

The Government of Canada, on the other hand, responded by proposing direction orders to the CRTC under section 7 of the Broadcasting Act, but may have been too zealous in its drafting of these orders. The directives appear to be of "specific application" on "narrow policy matters," rather than of "general application" on "broad policy matters" as is required under that very section of the act. The proposed direction orders may also constitute retroactive regulation, which is clearly *ultra vires*. The preponderant weight of all the evidence laid before the committee suggested that these proposed direction orders are, in fact, *ultra vires*. In the most recent directions that the government has given to the CRTC, they have managed to avoid taking a step which would be *ultra vires* by ordering that a licensing regime take effect before November.

• (2200)

Clearly, if this were not the case — in other words, had the Department of Canadian Heritage waived its solicitor-client privilege to permit Department of Justice documents to be laid before the committee, or had the Minister of Canadian Heritage, the Honourable Michel Dupuy, appeared before the committee to explain this apparent new departure in statutory interpretation — the committee may have been able to come to a different conclusion.

One thing is for sure, however. If these matters are headed to the courts, as was threatened by the CRTC and Expressvu, Canadian consumers and Canadian culture will be the big losers. The committee was told that the so-called "grey" market, where Canadians are circumventing the law prohibiting the reception of unauthorized foreign programming, was estimated conservatively to be 30,000 households. This market is growing at about 1,000 per week. These Canadians, needless to say, are by-passing Canadian facilities and are not contributing even one cent to the production and promotion of Canadian cultural goods and services, as are all other Canadians. Canadian culture is under threat with each passing day that "grey" marketeers are allowed to roam the market and sign-up Canadian households to these American satellite services.

The committee sees no reason why this should happen. A court-determined solution need not be the outcome of this precarious state of affairs. In fact, Canadian cultural policy can, and still should, respond to this new technological threat. This is the time for cooler heads to prevail; and it is time for all those directly engaged in this dispute to realize that half a loaf of bread is better than allowing the entire loaf to go the American "grey" market way. Compromising among the four parties is not only required but imperative because time is of the essence.

The committee views its role in the policy making process as an advisor to government, which stems from its removed position from the principles or combatants and its expert status in dealing with matters arising under the Broadcasting Act. The committee

advanced seven recommendations to the government that it believed would rectify the existing stalemate and avert a protracted court battle. I am pleased to say, honourable senators that given the action, that the government has taken, a great number of those recommendations were in fact adopted by the government.

I will read just one in conclusion.

The Government of Canada and the CRTC immediately take the appropriate steps to institute a licensing process to begin upon the coming into force of the Direction Orders. That the CRTC waive the mandatory administrative time constraints and notice periods in order to complete the process before September 1, 1995, so that licences can be issued on or before that date.

The only change in the government directives is the date which was changed from September 1 to November 1, but Expressvu is allowed to commence under its exemption order on September 1.

That, honourable senators, without reading the other recommendations set forth in our report, is the essence of the report that has been tabled.

Motion agreed to and report adopted.

ONTARIO COURT GENERAL DIVISION

MOTION TO STRIKE SPECIAL COMMITTEE TO EXAMINE AND REPORT UPON THE CONDUCT AND BEHAVIOUR OF CERTAIN OFFICES AND JUSTICES—POINT OF ORDER— SPEAKER'S RULING

The Senate proceeded to consideration of the motion of the Honourable Senator Cools, seconded by the Honourable Senator Carstairs:

That a Special Committee of the Senate be constituted to examine and report upon the conduct and behaviour of certain justices and barristers of the Ontario Court of Justice (General Division), raised by the Honourable Senator Cools in her speeches on Parliamentary Privilege in the Senate in terms of:

- (i) failing to take judicial notice of the Law of Parliamentary Privilege, the Constitution of Canada, and the laws of Canada pertaining to the Senate;
- (ii) failing to uphold and enforce the said laws, and the immunities and privileges of the Senate;