
CANADIAN BROADCAST STANDARDS COUNCIL

QUEBEC REGIONAL PANEL

TQS re *Call TV* (version 1, round 1)

(CBSC Decision 08/09-1834 & -1856)

Decided August 11, 2009

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M. Ille, J. Pennefather (*ad hoc*)

THE FACTS

A paid program named *Call TV* (of Austrian origin) has been broadcast in various languages and using local hosts in numerous European countries for more than a decade. Montreal-based broadcaster TQS added a French-Canadian version of the program to its 2009 summer schedule (June, July and August). Indeed, on April 30, 2009, TQS was seeking [translation] “hosts immediately for the ‘CALL TV’ television series to be aired this summer.” TQS ultimately succeeded in finding the hosts it sought.

Apparently produced by Mass Response TV, which paid TQS for the broadcast time, *Call TV* aired Sunday to Friday from 11:00 pm to 12:30 am. The premise of the program was found in its name, *Call TV*; viewers were encouraged to call the on-screen 1-900 number, or text (SMS) the number given, with their solution to the various puzzles that appeared on the screen in order to win cash prizes (each episode dealt with in this decision included two or three separate contest segments) (the contestants, of course were charged for their 1-900 call or text messages, that being the program’s source of revenue). The value of each successful answer appeared at the bottom of the screen. The amount usually began at \$150 and gradually increased as time passed. Three women shared hosting duties on the four challenged episodes, one on two of the shows and the other two on one episode each.

At the beginning of each episode, the host explained how the program's automated telephone system functioned. It was a 1-900 number, so she explained that each telephone call and each text message would cost \$1 and that callers had to be at least 18 years old to participate. For example, on June 19, the host provided the following information at the beginning of the program:

[translation]

There are two ways to reach me. The first is, if you have a cell phone, you can quote TV by text message at 77977, if you are a member of Rogers, Fido, Bell, Telus, and now Virgin is part of the distributors with *Call TV*. So you send SMS, um, quote TV and we will have your phone number in our data bank so we can call you back later in the program to have you participate. Otherwise, there is the land line at 1-900-528-8000. As in the case of text messaging, we can take your number and call you back later. But you could get extremely lucky and get the line that takes you directly to the studio to answer the question. Note that regardless of whether you choose text messaging or a phone call to get in touch with us, both options give you as many chances to win. *It works on pure chance*. The automated system decides on the calls that will be chosen, and in both cases it will cost you one dollar each time you participate. In addition, you must be at least 18 years old to participate. [Emphasis added.]

The telephone and text message numbers remained on the screen throughout the duration of the program, as well as the information [translation] "\$1 per text message, \$1 per call". In addition, the following information scrolled across the top of the screen repeatedly:

[translation]

Participation is limited to those who are at least 18 years of age. Winnings are not paid out to minors. ... Calls are chosen at random. ... NOTE: the actual amount of a winning may change throughout the program! ... You decide if a puzzle is easy or difficult. ... Please note that calling does not guarantee your participation in the program. *Chance dictates whether your call is chosen or not*. ... You decide if a puzzle is easy or difficult. ... Be aware that text messages are possible only through Rogers, Fido, Telus AND NOW ALSO THROUGH BELL ... You will find all the information concerning the program as well as the rules governing participation at the following web address: www.call-tv.ca.

The phone distribution services are working constantly to optimize the capacity of the phone lines. We appreciate your patience and your understanding. [Emphasis added.]

The names of apparent past winners of the Quebec version of the program and the amounts they had won scrolled across the bottom of the screen.

By the date of release of this decision, the CBSC had received 185 complaints about *Call TV*. Many of those complaints raised issues relating to off-air activities which the CBSC has neither the jurisdiction nor the capability to investigate. These issues included: the fact that there would be large blocks of time during which the hosts claimed they were not receiving any calls when the complainants knew that they themselves had been trying to phone in at that moment; suspicions regarding the identity of the "winners", suggesting that they were in fact employed by the program;

and inaccuracies in their phone bills, such as being charged even when the callers had encountered a busy signal.

Of the 185 complaints, however, 119 concerned the actual content of the program, matters that fall squarely within the mandate of the CBSC. The complainants noted that some of the games were unfair because they seemed impossible to solve or the allegedly correct answer was outright inaccurate. Of those 119 complainants, only 75 provided the CBSC with the date and time of a specific episode to review and, of those 75, only three complainants requested that the CBSC pursue its investigation (one of the three was received *following* the date of the adjudication, and thus too late to be a part of *this* decision).

One complainant first wrote to the CBSC on June 16 expressing his concern about a game that had occurred on June 14 for which he said [translation] “the answer to one question was incorrect and everyone could see it” (the full text of this and all other correspondence can be found in the Appendix). On July 13 he wrote back with another specific example that had occurred on the July 12 episode:

[translation]

The question consisted of providing a male first name having an “A” as the second letter. They were looking for ten names. We were assured that they were common first names. I can say that was the case when the following names were confirmed: Marc, David, Jacques and Laurent. But when they revealed the six other names since no one came up with them, namely, Pancho, Hakan, Gabor, Darko, Lamar and Nanno, I wouldn’t say those are common names, especially given that the program is broadcast in Quebec.

This program should not be on the air. It amounts purely and simply to theft and I even have my doubts as to whether the winners presented might not be individuals paid to encourage people to call.

The other complainant identified a game on the June 16 episode:

[translation]

In one game, the object was to establish the total number of litres. There were:

two 35-litre barrels amounting to 70 litres;

two 25-litre barrels amounting to 50 litres;

two 18-litre barrels amounting to 36 litres; and

two 6-litre barrels amounting to 12 litres

for a total of 158 litres

There was no winner and when she opened the envelope containing the answer, their total was 144 [*sic*] litres without any explanation, and so forth. There were several, not counting the fact that it was impossible to get through and each attempt was met with a

recorded message saying "thank you for calling, please try again". And we were charged \$1 for each call.

That complainant added additional comments in an e-mail of June 21:

[translation]

Another game involving a total took place on June 19, 2009. At the end of the game the host specified that if the answer was not found she would give it, but not the method of arriving at that answer because the game could be played again another time. I find this process abnormal.

TQS sent the following response to the complainants:

[translation]

Call TV is a program that is presented and paid for by Mass Response TV. The latter is required to comply with all applicable regulations. As TQS is merely the means of broadcasting this paid program, we advise you to contact Mass Response TV for information on all conditions and procedures, regulations and verifications applying to this program. You can contact them by e-mail at public@call-tv.ca or via their toll-free number at 1-888-627-7706.

The fact that TQS broadcasts the program does not mean it endorses its content. As in the case of commercials for various products, the fact that TQS runs the commercial for a given product does not mean that it has verified the quality of that product. That would be a very heavy burden to impose on any broadcaster. For this reason, we broadcast an advisory prior to airing the program that read as follows: *"The following program is an infomercial presented and paid for by MASS RESPONSE. If you have any questions, comments or wish to consult the rules, please visit their website at www.call-tv.ca or e-mail them at public@call-tv.ca."*

Once that advisory has been given, the choice of watching the program or not is left up to the viewer. Finally, we wish to make it clear that TQS has always complied with the applicable legal obligations.

Thank you for your interest in the TQS network. Best regards.

As mentioned above, following receipt of that letter and prior to the date of the Quebec Panel adjudication, two complainants requested that the CBSC pursue the matter further. Both pointed out that TQS should take responsibility for its programming.

Pursuant to those two complaints, the CBSC Quebec Regional Panel examined the four episodes of *Call TV* identified by those complainants.

On June 14, the first game featured eight letters on the screen, some, but not all, of which were connected by black lines. The objective was to form a word with the letters, provided that the letters were joined in order by the lines. There were a few possibilities and three callers won money.

For the second game, a blackboard appeared on screen. The words “dix-huit” (eighteen) and “sept” (seven) appeared on the board along with the numbers 25, 16, 9 and 55. The challenge was [translation] “Add up all the numbers and figures.” The host took 31 calls from persons who gave a variety of answers, but she told all of them that they were incorrect. She eventually opened the envelope in her hand to reveal that the answer sought was 199. She did not provide any explanation as to how one arrived at that number. Nor was that information disclosed to the audience at any later time during the *Call TV* broadcast period.

For the third and final game of the night, there was an equation made up of matchsticks, “5+2=4”. The goal was to move one matchstick to make the equation accurate. After waiting for a considerable length of time without any calls, a woman finally called and, by turning the “+” to a “-” and the “5” to a “6”, won at the very last minute.

The second episode viewed by the Panel was that of June 16. For the first contest, an image of four barrels was shown on a screen. On each barrel, a quantity was marked twice: “6 Litres”, “18 Litres”, “20 litres” and “35 Litres”. The instruction was [translation] “Give the total of the litres!” The host also explained:

[translation]

As you can see, a board will immediately appear on the screen showing barrels of different capacities in litres. Find the total number of litres. We begin tonight by making you do some calculations. We’re playing for two hundred dollars. [...] You must calculate everything you see on the screen. Don’t forget anything. We have played similar games in the past, but tonight is just a bit different. So, make sure you don’t forget anything; calculate everything and find the answer. [...] Add up everything you see on the screen.

The host took 35 calls, including three people who gave 158 as an answer and four people who gave 79. Those seven and all 28 other callers were said to be incorrect. The host stated that she could not explain the method to the audience:

[translation]

There is a correct answer. Several people sometimes send me e-mail messages, so they get on the Internet, and they ask me “But how do you arrive at the answer?” Obviously, we can’t give you the method of arriving at the answer since some games of a similar nature are sometimes repeated.

She continued to provide encouragement to the audience saying things like [translation] “There’s a strategy here”, “Try to see how to find the total of the litres indicated on the screen,” and “Don’t forget any number.” After one hour of unsuccessful calls, she revealed that the answer was 244.

Following that, she began the second game which involved a grid of letters, each of which was worth a certain number of points. The objective was to form the name of an animal four letters long while ensuring that the points allotted to the four letters added

up to nine. The possible answers to this game were much more obvious and a few callers won small sums of money.

The June 19 episode began with the usual information about the cost and functioning of the telephone system. Three minutes into the program, the host elaborated:

[translation]

With respect to cell phones for text messages, Rogers, Bell, Fido, Telus and now Virgin are all participating. So if you are, if you are a member or a subscriber of one of those companies, you can send a text message. I remind you that each message costs you one dollar. Because the messages [*sic*], your chances of participating are cumulative. So, if you send ten messages for instance, it will cost you ten dollars, but your number will be entered in the data bank ten times. It's as simple as that. It's a dollar by phone as well, a dollar each time you call us. *But if the line is busy and you can't get through, you won't be charged.* You can, you can, um, try as many times as you wish. On the other hand, if you get through, regardless of whether you have won or not, you still did try to participate. So that's what costs you one dollar. [Emphasis added.]

The first contest was called [translation] "What word are we looking for?" The top half of a printed word was shown on screen and callers had to guess what the word was. A number of different words were shown in succession with callers winning money each time. The second contest of the night was the blackboard game described above from the June 14 episode, only with different numbers: "cinquante" (fifty) and "vingt" (twenty) written in words and the numbers 69, 101, 14, 41 and 9. Again, the instruction was to [translation] "Add up all the numbers and all the figures". Like the host on the June 14 episode, the host on this episode also informed viewers that she could not explain how to arrive at the correct answer:

[translation]

We've played this type of game before. In fact, some people wrote to us saying "yep, in the end you gave the answer, but you didn't say how to go about it." Well no, in fact, we didn't say how to go about finding the answer because the same game might be repeated with different figures and numbers, so obviously we don't give the method of arriving at the answer at the end of the game. If no one found the correct answer, we won't explain how to get it since we might come back next week with the same game, but with different figures and letters. Who knows?

She also insisted that the correct answer was achievable:

[translation]

Add up all the numbers and all the figures on this board. Um, that's not much of a hint, but that's the game. If it was easy to arrive at the answer, there would be no fun in that, no suspense. That's why we, we give you these difficult questions. But, I must admit that this one is not a piece of cake, but you can do it. Some people have already done it. And, just so you know that the method of arriving at the answer really does exist, we do try out the game prior to presenting it to you on the screen. I don't do it, but the producers do and several people arrived at the correct answer, so it is doable.

She took a total of 32 calls, but no-one was successful. At 12:03 am she revealed that 405 was the answer they were seeking.

The final game of that episode was simply to provide the name of an animal four letters long. The names were then posted in a grid. The basic restriction was that the same letter (from among those in names already posted on the grid) could not be repeated within the same vertical column. Despite the ease of this contest, only two callers got through, supplied names and won modest amounts of money.

On July 12, *Call TV* began a bit differently than the other three episodes described above. Before the introduction by the host, an advisory in audio and video format appeared on screen with the following information:

[translation]

The following program is an infomercial presented and paid for by MASS RESPONSE. If you have any questions, comments or wish to consult the rules, please contact them at:

website: www.call-tv.ca

e-mail: public@call-tv.ca

telephone: 1-888-627-7706

The program then began in its usual format. For the first contest, a list of ten blank spaces appeared on screen. The host informed viewers that she was seeking male first names that had the letter "a" as their second letter. The first participant guessed "Marc" and won. Successive callers then made the following suggestions, none of which appeared on *Call TV*'s list: Gaston, Patrick, Yann, Gabriel, Carl, Daniel, Martin, Paul, Maxim, Yannick, Mathieu, Samuel, Marcel, Raymond, Fabien, Pascal, Nathan, Patrice, Mario, Danny, Gaëtan, Raphaël, Dave, Marco, Danick, Mathis, Raoul, Jacob, Zachary, Maurice et Sambo.

The host assured viewers that the names sought were familiar, simple, known, common. She made the following remarks as the game progressed (all emphasis added).

[translation]

And I can't even help you. I don't know what the names are, but my producer told me before we started that they are *very well-known names*; very well-known names in these envelopes, but which ones? I'm trying along with you. I'm trying to think; I'm trying to find my own answers.

Listen, I'm certain they are *simple names*. After all, "Maxim" is not, um, a short and simple name. *Very well-known names*. That's what I was told. I was told the envelopes contain *very well-known names*. What could we be looking for?

So, "Marc" is a simple name. "David" is another simple name. What do you think at home? I'm, I'm anxious to hear your other suggestions. I'm also anxious to know as I am very curious. I'm anxious to know what my envelopes contain. I still have eight chances to give you money and we're already at five hundred dollars. You know, *we keep it simple*. Common names, male given names; everyday names we should say. We don't make things complicated.

Listen, it's not very difficult. *There are known names in there, names that you know*. It will be a surprise for me as well.

There are people's names, *known names, simple names*. Perhaps names you know, perhaps some you don't.

Eventually, three callers correctly guessed the names David, Laurent and Jacques, but six empty spaces remained on the list when time expired. At 12:06 am, the host finally revealed the remaining names: Pancho, Hakan, Gabor, Darko, Lamar and Nanno. The host herself then commented with respect to the name Hakan, [translation] "I've never heard of that particular given name. I don't know what its origin could be or what country it comes from" and "And, listen, I would have never thought of some of these. You must surely be telling yourself the same thing."

The second game of that episode was a word search in which one had to find the names of makes of automobiles on a grid of letters. Three people won money in that game.

THE DECISION

The Quebec Regional Panel examined the broadcasts under Clause 12 of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* relating to contests and promotions. That Clause reads as follows:

All on-air contests and promotions shall be conceived and conducted fairly and legitimately and particular care shall be taken to ensure that they are not misleading, potentially dangerous or likely to give rise to a public inconvenience or disturbance and that any prizes offered or promises made are what they are represented to be.

The Panel also noted that one of the Background principles of the Code reads as follows:

Each broadcaster is responsible for the programming of the licensed station, network or service.

The Panel also looked to Section 3(1)(h) of the *Broadcasting Act*, which reads as follows:

3. (1) It is hereby declared as the broadcasting policy for Canada that

[...]

(h) all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast;

The Panel Adjudicators read all of the correspondence and viewed the four episodes of the program described above. The Panel concludes that TQS violated Clause 12 of the *CAB Code of Ethics*.

Broadcaster Responsibility for *Everything* Broadcast

There are several issues that must be dealt with prior to the Panel's grappling with the meaning of Clause 12. Of these, the Panel considers it most essential to clarify the issue of responsibility for content raised by the broadcaster in its response to the complainants and its on-air advisory or disclaimer. The principal part of the letter sent to the two complainants who filed the Ruling Requests (quoted above) necessary to trigger this CBSC adjudication reads as follows:

[translation]

Call TV is a program that is presented and paid for by Mass Response TV. The latter is required to comply with all applicable regulations. As TQS is merely the means of broadcasting this paid program, we advise you to contact Mass Response TV for information on all conditions and procedures, regulations and verifications applying to this program. You can contact them by e-mail at public@call-tv.ca or via their toll-free number at 1-888-627-7706.

The fact that TQS broadcasts the program does not mean it endorses its content. As in the case of commercials for various products, the fact that TQS runs the commercial for a given product does not mean that it has verified the quality of that product. That would be a very heavy burden to impose on any broadcaster.

TQS's attempt to avoid responsibility for any content issues associated with *Call TV* and the attempt to pass it along to the producer of the paid programming, designated as Mass Response TV, cannot succeed. The private broadcasters' own *Code of Ethics* provides, in the Background section, "Each broadcaster is responsible for the programming of the licensed station, network or service." Moreover, this is entirely consistent with the statutory obligation of all licensed broadcasters under Section 3(1)(h) of the *Broadcasting Act*, which establishes broadcast licensee responsibility for everything each broadcaster airs. On the basis of that principle and, as long ago as 1995, the Ontario Regional Panel observed in *CKVR-TV re Just for Laughs* (CBSC Decision 94/05-0005, August 23, 1995) that CKVR-TV remained responsible for the content of a program produced by the CBC, which, as a public broadcaster, was not a member of the CBSC. As the Panel said,

This does not, of course, alleviate in any respect the responsibility of the station itself for the programming it chooses to air. As the "Background" to the *CAB Code of Ethics* states, "each broadcaster is responsible for the programming of the licensed station." Thus, while CKVR-TV was not responsible for *producing* the program which it obtained from a broadcaster that is not a CBSC member, CKVR-TV was *fully responsible for the content* of the program which it had chosen to air. [Emphasis added.]

That principle has also been applied by CBSC Panels to foreign programming syndicated in the Canadian market. In *CFMT-TV re an episode of "The Simpsons"* (CBSC Decision 94/95-0082, August 18, 1995), the station told the complainant that she had to complain to the American network Fox Broadcasting and it provided her with Fox's address. The Ontario Panel reiterated the principle that "every broadcaster is responsible for *all* of the material it broadcasts, whatever its source." It went on to state, in words more directly applicable to the matter at hand,

A broadcaster may, for quite positive reasons, wish to encourage a viewer to *also* contact the producer of the program but should not attempt to sidestep its *own* responsibility in that regard on the grounds that *it* was not the producer of the show at issue.

In *CIII-TV (Global Television) re an episode of Seinfeld* (CBSC Decision 96/97-0074, May 8, 1997), the Ontario Panel restated the foregoing principle, despite the fact that it was unsure

from the wording of the Global letter, whether the broadcaster was attempting to "pass the buck" or merely to provide *additional* information to the complainant. It would like to remind the broadcaster that the latter course is the appropriate one.

In *CFTM-TV (TVA) re Piment Fort* (CBSC Decision 95/96-0211, August 14, 1998), this Panel noted that there was a suggestion in the response of the broadcaster that the *primary* responsibility for the program in question was that of its producer, Avanti Ciné-Video Inc. It also observed that the broadcaster's reply advised that "this independent producer is first and foremost the party responsible for the content of the said production." This Panel did note that TVA's Vice-President of Programming did acknowledge the network's responsibility under the *Broadcasting Act*, but it also believed that it should point out that

the *primary* responsibility is that of the broadcaster, and not the producer, for whatever the broadcaster chooses to put on its airwaves. It is always useful for a broadcaster to point out to its producers of programming, whether in-house or independent, just which standards it employs for its programming but it is on the broadcaster's desk, not the producer's, that the proverbial buck stops.

There is no indication in the TQS correspondence that it has assumed any responsibility for any problems with the challenged *Call TV* broadcasts in terms of the *CAB Code of Ethics*. The Panel draws no conclusions about whether or not there are any other concerns of the many complainants that fall outside the scope of broadcast standards for which TQS may be similarly responsible. It does, however, conclude that TQS bears full responsibility for any breach of the *CAB Code of Ethics* flowing from the broadcast

of *Call TV*. And it adds, parenthetically, that TQS was a knowledgeable participant in an element of the production when it sought (on its own website, if not elsewhere as well) local talent as show hosts.

Off-Air Issues

The complaints made to the CBSC cover a very broad range of issues, touching on callers' frustration with the inaccessibility of the program personnel (whom they were induced to call); the bills, sometimes amounting to hundreds of dollars, received by callers; the allegation that these bills included charges for calls they did not succeed in making (e.g. calls resulting in busy signals, for which hosts had assured the audience on air they would not be billed); the apparent unfairness of some, at least, of the contests; misrepresentations made by the hosts regarding some of the contests; the inexplicable frequent absence of calls for relatively long periods, and sudden, last-second success in callers getting through; and so on.

Those issues *which arise from the broadcasts themselves* fall within the mandate of the CBSC. The Panel can deal with the broadcast of the various contests and the representations of the hosts during the programs, and it will do so in this decision. The Panel cannot, however, deal with the off-screen operations of Mass Response TV or the fairness of the billing by the various telephone companies for the 1-900 calls or the text messaging.

The Nature of the Challenged Program

While broadcasters remain responsible for everything they broadcast, there may be different standards applicable to different categories of broadcasting. It is thus of some importance to determine the nature of *Call TV*. In its letter to the complainants, TQS's Director of Legal Affairs referred to the broadcaster's viewer advisory, which read in part as follows: "*The following program is an infomercial presented and paid for by MASS RESPONSE.*" In the broadcaster's terms, it was an infomercial. This is not, however, the view of the Quebec Regional Panel. The Panel acknowledges that *Call TV* was what is sometimes known as "paid programming", but it was not an infomercial. As the Ontario Regional Panel explained in *Sun TV (CKXT-TV) re an infomercial for a telephone sex line* (CBSC Decision 06/07-0244, January 9, 2007),

an infomercial falls within the category of advertising, rather than programming [...]. It is, after all, a commercial message, that is, an attempt to sell goods or services to the viewer.

An infomercial is, in effect, an extended commercial, running for a much longer period of time than a traditional commercial, often thirty or sixty minutes. The goal of both is the same, namely, to sell a product or a service. The extended duration of the advertising message in an infomercial provides the opportunity for the vendor to expand the description of the product or service; hence the “info” part of infomercial. While infomercials may occasionally be presented in the guise of an entertainment format, their primary goal is to induce callers to place orders for the purchase of the product or service they are hawking.

While the goal of *Call TV* is to induce persons to *call*, the program’s goal is not to sell any product; it is to make money from the calls placed or texts sent by the participants. The question for the creators of the program was likely, “What is the best method for us to induce people to spend money on 1-900 calls or texts?” They appear to have concluded that it was to create a series of contests. In any event, the view of the Quebec Regional Panel is that *Call TV* takes, in the sense of Clause 12 of the *CAB Code of Ethics*, the form of an on-air contest, and is thus subject to the requirements of that Clause. That is to say, the contests (there were several of them on the four days of challenged programming) must: a) be conducted fairly and legitimately; b) not be misleading; and c) must ensure that any prizes offered or promises made are what they are represented to be.

The Compliance of the *Call TV* Contests with Clause 12

The Panel considers that there was some variety in the challenged contests. Some were word-driven, some were styled as puzzles, and some appeared to be mathematical. Of the various contests, the Panel finds no difficulty with the creation of words from letters connected by lines and the re-arranging of matchsticks (June 14); the provision of four-letter names of animals with a fixed total point value (where each letter provided had a number of points attributed to it) (June 16); the recognition of full words from the revelation of the top half of the letters and the guessing of four-letter names of animals with a restriction as to the repetition of letters in each word (June 19); and the search for the names of makes of automobiles on a large grid of letters (July 12).

The Panel does have great concerns about some of the mathematical puzzles, such as the one asking the audience to add up “all the numbers and figures” on the blackboard (June 14, repeated on June 19 with different words and numbers); and the one asking the audience to “give the total of the litres” of a number of barrels (June 16). The Panel’s principal concern is that these contests were not conducted fairly and legitimately. First of all, there were no successful callers among those the program’s producers chose to be on air. Nor were any of the Adjudicators, without any time

pressure whatsoever and having the answers in front of them as provided by the hosts at the end of each such contest, able to justify or explain the answers given.

While this has of course raised doubts in the minds of the Adjudicators as to the legitimacy of the foregoing puzzles, what is more important to them is the inherent absence of transparency for the audiences. Audiences ought to be able to know or understand the rules of a contest and the transparency of the outcome, *particularly when they are being asked to spend money to enter them*. The rule can be the seeking of a particular fact or piece of information, in which case the disclosure of the verifiable fact or information is the transparent element. The rule can be the guessing of a number, as in Government-run lotteries, in which case the revelation of the numbers falling out of a basket is the transparent element. The rule can be that a disclosed committee of individuals will judge the dancing, singing or other skill set of an individual or group. And so on. Where, contrary to the reasonable and customary examples of the foregoing contests, the inherently dubious outcome is neither evident *nor explained*, the Panel considers that the absence of transparency renders the conduct of the contest neither fair nor legitimate, as required by Clause 12 of the *CAB Code of Ethics*. Nor does the Panel consider that the host's repeated explanation that "we might come back next week with the same game" constitutes a justification for the failure to be transparent.

The contest that the Panel found most misleading on its face was the name-guessing game of July 12. While it might have been fair and legitimate to simply suggest to the audience that they take their best shot at guessing which ten names were in the envelopes held by the host, the producers may have thought that this would not have generated enough callers or texters. After all, their interest was in generating the maximum number of one-dollar contributors. Consequently, in order to induce people to believe that they had a chance, the host continually made the point that the names were familiar, simple, known, common, etc. They were not. In a tactic reminiscent of the annoying, gloating, oddly-named dwarf in the Brothers Grimm fairy tale *Rumpelstiltskin* (well-known in its original German and English-translated versions, perhaps less known in its French version, *Le Nain tracassin*), the *Call TV* team developed a list of anything but common names. While the correct guesses Marc, David, Jacques and Laurent all fell easily into the familiar, known, common category, the remaining Pancho, Hakan, Gabor, Darko, Lamar and Nanno did not. Like the name Rumpelstiltskin, they were obscure, remote and extremely uncommon to the audience at which the French-Canadian incarnation of *Call TV* was aimed. This contest was nothing short of misleading and thus in violation of Clause 12 of the *CAB Code of Ethics*.

As anticipated above in the section entitled "Broadcaster Responsibility for *Everything Broadcast*", the breaches of Clause 12 discussed in the present section are all breaches *by TQS* of the standard established in that Clause. Whether or not there is any fault on the part of Mass Response TV to Canadian audiences or anyone else is not relevant to

the CBSC, and it has made no evaluation of *Call TV* on that basis. The CBSC's only concern is TQS's responsibility under the *CAB Code of Ethics* and the Quebec Panel's view in that regard is clear and described in this section of the decision.

Given the Quebec Panel's conclusions regarding TQS's breach of Clause 12 on each of the four challenged episodes, the Panel also reminds the broadcaster that it is not entitled to continue breaching that Clause by broadcasting contests that are not conducted fairly and legitimately or are misleading.

An Additional Concern

There is an aspect of the conduct of the contests on the four dates reviewed about which the Panel is unable to draw a conclusion but which is important enough for it to provide advice to this and other broadcasters conducting similar contests in future. While the Panel notes the hosts' claims that the call system was totally automated, that is to say, without human intervention or choice-making, the timing of the final correct guesses seemed almost always to occur at the announced *end* of each contest. While it seems unlikely, if not inconceivable, to the Panel that this *could* happen time and again on the basis of chance alone (as represented by the hosts on several occasions), the Panel has no hard information on the basis of which to draw a conclusion that the producers in some way juggled the calls to arrive at such an outcome. If they had done so in any one of the contests, the result would have been inherently unfair, as the hosts continuously induced the audiences to call or text on the basis that they could still win the promised prize, when in fact they would have been too late to do so. Such a result would have been unfair and illegitimate in terms of Clause 12 of the *CAB Code of Ethics*. In the absence of the necessary information, the Panel cannot apply this principle to the challenged episodes of *Call TV*.

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 viewer or listener is the manifestation to the complainant of that involvement. In this case, the Panel has faced a most unusual situation, one in which the broadcaster has responded, true, but appears to have tried to pass the responsibility for the broadcast content to *others*. That is both unfair and unreasonable. TQS, indeed all broadcasters, must be aware of their responsibility for *everything they*

broadcast. This is not a case of the broadcaster arguing, say, that their news report was fair and accurate when a complainant has argued that it was not. This is a case of the broadcaster ducking any discussion of the substantive issue of fault for content and arguing rather that the whole business was someone else's fault and problem. In the fullest sense of what the CBSC expects from its members for the benefit of the public, TQS has let the side down, but, on *this* occasion, because it did respond, the Panel is prepared not to find a breach of the obligation of responsiveness. That would not be the case on a second such occasion.

ANNOUNCEMENT OF THE DECISION

TQS is required to: 1) announce the 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 *Call TV* was broadcast, but not on the same day as the first mandated announcement; 2) within the fourteen days following the broadcasts of the announcements, to provide written confirmation of the airing of the statement to the complainants who filed the Ruling Requests; and 3) at that time, to provide the CBSC with a copy of 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 violated Clause 12 of the Canadian Association of Broadcasters' *Code of Ethics* in its broadcasts of *Call TV* on June 14, 16 and 19, and July 12, 2009. Clause 12 requires that contests be conducted fairly and legitimately and must not be misleading. The CBSC found that some of the mathematical contests on *Call TV* provided dubious or incomprehensible results. The CBSC considers that TQS failed to provide transparency in the revelation of the contest outcomes to the audience. This rendered the conduct of the contests in question neither fair nor legitimate, in breach of Clause 12. The CBSC also considered that a name-guessing contest used obscure, rather than common, names (as had been represented) to prevent contestants from succeeding. The contest was misleading, and therefore in breach of Clause 12.

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

ANNEXE

Décision du CCNR 08/09-1834 et -1856 TQS concernant *Call TV*

Les plaintes

Le CCNR a reçu 185 plaintes au sujet de *Call TV*. Seulement trois des 185 plaignants ont remis leurs Demandes de décision (une des trois plaintes a été reçue à *la suite* de la date à laquelle la décision a été rendue, et a donc été faite trop tard pour faire partie de la *présente* décision). Le texte de ces deux plaintes est reproduit ci-dessous.

Dossier du CCNR 08/09-1834, (plainte en date du 16 juin 2009)

Je trouve que cette émission ne devrait pas être présentée. En plus de nous promettre des prix, il nous mente et nous présente des faussetés. La preuve, dimanche soir, la réponse à une question n'était exacte et tout le monde pouvait le dire. Ils trichent à la vue de tout le monde pour faire de l'argent et je pense que cette émission ne devrait pas être présentée.

Le plaignant a donné plus de renseignements le 13 juillet :

Ma plainte concerne toutes les émissions en général et tout particulièrement celle de dimanche le 12 juillet diffusée sur les ondes de TQS qui était diffusée à 23 h.

La question était de nommer un prénom masculin avec un « A » en 2^e position. Ils en cherchaient 10. On nous affirme que les prénoms sont courants. Je peux dire que oui, quand on a nous confirmé les noms suivants : Marc, David, Jacques et Laurent. Mais quand ils nous dévoilons les six autres, parce que personne ne les a trouvés : Pancho, Hakam, Gabor, Darko, Lamar et Nanno. Je ne peux pas dire que ce sont des noms courants, surtout que l'émission est présentée au Québec.

Cette émission ne doit pas avoir lieu. C'est du vol pur et simple et je doute même si les gagnants présentés ne sont pas des personnes payées pour inciter les gens à appeler.

S.V.P. Portez une attention à cette émission et vous allez voir qu'elle doit être retirée des ondes.

08/09-1856

Ce plaignant a écrit au CCNR le 18 juin 2009 :

la date de l'émission : le 16 juin 2009

le diffuseur : TQS

le nom de l'émission : Call TV

Il y a eu un certain jeu où il fallait trouver le total du nombre de litres. Il y avait :

2 bidons de 35 litres soit 70 litres

2 bidons de 25 litres soit 50 litres

2 bidons de 18 litres soit 36 litres et

2 bidons de 6 litres soit 12 litres

pour un total de 158 litres

Il n'y a eu aucun gagnant à ce jeu et lorsque qu'elle a ouvert l'enveloppe pour donner la réponse leur total était de 144 [sic] litres sans donner plus d'explication et des affaires de même. Il y en avait plusieurs sans compter qu'il était impossible d'avoir la ligne et que chaque fois que ça nous répondait « merci d'avoir appelé, essayer la prochaine fois » nous étions chargés 1 \$ pour chaque appel. Voilà. [Coordinatrice de la communication du CCNR], un aperçu de cette émission pour laquelle j'ose espérer une réponse favorable.

Le plaignant a écrit de nouveau le 21 juin :

Encore un autre jeu, en date du 19 juin 2009, où il fallait trouver un total. L'animatrice, à la fin du jeu, a précisé que si la réponse n'était pas trouvée elle donnerait le résultat mais pas la façon de trouver ce résultat parce que le jeu pourrait être rejoué à une autre occasion. Je trouve que ce procédé n'est pas normal. Je ne sais pas ce que vous pensez de ça.

La réponse du télédiffuseur

TQS a répondu au premier plaignant le 9 juillet et au deuxième plaignant le 26 juin :

Monsieur,

Le Conseil canadien des normes de la radiotélévision (CCNR) nous a fait parvenir votre plainte concernant l'infopublicité **Call TV** diffusée sur nos ondes le 16 juin dernier.

Call TV est une émission présentée et payée par Mass Response TV. Ces derniers ont l'obligation de respecter tous les règlements qui y sont applicables. TQS n'étant que le diffuseur de cette émission payée, pour connaître toutes les modalités, les règlements de l'émission et les vérifications qui s'y appliquent, nous vous conseillons de communiquer avec Mass Response TV. Vous pouvez les contacter soit par courriel à public@call-tv.ca ou sur leur ligne sans frais au 1 888 627-7706.

Le fait que TQS diffuse l'émission ne constitue pas une acceptation de son contenu. Comme dans le cas des annonces de divers produits, le fait que TQS annonce ledit produit ne veut pas dire que TQS aura procédé à une vérification sur la qualité de celui-ci. Un tel fardeau serait trop onéreux à imposer à quelconque diffuseur. Pour cette raison, nous avons diffusé une mise en garde avant la diffusion de l'émission dont voici le texte : « *L'émission qui suit est une infopublicité présentée et payée par MASS RESPONSE. Pour toute question, commentaire ou pour consulter les règlements, consultez le site Internet www.call-tv.ca ou écrivez à public@call-tv.ca. »*

Le choix de regarder ou non l'émission, suite à cet avis, est laissé au téléspectateur. Pour terminer, sachez que TQS a toujours respecté les obligations légales qui s'imposent.

Nous vous remercions de l'attention que vous portez au réseau TQS et vous prions d'agr er, Monsieur, nos sinc eres salutations.

Correspondance additionnelle

08/09-1834

Le plaignant a remis sa Demande de d cision le 17 juillet avec la note suivante :

Le radiodiffuseur me dit en gros qu'ils ne sont pas responsables parce que c'est une  mission publicitaire pay e. C'est un non-sens.

08/09-1856

Le plaignant a  crit de nouveau le 29 juin :

J'ai bien re u la r ponse de TQS concernant ma plainte   propos de *Call TV*. Cette r ponse ne me convient pas du tout. TQS doit  tre responsable du contenu de ses  missions. Ce fait, je maintien ma plainte.

Encore mercredi 24 juin la pr sentatrice a pr sente 3 cartes   jouer soit le 2, le 4 et le 5 de carreau expos s en  ventail et il fallait dire combien de carreaux il y avait. Personne n'a trouv  le r sultat et la pr sentatrice a ouvert l'enveloppe et donn  le r sultat 144 sans encore une dire comment ce r sultat a  t  trouv .

  propos des pr sentatrices, elles disent toutes les 3  tre en Autriche pour la dur e du jeu soit le 31 ao t.  a m' tonnerait bien fort qu'elles se trouvent   Vienne.

Je sais que le CRTC [*sic* - CCNR] fait un travail merveilleux et souhaiterai que vous mettiez fin   cette superch rie de jeu dont le seul but est de collecter de l'argent des Qu b cois et si cela serai possible que quelqu'un de votre conseil visionne cette  mission qui a lieu tous les jours de 11 h pm   12 h 30 am.

Apr s que le CCNR lui a envoy  un courriel pour confirmer la r ception de sa Demande de d cision, il a r  crit:

J'ai bien re u votre courriel et si j'ai bien compris  a prendra au moins 6 mois pour prendre une d cision alors que cette  mission prendra fin au 31 ao t si j'ai bien compris. Ces arnaqueurs vont continuer   frauder les Qu b cois en toute impunit . D sol  mais je ne comprends pas que  a prenne autant de temps alors que je vous ai pr cis  que cette  mission prenait fin au 31 ao t.

J'ose esp rer qu'une mesure sera prise avant cette date.