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

CHAN-TV re a news item concerning a fatal accident (logger tapes)

(CBSC Decision 00/01-0839)

Decided January 23, 2002

S. Warren (Chair), H. Mack (Vice-Chair), R. Cohen (*ad hoc*), G. Leighton, M. Loh

THE FACTS

On April 25, 2001, CHAN-TV (Vancouver) broadcast a news item reporting the death of a cyclist who had fallen in the path of an oncoming truck in Surrey, British Columbia. A viewer filed the following complaint with the CBSC:

On Channel 8 at around 11.35pm yesterday 25th April 2001 (repeated, I am told, today 26th on your 7.30am broadcast) you carried a report of a fatal accident involving a cyclist who had fallen from his machine, having caught his wheels in the railway track, and been run over by a vehicle on 64th Avenue, Surrey, B.C. After relating details of the accident and commenting on the dangers of that particular section of highway, the news item was terminated with a scene of firemen hosing down the road surface.

There was no mention that fuel had been spilled and the implication for viewers was that the victim's blood was being washed away!!

Such a scene would have been unnecessarily painful for any of the victim's friends or relatives who chanced upon that broadcast and there was no news value whatever in shots of firehoses being played on the road surface. The accident had happened earlier in the day and there must have been time to remove that dramatic and superfluous scene.

The News Director replied to the complainant on May 25. He said in part (the entire letter can be found in the Appendix):

On our News Hour Final on April 25th and on our Morning News the following day we broadcast a report of an accident involving a cyclist at a railway crossing. The report was less than thirty seconds and included visuals of a "clean-up" of the accident scene. These included the truck involved being towed away and the bicycle in the trunk of an RCMP

vehicle. Our pictures located the scene for our viewers and showed, as you say, a person hosing down the area.

Our report covered the facts of the story only and complied fully with the codes of conduct as outlined by both the Canadian Association of Broadcasters and the Radio-Television News Directors Association. The inference that "blood was being washed away" from the scene is entirely your own and was in no way even remotely suggested by our report.

In the public interest we brought into focus complaints from nearby residents who had warned officials in the past that the crossing was dangerous. Our report did not name the victim.

The complainant was not satisfied with this response and wrote to the broadcaster and the CBSC on June 11, in part (the full letter is reproduced in the Appendix):

[Y]ou suggest that my interpretation of the "clean-up" shots of a person, dressed as a fireman, hosing down the highway, as being the removal of the victim's blood, is simply my inference!!! It could, of course, have been spilled fuel or oil but if so why not mention it in the commentary? I, and I am sure relatives and friends of the deceased also believe, that it was an unnecessarily dramatic part of the clean-up procedure which was chosen for pure sensationalism! Where was the comment from the owners of the dangerous rail line, who were they and just what is being done about it? - was there a sign warning cyclists of the special danger?

The CBSC considered this reply to be the equivalent of a Ruling Request and the file was sent to the B.C. Regional Panel for adjudication.

A Special Problem: The Loss of the Logger Tape

Further to the CBSC's standard initial telephone request that the logger tape of the broadcast be held, the broadcaster sent a fax to the CBSC Secretariat on May 15 confirming that the tape was being held. As a part of its standard procedure, the Secretariat then sent its more formal written request to the broadcaster on May 23 seeking its response to the complainant and requesting the holding of the logger tape until disposition of the matter. When, after the review of the file, the CBSC Secretariat requested the delivery of the tape dubbed from the logger tape, CHAN-TV could not find the required tape of the April 25th 11:35 pm broadcast. The News Director, who had subsequently become the General Manager of Global Television's B.C. operations, provided the following explanation to the CBSC:

It has come to my attention that you require a written explanation regarding the disappearance of our "logger" tape for our News Hour Final of April 25th, 2001.

As indicated in the exchange of e-mails with the newsroom assistant, [Ms. H], the tape was red-flagged and preserved immediately upon learning of the complaint from [the complainant] in accordance with CBSC requirements. [The complainant] also received a written response from me within the time period prescribed.

Several months later when we learned a dub was required, the logger tape could not be found. Apparently, the red tag we use to identify these tapes either fell off or was removed. Our librarians then followed normal practice and recycled the tape.

Either way, I can assure you this was an accident. In the many years BCTV News and now Global B.C. has been members of the CBSC, this has never happened before. New measures are being introduced to make sure the tags don't fall off again.

If [the complainant] wishes to continue, I believe the voice over in question might be found in our archives on an edit pack. The script, in paper form, can be sent along as well which would provide an accurate representation of the brief item. Please contact [the newsroom assistant] if you wish proceed on this basis.

Pursuant to that invitation, the CBSC did request the written voice-over and the edit pack, the raw footage on the basis of which the news report was edited, and it was duly furnished to the Council Secretariat and the Adjudicators.

THE DECISION

The CBSC's British Columbia Panel considered the complaint under the CBSC's *General Principles* which contains the following statement on the loss of logger tapes:

Broadcasters are required by *Regulation* to retain logger tapes of their programming for 28 days, and, by virtue of their membership in the CBSC, they are required, when advised by the CBSC Secretariat, to safeguard the relevant logger tapes and to provide the required number of dubbed copies of these tapes to the CBSC when requested pursuant to a complaint.

Due to the provision of the edit pack and the voice-over script, the Panel was also able to address the substance of the complaint, which it did under Clause 6.1 of the Canadian Association of Broadcasters (CAB) *Violence Code*.

CAB Violence Code, Clause 6 (News and Public Affairs)

- 6.1 Broadcasters shall use appropriate editorial judgment in the reporting of, and the pictorial representation of violence, aggression or destruction within their news and public affairs programming.

The Adjudicators reviewed the correspondence as well as the subsequently provided video edit pack. The Panel considers that the broadcaster has breached the requirement relating to the retention and furnishing of logger tapes but it does not consider that the news report was otherwise in breach of the above-noted provisions of the *CAB Violence Code*.

The Requirement to Retain and Furnish Copies of Logger Tapes

The obligation of broadcasters to retain logger tapes is clear, both in terms of CBSC and CRTC requirements. In *Crossroads Television (CITS-TV) re Nite Lite* (CBSC Decision

98/99-1129, March 29, 2000), the circumstances of the failure to furnish logger tapes were not dissimilar from those of the present case in the sense that the breach appeared to be entirely inadvertent. In that decision, the Ontario Regional Panel stated that:

In this case, the broadcaster *thought* it had retained the July 13 and 14 tapes and was sending these to the CBSC when they were requested. As noted above, the programming on the tapes was that of a totally different date. The CBSC has no reason to believe that this was a purposeful act; however, the Council wishes to underscore that inadvertence, innocent mistake or the acts of third parties which interfere with the preservation of requested logger tapes are not and cannot be accepted as excuses for the non-availability of the correct tapes in reviewable condition at the time at which they are needed by the Council. Although the program itself may not have been in breach of any of the broadcast Codes (something which the Council is unable to determine in this case), the broadcaster *is* in breach for the failure to comply with this essential requirement of membership in the CBSC and of licence holding in the Canadian broadcasting system.

In the *Crossroads* decision, the Ontario Regional Panel also reviewed the importance of the obligation to retain logger tapes for the CRTC, which has not over time been immune to corresponding situations. The Panel explained the regulator's situation in the following terms:

Under all of the CRTC's Regulations pertaining to radio and television, every licensee is *obliged* to "retain a clear and intelligible audio-visual recording of all of its programming" for a period of four weeks from the broadcast and, then, for longer periods when complaints are received and programs are under investigation. The Commission's insistence on the importance of this requirement has been made amply clear in its decisions. For example, in *Licence renewal for CKDX-FM* (Decision CRTC 2000-44, February 17, 2000), the Commission pointed out that, as a part of its preparations for the Hearing, it had asked for the tapes for the period from May 4-10, 1997, and that "tapes for the entire week were unintelligible." It pointed out that it had received the assurance that "The licensee has installed an additional VHS logger unit that runs simultaneously with the original reel-to-reel logger system." In the circumstances, it provided a short licence renewal (just over three years), to ensure that it could verify compliance with this and the other two matters of concern in that renewal. See also, as recent examples of CRTC decisions in which the retention and delivery of logger tapes was a material issue in a licence renewal: *Licence renewal for VOAR* (Decision CRTC 99-540, December 13, 1999), *Licence renewal for VOWR* (Decision CRTC 99-539, December 13, 1999) and *Licence renewal for CFNI* (Decision CRTC 99-497, November 17, 1999). In the case of *Short-term Licence renewal for CKCU-FM; Issuance of a Mandatory Order* (Decision CRTC 98-124, April 17, 1998), the Commission went considerably further (ordering a two-year licence renewal), despite the fact that

In a letter dated 8 January 1997, the licensee advised that *human error* had "resulted in one of the two logger tapes being *inadvertently* recorded over". Accordingly, the licensee was unable to provide complete logger tapes as requested by the Commission. [Emphasis added.]

The Commission elaborated:

At the hearing, the Commission reminded the licensee that the availability of a complete, clear and intelligible logger tape is particularly important as it allows the Commission, not only to initiate its own monitoring of programming, but also to act on complaints from the general public concerning programming matters.

The Panel then explained the relationship of the CBSC and the CRTC policies in this regard:

The requirements of membership in the CBSC merely parallel the regulator's exigencies. There should be no doubt that the retention of logger tapes by broadcasters is a *cornerstone* of the self-regulatory process. Because the CBSC is not an evidence-gathering body, it relies *solely* on the program tapes as the "evidence" of what was said or shown on the airwaves. It is these tapes alone which are the measure of the broadcaster's compliance with the Codes to which all CBSC members adhere. The self-regulatory process relies on the availability of these tapes and the *serious* respect by broadcasters of any request by the CBSC Secretariat to retain these *for as long as necessary* while a file remains open. The members of the public who file complaints with the CBSC or which are referred to the CBSC by the Commission *must* have the sense of security that the broadcaster will comply with this requirement in order for them to retain faith in the process.

In applying these principles to the case at hand, the Panel finds CHAN-TV in breach of the fundamental membership requirement to furnish logger tapes of programming requested within the 28 day time period following the broadcast of a challenged program. In this matter, the broadcaster does acknowledge the existence of a system that could, and did, lead to the failure it experienced. The Panel expects that, in future, its systems will have improved so that such inadvertences cannot occur.

The Balancing of Logger Tape Loss with the Public Interest

As a result of the great difficulty presented to complainants in circumstances in which logger tapes are not furnished, the Prairie Regional Panel determined, in *CKX-FM re Announcer Comments* (CBSC Decision 00/01-0423, August 20, 2001), that the interests of the public be protected, to the extent possible. Accordingly, they proposed a principle that would accomplish this goal in circumstances in which the broadcaster's actions in not furnishing a tape would not disadvantage the complainant. The Panel concluded:

In the circumstances, namely, the absence of that essential evidence of what was broadcast, the Panel finds itself in a situation in which it appears unfair to the complainant to simply decide that it can make *no* decision. If, on the face of the complaint, it does appear that the complainant's concerns could reasonably result in a finding of breach on the substantive issue, in addition to the obvious breach of broadcaster standards by reason of the failure to retain the tapes themselves, the Panel will find against the broadcaster on these grounds as well. While not on all levels a satisfactory resolution of the problem of lost logger tapes, it seems unreasonable to deny the complainant's allegations by the unilateral mishandling of the material which the broadcaster is *obliged* to retain and which, ironically, might work to its own advantage in defending its broadcasting choices.

While the B.C. Panel supports the extension of this principle to matters with which it is called upon to deal, it finds, in the present case, that the broadcaster has found an entirely reasonable way in which to permit an assessment of the substance of the challenged newscast, namely, by the provision of the edit pack and voice-over script. Having reviewed

these, the Panel considers that it is clear that the conclusion drawn by the complainant is subjective and exaggerated. While it is certainly *possible*, if not *in fact* likely, that some of what was being washed away by the firefighter's hosing of the street was the blood of the victim, it is at least *as likely* that other debris from the accident was involved. Any such impact would leave bits and pieces of metal, glass, possibly cloth, undoubtedly dirt from the undercarriage of the vehicle, and so on, on the street, all of which would need to be cleared away. There was absolutely nothing in the broad swathe of watering of the pavement that would have suggested any predominance of blood. There was certainly no indication in the voice-over that there was *any* blood involved, although the Panel assumes that there probably was *some* on the road. How could there not have been? How realistic would it have been to expect otherwise. From the point of view of the Code, the Panel believes that the broadcaster did use "appropriate editorial judgment" in the footage that it shot (and from which it ultimately made its broadcast selection) and in avoiding any reference to blood that might have appeared ghoulish at the end of the day. There was no Code breach on this account.

Broadcaster Responsiveness

The CBSC Panels always assess the quality of the dialogue between the broadcaster and the complainant. Although the complainant in this matter has frequently turned his attention to this broadcaster, almost always *without* result, the broadcaster's representatives have patiently and thoughtfully responded to his complaint. In fact, but for the loss of the logger tapes (unanticipated at the time of the complaint and response dialogue), this matter would have been disposed of by the CBSC's Summary Decision process. The broadcaster was, as always, thorough and appropriate. Nothing more could be expected or required in this regard.

CONTENT OF THE ANNOUNCEMENT OF THE DECISION

CHAN-TV is required to: 1) announce this decision, in the following terms, once during prime time within three days following the release of this decision and once more within seven days following the release of this decision during the time period in which this newscast was broadcast; 2) within fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the statement to the complainant who filed the Ruling Request; and 3) to provide the CBSC with that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by CHAN-TV.

The Canadian Broadcast Standards Council has found that CHAN-TV has breached its requirements of membership in the CBSC. When requested to provide tapes of a news item broadcast on April 25 and 26, 2001, it was unable to do so despite the requirement under both the CBSC's terms of

membership and the corresponding requirements of the CRTC that it retain and furnish such tapes as part of the complaint resolution process. The broadcaster did, however, furnish other pre-broadcast materials that enabled the CBSC to determine that the challenged newscast was otherwise in full compliance with broadcaster Codes.

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

APPENDIX

CBSC File 00/01-0839 CHAN-TV re a news item concerning a fatal accident (logger tapes)

I. The Complaint

The CBSC received a copy of the following complaint via e-mail on April 26, 2001:

On Channel 8 at around 11.35pm yesterday 25th April 2001 (Repeated, I am told, today 26th on your 7.30am broadcast) you carried a report of a fatal accident involving a cyclist who had fallen from his machine, having caught his wheels in the railway track, and been run over by a vehicle on 64th Avenue, Surrey, B.C. After relating details of the accident and commenting on the dangers of that particular section of highway, the news item was terminated with a scene of firemen hosing down the road surface.

There was no mention that fuel had been spilled and the implication for viewers was that the victim's blood was being washed away!!

Such a scene would have been unnecessarily painful for any of the victim's friends or relatives who chanced upon that broadcast and there was no news value whatever in shots of firehoses being played on the road surface. The accident had happened earlier in the day and there must have been time to remove that dramatic and superfluous scene.

Comments please.

II. The Broadcaster's Response

The News Director of BCTV (CHAN-TV) responded to the complainant's letter with the following e-mail dated May 25:

Your letters of complaint to the Canadian Broadcast Standards Council have been forwarded to me for a reply.

On our News Hour Final on April 25th and on our Morning News the following day we broadcast a report of an accident involving a cyclist at a railway crossing. The report was less than thirty seconds and included visuals of a "clean-up" of the accident scene. These included the truck involved being towed away and the bicycle in the trunk of an RCMP vehicle. Our pictures located the scene for our viewers and showed, as you say, a person hosing down the area.

Our report covered the facts of the story only and complied fully with the codes of conduct as outlined by both the Canadian Association of Broadcasters and the Radio-Television News Directors Association. The inference that "blood was being washed away" from the scene is entirely your own and was in no way even remotely suggested by our report.

In the public interest we brought into focus complaints from nearby residents who had warned officials in the past that the crossing was dangerous. Our report did not name the victim.

Your second complaint involves our April 28th report of a tragic bus accident in New Brunswick. I have reviewed this as well and believe that we have, again, complied fully with the codes of ethics under which we are governed. Traffic accidents are, indeed, disturbing especially when they involve fatalities. However, the often disturbing images offer a true reflection of what happened. Our pictures, obtained from a television affiliate in the region, were not obtrusive, stayed back from the scene and did not intrude on the activities of emergency crews. The shot you refer to involved a very wide view of a virtual wall of firefighters holding up a large screen to shield the scene from passerby.

Sadly, pictures such as these are not uncommon but often provide added impetus to find answers and institute measures to prevent a similar tragedy in the future.

I trust this answers your concerns.

III. Additional Correspondence

The complainant sent the following e-mail to both CHAN-TV and the CBSC on June 11:

Further to my e-mail message of May 25th, I have given careful consideration to your explanations below and I am still dissatisfied.

In the first instance you suggest that my interpretation of the "clean-up" shots of a person, dressed as a fireman, hosing down the highway, as being the removal of the victim's blood, is simply my inference!!! It could, of course, have been spilled fuel or oil but if so why not mention it in the commentary? I, and I am sure relatives and friends of the deceased also believe, that it was an unnecessarily dramatic part of the clean-up procedure which was chosen for pure sensationalism! Where was the comment from the owners of the dangerous rail line, who were they and just what is being done about it? - was there a sign warning cyclists of the special danger?

Concerning the New Brunswick accident there was no newsworthy reason to display the picture of the firemen, "holding a tarp while they removed a body of one of the victims," as the newsreader so delicately put it. That shot and comment would have been extremely painful for any of the victim's friends or relatives. What value was there in it? I suggest drama and ghoulishness are not news!

I hope you will improve!