Section 3(b) of the Tel Act provides the **facilitation of the orderly development of a telecommunications system that serves to safeguard, enrich, strengthen the national, cultural and economic wellbeing of the society** as one of the Authority’s objectives.

In accordance with sec 3(g) of the Act, in discharging this responsibility, the Authority, must “**regulate broadcasting services consistently with the existing constitutional rights and freedoms contained in section 4 and 5 of the Constitution.**”

Of significant import to our forum today would be the exercise of the rights of freedom of expression, or free speech, and freedom of the press, bearing in mind the protection of these rights provided by section 5, which enshrines that no law shall infringe upon the fundamental rights.

However, notwithstanding the protections of those freedoms by the Constitution, there are effective constraints on the exercise of these rights. The question is really to what extent does an act or, in our instance, a spoken word, burden the fundamental right of free speech, or have a “chilling effect” on same. In law we refer to the O’Brien test of scrutiny as to whether or not the right to free speech or free press can be restricted (usually where there is an incidental governmental interest involved).
Further, to what extent does our exercise of our rights infringe upon the rights of another?

Concession condition D8 requires concessionaires to adhere to the Broadcast Code, which as we know is currently being considered by the Cabinet. In its absence, CC D9 provides guidance as to the effective limitations broadcasters are to recognize in transmission and broadcast of content.

D9.

Without prejudice to Condition D8, and until such time as a Broadcasting Code is promulgated in accordance with the Act, the concessionaire shall not:

(a) transmit any programme, information or other material which degrades or portrays in a negative manner or discriminates against or encourages discrimination against any person or group by reason of race, origin, class, religion or sex;

(b) transmit any programme, information or other material which is hostile to any country; or,

(c) broadcast programme, information or other material which endangers the security of the Republic of Trinidad and Tobago, violates any law, is of a defamatory nature, is subversive to peace or public order or is otherwise contrary to the laws of Trinidad and Tobago.

Critical issues for a broadcaster/ moderator to consider in conducting their duties pursuant to D9:

1. When do we defame another? Under the Libel and Defamation Act, we do so when we make or issue any intentional false communication that harms a person’s reputation; decreases the respect, regard, or confidence in which a person is held; or induces disparaging, hostile, or disagreeable opinions or feelings against a person.

Hard to balance against Trini “mauvaislang”? Remember the origins of our French patios word: mauvais langue – bad language? What we think is Ok may not necessarily be so in law.
2. When can our content transmitted be seen to encourage or provoke a breach of the peace (what many refer to as incitement)? Section 5 of the Criminal Offences Act makes a crime of the “sending of any challenge with intent to provoke, or otherwise endeavouring to provoke any person to commit a breach of the peace”.

3. We must also be alert as to when content may be seditious. Sedition is a crime covered by the Sedition Act and makes the communication of any statement having a seditious intention a criminal offence.

“Seditious intention” as defined in the Sedition Act is not just limited to an intention to “bring into hatred or contempt”, or to “excite disaffection against Government or the Constitution …” it also covers the intent to raise discontent or disaffection amongst inhabitants of Trinidad and Tobago by

(d) (to)engender(ing) or promote(ing)
(i) feelings of ill-will or hostility between one or more sections of the community on the one hand and any other section or sections of the community on the other hand; or
(ii) feelings of ill-will towards, hostility to or contempt for any class of inhabitants of Trinidad and Tobago distinguished by race, colour, religion, profession, calling or employment; - all of which are echoed in our CCD9.

In accordance with Sec 79. (1) of the TA 2001, the Authority is charged with the responsibility of creating a Broadcasting Code to regulate the practices of concessionaires of broadcasting services. Although not yet promulgated, the BC has been consulted upon a number of times and in its latest iteration, has been specifically tailored to the needs of our society and its specific culture. It therefore serves as a good guide to broadcasters on matters of relating to (Slide): Protection of Children (encouraging the use of watershed hours where controversial, harmful, obscene or offensive topics may be discussed or content shown), Harm abuse and Discrimination, Crime, Race, News and Public Information, Warnings and Audience Advertising, Sponsorship and Promotional Programming.
The role of the broadcaster and moderator in the format of a “talk show” is a difficult one, given that the programme is live. As such, moderators and broadcasters need to be aware of the critical issues and have ready tools at hand to assist in the performance of their duties.

Keen attention should be paid to matters of accuracy, privacy, and the treatment of sensitive themes like bereavement, sex and violence or the treatment and handling of call in programmes and censorship.

An important rule is the requirement of balance and impartiality in the programme. This may be difficult but, should a moderator feel that the programme is taking a turn towards bias or impartiality, he or she should skillfully ensure that the other side is discussed by timely introduction of issues, conversation prompts, etc.

It would be remiss of me if the issue of social responsibility were not mentioned.

SR is an ethical framework or moral philosophy which suggests that an entity has an obligation to act for the benefit of society at large, recognizing the impact that it has on its environment.

Being Socially Responsible means that people and organisations must behave ethically and with sensitivity toward social, cultural, economic and environmental issues.

Why is the concept of social responsibility so important?

SR is of incredible value in this industry because it is an overarching or umbrella attitude toward broadcasting –that can be discharged both in the absence of a code and eventually in conjunction with it. When engaged it encourages the broadcaster to consider the impact that the programming has on the relevant audience and therefore inevitably begging the question “is this appropriate programming?”
Yes a broadcaster’s determination of what is appropriate will yield an answer which will be subjective and guided by the broadcasters own discretion, but actively developing and adopting that social conscience will necessarily peak a broadcaster’s awareness of its audiences' sensitivities and allow for a more careful examination of acceptability and appropriateness going forward.

SC still leaves the broadcaster with full editorial control but it creates a more acute awareness of what is fitting here in this society bearing in mind our cultural norms and laws.

SR can be viewed as a responsibility to refrain from acting (resistance stance) or it can be viewed as a responsibility TO act (proactive stance). So a broadcaster may use his discretion in the execution of his responsibility by choosing to refrain from discussing or airing content of an obviously controversial and/or salacious and prurient nature or use his position of broadcaster as one of influence… encouraging listeners to aspire to greater, to engage in healthy discussion or air programs about topics which are of real literary, artistic, social, political or scientific value. Or perhaps as a broadcast you may choose both a proactive and resistive stance, appropriately placing programming in time slots where the intended audience can benefit.

Broadcasters are therefore encouraged to

-make use of watershed hours in anticipation of the Broadcasting Code or

-safeguard their announcers, moderators and hosts by training them how to handle difficult situations while hosting radio and television programs.

-provide them with options on how to avoid or handle controversial subject matter or how to steer a conversation in its intended direction or redirect it should it go down a different path.

-make use delayed recordings to enable self-censorship or to empower their employees to take ownership and control of their programs and end a call should the need arise?
And so, in a nutshell, in discharging its duty as broadcaster in a socially responsible manner, broadcasters are encouraged to look at the matter of suitability of content from a holistic standpoint and determine what is appropriate, guided by our laws but tempered not only by what is acceptable as it relates to the morals, culture, standards and values of the society in question, but more importantly the **effects and impact** on the society in question – and in this case, that would be the wider listenership and viewership of T&T.