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

CHAN-TV (BCTV) re News Item (Children and Foster Care)

(CBSC Decision 99/00-0262)

Decided May 9, 2000

S. Warren (Chair), H. Mack (Vice-Chair), M. Loh, D. Millette, J. Rysavy

THE FACTS

On December 15, 1999, a CHAN-TV (BCTV) (Vancouver) reporter was present at a Vancouver home from which two foster children, aged 10 and 12, were being removed by the Ministry of Children and Families against their will and that of their foster parents. During the course of the filming, the reporter interviewed the two children and a part, if not all, of those interviews was used on the 6:00 p.m. news that evening. (The full transcript of that news segment is reproduced as Appendix A below.) The news item began with the following introduction by the station's news anchor:

Tony Parsons: Good evening. Imagine having your children ripped from your arms, taken from your home by virtual strangers. Then imagine how much worse it would be at this time of year. Well that did happen this afternoon in Surrey. With just ten days to go before Christmas, two girls have been taken from their home against their wishes by the people who are supposed to protect their interests. As you can only imagine, the girls and the parents are horrified. The parents are foster parents but they have raised the girls since they were infants. And the only thing they are accused of "doing wrong" is getting old.

The only intervention of the children was the following exchange with the reporter of the story, John Daly:

Daly (to the girls): What do you think of this business that maybe they are too old?

Girls: We do not think they are too old. 'Cause they are not too old.

Daly (to the girls): Do they do things with you?

Girls: Yeah.

Daly (to the girls): Are they good parents?

Girls: [They nod affirmatively.]

On December 23, the Director of Child Protection of the Province of British Columbia sent a letter of complaint to the CRTC, which forwarded it to the CBSC. That complaint stated in part (the full text of the complaint is reproduced as a part of Appendix B below):

... The camera recorded the children's responses to questions put to them by a BCTV reporter regarding their wish to remain in their present foster placement. Their faces were clearly identifiable and their responses to questions put to them were very emotional.

When my office became aware that these children were being filmed, the producer and reporter ... was [*sic*] advised by the Ministry's Communications Division that the film footage of these children could not be published. ... [T]he Director as guardian opposed the televising of the film footage of the children ... [and] it was the Director's opinion that presenting the children on public television was clearly not in their best interests.

...

Violating these children's privacy rights in order to run a one-sided sensational news report offends against community standards in news reporting.

The Director's letter also referred to certain medical problems of the children and the fact that these had been reported in the *Province* and the *Vancouver Sun* and alleged that the foster parents had violated the *Child, Family and Community Services Act* in revealing those medical details. Although no specific allegation was made against BCTV in this regard, it was difficult for the B.C. Regional Council to understand why it was included in the letter of complaint if not to attempt to direct some blame against BCTV in this respect.

BCTV's News Director responded to the complainant on January 21, saying in part (the full text of the reply being included as part of Appendix B):

To the extent your complaint deals with matters of broadcasting standards, we disagree that showing the identities of two children age 10 and 12, with their consent and the consent of their foster parents on a matter of significant public interest, was contrary to high broadcast standards. The decision to identify the children was not taken lightly. However, the point of the report was that the children and the then foster parents had close bonds and were deeply traumatized by the Ministry's decision - something which could only be conveyed through the emotion in the children's faces, words and voices. It was that very visible trauma that made it so important to scrutinize the Ministry's decision.

...

This was a report about a government decision that profoundly upset and divided a family. To have rendered any member of the family anonymous would have entirely dehumanized the story they very much wanted to share with the public. A reporter paraphrasing their words would not have fairly or properly communicated the real story.

It also must be said that the children in this case deserved to have their voices heard on a governmental decision that profoundly affected them. Their opinions count, and it is

apparent from your complaint that the Ministry would not have permitted them to speak out in opposition to your decision. ...

We took many factors, pro and con, into consideration in coming to the decision to identify the children. They primarily included properly communicating the story; the age of the children (they were not infants but were children of ages who regularly testify in open court); the children's right to speak out; the concerns expressed by your staff to our reporter and lawyer; the consent of the children and their then foster parents; and the potential impact on other foster children in the family. We made the decision thoughtfully and we stand by it. ...

It should be noted that the matter became a very public political dispute. Perhaps as a consequence of this public debate, there were also numerous "interventions" filed by parties on both sides of the issue with either the CRTC or the CBSC. All became a part of the CBSC's file although, since there was no indication that any of the "interveners" had *seen* the news report in question, they were not dealt with as a formal part of the decision process.

Since the complainant was dissatisfied with the response of BCTV's News Director, he filed a Ruling Request (through the Provincial Government's Ministry of the Attorney General) on February 7.

THE DECISION

The B.C. Regional Council reviewed the logger tape of the news report as well as all of the correspondence and considered the complaint under Article Four of the Radio Television News Directors Association (RTNDA) *Code of (Journalistic) Ethics*, which provides:

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.

The Council does not consider that BCTV has breached any part of that provision.

The Meaning of the Privacy Article

It is clear that Article Four envisages that, despite the *public* nature and presence of "public persons", their *private* lives will only be subject to the invasive eye of broadcast journalists to the extent that the infringement is necessary, first, "to satisfy the public interest" and, second, to "accurately report the news." It goes without saying that, in order to justify the infringement upon the private lives of *private* persons, the standard to be applied will be at least as stringent as, and likely more so than, that applied to public persons.

When the Code uses the term “to satisfy the public interest,” the Council does not understand this article to mean indulge or cater to gossip-mongers, in the base sense of the term “satisfy”. The Council rather expects this provision to mean that, in the best sense of the term, the reporting of information *in* the public interest is what Canada’s Radio and Television News Directors had in mind in codifying this provision. With respect to the second requirement, namely, the *accurate* reporting of the news, the Council considers that the meaning of the words is straightforward and not in doubt.

The Application of the Privacy Principles

In applying these standards to the news report at hand, the Regional Council considers the issue absolutely clear. This story was not simply a gossipy tale or soap opera-ish in nature. On its face, two adults, with an uncontradicted *36 years* as foster parents, were being deprived of the children they had brought up since they were infants. From the report, it appeared incontrovertible that the separation was involuntary. As an additional consideration, the separation was being made to happen merely ten days before the holiday season. In those circumstances, it is difficult to conceive why the story would *not* have been seen by reasonable persons to be very much *in the public interest*. Moreover, quite apart from the specifics of the case, the public could be presumed to have a general interest in government mechanisms which would lead to such an *apparently* iniquitous result.

As to the question of accuracy, there can equally be no doubt that the proclamation by the reporter alone that neither the parents nor the children wished to be separated from each other would *never* have had the credibility of the “testimony” to that effect given on camera by both the children and the parents. If, after all, a still picture is proverbially worth a thousand words, the videotape in question was worth infinitely more than that and certainly provided a clearer picture of the issues than could any attempted explanation by a third party, such as the reporter. Moreover, it is hardly incidental that the authorities were provided with the opportunity to appear on-screen and explain their side of the story. They declined to appear on-camera or to discuss the specifics of the case.

It is the conclusion of the B.C. Regional Council that the report does, on its face, satisfy the criteria established by Article Four of the *RTNDA Code of (Journalistic) Ethics*. It remains to determine whether special consideration should be given to the interview of the children aged 10 and 12 in the circumstances of this case.

Interviewing Children

In *CHBC-TV re News Item (Double Homicide)* (CBSC Decision 97/98-0008, May 20, 1998), the parents of a 16-year old girl complained that their daughter had objected to the

interview and that their consent ought to have been obtained prior to the interview and, of course, the broadcast. The B.C. Regional Council first recognized

the interest of the broadcaster in visiting the area of the murders and in trying to provide for its viewers as much information as possible from persons with knowledge of the crime or the individual victims or perpetrators. In principle, therefore, the broadcaster was entitled to do what it did, including the seeking of interviews with people likely to have information on the events.

Having established the interest of the broadcaster in the use of such information, the Council then dealt with the issues of consent and age. On the issue of consent, the Council found that, in the circumstances of that case,

the daughter was always in a position to give or withhold her consent. She *knew* that she was being recorded. She was always inside the door of her house while the interviewer was outside. She could have ended the interview at any time by closing the door. There is no indication whatsoever in the video footage used in the news report that she was coerced. The Council readily concedes that she was probably inexperienced but this does not, in the Council's view, render her any different than most non-public figures *of any age* who are interviewed by the press. While some of the questioning was leading, that issue was not age-related. Nor, in the view of the Council, was the interviewee in any way compromised thereby.

The Council ruled that the interview was proper.

The Council is not being asked here to decide the question of an interview with a 6 or 8 year old child. It is rather faced with the case of an interview with a mature looking 16-year-old. To say that a fiduciary relationship whereby the reporter held a position of trust *vis-à-vis* the daughter was created by the mere fact that she was interacting with an adult is simply naïve.

The Council does not find that use in the report of the interview with the complainant's daughter was improper by reason of the absence of parental consent.

In the case at hand, the Council is of the view that the children were neither coerced nor misled. To the contrary, there is every indication that the children *would have wished* that their point of view *be* a part of the story. Had it not been, there is every reason to believe that the credibility of the report would have been diminished. It was of the essence of the story that the public know that this was not merely the expression of the clash of consents of the adults yearning to retain the children in foster care and those wishing to remove them from such care. It was, after all, the story of the children and *their* clear desire to remain with their parents. No-one could bear better witness to *that* story than the children themselves. The Council finds that their consent was validly and appropriately obtained. Moreover, the Council finds that their treatment at the hands of the reporter, in terms of the images used in the actual newscast, was gentle and sympathetic. There is every indication that the judgment of the reporter and news management in obtaining and airing the interview in question was unimpeachable.

The Provision of Personal Medical Information

Although raised in the letter of complaint, it appears that the publication of medical information regarding the children was the responsibility of the written press and not, in either first instance or in any broadcast complained of, that of BCTV. It is not the responsibility of this Council to make any comment with respect to the actions of the written press or the application, if any, of the provincial legislation referred to by the complainant.

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 response was particularly thorough. Moreover, it was clear that the News Director was prepared to share with the complainant his detailed thinking regarding the reasons, legislative and otherwise, for taking the position which he did. The complainant could not have expected a more thorough canvassing of the issues. Consequently, the broadcaster has not breached the Council's standard of responsiveness. Nothing more is required.

This decision is a public document upon its release by the Canadian Broadcast Standards Council. It may be reported, announced or read by the station against which the complaint had originally been made; however, in the case of a favourable decision, the station is under no obligation to announce the result.

Appendix A
TO CBSC DECISION 99/00-262
CHAN-TV (BCTV) re News Item (Children and Foster Care)

The news item in question was the newscast's top story. The news item was as follows:

Tony Parsons: Good evening. Imagine having your children ripped from your arms, taken from your home by virtual strangers. Then imagine how much worse it would be at this time of year. Well that did happen this afternoon in Surrey. With just ten days to go before Christmas, two girls have been taken from their home against their wishes by the people who are supposed to protect their interests. As you can only imagine, the girls and the parents are horrified. The parents are foster parents but they have raised the girls since they were infants. And the only thing they are accused of "doing wrong" is getting old.

John Daly (Reporter): This is warm home filled with children, biological, adopted and foster children. And Cayleigh and Carrea are going to have to leave, just ten days before Christmas. So their foster parents had the whole family celebrate last night get their gifts. This has been their home for the last 10 years, when authorities first brought them here.

Mrs. Draayer (on the phone): you knew what age we were when you brought them here

Daly: Now 66 and 71, they received this certificate for 36 years of foster parenting but they were told they could not keep their kids.

Mr. Draayer: We were told by social workers that if we talked to media or any other people, that they would pull the children right away. We have been in contact with the Child Commissioner who is now working on the case and trying to see if he can stop it.

Daly (to Mrs. Draayer): You were committed to looking after these children until they were grown. And you've had them from when

they were 1 and 2 ½.

Mrs. Draayer: And now in beginning of March, they are going to be 10 years with us and so the children do not know anybody else.

Daly: This is going to be tough. The girls know where they are going, to live with their relative in the Okanagan whom they visited this summer. They feel they are better off with the mom and dad they know.

Daly (to the girls): What do you think of this business that maybe they are too old?

Girls: We do not think they are too old. Cause they are not too old.

Daly (to the girls): Do they do things with you?

Girls: Yeah.

Daly (to the girls): Are they good parents?

Girls: Nod.

Mr. Draayer: This is what they are saying: "we can't go down the hill with the children anymore." No we can't but we can still give them proper care and love. And that's all the children need. And they need a lot of love. ...

Daly: Then, just after two this afternoon, the authorities arrived to take the girls away. Each deals with the separation in her own way.

One of the girls (crying in the arms of her foster mom): They can't do this. I can't go.

Daly: Their foster parents fear the girls will never be back but they promise them they will stay in touch. Promise them that they will always love them.

Tony Parsons: The Ministry of Children and Families declined an on-camera interview until late this afternoon and by phone they say they cannot discuss the specifics of an individual case. But

there is no age limit on foster parents. The Draayers say they have been fighting the plan to move the girls for two years, hoping that common sense would win out. The Ministry says the decision to move children in mid-school year, just before a holiday, is only taken after careful, clinical assessment and consideration.

Appendix B
TO CBSC DECISION 99/00-262
CHAN-TV (BCTV) re News Item (Children and Foster Care)

I. The Complaint

On December 23, 1999, the complainant sent the following letter to the CRTC which forwarded it to the CBSC in due course:

As the Director of Child Family and Community Services for the province of British Columbia, I am the guardian of children in the care of the Ministry for Children and Families.

On December 15, 1999, a BCTV news camera was present at the home of Bert and Anna Draayers, foster parents of two children, aged 10 and 12 who are under my guardianship. The camera recorded the children's responses to questions put to them by a BCTV reporter regarding their wish to remain in their present foster placement. Their faces were clearly identifiable and their responses to questions put to them were very emotional.

When my office became aware that these children were being filmed, the producer and reporter, Mr. John Daley was advised by the Ministry's Communication Division that the film footage of these children could not be published. Mr. Daley indicated there were no legislative barriers to the filming and suggested my office contact BCTV's lawyers. At approximately 4:30pm, Mr. Wayne Matheson, Deputy Director, contacted BCTV lawyer and advised him that the Director as guardian opposed the televising of the film footage of the children and that the Ministry's lawyer would contact him shortly. At approximately 4:45pm the same day, a Ministry lawyer attempted to contact BCTV's lawyer and left a voice message that it was the Director's opinion that presenting the children on public television was clearly not in their best interests.

BCTV ran the film footage of the children on the BCTV 6:00pm news as a lead story and apparently provided it to CTV for the 11pm National News.

The following day, the Province newspaper ran an article reporting that the children "...are hard to look after because of their fetal alcohol condition..." and "the girls are among nine children produced by one mother and nine fathers said Anna. The birth mother has never been involved with them and is 'incapable of looking after them. They are difficult children.'"

On December 17, 1999, the Vancouver Sun newspaper ran a story reporting that: "the sisters have special care requirements because they suffer from Fetal Alcohol Syndrome and Attention Deficit Disorder. They need extra attention, guidance, structure and routine."

The Child, Family and Community Services Act has its own internal regime governing disclosure of information obtained under it. It is more restrictive than the privacy provisions contained in the Freedom of Information and Protection of Privacy Act. These restrictions were designed to prevent children from being stigmatized because of involvement with the Ministry for Children and Families. The foster parents breached the provisions of the CFCSA by disclosing the children's personal information to the media.

BCTV was complicit in the breach of these children's privacy rights in that it should have known the foster parents were prohibited by legislation from disclosing the information on the newscast.

These children have been placed with relatives in a different community. As is readily apparent, any person in that community who has watched BCTV and read one or both newspapers can identify these children and will know their birth mother's history and their special needs.

Violating these children's privacy rights in order to run a one-sided sensational news report, offends against community standards in news reporting.

Please accept this as a formal complaint against BCTV for violating ethical and moral standards in reporting on children's matters.

II. The Broadcaster's Response

BCTV's News Director responded to the complainant on January 21, 2000 as follows:

I am responding to your complaint to the Canadian Broadcast Standards Council dated December 23, 1999. The news report in question was BCTV's December 15, 1999 item about the removal of two children from the foster care of Mr. and Mrs. Draayers by the Ministry of Children and Families, against the wishes of both the Draayers and the children.

Your letter also contains complaints about Vancouver Sun and Vancouver Province news articles, about which I will not comment.

Your complaint about BCTV's report, for the most part, alleges that BCTV violated privacy laws by identifying the 10 and 12 year old children. We disagree with your interpretations of the law, and we note that neither your complaint nor any of the communications between your representatives and our reporter or lawyer identified the enactment which precluded identifying the children, despite our requests. There is in fact no general law against identifying children (unless, for example a specific enactment such as the Young Offenders Act applies) nor any general law permitting a parent or guardian to prohibit the identification of children. On the contrary, the Charter of Rights protects freedom of the press and requires that any restriction on that right be specifically proscribed by law, only where there is a pressing need for the law and the law minimally infringes the freedom.

To the extent your complaint deals with matters of broadcasting standards, we disagree that showing the identities of two children age 10 and 12, with their consent and the consent of their foster parents on a matter of significant public interest, was contrary to high broadcast standards. The decision to identify the children was not taken lightly. However, the point of the report was that the children and the then foster parents had close bonds and were deeply traumatized by the Ministry's decision - something which could only be conveyed through the emotion in the children's faces, words and voices. It was that very visible trauma that made it so important to scrutinize the Ministry's decision.

The fallout from the news report on BCTV and in other media was a public outcry, and a response from the Ministry to publicly explain

its position. Whether members of the public were angered at the Ministry, persuaded that this decision was correct, or sensitized to the difficult issues at play, they were educated and engaged by a the robust dialogue about an important issue and about the performance of an important public body.

This was a report about a government decision that profoundly upset and divided a family. To have rendered any member of the family anonymous would have entirely dehumanized the story they very much wanted to share with the public. A reporter paraphrasing their words would not have fairly or properly communicated the real story.

It also must be said that the children in this case deserved to have their voices heard on a governmental decision that profoundly affected them. Their opinions count, and it is apparent from your complaint that the Ministry would not have permitted them to speak out in opposition to your decision. And they were not alone in their determination to have their story heard. In subsequent reports, representatives of the Fetal Alcohol Syndrome Association, and the Foster Parents Association of B.C. raise serious questions about this case. The children's school principal spoke out in support of the Draayers along with their family physician. Finally, the girls' great aunt and their grandfather joined the chorus.

We took many factors, pro and con, into consideration in coming to the decision to identify the children. They primarily included properly communicating the story; the age of the children (they were not infants but were children of ages who regularly testify in open court); the children's right to speak out; the concerns expressed by your staff to our reporter and lawyer; the consent of the children and their then foster parents; and the potential impact on other foster children in the family. We made the decision thoughtfully and we stand by it.

In the news media, we often have to make difficult decisions, and sometimes they draw angry reactions or complaints such as yours. A common assumption is that the media is callous and insensitive to the impact of its decisions. I can assure you that is not the case. We frequently make decisions not to broadcast certain matters after weighing the considerations both ways. We do not believe that ethics in journalism requires us to avoid making controversial

decisions, or that a media outlet should make the same decisions on every story. Rather, we believe high standards and ethics involves being sensitive and thoughtful about the competing considerations which go into every news story, as we were in this case.