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**CANADIAN BROADCAST STANDARDS COUNCIL  
ONTARIO REGIONAL COUNCIL**

CTV re an episode of *The Shirley Show*

(CBSC Decision 93/94-0261)

Decided August 18, 1995

M. Barrie (Chair), A. MacKay (Vice-Chair), R. Cohen (*ad hoc*),  
P. Fockler, T. Gupta, R. Stanbury

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**THE FACTS**

*The Shirley Show* is a one-hour talk show broadcast every afternoon on the CTV Network. The show's format centres on Shirley Solomon, its host, and a group of panellists (usually 6 to 12) debating a single topic before a studio audience. The show's host presides over the discussion and knits together statements of the panellists with comments from the audience. Topics chosen for the program are meant to elicit viewership, as would be expected, and the resulting debates are often quite emotionally charged.

On the show's March 30, 1994 broadcast, nine panellists were invited to present their views on doctor-assisted suicide. Four of the nine were against the practice while the remaining five panellists favoured doctor-assisted suicide. The discussion became quite heated and, at times, panellists struggled to be heard. Interruptions were frequent throughout the discussion, often resulting in a shouting match among panellists. While it would be customary for the Regional Council to include lengthy excerpts from the challenged program at this point in the decision, the Council believes that little would be served, in *this* case, by adding bits of that dialogue, fragmented as it was by the participation of so many panellists and audience members. It believes that it will suffice, for these purposes, to make certain general observations. These follow.

First, many of the guests were given less than a minute to make their introductory remarks. One of the panellists who had been introduced at the very beginning of the Show was not afforded an opportunity to speak before half-way through the Show when one of her co-panellists interrupted on her behalf and gave her the floor. Throughout the hour, the host appeared to have difficulty in maintaining control of the discussion, often using commercial breaks to refocus the discussion and give her less vocal guests an opportunity to speak.

At one point, when a very contentious comment made by one of the panellists resulted in an outcry from other panellists, Ms. Solomon was trying to speak but was herself unable to cut in on the discussion. It must also be added that the complainant, who was one of the panellists, did have several opportunities to intervene in the dialogue.

## The Complaint

On April 29, 1994, one of the guests on the March 30 show sent a letter to the CRTC complaining that the presentation of the issue of doctor-assisted suicide on *The Shirley Show* had been biased in favour of this practice. The complainant also expressed concern over other aspects of his participation in the Show. This letter, which was in the ordinary course forwarded by the CRTC to the CBSC, was as follows:

I was recently a guest on The Shirley Show ... I believe that this program presented a complex issue in a way that encourages people with terminal or life-threatening illnesses to seek euthanasia or assisted-suicide rather than the physical, emotional and spiritual supports they truly need. This is unconscionable at a time when people are most vulnerable to abuse and having their lives shortened.

[...]

1. During three long telephone pre-interviews by one of the shows producers, I was told that there would be 4 people discussing this issue in depth and in a balanced way - two in favour of euthanasia and assisted suicide, and two opposed. I was to be one of those in opposition. The audience would be asked to participate and I was asked to be as forthright and passionate about this issue as I was during our telephone conversations.
2. Upon arriving for the taping on March 9<sup>th</sup>, I was told that there would be, in fact, 9 people discussing this most difficult issue instead of 4. I expressed my concern that this topic could not be adequately addressed by 9 people sharing 48 minutes of show time. The host of the program, Shirley Solomon, informed me just minutes before the taping that the four people of the panel, including me, who had personal stories to tell would go on first so that they would receive the necessary time they deserved to tell their stories. The politician and lobbyists would follow us after the first break. We were also told by Ms. Solomon not to mention that the show was being taped at night in Canada since Americans and Canadians are being led to believe that this is an American program out of New York.
3. When we were brought into the studio, I was ushered to the side rather than to the stage. The first long segment of the program had one woman from Ohio who is dying of cancer and opposed to assisted-suicide debating the issue with Svend Robinson, the NDP politician with a bill before the House on euthanasia, and three other people in favour of euthanasia and assisted-suicide. This clear imbalance was most unfair to the woman from Ohio. Ms. Solomon clearly demonstrated from the beginning of the show her own bias toward euthanasia and assisted suicide.
4. When the rest of us joined the program the audience and viewing public had been clearly biased by Ms. Solomon against presenting a balanced view. Ms. Solomon did little to allow the four of us opposed to euthanasia and assisted suicide equal time and respect to present our views. One panelist Rita Marken who is the Executive Director of the International Anti-Euthanasia Task Force was lectured by Ms. Solomon on the correct way to listen to people in

favour of euthanasia. Ms. Marken has appeared on hundreds of programs across North America and has never been treated with so much disrespect.

5. Those of us opposed to euthanasia and assisted-suicide were seen as religious fanatics or moralists who do not understand or listen to the needs of people who are dying. I have no religious affiliation, am certainly not a fanatic and was the only panelist familiar with palliative care in Canada from the perspective of a family member and volunteer. I believe the public deserves balanced information on a topic that will face all of us one day - information I was not permitted to present. Mr. Darling, I never interrupt people or speak loudly - I did both on this program just to get a few points made. This media circus is not necessary to have a reasoned public debate; nor to receive sufficient ratings.

Specifically my complaint is that Ms. Solomon and her production staff lied to me about the number of people on the panel and the order of our presentations. The needs and wishes of my family treated with disrespect. The show's format and process was [*sic*] clearly biased and unethical. Their lies and clear bias misrepresented the facts to Canadians about what care and supports are available to people who are dying. There was a gentleman with ALS on this program who was supported to believe that his life until his death would be horrible without assisted suicide. The host and half the panel reinforced this belief even though there is clear evidence that this does not have to be true.

Another complaint is the facade we were told to maintain that this was a program taped live (i.e. no editing) in the daytime (actually taped at 10:00 p.m.) in America. Surely we have come farther in our country's history that we do not have to pretend to be American to get our opinions on national issues heard. This is a blatant lie to the Canadian audience you represent at the CRTC.

## **The Broadcaster's Response**

In a letter dated May 12, 1994, CTV's Vice-President, Entertainment Programming, wrote the following response:

Let me hasten to point out at the very beginning that the purpose of SHIRLEY is to inform and enlighten and, as circumstances allow, to entertain our viewers. It is not our intention to offend anyone, certainly not the guests and panelists who appear on behalf of the subject under examination. We have again examined the episode in question and would like to address your comments.

It is very rare that less than six guests would be invited to participate in a SHIRLEY show. The usual number of guests is anywhere from six to twelve. It is important, particularly with a complex issue such as doctor-assisted suicide, to have proper representation of all points of view and this is simply not possible with only four guests. The panel of guests for the episode that you participated in was made up of four individuals who were against doctor-assisted suicide and five who supported it. These included individuals and families of those suffering from terminal diseases, Dr. Jack Kevorkian's lawyer, as well as lobbyists and a Canadian politician c an interesting and well balanced panel. When the producer of this particular episode discussed the show with you, he explained that he had contacted four guests to date. It is unlikely that he said or inferred that there would be only four panelists on the show.

The SHIRLEY show tapes in the evenings and has always done so. This is done to allow audience members to attend who would otherwise not be available. Therefore, the audience and panelists are always asked to refrain from making comments that allude to the fact that

the show is being taped in the evening. This is certainly not done to mislead anyone, but to ensure that the best panelists and most varied audience members are available for each show. Since SHIRLEY has not been sold in the United States, Shirley Solomon asks her guests and audience to refrain from making unnecessary references to the U.S. or Canada, to avoid confusion among the viewers.

You must also understand that the exigencies of a talk show taped before a live audience often demand last minute changes in the number and order of panelists. Individuals who were not available often become so at a late date and are added to the roster. I am sure that the last minute shuffling of the order in which the guests appeared was done in order to ensure the best possible show and was not the result of an intentional lie on the part of the producer of the episode.

It is not our view that the episode was biased. The complex and highly controversial subject of doctor-assisted suicide was handled in as in-depth a manner as can be expected in a one-hour talk show. There was equal representation for both sides of the issue and the host went out of her way to ensure that each panelist had an opportunity to present their point of view. The panelist with ALS that you refer to in your letter was not mistreated or abused on this program. He was quite aware of what ALS will do to him, which is why he was on the show -- to voice his point of view on the subject of doctor-assisted suicide, which he did eloquently and bravely.

I am sorry that you feel this topic, which is clearly a very personal one for you, was not handled to your satisfaction. However, I have investigated your concerns thoroughly and, after watching this episode and speaking with the show's producers, I feel that the program was well produced and well balanced and that both sides were well represented. I did not see any mistreatment of guests or audience members. As far as the number of guests that were to be present on the panel, this may have been a misunderstanding on your part.

The complainant was unsatisfied with this response and requested, on June 9, 1994, that the CBSC refer the matter to the appropriate Regional Council for adjudication.

### **Further Correspondence from the Complainant**

On June 9, the complainant wrote back to the CBSC. He indicated that the broadcaster's reply had been "unsatisfactory". He added the following observations:

To redress this situation I have asked that the SHIRLEY show do a follow-up program on palliative care to address the real needs of people who are dying and their families. ... The episode "Doctor-Assisted Suicide" did not allow panelists like me an opportunity to present palliative care information clearly. I believe that the SHIRLEY [show] has a responsibility to provide this supportive information to the majority of Canadians who are afraid of how they will die.

He also responded to the CTV Vice-President's letter on the same date on a point by point basis.

Your paragraph 2: I appreciate that no program's purpose is to offend guests, panelists or viewers. However, offence is sometimes the result of ill-conceived behaviour. You state "that the purpose of SHIRLEY is to inform and enlighten and, as circumstances allow, to

entertain our viewers". This particular program did not accurately inform or enlighten but concentrated on entertaining viewers by manipulating panelists and forcing those of us opposed to doctor-assisted suicide to interrupt other speakers to get our views heard. I refer you to my original complaint letter of April 29, 1994 to the CRTC for specifics.

Your paragraph 3: It may be rare for the SHIRLEY show to have less than six panelists, however, I had to rely on the producer's invitation to be a member of a panel of four. I disagree completely with you that four people could not represent such a complex issue. The reverse is actually correct since nine people cannot represent the differing perspectives given the format, host's bias, and time allowed for each person to speak. I do not believe this is merely a difference of opinion but a difference between entertainment and enlightening your viewers.

Your paragraph 4: I appreciate that taping the show at night allows more audience members to attend. I do not understand how that would affect your viewing audience if they knew the show was taped instead of live. Since the SHIRLEY show has not been sold in the United States I do not understand why references to Canada should be avoided. Like it or not, if panelists are asked not to make references to date, time or place, you are misleading your viewers into believing that this is an American show, taped live in New York (which I understand is the intent).

Your paragraph 5: I do not understand this paragraph at all. As I said in my complaint letter, Ms. Solomon spoke to me literally minutes before we were ushered into the studio. She told me that I would be up first with the three other people (out of 9) who had a personal story since she understood how important it was to have the personal views presented before the legal, parliamentary and lobby views. There were no additional panelists available in those last few minutes. You state that the last minute shuffling was done to "ensure the best possible show". If your host tells panelists minutes before the program is taped that she wants a balanced opening segment of two people personally in favour of doctor-assisted suicide and two opposed, how can the program be improved by ending up with four people in favour and one opposed? That is not a balanced view and it contradicts the host's intent to present personal stories first. This is either a misrepresentation or incompetence - neither leads to fulfilling the purpose of informing and enlightening your viewing audience.

Your paragraph 6: I disagree completely with your conclusions. I do not believe that your host, her producers, nor you understand what it is to have ALS and what can be done to provide the supports someone like this panelist needs. The vast majority of people with ALS are not suicidal and your program misrepresented the illness and the prognosis of those who have this illness. Anyone recently diagnosed with ALS who saw your program would be clearly misled as to what to expect.

Your paragraph 7: I have given over 120 interviews on television, radio and in the print media. I have never been treated as badly as I was on this program and I did not misunderstand the number of guests that would appear on this show. I made it clear that I would not participate in a media circus. When I showed up at the studio and found out there would be nine panelists I thought very seriously of not appearing. Ms. Solomon's encouragement, minutes before the taping, convinced me I would get a fair period of time to present my parents story during the first segment of the program. That did not happen. If I made any mistake, it was to agree to go on after the first segment was over but I could not let the panelist with cancer be the only person presenting the palliative care argument. I felt terribly angry for her that she was forced to represent the opposing view against such a strong media personality as Svend Robinson. It was quite unfair and unethical.

Your paragraph 8: I am sorry that your program did not enlighten and that overall, in my opinion, you did not achieve your goal of a balanced program. I believe this situation must be redressed in some way during the Fall season, assuming the SHIRLEY show is still on the air. I believe a panel discussion of palliative care in North America would help inform and enlighten your viewers. I would not personally appear on such a show since that is not the point of this complaint. There are many capable patients, family members, professionals and volunteers who can help North Americans understand how we can help people remain comfortable until their natural deaths.

## THE DECISION

The CBSC's Ontario Regional Council considered the complaint under Clause 7 of the *Code of Ethics* of the Canadian Association of Broadcasters (CAB).

*CAB Code of Ethics*, Clause 7 (Controversial Public Issues):

Recognizing in a democracy the necessity of presenting all sides of a public issue, it shall be the responsibility of member stations to treat fairly, all subjects of a controversial nature. Time shall be allotted with due regard to all the other elements of balanced program schedules, and to the degree of public interest in the questions presented. Recognizing that healthy controversy is essential to the maintenance of democratic institutions, the broadcast publisher will endeavour to encourage presentation of news and opinion on any controversy which contains an element of the public interest.

The Regional Council members viewed a tape of the program in question and reviewed all of the correspondence. In the Council's view, the program did not breach the *CAB Code of Ethics*.

## The Content of the Program

At the outset, the Council notes that, pursuant to Clause 7 of the *CAB Code of Ethics*, broadcasters must "*endeavour* to encourage presentation of ... opinion on any controversy which contains an element of the public interest." This Code provision reflects the principle enunciated in paragraph 3(1)(i) of the *Broadcasting Act* which declares that, as part of the broadcasting policy for Canada, "the programming provided by the Canadian broadcasting system should ... provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern". This principle is often referred to by communications specialists as the balance requirement. The CRTC has interpreted this "requirement" in the following manner in Public Notice CRTC 1988-213, *Policy regarding Open-Line Programming* (December 23, 1988):

The Commission, in a number of pronouncements, has encouraged licensees to discuss a wide variety of issues in their programming, including matters of public concern. It considered that the public, through exposure to various points of view on such issues, should be in a better position to reach informed opinions on such matters.

The Commission has, on such occasions, required that balance in the broadcasting system be maintained in the following manner:

- a) Each undertaking must comply with the requirement of the Act regarding balance in its own programming.
- b) Not all programming need be balanced, only that relating to matters of public concern.
- c) In general, balance need not be attained in each program or series of programs, but rather in the overall programming offered by each undertaking over a reasonable period of time.
- d) To attain balance, equal time need not necessarily be given for each point of view. Rather, it is expected that in the programming offered by an undertaking, a variety of points of view will be made available to a reasonably consistent viewer or listener over a reasonable period of time.

The Commission has always considered that it is the licensee's responsibility to decide whether an issue is a matter of public concern and to determine the manner in which balance is to be achieved....

Reflecting the CRTC's policy, it has been the view of the CBSC that a program dealing with a controversial issue need not have *built-in* balance. Broadcasters are entitled to balance biased programming by presenting the other side of the issue on other programs dealing with the same issue. If an individual program is not internally balanced, the Council may need to look at the overall programming provided by the broadcaster in order to see whether the broadcaster has met its responsibility pursuant to Clause 7 of the *Code of Ethics*.

As the CRTC's guidelines also provide, the CBSC takes the position that, while time allotted to the various sides of the issue is an important consideration in assessing a broadcaster's compliance with Clause 7, it is not alone determinative.

In this case, the Ontario Regional Council does not consider that it is necessary to respond to the viewer's complaint by going outside of the program of March 30 to determine whether there is balance in the network's programming on the subject of doctor-assisted suicide. The Council is satisfied that the presentation of views on doctor-assisted suicide on the *Shirley Show* in question constituted a balanced treatment of this controversial public issue. The Council notes that the guests who were invited to appear on the Show represented both sides of the issue and, in so doing, provided *many* different perspectives on the topic. While it is undeniable that some guests were more vocal than others, the Council is also satisfied that all guests were given an opportunity to speak.

The CBSC does not believe that it is generally practical or even possible to give every guest in such an environment the opportunity to express *fully* his or her point of view on the subject treated. If any such show's producers are doing their job, they will be gathering in their studio individuals who have an expertise and perspective on a subject which would, in

an ideal (but unrealistic) world (from a broadcasting point of view), entitle *each* of them to occupy a considerable quantity of time in exposition of their knowledge. That goal can *rarely* be met in a non-print media environment and even print publishers have their own spatial constraints. And so, it must almost be a given that persons choosing to be guests on such shows must be satisfied that they will not have the opportunity to say everything they wish to say. Their failure to meet their personal goals in this respect will not, in the absence of some *other* evidence of breach, constitute a breach of the Controversial Issues provision of the *CAB Code of Ethics*.

With respect to the allegation that the host of the show was biased, the Council notes that she did allow people with views different from her own to speak on the subject. On one such occasion, for example, Shirley Solomon exhorted persons from the audience who were *against* doctor-assisted suicide to speak up as such persons had not yet been heard from in the course of the program. In any event, the Council does not consider that a breach of Clause 7 occurs as soon as a host, commentator or moderator “shows his or her colours.” The Council notes in this regard that, in a June 12, 1989 letter to a complainant regarding the CBC program “Edmonton AM”, the CRTC stated that “the use of a commentator who is not totally impartial, ... is not something which is directly covered by the *Broadcasting Act* or the regulations. A licensee is free to use whomever he wishes, provided that the balance and equitable requirements are met.” While matters did not unfold precisely as the complainant would have preferred, the Council has no doubt that the host acquitted her responsibility regarding the presentation of a diversity of views on the complex subject of doctor-assisted suicide.

### **The Off-Air Events**

The Regional Council does not consider it appropriate to deal with the off-camera practices alleged by the complainant. While there are circumstances in which the CBSC can deal with off-air matters, these tend to be limited to the circumstances envisaged in the *RTNDA Code of (Journalistic) Ethics*, whose administration was recently undertaken by the CBSC (as of October 28, 1994). This Code is not applicable to these circumstances and, moreover, even if it were, there is considerable dispute as to the facts surrounding these events. In circumstances where the Council is not in a position to assess the accuracy of either version of events, it will generally be forced to abstain from dealing with the issue in question as it is not an evidence-gathering body.

### **The Broadcaster’s Response**

In addition to assessing the relevance of the Codes to the complaint, the CBSC always assesses the responsiveness of the broadcaster to the substance of the complaint. It is a responsibility of membership in the CBSC to be responsive to audience complaints. In this case, CTV’s Vice-President, Entertainment Programming, dealt at considerable length,

issue by issue, with the matter raised by the complainant. The Council considers that the broadcaster's response was more than satisfactory. 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.*