

# ***Broadcasters' Guide to Elections for Members of the Nunavut Legislative Assembly***



2017

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## Contents

|   |    |
|---|----|
| Introduction.....   | 1  |
| Relevant Acts and regulations .....   | 1  |
| Defining broadcast and broadcaster .....  | 2  |
| An informed electorate .....  | 2  |
| Broadcaster’s Obligations .....   | 3  |
| Internal policies and procedures .....  | 3  |
| Equitable and balanced treatment, and equal access.....   | 4  |
| Defamation, slander, libel, obscenity .....   | 5  |
| Free access political programming .....   | 6  |
| News, comment, and current affairs programs .....   | 6  |
| Debates .....   | 7  |
| Advertising: free, paid, identifying statements .....   | 7  |
| Third party ads .....   | 9  |
| Announcements versus advertising .....  | 11 |
| Broadcasters or on-air personalities as candidates.....   | 12 |
| Three Sample Scenarios—Election Broadcasting .....  | 13 |
| Example 1—news, comment, current affairs .....  | 13 |
| Example 2—election advertising .....  | 13 |
| Example 3—election advertising .....  | 14 |
| Complaints about Election Broadcasting.....   | 15 |
| Penalties for Breaking the Laws .....   | 15 |
| Important Sections— <i>Nunavut Elections Act</i> and Broadcasting<br>Distribution Regulations ..... | 17 |



## Broadcast Guide—Nunavut Elections for Members of the Legislative Assembly

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|  |    |
|--|----|
| Nunavut Elections Act.....                             | 17 |
| Broadcasting Distribution Regulations SOR/97-5555..... | 20 |

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## Introduction

Elections Nunavut produced this document as a general guide for broadcasters. It outlines your legal obligations during Nunavut elections for Members of the Legislative Assembly (MLAs). For more complete information, see the original legal documents.

This Guide does not cover federal elections. Broadcasting rules in the *Canada Elections Act* do not apply to elections for Nunavut's MLAs.

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### Relevant Acts and regulations

The *Nunavut Elections Act* covers broadcasting by radio, television, and the Internet. It governs how and when candidates and third parties can use these media during the election period and for an election campaign. The election period begins the date of the writ (the official election announcement) and ends on Election Day.

The *Act* defines campaign material as: "any advertisement, including advertisements on the radio, television, and the Internet as well as placards, posters or banners, in favour of or on behalf of a candidate or against a candidate." This includes ads with positive and negative messages such as 'Vote for X' or 'Don't vote for Y'.

During Nunavut elections for MLAs, broadcasters also have legal obligations under other laws and regulations.

- Government of Canada *Broadcasting Act*
- Broadcasting Distribution Regulations SOR/97-555
- CRTC Broadcasting Circular CRTC 2008-5. The CRTC sends the Circular to all regulated broadcasters each time we issue the writ for a Nunavut election.

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### **Defining broadcast and broadcaster**

The *Nunavut Elections Act* defines broadcasting as: “any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place.”

A broadcaster is a person or agency who holds a CRTC licence under the federal *Broadcasting Act*, to present a broadcast on radio, TV, or the Internet. A broadcast includes a distribution, program, or network such as subscription services and pay-per-view channels.

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### **An informed electorate**

During an election campaign the public has the right to know about the issues. They need enough knowledge to make an informed choice from among the various candidates.

Broadcasters are responsible to help make sure that their audience is informed of the main issues and the positions of all candidates.

Broadcast media have an important role to help make sure that the public receive good and complete information that they can easily understand and use.

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## Broadcaster's Obligations

Broadcasters must follow the laws and regulations during elections for Nunavut's MLAs. Your obligations relate to the following topics.

- Internal policies and procedures
- Equitable and balanced treatment, and equal access
- Defamation, slander, libel, obscenity
- Free access political programming
- News, comment, and current affairs programs
- Debates
- Advertising: free, paid, identifying statements
- Third party ads
- Ads versus announcements
- Broadcasters or on-air personalities as candidates

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### Internal policies and procedures

Broadcasters should develop and apply internal policies and procedures for election broadcasting. These can provide important guidelines for what election broadcasting you air and when.

Policies and procedures should be clear about whether a program falls under the rules that apply to news, comment, or current affairs programs, or the rules that apply to campaign material or advertising.

Factors that influence this decision include:

- Who pays?
- Who decides the content, format, and character?

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If a broadcaster accepts paid advertising, you should also have a system to provide timely and accurate invoicing. Candidates need this information to file their financial return, completely and on time.

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**Equitable and balanced treatment, and equal access**

As a general principle, broadcasters must provide equitable and balanced treatment of issues and candidates. Equitable means that all candidates are entitled to fair and just coverage that gives them the opportunity to expose their ideas to the public. It does not necessarily mean the same or equal coverage.

Balanced means equitable time—comparable but not equal or the same in terms of the target audience or the length, time, or language of broadcast. Broadcasters must have balance over a reasonable time—generally a week—and not necessarily within a specific program.

*Broadcasting Distribution Regulations SOR/97-555*

27. (4) If a licensee provides time on the community channel in a licensed area during an election period for the distribution of programming of a partisan political character, the licensee shall allocate that time on an equitable basis among all accredited political parties and rival candidates.

Broadcasters must also give each candidate equal access to broadcast time.

*Nunavut Elections Act*

**Broadcast time**

187. Every broadcaster who operates a community or educational broadcasting service shall, subject to the conditions of its licence, any agreement with the Canadian Broadcasting Corporation, and the regulations made under the *Broadcasting Act* (Canada),

- (a) make broadcasting time available to all candidates in the



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- constituencies in which it operates; and
- (b) ensure that every candidate has approximately equal access to broadcasting time.

We recommend that broadcasters consider the following ways to ensure balance:

- Provide a listener call-in type show.
- Interview people of equal ability from each major side of an issue.
- Allow a complainant a chance to rebut on-air.
- Broadcast announcements during prime time that tell listeners about community access programming.

Broadcasters are obliged only to cover the major sides of an issue of public concern. Each broadcaster is responsible for editorial judgement and decides what constitutes an issue of public concern.

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#### **Defamation, slander, libel, obscenity**

Broadcasters must avoid defamation, slander, libel, and obscenity.

Defamation happens when a broadcaster airs false information that damages the reputation of an individual, group, or business. Often there is a fine line between defamation and valid criticism, intentional and unintentional defamation.

Slander is an oral form of defamation—when someone intentionally speaks over-the-air defamation. Libel is a written form of defamation.

Anyone involved in a slanderous broadcast may be legally responsible—the station, the station manager, the program director, or the program host. Insinuating a name in a way that people can guess

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the identity of a person, group, or business is the same as saying the actual name. Canadian law sees this as a serious offence.

Broadcast regulations generally prohibit sexually explicit material or material that contains strong language or that is likely to offend some listeners. The Radio Broadcasting Regulations (1986) prohibit obscenity. Section 3(c) states: "*a licensee shall not broadcast any obscene or profane language.*"

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### **Free access political programming**

Free access programming is one of two main types of political programming. It is program time that a broadcaster offers free of charge to a candidate or third party. A broadcaster that offers free time for one candidate must offer equitable free time for all candidates

All the rules that apply to broadcast advertising apply to free access political programming. Broadcasters must ensure the programming is not defamatory. You do not interfere as moderator or in the production process. But the broadcaster is ultimately responsible for the program. At the same time you give the candidate the widest possible latitude and control.

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### **News, comment, and current affairs programs**

News, comment, or current affairs programs must meet CRTC codes, regulations, and policies for community programming. The primary aim of these programs is to inform the public, present a range of viewpoints, and provide objective and impartial reporting. Broadcasters must offer these programs on an equitable basis for all candidates. Broadcasters have editorial control and may decide the format and participants, and directly intervene as moderator. Candidates do not pay for or decide the format of these programs.

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Broadcasters must make sure that news, comment, and current affairs programs do not appear to encourage voters to vote for or against a particular candidate. Candidates and broadcasters must understand the differences between these formats and advertising / campaign material.

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### **Debates**

It is not strictly necessary that debate programs feature all rival candidates. BUT—in general—broadcasters must take reasonable steps to ensure that their public affairs programs inform their audience on the main issues and positions of all candidates.

The term balanced includes the principles of fair radio debate.

- Listeners have the right to respond and challenge.
- Debate should be between equals.
- No one should dominate a debate using power or wealth.

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### **Advertising: free, paid, identifying statements**

Broadcasters are responsible to maintain standards for advertising. This includes taste and decency, privacy, codes of broadcasting practice, and law and order. Broadcasters do not need to provide balance to election ads as they must do for news, comment, or current affairs programs. Broadcasters have no restrictions on when they may begin to accept bookings for broadcast election advertising.

Broadcasters must offer the same advertising rates and terms to all candidates. If you sell advertising to one candidate or advocate, you must make it available to all candidates on an equitable basis and at the same price. This includes any volume discounts and offers of bonus time. If the demand for paid advertising time exceeds the amount of commercial time that the broadcaster schedules, you must resolve the conflict equitably.

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The candidate usually has editorial control over advertising, except for third party advertising. Candidates can pay for and broadcast negative advertising, as long as the ad does not contain defamatory statements or lies.

The financial agent or campaign manager must authorize the content and booking of every ad. Broadcasters that accept bookings and material through advertising or media agencies should keep copies of the written authorities.

Broadcasters must identify each advertising client—both on air and in logs. All advertising / campaign material must contain a statement identifying the advertiser.

When the broadcaster airs an ad, it must include a statement that names the financial agent or campaign manager. The statement can be written or oral. If written, the audience should be able to read it. If oral, the audience should be able to understand it.

Here is a sample statement:

Authorised by: S. Smith, Financial Agent / Campaign Manager

On behalf of J. Inuk Candidate for the Constituency of -----

Contact Information: Tel: ----- Fax: ----- Email: -----

*Nunavut Elections Act*

**Identification**

175. (2) Any campaign manager or other person sponsoring the advertisement referred to in subsection (1) shall provide his or her name and address to the broadcaster or publisher of the advertisement.

**Identification when campaigning**

186. (1) Every candidate or other person who campaigns shall, in accordance

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with instructions issued under subsection (4), ensure that all his, her, or its campaign material includes

- (a) the name of the candidate or other person campaigning; and
- (b) the name and a valid telephone number or email address of an individual who is responsible for the content of the campaign material, which in the case of a candidate is his or her financial agent.

#### **Clarity of information**

(2) The information required under subsection (1) must be communicated in a way that is as easy to read, hear, or see as the majority of the substance of the message being communicated by the campaign material.

#### **Minors**

(3) If the person campaigning is a minor, the person referred to under paragraph (1)(b) must be an adult who is responsible for the minor.

#### **Instructions of Chief Electoral Officer**

(4) The Chief Electoral Officer may issue instructions respecting the communication and inclusion of the information required by this section.

#### **Campaign material requirements**

**249.** (2) Any person printing, publishing, broadcasting or distributing, or causing to be printed, published, broadcast, or distributed any campaign material that does not comply with section 186 is guilty of an offence.

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#### **Third party ads**

Third parties—an individual or group that isn't a candidate—may buy and air broadcast ads during an election, according to the laws. For example a third party ad may advocate for or against a policy. Or the ad may name or directly advocate for or against a candidate. A third party can pay for and broadcast negative advertising, as long as the ad does not contain defamatory statements or lies.

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No individual person or company from outside Nunavut may advertise or in any other way, including phoning a radio program, campaign during an election.

### **Prohibited campaigning**

**13.1** (1) Subject to subsection (2), the following persons or entities shall not campaign in an election:

- (a) any individual who is not resident in Nunavut;
- (b) any corporation or other entity that
  - (i) is not incorporated, established or continued by or under the laws of Nunavut, and
  - (ii) does not carry on business in Nunavut in compliance with any registration or licensing requirements applicable to it under the laws of Nunavut.

Broadcasters are responsible to maintain standards. This includes taste and decency, privacy, codes of broadcasting practice, and law and order. Broadcasters do not need to provide balance to election ads as they must do for news, comment, or current affairs programs.

The broadcaster should know clearly whether or not the ad comes from a candidate's office or a third party.

Broadcasters must identify each advertising client—both on air and in your logs. All advertising / campaign material must contain an identifying statement.

When the broadcaster airs the ad, you must include a statement that names the party that sponsored the ad. The statement can be written or oral. If written, the audience should be able to read it. If oral, the audience should be able to understand it.

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Here is a sample statement:

This ad is being paid for by: -----

Authorised by: S. Smith, Sponsor

Contact information: Tel: ----- Fax: ----- Email: -----

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**Announcements versus advertising**

Broadcasters may air non-partisan, community service, or station announcements. These include things such as a list of candidate meetings, or encouragement to vote or to register to vote. The *Nunavut Elections Act* considers this kind of announcement separate from and different than advertising.

To maintain a code of good practice, broadcasters should air a statement that gives the name and contact information of the person or group that authorised the announcement. Here is a sample statement:

Authorised by: Gjoa Haven Returning Officer, Elections Nunavut

Contact information: Phone: ----- Fax: ----- Email: -----

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### **Broadcasters or on-air personalities as candidates**

A broadcaster or regular on-air personality may become a candidate. If that happens, they must remove themselves from their broadcasting role during the election campaign. This prevents them from having unfair advantage over other candidates.

This applies to all on-air personalities, even if their exposure is only as a commercial announcer.

Broadcasters must remove these candidates from their broadcasting duties as soon as they file their declaration of candidacy. It is not an option for broadcasters to offer similar on-air opportunities to other candidates.



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## Three Sample Scenarios—Election Broadcasting

Broadcasters should be clear about whether a program falls under the rules that apply to news, comment, or current affairs programs or the rules that apply to campaign material or advertising.

Factors that influence this decision include:

- Who pays?
- Who decides the content, format, and character?

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### Example 1—news, comment, current affairs

A regular program, with the normal host and graphics, describes how to register to vote, where to vote, and how the election works. The program shows some footage of two local candidates as they attend meetings, deliver leaflets, and do other activities.

A reporter talks to some voters about how interested they are in the elections. The program ends with a list of the names of all local candidates.

This example is clearly a news, comment or current affairs program.

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### Example 2—election advertising

A community language program has a regular slot for a community guest. The week before the election, the guest is a candidate who talks about the election and how it's important for people to vote.

The candidate then says: "Make sure you vote next Monday and vote for me". With this last statement the candidate turned this current affairs program into a broadcast election ad.

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### **Example 3—election advertising**

Four months before the election, a group asks a broadcaster for a weekly slot during the election period. They propose a magazine style, current affairs type program. They want to interview people and present views from a particular political perspective.

At the end of the election period, the broadcaster discovers that campaign organizers for a certain candidate created the program. The program is broadcast election advertising because campaign organisers decided the format and paid for the program.

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## Complaints about Election Broadcasting

For complaints related to breaking the laws in the *Nunavut Elections Act*, people should go to their local RCMP.

For complaints related to federal laws and regulations, people should go to the CRTC.

- ☎ 877.249.CRTC (2782)
- 📠 819.994.0218

## Penalties for Breaking the Laws

Territorial and federal laws each have their own fines and other penalties.

- If you break the laws of the *Nunavut Elections Act*, you can pay a fine; go to jail, or both.
- If you break the laws under the *Broadcasting Act* or CRTC regulations, you can pay a fine.

### *Nunavut Elections Act*

#### **General offence and punishment**

**268.** (1) Except as otherwise provided in this Act, any person who contravenes this Act is guilty of an offence and liable on summary conviction to:

- a fine not exceeding \$5,000;
- imprisonment for a term not exceeding one year; or both a fine and imprisonment.

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*Broadcasting Act*

**Breaking a regulation or order**

32. (2) Every person who contravenes or fails to comply with any regulation or order made under this Part is guilty of an offence punishable on summary conviction and is liable:

- (a) in the case of an individual, to a fine not exceeding twenty-five thousand dollars for a first offence and not exceeding fifty thousand dollars for each subsequent offence; or
- (b) in the case of a corporation, to a fine not exceeding two hundred and fifty thousand dollars for a first offence and not exceeding five hundred thousand dollars for each subsequent offence.

**Breaking the conditions of license**

33. Every person who contravenes or fails to comply with any condition of a licence issued to the person is guilty of an offence punishable on summary conviction.

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## Important Sections—*Nunavut Elections Act* and Broadcasting Distribution Regulations

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### Nunavut Elections Act

Note the following important sections of the *Nunavut Elections Act*.

#### Definitions

2. (1) In this Act

"campaign" means to make public statements or issue campaign material promoting or opposing a candidate in an election; (*faire campagne*)

"campaign material" means any advertisement, including advertisements on the radio, television and the Internet as well as placards, posters or banners, in favour of or on behalf of a candidate or against a candidate; (*matériel utilisé au cours de la campagne électorale*)

#### Prohibited campaigning

13.1 (1) Subject to subsection (2), the following persons or entities shall not campaign in an election:

- (a) any individual who is not resident in Nunavut;
- (b) any corporation or other entity that
  - (i) is not incorporated, established or continued by or under the laws of Nunavut, and
  - (ii) does not carry on business in Nunavut in compliance with any registration or licensing requirements applicable to it under the laws of Nunavut.

#### Advertising contribution

175. (1) The cost of the advertising shall be considered a contribution to a candidate where a person, with the knowledge and consent of the candidate, campaigns by advertising

- (a) through the facilities of a broadcaster;
- (b) in a newspaper, magazine or other periodical publication or

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- other printed document; or
- (c) through the use of any billboard, sign or outdoor advertising medium.

### **Identification**

(2) Any campaign manager or other person sponsoring the advertisement referred to in subsection (1) shall provide his or her name and address to the broadcaster or publisher of the advertisement.

### **Identification when campaigning**

**186.** (1) Every candidate or other person who campaigns shall, in accordance with instructions issued under subsection (4), ensure that all his, her or its campaign material includes

- (a) the name of the candidate or other person campaigning; and
- (b) the name and a valid telephone number or email address of an individual who is responsible for the content of the campaign material, which in the case of a candidate is his or her financial agent.

### **Clarity of information**

(2) The information required under subsection (1) must be communicated in a way that is as easy to read, hear or see as the majority of the substance of the message being communicated by the campaign material.

### **Minors**

(3) If the person campaigning is a minor, the person referred to under paragraph (1)(b) must be an adult who is responsible for the minor.

### **Instructions of Chief Electoral Officer**

(4) The Chief Electoral Officer may issue instructions respecting the communication and inclusion of the information required by this section.

### **Broadcast time**

**187.** (1) Every broadcaster who operates a community or educational broadcasting service shall, subject to the conditions of its licence, any agreement with the Canadian Broadcasting Corporation and the regulations

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made under the *Broadcasting Act* (Canada),

- (a) make broadcasting time available to all candidates in the constituencies in which it operates; and
- (b) ensure that every candidate has approximately equal access to broadcasting time.

**Identity of campaigner**

(2) No broadcaster who operates a community or educational broadcasting service shall broadcast any campaign material that does not comply with section 186.

**Campaign material requirements**

**249.** (2) Any person printing, publishing, broadcasting or distributing or causing to be printed, published, broadcast or distributed any campaign material that does not comply with section 186 is guilty of an offence.

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## **Broadcasting Distribution Regulations SOR/97-5555**

Note the following important sections of the Broadcasting Distribution Regulations SOR/97-5555.

### *Broadcasting Distribution Regulations SOR/97-555*

#### **Community Channel**

27. (01) Except as otherwise provided under a condition of its licence, if a licensee elects to distribute community programming under paragraph 19(f) or if a community programming undertaking is licensed in the licensed area, the licensee shall distribute the community programming as part of the basic service.

(1) If a licensee elects to distribute community programming under paragraph 19(f), except as otherwise provided in subsections (2) and (3) or under a condition of its licence, the licensee shall not distribute on the community channel in a licensed area any programming service other than:

- (a) community programming;
- (b) a maximum of two minutes during each clock hour of announcements promoting broadcasting services that the licensee is authorized to provide;
- (c) a public service announcement;
- (d) an information program funded by and produced for a federal, provincial, or municipal government or agency, or a public service organization;
- (e) the question period of the legislature of the province in which the licensed area is located;
- (f) an announcement providing information about the programming to be distributed on the community channel;
- (g) a commercial message that mentions or displays the name of a person who sponsored a community event or the goods, services or activities sold or promoted by the person, if the mention or display is in the course of, and incidental to the production of, community programming relating to the event;



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- (h) an oral or written acknowledgement, that may include a moving visual presentation of no more than 15 seconds per message, contained in community programming that mentions no more than the name of a person, a description of the goods, services or activities that are being sold or promoted by the person, and their address and telephone number, if the person provided direct financial assistance for the community programming in which the acknowledgement is contained;
  - (i) an oral or a written acknowledgement contained in community programming that mentions no more than the name of a person, the goods or services provided by the person and their address and telephone number, if the person provided the goods or services free of charge to the licensee for use in connection with the production of the community programming in which the acknowledgement is contained;
  - (j) a still image programming service as described in Public Notice CRTC 1993-51, entitled *Exemption Order Respecting Still Image Programming Service Undertakings*, if the service is produced by the licensee or by members of the community served by the undertaking and does not contain commercial messages, other than commercial messages contained within the programming service of a licensed radio station; or
  - (k) the programming of a community programming undertaking.

(1.1) At least 75% of the time for promotional announcements broadcast in each broadcast week under paragraph (1)(b) shall be made available for the promotion of the community channel and for the promotion, by Canadian programming undertakings other than related programming undertakings, of their respective services.

(1.2) A maximum of 25% of the time for promotional announcements broadcast in each broadcast week under paragraph (1)(b) may be made available for the promotion of the services of related programming undertakings, discretionary services and programming packages, cable FM service and additional cable outlets and for the distribution of information on

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customer services and channel realignments.

(2) Whenever a licensee is not distributing community programming on the community channel in a licensed area, or is distributing on that channel community programming that has no audio component, the licensee may distribute on that channel the programming service of a local radio station, other than an educational radio programming service the operation of which is the responsibility of an educational authority.

(3) Whenever a Class 2 licensee is not distributing community programming on the community channel in a licensed area, the licensee may distribute in that licensed area the programming services referred to in Public Notice CRTC 1985-151, entitled *Complementary Programming on the Community Channel*.

(4) If a licensee provides time on the community channel in a licensed area during an election period for the distribution of programming of a partisan political character, the licensee shall allocate that time on an equitable basis among all accredited political parties and rival candidates.

**27.1** (1) Except as otherwise provided under a condition of its licence, a licensee shall devote not less than 60% of the programming distributed on the community channel in the licensed area in each broadcast week to the distribution of local community television programming.

(2) The time allocated to the distribution of alphanumeric message services is excluded from the calculation of the programming requirement under this section.

(3) Except as otherwise provided under a condition of its licence, a licensee:

- (a) shall devote not less than 30% of the programming distributed on the community channel in each broadcast week to community access television programming;
- (b) shall devote from 30% to 50% of the programming distributed on the community channel in each broadcast week to community access television programming, according to requests;

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- (c) if one or more community television corporations are in operation in a licensed area, shall make available to them up to 20% of the programming distributed on the community channel in each broadcast week for community access television programming; and
  - (d) if one or more community television corporations are in operation in a licensed area, shall make available to each of them, on request, not less than four hours of community access television programming in each broadcast week.

28. (1) Except as otherwise provided under a condition of its licence, a licensee shall:

- (a) keep a program log or a machine-readable record of programs distributed on the community channel in each licensed area and retain it for a period of one year after distribution of the programs; and
- (b) enter into the program log or machine-readable record of programs each day the following information for each program:
  - (i) the title of the program,
  - (ii) the date of distribution, time of commencement and completion, and duration of the program, which includes announcements and commercial messages referred to in paragraphs 27(1)(b) and (g),
  - (iii) a brief description of the program, including a statement as to whether the program is local community television programming,
  - (iv) the name of the undertaking for which the program was produced and the name of the producer,
  - (v) a statement as to whether the program is community access television programming and the identification of the party having been provided access, and
  - (vi) the time of commencement of announcements and

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commercial messages referred to in paragraphs 27(1)(b) and (g), the duration and, in the case of a commercial message, the name of the person selling or promoting goods, services or activities.

(2) A licensee shall retain a clear and intelligible audio-visual recording of each program distributed on the community channel in each licensed area for a period of

- (a) four weeks after the date of distribution of the program; or
- (b) eight weeks after the date of distribution of the program, if the Commission receives a complaint from a person regarding the program or, for any other reason, wishes to investigate, and so notifies the licensee before the end of the period referred to in paragraph (a).

(3) If, before the end of the relevant period referred to in subsection (1) or (2), the Commission requests from a licensee a program log, machine-readable record or clear and intelligible audio or audio-visual recording of a program, the licensee shall immediately furnish the log, record or recording to the Commission.