

April 2, 2001

DELIVERED BY HAND

Detective Sergeant Paul Gillespie  
Special Investigation Services  
Morality/Pornography Section  
Metro Toronto Police Service  
40 College Street  
Toronto, Ontario M5G 2J3

Copy to Chief Julian Fantino

Dear Sir:

**Re Complaint against Bell ExpressVu for distributing obscene material in  
contravention of Criminal Code Section 163**

I would like to file a complaint against Bell ExpressVu, 115 Scarsdale Road, Toronto, Ontario for broadcasting sexually violent and degrading films on their pay-per-view channels in contravention of Section 163 of the Criminal Code.

On March 28, 2001, the CBC television program, the Fifth Estate, reported on an investigation they conducted into the broadcast of sexually explicit material on Canadian pay-per-view television channels (videotape copy enclosed). Emphasis was given to the movies carried by Bell ExpressVu. In previewing the piece for CBC's The National, reporter Hana Gartner stated:

"It is a competitive marketplace, and in the race for the raciest, Bell ExpressVu has broken the rules. It is running the raunchiest hard-core porn on two twenty-four hour channels which it is picking up from a distributor in Boulder, Colorado. Some of their movies are sexually violent, and would not be approved by the provincial censor boards." (CBC The National, March 27, 2001)

The Toronto Star carried the following description of some of the activities shown during the program and which had been broadcast by Bell ExpressVu:

"... reporter Hana Gartner introduced clips that showed painful-looking bondage and simulated rape and torture, including hot wax being poured onto the breasts of a seemingly helpless bound woman and clothes pins and other clamps attached to nipples.

In one scene, a woman protests while being tied up and lashed to a door, with the doorknob in her mouth; others are hogtied while their bare buttocks and breasts are whipped." (*Bell satellite TV pulls porn in wake of CBC expose*, Toronto Star, March 29, 2001)

In closing the segment, Hana Gartner said that the images shown on Fifth Estate were only a "tiny sample, carefully chosen and edited to reveal the least possible" which seems to indicate that movies containing even more violence and degradation have been broadcast.

The Canadian Radio-television and Telecommunications Commission (CRTC) spokesman stated that it is a condition of license for pay-per-view channels to have sexually explicit films approved by a provincial film review board prior to broadcast. Bell reportedly assured the Fifth Estate that all such movies had been approved by the Ontario Film Review Board. However, Robert Warren, Chair of the OFRB was shown examples of movies broadcast on Bell ExpressVu's two channels, movies the satellite company said had been cleared by the OFRB. Mr. Warren had not heard of many of the movies and some of them he said the Board would never approve because of the violent and degrading content.

If Bell ExpressVu is in contravention of its licensing agreement with the CRTC because they are not submitting films to a provincial film review board prior to broadcast, that is a matter for the federal regulator to investigate. This complaint relates to the broadcast by Bell ExpressVu of material that contravenes the Criminal Code obscenity law, and since the company is located in Toronto, I am requesting that the Metro Toronto Police Service investigate.

Section 163 of the Criminal Code makes it an offence to distribute, circulate or possess for the purpose of distribution or circulation "any obscene written matter, picture, model, phonograph record or other thing whatever", which is defined as "any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence".

The sexually explicit movies broadcast by Bell ExpressVu clearly contravene Section 163 in that they combine sex with cruelty and violence. Furthermore, even when violence was not overt in the films, women were subjected to degradation. In *Regina v Butler*, the Supreme Court of Canada had the following to say about degradation:

There has been a growing recognition in recent cases that material which may be said to exploit sex in a "degrading or dehumanizing" manner will necessarily fail the community standards test.

Subsequent decisions... held that material that "degraded" or "dehumanized" any of the participants would exceed community standards even in the absence of cruelty and violence.

In the appreciation of whether material is degrading or dehumanizing, the appearance of consent is not necessarily determinative. Consent cannot save materials that otherwise contain degrading or dehumanizing scenes. Sometimes the very appearance of consent makes the depicted acts even more degrading or dehumanizing.

This type of material would, apparently, fail the community standards test not because it offends against morals but because it is perceived by public opinion to be harmful to society, particularly to women.

Cruelty, violence and degradation were depicted in the sexually explicit material identified by the Fifth Estate as having been broadcast by Bell ExpressVu. In addition to the investigation being undertaken by the CRTC, an investigation by Metro Toronto Police into possible contravention of the Criminal Code obscenity law by Bell ExpressVu is also warranted. I look forward to hearing from you.

Sincerely,

Valerie Smith

Encl Videotape, Fifth Estate, March 28, 2001

cc The Hon. David Young, Attorney General of Ontario  
Murray Segal, Assistant Deputy Minister, Criminal Law  
Ministry of the Attorney General, Ontario  
The Hon. Norm Stirling, Minister of Consumer and Business Services  
The Hon. Dianne Cunningham, Minister Responsible for Women's Issues  
Scott Newark, Special Counsel, Office for Victims of Crime, Ontario  
Robert Warren, Chair, Ontario Film Review Board  
Michael Bryant, M.P.P., Liberal Critic, Attorney General  
Peter Kormos, M.P.P., NDP Critic, Attorney General  
Marie Bountrogianni, M.P.P., Liberal Critic, Women's Issues  
Francis Lankin, M.P.P., NDP Critic, Women's Issues  
Steve Gilchrist, M.P.P.  
The Hon. Sheila Copps, Minister of Heritage  
Cheryl Gallant, M.P., Alliance Critic, Heritage Canada  
David Colville, Chairman, CRTC  
Jean-Pierre Blais, Executive Director, Broadcasting Directorate, CRTC  
Tony Lacombe, Director General, Licensing & Operations Group, CRTC  
Priscilla de Villiers, President, CAVEAT  
MediaWatch