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

CKNW-AM re an episode of Bruce Allen's *Reality Check*

(CBSC File 05/06-0651)

Decided May 9, 2006

M. Loh (Chair *ad hoc*), G. Leighton, F. Riahi, J. Rysavy, M. Singh, S. Warren

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**THE FACTS**

Each weekday, CKNW-AM (Vancouver) broadcasts an editorial commentary by Bruce Allen called *Reality Check*, in which Allen provides his point of view on a current event or recent news story. The following is a transcript of the *Reality Check* segment that was broadcast on September 8, 2005 at approximately 12:13 pm.

I'm Bruce Allen. This is CKNW and this is your *Reality Check*. Now how many pillars are there out there for these drug addicts? Three, four, five, nine? Who knows and who cares? Well here's the newest way we've come up to look after those junkies who have nothing to do but eat up public money and turn our city into a pig sty. We now have groups of volunteers who roam the back alleys on the East Side looking for drug addicts that are too messed up to inject themselves. And then these warped people inject them personally. Talk about perverse. And there are forty of them. Forty people out there trying to keep this human vermin alive to suck more dough out of the public purse. We gave them free injection sites. What? Too tired to go to the free place? Don't worry, we'll come to you and jam that spike in your arm. Don't bother to get up, just give us a call. We'll get there faster than Domino's. This is sick. What's the down side if these people don't get their fix? They die? Yeah, so? Are we losing big contributors here? They get the wrong smack and overdose? Same result, too bad. Kind of like driving around a car at a hundred kilometres an hour when the sign says fifty. You take your chances, you reap the consequences. There's something terribly wrong about people out there making sure that our junkie population is well looked after drug-wise. Maybe if we got rid of those would-be guardian angels, the drug problem would decrease. Nothing like making the drugs too expensive, the sentencing too stiff and the population too angry to make the neighbourhood drug addict look for greener pastures. That's about three pillars, isn't it? I'm Bruce Allen and this is the Giant, CKNW NewsTalk 980.

On November 4, the following complaint was sent to the CRTC and forwarded to the CBSC in due course (the full text of all correspondence can be found in the Appendix):

I am voicing a complaint because the comments by Bruce Allen promoted hatred towards a disadvantaged group in our society, people with substance abuse problems. He suggested that we should let them die. I believe this contravenes your act, as well as human rights legislation.

Both the CRTC and the CBSC informed the complainant that broadcasters are only required to keep tapes of their programming for 28 days following the broadcast and that generally complaints cannot be investigated if there are no tapes available. The complainant wrote back to the CBSC on November 16, in part as follows:

I wanted to point out that this offending tape is still available to be heard on the station's website. Did you know that? Whether they keep their logger tapes past 28 days should not then matter, you can listen to the comments by entering the date at their archives on their website.

Despite the delay, the broadcaster raised no objection to the filing of the complaint. In a letter dated December 6 and sent December 21, the station's Program Director said, in part:

[Y]our email sets out your concerns that comments made by Bruce Allen on his *Reality Check* feature "promoted hatred towards a disadvantaged group in our society, people with substance abuse problems."

Mr. Allen was referring to a program of volunteers who patrol the city, helping those who are drug addicted and incapacitated to inject themselves. Mr. Allen's comment was a firmly stated opposition to this program. He also made no secret of the fact that he feels all people should bear the consequences of their own actions.

As you are probably aware, CKNW broadcasts news, sports and talk programming to an adult audience, primarily 35-64 years old. Our programming often includes open discussions and commentary in which controversial comments are expressed on different questions or topics.

Commentators and Program Hosts sometimes employ terms which may be controversial and not necessarily correspond to the tastes of everyone. You will appreciate that taste is an extremely subjective element relative to the point of view of different individuals. However, the Canadian Association of Broadcasters *Code of Ethics* (the "Code"), administered by the CBSC has clarified that "the broadcaster's programming responsibility does not extend to questions of good taste." The CBSC applies current social norms in its interpretation of the Code. The CBSC has acknowledged that a program "will not be everyone's 'cup of tea' and it assumes that some members of society would be offended ... That is not, however, the criterion by which the program must be judged." The Code also recognizes that "healthy controversy is essential to the maintenance of democratic institutions, and the broadcast publisher (should) endeavour to encourage presentation of news and opinion on any controversy which contains

an element of the public interest.” The CBSC has noted that discussions on controversial subjects are an “acknowledged component of Canadian society.” The CBSC has also noted that host may present a point of view on topical, and controversial, issues. “It would be unreasonable to expect that the airwaves be pure, antiseptic and flawless. Society is not. Nor are individuals in their dealings with one another ... What may constitute the limits of acceptability in each challenged case will need to be appreciated in its context.”

The complainant filed her Ruling Request on December 22.

## **THE DECISION**

The B.C. Regional Panel examined the complaint under the following provisions of the Canadian Association of Broadcasters’ (CAB) *Code of Ethics*:

### *CAB Code of Ethics*, Clause 2 – Human Rights

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

### *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.

## **Extent of the Protection under the Human Rights Clause**

Although the revised (2002) version of the *CAB Code of Ethics* is the one to which the Panel is referring in this decision, decisions based on the earlier (1988) version remain relevant to the matter at hand. The underlying principle of most relevance, which was applicable then and remains applicable now is that the list of identifiable groups in both versions of Clause 2 was not intended to be *limitative*. In the first instance of the extension of the list, namely, *CJRQ-FM re Opinion Poll* (CBSC Decision 94/95-0135, March 26, 1996), the Ontario Regional Panel confirmed that sexual orientation must be considered a protected ground under Clause 2 of the *Code of Ethics*. Then, in *CHCH-TV re Life Today with James Robison* (CBSC Decision 95/96-0128, April 30, 1996), the Ontario Panel noted that the Supreme Court of Canada had read “sexual orientation” into section 15 of the *Canadian Charter of Rights and Freedoms* in *Egan v. Canada* [1995] 2 S.C.R. 513. In that decision, Mr. Justice La Forest stated:

I have no difficulty accepting the appellants' contention that whether or not sexual orientation is based on biological or physiological factors, which may be a matter of some controversy, it is a deeply personal characteristic that is either unchangeable or changeable only at unacceptable personal costs, and so *falls within the ambit of s. 15 protection as being analogous to the enumerated grounds*. [Emphasis added.]

This test has become the benchmark for the CBSC in assessing the issue of analogous protected groups. It has, however, been the case that the circumstances meriting possible extension have not been present. Indeed, various CBSC Panels have been unwilling to extend the analogous grounds in the areas of profession, social welfare beneficiaries, social condition, political affiliation, and hair colour. [See, for example, *CKLZ-FM re Announcer Comments* (CBSC Decision 94/95-0113, December 18, 1996), *TQS re Black-out ("Faring Well with Welfare")* (CBSC Decision 97/98-0009, January 29, 1999), *CJMF-FM re the program L'heure de vérité avec André Arthur* (CBSC Decision 99/00-0240, August 29, 2000), *CHOG-AM re the "Jesse and Gene Show"* (CBSC Decision 93/94-0242, November 15, 1994), and *CKNG-FM re "Blond Moments"* (CBSC Decision 96/97-0060, December 16, 1997).] Another Panel has refused to include the condition of pædophilia in the category of mental handicap. [See *Comedy Network re Open Mike with Mike Bullard (Leah Pinsent Film)* (CBSC Decision 99/00-0482, January 31, 2001).]

In the matter at hand, the Panel is called upon to consider the extension of the protections of Clause 2 to drug addicts, or "people with substance abuse problems". It is the view of the BC Regional Panel that such persons cannot be protected under the Human Rights Clause because, to use the words written by Mr. Justice La Forest in the *Egan* decision, their distinguishing identification is not a "deeply personal characteristic that is either unchangeable or changeable only at unacceptable personal costs". While the Panel understands that their circumstances are frequently immensely regrettable, if not tragic, they are not an analogous, protected, identifiable group, as that term has been explained by the Supreme Court.

### **Full, Fair and Proper Comment?**

The CBSC has consistently taken the position that broadcasters are entitled (if not encouraged) to air programming that takes a stand on government policies, programs and actions. It may be supportive or critical of those policies, programs or actions. That little matters. What does matter is that such commentary is at the core of democratic discussion. In addition, commentators are entitled, as a general principle, to broadcast opinions that may be controversial, provocative and unpopular. None of the foregoing is to suggest that there are no limits to the nature of the criticism that may be made. As a general principle for example,

programming should not contain extremely nasty attacks against a group or individual, on the one hand, or misrepresent a particular issue, on the other.

In the matter under consideration, the BC Panel considers that the issue is policy-related and controversial, which certainly makes it fair game for editorial comment. In any event, it is fair to observe that the criticism of the commentator relates more to the “groups of volunteers who roam the back alleys on the East Side looking for drug addicts”, those he describes as “these warped people”, than to the addicts themselves. The focus of the piece is on those who facilitate the drug addiction by helping those too “messed up” to inject themselves. The sarcasm is aimed at those who help the addicts by *going to them*; “Too tired to go to the free place? Don’t worry, we’ll come to you and jam that spike in your arm. Don’t bother to get up, just give us a call. We’ll get there faster than Domino’s.” His view is that the addicts do not contribute to society; they are net takers. If their illegal habit results in their death, he considers that no societal loss. “Too bad,” he concludes. “Kind of like driving around a car at a hundred kilometres an hour when the sign says fifty. You take your chances, you reap the consequences.” It is true that he is also critical of the addicts themselves, referring to them as “human vermin [...] who have nothing to do but eat up public money and turn our city into a pig sty.” His view: much cost, no reward.

The Panel finds the opinion piece tough but entirely fair. Were the addicts and their guardian angels a fair target? Yes. Were they a proper target? Yes. Was the criticism over the top? Perhaps, but only on the level of taste. It may be that Bruce Allen used a medieval mace when stepping on the bug would have sufficed; however, the criticism of the program of benevolence did not constitute a breach of Clause 6 of the *CAB Code of Ethics*.

### **Broadcaster Responsiveness**

The CBSC always assesses the broadcaster’s responsiveness to the complainant, which is a responsibility of membership in the Council. It expects that response to be thoughtful and focussed on the substance of the complaint. In the matter at hand, the Panel considers that the response of the Program Director constitutes a sufficient reply to fulfill CKNW’s obligation of responsiveness on this occasion.

*This decision is a public document upon its release by the Canadian Broadcast Standards Council. It may be reported, announced or read by the station against which the complaint had originally been made; however, in the case of a favourable decision, the station is under no obligation to announce the result.*

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## APPENDIX

### CBSC Decision 05/06-0651 CKNW-AM re an episode of Bruce Allen's *Reality Check*

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#### The Complaint

The following complaint was sent to the CRTC on November 4, 2005 and forwarded to the CBSC in due course:

CKNW AM Radio Vancouver BC

Sept 8 2005 (approx 12 pm) *Reality Check* commentary by Bruce Allen.

I am voicing a complaint because the comments by Bruce Allen promoted hatred towards a disadvantaged group in our society, people with substance abuse problems. He suggested that we should let them die. I believe this contravenes your act, as well as human rights legislation.

Both the CRTC and the CBSC informed the complainant that broadcasters are only required to keep tapes of their programming for 28 days following the broadcast and that generally complaints cannot be investigated if there are no tapes available. The complainant wrote back to the the CBSC on November 16:

We just received your email and I am responding for my wife who is at work. I wanted to point out that this offending tape is still available to be heard on the station's website. Did you know that? Whether they keep their logger tapes past 28 days should not then matter, you can listen to the comments by entering the date at their archives on their website. We just listened to them again three nights ago. They are quite repellent.

Given that information, the CBSC agreed to pursue the complaint.

The complainant wrote again to the CBSC on December 18:

I have not received a response from CKNW regarding my concern about Bruce Allen's comments. Twenty-one days has elapsed.

#### Broadcaster's Response

The broadcaster responded to the complainant on December 21 with a letter dated December 6:

I am writing in response to your email of November 4, 2005 where you raised concerns regarding a commentary that aired on CKNW on September 8<sup>th</sup>, 2005.

In particular, your email sets out your concerns that comments made by Bruce Allen on his *Reality Check* feature “promoted hatred towards a disadvantaged group in our society, people with substance abuse problems.”

Mr. Allen was referring to a program of volunteers who patrol the city, helping those who are drug addicted and incapacitated to inject themselves. Mr. Allen’s comment was a firmly stated opposition to this program. He also made no secret of the fact that he feels all people should bear the consequences of their own actions.

As you are probably aware, CKNW broadcasts news, sports and talk programming to an adult audience, primarily 35-64 years old. Our programming often includes open discussions and commentary in which controversial comments are expressed on different questions or topics.

Commentators and Program Hosts sometimes employ terms which may be controversial and not necessarily correspond to the tastes of everyone. You will appreciate that taste is an extremely subjective element relative to the point of view of different individuals. However, the Canadian Association of Broadcasters *Code of Ethics* (the “Code”), administered by the CBSC has clarified that “the broadcaster’s programming responsibility does not extend to questions of good taste.”<sup>1</sup> The CBSC applies current social norms in its interpretation of the Code. The CBSC has acknowledged that a program “will not be everyone’s ‘cup of tea’ and it assumes that some members of society would be offended ... That is not, however, the criterion by which the program must be judged.”<sup>2</sup> The Code also recognizes that “healthy controversy is essential to the maintenance of democratic institutions, and the broadcast publisher (should) endeavour to encourage presentation of news and opinion on any controversy which contains an element of the public interest.”<sup>3</sup> The CBSC has noted that discussions on controversial subjects are an “acknowledged component of Canadian society.”<sup>4</sup> The CBSC has also noted that host may present a point of view on topical, and controversial, issues.<sup>5</sup> “It would be unreasonable to expect that the airwaves be pure, antiseptic and flawless. Society is not. Nor are individuals in their dealings with one another ... What may constitute the limits of acceptability in each challenged case will need to be appreciated in its context.”<sup>6</sup>

Notwithstanding the foregoing, we deeply regret that the commentary offended you. Please be assured that we take our responsibilities as a broadcaster seriously. Our producers and hosts are sensitive to the substance of the various topics presented on CKNW and we work to ensure all our programming complies with the *Broadcasting Act*, the *Radio Regulations* and the Code and standards required of us as a member of the CBSC.

We trust the foregoing responds to the concerns you raised in your email. At CKNW, we recognize the importance of listener feedback and appreciate all comments. We thank you for taking the time and initiative to share your concerns with us.

<sup>1</sup> Clause 1 – *CAB Code of Ethics Commentary*

<sup>2</sup> *CFJP-TV (TQS) re Quand l’amour est gai* (CBSC Decision 94/95-0204, December 6, 1995)

<sup>3</sup> *CAB Code of Ethics* (“Codes”) – Clause 7 – administered by the CBSC

<sup>4</sup> *CFJP-TV (TQS) re Quand l’amour est gai* (CBSC Decision 94/95-0204, December 6, 1995)

<sup>5</sup> *CFTM-TV re Mongrain* (CBSC Decisions 93/94-0100, 93/94-0101 and 93/94-0102, December 6, 1995)

<sup>6</sup> *CKTF-FM re Voix d’accès* (CBSC Decision 93/94-0213, December 6, 1995)

### **Additional Correspondence**

On December 22, the complainant wrote to the CBSC:

I received an email from CKNW today, December 21, 2005. The email was forwarded to you by CKNW. I shall forward it to you as well. Please note that the attachment containing the letter in response to my complaint is dated December 6th 2005. I intend to formally proceed from here and would like this to be noted because I have 14 days in which to respond. I do not want to be disqualified or disadvantaged by the radio station dating their letter December 6th, and would like you to be aware that I did not receive any response before today, Dec 21, 2005.