
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL PANEL**

CHEX-TV re Sportscast

(CBSC Decision 03/04-0926)

Decided October 22, 2004

R. Stanbury (Chair), M. Ziniak (Vice-Chair), B. Bodnarchuk, R. Cohen (*ad hoc*),
J. David, M. Oldfield

THE FACTS

On February 16, 2004 at approximately 6:23 pm, the CHEX-TV sportscaster, Gary Dalliday, made the following statement:

Now, if any of the Petes players are looking in right now, here's a little message for you. Guys, I love you all, I want you to do well and I know how hard you work and I'm not here to promote violence, but ... when somebody takes a cheap shot at the heart and soul of your team, somebody has to and should've stepped up and, well, as my good friend Roger Neilson would say, deliver a message, and I think you know what I mean by that.

A viewer filed a complaint on February 17 with the CRTC, which forwarded it to the CBSC in due course (the full text of all correspondence can be found in the Appendix). The complainant expressed his concern that

the sports announcer seemed to incite the local junior hockey team to retaliate by harming an opponent as that team apparently injured a member of the Peterborough club. He never indicated that perhaps the referee or the league should have been more stringent, but urged the young players of this team to "harm" (my words) their opponent when a "cheap shot" (his words) is taken against their team.

I really don't think Canadian airwaves should be used to promote violence. [...].

The General Manager of CHEX-TV replied to the complainant on February 26. In that letter, the General Manager indicated that he had spoken with the sportscaster who

assures me it was not his intention to “promote violence”; in fact he prefaced his remarks with those words [...].

As you know, hockey is an aggressive sport and his comment was simply meant to inspire the team to use all means possible (non-violent) to get a message across to the opposing team. Gary points out that he has a lengthy track record of downplaying violent aspects of the game by excluding any fights that occur during games from the highlights he shows in his nightly sportscast and has done so for the past five or six years.

The complainant responded to the broadcaster’s letter on March 3 and elaborated on his concerns in the following terms:

[Y]ou are using the airwaves (a monopoly that CRTC gives you exclusive rights) that belong to all the people.

[...]

- 1- “If any of the Petes players ...” In other words, the announcer is addressing his words to the young players NOT the general public.
- 2- “I’m not here to promote violence BUT [complainant’s emphasis]” ...” The word BUT surely implies that he is advocating violence.
- 3- “... deliver a message and I think YOU [complainant’s emphasis] (the players, not the general public) know what I mean ...” Surely the “message” is to incite the young players to some kind of aggressive action.

The public would have been better served if Mr. Dalliday questioned the quality of the officiating at that particular game – clearly spelling out what he viewed as a “cheap shot” and encouraging his viewers to protest to the league official about this lack of quality.

CHEX-TV’s General Manager provided a second reply to the complainant dated March 31. He cited a previous CBSC decision involving allegations of promotion of violence in sports programming and provided the following additional comments:

Please be assured that CHEX Television does not promote or advocate violence. As a member of the Canadian Association of Broadcasters (CAB) we adhere to all codes and guidelines established for the broadcast industry and administered by the CBSC.

[...]

We regret if the Program offended you or if you found the comments to be advocating violence, for that was not our intent. In this instance, the sportscaster was neither promoting nor exploiting violence. In fact, he was quite clear when he said “*I’m not here to promote violence*”. His remarks go on to suggest a “message” be delivered to the opposing team and you acknowledge in your second letter [...] that hockey is an aggressive sport ... in fact, you changed your remark to “*the message seemed to incite the young players to some kind of aggressive action*” deleting the word “*harming*”. The “message” to be delivered could be through a legal body check or any number of other non-violent options at the players’ disposal. Our sportscaster, Gary Dalliday, is very sensitive to keeping the violent aspects of hockey out of his broadcasts and is proud of the

fact that he has been deleting fights from his highlight reels, preferring to show viewers the actual goals and exciting plays of the game.

The complainant submitted his Ruling Request form and an additional letter dated March 30 in which he wrote

I am disappointed that CRTC does not “control” what is said on air, yet my understanding (wrongly, I guess) is that CRTC controls who receives permission to use Canadian airwaves and stations not upholding proper standards (eg. Canadian content) are refused renewal of these airwaves. Isn't CBSC more like a “fox” being asked to guard the hen house?

After this telecast, ironically, an NHL player severely injured another player, retaliating for an incident prior to this game, probably goaded on by a broadcast. He was a professional and an adult. The comment in question was directed to young, impressionable and vulnerable 16-20 year olds.

THE DECISION

The CBSC Ontario Regional Panel examined the complaint under the following Clauses of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* and *Voluntary Code Regarding Violence in Television Programming*:

CAB Code of Ethics, Clause 6 – Full, Fair and Proper Presentation

It is recognized that the full, fair and proper presentation of news, opinion, comment and editorial is the prime and fundamental responsibility of each broadcaster. This principle shall apply to all radio and television programming, whether it relates to news, public affairs, magazine, talk, call-in, interview or other broadcasting formats in which news, opinion, comment or editorial may be expressed by broadcaster employees, their invited guests or callers.

CAB Violence Code, Article 10 – Violence in Sports Programming

10.1 Broadcasters shall not promote or exploit violent action which is outside the sanctioned activity of the sport in question.

The Panel viewed a tape of the sportscast in question and examined all of the correspondence. The Ontario Regional Panel determines that the broadcast of the comments breached Clause 6 of the *CAB Code of Ethics* but not Article 10 of the *CAB Violence Code*.

Full, Fair and Proper Comment

The Panel appreciates the efforts made by the General Manager of CHEX-TV to put the best possible light on the sportscaster's comments. Moreover, the Panel of course has no reason to disagree with the General Manager's explanation of

Gary Dalliday's record as a broadcaster who is "very sensitive to keeping the violent aspects of hockey out of his broadcasts and is proud of the fact that he has been deleting fights from his highlight reels." Notwithstanding Mr. Dalliday's past record, the Panel finds it hard to argue with the content on the dub of the logger tape which it viewed. Whether the commentator *meant* to say what he *did* say or not, his words and tone did not leave any sense of equivocation. He began with the unsubtle rhetorical device of setting up a straw man: "I'm not here to promote violence, *but ...*". It is a way of both defining what one is about to say and trying, at the same time, to avoid responsibility for what is to follow. The sportscaster then said, clearly referring to what had happened to one of the Peterborough Petes hockey players, "somebody has to and should've stepped up ...". Then, to have the effect of ensuring that no-one would misunderstand where he was going, he capped off the advice with "somebody has to [...] well, as my good friend Roger Neilson would say, deliver a message, and I think you know what I mean by that." The ending is a Monty Pythonesque "nudge, nudge, wink, wink" in nature. It was, the Panel considers, a poor attempt to say something without saying it. It did not achieve that goal.

Bottom line, the Panel's understanding of the exhortation is this. *If* Gary Dalliday did *not* intend his comments to appear to encourage some form of retaliation, he could have chosen a more benign formula. There is no end of less suggestive expressions that he might have selected. He might, for example, have said something like, "Play harder, guys. More determination. More resolution. Win one for the Gipper." He did not do so. He left a different kind of message. In the view of the Panel, it did not meet the private broadcasters' test of "proper presentation of [...] opinion, comment and editorial" and, in consequence, was in breach of Clause 6 of the *CAB Code of Ethics*. Moreover, it was a message targeted, he ought to have foreseen, at young players. (Not only do young people generally admire hockey heroes, but the age limits of eligibility in the Ontario Hockey League, in which the Peterborough team plays, are 16 to 20.) The youthful market for Mr. Dalliday's remarks implies that even more care ought to have been taken with his choice of words in what has been, some might say, a delicate time in terms of hockey culture.

Violence in Sports Programming

Although the Panel has concluded that the sportscaster's exhortation was improper, it does not consider that it amounts to a breach of the broadcasters' obligation not to promote or exploit violent action which is outside the sanctioned activity of the sport in question. There are, in the view of the Panel, numerous ways to deliver a message which are inappropriate or, as noted above, improper but which, technically speaking may, fall *within* the scope of the game, within the "sanctioned activity of the sport." There are, for example, some actions which may amount to no more than minor penalties, such as holding or interference, which, although subject to a penalty, *do* fall within the *anticipated* scope of play.

The Panel considers that Gary Dalliday's incitement does not attain the higher level of *promoting violent action* which would be in breach of this article of the *CAB Violence Code*. Consequently, although the Panel finds the comments improper, and on the edge in terms of Article 10 of the *Violence Code*, it does not find them in breach of this article.

Broadcaster Responsiveness

In all CBSC decisions, the Council's Panels assess the broadcaster's responsiveness to the complainant. Although the broadcaster need not agree with the complainant, and vice versa, it is expected that the station's representatives charged with replying to complaints will address the complainant's concerns in a thorough and respectful manner. In this case, the Panel finds that the broadcaster's response was, in this regard, entirely appropriate. The General Manager responded twice in his efforts to satisfy the concerns of the complainant. Although he did not succeed, it was hardly for lack of trying. The Panel considers that CHEX-TV has fully met its CBSC membership responsibility of responsiveness on this occasion.

ANNOUNCEMENT OF THE DECISION

CHEX-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 Gary Dalliday's sportscast was broadcast; 2) within the 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) at that time, 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 CHEX-TV.

The Canadian Broadcast Standards Council has found that, in its early evening sportscast of February 16, 2004, CHEX-TV breached Clause 6 of the Canadian Association of Broadcasters' *Code of Ethics*. By using language that urged the local hockey team to take steps to repay another team for harming one of its players, CHEX-TV breached the clause of the *Code of Ethics* which requires the proper presentation of opinion, comment and editorial.

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

APPENDIX

CBSC File 03/04-0926 CHEX-TV re Sportscast

The Complaint

The following complaint dated February 17, 2004 was sent to the CRTC and forwarded to the CBSC in due course:

Re: Sportscast of Feb. 16th – CHEX – Peterborough

On the 6:00 pm sportscast on the above date, the sports announcer seemed to incite the local junior hockey team to retaliate by harming an opponent as that team apparently injured a member of the Peterborough club. He never indicated that perhaps the referee or the league should have been more stringent, but urged the young players of this team to “harm” (my words) their opponent when a “cheap shot” (his words) is taken against their team.

I really don't think Canadian airwaves should be used to promote violence. Please review this telecast, as is your mandate, to determine how CRTC views this kind of on air comment. I'm sure CHEX – Peterborough would keep a tape of it.

Please contact me after your review.

Broadcaster Response

The General Manager of CHEX-TV replied to the complainant on February 26 with the following letter:

Thank you for bringing your concern (re: Sportscast of February 16 – 04) to my attention.

I have reviewed the logger tape of the sportscast in question and have transcribed (attached) the comments you take exception to. I have also spoken with Sportscast Gary Dalliday, who assures me it was not his intention to “promote violence”; in fact he prefaced his remarks with those words, which you will see in the transcription.

As you know, hockey is an aggressive sport and his comment was simply meant to inspire the team to use all means possible (non-violent) to get a message across to the opposing team. Gary points out that he has a lengthy track record of downplaying violent aspects of the game by excluding any fights that occur during games from the highlights he shows in his nightly sportscast and has done so for the past five or six years.

I trust this addresses your concern and once again thank you for bringing it to my attention.

Additional Correspondance

The complainant responded to the broadcaster's letter on March 3 and elaborated on his concerns in the following terms:

Thank you for your reply of Feb. 26th to my letter re: Feb. 16th sports news. I admire your protection of your employees but on the other hand you are using the airwaves (a monopoly that CRTC gives you exclusive rights) that belong to all the people.

Thank you too for the actual transcript of the actual words.

- 1- "If any of the Petes players ..." In other words, the announcer is addressing his words to the young players NOT the general public.
- 2- "I'm not here to promote violence BUT" ..." The word BUT surely implies that he is advocating violence.
- 3- "... deliver a message and I think YOU (the players, not the general public) know what I mean ..." Surely the "message" is to incite the young players to some kind of aggressive action.

The public would have been better served if Mr. Dalliday questioned the quality of the officiating at that particular game – clearly spelling out what he viewed as a "cheap shot" and encouraging his viewers to protest to the league official about this lack of quality.

Mr. Dalliday must control whom he interviews, etc. These players need all the publicity they can muster. If in the next game against this self-same team, a player heeds Mr. Dalliday's words and "delivers a message", does Mr. Dalliday praise him and perhaps feature that "message"??? I really think CHEX has some soul searching to do.

Please don't use the "If you don't like it, turn to some other station!!!" because of the CRTC ruling there are no other stations.

The complainant submitted his Ruling Request form and an additional letter dated March 30:

Thank you for your letter of March 15th.

Except for the first letter from CHEX, Peterborough, I have received no reply as of this date and have not seen any retraction of the offending comment from any sportscast.

Enclosure #1 – actual transcript of the words used by CHEX.
#2 – my reply to that transcript.

I am disappointed that CRTC does not "control" what is said on air, yet my understanding (wrongly, I guess) is that CRTC controls who receives permission to use Canadian airwaves and stations not upholding proper standards (eg. Canadian content) are refused renewal of these airwaves. Isn't CBSC more like a "fox" being asked to guard the hen house?

After this telecast, ironically, an NHL player severely injured another player, retaliating for an incident prior to this game, probably goaded on by a broadcast. He was a professional and an adult. The comment in question was directed to young, impressionable and vulnerable 16-20 year olds.

CHEX-TV's General Manager provided a second reply to the complainant dated March 31:

The Canadian Broadcast Standards Council (CBSC) has asked us to provide a second response to your recent letter to CHEX Television concerning comments made during the Sports segment of Newswatch @ 6:00 (the "Program") on February 16, 2004.

More particularly, your letters dated February 17, and March 3, 2004 suggest that the sports announcer seemed to incite or advocate violence to the local junior hockey team. Your overall complaint is "*I really don't think Canadian airwaves should be used to promote violence.*"

Please be assured that CHEX Television does not promote or advocate violence. As a member of the Canadian Association of Broadcasters (CAB) we adhere to all codes and guidelines established for the broadcast industry and administered by the CBSC.

In a previous decision, the CBSC has clarified that use of the phrase "Assassinate the Kings" during the broadcast of a Toronto Raptors basketball game against the Sacramento Kings did not amount to either promoting or exploiting violent action in any way, much less "violent action which is outside the sanctioned activity of the sport in question."

We regret if the Program offended you or if you found the comments to be advocating violence, for that was not our intent. In this instance, the sportscaster was neither promoting nor exploiting violence. In fact, he was quite clear when he said "*I'm not here to promote violence*". His remarks go on to suggest a "message" be delivered to the opposing team and you acknowledge in your second letter (dated March 3/04) that hockey is an aggressive sport ... in fact, you changed your remark to "*the message seemed to incite the young players to some kind of aggressive action*" deleting the word "*harming*". The "message" to be delivered could be through a legal body check or any number of other non-violent options at the players' disposal. Our sportscaster, Gary Dalliday, is very sensitive to keeping the violent aspects of hockey out of his broadcasts and is proud of the fact that he has been deleting fights from his highlight reels, preferring to show viewers the actual goals and exciting plays of the game.

Please be assured that we take our responsibilities as a broadcaster very seriously. At CHEX Television we work to ensure all our programming complies with the *Broadcasting Act*, the *Television Broadcasting Regulations* and the Codes and standards required of us as a member of the CBSC.

We trust the foregoing responds to your concern. We recognize the importance of viewer feedback and appreciate all comments. We thank you for bringing your concerns to our attention.