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

CHAN-TV (BCTV) re News Item (Child Pornography)

CBSC Decision 98/99-0249

Decided on October 14, 1999

S. Warren (Chair), R. Cohen (*ad hoc*), D. Cooper, M. Loh and D. Millette*

*Hudson Mack, who customarily sits as a member of the B.C. Regional Council, did not participate in this decision as his station picked up the BCTV feed and broadcast the same news report as the Regional Council considered in this case.

THE FACTS

On January 15, 1999 (not January 14, as was stated by the complainant in her letter referred to below), a story dealing with the nationally known British Columbia court decision regarding possession of child pornography was broadcast during the CHAN-TV (BCTV) (Vancouver) 6 p.m. newscast. The newscast began with a "teaser" stating: "Staggering news from the court which declares kiddie porn legal to own." Three pictures of child pornography were shown as part of the short teaser: a young girl in fish-net stockings, a young girl showing her underwear and the bare legs of another young girl in a ballerina pose.

The actual report went as follows:

Tony Parsons (Anchor): Good evening. What's wrong with this picture? Like a page from the old comic book world of Bizarro, everything tonight seems backwards. In a moment we will see how Ottawa has decided that children's art is too dangerous to be displayed on the walls of any school in the country. But first the astounding, no, shocking court decision that having child pornography in your possession is not a crime, that it poses no increased danger to Canadian children. Are we missing something here? Hang kid's art on a school wall and you're in trouble. Possess kiddie porn, no problem. First Clem Chappel [sp] with a porn decision and a man who's court case has changed the law.

Robin Sharp (acquitted paedophile): If you take a nude picture of a child, is that child abused?

Clem Chapple: Is it?

Robin Sharp: I would say in most cases 'no'.

Clem Chapple: John Robin Sharp's views on child pornography are abhorrent to most people, but for now his views are the law. It's fine to possess kiddie porn. Possession charges against him dating back to 1995 have been thrown out.

Robin Sharp: Well I won and I think people everywhere in Canada can feel a little bit less sort of concerned or freaked-out by what they may have in the bottom drawer of their dressers or this type of thing.

Kari Simpson (Citizen's Research Institute): The outrage over this thing is just unbelievable.

Clem Chapple: It's predictable that the decision would outrage Kari Simpson, a child rights and anti-abortion crusader. But the Supreme Court did not endorse child porn; rather, it found that the right to privacy and freedom of expression outweighs the evil of simple possession of child pornography. Simpson simply disagrees.

Kari Simpson: But when you look at the fact that, as citizens, if we were to have in our possession stolen goods, they could be confiscated from us and we could be charged with having those stolen goods in our possession. So as long as you're an object you're okay, the law seems to protect you; you have some rights. But when you're a living breathing child, those rights appear to be able to be violated.

Ujjal Dosanjh (Attorney General): It's a significant decision, may have significant implications and therefore it is being reviewed.

The same three pictures from the teaser are shown again, as well as a fourth picture showing a young girl from the waist down, wearing only panties.

Clem Chapple: It's extremely unlikely that the Attorney General will sit back and let child pornography become an acceptable element of society. He has the B.C. Court of Appeal and the Supreme Court of Canada to appeal to. Meanwhile John Robin Sharp, though victorious, is having trouble with one question.

Clem Chapple: Forgive me, is that your grand-daughter up there, that picture?

Robin Sharp: That's my youngest grand-daughter.

Clem Chapple: You must be anticipating this question: how would you like it if someone had pictures of her in their room?

Robin Sharp: Generally speaking, no. You've asked an awkward question and I admit it.

Letters of Complaint

The complainant sent the following letter to the Senior Producer of BCTV on January 18.

I discussed with you the concern I have of BCTV displaying photographs pertaining to child pornography on the Thursday, January 14, 1999 telecast of the 6:00 p.m. news.

The injustice of the case that was reported, I agree, needs to be exposed. I feel, however, [that] showing even edited pictures on a newscast of child pornography is only a further exploitation of the crime that is committed against these children.

I am requesting that the integrity of BCTV be upheld by not airing pictures of any kind of pornography on its newscasts, edited or otherwise.

Also, I am asking that it be made certain that viewers are warned in advance if any material of this nature is chosen to be produced in the future.

Following her letter to BCTV, the complainant sent another letter, dated January 19, to the CRTC's Vancouver office, which letter was forwarded by the CRTC to the CBSC in due course:

Attached is a copy of a letter I sent to Mr. George Brown, the Senior Producer of BCTV, with my concerns of their airing photographs pertaining to child pornography.

I was told in a phone conversation I had with Mr. Brown, that the pictures shown were edited for television. Edited or not they were still pornographic pictures of children. I also asked why there was no warning given preceding these pictures, I was told [that] it was decided no warning was needed.

When I told Mr. Brown that by displaying these pictures on television, BCTV becomes as guilty of exploiting children as the child pornographers who took the pictures, his reply was, they have to show them to tell the complete report.

Child pornography is illegal, and if BCTV has integrity, its producer needs to be held accountable for the arrogance it displayed in airing these photographs and for not warning the public beforehand of the content of its report.

The broadcast was aired the week of Jan. 11-15 at 6:00 p.m. and was read by news anchor Tony Parsons. I believe it was broadcast on Thursday, January 14, 1999.

The Broadcaster's Response

The News Director of BCTV responded to the complainant's letter on February 9 in the following terms:

The B.C. court decision on possession of child pornography has had sweeping ramifications across the nation. We at BCTV News anticipated this and we believe very strongly that it is our duty to bring matters of such profound importance forward for public debate. After the initial release of the court decision, the debate began in the B.C. Legislature and quickly moved to Ottawa where our Members of Parliament continue to debate not only the decision itself but the laws governing possession of this kind of material.

We take our responsibility to our viewers very seriously. We understand that families are watching our news programs and certainly it would not be in our interest to offend. However, we must weigh that responsibility against our obligation to deliver the truth.

Your concern centres on approximately 10 seconds of video. I would like to assure you that those pictures were obtained from our news archives and were heavily edited. In order to do our job effectively, it is important we provide the context from which important public issues arise. In this case the context was, and continues to be, child pornography and individual rights as protected by the Charter of Rights. What we showed was a highly sanitized and edited example of what has sparked a national debate.

As for a warning in advance, the lengthy introduction to the report clearly spelled out the subject matter. I believe the video in question was carefully edited, inoffensive and did not require an additional warning.

While I am glad to read in your letter that you feel the issue is worthy of attention, I am sorry you were offended by our report. However, as journalists we feel it is our job to shed light where we can. Sometimes that requires us to use material that is both relevant and discomfoting.

The complainant was unsatisfied with the broadcaster's response and requested, on February 15, that the CBSC refer the matter to the B.C. Regional Council for adjudication.

THE DECISION

The CBSC's B.C. Regional Council considered the complaint under certain provisions of the *Voluntary Code regarding Violence in Television Programming* and the *Code of Ethics* of the Canadian Association of Broadcasters (CAB) as well as the *Code of (Journalistic) Ethics* of the Radio and Television News Directors Association (RTNDA). The texts of the relevant provisions of these Codes read as follows:

CAB Violence Code, Article 6 (News and Public Affairs Programming)

- 6.1 Broadcasters shall use appropriate editorial judgment in the reporting of, and the pictorial representation of violence, aggression or destruction within their news and public affairs programming.
 - 6.2 Caution shall be used in the selection of, and repetition of, video which depicts violence.
 - 6.3 Broadcasters shall advise viewers in advance of showing scenes of extra-ordinary violence, or graphic reporting on delicate subject matter such as sexual assault or court action related to sexual crimes, particularly during afternoon or early evening newscasts and updates when children could be viewing.
 - 6.4 Broadcasters shall employ discretion in the use of explicit or graphic language related to stories of destruction, accidents or sexual violence, which could disturb children and their families.
- [...]
- 6.6 While broadcasters shall not exaggerate or exploit situations of aggression, conflict or confrontation, equal care shall be taken not to sanitize the reality of the human condition.

...

RTNDA Code of Ethics, Article 3

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.

CAB Code of Ethics, Article 6

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 labeled as such and kept distinct from regular news presentations. Member stations will, insofar as practical, endeavour to provide editorial opinion which shall be clearly labeled 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.

The Regional Council members viewed a tape of the newscast in question and reviewed all of the correspondence. For the reasons discussed below, the Council does not find that CHAN-TV's coverage was in breach of any of the foregoing Code provisions.

The Content of the Newscast

The letters of complaint were, in the view of the B.C. Regional Council well-balanced and fair in that the complainant acknowledged the importance of the news report itself. In her words, "The injustice of the case that was reported, I agree, needs to be exposed." Basically, she had two problems with the newscast, both of which struck chords with the Council. The first related to the broadcast of the pictures of children and the second related to the absence of a warning or viewer advisory that they would be coming on the screen.

As to the first issue, she alleged that "showing even edited pictures on a newscast of child pornography is only a further exploitation of the crime that is committed against these children." She requested to the broadcaster "that the integrity of BCTV be upheld by not

airing pictures of any kind of pornography on its newscasts, edited or otherwise.” In her second letter, she was perhaps more forceful. She asserted:

I was told in a phone conversation I had with Mr. Brown, that the pictures shown were edited for television. Edited or not they were still pornographic pictures of children. I also asked why there was no warning given preceding these pictures, I was told [that] it was decided no warning was needed.

When I told Mr. Brown that by displaying these pictures on television, BCTV becomes as guilty of exploiting children as the child pornographers who took the pictures, his reply was, they have to show them to tell the complete report.

Child pornography is illegal, and if BCTV has integrity, its producer needs to be held accountable for the arrogance it displayed in airing these photographs and for not warning the public beforehand of the content of its report.

Dealing first with the issue of the broadcast of the pictures, the Council wishes to observe that it understands the discomfiture of the complainant in viewing *any* depiction of child pornography. The Council also understands, however, that, in the medium of television, it is generally appropriate, although not, it must be admitted, absolutely necessary, to add a visual element to a news story. Moreover, this is acknowledged in the balancing requirements of Article 6 of the *CAB Violence Code*, which urges both editorial judgment and caution in the choice of video footage to accompany a report, on the one hand, with the obligation on the broadcaster to ensure that “equal care shall be taken not to sanitize the reality of the human condition.”

In the first of its decisions dealing with this difficult issue of balancing the public’s need to know and unpleasant visual realities, the Ontario Regional Council stated in *CTV re Canada-AM (Airborne Hazing)* (CBSC Decision 94/95-0159, March 12, 1996):

The Code recognizes that society has a right, if not an obligation, to have presented to it the reality of the news, however unpleasant or even intolerable that news may be from time to time.

This does not, however, open the floodgates to *every* bit of reality which could be defined as news or every bit of every story which *ought* to be brought to the attention of the Canadian public. Elements of editorial judgment must be exercised on many levels. Since, in the first place, there are innumerable stories competing for the time available in any newscast, a story ought to be reported for reasons “beyond simply engaging the audience’s attention”...

Almost every story which must be told will require editorial judgment as to *how* it will be told. Nor will every story requiring such judgment ultimately come to the CBSC’s attention. Such rare occurrences will generally be those which, in their edited form, still attract viewer attention by reason of their frightening, violent, graphic or other unpleasant characteristics. In each such case, the broadcaster must temper the public’s need to know with the measure of how *much* needs to be known so as not to exceed the bounds provided in the *Violence Code*.

Then, in *CHCH-TV re the Ricki Lake Show* (CBSC Decision 95/96-0105, April 30, 1996), the Ontario Regional Council spoke to a similar issue in which unpleasant depictions of animal abuse were broadcast. It said:

Members of the Regional Council agree that the animal abuse described on the *Ricki Lake Show* segment in question was particularly unpleasant and discomfiting, if not also disgusting, to use the term applied by the complainant. This is not, however, the question which the Council must answer. It is rather the matter of the nature, perspective and extent of the coverage of the issue by the broadcaster. In this respect, there is no doubt but that our society demands that both pleasant *and* unpleasant matters be dealt with by the media. It follows that broadcasters must be the purveyors of both and must constantly be called upon to exercise judgment in what they choose to air. They often face conflicting principles and must walk a very fine line, particularly in the area of news and public affairs programming, in order to satisfy Code standards.

As the *CAB Violence Code* provides, in dealing with these issues in general, broadcasters "shall use appropriate editorial judgment in the reporting of, and the pictorial representation of violence". Thereafter, the application of this general principle to specific cases encounters two apparently conflicting principles. Broadcasters are, on the one hand, advised to use "caution ... in the selection of, and repetition of, video which depicts violence" and yet, on the other hand, are required by the Code "not to sanitize the reality of the human condition." There is established, in other words, in the area of broadcast standards, a balance between the public's need to know and the way in which that knowledge should be conveyed. The issue is ultimately one of reasonableness of treatment.

Finally, in a matter closer in subject matter to the one at hand, namely, *CITY-TV re an episode of Hard Copy* (CBSC Decision 96/97-0055, May 8, 1997), the Ontario Regional Council again held:

There can be no doubt that the reporting of child abuse, just like the reporting of other crimes and issues of general concern, is in the public interest and broadcasters should not be reluctant to deal with this and other controversial subjects for fear that the simple broaching of them may result in a breach of broadcast standards. The Council, therefore, rejects the complainant's contention in "questioning the judgment of Citytv programming to show scenes of child abuse at all". The Council finds that, in this case, the violence contained in the video footage broadcast as part of a *Hard Copy* report does not fall in the category of material which should not be shown at all in news and public affairs programming.

As the foregoing cases illustrate, that editorial balancing act is one which is not free from difficulty and is no doubt the source of much pulling of hair and gnashing of teeth in newsrooms on a daily basis. It is also particularly concerning when the element of evil acts regarding children is added to the mix. Unless, though, the broadcaster's choices are egregiously insensitive to the public good, the Council cannot see why it ought to interfere with the choices it makes. *This* is not, however, in the Council's view, a circumstance in which the broadcaster has merely landed *just* on the right side of the line; the Council agrees with BCTV's editorial decision to use the photographs. After all, the goal of the broadcaster, the Council assumes, was not merely to report a *very* controversial story but to *underscore* the awful result of the judicial determination to authorize the possession of child pornography. Could it have accomplished its goal by simply *telling* the story and

interviewing the accused? Probably. It could not, however, have succeeded in conveying the sense of public disgust with the practice *without* adding a visual element. And it does seem to the Council that the broadcaster's choices were tame, albeit unpleasant. There were undoubtedly far more explicit pictures available which would have brought the result to another utterly unacceptable level. With the possible (unnecessary but hardly outrageous) exception of the additional photograph which BCTV added in the body of the report to the three used in the teaser at the start of the news hour, i.e. the picture showing a young girl from the waist down wearing only panties, the Council endorses the balance which BCTV applied to its news report on the issue.

The Use of a Viewer Advisory

While the Council has on previous occasions acknowledged the value to the use of a viewer advisory preceding unpleasant news reports, it does not consider, as indicated above, that the visual material used was particularly graphic, in which case it would have required an advance warning to viewers. While the broadcaster could usefully have chosen to add an advisory to the report, the Council believes that its explanation that "the lengthy introduction to the report clearly spelled out the subject matter" went part way, at least with respect to the matter to be dealt with although not at all with respect to the use of the photographs. While, being aware of the complainant's concerns expressed in this matter, BCTV might choose to use a more explicit warning in the future in the case of a similar report, the Council does not consider that any Code breach was involved in not airing such an advisory.

Broadcaster Responsiveness

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, the Council considers that the broadcasters' response addressed fully and fairly all of the issues raised by the complainant. Nothing more is required. Consequently, the broadcaster has not breached 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.