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

CHAN-TV re News (RCMP Investigation of Premier Clark)

CBSC Decision 98/99-0440

Decided 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.

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## THE FACTS

On March 4, three stories dealing with the awarding of a gaming licence to an individual alleged to be a friend of B.C. Premier Glen Clark were broadcast by CHAN-TV (BCTV) (Vancouver) during its 6 p.m. newscast. The first of the three stories, which is the most relevant to the complaint, is transcribed herewith.

**Tony Parsons (Anchor):** Good evening. The minister in charge of gaming in this province returned from a South American trade mission today and fell on his sword. He said the decision to approve in principle a casino licence for the North Burnaby Inn was his and it had nothing to do with the Premier. Then later, a lawyer claiming to be employed by the Premier also leapt to his defence. The casino approval process is part of a police investigation which resulted in a raid on the Premier's house, caught by our cameras, and the Premier's subsequent denial of playing any role in the process. But that is far from the end of it. Tonight, some investigating by our Keith Baldrey suggests that the Premier might not have been as insulated from the decision-making as he had suggested.

**Keith Baldrey (reporter):** Premier Clark refused to appear in public today, preferring instead to send out his own personal lawyer to launch a counter-offensive aimed at rescuing his leadership.

**David Gibbons (Premier Clark's lawyer):** I am appalled with the way the Premier and his family have been treated in regards to these matters.

**Keith Baldrey:** David Gibbons said he finds the search Tuesday night at the Premier's house and the fact that BCTV cameras were present as an attack on freedom and democracy.

**David Gibbons:** If we were in the United States, we'd suspect that Senator McCarthy was alive and well and living. But of course he is not. But in these times, we see all too frequently this kind of behaviour. There is a suggestion being lofted around that our Premier, an elected official, should consider resigning over this kind of scurrilous and unsubstantiated rumour mongering. And, as a citizen, and I am not speaking here as his lawyer, I am very, very concerned.

**Keith Baldrey:** But after portraying the Premier as some sort of victim, Gibbons then proceeded to claim that the Premier had nothing to do with approving the casino licence for his friend.

**David Gibbons:** Premier Clark did not participate in any aspect of the decision-making process in regards to the application for a gaming licence. Full stop. If you run a story that says that he participated in approving or disapproving this licence, we'll sue you in defamation and I'll guarantee you that, all right? Because that did not happen. That did not happen. Nobody can prove that happened and that is the gossip mongering and unsubstantiated rumour that is floating around here.

**Keith Baldrey:** Gibbons is basing his claim on gaming minister Mike Farnworth's statement today that it was he and he alone who made the casino licence decision. Arriving at the airport from South America today, Farnworth said "The announcement that I made in December, that was my decision." But Farnworth's statement begs the question whether or not Glen Clark was at Cabinet meetings that discussed the casino decision or the process leading up to it.

Every month, the government deposits here, with the Conflict of Interest Commissioner, a report that shows which Cabinet Minister leave Cabinet meetings when the item up for discussion may affect things that affect their own personal interest. But the records inside this office show that Glen Clark has never exempted himself from a Cabinet meeting since he became Premier. Yet a government news release dated December 17<sup>th</sup> seems to indicate that the controversial casino licence in question was decided by Cabinet at that December meeting.

The news release announcing the approval in principle of the casino licences talks about the evaluation process leading up to the approval. That evaluation, the news release says, was presented to Cabinet for decision.

**Gordon Campbell (Opposition Leader):** All I can tell you is that on December the 17<sup>th</sup>, they told us it was a Cabinet decision. And that's what I think the people believe. I don't know why we would expect all of a sudden Mr. Farnworth to have responsibility for it.

**Unidentified Voice:** [inaudible] from that meeting indicate that Premier Clark was present for at least some of it.

**David Gibbons:** I'm not privy to that document sir. If I could see that, I could find out about it for you.

**Unidentified Voice:** It's just a routine statement, sir.

**David Gibbons:** I'm not privy to it.

**Keith Baldrey:** Gibbons seemed caught off guard by the existence of the news release, and instead of calming the waters, the lawyer's appearance today seemed only to further muddy the affair that continues to threaten Glen Clark's leadership.

**Tony Parsons:** The raid on the Premier's house is the link between two separate but parallel police investigations. There is the investigation of the Government's approval in principle of the legal casino licence, over the objections of Burnaby Council, and there is the investigation of illegal gambling which centres on the neighbour and friend of the Premier's. The Premier clearly knew of that neighbour's application for the casino licence but did the Premier also know of the allegations of criminal activity? Tonight, in our continuing investigation, reporter John Daly uncovers the connections between the two police probes and some strip clubs on the lower mainland.

## **The Letter of Complaint**

The following complaint, dated March 5, was sent to the CRTC's Vancouver office and was in turn forwarded to the CBSC.

I wish to register a complaint regarding what I considering [*sic*] the excessively editorial nature in news reporting inconsistent of [*sic*] concept of unbiased and accurate news delivery by BCTV of Vancouver. In particular I'm concerned with the biased views of station and reporter Keith Baldrey, with respect to their handling of the story on the RCMP raid of Premier Clark's home. BCTV has in my opinion violated Clark's right to privacy and has acted irresponsibly (and possibly illegally?) by sending a camera crew to Clark's home (Tues. March 2, 1999) taping [*sic*] the raid in action. It is quite likely that BCTV has acted on an illegal tip from the RCMP. It is my observation that BCTV consistently portrays a very negative, anti-NDP focus on government related news issues, and the coverage they have given this story only further galvanizes my disgust. I particularly deplore the obvious, personal bias Keith Baldrey projected with the piece he delivered on the March 4, 1999 6PM news on this story. Mr. Baldrey made several disparaging remarks about the Premier, and in particular slammed statements made by Mr. Clark's lawyer who naturally is protecting the Premier's interests and reputation in this matter particularly against obvious partisan aggression of the likes of BCTV and the rest of the media! It is readily apparent that the spin put on this story is meant to cast the Premier in the most negative light. (Please review Mr. Baldrey's comments and their 'man in the street' sound bytes). BCTV ignores the fact that no charges have been laid against Clark at this time, and that the RCMP have not yet implicated Mr. Clark in any wrong doings. I do not remember BCTV or Mr. Baldrey having been elected as the official opposition, however I would not be surprised if the Liberals and BCTV's ownership have some common ties...

I would be pleased to learn more about the CRTC's role in monitoring the conduct and the ethics of news reporting, and would like to know if you see some evidence of improper conduct in the coverage of this story by BCTV. Where does one draw the line between good, accurate accounting of the news vs. the projection of person political bias and deliberate manipulation of the public's views?

## **The Broadcaster's Response**

The News Director of BCTV responded to the complainant's letter on March 31 in the following terms.

Thank you for your letter concerning our coverage of the search by the RCMP of Premier Glen Clark's residence. The Canadian Broadcast Standards Council has forwarded it to me for a reply.

The facts we reported are as follows: After a five month investigation the RCMP obtained a warrant from a Supreme Court judge to search the Premier's home. The police confirmed the warrant was obtained as part of their investigation into the granting of a conditional casino license by the provincial government. This was an extraordinary and unprecedented event involving a very public figure in relation to a decision of his government. We discovered these facts through the hard work and instincts of our reporter, John Daly. He was not tipped by police.

What occurred at the Premier's residence could have been observed easily by anyone in the area at the time. We broadcast no more than that. We were not obtrusive, did not interfere in any way with the police and withdrew well back from the house while at the same time recording events as they unfolded. In doing so, we acted in compliance with both the privacy provisions of the Criminal Code and article four of the Code of Ethics of the Radio-Television News Directors Association.

The issue here is not privacy alone but how it balances against the principle of public scrutiny. It is a basic principle of a free press in a democratic society that we shed light where there might otherwise be darkness. We in the media keep watch over the actions of the police, judges and other public institutions so what they do is not done in secret. Search warrants involve a judicial process and police powers. The late Chief Justice Dickson of the Supreme Court of Canada said; "Initial secrecy surrounding the issuance of warrants may lead to abuse, and publicity is a strong deterrent to potential malversations"; and added, "As a general rule the sensibilities of the individuals involved are not basis for exclusion of the public from judicial proceedings.."

In reviewing our reports for this response I believe our coverage has been fair and balanced. Mr. Clark's lawyer, David Gibbons, was given considerable time to state his and his client's positions. Our legislative reporter, Keith Baldrey, has more than a decade of experience in covering politics in British Columbia and is eminently qualified to provide context and background in his reports involving political controversy. It is clearly stated by Mr. Gibbons in Mr. Baldrey's report of March 4<sup>th</sup> that no charges or any allegations of wrongdoing have been laid against the Premier. In fact, Mr. Gibbons goes on to issue a threat of legal action should anyone suggest otherwise.

In conclusion, we strive at all times to be sensitive to our viewers while at the same time carry out our obligations as journalists. When through the hard work and investigative skills of a veteran journalist we discover the police executing a search warrant at the home of a Premier, should we give him special consideration, turn our backs and deny history-making events?

## **Further Correspondence**

The complainant was unsatisfied with the broadcaster's response and requested, on April 10, that the CBSC refer the matter to the B.C. Regional Council for adjudication. Along with his Ruling Request form he included the following letter of explanation:

I received through the mail on April 8, 1999 BCTV's response to my complaint. Although I believe that their response justifies in their own minds that their actions and reporting

standards are of the most impeccable nature, I am still convinced that there exists a bias in the 'spin' applied to this, and numerous other stories, regarding the present NDP government. I am not satisfied that their reply addresses this aspect of my complaint. Mr. Baldrey may be a 'seasoned professional' in legislative reporting, however I firmly believe his personal politics have affected his bias, and that he is incapable of generating balanced, impartial news stories surrounding the NDP. Therefore, I feel that a review of the tapes of the news broadcasts of March 2<sup>nd</sup> and 4<sup>th</sup> should be performed by an impartial 3<sup>rd</sup> party to determine if a bias and a transgression of reporting ethics has been made. Should this panel of judges uphold the response from BCTV I will then be satisfied that balanced, unbiased reporting of this story has been provided to the public at large. I hope that I am not misguided in the notion that news should be delivered in a straight forward, impartial manner and that editorial comment has its place as well, but in the proper forum. Just for the record, I am in no way affiliated with any political party or other political organization.

The following note, dated August 17 from BCTV's Executive Assistant accompanied the logger tapes which were sent to the CBSC Secretariat:

Further to our conversation this morning regarding the concerns of [the complainant] on comments made by our Mr. Keith Baldrey.

[The complainant] refers to the News Hour on March 2<sup>nd</sup>. We did check this date and find there were no stories with Mr. Baldrey regarding Mr. Clark. Our News Hour spent a great deal of time on the passing of Mr. Jack Webster who was a well known TV host and a very prominent public figure. I did however, check the News Hour tape for March 3<sup>rd</sup> and found a live hit that Mr. Baldrey did with our anchor Mr. Tony Parsons. I have therefore included this item with the stories which ran on March 4<sup>th</sup> News Hour.

## THE DECISION

The CBSC's B.C. Regional Council considered the complaint under provisions of the *Code of Ethics* of the Canadian Association of Broadcasters (CAB) as well as under provisions of *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:

### *RTNDA Code of (Journalistic) Ethics, Article 1*

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 2*

News and public affairs broadcasts will put events into perspective by presenting relevant background information. Factors such as race, creed, nationality or religion will be reported only when relevant. Comment and editorial opinion will be identified as such. Errors will be quickly acknowledged and publicly corrected.

### *RTNDA Code of (Journalistic) 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.

### *RTNDA Code of (Journalistic) Ethics, Article 4*

Broadcast journalists will always display respect for the dignity, privacy and well-being of everyone with whom they deal, and make every effort to ensure that the privacy of public persons is infringed only to the extent necessary to satisfy the public interest and accurately report the news.

### *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 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.

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 Privacy Issue**

Although the CBSC has, on a number of occasions, been called upon to deal with the issue of privacy in the context of a news report, it is curious that it has not yet been asked to review such a report relating to the invasion of the privacy of a *public* person, which is precisely what is envisaged in Article 4 of the *RTNDA Code of (Journalistic) Ethics*. Despite that, there is terminology in its decision regarding the well-known Airborne Regiment hazing report which is apposite. In *CTV re Canada-AM (Airborne Hazing)* (CBSC Decision 94/95-0159, March 12, 1996), the Ontario Regional Council said:

It would be right to observe here that Article 4 of the *RTNDA Code of Ethics*, in dealing with the issue of privacy, makes specific reference to the privacy of *public* persons and not to private persons. This is perhaps because there may otherwise be a tendency on the part of citizens to believe that they have a proprietary interest in the lives of persons who have chosen to make themselves, in part, very public. [...]

In general, it is also true to observe that the private lives of individuals are of little or no interest to the public. There must, however, be exceptions to this principle or we would never, as a society, be entitled to see news stories on television on the grounds that they may contain footage of an unwilling participant in the event. It would not be realistic, for example, for television station news teams to seek permission from everyone who might be seen on camera at a crime scene, an accident, the picketing of a shop or a legislature, the arrival of a public figure or other events too numerous to describe here.

While the circumstances of the case at hand are not similar, they are not so dissimilar as to render those underlying principles inapplicable.

In fact, in the view of the B.C. Regional Council, it is difficult to imagine circumstances more relevant to an informed public than the *justified* reporting of an investigation of serious impropriety on the part of an elected official. The issuance of a search warrant pursuant to the judicial authority of the province and its execution by law enforcement officials at the home of the Premier are events of importance to the public and any broadcaster aware of such events might well be seen as irresponsible in not bringing them to the attention of the public. That the broadcaster was in the right place at the right time is hardly a fault or error on its part. It is, if anything, evidence that its instincts or information are spot-on. If their presence on the scene had resulted from a police leak, that might be a matter giving rise to an investigation *of the police* but not of the broadcaster. In any event, there is not a scintilla of justification for that position and, in fact, an unequivocal denial by the broadcaster: “[O]ur reporter, John Daly ... was not tipped by police.” As the BCTV News Director explained, “What occurred at the Premier’s residence could have been observed easily by anyone in the area at the time.”

Moreover, there was no intrusion onto the Premier’s property. The use of a long lens (which was itself in plain view on the street) showing police and other figures, including the Premier, milling about in a lighted kitchen window does not constitute an invasion of privacy. As this Council said in *CHBC-TV re Newscast* (CBSC Decision 93/94-0292, December 18, 1996), “if news organizations were required to make an appointment every time they wanted to get a story, they would be effectively handicapped, if not muzzled.” In the view of the B.C. Regional Council, the broadcaster’s actions in filming the scene in question were utterly beyond reproach.

### **Bias in the Report?**

The complainant alleges broadly that the broadcaster's report was “inconsistent of [*sic*] concept of unbiased and accurate news delivery.” More specifically, he alleged, first, that BCTV “ignores the fact that no charges have been laid against Mr. Clark at this time.” That

allegation is simply not well-founded. There is not only no allegation in the news report that any charges have been laid; there is none that imply that any will even be forthcoming. There is, to be sure, an implication that the Premier may have been present at a Cabinet meeting at which it was decided to issue the casino licence in question but apparently good investigative reporting revealed, first, that the matter of the licence approval was decided at the December 17 Cabinet meeting (with a Government press release in support of that information) and, second, that the official reports filed with the Conflict of Interest Commissioner revealed that Premier Clark had never exempted himself from any Cabinet meeting over any issue. An accusation of *presence* at the meeting, to be sure, but that would appear, on the basis of documentary evidence, to be *accurate*. Individuals on the short end of “accurate” sometimes feel pinched by the truth but accuracy is not generally equivalent to unsupportable bias.

The complainant specifically alleged, second, that “the RCMP have not yet implicated Mr. Clark in any wrong doings.” The Council notes that the execution of a search warrant is not the equivalent of wrongdoing and may not *ever* result in charges against the individual whose premises are searched. And even where such charges *might* be laid, whether against the Premier or any other individual, the law in this country provides a presumption of innocence until such time, if ever, as the legal process results in a finding of guilt. The broadcaster has not implicated the Premier in any wrongdoing other than suggesting that he “might not have been as insulated from the decision-making as he had suggested.” The reporter then went on to indicate exactly why *that* was the case but drew no inappropriate conclusions, in the view of the Council.

In connection with the news report, the complainant asks, finally and rhetorically, whether BCTV or the reporter have “been elected as the official opposition”. While the *technical* answer to this question is “of course not”, the role of the press is “to inform the public in an accurate, comprehensive and balanced matter about events of importance,” according to the fundamental principle established in Article 1 of the *RTNDA Code of (Journalistic) Ethics*. The preamble to that Code “recogniz[es] the importance to a democracy of an informed public.” Thus, it might be said that the press is, in a sense, everyone's official opposition. It is the duty of the press to bring to the light of day those matters of public concern which a well-informed public will want to know. That is all that BCTV did in this case. Furthermore, in the context of balance, the report was *constant* in its presentation of the position of the minister responsible for gaming Mike Farnworth that *he* and not the Premier made the decision to approve the casino licence of the North Burnaby establishment. Thereafter, a large portion of the report focussed on the Premier's lawyer, who had the floor essentially to himself in his condemnation of what he characterized as “the gossip mongering and unsubstantiated rumour that's floating around here.”

In the view of the Council, the broadcaster did everything necessary to give the Premier and his spokespersons fair due. Short of not reporting the matter at all, which would have been a dereliction of the broadcaster's own duty to the public, the Council cannot agree with the substance of the complainant's perspective.

## **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 broadcaster's News Director's response addressed fully and fairly all of the issues raised by the complainant, including his helpful reference to the position of the late Chief Justice of Canada on the subject of warrants. 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.*