
**CANADIAN BROADCAST STANDARDS COUNCIL
BRITISH COLUMBIA REGIONAL COUNCIL**

CKNW-AM re Journalistic Controversy

(CBSC Decision 94/95-0175)

Decided December 18, 1996

E. Petrie (Chair), M. Becott (Vice-Chair), S. Brinton, R. Cohen (*ad hoc*),
C. Murray, G. Vizzutti

THE FACTS

In March 1995, questions were being raised by politicians, the press and interested parties on both sides of the debate concerning the relationship of then NDP Premier Mike Harcourt with NOW Communications, an advertising agency run by a prominent New Democrat. The concerns gravitated around the question of NOW's contractual arrangements with the Government of the day.

On March 7, CKNW political correspondent and Victoria Bureau Chief, Kim Emerson, raised a question regarding the actions of then Premier Harcourt to Conflict of Interest Commissioner Ted Hughes. The question was whether the Premier was in either a real or a perceived conflict of interest since he might be in a position to gain politically either at the time in question or in the future from the work done by NOW on a retainer basis for the NDP Government. The debate at the time relating to whether the matter was or was not initially an *allegation* is not material here since, by March 11, this matter was clarified in correspondence between the Commissioner and the station. The B.C. Regional Council does not consider this issue germane to its determination.

While the CBSC has no interest in *weighing* the journalistic and editorial opinion which was vividly and hotly expressed in reaction to Mr. Emerson's initiation of the conflict of interest process, the Council notes that the B.C. and even some of the national media were split in their views on the propriety of the reporter's action. Indeed, not every on-air host at CKNW itself was in agreement with the action taken by Emerson. This fact is admitted and described at some length in the broadcaster's reply which is quoted below in this decision.

The Complaint

The B.C. Federation of Labour expressed its views on the comportment of CKNW in a letter of March 14 to the CBSC. It considered that CKNW had breached both Articles 6 and 7 of the *CAB Code of Ethics*. After citing those articles, the B.C. Labour Federation President said:

I believe CKNW has violated these sections of the CAB Code of Ethics in the following ways:

§ CKNW filed an allegation March 7, 1995 with B.C.'s Conflict of Interest Commissioner, Mr. Ted Hughes, regarding a possible conflict of interest on the part of Premier Mike Harcourt.

By doing so, CKNW has crossed the line from reporting on news to creating news by directly participating in political action.

§ CKNW failed, prior to filing the allegation, to directly ask Premier Harcourt if the substance of their allegation was correct and report on his response. In fact, Premier Harcourt has rejected all aspects of the allegation.

By refusing to follow basic journalistic principles and instead filing an allegation that has lead to a government inquiry, CKNW has breached its journalistic responsibilities.

§ In addition, this breach occurred during a period in which broadcasting ratings were being measured. This raises the question of whether CKNW engaged in creating news to boost audience ratings for the benefit of commercial advertising rates.

§ By clearly furthering one side of a "controversial public issue," CKNW has made it impossible to believe it can treat the issue fairly in its news coverage and editorial comments.

§ Furthermore, CKNW has taken a position with its filing of an allegation that is identical to the position taken by the two major opposition political parties, the Liberal and Reform parties. This leaves CKNW's reporting on the issue subject to questions about its impartiality.

In fact, other reporters at CKNW will now unfairly have a pall cast upon their reporting of provincial political matters because of the controversy.

§ Mr. Emerson has admitted in media interviews, including on BCTV News of March 12, that he approached both the Liberal and Reform parties to see if they were interested in filing the allegation with the Conflict of Interest Commissioner before CKNW filed its request. Mr. Emerson said the Liberals were not interested and the Reform Party had filed its own allegation. Mr. Emerson then filed CKNW's allegation.

By approaching both major opposition parties in an effort to have CKNW's allegation filed, Mr. Emerson and CKNW again breached the Code of Ethics: Clearly, news was not only selected by [*sic*] actually made by CKNW.

§ In subsequently publicly misrepresenting its decision to file such an allegation by the journalist involved, Mr. Kim Emerson, Victoria Bureau Chief of CKNW, the station has violated the Code.

On Friday, March 10, Mr. Emerson initially denied filing an "allegation," saying on his own station's The World Tonight that "there is no allegation...it's just a question..."

CKNW News Director Gord Macdonald was reported in the Globe and Mail of March 11, 1995 as also saying: "He [Mr. Emerson] asked a question. The story isn't Kim asking the question. The story is that Ted Hughes has decided to investigate the Premier of the province."

Only when Mr. Hughes wrote to CKNW on March 11, saying: "...it was clear to me that you, in fact, were representing that you had reasonable and probably [*sic*] grounds to believe that Premier Harcourt was in contravention of the Act.....and you were so alleging" did Mr. Emerson and CKNW admit they were making an allegation.

CKNW in this case has failed 'to ensure that news shall be represented with accuracy and without bias,' as the CAB Code of Ethics requires.

Furthermore, the lack of accuracy and bias were the result of the radio station attempting to protect itself from criticism of its own actions.

§ Mr. Emerson filed the allegation. Mr. Emerson has also stated in media reports that Mr. Macdonald asked him to file the allegation on conflict of interest. Both Mr. Emerson and Mr. Macdonald have also commented to several media outlets on CKNW's position regarding the allegation and on their own actions in pursuing it.

But both Mr. Emerson and Mr. Macdonald continue to hold their respective positions as CKNW's Victoria Bureau Chief and News Director, which leaves them in a conflict of interest in their reporting on and news assignment of stories on the government.

While Mr. Emerson has said he is not reporting on the story itself, he is still reporting on other activities of the Premier and government at the same time he is engaged in a public debate over the ethics of his own actions. This again fails "to ensure that news shall be represented with accuracy and without bias."

Mr. Macdonald, as CKNW News Director, is assigning reporters to cover the same story that he is an integral part of, as well as coverage of the Premier and provincial government, leaving at least a perception of bias.

Both Mr. Emerson and Mr. Macdonald should be shifted to other responsibilities at CKNW because of the clear public perception of their bias towards the Premier and his government.

It also remains to be clarified whether management at CKNW was aware of the filing of the allegation and approved of the decision, or were directly involved in the decision.

CKNW should immediately disclose this information to the public.

§ CKNW The World Tonight host Phillip Till has publicly supported the station's filing of the allegation on CKNW and in print media by saying that: "If we had an effective opposition, maybe we wouldn't have had to do it [file the allegation]." (Vancouver Sun, March 14, 1995)

This statement again clearly indicates CKNW is crossing the line between journalism and politics, by saying it is up to journalists to do the work of political parties if politicians don't do what journalists think they should.

In conclusion, I believe that CKNW and its employees have made a series of decisions which have resulted in a perception of bias against the Premier of the province and his government that have caused the public to question the station's journalistic integrity.

A swift answer to the questions raised here about CKNW's conduct and a prompt decision of the CBSC is needed to ensure the public that journalistic integrity is being defended by the broadcasting industry and that violations of the Code of Ethics will not be tolerated.

The Broadcaster's Reply

Following its customary procedures, the CBSC forwarded the complainant's letter to the station in turn for its reply. The Program Director responded to the B.C. Federation of Labour on April 12. The Program Director stated:

In essence, your complaint boils down to this:

1. You argue CKNW should not have initiated the request for Conflict of Interest Commissioner Ted Hughes to consider whether Premier Harcourt is in any real or apparent conflict in his dealings with NOW Communications, given his past connection with its principals. You say this reveals CKNW's bias against the Premier and claims by doing so, CKNW was not treating both sides of an issue in a balanced way.
2. You assert that CKNW compromised its own journalistic standards by crossing the line into "making" news, and placed itself in a conflict of its own in any reporting on this issue or Premier Harcourt generally.

Bias and Balance

As to bias and balance, the relevant CBSC guidelines are:

(Under Clause 6) "It shall be the responsibility of member stations to ensure that news shall be represented with accuracy and without bias. "

(Under Clause 6) "News shall not be selected for the purpose of furthering or hindering either side of any controversial public issue, nor shall it be designed by the beliefs or opinions or desires of the station management, the editor or others engaged in its preparation or delivery."

(Under Clause 7) Recognizing in a democracy the necessity of presenting an sides of a public issue, it shall be the responsibility of member stations to treat fairly, all subjects of a controversial nature".

Claims of bias against media are as old as media itself. Good journalists consider it their role to ask pointed questions about those in power, whoever they happen to be from year to year, and whatever their political stripes. Doing so might inspire those in power or their friends to cry "bias" when they happen to be on the receiving end of a pointed question, but the cry does not make it so.

The guidelines quoted above all relate to the presentation of issues. The complaint does not cite a single instance of CKNW failing to present the NOW Communications issue in a fair and balanced way. The reality is that CKNW's treatment of that issue has been substantially the same as the treatment it has been given by all other major media, and that treatment has been full and fair. In fact, CKNW has been so non-accusatory on the subject that the Conflict of Interest Commissioner believed the reporter had not met the legislative requirement to state that there were reasonable and probable grounds sufficient to continue the investigation. This, Hughes explained, was necessary given the wording of the legislation governing members' conflicts in B. C.

Was it biased or unbalanced for CKNW's legislative reporter to initiate the request for an investigation? No. Doing so was merely taking information which had been put into the public domain by others and asking for a question to be answered by Mr. Hughes. The reporter did not urge a result one way or the other, and has throughout made it clear that he simply believes it is important for the public to know the Commissioner's opinion, regardless of which way that opinion comes down.

Highest Possible Standards

As to journalistic standards, the relevant guidelines are:

(Under "Background") "It is recognized that the most valuable asset of a broadcaster is public respect with which must be earned and can be maintained only by adherence to the highest possible standards of public service and integrity."

(Under Clause 6) "It is recognized that the full, fair and proper presentation of news, opinion, comment and editorial is the prime and fundamental responsibility of the broadcast publisher."

The first quoted guideline recognizes that it is a broadcaster's most valuable asset - its reputation - that suffers if it fails to adhere to the highest possible standards of public service and integrity. If a broadcaster steps into a grey area, it accepts the criticism or applause which results.

In this case, several commentators have been critical of CKNW over the decision of its legislative reporter to initiate the request, and several commentators have defended that journalistic decision. Indeed, even within CKNW, different journalists have spoken out publicly on CKNW to argue opposing sides of the issue. I suspect it has been a healthy debate for journalists generally.

One important way to approach the debate is to look beyond the form of what occurred and examine its substance. Mr. Emerson requested an investigation, which others (specifically the leader of B. C. Reform, Mr. Weisgerber) have also requested and would have set in motion in any event. Mr. Hughes has, from the beginning, said he considers an investigation is warranted. Neither Mr. Emerson or CKNW have suggested that Mr. Hughes should decide the issue one way or the other. Looked at in that light, I trust you will agree that, even if the reporter's actions fell into the "grey

area" where reasonable journalists can genuinely disagree, it was hardly a departure from required standards.

Another important approach is to step back and consider a broader principle: freedom of the press. That freedom includes the right to do what some might find unpopular. High journalistic standards should not be treated as a set of "don'ts" defined by one arbiter's values. It should embrace the larger importance of having the freedom to ask hard questions and make courageous decisions. In the words of Justice William O. Douglas:

"(The) function of free speech under our system of government is to invite dispute. It may indeed serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger...that is why freedom of speech, though not absolute, is nevertheless protected..."

The complainant Federation was not satisfied by the response and returned a Ruling Request to the CBSC requesting that the matter be submitted to the appropriate Regional Council for consideration.

THE DECISION

As requested by the complainant, the Regional Council has considered the complaint under Articles 6 and 7 of the *CAB Code of Ethics*. The texts of those articles read as follows:

CAB Code of Ethics, Article 6 (News)

It shall be the responsibility of member stations to ensure that news shall be represented with accuracy and without bias. The member station shall satisfy itself that the arrangements made for obtaining news ensure this result. It shall also ensure that news broadcasts are not editorial. News shall not be selected for the purpose of furthering or hindering either side of any controversial public issue, nor shall it be designed by the beliefs or opinions or desires of the station management, the editor or others engaged in its preparation or delivery. The fundamental purpose of news dissemination in a democracy is to enable people to know what is happening, and to understand events so that they may form their own conclusions.

Therefore, nothing in the foregoing shall be understood as preventing news broadcasters from analyzing and elucidating news so long as such analysis or comment is clearly labelled as such and kept distinct from regular news presentations. Member stations will, insofar as practical, endeavour to provide editorial opinion which shall be clearly labelled as such and kept entirely distinct from regular broadcasts of news or analysis and opinion.

It is recognized that the full, fair and proper presentation of news, opinion, comment and editorial is the prime and fundamental responsibility of the broadcast publisher.

Article 7, *CAB Code of Ethics* (Controversial Public Issues)

Recognizing in a democracy the necessity of presenting all sides of a public issue, it shall be the responsibility of member stations to treat fairly, all subjects of a controversial nature. Time shall be allotted with due regard to all the other elements of balanced program schedules, and to the degree of public interest in the questions presented. Recognizing that healthy controversy is essential to the maintenance of democratic institutions, the broadcast publisher will endeavour to encourage presentation of news and opinion on any controversy which contains an element of the public interest.

The Regional Council also considers that Article 5 of the *RTNDA Code of (Journalistic) Ethics* is of relevance to the complaint. It reads as follows:

Broadcast journalists will govern themselves on and off the job in such a way as to avoid conflict of interest, real or apparent.

CBSC decisions generally begin with a discussion of the broadcast which is brought into question by the listener's or viewer's complaint. For the first time, however, the Council is being asked to rule regarding the *off-air* activities of one of its members. The Regional Council reviewed the correspondence but did not, as noted, listen to any broadcast tapes. It has arrived at the following decision.

Application of Articles 6 and 7 of the *CAB Code of Ethics*

The Regional Council does not consider that CKNW has breached the provisions of either Article 6 or Article 7 of the *CAB Code of Ethics*. Article 7 establishes, first, the obligation of the broadcaster to deal with issues in the public interest despite the fact that they may be controversial. It states:

Recognizing that healthy controversy is essential to the maintenance of democratic institutions, the broadcast publisher will endeavour to encourage presentation of news and opinion on *any controversy* which contains an element of the public interest. [Emphasis added.]

It then enunciates the broadcaster's obligation to deal fairly with all sides of a controversial public issue. It does this in the following terms:

Recognizing in a democracy the necessity of presenting all sides of a public issue, it shall be the responsibility of member stations to treat *fairly*, all subjects of a controversial nature. [Emphasis added.]

With respect to the question of dealing with a controversial issue, in this case the Premier's relationship with NOW Communications, the broadcaster fulfilled its obligation. Nothing in the complaint suggests that the broadcaster *covered* a subject which it ought not to have dealt with. The only question relating to Article 7 is whether the station treated *fairly* and in a balanced way the matters which it reported. After reviewing and re-reviewing the text of the complaint, the Regional

Council concludes that there is not a *single* reference to a newscast or program in which it is alleged that CKNW did *not* report on these matters fairly. Article 7 of the *CAB Code of Ethics* does not deal with *perceptions*; it deals with *realities*. It requires the broadcasters to face controversial issues in the public interest and to report on them fairly. The complainant's concerns relate solely to a possible "perception of bias" and Article 7 does not respond to such an allegation.

The requirements of Article 6 are not structurally dissimilar. As provided in that Article,

The fundamental purpose of news dissemination in a democracy is to enable people to know what is happening, and to understand events so that they may form their own conclusions.

In order to achieve this result, the Code establishes several guiding principles. Of these, the most fundamental is that the broadcaster shall represent the news "with accuracy and without bias." The Article further provides that the broadcaster "shall also ensure that news broadcasts are not editorial." Finally, the Article mandates that "News shall not be selected for the purpose of furthering or hindering either side of any controversial public issue."

Once again, the Regional Council concludes that there has not been a single reference to a broadcast which is alleged to be inaccurate or biased. Nor is there a burden on CKNW, as asserted in the Federation's letter, to establish that its news has been represented with accuracy and without bias. It is up to a complainant to at least assert that, on a particular program, on a particular day, news was thus represented. The Canadian Broadcast Standards Council then assesses the presence or absence of bias or accuracy in the reporting. Without any such allegation, there are no tapes to listen to and no such assessment can be made by fair individuals.

Nor, in the context of the above analysis of the requirements of Article 6, has there been any suggestion that CKNW had been *editorial* in its presentation of the *news* on any occasion. After all, any broadcast journalist is entitled to take editorial positions during its broadcast day; it is only required to keep its subjective commentaries *separate* from its news reporting. Whether or not it ought to have filed the allegation against the Premier is a matter dealt with further below but it is disingenuous to suggest that because CKNW has, by any means, adopted a position "that is identical to the position taken by the two major opposition political parties, the Liberal and Reform parties ... leaves CKNW's reporting on the issue subject to questions about its impartiality."

Ultimately, then, the pertinence of Article 6 must depend on the question of whether the station *selected* news "for the purpose of furthering or hindering either side of any controversial public issue." The complainant also notes that the matter arose "during a period in which broadcasting ratings were being measured. This raises the question of whether CKNW engaged in creating news to boost audience

ratings.” While the CBSC’s own verification corroborates the fact that the issue arose during a ratings period, it does not conclude this is at all material to the application of this Article. The application of the Article requires the selection of news by the broadcaster *to benefit or harm one side of a controversial issue*. Even if CKNW had chosen a provocative news story for ratings purposes, that decision would not have put it in breach of Article 7 *unless* that decision had been to further *one side* of an issue. Choosing a story because listeners might be *interested* in it is presumably the kind of editorial choice which broadcast and print journalists make from time to time, if not more frequently than that.

In this case, CKNW did not *select* the news; one of its reporters, by filing an allegation, became a news story which *every* journalistic entity was entitled to cover. Many, perhaps most, print and electronic daily British Columbia news publishers did. The life of the *exclusivity* of the story could not have endured more than 60 minutes in favour of CKNW in any case and, once again, there is no allegation by the B.C. Federation of Labour that CKNW *did* in fact favour one side or the other of the issue *in its broadcasts*.

If fault there is on the part of CKNW, the Regional Council concludes that it was not in the breach of either Article 6 or Article 7 of the *CAB Code of Ethics*.

Article 5 of the RTNDA Code of Ethics

It is only in Article 5 of the *RTNDA Code of Ethics* that the Regional Council finds assistance at the level of *perception* rather than reality. In that Article, the RTNDA requires that “Broadcast journalists will govern themselves *on and off the job* in such a way as to avoid *conflict of interest*, real or *apparent*.” [Emphasis added.] The requirement established by this Code is that broadcast journalists must avoid even the *appearance* of conflict of interest. It is here that the B.C. Regional Council considers that CKNW is in breach of its obligations.

The role of the news journalist is to report the news and, at its noblest level, to so investigate matters of public interest as to uncover newsworthy matters which might otherwise be undetected and unreported. In the words of the Radio and Television News Directors of Canada in the preamble and Article 1 of their *Code of Ethics*,

[T]he members of the RTNDA of Canada believe the broadcasting of factual, accurately-reported and timely news and public affairs is vital.

The main purpose of broadcast journalism is to inform the public in an accurate, comprehensive and balanced manner about events of importance.

In the view of the Council, it would have been entirely within the scope of CKNW’s journalistic responsibility to ferret out any and all accurate information relating to a possible conflict of interest on the part of the Premier or any other individual whose actions fell within the sphere of the public interest. It would then have been within

the responsibility of the station to *publish* this information so that the public would be informed “in an accurate, comprehensive and balanced manner about [an] event of importance.” It would have fallen within their entitlement, in the editorial areas of their broadcast day, to express an opinion about the information they had uncovered. In the Council’s opinion, it was, however, a breach of the *RTNDA Code of Ethics* to bring the matter to the Conflict of Interest Commissioner to ask *him* to carry out that role, for it then put CKNW in an *apparent* conflict of interest regarding the story in question.

The Regional Council noted earlier in this decision that there was no allegation of any bias or imbalance in the *actual* reporting of stories connected with the Commissioner’s investigation of the matter. Such an allegation is *unnecessary* in the event of a conflict of interest since it is of the *essence* of a *conflict* that there *may* be a problem in the impartiality of the broadcast journalist as the result of competing interests. The public is entitled to expect from its broadcast journalists such scrupulous behaviour as will withstand responsible scrutiny. The conflict requires that *news journalists* avoid taking a stand on public controversies. By bringing a complaint to the Conflict of Interest Commissioner, Mr. Emerson and his employer, as broadcast journalists, involved themselves in a public position on the controversy; indeed they may be said to have created the controversy. The broadcast journalist’s role is to investigate a matter and *report* it to the public, not to take a public stand on such an issue by bringing the matter to the Conflict of Interest Commissioner.

The Council does not agree with the broadcaster’s claim in its letter that “[t]he reporter did not urge a result one way or the other, and has throughout made it clear that he simply believes it is important for the public to know the Commissioner’s opinion, regardless of which way that opinion comes down.” Had the reporter not considered that there was a *likelihood* of a conflict, he would have been reckless in bringing the suggestion. He did not do so on a lark. He did not do so vis-à-vis anyone other than the Premier. The Council is prepared to give Mr. Emerson the benefit of the doubt by assuming that he considered that he had grounds for what he did. The Council equally believes that what he did constitutes a clear breach of the RTNDA Code’s conflict of interest provision.

The Council also considers it necessary to deal with the broadcaster’s suggestion that what its reporter did constitutes the exercise of freedom of speech as described by American Supreme Court Justice William O. Douglas in the excerpt cited in their letter. What Justice Douglas had in mind related to the *exercise* of speech. In this instance, it is precisely the *lack* of exercise of that right which concerns the Council. In Douglas’ terms, the broadcaster ought to have been seeking the truth *itself* and reporting the facts as it found them. In this instance, by attempting to transfer its responsibility to the Commissioner, CKNW abdicated that vital societal role.

The Role of the Premier

It should be made perfectly clear that the foregoing determination by the Council would have been the same whether or not the Premier had ultimately been found in breach of the Province's conflict of interest guidelines. The Council does believe that it is only fair, however, to point out that the Premier was found not to have violated any Provincial rules in this regard.

Broadcaster Responsiveness

In addition to its primary responsibility of measuring the complaint against the Code in question, the CBSC Regional Council always evaluates the *responsiveness* of the broadcaster to the complainant. This requirement to be responsive to audience complaints is a responsibility of membership in the CBSC and was first established in the CBSC's decision in *CFOX-FM re Larry and Willie Show* (CBSC Decision 92/93-0141, October 26, 1993). In this case, the Regional Council considers that the Program Director of CKNW-AM sent a thorough reply to the complainant. Nothing more is required.

Content of Broadcaster Announcement of Decision

The broadcaster is required, within thirty days of the release of this decision, to announce it, in the following terms, during peak listening hours and to confirm to the Secretariat of the CBSC and to the complainant that it has done so:

The Canadian Broadcast Standards Council has found that CKNW has breached the conflict of interest provisions of the Radio and Television News Directors Association *Code of Ethics*. By permitting its Victoria Bureau Chief to file an allegation with the B.C. Conflict of Interest Commissioner regarding then Premier Harcourt and NOW Communications in March 1995, the station put itself into an apparent conflict of interest regarding an event of public importance.

This decision is a public document upon its release by the Canadian Broadcast Standards Council.