there is no doubt that children spend more time in front of the television than on any other activity during the day and that mothers seldom accompany them during such viewings , children are exposed continuously to this medium without much guidance from their parents.⁷ The child is exposed to environments and circumstances far beyond the small and secure home community in which he has been developing and growing up. The opportunity offered by the television medium , alone , is far reaching. It offers an exciting stimulus and

whether people behind the screen like it or not , it is an extremely important 'educational' instructor for pre - school children. Care must be taken to ensure that whatever these children 'learn' from this 'instructor' must be constructive , safe and enterprising. The idea is not to make the medium into a baby - sitter for the parents as many parents seem to regard it.⁸ This responsibility is considered to be too great by some broadcasters and there is a notion that commercial television is only an entertaining medium and that education should be left to the school , the educative television networks and parents. Given that learning from television for children is 'incidental'⁹ such an argument cannot remove responsibility from the shoulders of broadcasters.

The child is never a completely passive recipient of his culture. He reacts selectively to it and acts on it in various ways ; he gets out of an experience what he brings to it. He learns from many sources and he is willing to try out and test that which he learns. The broadcasters and advertisers especially , have to respect this ability to adopt and learn and should not be the ones responsible for bringing children to anything or any activity that may endanger their health and safety.

Growing up is both painful for the child and his parents. The television medium should not make the developing process unnecessarily more complicated than it should be. The

contradiction between what parents and teachers say about safety and dangerous acts and what are being shown on the screen via commercials should be avoided.

SUMMARY

The safety issue in the area of advertising directed at children is probably the least controversial of all the issues discussed in this paper. Products that are considered to be harmful for children or at the disposal of children are prohibited to be advertised. Dangerous acts and improper use in connection with a product are required not to be depicted in an advertisement directed at children. Advertisers should constantly bear in mind the 'ability' of children to learn and the potentiality of the television medium to teach. Such potentialities should not be exploited in any way.

CHAPTER 5

A child does not grow up in a vacuum. He learns from experience what is to be expected of him in society. The process of learning , adopting and adapting the values of the society around him starts at an early age. Not long ago (perhaps thirty or less years ago?) , the child learned about the world mostly from his parents , his interaction with neighbours , his peers. Today television becomes his constant companion , his teacher and a great 'socialization agent' in his life. The trend in legislation reflects the concern of society about the values this medium is teaching our young. The statutes of Canada attempting to deal with this issue are mostly revealed in the Consumer Protection Act of Quebec and the Broadcast Code for Advertising to Children

LEGISLATION THAT DEALS WITH TASTEFULNESS AND SOCIAL VALUES IN ADVERTISEMENTS DIRECTED AT CHILDREN.

The Consumer Protection Act of Quebec prohibits any advertisement directed at children which :

1. expressly urges children to buy , or to request another person to buy , a commodity ;
2. belittles parental authority , judgement or

preferences ;

3. portrays reprehensive family life or customs ;
4. suggests that the possession or use of a commodity will endow a child with physical , social or psychological characteristics superior to those of his peers ; or conversely that the lack of possession or use thereof will have the opposite effect , except if such suggestion , insofar as it concerns education or health , be true ;¹

The Broadcast Code provides :

1. To avoid undue pressure , advertising must not urge children to purchase , or urge them to ask their parents to make inquiries or purchases.
2. No single commercial or any segment thereof shall be presented more than once during any regularly scheduled programme (this does not apply to broadcast 'specials' which are not regularly scheduled).
3. Toy advertisements shall not make direct comparisons with the previous years' models ,or with competitive makes , even when the statements or claims are valid - because such reference may undermine the child's enjoyment of present possessions or those that may be received as gifts.

4. Messages must not reflect disregard for parental authority or parental judgement or portray undesirable family living habits.
5. Any material benefits enjoyed should be inherent in the use of the product itself.

Basically , there are three aspects of the issue that is being dealt with in these provisions. The first is that advertisers should respect parental judgement and authority in the home. The second aspect is that materialism should not be suggested to the child at an early age. The third aspect is conformity .

These three aspects of the issue reflect the concern of parents , scholars and legislators about the tremendous influence of television on a child's outlook on life. As indicated in chapter 1 of this paper , young viewers tend to be more ambitious , more middle - class orientated and tend to stress self - confidence as the key to success.² All these values are being portrayed consistently in television programmes. There can be no doubt that the medium offers an environment beyond the child's immediate experience and it also teaches him the norms and behavioral patterns associated with different roles in life. Whether such premature exposure to a hypersensitive adult world before the child can grasp the significance of such norms and patterns of behavior is desirable or not is doubtful.

The term socialization is always broadly defined. According to Zigler and Child:³

"socialization is a broad term for the whole process by which the individual develops through transaction with other people, his specific patterns of socially relevant behaviors and experiences".

Brim referred to it as the process by which individuals acquire the knowledge, skills, disposition that enable them to participate as more or less effective members of groups and the society. ⁴

The fundamental difference between these two definitions is that Brim does not specify that 'interaction' is necessary in the process of socialization. Under his definition then, the television medium is a socialization agent for the child because he can acquire the knowledge, skills, and dispositions that will enable him to participate in the society, through the medium. However, as Halloran also indicated, the main sources of attitude formation are direct experience with objects and situations ⁵, whatever the child learns from the medium has to be reinforced by other sources of information and direct experience before such values and outlook on life become integrated into his personality and behavior patterns. A certain amount of interaction has to take place in the process of socialization.

As evidenced by research studies , the child is never a passive recipient of his culture , even less so of the stimuli as presented by the television medium.⁶ when the child is exposed to televised commercials , urging him to buy , to ask his parents to buy or telling him how marvellous it is to 'possess' certain things , he acquires the 'knowledge' and the 'disposition' to behave in a materialistic fashion. Such knowledge and disposition would cease to be effective if behavior patterns outside television were not in accordance with them. If , the child equipped with such knowledge and disposition to behave is not reinforced the same way from direct experience with his immediate environment , he also ceases to be effectively socialized by them.

What happens when a television child of today turns to his immediate environment , with his intense curiosity and ability to absorb knowledge and experience , to confirm what he sees on television? He sees a world of consumption, a world of possession, a world where achievement in life means wealth - accumulation. His parents keep changing their family car every year , with two or three cars parked in their garage; mom always keeps count of what the Jones have bought the day before; brother John who is in high school complains that his stereo set is just not in style anymore (it is the last year's model); mom came home today excited by the 'discovery' of a better detergent with a better cleansing power ; daddy discussed with mom last night the mortgage they are getting in order to finance a new

and bigger house (it will be in a better area too) ; next door Jimmy talks consistently , incessantly of the gifts he gets for his birthday , for this and that , for being good and for being not so good , but good enough ; and on and on and on

He may not be able to understand what all these mean. But what the nice man on the television screen said yesterday is really true :

it is nice to have this and that

You can be better than next door Jimmy if you have this

This is better than last year's model which Jimmy has

And on and on and on

Shut the adman up and switch off the television and the world outside still goes on and on. This 'flush - away - toilet' philosophy simply doesn't work anymore. The responsibility of socializing the child to be an individual falls back on the parents. The child simply doesn't interact with the 'box' the way he interacts with his parents. Dr. Edgar B. Phillips , executive director of the American Guidance voiced the opinion that a child's standard of behavior is determined by what he sees his parents do rather than what sees on television.⁷ A stable family environment with constant and sound parental guidance is adequate to ensure a fruitful and fulfilling growing up.

This is not denouncing the responsibility placed on the medium and the advertisers. However, it would seem that to shut away the 'reflector' of our society's dearly held values, however undesirable they maybe, is simply not enough. Our own outlook on life may have to change, society may have to change. The emphases on production, consumption and material achievement may have to give way to other more fulfilling emphases on life. Are we ready to do that much or more for the young of our society?

Moreover, recognizing the influence of television on children, legislators consider it useful in some respects. Such phrases as : 'except if such suggestion, in so far as it concerns education or health, be true', reflects such belief. If one were to study these provisions carefully, one would have discovered that this phrase recurs from time to time throughout. If the means of persuasion, of psychological motivation, of suggestions of superiority or inferiority are considered to be deplorable when used in the promotion of commercial products, such should also be deemed deplorable when used in promoting other things, be it education, health or ideology !

Aldous Huxley, in his book The Brave New World depicts a horror - dream of the future - the horror of conformity, of mechanical, instinctive likeness. Children in that society were born (or decanted) through scientific conception. Genes were preselected, predetermined. Those who were destined to be

laborers were endowed with the physical , mental , psychological and emotional qualities required to be good manual laborers. After they were decanted , they were to go through the process of neo - Pavlovian conditioning through which they will learn to hate books and flowers (of the low laborers' predisposition) and to have a distinct class consciousness. All this conditioning would ensure that every one would love what he was predestined to do - his own unescapable social destiny.9

However unforeseeable this 'prophecy' is to be , the provisions discussed in this chapter are moving towards the thin thread separating this horror - dream from what we want our children to be - individuals. If we insist on imposing a set of values on children and eliminating the others , how far are we from making conformity a reality ?

The third aspect is the respect of parental judgement and authority in the home. To suggest disregard of parental judgement and reprehensible family life patterns should be avoided. As indicated in chapter 1 of this paper , the influences on children , no matter how good or how bad , are modified or nullified by stable family communication patterns , peer - group relationship and guidance of the family. Advertisers should not take upon themselves to be the third parent of every child in his own home. Respect of a child's parents and family should be reflected in the advertisements.

It is the responsibility of the family, the school and the

society at large to socialize children. It is also the right of children in this society to demand a free flowing channel of information for input, for expression and for choice. It is doubtful whether it is the duty of the legislators to decide what social values and opinions can be channeled to children. It would seem to be extremely dangerous to present one-sided view of society either by advertisers or legislators. There is always a limit to how far legislation can go. It should never attempt to monopolize the influence of ideas and opinions.

CHAPTER 6

EFFECTS ON MARKETERS

None of the statutes studied in this paper sets out specifically to control the artform and techniques of presentation of an advertisement. As social concern mounts over the years , first with advertising of certain products (eg. alcohol , drugs , tobacco) , then with advertisements directed at certain groups in society (eg. minors in the case of alcohol , smokers in the case of cigarettes and children in general), measures taken to control the persuasive techniques used in advertisements also tend to become more stringent.

As scholars and critics begin to voice their concern about the terrifying process of 'mind - bending' and the motivation techniques used in advertising , legislators are being pressured constantly into enacting new statutes trying to keep certain means of persuasion in line. W. Howard Chase , president of the Public Relations Society of America put this concern into words :

"The very presumptuousness of moulding or affecting the human mind through the techniques we use has created a deep sense of uneasiness in our minds".¹

The statement made by Clyde Miller in his book , The Process of Persuasion , explaining the problems of conditioning

the reflexes of children raises this concern and this uneasiness even much higher.

"It takes time , yes , but if you expect to be in business for any length of time , think of what it can mean to your firm in profits if you can condition a million or ten millions children who will grow up into adults trained to buy your products as soldiers are trained to advance when they hear the trigger words : forward march".

The result of the general alarm created by such statements is the prolific and impressive list of specific prohibitions as provided for in the Consumer Protection Act of Quebec and the Broadcast Code for Advertising to Children.

Inevitably these provisions place limits on what the advertisers can say about their products. As they are now worded , the thresh - hold of demanding truth and factual information from an advertisement has long been transcended. In certain cases , even valid and true statements about the product will not suffice anymore.³

What does all this mean to a marketer? If he is a marketer of children's products, he is left with very few alternatives to promote them. He cannot stimulate brand loyalty directly and effectively since brand loyalty depends heavily on comparison with competitive makes and such comparison or comparison with last year's models is prohibited. Neither can he claim any superiorit are not intrinsic in the products themselves. Any

appeal to the psychological , emotional and social needs of a child by means of motivational techniques and implications is prohibited. Advertising claims , such as "Cheerios" advertising itself as the cereal with protein and energy with a visual background of a healthy youngster on a trampoline or "Super Power with Sugar Crisp" with the cartoon hero parting the iron bars of a window indicating the strength it gives, are considered to be objectionable. It would also seem pointless to promote product differentiation since it would be extremely difficult to bring any new changes to the knowledge of the public. To avoid any entanglement with the legislation , the best and probably the only alternative that can be used in promotion is to inform the public of the availability of the product and nothing else. Ralph Nader once said that the role of advertising is to funnel information and to funnel it in an interesting way. What advertisers can do these days is just that - providing the information - but it is getting ever more difficult to inform in an interesting way. However it does give the advertisers the opportunity to stretch their creativity in providing advertisements which are both entertaining and informative.

EFFECTS ON SOCIETY

An advertising executive, Mr. T. G. Armstrong, in a speech to IAA's 21st World Congress in 1969 said :

"The very fact that we no longer need apologize , explain or defend advertising as a positive economic force , does not mean that we do not have to exercise great care regarding its existence as a social force. Actually , the very fact of advertising ubiquity , its growing omnipresence to one degree or another in all of our cultures, its high degree of visibility, if you will, probably constitute the greatest potential problems we face. We, in advertising, have the capacity to kill off advertising if we are not prudent and wise in our approaches to it by failing to recognize the swift pace of social change and where and how advertising fits in ; we must make sure that we are not locked in a collision course with the very culture in which we are all a force , and within which we must survive".⁴

This view was expressed in 1969 and it is even more true in 1974. The issue of survival in our culture is becoming more acute. The enormous influence of the advertising institution in shaping and reflecting society's values is being resented. This concern is reflected more clearly in the legislation dealing with advertising directed at children.

Provisions , other than those in the Consumer Protection Act of Quebec and the Broadcast Code for Advertising to Children, tend to be couched in general terms and the standards applied to regulate advertising are more objectively orientated. The Department of Consumer and Corporate Affairs has always expressed the reluctance to litigate on the subjective matter of tastefulness. The concern is to avoid the shaky and touchy matter of deciding whose 'taste' is considered to be better and more desirable. Policing values and opinions is not the

responsibility of the court or the legislators.

However , as reflected in the Quebec Act and the Broadcast Code , there is a strong tendency to prevent children from being exposed to certain objectionable values. Although such tendency is never explicitly stated in the provisions , the net result of administering these provisions has the effect of controlling information about values , life styles , opinions and behavioral patterns which form the information input for their developing years. However , the fact that only desirable values and information are being channeled to children does not prevent us from violating the Bill of Rights in the manner expressed by President Kennedy , namely , the right to know and the right to choose.

Mary Gardiner Jones , the Commissioner of America's FTC said :

"While advertising has been expected from this philosophy to the narrow extent of the accuracy of specific product claims in it , efforts to go beyond this essentially verifiable standard of regulation , and to reach out to police the values , and cultural overtones and undertones in advertising would run the risk of simply substituting the opinions of one group , the regulators for those of another , the advertisers , as to which values and which aspects of American culture should be expressed by the commercials. Such a substitution would in no sense offer great assurance that these values and cultural elements would be any less distorted or one-sided or limited".⁵

Monopolizing information input to children , whether by government regulatory agencies or by advertisers would seem to be undesirable. In a society where individuality is valued above anything else , it is inconceivable to imagine that we wish our children to be conformers to only one set of values.

Further , as evidenced by research results and as emphasized throughout this paper , parental guidance and judgement are essential to the development of children. Whether it be the effects of televised violence on the child or the purchasing pattern of the family , parents can always exert deciding and major influences on children. A stable family communication pattern together with parental emphasis on non - aggression will reduce or nullify the liklihood of a child to act aggressively after being exposed to televised violence.⁶ Child - centered parents , thinking of the health of children tend to avoid buying presweetened cereal even if the children request such purchases.⁷ These research results point clearly to the conclusion that only if parents leave children to the television medium unattended and expose them to advertising messages without guidance or other sources of information is the influence of the medium at its greatest. It is time for parents to face the problem squarely. The issue cannot be solved by legislation alone. The common notion that legislation , once adopted , will dispose of a problem is unsound and naive. No one can take the role of a parent , least so the television medium or advertisers.

EFFECTS ON ADMINISTRATION

The effectiveness of these provisions depends on the ways they are being enforced. Under both the Consumer Protection Act of Quebec and the Broadcast Code for Advertising to Children , some form of consulting agency is established to offer advice to advertisers.

Preclearance of advertisements directed at children is mandatory under the Code. Under the Quebec Act , advertisers can have their advertisements sent to the Committee on Advertising Directed at Children to be analysed and approved. However , this procedure is not compulsory. Another mechanism used to administer the Act in Quebec is through complaints received by the Committee. Investigation and if necessary , prosecution is brought about by the Department of Finance, Institutions, Companies and Corporations.

The effect of the prolific and impressive list of detailed prohibitions under these two provisions is an overload of administrative work to be done by the regulatory agencies. After about one year of administrative experience since the Code was established , the Counsel admits to its unexpected ineffectiveness due to the lack of time and personnel resources. Copies to be precleared often pile up and the slowness in processing adds to frustration experienced by both advertisers and regulatory agencies.

Preclearance does not guarantee exemption from further investigation if complaints are received. A copy that has been approved before it is being released does not mean that it is all clean. Since the standards used in regulating advertising directed at children are value laden and subjective in most cases , it is difficult to ensure that they are agreeable to everyone. The result of this is duplication of efforts in some cases.

Further , no matter how stringent our own legislation is regarding advertising directed at children , the statutes have absolutely no control over the advertisements aired from American channels. Control of advertisements created outside Canada is outside the jurisdiction of Canadian legislation.

At the present stage of development in the area of controlling advertising directed to children , we have sporadic provincial statutes which are mostly ineffective and in cases , duplicative of each other. As advertising directed at children is mostly nationally televised commercials , what we need in this country now is a coherent and well defined national legislation to avoid undue duplication in the controlling and administrative efforts and to avoid confusion among advertisers as to the policy of the nation.

There are three alternatives to the approach adopted by the government to control advertising directed at children. These alternatives may not exclude each other and a combination of

them may prove to be useful.

ALTERNATIVES

1. Complete Control - This alternative has been contemplated by many and is viewed with alarm by most advertisers. The legislature is still unwilling to take any major step towards a complete ban of advertising to children on television.* The objection to this alternative is of course the question of financing children's programmes over half of which are supported by advertisers presently. Other means of financial support have to be found before banning advertising to children from the medium can be seriously considered. In a research study by Roper Research Associates, 80 % of Americans interviewed said that there should not be any advertisement in children's programmes while only 7 % would like to see it being eliminated if by the banning of advertisements would mean reduced number and quality of children's programmes.

There is indeed a dilemma of choice. However, a complete ban is an economically and morally sound alternative if the choice is between drastic, stringent codes and complete elimination. Administrative agencies set up under the former alternative will have to police violation of offences which may be difficult to prove, especially when the standards of regulation are far from being objectively verifiable. The resources (both financial and personnel) saved by not

establishing such agencies, not making investigations and holding court proceedings would be adequate to finance or subsidize interesting and educational programmes for children.

Further , it would seem that since children seldom do have the purchasing power to consume , it is just not fair to use them as selling tools to nag their parents or anyone else to buy on their behalf. The group aimed at by advertisements of children's products should be the parents. If such was the case, the gross exploitation of children's weaknesses can be avoided and parents would be given the chance to choose what they consider to be the best for their children.

Sponsorship of creative programmes is another alternative for advertisers of children's products in the case when they are banned to advertise directly to children. This will help the financing of programmes and upgrading their quality .

2. Legislation - The second alternative available is to control advertising directed at children on an objective, verifiable standards of regulation . Misleading , false and deceptive advertising in general should be curtailed , while honesty and truth in advertising should be promoted. Beyond the threshold of objective standards , legislators should try not to transcend.

It is important that provincial governments take an interest in the area of controlling advertising directed at

children but due to the nature of commercials included in this category , it would be more effective to have the federal government enacting the main piece of legislation. However , the present criminal law proceedings under the Combines Investigation Act are not efficient in either consumer redress or in prosecution. Civil proceedings should be provided as is the case under the Consumer Protection Act of Quebec. Opportunities for voluntary preclearance and consultation should be provided.

3. Self-Regulation - The third alternative is for the advertising industry to regulate itself. The idea is that for individual advertisers to observe rules of conduct is much less costly than legislative control by the government. Self - regulation also involves the removal of the danger of curtailment of the right of freedom of expression and subjection to severe censure. A balanced presentation should be recognized as the best way to prevent the promotion of a one - sided view of society. Advertising is a reflector of the values of culture and it should reflect all aspects in a truthful manner.

However, this alternative undoubtedly will depend on the good sense of judgement of advertisers. Other forms of control should supplement this. One form of control is to initiate the system of licensing to advertisers. A license to practise will be automatically become void following certain convictions for

violation of offences provided for in the legislation. This would ensure that advertisers will be more careful in designing a campaign or an advertising copy.

Another possible form of control is in the area of private consumer organizations. Use of such organizations will ensure that violations of legislative provisions brought to the attention of the appropriate departments and lessen the burden of police work to be undertaken by the regulatory agencies. Publicity given to violations and actions taken by the government by these organizations will provide a good means of educating consumers about frauds in the market place.

THE NEED FOR FUTURE RESEARCH

The issue of controlling advertising directed at children is based on moral judgement at large. The notion that it is bad to persuade children to buy things has affected the enacting of legislation in this country. Undoubtedly, we have to agree that a certain degree of value judgement on the part of legislators always influences the decision to enact legislation to control such social issue as advertising directed at children. However, it should be recognised that empirical studies on the effect of advertising on children will shed invaluable light on the impact of this particular issue on children of this society. Such

studies will provide the starting point for the legislators to act on. As discussed in chapter 1 of this paper, the scanty empirical studies in this area are not conclusive enough to remove all doubts. Before any reasonable measures can be taken to further control advertising directed to children, more research studies are definitely needed.

To conduct such studies is not without any difficulty. Any empirical study carried on under experimental conditions has limited interpretation. To generalize beyond such artificial conditions and to apply to day-to-day living is dangerous. With television being a common medium in the home nowadays, it would be difficult, if not impossible to separate experimental and control groups if the study is not carried out in experimental conditions (eg. interviewing of children at their homes). If it were difficult to compare the effects of television advertising on the experimental with the effects on the control group, it would also be difficult to ascertain that advertising or television is the only variable accountable for any major revelation. Isolation of variables and target groups are extremely important precautionary steps to be taken to ensure that what is being measured is what is intended to be measured.

Future empirical studies should be addressed to three basic issues. The first is the impact of television advertising on children. How many advertising messages is an average child exposed to everyday? How well can he recall the messages? How

well can he recall the products advertised? How well can he recall the brands? All these questions have to be answered.

The second issue of concern is the effects of television on behavioral patterns . The basic questions are: what is the relationship between children's exposure to television advertising and their buying pattern and that of their family and what is the relationship between such exposure and imitative actions by children.

The third issue is the reaction of children to television advertisements. Do they understand the concept of advertising? Do they know what is advertising? Do they enjoy advertisements they see on television? Are they, in general, cynical about or indifferent to such advertisements? If they do enjoy them, why?)p the desirability of long-term studies should be recognised. The alleged 'conditioning' effect of advertising on children should be determined once and for all. Besides isolation of variables, it would also be useful to isolate and compare the impact of different formats of advertising (eg. personalities, cartoons and puppets).

There is undoubtedly a lot to be done in this area in the future. In 1975 when C. B. C. will take advertising directed at children off the air, opportunities for hypotheses testing will be almost unlimited.

RECOMMENDATIONS

It is not inconceivable that television advertising directed at children would be eliminated completely from the screen now that C.B.C. is ordered to take this step by January, 1st 1975.* Ultimately, the pressure for actions along this line will have its effect on legislation. Whether the elimination of advertising directed at children under age 13 only while children continue to be exposed to messages not meant for them would be effective in achieving the desired protection or not remains to be seen. It can be said that children are expected to be shut away in a world of their own and not be affected by activities happening outside their walls. It would seem that the 'spill over' effects of other advertising messages on children would be the main concern in the next two or three years.

The action taken by the C.R.T.C. in ordering the C.B.C. to eliminate advertising directed at children and radio advertising in general is a warning signal to the rest of the advertising and broadcasting industries. Now is the time that they start making constructive and reasonable measures to ensure that they are not 'locked in a collision course' with the very culture and society in which they are operating in. It should be recognised that a strong working relationship and cooperation between legislative agencies and industries are desirable. The former

should refrain from taking an 'out-to-get-them' attitude towards the latter; and the other should not take on a 'persecution probia'. Objective, verifiable standards of regulation coupled with licensing of advertising agencies to ensure effective self-regulation would be a plausible alternative to a battlefront. A liason between these two by the mediative efforts of independent consumer associations is also desirable.

Everyone, at one time or another, is annoyed by objectionable advertisements or entertained by creative ads. What we are apparently so concerned about is that we know we are easily persuaded by the advertising messages and we are uneasy about our little dark corners of our unknown psychological depth being exposed and manipulated so easily. Even the admen are subjects of such persuasion. It is the fear of the unknown that drive us to such uneasiness. Is it not then, that the outcry for protection aimed at children from such persuasive messages a unconscious cry for protection for ourselves? If we were enterprising enough, maybe we could work out alternatives to our present consumption orientated society and to advertising as a means to increase wealth accumulation. Either we live with it, control it or eliminate it. Until we find alternatives to our present system, we better find means to control it so that we can live with it.

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APPENDIX I

Extrait de la *Gazette officielle du Québec*, en date du
11 novembre 1972

A.C. 3268-72, du 31 octobre 1972

**LOI DE LA PROTECTION DU
CONSOMMATEUR**
(L.Q. 1971, ch. 74)

Publicité destinée aux enfants

Présent: Le lieutenant-gouverneur en conseil.

CONCERNANT la publicité destinée aux enfants.

ATTENDU QUE le paragraphe *o*) de l'article 102 de la Loi de la protection du consommateur (L.Q. 1971, ch. 74), permet au lieutenant-gouverneur en conseil d'adopter des règlements:

" *o*) pour établir des normes concernant la publicité au sujet de tout bien faisant ou non l'objet d'un contrat ou crédit, spécialement toute publicité destinée aux enfants; "

ATTENDU QUE, par l'arrêté en conseil 1408-72 du 24 mai 1972, publié dans la *Gazette officielle du Québec* du 10 juin 1972, (p. 4747) le lieutenant-gouverneur en conseil a édicté un règlement général sous l'autorité de la Loi de la protection du consommateur;

ATTENDU qu'il y a lieu de modifier ce règlement général en y insérant une section visant la publicité destinée aux enfants;

IL EST ORDONNÉ, en conséquence, sur la recommandation du ministre des institutions financières, compagnies et coopératives:

QUE le règlement ainsi adopté entre en vigueur conformément à son article 2.

Le Greffier du Conseil exécutif,
JULIEN CHOUINARD.

*Règlement modifiant le Règlement général
adopté sous l'autorité de la Loi de la
protection du consommateur*

1. Le Règlement général, adopté en vertu de la Loi de la protection du consommateur par l'arrêté en conseil No. 1408-72 du 24 mai 1972, est modifié en insérant, après la section XI, la suivante:

SECTION XI-A

Publicité destinée aux enfants

11.51 Dans cette section, à moins que le contexte n'indique un sens différent, les mots suivants signifient:

a) « publicité »: toute représentation publicitaire faite dans un but commercial;

b) « enfant »: toute personne âgée de moins de 13 ans;

Extract from the *Québec Official Gazette* of
November 11, 1972

O.C. 3268-72, 31 October 1972

**CONSUMER
PROTECTION ACT**
(R.S.Q. 1971, ch. 74)

Advertising intended for children

Present: The Lieutenant-Governor in Council

RESPECTING advertising intended for children

WHEREAS under subparagraph *o* of section 102 of the Consumer Protection Act (S.Q. 1971, ch. 74) the Lieutenant-Governor in Council may make regulations:

"(o) to determine standards for advertising goods, whether or not they are the object of a contract, or credit, especially all advertising intended for children;"

WHEREAS under Order in Council 1408-72 dated 24 May 1972, published in the *Québec Official Gazette* on 10 June 1972 (p. 4747), the Lieutenant-Governor in Council enacted a general regulation under the Consumer Protection Act;

WHEREAS it is expedient to amend this regulation by inserting therein a division respecting advertising intended for children;

IT IS ORDERED, therefore, upon the recommendation of the Minister of Financial Institutions, Companies and Cooperatives:

THAT the regulation annexed to this Order in Council be approved;

THAT this regulation come into force pursuant to section 2 of the said regulation.

JULIEN CHOUINARD,
Clerk of the Executive Council.

*Regulation amending the General Regulation
under the Consumer Protection Act.*

1. The General Regulation made pursuant to the Consumer Protection Act under Order in Council 1408-72 dated 24 May 1972 is amended by adding the following after Division XI:

"DIVISION XI-A"

Advertising intended for children

11.51 In this division, unless the context indicates a different meaning, the following words mean:

(a) "advertising": any advertising of a commercial nature;

(b) "child": every person under the age of 13 years;

c) « marchandise »: tout bien faisant ou non l'objet d'un contrat ou crédit.

11.52 Nul ne peut, au Québec, préparer, utiliser, publier ou faire publier de la publicité destinée aux enfants qui est déloyale, fausse, trompeuse ou fallacieuse.

11.53 Nul ne peut, au Québec, préparer, utiliser, publier ou faire publier de la publicité destinée aux enfants qui:

a) exagère la nature, les caractéristiques, le rendement ou la durée d'une marchandise;

b) minimise le degré d'habileté, l'âge, la force ou l'adresse requis pour faire usage d'une marchandise;

c) emploie un superlatif pour décrire les caractéristiques d'une marchandise ou un diminutif pour en indiquer le coût;

d) emploie un comparatif ou établit une comparaison;

e) incite formellement un enfant à acheter ou à inviter une autre personne à acheter une marchandise;

f) déconsidère l'autorité, le jugement ou les préférences des parents;

g) représente des habitudes de vie familiale reprehensibles;

h) annonce un produit qui, par ses nature, qualité ou usage ordinaire, ne devrait pas être à l'usage d'un enfant;

i) annonce un médicament ou une spécialité pharmaceutique;

j) annonce une vitamine sous forme liquide, en poudre ou en comprimé;

k) représente une personne agissant d'une façon imprudente;

l) représente une marchandise de façon à en suggérer un usage impropre ou dangereux;

m) emploie une personne ou un personnage connus des enfants, sauf s'il s'agit d'un acteur ou d'un présentateur professionnels qui ne figurent pas dans une publication ou un programme destinés aux enfants;

n) emploie un dessin animé ou une bande illustrée (cartoon);

o) suggère que le fait de posséder ou d'utiliser une marchandise développe chez un enfant un avantage physique, social ou psychologique supérieur à celui d'un enfant de son âge, ou que la privation de cette marchandise a un effet contraire, sauf si cette suggestion est vraie en ce qui a trait à l'éducation ou à la santé;

p) annonce une marchandise d'une façon telle qu'un enfant soit faussement porté à croire que, pour le prix ordinaire de cette marchandise, il peut se procurer l'ensemble des marchandises ou accessoires annoncés.

11.54 Les paragraphes i, j, m et n de l'article 11.53 ne s'appliquent pas à une publicité apparaissant sur un emballage, une étiquette ou une marchandise.

(c) "commodity": all goods, whether or not they are the object of a contract or credit.

11.52 No one shall prepare, use, publish, or cause to be published in Québec advertising intended for children which is unfair, false, deceptive or misleading.

11.53 No one shall prepare, use, publish or cause to be published in Québec advertising intended for children which:

(a) exaggerates the nature, characteristics, performance or length of life of a commodity;

(b) de-emphasizes the skill, age, strength or dexterity necessary to use a commodity;

(c) makes use of superlatives to describe the characteristics of a commodity or make use of diminutives to describe the price thereof;

(d) makes use of a comparative claim or establishes a comparison;

(e) expressly urges children to buy, or to request another person to buy, a commodity;

(f) belittles parental authority, judgment or preferences;

(g) portrays reprehensible family life or customs;

(h) concerns a product which, by its nature, quality or ordinary usage ought not to be placed at the disposal of children;

(i) concerns a drug or a proprietary medicine;

(j) concerns a vitamin in liquid, powdered or tablet form;

(k) portrays a person performing any unsafe act;

(l) portrays a commodity in a manner suggestive of improper or dangerous use thereof;

(m) employs a person or personage known to children, except in the case of a professional actor or announcer who are not featured in any publication or programme intended for children;

(n) employs cartoons;

(o) suggests that the possession or use of a commodity will endow a child with physical, social or psychological characteristics superior to those of his peers, or, conversely, that the lack of possession or use thereof will have the opposite effect, except if such suggestion, insofar as it concerns education or health, be true;

(p) introduces a commodity in such a context that a child would be falsely led to believe that, for the regular price of such commodity, he could obtain all the commodities or accessories advertised.

11.54 Paragraphs i, j, m and n of section 11.53 do not apply to advertising appearing on a wrapping, a label, or on a commodity.

11.55 Pour déterminer si une publicité est ou non destinée aux enfants, on doit tenir compte du contexte de sa présentation et considérer notamment la nature et la destination de la marchandise, la présentation de la publicité ainsi que le temps et l'endroit où elle apparaît.

2. Le présent règlement entrera en vigueur à la date de sa publication dans la *Gazette officielle du Québec*, sauf en ce qui a trait au paragraphe c) de l'article 11.53 lequel entrera en vigueur le 1er juin 1973.

Cependant, au cas visé dans le paragraphe n de l'article 11.53, l'emploi d'un dessin animé ou d'une bande illustrée qui a été utilisée pour fin de publicité avant la date de publication de la présente section dans la *Gazette officielle du Québec* est permis jusqu'au 1er septembre 1973.

11.55 To determine if advertising is intended for children, account must be taken of the context of the presentation, and consideration must be given in particular to the nature and the intended purpose of the commodity, the type of presentation and also the time and place where it is shown.

2. This regulation shall come into force upon the date of its publication in the *Québec Official Gazette*, except paragraph c of section 11.53 which shall come into force on 1 June 1973.

However, in the case contemplated in paragraph n of section 11.53, the use of cartoon advertisements which were already in use prior to the date of publication of this Division in the *Québec Official Gazette* shall be permitted until 1 September 1973.

Broadcast Code for Advertising to Children

Background

This Code has been designed to complement the Canadian Code of Advertising Standards. It is a supplement to all federal and provincial laws and regulations governing advertising, including those regulations and procedures established by the Canadian Radio-Television Commission, the Department of Consumer and Corporate Affairs and the Department of National Health and Welfare.

The general principles for ethical advertising are outlined in the Canadian Code of Advertising Standards, and apply to all advertising. The purpose of the regulations of the Broadcast Code for Advertising to Children is to serve as a guide to advertisers in distinguishing between the special characteristics of a child and an adult audience.

The following organizations agree to abide by the Broadcast Code for Advertising to Children:

Association of Canadian Advertisers Incorporated
Canadian Association of Broadcasters
Canadian Toy Manufacturers Association
CTV Television Network
Institute of Canadian Advertising
Radio Sales Bureau
Television Bureau of Canada

The code has also been endorsed in principle by the Canadian Broadcasting Corporation.

Definition

It is recognized that "children" is a relative term, and that many children enjoy "adult" programmes as frequently as they enjoy content directed to the child audience. The clauses in this Code refer to commercial messages broadcast specifically to children under 13, whether on children's or adult programmes, and the word "advertising" refers to such messages.

Code Clauses

1. Factual Presentation - Children, especially the very young, live in a world that is part imaginary, part real, and sometimes do not distinguish clearly between the two. Advertisements should respect and not abuse the power of the child's imagination.

(a) Written, sound, photographic and other visual presentations must not exaggerate service, product or premium characteristics, such as performance, speed, size, colour, durability, etc.

(b) When advertising shows results from a drawing construction, craft or modelling toy or kit, the results should be attainable by an average child, and should not be professionally-prepared results that only a child with a very high degree of skill could hope to achieve.

The foregoing does not require the elimination of fantasy in advertising. Many childhood possessions become particularly meaningful as they are incorporated into the child's fantasy world, and it is natural and appropriate to communicate with this audience through "mood settings." The purpose of this section is to assure that presentations shall not try to stimulate unreasonable expectations of product or premium performance.

2. Product Prohibitions - Some products by their very nature should not be promoted to children. Therefore,

(a) Drugs, proprietary medicines, and vitamins in liquid, powdered or tablet form must not be advertised to children.

(b) Products not intended for use by children must not be advertised to children, either directly or through the advertising of promotions that are primarily child-oriented.

3. Undue Pressure upon Parents to Purchase - The purpose of most commercial content is to encourage a purchase. However, children are generally not competent to make comparative buying decisions.

(a) To avoid undue pressure, advertising must not urge children to purchase, or urge them to ask their parents to make inquiries or purchases.

(b) No single commercial nor any segments thereof shall be presented more than once during any regularly scheduled programme. (This does not apply to broadcast "specials" which are not regularly scheduled.)

4. Promotion by Programme Character and Personal Endorsements - The child's mind may not always distinguish between a broadcast programme and a commercial.

mercial content or between the personal influence of performers and the intrinsic appeal of products they advertise. Products advertised to children should be promoted on their own merits and therefore:

(a) Personalities and characters featured on children's programmes must not be used to promote products, premiums or services.

(b) Cartoon characters and puppets must not expressly promote products, premiums or services. This prohibition does not extend to public service announcements, or to factual statements about nutritional or educational benefits.

(c) Persons and characters well-known to children must not be used to endorse products, premiums or services, except for professional actors or announcers who are not featured on programmes intended for children.

5. Price and Purchase Terms - Price and purchase terms, when used, must be clear and complete. Price should not be used as a source of undue pressure to purchase.

(a) Where the advertiser is a retail organization, the price quoted must be the price at which the article is sold in the retail organization's store or stores.

(b) The cost should not be minimized as by the use of such words as "only" or "just".

(c) When any parts that a child might reasonably suppose to be part of the purchase are available only at extra cost, this must be made clear both orally and visually.

(d) When accessories are used in an advertisement it must be clear that such accessories are not included in the purchase of the product.

(e) Demonstrations and descriptions must clearly indicate that assembly is required, when it might normally be assumed that the article would be delivered assembled.

6. Comparison Claims - Children share with adults a desire for change and variety, but children are not in a position to measure the costs of change or the family's ability to absorb these costs.

(a) Toy advertisements shall not make direct comparisons with the previous year's model, or with competitive makes, even when the statements or claims are valid, because such references may undermine the child's enjoyment of present possessions or those that may be received as gifts.

7. Safety - For the child's protection, any explanation of the claim "expressly approved by the Canadian Broadcasting Corporation" must be clear and complete.

so often introduce the children to products, and because some parents may be unaware of the hazards that might exist through the misuse or abuse of products, media can contribute directly or indirectly to sound and safe habits.

(a) Advertisements, except specific safety messages, must not portray adults or children in unsafe acts, e.g. playing inside a refrigerator or with matches, ignoring traffic regulations, accepting gifts from strangers, or under the influence of alcohol or narcotics.

(b) Advertisements must not show products being used in an unsafe or dangerous manner, such as adults transferring hazardous products from their original containers into other containers which children associate as safe or related to food or drink, e.g. pouring a hazardous product into cups, glasses or soft drink bottles.

8. Social Values—Although many influences affect a child's habit development, it remains the prime responsibility of parents "to instruct a child in the way that he should go." Advertisers should ensure that they do not make the task more difficult.

(a) Messages must not reflect disregard for parental authority or parental judgment or portray undesirable family living habits.

(b) Advertising must not imply that possession or use of a product makes the owner superior, or that without it the child will be open to ridicule or contempt. This prohibition does not apply to true statements regarding educational or health benefits.

(c) Any material benefits enjoyed should be inherent in the use of the product itself.

9. Substantiation Required

(a) Where claims are made regarding specific product qualities—performance, safety, speed, size, colour, durability, etc.—the advertiser must be prepared, on request from the enforcement bodies, to provide evidence supporting such claims.

10. Code Administration

(a) *Enforcement & Jurisdiction*—The enforcement bodies for this Code will be the Children's Advertising Sections of the Advertising Standards Council (English) and le Conseil des normes de la Publicité (French) established by the Canadian Advertising Advisory Board.

The Children's Section of the Council/Conseil shall have five members, including at least two public representatives. (Alternate members may be nominated to ensure a quorum). The Consumers Associa-

tion of Canada shall nominate two public representatives (and two alternate public representatives) for each of the Councils.

In an emergency, a quorum may be three members, at least one of whom shall be a public representative. The Council/Conseil have jurisdiction only over commercials broadcast by Canadian stations or on behalf of Canadian advertisers.

(b) *Pre-clearance and Consultation*—No broadcaster shall accept any advertising specifically directed to children which has not received the prior approval of the Advertising Standards Council or the Conseil des Normes de la Publicité. This pre-clearance is not mandatory for advertising that is purely local.

Because of the time and expense involved in creating television advertising, it is recommended that where any reasonable doubt exists about possible contravention of the Code, advertisers or their advertising agencies should submit ideas in storyboard or script form.

This is especially true of toy commercials and promotion and premium offers, where the peak selling season or concentrated promotion period tends to be short, and an advertiser deprived of air time might find himself severely handicapped.

(c) Inquiries and comments about the Code, and complaints regarding alleged violations, should be made to the Children's Advertising Section, Advertising Standards Council, 1240 Bay Street, Suite 302, Toronto, Ontario M5R 2A7, or to le Département de la publicité destinée aux enfants, Conseil des normes de la Publicité, Case Postale 35, Succ. Mont-Royal, Montréal 304, Québec.

Any member of the public may submit a complaint to the Children's Advertising Section of the Council/Conseil or the Council as a whole, but telephone complaints will not be acted upon unless confirmed in writing.

(d) *Enforcement Procedure*—If the Children's Advertising Section of the Council/Conseil find that an advertisement is in breach of the Code, the member broadcasters have agreed that the offending advertisement shall not be re-run and the advertiser and/or his agency shall be so notified.

(e) *Effective Date*—This Code applies to all commercials directed at children broadcast after September 1, 1973. The Advertising Standards Council may, at its discretion, allow time for compliance for commercials produced prior to the announcement of this Code.

Broadcast Code for Advertising to Children

*The Canadian Association of Broadcasters
l'Association canadienne des radiodiffuseurs*

Single copies of this code may be obtained free from the offices of either the Canadian Association of Broadcasters, P.O. Box 627, Station B, Ottawa, or the Canadian Advertising Standards Council, 1240 Bay Street, Suite 302, Toronto, Ontario M5R 2A7. Bulk copies available at \$2.00 a hundred.

May 1973

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Abbreviations of Statutes

S. C. - Statutes of Canada
S. A. - Statutes of Alberta
S. B. C. - Statutes of British Columbia
S. N. B. - Statutes of New Brunswick
S. N. S. - Statutes of Nova Scotia
S. O. - Statutes of Ontario
S. P. E. I. - Statutes of Prince Edward Island
S. Q. - Statutes of Quebec

Law Reports

C. P. R. - Canadian Patent Reporter
D. L. R. - Dominion Law Reports
O. R. - Ontario Reports
Ex. C. R. - Exchequer Court Reports