ARTS & MEDIA

Captain Cable takes on a national industry

BY LOUISE SLOBODIAN

In an age of cartoon superheroes, valiantly using incredible abilities to stop baddies and rotters in their tracks, one man—using only his savings and acquired knowledge of the Canadian cable industry—struggles to right wrongs, to avenge bad decisions and force openness and compliance wherever he turns.

He's taken on tax reform hearings, with only 24 hours notice and a snowstorm to drive through; contested Rogers, the media giant, with a single monthly bill and a court date; and challenged consumers to wake up, though via the mainstream media who, by-and-large, won't tell his story.

Despite setback after setback, like an early October court defeat, he carries on.

He is Captain Cable, hero of the '90s.

He is Keith Mahar, a likeable, kinetic, funny man in black jeans and denim jacket, who just got fed up. It all began in September, 1994.

On the line

Keith Mahar, 32, was an up-and-comer in the broadcasting industry, the cable relations man for the Toronto hotshot network, CHUM Limited, which peddles its rock music channel and new Bravo! arts channel across the country.

Originally from Montreal, with a business degree from the University of New Brunswick, he'd been with CHUM just a year, though he'd spent six years doing similar work for another company.

It was a great year at MuchMusic, a dream job. It was also the year Keith Spicer went coast-to-coast, talking channels, channels, channels as chairman of the Canadian Radio-television and Telecommunications Commission (CRTC), the federal cable regulator.

Bravo! was granted a license as a result of those hearings, and, as well, the now infamous Rogers negative billing fiasco was born. Somewhere in the middle, Keith Mahar smelled a rat, and he has continued to sniff out trouble ever since.

Mahar claims the CRTC commissioners knowingly chose to buy the dream of a national electronic superhighway at the expense of cable consumers who were not informed of the ins and outs of their rates. Mahar contends the cable companies were awarded a handsome profit into the bargain.

This really got to Mahar: this was his industry after all, where he had the knowledge to understand the complicated decisions and regulations and the technology involved.

Finally, he put himself on the line.

Mahar quit his job in order to make a public intervention into the hearings around Rogers' $3.1 billion takeover of another media conglomerate, Maclean-Hunter. His appearance carried little weight. It was a disappointment.

Though he also submitted an appeal to the federal Cabinet on this matter, and appeared at a tax reform hearing, he soon changed tack, going after two decisions from the CRTC's 1993 month-long structural hearing.

He got two legal opinions on the authority of the CRTC to amend its regulations, particularly two subsections regarding cable charges to consumers for "addressable digital decoders" that sends information between cable companies and subscribers, and a subsection permitting cable companies not to reduce previously raised fees.

One lawyer concluded "the CRTC exceeded it legal mandate when it made these particular amendments to the Regulations." The other offered the opinion "that there are some very credible arguments you can make which put the legality of these decisions in serious doubt."

The latter statement is less clear cut, but continues in a vein close to Mahar's heart: "... based on the track record established by these ... it would be fair to conclude more broadly that cable subscribers will have to be more vigilant to look out for their own financial interests; neither the CRTC nor governments have so far."

Mahar has also taken on the CRTC wholesale, as he stated at the tax reform hearing. "I wonder whether we've exceeded our ability to pay for the luxury of commissions such as the CRTC in their current capacity."

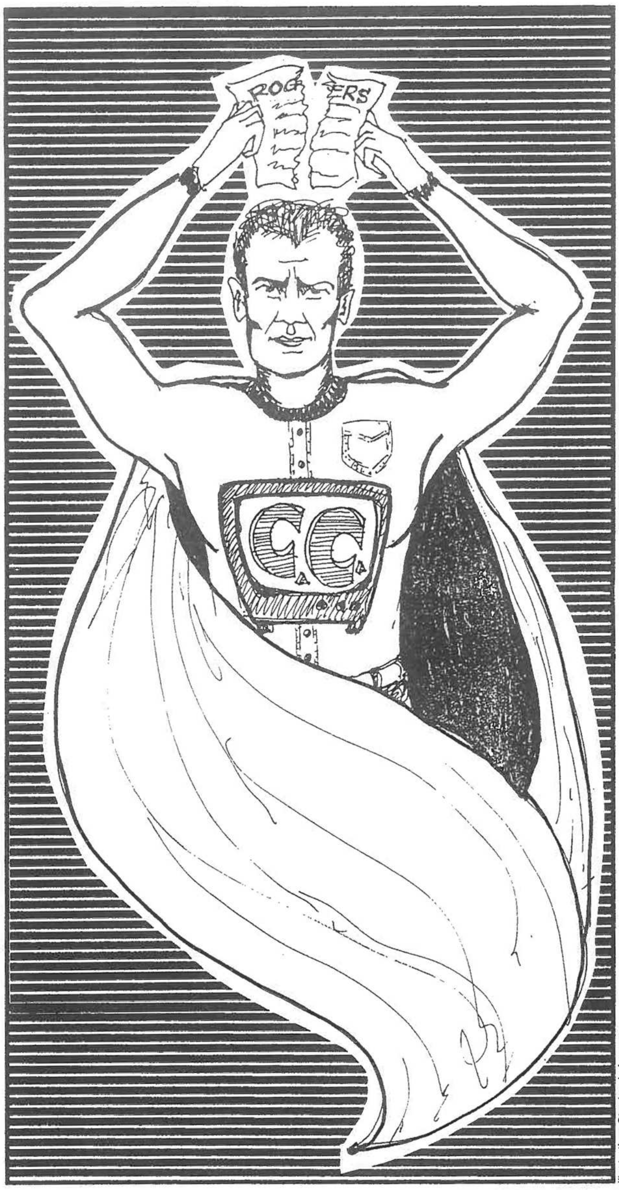

Illustration: Stephanie Lang

As Mahar tries to make a complex issue understandable, it seems as if he's trying to tame a monster with many heads, all emerging from the body of the CRTC. He has focused his attention on the CapEx sunset clause.

Five years ago, the Commission allowed cable companies temporarily to increase basic cable rates to pay for the capital expenditures they made to upgrade their cable network. This January, cable companies were scheduled to reduce their rates by the amount they'd applied five years earlier.

Then the rules changed, and the companies were given a choice by the CRTC. If they gave half that monthly amount to a new Canadian production fund (with the broad aim of saving Canadian culture by allowing new programs to be produced), they could keep the other half.

No return to the consumer. No need even to tell the consumer. It's not as if their monthly bill would change. All but three of Canada's 46 cable systems (some owned by the same companies) took the fund option. Those three systems are in Aurora, Ontario, and Grande Prairie and Edmonton, Alberta.

Mahar calls this a new tax, not a continuation of an old charge. Furthermore, he calls it a hidden tax and claims it will cost Canadians $600 million over the next five to seven years.

And the amount varies, when you look at the differences between companies, which did not have uniform rate increases.

For example, the cable company in Petrolia, Ontario didn't impose any fee for capital expenditures between 1986 and 1990. In Cornerbrook, Newfoundland, rates were raised by nine cents. Newmarket, Ontario cable subscribers paid the highest assessment in the country at $4.60 a month. That's $55.20 a year. In five years, that's $276, plus provincial tax and the GST.

Mahar isn't arguing the production fund is a bad idea. In fact he says the CRTC would have been better to straight out assess all Canadian cable consumers a small, uniform fee and be done with it. He argues consumers should have been informed, and he challenges the "windfall" the decision leaves the cable companies which are already excessively privileged.

"People have the right to be apathetic provided they have full disclosure, not to be forced into compliance through ignorance. This is what this type of regulation is preying on—the unaware consumer.

"The problem here is that the government wants to have the information highway built as quickly as possible. In this haste, they're willing to cut corners. We're being forced to pay a premium now for the potential benefits of competition in the future."

It's not as if the CRTC was unaware. Three CRTC commissioners dissented from this decision at the structural hearings. And in a transcript of the hearings, chair Keith Spicer responded to an intervention by Rogers Cablesystems Ltd. this way:

"You are asking us to soak—well, let's say to invite—the Canadian subscribers to come up with quite a lot of money for your industry to build an infrastructure which would be used no doubt to defend Canadian programming, but also down the road five years

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a whole lot of other services that have nothing to do with what normal people call television, what with home shopping, banking, and things in which the industry will make some honest money, and good for them. But we should know what we are asking these people to pay for...."

The cable companies got their way in this, after giving reassurances and stronger commitments around the $300 million production pool. Mahar says this adds proof that the consumer is under-represented.

"I've grown very jaded about the way the process is working. You've got a vacuum where the consumers' interest should be.

"You've got the broadcasters, you've got the production side, the distribution side all very well represented at the CRTC hearings. They've all got corporate backing and money to play with. The public doesn't have any oney to ... try to counterbalance the ed interest in the process.

"The CRTC has a lot of authority ... So you have this relationship where cable companies do not go out of business. It's an artificial marketplace where if companies don't have enough money, they just apply to the CRTC for what is called an economic need rate increase and if they're financially justified, the CRTC gives it to them and the rates go up. So there's a very high privilege to these companies. ...

"I think the CRTC is trying to protect the current vested interests in the marketplace, instead of holding out for what might be best for everyone in the future."

In March, Mahar brought this message to Ottawa.

There he teamed up with MPs from three parties: Liberal Dan McTeague, NDP Simon de Jong, and Reformer Jan Brown. On March 29 he held a news conference with these three, publicizing the regulations in question. The next day Jan Brown brought the question into the House of Commons where, Mahar says, Minister Sheila Finestone "sidestepped" the issue.

That day as well, the CRTC issued a statement denouncing claims of a hidden tax and of favouring cable companies. "As a regulator of the Canadian broadcasting industry, the CRTC must maintain balance between the interests of all its publics ... Inevitably, and taken in isolation, some decisions can be made to *appear* to favour one group over another. But in the long run, we must seek a balance of interests." Mahar says, "I just left Ottawa shaking my head."

He is less idealistic about making a significant difference now and more pragmatic about making a dent. "It's just a matter of making more and more people accountable."

Try and try again

Having tried public hearings and the democratic process with little result, Keith Mahar dug into his savings and looked to legal action.

Mahar and his counsel chose to go the route of a contract dispute. He went to court as a Rogers subscriber, contesting the $2.52 he'd been charged since January 1 when the "sunset" clause determined his rate should drop. That brought them to Toronto's Ontario Court, General Division, on October 3 and 4.

"I could have gone to small claims and tried to win my $2.52. But it wouldn't have done anything for anyone else," he says of his choice.

Mahar lost his gamble when the judge refused to hear the case after deciding his court was the wrong jurisdiction. To add salt to that wound, Mahar is stuck with the costs—including Rogers' defence. When *CNT* went to press, that amount had not been determined.

The wee bit of good news is that the judge recognized that the case had broad policy implications—as Mahar has argued all along. The bad news is that he now has to petition the CRTC to hear him out.

But Captain Cable hasn't turned in his cape (or MuchMusic jean jacket) yet. The day after the court defeat, he committed himself to carrying on. "On one hand, this is deflating. On the other, if I'm blocked here, with my knowledge, the average guy could get nowhere."

A week later, sitting on a couch in the *CNT* office, Keith Mahar is clearly regrouping his internal forces, and evaluating his position. He is less animated, more reflective. "I can't do it alone," he says a few times.

In August he established the not-for-profit Cable Watch Citizen's Association, with a small board of directors. There's been some interest, he's received a few cheques, and his hope is here. "If I get even 2,000 people at $15 each, I can carry on. I don't need a salary for a few years, just to cover expenses."

And he's changed his perspective. "I was looking for a quick guerrilla attack," he says of his decision to enter the fray just over a year ago. "Now I know I'm in for the long haul."