
**CANADIAN BROADCAST STANDARDS COUNCIL
QUEBEC REGIONAL COUNCIL**

CFTM-TV (TVA) re *J.E.* (Entreprises Pendragon)

(CBSC Decision 97/98-0390)

Decided August 14, 1998

Y. Chouinard (Vice-Chair), R. Cohen (*ad hoc*), M. Gervais,
S. Gouin and P. Tancred

THE FACTS

On September 19, 1997, CFTM-TV (Montreal) ("TVA") reported on a company's unsuccessful efforts to produce a visitors' guide for the Eastern Townships on *J.E.*, TVA's information and public affairs program. The report (a full transcript of which is provided in its original French in Appendix A) included interviews with the company's president and small business persons who had lost the money they had paid for advertising in the guide. The president was questioned based on the following erroneous calculation by the reporter:

Michel Johnson: Faisons un petit calcul très conservateur. Si on se fie à la liste de clients présenté par Pendragon, 180 compagnies auraient donné un minimum de 200\$ chacune, pour un grand total de 360 000\$. La seule dépense connue pour Pendragon est cette page web, qui a coûté quelques centaines de dollars. Page web qui, d'ailleurs, reste inconnue pour la plupart des Internautes.

[English translation, added after initial publication]

Michel Johnson: Let's do a small, conservative calculation. If we go by the list of clients prepared by Pendragon, 180 companies would have given a minimum of \$200 each, for a grand total of \$360,000. The only expenditure by Pendragon is this web page, which cost a few hundred dollars. A web page that remains virtually unknown to most internet users.

The interview with the President of Entreprises Pendragon ("Pendragon") was as follows:

Michel Johnson: Nous sommes allés demander des explications à [nom du président]. La première rencontre ne nous a pas beaucoup éclairés. Le même jour, [le président] a accepté de nous rencontrer à nouveau.

Le président: Je ne suis pas un fraudeur, ni un croqueur. OK ? Moi, je suis une personne très honnête.

Michel Johnson: Le président de Pendragon explique sa déconfiture par une subvention du gouvernement provincial qui n'est jamais arrivée.

Le président: On nous a dit qu'on a pas, on était pas une compagnie, qu'on était une compagnie à risque. OK ? On a refusé à ce moment là ; j'ai la copie de la lettre ici. Qu'est-ce que tu veux faire ? Sauf que là à ce moment là, il est trop tard. Fait-que, nous, on était sûrs de l'avoir, mais on ne l'a pas eue. Malheureusement, on n'a pas eu le temps de se retourner donc on s'est retrouvés le bec à l'eau.

Michel Johnson: [Le président] jure ne pas avoir touché 360 000 \$ mais bien 76 000 \$ en revenus publicitaires. En ajoutant l'argent du plan Paillé, c'est près de 130 000 \$ qui ont été dépensés en matériel et en salaire. [Le président], quant à lui, a empoché 30 000 \$ pour 9 mois de travail. Il a fait une faillite personnelle et a remis le matériel à la Caisse populaire. Il dit être une victime, au même titre que les commerçants.

Le président: Les gens, là, je pourrais en traîner en cour mais j'ai pas d'argent pour le faire. Je suis obligé de me débattre comme je le peux et je n'ai pas une cent. Mais sauf que là, je trouve que si *J.E.* faisait correctement les choses, peut-être que ça m'aiderait à me sortir du trou.

Michel Johnson: Ce serait quoi faire correctement les choses?

Le président: Faire l'émission comme elle devrait être et pas faire en sorte que je passe pour un ostie de fraudeur.

[English translation, added after initial publication]

Michel Johnson: We went asking for explanations from [name of president]. The first meeting did not enlighten us much. The same day, [the president] agreed to meet with us again.

President: I'm not a fraud or a crook. Okay? I'm a very honest person.

Michel Johnson: The president of Pendragon explained his insolvency was due to a government grant that never materialized.

President: We were told we were not, we were not a company, that we were a risky company. Okay? We were refused at that time; I have a copy of the letter here. What can you do? Except by that time, it was too late. We were so sure we would get it, mais we didn't get it. Unfortunately, we didn't have time to reverse course so we found ourselves left high and dry.

Michel Johnson: [The president] swears he did not receive \$360,000, but rather \$76,000 in advertising revenue. If we add the money from the Paillé plan, that's almost \$130,000 that was spent in supplies and salaries. According to [the president], he pocketed \$30,000 for 9 months of work. He declared personal bankruptcy and gave the supplies back to the Caisse populaire. He says he's a victim just like the businesses.

President: I could take the people to court, but I don't have the money. I have to struggle as well as I can and I don't have a cent. But, except if *J.E.* does things right, it might help me get out of this hole.

Michel Johnson: What do you mean do things right?

President: Do the show as it should be and not make me look like a damn fraud.

The Letter of Complaint

On October 1, 1997, the President of Pendagron complained to the CRTC about *J.E.*'s report. His letter read in part as follows:

[Translation] This misleading report which was broadcast on September 19 at 7 p.m. gave the impression that I, [complainant's name], who was at the time President of Entreprises Pendragon Inc., defrauded my clients of the sum of \$360 000. **This is completely false!**

On August 12 1997 at 8 p.m., **Mr. Michel Johnson**, a *J.E.* reporter, came by my house **with my consent** in order to do an interview and tape part of the segment of this infamous report in which I would prove that there had not been any fraud involved. This reporter was given full access to my financial records, my deposits and receipts, my bank records and the balance sheet, in addition to proof of the business's closing and my official bankruptcy. I invited this individual to come look at the bank records at the Caisse Populaire in order to show him that he was mistaken in his belief that I was a rogue. **All the documents prove my version of the facts** but, despite this proof, *J.E.* went ahead with its misleading report which left the impression that I had misappropriated this sum of money. Moreover, I had told this reporter that it was not possible to defraud consumers when you are on a "plan Paillé" (a start-up program for new businesses) and when the Caisse Populaire, the main lender, tracks all expenses and receipts. Moreover, a scoundrel would never give the address of his own private residence. All business records gave my personal address and the business's private residence, which is one and the same and which continues to be! **TVA also put an ad in the *Journal de Montréal*** on September 19, 1997 for this infamous show.

This deceitful show has tarnished my reputation and that of my spouse and we are going to demand compensation. **How can people**, in complete freedom and without just cause, destroy publicly and wrongly the life of a person in front of over 250 000 viewers? I think there is a limit to freedom of the press. And it is up to the CRTC to limit this freedom and this invasion of privacy. In a very short time, I have lost my job, my income, my business and I was forced into personal bankruptcy. And to top it all off, they have voluntarily and without just cause tarnished my professional and personal reputation on t.v.; that is just too much. Someone will have to do his homework!

On the morning of August 12, 1997, at 8 a.m., I was forced to have the police take away the *J.E.* crew from my private property, situated in a purely residential area. These individuals were obstructing the exit of my spouse from the premises and were harassing her with questions. I must also tell you that the September 19 broadcast was not realistic because the reporters were attempting to destroy my company's website by saying that it did not exist and that it had only one page. However, how do you explain that, on television, we clearly saw the site (which exists) and which contains over 200 professional Web pages? This site was never closed! Here is its address: <http://www.Generation.Net/pendrag~>. Concerning the payment in advance of all publicity, let me tell you that that is the way it is done in this business, a first payment is always required! And this is in no way fraudulent! Our clients were offered the opportunity to pay in three or even four instalments.

I still have all the documents required to prove my good faith and which prove that the company voluntarily closed its doors by returning all its assets to the principal creditor because it could no longer pay its debts. A document which, by the way, was given to the reporter on the morning of August 12 in front of police officers. **In conclusion, I would like to underscore that there exists in Canada a Bankruptcy Protection Law. I am under official bankruptcy since July 4, 1997. The conversation with the JE reporter on August 12 at 8 p.m. was tape recorded with his permission. The conversation lasted 20 minutes.**

The Broadcaster's Response

TVA's Legal Counsel replied to the complainant on November 24, 1997 in the following terms:

[Translation] First, I don't think it is right to speak of a complaint against *J.E.* given that your comments relate to a single report on the steps undertaken by Les Entreprises Pendragon to create a visitors' guide.

In any event, I wish to emphasize that this report was part of *J.E.*, an information and public affairs program which deals with a variety of topics or public interest with a common theme of general public protection.

We deny all allegations that the program was false and misleading based on the fact that testimonials were obtained from credible people, all according to generally recognized journalistic guidelines. Moreover, it is false to purport that the report left the impression that Pendragon was guilty of fraud or money misappropriation since it merely mentioned that a specified amount must have been collected, and that this money was most likely used to pay salaries and various unidentified expenses.

More specifically to the point that the business benefited from the "plan Paillé", we would like to draw your attention to the fact that it is clearly mentioned in the report and you also had the opportunity to explain that the whole thing flopped when the grant was denied to your business because it was too high risk.

With respect to your allegations of invasion of privacy, I would like to underscore that the address of your public company was the same as your personal home address and therefore we cannot talk of invasion of privacy when it is a place of public business.

With respect to the possibility that there may have been damage done to your reputation and to the reputation of your spouse, and without acknowledging that this may have occurred, I note that, in my view, there was no doubt that this was a topic of public interest and therefore there could not have been wrongful injury to reputation.

Without limiting the generality of the preceding, permit me to point out that asking for full payment in advance for publication of advertisements in the visitors' guide runs contrary to generally accepted practices as well as the *Consumer Protection Act*.

As to the facts set out on page 2 of your letter, I would like to underscore that it is wrong to purport that your spouse's exit was in any way obstructed by TVA or *J.E.* or that she was harassed with questions. As to the existence of the website, we never said it did not exist but we noted that its existence was fleeting.

The complainant was unsatisfied with this response and requested, on December 15, 1997, that the CBSC refer the matter to the appropriate Regional Council for adjudication. His request for adjudication was accompanied by a letter dated December 7, 1997 (included in its original French in Appendix B) which reiterated his contention of "innocence" and indicated that he sought compensation for the injury he has suffered as a result of *J.E.*'s report.

THE DECISION

The CBSC's Quebec Regional Council considered the complaint under the *Codes of Ethics* of the Canadian Association of Broadcasters (CAB) and the Radio Television News Directors Association (RTNDA). The texts of the relevant provisions read as follows:

CAB Code of Ethics, Clause 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 labeled as such and kept distinct from regular news presentations. Member stations will, insofar as practical, endeavour to provide editorial opinion which shall be clearly labeled 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.

RTNDA Code of Ethics, Article 1

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

RTNDA Code of Ethics, Article 2

News and public affairs broadcasts will put events into perspective by presenting relevant background information. Factors such as race, creed, nationality or religion will be reported only when relevant. Comment and editorial opinion will be identified as such. Errors will be quickly acknowledged and publicly corrected.

RTNDA Code of Ethics, Article 3

Broadcast journalists will not sensationalize news items and will resist pressures, whether from inside or outside the broadcasting industry, to do so. They will in no way distort the

news. Broadcast journalists will not edit taped interviews to distort the meaning, intent, or actual words of the interviewee.

The Regional Council members viewed a tape of the report in question and reviewed all of the correspondence. The Council considers that *J.E.*'s report violates the provisions of the *CAB Code of Ethics* and *RTNDA Code of (Journalistic) Ethics* which require accuracy in reporting.

The Content of the Report

As the Council has stated on numerous occasions, it takes no issue with the broadcaster's choice of story to tell. Freedom of expression and journalistic, creative and programming independence are guaranteed to broadcasters under subsection 2(3) of the *Broadcasting Act*. As stated in *CKVR-TV re News Item (Car Troubles)* (CBSC Decision 97/98-0235, July 28, 1998):

[T]he Council notes that, under the *Broadcasting Act*, broadcasters enjoy "journalistic, creative and programming independence". The Council is of the view that this independence is also a cornerstone of the interpretation which should be given to the industry Codes which members of the CBSC have agreed to abide by. Accordingly, the Council does not question the broadcaster's determination of the newsworthiness of this consumer report.

Nor does the Council take issue with the content of the report in general terms. It considers that the report was *structured* in such a way as to be fair and balanced (although the end-result of the report may have been less than fair due to a faulty premise which is discussed below). The Council notes that a delicate balance must be struck in dealing with "involved" complainants. As stated in *CFRN re Eyewitness News* (CBSC Decision 96/97-0149, December 16, 1997),

the complaint of an aggrieved party does require *particular* attention to the words used in the letter of complaint on the assumption that the party may be expected to know more about the facts surrounding his or her complaint. The Council is, however, equally aware, that an aggrieved party may come to an issue with a "thinner skin" regarding any allegations made. There is, in that sense, a very particular balance to be brought to the viewing of such issues.

In another case similar to the one at hand, *CFCN-TV re "Consumer Watch" (Travel Agency)* (CBSC Decision 95/96-0240, December 16, 1997), the president of a discount travel agency complained that reports about his business did not give "the other side of the issues." In finding no breach of the Code, the Prairie Regional Council made the following comments on the fairness and balance requirement of the RTNDA Code:

It appears to the Council that the complainant, in alleging that the story should have included "the other side of the issues", considers that the fairness and balance requirement for news reports means that negative comments about a company must be balanced by positive comments. The Council disagrees. Were the complainant's view correct, there could never be a negative or critical news report. At the end of the day, it is the *reporting of the*

newsworthy event which must be evaluated for its objectivity and fairness and not the overall effect of the news report on the person or company who is its subject.

In this case, the Council considers that the complainant's argument that *J.E.* "should have done the right thing" to be unrealistic. There was a story to be told and the story the broadcaster chose to tell did not have to be positive towards the business targeted. In the end, the complainant may have wished that the report had not been aired at all, but the Council certainly does not consider that the mere fact that the report was negative *vis-à-vis* Pendragon constitutes a breach of the Codes.

A Mathematical Error of Magnitude

While the Council finds no fault with the report's *structure* or the broadcaster's *choice of story to tell*, it does consider that the gross miscalculation on the reporter's part created inherent unfairness in the report. The reporter attempted to calculate "a conservative estimate" of the amount of money Pendragon could have collected from local small businesses in its failed attempt to publish a visitor's guide. He stated (and the numbers were put up on the screen) that, if 180 clients each paid the minimum of \$200, Pendragon should have collected \$360,000. While the Council understands that the addition of the extra zero (making the relatively small sum of \$36,000 the rather huge sum of \$360,000) may have been inadvertent, it was a *reckless* error on a centrally material issue in the report. Moreover, the error was *compounded* by the reporter who relied on the exaggerated number as the basis for his questioning of Pendragon's president. The fact that the president was given the opportunity to deny that he had ever collected the alleged sum of money does not, in the Council's view, begin to counterbalance the damage done by the use of an utterly unwarranted and exaggerated figure by the reporter, who is, after all, in control of the playing field.

The Council notes that this gross mathematical error is not the only source of confusion in the report. When confronted by the president's contention that he only collected \$76,000 in advertising revenues *in total*, the reporter inexplicably added to this amount the money allegedly never received as part of a government grant, the "plan Paillé", bringing the total to \$130,000. This calculation was provided just moments after the interview and despite the fact that the president went to great lengths to explain that it was the denial of grant money which caused the business to fail in the first place.

The Council finds that the inexplicable sloppiness surrounding the information relating to potential revenues collected by Pendragon created an unfair report. In a similar case, *CITV-TV re "You Paid For It!" (Immigration)* (CBSC Decision 95/96-0088, December 16, 1997), the Prairie Regional Council found that the broadcaster had failed to make the important distinction between immigrants and refugees in a report which required such distinction to be made. It found that this inaccuracy constituted a breach of the RTNDA *Code of Ethics*:

[T]he Council considers that CITV's failure goes further than merely lacking "tightness". The report on the issue of government spending in the area of immigration confused money spent on *immigrants*, i.e. foreigners who are accepted into Canada in the hopes that they will spur economic growth for the country, with money spent on *refugees*, i.e. people who are accepted into Canada out of humanitarian compassion. The confusion of money spent with respect to both groups in the context of the statement that a treasury critic "doesn't believe that many of the bills paid by the Department of Citizenship and Immigration are paying off" was grossly misleading and had the overall effect of portraying *all* newcomers to Canada are "free-loaders".

It appears to the Quebec Regional Council in this case that, as in the CITV-TV case referred to above, the reporter attempted to make his story more provocative than could ever have been supported by the facts. The Council considers that the error was so gross that the *correct* amounts at issue, if *accurately* calculated (at one-tenth of the figure actually used), may not even have given rise to the story *at all*.

The Council finds that by presenting a report which contained a serious inaccuracy resulting from a gross mathematical error and a sloppy presentation of facts surrounding the issue of potential revenues collected by Pendragon, TVA failed in its obligation, pursuant to Clause 6 of the CAB *Code of Ethics* and Article 1 of the RTNDA *Code of Ethics*, to present news with accuracy and fairness. Moreover, the Council is of the view that the report had the overall effect of sensationalizing the story of a failed entrepreneurial effort, contrary to Article 3 of the RTNDA Code.

Broadcaster Responsiveness

In addition to assessing the relevance of the Codes to the complaint, the CBSC always assesses the *responsiveness* of the broadcaster to the substance of the complaint. In this case, although the Council's view differs from that of TVA's Legal Counsel, it considers that the broadcaster addressed fully and fairly all the issues raised by the complainant. Consequently, the broadcaster has not breached the Council's standard of responsiveness. Nothing more is required.

BROADCASTER ANNOUNCEMENT OF THE DECISION

The station is required to announce this decision forthwith, in the following terms, during prime time and, within the next thirty days, to provide confirmation of the airing of the statement to the CBSC and to the complainant who filed a Ruling Request.

The Canadian Broadcast Standards Council has found that TVA breached provisions of the Canadian Association of Broadcasters' and Radio and Television News Directors Association's *Codes of Ethics* in its September 19, 1997 broadcast of *J.E.* The Council finds that, by presenting a report which contained a serious inaccuracy resulting from a gross mathematical error

and a sloppy presentation of facts surrounding the issue of potential revenues collected by a now bankrupt small business, the broadcaster failed in its obligation to present news with accuracy and fairness. Moreover, the Council finds that the inaccuracies had the overall effect of sensationalizing the story of a failed entrepreneurial effort.

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

**Annexe A de la Décision du CCNR 97/98-0390
CFTM-TV (TVA) concernant J.E. (reportage sur les Entreprises Pendragon)**

Transcription partielle du reportage sur les Entreprises Pendragon diffusé dans le cadre de l'émission *J.E.* le 19 septembre 1997 :

Gaetan Girouard (animateur) : Ce devait être un beau petit guide touristique, avec un beau site Internet. Voilà pourquoi plusieurs commerçants d'une même région ont vite embarqué dans le projet d'un vendeur qui leur a rendu visite ce printemps. Finalement, il n'y a jamais eu de guide. Jamais de site Internet mais tous le monde a payé. L'histoire d'un vendeur de publicité qui, comme un touriste a fait le tour de la place et est reparti avec des souvenirs, non pas photos mais des chèques de ses clients.

...

Michel Johnson (journaliste) : Dans l'industrie touristique, que ce soit une boutique, une auberge ou un magasin, la publicité est d'une importance primordiale. Et celle que l'on proposait dans le guide Pendragon était très attrayante.

...

Michel Johnson : Ce qui était aussi intéressant dans l'offre fait par les gens de Pendragon, c'est que vous en aviez vraiment beaucoup pour votre argent.

Cliente de Pendragon : On était sur l'Internet deux ans, le guide était bon pour ... trois ans, et on avait un petit feuillet aussi.

Michel Johnson : Le seul petit hic, vous le devinez, c'est que les gens devaient payer d'avance.

...

Ces commerçants ont payé entre 200 et 700 dollars. Ce ne sont pas des sommes énormes, mais dans une PME, l'argent que l'on consacre à la publicité est limitée.

...

Si ces gens d'affaires se retrouvent les poches vides, à un certain moment, le compte bancaire de Pendragon, lui, a dû être bien garni.

...

Faisons un petit calcul très conservateur. Si on se fie à la liste de clients présenté par Pendragon, 180 compagnies auraient donné un minimum de 200 \$ chacune, pour un grand total de 360 000 \$. La seule dépense connue pour Pendragon est cette page web, qui a coûté quelques centaines de dollars. Page web qui, d'ailleurs, reste inconnue pour la plupart des internautes.

...

Nous sommes allés demandé des explications à [nom du président de Pendragon]. La première rencontre ne nous a pas beaucoup éclairé. Le même jour, [le président] a accepté de nous rencontrer à nouveau.

Le président de Pendragon : Je ne suis pas un fraudeur, ni un crosseur. OK? Moi, je suis une personne très honnête.

Michel Johnson : Le président de Pendragon explique sa déconfiture par une subvention du gouvernement provincial qui n'est jamais arrivée.

Le président : On nous a dit qu'on a pas, on était pas une compagnie, qu'on était une compagnie à risque. OK ? On a refuse à ce moment là ; j'ai la copie de la lettre ici. Qu'est-ce que tu veux faire ? Sauf que là, à ce moment là, il est trop tard. Fait-que, nous, on était sûrs de l'avoir, mais on ne l'a pas eu. Malheureusement, on n'a pas eu le temps de se retourner donc on s'est retrouvés le bec à l'eau.

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Le président : Les gens, là, je pourrais en traîner en cour mais j'ai pas d'argent pour le faire. Je suis obligé de me débattre comme je le peux et je n'ai pas une cent. Mais sauf que là, je trouve que si J.E. faisait correctement les choses, peut-être que ça m'aiderait à me sortir du trou.

Michel Johnson : Ce serait quoi faire correctement les choses?

Le président : Faire l'émission comme elle devrait être et pas faire en sorte que je passe pour un ostie de fraudeur.

Fin du reportage

**Annexe B de la Décision du CCNR 97/98-0390
CFTM-TV (TVA) concernant J.E. (reportage sur les Entreprises Pendragon)**

Lettre du plaignant accompagnant sa demande de décision :

Par cette présente, j'aimerais vous faire part de la réponse de TVA, datée du 24 novembre 1997. Une réponse qui comme vous le constaterez en annexe, n'accorde aucun crédit à mon honnête démarche.

J'ignore encore la volonté de votre organisme et le but qu'il veut atteindre dans ce dossier? Personnellement, je considère qu'une telle émission de télévision n'a aucun mérite d'existence **car elle s'enrichit au détriment de la réputation des gens**. J'ai toujours la ferme conviction que je possède les preuves de mon innocence et que cette émission a porté atteinte à ma réputation personnelle et professionnelle car encore aujourd'hui, des gens me parlent de cette fâcheuse entrevue.

Comment se défendre contre une telle machine juridique lorsque l'on est en faillite et sans le sous ? Je veux des réparations et je suis décidé à prendre les moyens pour y parvenir. Premièrement, je vais attendre votre réponse concernant ce dossier. Deuxièmement, je vais me diriger vers l'émission « La Facture » pour parler des conséquences de la liberté illimitée de la presse. J'envisage aussi de demander l'aide de la Commission des droits de la personne et la Commission de la protection de la vie privée ainsi que la Commission d'accès à l'information. Je crois que certains journalistes aimeraient suivre un tel débat. Il y a aussi la possibilité de déposer une plainte au Surintendant des faillites du Canada et de m'adresser directement aux ministres des communications provinciales et fédérales.