
**CANADIAN BROADCAST STANDARDS COUNCIL
ATLANTIC REGIONAL COUNCIL**

CJCB-AM re *TalkBack*

(CBSC Decision 96/97-0065)

Decided February 14, 1997

P. Schurman (Chair), R. Cohen (*ad hoc*), K. MacAulay, C. McDade,
Z. Rideout, C. Thomas

Mr. Donnie Graham, Program Director at CJCB-AM (Sydney), is one of the co-hosts of *TalkBack*, an open line program broadcast by CJCB weekdays between 9:00 a.m. and 10:00 a.m. On the show of October 1, 1996, a caller outlined to him her problems with the Children's Aid Society and Home Care Nova Scotia in extensive and personal detail. A transcript of the broadcast is annexed hereto as an Appendix; however, little of it is directly pertinent to the difficulties arising between the complainant and the station. The nub of their difficulty relates to a brief portion of that call and the larger law-related issues flowing therefrom.

After the caller presented the detailed background of her situation, the host permitted her to discuss a meeting with her social worker which she had attended with her Regional Councillor [no relation, of course, to the CBSC Atlantic Regional Council] in the hope, the Atlantic Regional Council assumes, that the Councillor's more authoritative presence would encourage the social worker to accede to the caller's request to return special needs child from foster care. At this meeting, the caller reported that she had given her social worker oral authority to discuss the details of her child's case. Despite that, the social worker refused to discuss the details of the matter in the presence of the Councillor. The host's response was to explain that the law in Nova Scotia did not allow the social worker to do so, even with the parent's permission. That dialogue was as follows:

Caller: Well, I'm finding one thing, I had one, I had, uh, a meeting here a couple of weeks ago and I had a Councillor in with me and we didn't get too far because they don't want to speak about anything 'cause he was there. And I gave him, the Children's Aid notice he was coming, and I gave Children's Aid permission to talk in front of him.

Donnie: Yeah but the law doesn't allow them to. I mean, that's, it's an unfortunate situation, but the law does not, they are not legally allowed to do that. With your permission or without it, the law in Nova Scotia does not allow them to do that.

Caller: Not even if I ...

Donnie: No, not even with your permission.

Caller: No?!

Donnie: No.

Caller: But, see the thing...

Donnie: That, that's the law, that's what's on the books, that's what's passed in the Legislature.

He closed this call with an offer to the mother to see if he could "make some phone calls and find anything out."

While some of the following details are conjectural in the sense that Regional Council members did not hear them on the tapes to which they were personally able to listen, they at least do not appear to be in dispute as between the complainant and the station. It appears that the complainant subsequently called in to the program offering his opinion and assistance on the subject raised by the caller. The complainant was, at that time, a frequent caller who was well-known to the host. The host chose not to allow the complainant caller to announce his group's telephone number on air, but rather offered to provide it to the original caller off air in the event she wished to call the host again. It appears that the original caller did not avail herself of the opportunity to contact the host for this information.

The Complainant-Broadcaster Correspondence: The First Round

The complainant wrote to the Regional Office of the CRTC on October 2, 1996, alleging that the host made "false statements on air concerning legal aspects of law which he has not legal authority to do and has misinformed the listening public as to what their rights are." On the same date, the Vice-President and General Manager of the station responded to the complainant in writing as he had apparently already done on the telephone. In that letter, he refused to supply tapes of the program on the grounds that there was, in his view, a "credibility [*sic*] factor" regarding the complainant's Family Rights Association.

On October 11, 1996, the host responded to the complainant. He explained why he believed that his on air interpretation of the social worker's position had been correct.

Having reviewed the comments made by myself and the caller on the talkback show in question, I fail to see where a mistake was made on my part. The lady said she had her regional councillor present with the social worker from Children's Aid, and told the social

worker he could give the details of her child's case. The social worker refused. I explained the social worker couldn't give out the information because of confidentiality.

As you are well aware, the Social Work Code of Ethics says the information is confidential and can only be released if the client authorizes in writing. This has been incorporated into the policy and procedures handbook of the Provincial Children's Aid department, and they have information release forms available which must be Filled out and signed. This was not done, thus confidentiality exists. I also understand that legal advisors feel the social worker should determine that the release of information will be to the benefit of the child before they are required to follow this rule.

I hope this letter clears up the misunderstanding.

On October 17, the Program Director wrote to the Senior Regional Officer of the CRTC for the Atlantic Region, enclosing a copy of the station's "Guidelines for CJCB's TalkBack", which the CRTC representative in turn forwarded to the complainant. They read as follows:

All callers to CJCB's TalkBack program are considered to be a part of CJCB's programming. As such, number of appearances on the show, length of stay on the show and topics discussed are at the sole discretion of the host.

TalkBack hosts are to be mindful of the laws regarding slander and libel. Special attention is to be given to **Public Notice CRTC 1988-213** concerning gratuitous personal attacks on individuals or groups, as well as unresearched or inaccurate reporting. To knowingly allow either is considered unprofessional and subject to discipline.

Although TalkBack's aim is to discuss a wide variety of issues of public concern allowing exposure to various points of view, this should be done with the goal of having the public reach better informed opinions and balance.

As per Public Notice CRTC 1988-213.... "equal time need not necessarily be given for each point of view". Rather, it is expected that in the programming offered by the undertaking (CJCB), a variety of points of view will be made available to a reasonably consistent listener over a reasonable period of time.

TalkBack hosts will not knowingly broadcast, or allow to be broadcast, comments that, when taken in context, tends [sic] or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

On October 28, 1996 the complainant wrote directly to the broadcaster in response to the Program Director's letter. The complainant refused to accept the broadcaster's interpretation and again alleged that the host had misled the caller and the complainant on the legal issues. He said:

I do not accept your interpretation of what you feel the responsibilities and guidelines are concerning confidentiality are [sic] and your letter does not clarify your statements on air to both the caller nor the comments you made to me on a subsequent show. You very clearly stated that there was a part of the Children's and Family Services Act relating to the social workers [sic] obligation under the act to keep information confidential. You even requested I tell you what year of the act I was referring to when I disagreed with you.

Also, in your explanation [sic] you neglect to mention that the caller could have written an authorization at the meeting and also that written authorization would not be necessary with the client present when the information is being released and agrees verbally in that meeting.

You have clearly misled the caller and myself with what you call facts or law concerning the person's ability to have a support person present with these meetings. If what you are saying is correct than [sic] the person's lawyer would also have to have written authorization to access information concerning the client and this is not done. As well if you did investigate what is in the Children's and Family Services Act you would be aware that section 93 of the act, making [sic] these children's aid matters **open to the public**. You did not clarify this to the caller and I still feel misled. We should not forget the Mrs.'s X [sic] case that prompted the changes in the Act to help achieve accountability in the system.

Finally, on November 22, 1996, in what is an unusually long delay in transferring a complaint concerning a private broadcaster, the CRTC referred this matter to the CBSC for consideration and resolution.

The Complainant-Broadcaster Correspondence: The Second Round

On November 28, 1996, the complainant wrote to follow up on his complaint, reiterating his version of the facts, alleging that the host had misled the audience, and that

the host has a grudge against this organization and allows his personal feelings to cloud his professional judgement both on and off air. This is clearly a personal attack on this organization without any basis and if the host can show that this is not a reputable organization then we at Family Rights Association will apologize to him, the station and withdraw these complaints.

He also raised the issue of other statements made by the host on his program of that date (November 28) but this decision will not extend beyond the point raised in the initial letter. It is the view of the Atlantic Regional Council that, whatever its origins, whether on or off the air, and without for these purposes assigning blame, a feud had developed between the complainant and the station. To the extent that the November 28 letter constituted another stage of the same disagreement, it is not the CBSC's intention to deal with the program of that date as well.

On January 10, 1997, in response to the CBSC's standard request that the broadcaster respond to a listener with a complaint, the General Manager wrote to the complainant indicating that his review of the program revealed nothing which contravened the broadcaster's internal guidelines. In that letter, the General Manager enclosed an internal memorandum which had been written to him by the co-host of the TalkBack program. The content of those letters is as follows. First, the letter of the General Manager to the complainant:

I have reviewed the program in question, along with Mr. Dave Wilson, the co-host of the Talk Back Program, and find nothing in the program that was in direct conflict with the station's guidelines. You stated " Public Notice CRTC 1988-213 - concerning gratuitous attacks on

individuals or groups as well as unresearched or inaccurate reporting. Again, I am at a loss to understand your reasoning for quoting this Notice, there is absolutely nothing in the context of the program that even resembles a conflict of this particular Notice.

I am also enclosing a memo from Mr. Wilson, to me with regard to this particular program.

Thank you for taking the time and trouble to convey your thoughts and opinion on this matter.

Next, the internal memorandum of the co-host of the show to the General Manager:

Re [the] complaint to the C-R-T-C and Broadcast Standards Council: as the tape of the program clearly shows the Family Rights Association was never named in a broadcast. The caller who broached the subject of having difficulty with the legal system was encouraged to follow through and did not call after the program looking for help or information. A subsequent caller who tried to suggest what help is available was indeed [the complainant] himself. When [the complainant] did call me off-air, I was neither ignorant nor rude. In my opinion I have misled no one, have done nothing unprofessional and am not in a conflict with our open line show guidelines.

On January 22, 1997, the complainant, dissatisfied with the response from the station, filed a Ruling Request, asking that the matter be referred to the appropriate Regional Council for resolution.

Subsequent Correspondence

On February 3, 1997, the complainant wrote again to the General Manager outlining his recollection of the program, his concerns over two other incidents stemming from different programs which were not named, and offering to "sit and discuss the matter."

In two letters dated February 6, 1997 to the CBSC, the one from CJCB's Program Director and first host complained about by the complainant in this matter and the other from CJCB's News Director and *Talkback* co-host, the station provided a history of its collective experience with the complainant. Although the letters were quite different, they revealed a common theme which related to the question of the credentials of the complainant and his organization. The collective result of the letters was that the station had resisted saying "anything negative" about the complainant's organization but that they were wary of providing him with a voice in circumstances where his credibility had not, in their view, been established. The News Director's letter did in particular detail reasons for his view of the complainant's lack of entitlement to appear on air as a guest of the show. It is not the view of the Council that it would be either necessary or useful to make these details public. In the Decision section below, the Atlantic Regional Council will integrate its views on the station's decision with its own perspective on a broadcaster's role in such circumstances.

THE DECISION

The CBSC's Atlantic Regional Council considered the complaint under Clauses 6 and 7 of the *Code of Ethics* of the Canadian Association of Broadcasters (CAB). These read as follows:

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 analyzing 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.

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 listened to a tape of the October 1 program and reviewed the voluminous correspondence. The Regional Council considers that the broadcaster has not breached the provisions of the *Code of Ethics*.

The Issues

The Atlantic Regional Council considers that, while both Clauses 6 and 7 of the *Code of Ethics* apply to this matter, it is the issues raised by Clause 6 which are most pertinent to its decision. While Clause 6 deals ostensibly with news, the CBSC has long since understood its final paragraph to be of much broader scope and has regularly used this provision to deal with issues related to talk radio and television, call-in shows and other programming which deals in opinion and comment rather than formal news and public

affairs. In this regard, the Council relies on the operative words: "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. [Emphasis added.]"

Fair and Proper Presentation of Opinion and Comment

The question, therefore, for the Atlantic Regional Council is to evaluate the on air comments of the host, Mr. Donnie Graham. In doing this, the Council has *no* hesitation in finding that the host was absolutely fair and proper, if not also sympathetic, in his approach to the caller, whose personal problems with her special needs child were certainly complex. Moreover, in arriving at this decision, the Council is not required to express its own opinion on the niceties of the legal point which faced the host. The issue is not, after all, whether he was absolutely correct regarding his representation on the requirement of a formal authorization to disclose in a pure legal sense or not. It is not his responsibility to *be* a lawyer and he did not represent himself as such, although he was firm on his understanding of the Nova Scotia law. Furthermore, there is always the possibility that two lawyers might themselves have differing opinions on the very issue.

The host's duty was to be fair and responsible in expressing his opinion. If inaccuracy there was, and the Atlantic Regional Council does *not* hereby express any opinion on *this* issue, it was an error *within* the ambit of fairness and reasonableness. The role of the host in this case stands in stark contrast with that of the host in *CKTB-AM re the John Michael Show* (CBSC Decision 92/93-0170, February 15, 1994), in which decision the Ontario Regional Council stated that the host's

comments were riddled with a multiplicity of factual inaccuracies, many of which were of the most elementary nature. They generally fell squarely within the CRTC's definition of what does *not constitute* "high standard" as outlined in Public Notice CRTC 1988-121 (at p. 7): "unresearched and inaccurate reporting and failure to meet professional standards."

The Complainant's Entitlement to Access

As to the entitlement of the broadcaster to deny access to the complainant to provide his phone number and the identity of his organization to listeners, the Council also finds that the host was absolutely fair and proper. It appears from the extensive correspondence that information was sought from the complainant regarding the credibility of his organization. It also appears that satisfactory information of this nature was never provided. There may, moreover, have been information of a doubtful nature regarding the complainant's organization which would have required rebuttal by the complainant in order for the broadcaster to acquit its own responsibilities to its listeners by permitting access to the airwaves by the complainant as a source of advice to listeners. It should not be forgotten that the broadcaster's first responsibility is to its audience and not to an individual who wishes to be heard.

While balance and the presentation of a diversity of views fall squarely within the basket of broadcaster responsibilities, the inclusion of a *particular* voice does not. Frequent callers to open line shows become known to the program hosts and producers. Since callers, as well as hosts, are the responsibility of the broadcaster, the station has a *duty* to listeners to be careful in choosing those who will go to air, how long they will stay on air, and so on. In Public Notice CRTC 1988-213, *Policy Regarding Open-line Programming* (23 December 1988), the Commission put that position in these terms:

A licensee is responsible for the actions of its employees, including open-line hosts, producers and programmers. A licensee is also responsible for comments made by guests or callers during open-line programs.

The station's guidelines, which go a bit further, are themselves not inappropriate when they say:

All callers to CJCJ's TalkBack program are considered to be a part of CJCJ's programming. As such, number of appearances on the show, length of stay on the show and topics discussed are at the sole discretion of the host.

For all of the above reasons, the Atlantic Regional Council concludes that there has been no breach of Clause 6 of the *Code of Ethics*.

Controversial Issues

Although Clause 7 of the *CAB Code of Ethics* deals with controversial issues and differs in much of its impact from the provisions of Clause 6, there is some overlap. To that extent, however, the Atlantic Regional Council considers that their discussion of Clause 6 suffices.

In the matter at hand, the issues of child care and welfare had already received a full and open presentation by the mother who was experiencing difficulties with the system and the host had given fair treatment to the issue itself. Moreover, the very terms of Clause 7 require that the broadcaster "treat fairly all subjects of a controversial nature" including the issues raised by the caller about her special needs child, as discussed above. The broadcaster had no further obligation to its audience.

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. In this case, while the final letter by the broadcaster to the complainant was somewhat brief, there had already been an unusually lengthy correspondence, in terms of the CBSC's experience and the Council considers that the broadcaster's responses were more than ample, despite the fact that its concerns regarding the credibility of the complainant and his organization were never satisfied.

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.

APPENDIX

96/97-0065

Transcript of a Portion of the CJCB-AM Talkback Show of October 1, 1996

Donnie Graham (TalkBack host): Good morning. You're on the air.

Caller: [Clearing throat.]

Donnie: Hello!

Caller: Hi, how are ya?

Donnie: Good and how are you?

Caller: Not too bad, Donnie.

Donnie: Go ahead.

Caller: Okay. Ah, Donnie, I'm concerned with Children's Aid Society in Cape Breton and with Home Care Nova Scotia. I have a little girl that's in, been in care the last two and a half years with Children's Aid and I had two little girls, a little boy and a little girl, that was in care that meant they returned home with me for the last year and a half and now I don't deal with Children's Aid any more. I don't deal with them at all, since June 26th of 1996. And I was upset, they will not allow me to have my daughter returned home that's in care. And what they're giving me is well, the requirements that she needs to be returned home is that well, I can't get the services that I need and everybody, like, knows most of the services that I need right now, I have. And I took down to them, actually had a meeting with Children's Aid with Dave [inaudible] and the other workers down there and ever since that it's just I can't get nowhere with them.

Donnie: Un huh.

Caller: They don't want to turn around and meet with me. They don't want to try to settle this out of court. They don't want to turn around and give me the help that I need. They're so concerned of actually, of my, um, children, the child that's in care. Why can't they turn around and give me the help? It requires as much as they're saying. And returning her and helping me in the house, with me, with the three children instead of the two. Like, I'm doing [coughing] excuse me. I'm doing, I'm doing really good now with my other two children. I have one that's 5 that's home and one that's 7 and a little girl that's in care is 5 ½ years old. She's looking to come home. Like the foster family is really good to her, where she's at, but she wants to be home with Mommy. And Children's Aid know this, she been told, she told them that a couple of times already. I see her on a monthly basis. And when I do see her, she's very happy, very contented. When she sees me, but when it's time to leave she gets upset sometimes, because she doesn't want to leave me or her brother and sister.

Donnie: So one, one of the problems is, is that this particular child requires some kind of special care.

Caller: Yes she does.

Donnie: And you, you, you, you can't get that special care?

Caller: I can't get the special need. I'm trying to get the special care right now but she, that Children's Aid are telling me I require for her to be returned home and I find out now I went to every resource that I can possibly go with and most of them gave me the resources that I need. Like I can get the handicap bus for her for back and forth to school. I can get, um, what else can I get for this? A number of activities that I am planning on putting her in that's going to help her balance and coordination and things that this, Children's Aid know this. But the thing I cannot get is Home Care Nova Scotia to assist me, in Leslie McEachern's [ph] program of special needs. They're telling me that she doesn't require it and they have different reports from Dr. Gordon, um, Town Day Care Centre and doctors.

Donnie: If, if, Doc... this is what I, this is what I can't understand. If, if you have doctors, um, who are vouching for the fact that this child requires this type of, of service. Who has the right to challenge everybody that knows, by saying no, you don't need it? That, that, that's what boggles my mind and it's not only in these instances, it goes to Work..., Workers' Compensation and the whole bit.

Caller: Exactly, and see what bothers me right now is that they have these reports, but they're telling me, it's not enough for them. They need further reports in order to give me any assistance. And they know that she's special needs, she does have special needs, in some circumstances, she's developmentally delayed in a few areas. And they know this, and I just cannot seem to be getting any help from special needs program. It's supposed to be out for special need kids that require services that are there for them to be able to live every day.

Donnie: Un huh.

Caller: And every day living and they just don't want to inquire it with me.

Donnie: So your argument isn't with Children's Aid as much as it is with obtaining special care.

Caller: Exactly.

Donnie: Home Care Nova Scotia.

Caller: Exactly, I am, I am upset with Children's Aid though, because now they have a new supervisor in [inaudible] area, and all the supervisors they moved around and it's like, now it's just, they got to go all the rigamarole with the new case, like the same old ...

Donnie: Un huh. Have you contacted, uh? No that wouldn't be the right thing. Have you tried to get in touch with your MLA over this issue?

Caller: Yes I did and actually I'm dealing with my Councillors right now about this. And Dave Dingwall's office, and everybody I can think of right now. Because right now, my concern is, is having my daughter returned home. Like she wants to come home. We want her home, and

there is no reason why that she can't come home. If I'm good en.., if I can look after the other two kids at home and they see no problem with this at all. They're not even involved in this life with me, with my other two kids. But they will not turn around and give me my daughter that has special needs. They will not even give me the help that I need.

Donnie: Until you can get the resources in place to look after the special needs.

Caller: Exactly, and they won't even give me the help or the resources, like they won't even try to uh, try to help me and turn things around and be a family again. They don't want that anymore. All they want to do right now is adopt my daughter out, that's all they're interesting [*sic*] in. They don't want to see her needs or what she wants or anything else and I think she should have some say, and like parents even should have some say in the matter.

Donnie: Okay, well, you know keep, hopefully you'll get some positive answers from one of the politicians you are dealing with and hopefully somebody will come to bat for you.

Caller: Well, I'm finding one thing, I had one, I had, uh, a meeting here a couple of weeks ago and I had a Councillor in with me and we didn't get too far because they don't want to speak about anything 'cause he was there. And I gave him, the Children's Aid notice he was coming, and I gave Children's Aid permission to talk in front of him.

Donnie: Yeah but the law doesn't allow them to. I mean, that's, it's an unfortunate situation, but the law does not, they are not legally allowed to do that. With your permission or without it, the law in Nova Scotia does not allow them to do that.

Caller: Not even if I ...

Donnie: No, not even with your permission.

Caller: No!?!

Donnie: No.

Caller: But, see the thing...

Donnie: That, that's the law, that's what's on the books, that's what's passed in the Legislature.

Caller: Uh huh. See another thing I can't understand either is okay, Home Care Nova Scotia even though the circumstances, they're even, like I gave [inaudible] forms signed for both parties and the Home Care Nova Scotia and the special needs program to Children's Aid. They can all sit and talk about what's going on here and see if they can come up with a situation and be able to help me with my daughter that's in care so she can return home with me and the other two children and with me, but seem I can't get nowhere.

Donnie: Uh huh.

Caller: Like they're talking, but it seems the same thing, I.., there's no help out there. I know there's help out there somewhere, but seems like I'm just being turned down everywhere I go.

Donnie: Okay, well, Robert Chisholm is going to be here on talk back later on in the week, maybe he'll be able to help you out.

Caller: All right.

Donnie: But, in the meantime, I'll see if I can make some phone calls and find anything out.

Caller: Okay, thanks a million, Donnie.

Donnie: You're welcome.

Caller: Okay.

Donnie: All right.

Caller: Bye, bye.

Donnie: Bye now. Have to take a break. Don't run away, those of you on hold, we shall return.

[Commercial break.]