
**CANADIAN BROADCAST STANDARDS COUNCIL
PRAIRIE REGIONAL COUNCIL**

CITV-TV re News Item (Arts Funding)

(CBSC Decision 95/96-0091)

Decided December 16, 1997

S. Hall (Chair), D. Braun (Vice-Chair), K. Christensen, D. Dobbie,
V. Dubois and D. Ish

THE FACTS

In November 1995, the CITV-TV (ITV, Edmonton) 6 p.m. and 10 p.m. newscasts carried a number of segments entitled "You Paid For It!". In the November 15 segments, one of the stories featured was about public funding for controversial theatrical plays.

The report was presented by way of a montage of individual interview clips. In order to present different versions of the same report for the 6 p.m. and 10 p.m. newscasts, the reporter edited the same interview footage slightly differently. The shorter version was broadcast during the 6 p.m. newscast. It was introduced by the news anchor with the following statement and questions:

Well, maybe you were surprised to find out that you paid for that. What about controversial plays? Did you know that, in many cases, you're paying for the production whether you're in the audience or not? Boni Fox explains in her exclusive series You Paid For It!

The report then went as follows:

Boni Fox (reporter): It's rehearsal time for the third annual *Loud 'N Queer* Festival, the Catalyst Theatre's celebration of gay and lesbian playwrights. Tyler Irvine's piece is titled *Drooling Boyfriends*. No-one argues against the right to creative expression but there are some objections when you consider taxpayers help foot the bill. Last year, the Theatre's operating budget was about \$350,000. Government grants have been dwindling steadily to

the point where federal, provincial and municipal governments make up less than \$90,000 of that.

Ruth Smillie (Art Director of Catalyst Theatre): I'm not sure that most people are aware because the government does not articulate it in this way that there is not a nickel of that goes into arts funding now. It's all lottery money, all of it.

Jason Kenney (Representative from the Canadian Taxpayers Federation): That's what they always say but, the bottom line is that, when an institution or organization is subsidized by the government, everything it does indirectly is subsidized by taxpayers.

Boni Fox: Jason Kenney believes no-one has a right to a government grant. And he's also convinced it's high time for artists to operate on the market principle. If the play is good, people will pay to see it.

Jason Kenney: Those that stink don't sell any tickets. It's called the market. It works in other areas of life. Why shouldn't it work in art?

Boni Fox: With government arts grants consistently diminishing and budget restraint in full swing across the country, taxpayers may soon be off the hook and playwrights such as Taylor Irvine may have to find other outlets for their creative drive. Boni Fox, ITV News at six.

The news anchor concluded the 6 p.m. report with "Loud 'N Queer opens this week-end at the Catalyst Theatre."

During the 10 p.m. news, the slightly longer feature report was presented as follows:

Boni Fox: Tyler Irvine puts in long hours writing a play. He has already put in a full shift on his real job. Where others might suffer exhaustion, Irvine enjoys a burst of creative energy.

Tyler Irvine: I love writing. Writing is an excellent way of expressing oneself.

Boni Fox: Irvine's work is off the beaten track. The one-act skit is easily described by the title: *Drooling Boyfriends*. *Drooling Boyfriends* joins several other plays written by gay and lesbian thespians in the Catalyst Theatre's annual *Loud 'N Queer* Festival.

Tyler Irvine: As a gay writer, as a gay playwright, it offers that opportunity to put your work out for the public to see.

Boni Fox: Ruth Smillie is quitting as Art Director for the Catalyst Theatre. Her creative fuse has blown. Budget pressures mean she's taken unpaid leave and laid off staff.

Ruth Smillie: The human cost of that is nearly too great.

Boni Fox: Last year the Theatre's operating budget was about \$350,000. Government grants have been dwindling steadily to the point where federal, provincial and municipal grants make up less than \$90,000 of that. Smillie says long gone are the days when Canadians could enjoy universal access to culture.

Ruth Smillie: Here we are today and we're talking possibly about, if you want to see something, you should pay full price for it. I think my grandfather'd be rolling over in his grave.

Jason Kenney: Nobody has a right to a government grant. We do have a right not to be discriminated against on certain bases enumerated in the Charter but that doesn't include a right to throw 30,000 tax dollars away on a ridiculous excuse for theatre.

Ruth Smillie: I'm not sure that *Loud 'N Queer* is particularly controversial unless you're homophobic.

Boni Fox: Smillie has anticipated this kind of backlash. A separate set of books can prove that fundraising and ticket sales for *Loud 'N Queer* cover the cost of production.

Jason Kenney: That's what they always say but, the bottom line is that, when an institution or organization is subsidized by the government, everything it does indirectly is subsidized by taxpayers.

Boni Fox: With budget restraint in full swing at all levels of government taxpayers may not be subsidizing theatre like this for much longer and writers like Tyler may be looking for a new venue in which to perform. Boni Fox, ITV News at Ten.

The Letters of Complaint

It often happens that the CBSC receives a number of complaints about a program, some, many or all of which are resolved by the broadcaster's reply to the complainants. While this issue is not generally raised in the course of a CBSC decision, it is necessary to do here because of the broadcaster's method of dealing with the complaints (which, for reasons discussed below, was considered entirely satisfactory). Instead of directly addressing the text of the letter cited below to the complainant in *this* case, he included a copy of his letter to another complainant as an annex to his letter to this complainant. Thus, in order to complete the background explanation for the inclusion of certain references to "outside" matters in this decision, the Prairie Regional Council must include the text of the letter from the other complainant in order for readers to fully understand the broadcaster's response, which is given below. It should also be recognized that the issues of the other complainants who did not send in Ruling Requests were, in fact, resolved by the broadcaster's communication with them.

In the event, the CBSC received four complaints regarding this news item; however, three of the complainants were satisfied with the broadcaster's reply, leaving only one who returned the signed CBSC form indicating that she was unsatisfied and was requesting adjudication of the matter by the appropriate Regional Council. Accordingly, the Prairie Regional Council only considered the following complaint (of November 24). In her letter, the complainant claimed that this news item "disparaged arts funding and the gay and lesbian community." Her letter further stated that

The interviews for this news item, "You Paid for it", were granted under false pretences. The interview material was later presented out of context.

This complainant also wrote to the Vice President of ITV, copying the letter to the CBSC and the CRTC. This letter read in part as follows:

I can no longer trust the news reports of ITV. This is because last week your reporters misrepresented themselves to the artists involved in "Loud 'N Queer", and presented their interviews and clips from the production out of context.

The other letter of complaint to which reference was made above reads in part as follows:

In September of 1995, Boni Fox contacted Catalyst Theatre regarding our annual writers' cabaret, *Loud 'N Queer*. Ms. Fox said that she wanted to do a profile on Catalyst Theatre and a preview on the *Loud 'N Queer Festival*. On these terms, I agreed to do an interview with Boni Fox and, at her request, put her in touch with James Tyler Irvine, one of the writers submitting a script for the festival. Ms. Fox interviewed James in his home and shot footage of him delivering his script to the theatre. Last Tuesday, an ITV cameraman came into the first rehearsal of James's script and shot footage of the actors rehearsing.

On Wednesday, November 15, 1995, ITV used footage of the interview with me, the playwright, and the actors in rehearsal on the 6 p.m. and 10 p.m. newscast as the focus of the ITV series, "You Paid For It!" The broadcast opened with the anchorwoman saying,

Maybe you're surprised to find out you paid for that. What about controversial plays? Did you know that in many cases you're paying for the production, whether you're in the audience or not?

At no time during any of my telephone conversations with Boni, during her interview with me at Catalyst, or during her interview with James Tyler Irvine, did Boni Fox indicate that we were to be the subject and focus of "You Paid For It!". We were not told that the interviews and rehearsal footage would be used as fodder for an attack by Jason Kenney of the Canadian Taxpayer's Association as part of the ITV programme.

When I spoke to Tim Spelliscy, the Executive Producer of ITV's News and Public Affairs Department last Friday, he said that it had always been ITV's intention to use Catalyst Theatre and *Loud 'N Queer* as the focus of "You Paid For It!". Withholding this information from us was not then an oversight, but rather a willful misrepresentation of ITV's intentions and a stunning example of unethical, homophobic journalism.

Furthermore, when I spoke to Boni Fox regarding *Loud 'N Queer*, I made it clear to her that anyone can submit material for the cabaret regardless of their sexual orientation. Some of the writers featured in the cabaret are gay, some are heterosexuals, some are lesbians, some are bisexuals. I also explained that the sexual orientation of the actors is not an issue when casting the event. They are hired on the basis of their professional merits, not sexual orientation.

In ITV's newscast on November 15th, the commentator said that James Tyler Irvine's script "joins several other plays written by gay and lesbian thespians in the Catalyst Theatre's *Loud 'N Queer Festival*." As I have already mentioned, being gay or lesbian is not a prerequisite for having work produced at *Loud 'N Queer*. Furthermore, the word 'thespian' is a noun meaning actor or actress. By using this reference while showing footage of actors in rehearsals, ITV effectively "outed" more than 30 writers and the cast members.

Boni Fox and the members of ITV's News and Public Affairs staff wanted to create an inflammatory piece on arts funding. Through misrepresentation, lying, distorting the facts, and fuelling public prejudice against the gay and lesbian community, they got it. However, by

inventing the news rather than reporting the news, ITV has violated one of the most fundamental principles of journalism.

The Broadcaster's Response

The Executive Vice-President and General Manager of ITV responded to the complaint which is the subject matter of this decision in a letter dated December 1. As noted above, this letter attached the station's response to one of the *other* complainants mentioned above and stated that "As indicated in that letter, we have taken immediate steps to rectify this situation at the station and certainly regret any offense we may have caused certain members of the public including yourself." The attached broadcaster's response, which is reproduced in part below, does deal with specific points raised in the second letter of complaint which is reproduced above.

Our entire Broadcast Standards Committee has now met and had a thorough discussion about the ITV News story on Catalyst and your letter of November 20, 1995.

We would like to preface our remarks by saying that this incident has been the subject of much consternation at the station and particularly in the news department. We extend to Catalyst our assurances that a result of this unfortunate incident will be a redoubling of efforts to scrutinize news stories before they go to air. The reality is that we produce four newscasts everyday 365 days of the year. Our reporters and newsroom staff are human and it sometimes happens that mistakes in judgement are made. What our station and editorial staff are not however, is homophobic and at the outset we would like to counter that very disturbing accusation.

We are also in the business of creating works for television and film and forging alliances with producers, writers and actors. Through public service announcements and news and promotional features, we have consistently supported many theatre groups and their creative endeavours - regardless of the sexual orientation of the actors or writers and whether the works include gay themes or not, without hesitation. We will continue to do so. Freedom of creative expression is equally important to us as is our relationship with the creative community.

We sincerely regret the impression that was evidently left with certain members of the theatre community and the public that ITV is homophobic. However, it is simply not true and moreover, it is an accusation that is inconsistent with the support we have shown to the artistic and theatre community in the past. Indeed, one of the things we specifically try to avoid in the newsroom is taking editorial positions on issues. What we try to do is present both sides of a story without imposing our own editorial judgment.

This brings us to the news item in question. The story did include both your views about the funding of controversial plays as well as the views of the Canadian Taxpayers Association. It was not our intention to endorse one argument over the other but merely to present two different opinions on what is admittedly a very controversial subject. We cannot simply avoid sensitive issues altogether for fear of offending people who hold particular views. Doesn't freedom of expression also mean that Jason Kenny of the Taxpayers Association ought to be allowed to voice his opinions although there may be those among us who disagree strongly with those views? It is our position that freedom of expression has to prevail in such circumstances.

We did however, fall down in two important respects which we very much regret and for which we must apologize. First, the title of the series ("You Paid For It") of which the Catalyst story was a part was, in hindsight, inappropriately harsh and may have given the story a bias which we did not intend for it to have. We discussed this issue at the Committee meeting at some length in an effort to determine how the story itself and the title got "out of synch". What seems to have happened is that there was a breakdown in communication between the promotions department which was responsible for promoting the series and its title and the news department which was actually putting the stories for the series together. In short, promotions was not aware of the actual content of the story and the newsroom apparently misjudged the impact that the promotion and title of the series could have on how the story was perceived. Had there been better communication between the two departments the story would have been placed in a more appropriate context. We have taken immediate steps internally to prevent such a problem from recurring.

Second, you have asserted that our reporter, Boni Fox, misrepresented herself and the nature of the report to you. Such conduct violates our Company Code of Journalistic Ethics and Guidelines and is indeed a very serious matter. Our Vice President, News and Public Affairs has spoken with Ms. Fox and we can assure you that appropriate disciplinary action is being taken. Moreover, a meeting of all news staff has been convened to reiterate the importance and content of the Code to ensure that an incident of this nature does not repeat itself. You can also expect to receive a separate letter of apology from Ms. Fox.

Finally, you expressed a concern about our reference to the *Loud 'N Queer Festival* as including "plays written by gay and lesbian thespians". Apart from the grammatically incorrect use of the word "thespians", as far as we know, that statement is accurate. It is our understanding that *Loud 'N Queer* is indeed a celebration of art with gay themes. Nobody involved in the story was singled out as actually being gay or otherwise except for Tyler Irvine who referred to himself in his own words as a "gay writer". Nor did we say that being gay or lesbian was a prerequisite to participating in the Festival.

In summary, we reiterate that ITV is not homophobic nor was there any intent to fuel public prejudice against the gay and lesbian community. Whether we like it or not, the Canadian Taxpayers Association speaks for a segment of the population on the issue of funding for the arts. The story was as much a platform for your Theatre and your views as it was for the Canadian Taxpayers Association. We do however, take responsibility for the conduct of our reporters and deeply regret the offense we have caused you and other members of the public and theatre community. This entire incident has weighed very heavily on Ms. Fox and the News Department at the station.

We do appreciate your making your views known to us. It helps us to take stock of what kind of job we're doing and our internal checks and balances. You have made it clear that there is room for improvement and we have taken swift action to ensure that improvements are made.

THE DECISION

The CBSC's Prairie Regional Council considered the complaint under Clauses 2 and 6 of the *CAB Code of Ethics* and Clauses 1 and 3 of the *RTNDA Code of Ethics*, which read as follows:

CAB Code of Ethics, Clause 2 (Human Rights)

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

CAB Code of Ethics, Clause 6 (News)

It shall be the responsibility of member stations to ensure that news shall be represented with accuracy and without bias. The member station shall satisfy itself that the arrangements made for obtaining news ensure this result. It shall also ensure that news broadcasts are not editorial. News shall not be selected for the purpose of furthering or hindering either side of any controversial public issue, nor shall it be designed by the beliefs or opinions or desires of the station management, the editor or others engaged in its preparation or delivery. The fundamental purpose of news dissemination in a democracy is to enable people to know what is happening, and to understand events so that they may form their own conclusions.

Therefore, nothing in the foregoing shall be understood as preventing news broadcasters from analysing and elucidating news so long as such analysis or comment is clearly labelled as such and kept distinct from regular news presentations. Member stations will, insofar as practical, endeavour to provide editorial opinion which shall be clearly labelled as such and kept entirely distinct from regular broadcasts of news or analysis and opinion.

It is recognized that the full, fair and proper presentation of news, opinion, comment and editorial is the prime and fundamental responsibility of the broadcast publisher.

RTNDA Code of (Journalistic) Ethics, Article One:

The main purpose of broadcast journalism is to inform the public in an accurate, comprehensive and balanced manner about events of importance.

RTNDA Code of (Journalistic) Ethics, Article Three:

Broadcast journalists will not sensationalize news items and will resist pressures, whether from inside or outside the broadcasting industry, to do so. They will in no way distort the news. Broadcast journalists will not edit taped interviews to distort the meaning, intent, or actual words of the interviewee.

The Regional Council members viewed a tape of the program in question and reviewed the correspondence. The Council considers that the program in question does not violate either of the Codes of Ethics mentioned above.

Was the Report Homophobic?

Clause 2 of the *Code of Ethics*, the human rights provision, prohibits abusive or discriminatory material or comments based on certain protected grounds. While sexual orientation is not explicitly found in the wording of that provision, as explained in *CHCH-TV*

re Life Today with James Robison (CBSC Decision 95/96-0128, April 30, 1996), the CBSC considers sexual orientation to be an “analogous” protected ground under this provision.

It is important to note that the human rights provision does not prohibit mere references, where pertinent, to matters of race, national or ethnic origin, colour, religion, age, sex, marital status, physical or mental handicap or sexual orientation. The requirement that an abusive or hateful element be present in order to find a breach of Clause 2 of the *Code of Ethics* was recognized in *CFOX-FM re the Larry and Willie Show* (CBSC Decision 92/93-0141, August 30, 1993), where the B.C. Regional Council concluded that

It is not *any* reference to "race, national or ethnic origin, religion, age, sex, marital status or physical or mental handicap" but rather those which contain "abusive or discriminatory material or comment" based on the foregoing which will be sanctioned.

In this case, the Council does not find that the report “disparaged … the gay and lesbian community” as alleged by the complainant. The report was about controversial plays and whether these *should* receive government funding. It focused on the *Loud ‘N Queer* festival which, as the Council understands it, is specifically aimed at bringing non-traditional lifestyles into the spotlight. While the sexual orientation of participants in the festival may not have been relevant information had *another* festival been the focus of the report, it was in this case. The reporter’s comments, then, since relevant to the story and not based on homophobic views, were not considered by the Council as being in contravention of Clause 2 of the CAB *Code of Ethics*.

Accuracy and Fairness

The complainant also alleges that the interviews were obtained on false pretences and presented out of context. With respect to the allegation of false pretences, the Council notes that there was no allegation that the reporter did not disclose that *she was indeed a reporter*, nor was it alleged that the video footage was taken surreptitiously. Rather, the allegation of false pretences is based on the fact that the reporter did not divulge the *focus* of her story, *i.e.* that it would form part of the series “You Paid For It!” when requesting interviews.

While the Council notes that the broadcaster has apologized for the conduct of Ms. Fox in relation to this story, stating that her conduct violated their own Company Code of Journalistic Ethics and Guidelines, there is insufficient evidence for the Council to conclude that her conduct also constituted a breach of the CAB *Code of Ethics* or the RTNDA *Code of (Journalistic) Ethics*. Because the CBSC is not an evidence-gathering body, it does not hold hearings at which evidence, including the testimony of witnesses, is presented. The correspondence between the complainant and the broadcaster is always taken into consideration, but these letters are treated only as argument and not as evidence. In this case, based on the acknowledgement of the broadcaster, it *may* be that the reporter’s conduct was in breach of the Codes of Ethics administered by the CBSC; however, without

knowing the precise nature of the reporter's misrepresentation which was acknowledged by the broadcaster, the Council cannot make a determination in this regard. The Council considers it opportune to note, nevertheless, that, in its view, the reporter was under no obligation to divulge the angle she was planning to give to the story she was preparing, *even if she did know it prior to seeking the interviews.* Indeed, the Council recognizes that, during the interview stage, reporters may not always have an absolutely fixed preconceived notion of the story that is developing and, even where they do, requiring the divulgence of the angle of the story to interviewees may unfairly hinder the information-gathering process.

As to the presentation of interview footage out of context, the *RTNDA Code of (Journalistic) Ethics* strictly prohibits the *editing* of taped interviews to "distort the meaning, intent, or actual words of the interviewee." Accordingly, while the Council is generally not concerned with issues surrounding the obtaining of interviews, the ultimate *use* of interview material in a broadcast report is an issue of importance for the CBSC and its members.

The Council does not consider that a distortion occurred in this instance. In the Council's view, the complainant's allegation stems from her dissatisfaction with the ultimate angle given to the story and not with the manipulation of what was said. It may well be that the interviewees would not have volunteered certain information had they known how it would be used; however, that is very different from employing creative editing in order to broadcast something which was never actually said.

In this regard, the complaint at hand is not unlike that dealt with in *CFTO-TV re News (Sexual Assault)* (CBSC Decision 93/94-0215, June 22, 1994). In that decision, a woman claimed that the reporting of proceedings against a doctor who had allegedly assaulted her sexually was inaccurate and unbalanced. The Regional Council disagreed.

Although one member [of the Council] considered that the complainant had been right to be annoyed about the reporting of the amount of money she was seeking, all were agreed that there had not been any breach of the Codes in so reporting since the complainant had herself provided the interview used on air and the \$300,000 figure was the inevitable and logical conclusion of her own statements.

Whether, in the end, the complainant sought those or any damages is unknown to the Council and immaterial to the result of this adjudication. It had been complainant's choice to disclose such information on air. Numbers, particularly large numbers, are interesting to the public and CFTO-TV acted reasonably in reporting information which the station believed would be of interest to its viewers. The accuracy of the CFTO news report in this respect was not in question. Consequently, no breach of the Codes could be found in the reporting of this information.

As to the complainant's allegation that the story "disparaged arts funding", the Council considers this case to be analogous to the situation faced by the British Columbia Regional Council in *CHAN-TV re Newscast (Recycling Society)* (CBSC Decision 96/97-0004, March 10, 1997). That decision involved two newscasts about a not-for-profit organization which, in the complainant's view, had been malicious, one-sided and destructive. The British

Columbia Regional Council dealt with the issue of "how the story was told" in the following way:

In general, it is the responsibility of the news organization to choose the story it will tell and the way it will tell it. In *CFTO-TV re Newscast (Pollution)* (CBSC Decision 92/93-0178, October 26, 1993), the broadcaster had referred to an American pollution study, using the information to give the story local relevance. The complainant, who was an expert in the area of pollution, felt that the original report, which gave rise to the story, had been distorted or misrepresented. The Council did not agree; it found that there had been no breach of the Code.

CFTO-TV used the American report only as a "top" to its story, which dealt with a local perspective, oriented more particularly toward the automobile. It did not represent that this was the essence of the study, or even a part of it. The complainant was obviously dissatisfied that the report did not adequately explain the American study; this was not the story which CFTO-TV chose to tell. In that, it was not inaccurate or biased. At worst, it simplified the more complex issues raised by the study. This does not, however, constitute a breach of the CAB *Code of Ethics*.

Similarly, in *CHEK-TV re Evening News* (CBSC Decision 94/95-0137, December 18, 1996), the B.C. Regional Council upheld the broadcaster's right to tell the story it chose to tell in that case. The broadcaster was not obliged to treat the issue central to that report in greater depth or more broadly. The broadcaster was obliged to be accurate but not to relate the story in question to related or similar matters taken from prior British Columbia or national political history.

In this matter, the consideration is only slightly different. Here, the complainant would have liked to choose the persons to be interviewed by BCTV to reflect the story it wanted to tell. Provided, however, that the station could be fair and balanced in telling the story it chose to tell, it was not necessary for it to interview the specific individuals proffered by the Society.

This case, like the CHAN-TV case, is one where the complainant would have liked the report to reflect the story she wanted to tell. After due consideration, however, it appears to the members of this Council that, all in all, the reports in question were fair and balanced.

Broadcaster Responsiveness

The CBSC always recognizes the broadcaster's obligation, as a CBSC member, to be responsive to complainants. In this case, the Regional Council considers that the response from the broadcaster ("response" being defined, for the Council's purposes, as the combination of the letter to this complainant and that to the other complainant, which was annexed to this complainant's letter) dealt in great detail, issue by issue, entirely frankly, and even apologetically (where the broadcaster felt it could have acted differently) with the issues raised by the complainant. The Council notes that many, if not all, of the complainants in this matter were closely intertwined and accordingly, the actions of the broadcaster in response to this complaint, i.e. attaching a letter of response to another complainant, were neither inappropriate nor disrespectful. In fact, the CBSC considers that

the broadcaster's response was as fine as any it has seen in any region. It goes without saying that the Council finds that the station did not breach the Council's standard of responsiveness.

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.