
**CANADIAN BROADCAST STANDARDS COUNCIL
QUEBEC REGIONAL PANEL**

TQS re *Le Grand Journal* (Michel Villeneuve Commentary)

(CBSC Decision 03/04-1949)

Decided February 10, 2005

G. Bachand (Chair), T. Rajan (Vice-Chair), B. Kemeny, R. Cohen (*ad hoc*),
G. Moisan, M.-A. Murat

THE FACTS

On July 20, 2004, during its broadcast (at 10:30 pm) of the news program *Le Grand Journal*, Télévision Quatre Saisons (TQS) sports commentator Michel Villeneuve discussed recent reaction to the choice of Quebec judo athlete Nicholas Gill as Canada's flag-bearer at the upcoming Olympic Games in Athens. At that time, Villeneuve referred to the words of *Toronto Sun* columnist Steve Simmons, who had objected to the choice of Mr. Gill, arguing that the athlete's preference for Quebec sovereignty in the 1995 Quebec referendum rendered him unqualified to carry the Canadian flag. Villeneuve commented that, "[translation] for Simmons, a redneck in the same league as Don Cherry, a separatist doesn't have the right to carry the Canadian flag."

That same evening, a TQS viewer sent an e-mail to the CRTC, which forwarded it to the CBSC in due course. In his e-mail, the viewer expressed the following concern with the evening's *Grand Journal* broadcast (the full text of the complaint and all other correspondence, in the original French, appears in the Appendix):

[Translation] The sports commentator made racist and biased comments while discussing, among other things, a *Toronto Sun* journalist, calling the latter a "redneck" and ending his comments with the following words (and I quote): "that's a kick in the teeth, isn't it?"

Considering the precedent that you established with radio station CHOI-FM, I ask that you order that this station simply be shut down.

The Vice-President of Communications at TQS responded to the complainant on August 31. Her response, in relevant part, reads as follows:

[Translation] We regret that Mr. Villeneuve's comments disturbed you. He was using rather colourful language to comment on an article by journalist Steve Simmons that appeared in the *Toronto Sun*, and which questioned the choice of judo athlete Nicholas Gill as Canada's flag-bearer at the Athens Olympic Games. Mr. Villeneuve was angry that Mr. Simmons mentioned an event from 1995, when Nicholas Gill had been interviewed by a Toronto journalist and admitted to having voted in favour of sovereignty in the last Quebec referendum. Mr. Villeneuve then got carried away, stating, "for Simmons, a redneck in the same league as Don Cherry, a separatist doesn't have the right to carry the Canadian flag." [...] You should note that Mr. Villeneuve's commentary in *Le Grand Journal* is not prepared in advance, which can lead to this kind of spontaneous comment. Under the circumstances, the comment was completely reasonable and acceptable.

Rest assured that Mr. Villeneuve did not mean to make racist comments, but rather, he wanted to emphasize the rigidity of the Toronto journalist [...].

The complainant was not satisfied with this response. On September 3, he e-mailed a further message to the CBSC, in which he stated, in relevant part:

[Translation] The response I got was completely unacceptable. Yes, I was given the context of the comments, as though I didn't know why I was complaining, only to be told that "under the circumstances, the comment was completely reasonable and acceptable". No, this comment was not acceptable.

Considering this message to be the equivalent of a Ruling Request, the CBSC contacted the broadcaster to obtain logger tapes of the newscast in question. TQS was, however, unable to provide the tapes, citing technical problems with its recording equipment. Nonetheless, TQS sent the CBSC a letter explaining the circumstances, along with a transcript of the relevant portion of the newscast.

THE DECISION

The CBSC's Quebec Regional Panel examined the complaint under the following provision of the Canadian Association of Broadcasters' (CAB) *Code of Ethics*. Clause 2 of that Code reads as follows:

CAB Code of Ethics, Clause 2 – Human Rights

Recognizing that every person has a right to full and equal recognition and to enjoy certain fundamental rights and freedoms, broadcasters shall endeavour to ensure, to the best of their ability, that their programming contains no abusive or discriminatory material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, sex, marital status or physical or mental handicap.

The Panel reviewed all of the correspondence and (in the absence of the logger tape of the newscast) the transcript of the program provided by the broadcaster. Based on the information available, the Panel finds that the segment was not in breach of the *CAB Code of Ethics*. The Panel did find, however, that, the failure

to retain and provide the CBSC with logger tapes of the program in question, constitutes a breach of its obligations as a member of the CBSC.

The Requirement to Retain and Furnish Copies of Logger Tapes

It is a membership requirement of the CBSC (which is identical to the regulatory requirement of the CRTC on this issue) that broadcasters retain logger tapes of all programming for 28 days following the broadcast and for whatever longer period of time may be required once the CBSC requests the retention of the tapes pursuant to the receipt of a complaint. This obligation is outlined in the *CBSC Manual*:

In order for [its] process to be effective [...] the broadcaster must take all necessary steps to ensure that the timeliness of its reply is such that the complainant is able to access the CBSC's process within the 28 day period for retention of logger tapes or that it has set aside the logger tape for the challenged program so that it will be preserved and available to ensure the security of the process.

The Quebec Panel reviewed past decisions addressing the retention of logger tapes by broadcasters. In *Crossroads Television (CITS-TV) re Nite Lite* (CBSC Decision 98/99-1129, March 22, 2000), for example, the Ontario Regional Panel described the obligation in the following language:

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.

The Panel also took particular note of the Prairie Regional Panel's decision in *CKX-FM re Announcer Comments* (CBSC Decision 00/01-0423, August 20, 2001). In that decision, the Council proposed a principle that could govern cases in which no logger tapes are available, but where the complaint could nonetheless, as in the present case, be reviewed as a result of the extra effort made by the broadcaster to provide the necessary information regarding the substance of the broadcast. According to that decision,

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.

The B.C. Regional Panel used this principle to decide in favour of the broadcaster in *CHAN-TV re a news item concerning a fatal accident (logger tapes)* (CBSC Decision 00/01-0839, January 23, 2002). In that decision, the broadcaster was able to supply alternative material to enable the Panel to adjudicate the substance of the complainant's concerns:

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.

In the present case, the Quebec Regional Panel notes that the broadcaster's transcript of the program in question captured precisely the comments found objectionable by the complainant. Consequently, the Panel feels comfortable using the transcript, even in the absence of the logger tape, to determine whether there has been any breach of Clause 2 of the *CAB Code of Ethics*. (See the following section, which deals with this issue.)

Nonetheless, the broadcaster's requirement to retain and provide logger tapes to the CBSC, when requested, is, as described above, well-established. Indeed, logger tapes are so critical to the effective regulation and self-regulation of the airwaves that their retention is, as also noted above, a requirement of the CRTC. A written transcript of a program can provide the wording of commentary aired on television, but it cannot capture the tone, context, or effect on the viewer that an official logger tape can. The Panel recognizes that the broadcaster's breach of the logger tape requirement was unintentional and inadvertent. Nonetheless, the retention and provision of logger tapes is an obligation of result, not of means. Best efforts to ensure the availability of logger tapes when required will not suffice. Absent the actions of a third party over whom the broadcaster has no control or for whom it has no responsibility, the failure to deliver tapes when required will constitute a breach of the broadcaster's CBSC membership obligations.

Derogatory vs. Abusively Discriminatory Comment

Understandably, the English-language slang term, "redneck", is likely unfamiliar to many Francophone television viewers (the complainant being an obvious

exception). Nonetheless, the Panel was able to consider the meaning of the word and to evaluate the use of the term in the context of the program under consideration.

According to the *Shorter Oxford English Dictionary*, “redneck” is defined as “an uneducated working-class white person in the southern US, esp[ecially] one holding reactionary political views, gen[erally] anyone holding reactionary political views” and is considered to be informal and derogatory. The American Merriam-Webster online dictionary similarly defines “redneck” as “a white member of the Southern rural laboring class; or, a person whose behavior and opinions are similar to those attributed to rednecks” and considers the term to be “disparaging”. And the *Oxford Canadian Dictionary* refers to the term as derogatory and defines it as

1. An uneducated working-class white in the southern US, esp. one holding reactionary political views.
2. Anyone holding reactionary political views. *adj.* Reactionary, conservative.

It is clear to the Panel, on the basis of the foregoing that, in the Canadian context, therefore, “redneck” could reasonably be considered a disparaging or derogatory term for people with politically conservative opinions. As noted above, the protected grounds, in terms of the prohibition of abusive or unduly discriminatory comment extend to “race, national or ethnic origin, colour, religion, age, sex, marital status or physical or mental handicap.” While the list is not limitative, it does not, in the view of the Panel, extend to “political affiliation”. In *CHOG-AM re Connections* (CBSC Decision 96/97-0040, May, 8, 1997), the host cut off a caller who commented that “Tories don’t have children, they have piglets.” The Ontario Panel observed that “such political expression holds a very high status in terms of the constitutional guarantee of freedom of expression.” Although there was no discussion of the human rights aspect of political conviction on that occasion, it would appear that the Panel’s choice was that such a political reference was protected as an issue of freedom of expression *rather than* an issue of human rights. Indeed, in the Ontario Panel’s next opportunity to deal with the issue, in *CHOG-AM re the Jessie and Gene Show* (CBSC Decision 93/94-0242, November 15, 1994), the Panel did not consider that a song parodying Member of Parliament Jag Bhaduria’s then politically controversial situation fell afoul of the Human Rights clause:

All members agreed that public figures, such as politicians, are often held up to criticism and parody. Indeed, it is the most essential component of the principle of free speech that the fullest criticism of political figures and political positions be permitted in a free society. Provided that the satire or criticism is levelled at political persons on the basis of their actions as public figures and not on the basis of their national or ethnic origin, it must be permitted, if not encouraged. In this case, the Council agreed with the station that the parody had been directed toward Mr. Bhaduria himself, and not toward Indian people as a group.

In the present matter, the Panel does not consider that the use of a simple, even if pejorative, term to describe another editorial commentator's perspective on a political issue is subject to protection under the Human Rights Clause of the *CAB Code of Ethics*.

The Quebec *Charter of Human Rights and Freedoms*

It is true that the Quebec *Charter of Human Rights and Freedoms* includes "political convictions" as a ground benefiting from certain kinds of protections. The language of the pertinent part of section 10 reads as follows:

Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on [...] political convictions [...].

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right

In section 10.1, it is also provided that "No one may harass a person on the basis of any ground mentioned in section 10." The enumerated protections are provided to ensure the fullest capacity of individuals to enter into juridical acts, i.e. contracts, lease premises, have access to public places, jobs and so on. The purpose of the Human Rights Clause of the *CAB Code of Ethics* does not target the same forms of discriminatory practices. It is the view of the Quebec Panel that the protections afforded to persons subject to the Quebec *Charter* apply to the circumstances therein envisaged but do not extend the definition of enumerated groups in Clause 2 of the *CAB Code of Ethics*.

Broadcaster Responsiveness

The CBSC considers, as a part of every decision, whether the broadcaster has complied with its obligation to respond appropriately to the complainant's concerns. That dialogue is not only a part of every broadcaster's CBSC membership obligations, it also represents the public's sense of security in the process of self-regulation. While broadcasters are always involved with the reaction of their audiences to what they put on air, this dialogue with a listener is the manifestation to the complainant of that involvement. The Panel considers that the response by the Vice-President of Communications at TQS was thorough and appropriate.

CONTENT OF THE ANNOUNCEMENT OF THE DECISION

TQS 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; 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 TQS.

The Canadian Broadcast Standards Council has found that TQS has breached its requirements of membership in the CBSC. When requested to provide tapes of a news item broadcast on July 20, 2004, it was unable to do so. The failure to supply a copy of the logger tape to the CBSC for purposes of its adjudication of a complaint constitutes a breach of TQS's membership requirements in the Council.

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

ANNEXE

Dossier du CCNR 03/04-1949 TQS concernant *Le Grand Journal* (Commentaire de Michel Villeneuve)

La plainte

La lettre suivante en date du 20 juillet 2004 a été acheminée au CCNR par le CRTC :

TQS émission *Le Grand Journal* à 22h30, le 20 juillet.
Lors des sports.

Le commentateur sportif a tenu de propos raciste et tendancieux en parlant en outre [sic] d'un journaliste du *Toronto Sun*, en traitant ce dernier de « red neck » et en terminant son commentaire en disant et je site [sic] « Vlan d'en [sic] les dents ... ».

Contenu [sic] du précédant que vous avez créer [sic] avec la station de CHOI-FM, je vous demande d'ordonné [sic] la fermeture pure et simple de cette station de télévision.

La réponse du télédiffuseur

Le télédiffuseur a répondu au plaignant le 31 août avec la lettre qui suit :

Monsieur,

Nous accusons réception de la lettre que vous nous avez fait parvenir via le Conseil canadien des normes de la radiodiffusion (CCNR) et dans laquelle vous nous faites part de votre insatisfaction concernant l'émission *Le Grand Journal* diffusée à notre antenne le 20 juillet dernier.

Nous sommes désolés que les propos de M. Villeneuve vous aient choqué. Celui-ci a commenté, dans son langage coloré, l'article du journaliste Steve Simmons paru dans le *Toronto Sun* remettant en question le choix du judoka Nicolas Gill en tant que porte-drapeau du Canada aux Jeux olympiques d'Athènes. M. Villeneuve était choqué que M. Simmons fasse mention d'un événement datant de 1995 alors que Nicolas Gill avait été interviewé par un journaliste torontois à qui il avouait avoir voté favorablement au référendum sur la souveraineté du Québec. M. Villeneuve s'est alors laissé emporter en disant « *et pour Simmons, un redneck de la classe de Don Cherry, un séparatiste n'a pas le droit de porter le drapeau canadien* ». Ce commentaire faisait référence au commentateur sportif Don Cherry qui est malheureusement reconnu pour ne pas cacher ses préjugés anti-séparatistes. Devant cet article, Nicolas Gill a réagi en soutenant être fier de sa culture québécoise et que porter le drapeau canadien à Athènes serait l'un des plus grands moments de sa carrière. C'est alors que M. Villeneuve, en réaction à la réponse très diplomate de l'athlète, a été sarcastique en utilisant l'expression « *et v'lan dans les chicklets* ». Ce à quoi l'animatrice du *Grand Journal*, Mme Nathalie Roy a rétorqué en disant « *vous êtes en forme aujourd'hui, Michel* », soulignant par le fait même la réaction passionnée de M. Villeneuve face à cet événement.

Notez que dans le cadre du *Grand Journal*, l'intervention de M. Villeneuve n'est pas écrite à l'avance, ce qui peut engendrer ce genre de commentaires spontanés. Dans les circonstances, ce commentaire était tout à fait raisonnable et dans les limites de l'acceptable.

Soyez assuré qu'en aucun cas M. Villeneuve n'a voulu tenir des propos racistes, mais qu'il a plutôt voulu souligner l'intransigeance du journaliste torontois dans la nomination de M. Gill, nomination pourtant méritée, celui-ci ayant remporté une médaille de bronze aux Jeux olympiques de 1992 et une d'argent en 2000. De plus, sa candidature a été retenue parmi les 11 candidats à cet honneur.

Recevez, Monsieur, l'expression de nos meilleurs sentiments.

Correspondance additionnelle

Le 1 septembre, le plaignant a envoyé le courriel suivant au CCNR :

Il semble que ma plainte ne soit pas prise au sérieux par TQS, je n'ai eu aucune réponse depuis le dépôt de ma plainte ! Cela en dit beaucoup sur leur capacité à respecter leur auditoire.

Je vous demande donc d'intervenir pour rappeler ce diffuseur à l'ordre. Aussi, je désire savoir si je peux remplir le formulaire et ce même si je n'ai pas eue [sic] de réponse de leur part [sic] ? Car, je ne suis vraiment pas satisfait de leur « pas de réponse ».

Merci de votre collaboration

Le 3 septembre, le plaignant a envoyé sa Demande de décision et la note suivante :

J'ai finalement eu une réponse de la part [sic] de [la Vice-présidente, Communications], et ce suite à un deuxième courriel pour demander un peu de respect de la part [sic] de TQS.

Ce que j'ai eu comme réponse est tout à fait inadmissible. Oui, j'ai eu droit à une mise en contexte de leur propos, comme si j'ignorais pourquoi je portais plainte pour finalement me faire dire et je la cite « Dans les circonstances, ce commentaire était tout à fait raisonnable et dans les limites de l'acceptable. » Non, ce commentaire n'était pas acceptable. Je rappelle à [la Vice-présidente, Communications] et au CCNR qu'il y a une station de radio à Québec qui est menacée de fermer pour des propos similaires et dont l'animateur vedette doit commenter l'actualité durant plus de 4 heures par jour. M. Villeneuve ne parle à peine de cinq minutes et il ne peut [sic] s'abstenir de tenir des propos racistes. Cette réponse était INACCEPTABLE, le minimum aurait été que M. Villeneuve présente s'est [sic] excuses et qu'il paraisse sincère. Je demande donc la même sanction qui a été réservée à CHOI-FM c'est-à-dire la fermeture pure et simple. Si c'est inacceptable pour CHOI ce l'est aussi pour TQS.