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

CHBC-TV re Newscast

(CBSC Decision 93/94-0292)

Decided December 18, 1996

E. Petrie (Chair), M. Becott (Vice-Chair), S. Brinton, R. Cohen (*ad hoc*),
C. Murray, G. Vizzutti*

(*Since Mr. Vizzutti's station was directly involved, he abstained from consideration of this matter)

THE FACTS

During a newscast on June 10, 1994, CHBC-TV broadcast a story about a couple who had purchased a home, which, they later learned, had a dry well. The two minute news item began with information about their lawsuit in the British Columbia Supreme Court and their attempt to collect the award of \$14,000 against the previous owner of the property. The first story dealing with the original B.C. Supreme Court order had been run on an earlier occasion by CHBC-TV.

The present story went on to describe the lack of success the plaintiffs had had in actually collecting the amount of the judgment. The reporter on the story visited the defendant's home in order to interview him. He refused a formal interview at the time; however, he was photographed through the kitchen window of his home (somewhat obscured by the curtains) and that image, with the accompanying dialogue, was used in the newscast. That dialogue ran as follows:

Q: Are you going to make an effort to pay when you can?

A. Umm, I haven't really come to a decision on it yet.

Q. You have to pay, though, don't you?

A. I'd gladly talk to you tomorrow.

No subsequent interview with the defendant apparently took place and the reporter's tag line on the kitchen window interview was:

R. Today [the defendant] told us the [plaintiffs] hadn't contacted him since the judgment.

The piece then segued to a general issue, namely, the value of a court award and the possible difficulties which may be incurred in trying to collect it. The reporter's conclusion: "Winning in court doesn't necessarily mean winning in real life."

The Complaint

On July 15, complainant, also the defendant in the B.C Supreme Court case, wrote the CBSC. He stated that, on June 9, he and his family

were inside our private residence preparing dinner, when I noticed through my kitchen window the arrival on my outside deck of a reporter from CHBC and a cameraman. From inside my house I informed the reporter, that because I had not been informed of his arrival and because I was too busy at that time to grant an interview, I would be prepared to be interviewed the following day. The reporter pressed me for a statement, however, I repeated that this was not an appropriate time and I did not wish to be interviewed.

Subsequently, it came to my attention that CHBC had all the while been secretly taping me and my family inside our house, without our consent or knowledge. Apparently, this video was broadcast on CHBC news June 10 and June 12.

[...]

The greater concern here is: Are television news reporters allowed to enter upon private property, unannounced and uninvited, secretly peer inside a Canadian citizen's home and freely video whatever he or she wants to, and then broadcast these images publicly?

[...] Although CHBC does not normally cover countless other similar private disputes, the station, for reasons unknown, has pursued my situation with vigour. I am a private citizen and fail to see any redeeming public value in this story. This position is confirmed by the fact that none of the other media in the area has bothered to report on this matter. I and my family are being unfairly subjected to harassment and discrimination.

The Broadcaster's Reply

The CBSC forwarded the letter to CHBC-TV for reply. Mr. Vizzutti, the News Director of CHBC-TV and a member of the BC Regional Council, who did not participate this adjudication because of his conflict of interest, responded to the complainant on August 5. In his letter to complainant, Mr. Vizzutti acknowledged the arrival of the camera crew "on your premises, and the conversation between you and [the] reporter [...] which took place through a kitchen window." He did, however, deny the allegation "that all the while our photographer had been 'secretly' taping the activities of you and your family". He went on:

The portion which was broadcast is, as you state, a statement from you through your window in which you informed [the reporter] that you had not reached a decision on

whether you will pay fourteen thousand dollars as ordered by the courts ... and that you would gladly talk to [the reporter] the following day.

[... W]hen you ask if it is our station policy to enter onto private property to conduct interviews, I suppose I shall have to say yes. In fact, we operate this way as a matter of routine, however, I must add a caveat to this by stating it is further our policy that when our crews are asked to leave, they do so immediately. I am satisfied that this is exactly how our crew behaved on your premises on June 9, 1994. In this sense, we are no different then any other person entering upon private property, be they door to door salesmen, Girl Guides, United Way Volunteers, etc.

You further state that CHBC News has been harassing and discriminating against you in this matter, something that should not befall a private citizen. [Y]ou are well aware of the fact that when the story first broke of a court order against you [the first CHBC story, not directly at issue here], you were acting as the NDP Campaign Manager for a candidate in the Federal election -- hardly a private placement. Further, you will recall that the story most likely led to your resignation as Campaign Manager a few days later. I suspect this has caused some bitter feelings toward CHBC News. Aside from that however, we feel it truly in the public interest to document the legal wrangling that has taken place in this matter. I sincerely believe we have done a great public service in outlying [*sic*] the perils of buying a home with an inadequate water supply, and the extreme difficulty one can encounter in trying to recover losses, even if they are armed with an order from the court.

We continue to pursue this story because it is in the public interest, pure and simple. Yes, there are as you state, countless other private disputes, but we only need one case in point to explain the overall story to our viewers. I am unable to speak to why none of the other media have reported on the matter. Perhaps it has something to do with the fact that our reporters have better investigative skills; perhaps they've decided that it is a story best told by television as opposed to radio or newspapers. I should add that we pride ourselves in breaking news, not following it. Possibly the other media outlets operate under the same principle.

The viewer was unsatisfied with this response and requested, on August 11, that the CBSC refer the matter to the British Columbia Regional Council for adjudication.

THE DECISION

The CBSC's B.C. Regional Council considered the complaint under the *Code of Ethics* of the Radio and Television News Directors Association (RTNDA). Article 4 of that Code reads as follows:

Broadcast journalists will always display respect for the dignity, privacy and well-being of everyone with whom they deal, and make every effort to ensure that the privacy of public persons is infringed only to the extent necessary to satisfy the public interest and accurately report the news.

And Article 7 of that Code reads, in pertinent part:

News directors recognize that informed analysis, comment and editorial opinion on public events and issues is both a right and responsibility.

The Regional Council members viewed a tape of the program in question and reviewed all of the correspondence. The members are of the view that the newscast in question did not breach the *RTNDA Code of Ethics*.

The Invasion of Privacy

The *Canadian Charter of Rights and Freedoms* provides no absolute right to privacy for Canadian citizens. This is not to suggest that no right to privacy exists but rather that that right is limited. It would not, for example, be logical or practical to expect that public access to walks or entrances to private property would be prohibited in the absence of notice to that effect. That notice might be express, as in the case of a sign, or implied, as in the case of a locked gate. It might even be ephemeral, as in the case of a verbal instruction to leave the property, an instruction which would be followed by CHBC-TV news crews, as a matter of station policy. In this case, there is no indication of any such notice having been given. Consequently, with respect to the argument regarding CHBC-TV's presence on defendant's property, the CBSC finds that there is no invasion of privacy.

In fact, the complainant did not appear the least bit angered or concerned by the presence of the film crew on his property. He did not indicate any problem with this issue in his letter of July 15. Nor would the Regional Council be overly sympathetic with such a concern. In their view, if news organizations were required to make an appointment every time they wanted to get a story, they would be effectively handicapped, if not muzzled. It should also be noted that, in this particular case, the broadcaster was seeking the other side of a story for which it had, until then, only obtained the plaintiff's point of view. If anything, the defendant was being given the chance to present his own perspective on the issue.

On the other hand, complainant alleged that CHBC-TV had been secretly taping him and his family inside his house. This claim was categorically denied by the broadcaster. Furthermore, if any such videotape had ever been created, it was never aired.

This does not, however, end the matter for there is a legitimate question to be confronted regarding the newscast itself. Was the coverage of the issue an unjustified invasion of the defendant's privacy? In *CFTO-TV re Nightbeat News* (CBSC Decision 92/93-0216, February 15, 1994), the Ontario Regional Council dealt with the question in the following terms:

The Council's assessment of the coverage of such matters must vary with the facts of each case but there will be a commonality of criteria to consider. While each will revolve around the exercise of discretion, one of the most important individual criteria to consider will be the invasion of privacy. This is not a case in which an interview of the son or mother of the deceased was sought. Nor did the camera or reporter enter a private dwelling. All of the shots were taken in the street. The report was not, in other words, *intrusive*.

In that case, no interview was sought; nor was there intrusion into the living space of the family; however, the issue there was one of a very different nature. It involved the murder of a woman whose mother and son were after caught on camera in the street in front of the building where the murder had just occurred. The question of intrusiveness will be differently assessed as a function of the state of mind of the individual whose privacy is in question. In the *CFTO* case, the individuals, in a state of intense grief, might not have been willing interviewees.

In this *CHBC-TV* case, the complainant/defendant was a willing, if not blasé, participant. That willingness to be interviewed on the following day was declared, both at the time of the kitchen window interview as used in the clip and in the subsequent letter of complaint. Nor was the complainant/defendant merely an ordinary private citizen, as he alleged in his letter. As explained (to some extent by implication) in the CHBC-TV News Director's response to complainant, at the time of the initial story dealing with the court verdict against the complainant, he had been acting as "the NDP Campaign Manager for a candidate in the Federal election [of October 1993]". This was a follow-up to the original story and its parameters and the nature of the original participants remain the same. In other words, if it had been reasonable to tell the original story, it was as reasonable to recount the follow-up at this time.

Furthermore, the interview, such as it was, was not elicited on any clandestine, misleading or fraudulent basis. The camera and crew were, by the complainant's own observation, in the open. The complainant had been under no obligation to utter a single substantive word to the CHBC-TV reporter. Quite the contrary, in the clip used, as noted above, he had acknowledged his preparedness to be interviewed at *another* time, presumably at a time and in circumstances of his own choosing. It goes without saying that he cannot expect to force a reporter to do it *his way*.

The Public Nature of Court Proceedings

The Regional Council is of the view that the right of privacy of an individual ends when he or she becomes a party to court proceedings insofar as the reporting of those proceedings and their outcome are concerned. In the absence of a judicial order to the contrary, the CBSC considers that all court proceedings and their outcomes are *public* by their nature.

In the matter at hand, one of the parties, the defendant, would have preferred that the final step, namely, the collection of amounts awarded under these particular court proceedings, be kept away from the public's awareness. The Council considers that a broadcaster is entitled to conclude that the public interest extends equally to the proceedings themselves and to the results of the proceedings. This interest may be: in the general precedent established by a court decision, which

may ultimately serve as a guide for members of the public to determine how they will carry on their activities, civil, commercial or private; or in the actions of the specific parties which gave rise to the proceedings in question.

In the matter at hand, the story began and ended as a news item with an element of informed analysis. The piece alerted members of the public to the dangers of purchasing a house with undisclosed structural problems and the potential perilous consequences, even where a wronged buyer is found justified in his or her claim by the court.

It is to be expected that the complainant who, in this case, was the defendant in the B.C. Supreme Court and the other party in the on-air newscast, felt sensitive at *being* the example. This fact taken alone does not, however, validate his complaint. No story is, after all, told in a vacuum, unrelated to real people and real events. Had the story been *biased*, the issue would have been a different one. In this case, there was no suggestion by the complainant that the coverage was slanted or unfair; his complaint was that there was coverage of the incident *at all*. The B.C. Regional Council does not agree with the complainant's view of the newscast; members consider that this issue falls squarely into the category of matters envisaged in Article 7 of the RTNDA Code:

News directors recognize that informed analysis, comment and editorial opinion on public events and issues is both a right and responsibility.

It is, in other words, a story which the broadcaster was entitled to tell.

The Broadcaster's Response

In addition to assessing the relevance of the Codes to the complaint, the CBSC Regional Council always evaluates the *responsiveness* of the broadcaster to the substance of the complaint since it is a responsibility of membership in the CBSC to be responsive to audience complaints. In this case, the News Director of CHBC-TV sent a detailed and thorough reply to the complainant. Nothing more is required.

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.