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**CANADIAN BROADCAST STANDARDS COUNCIL  
ONTARIO REGIONAL PANEL**

CFYI-AM re the *Touch of Health*

(CBSC Decision 99/00-0720)

Decided October 12, 2000

R. Stanbury (Chair), P. Fockler (Vice-Chair), M. Hogarth (*ad hoc*),  
S. Whiting and M. Ziniak

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**THE FACTS**

On July 14, 2000, the program the *Touch of Health*, a radio talk show whose host answered questions and gave advice concerning alternative health matters, was removed by CFYI-AM (North York) from its programming schedule. On July 20, the host of the program sent a letter of complaint to the CBSC (the full text of which can be found in the Appendix hereto), stating, in part, that “[t]his action against the show and it being taken off the air is a direct social and political assault against natural / alternative health.” In her view, “[w]ith the inevitable loss of the *Touch of Health* radio show, there will be a loss of >balanced’ broadcasting in this sector.”

The broadcaster responded to the complainant in a letter dated August 8, which was only faxed to the CBSC on September 28. (The full text of that letter is also included in the Appendix below.) In support of its claim that the decision to remove the program did not affect the balance of its programming, the broadcaster stated:

[W]e have removed all medical (traditional and non-traditional) programs from our week-end programming. As I shared with you, the rationale for this is two-fold: first is the concern over legal liability with respect to giving medical advice. The second reason is our desire to improve the quality of our weekend programming in order to generate increased ratings and revenue.

On August 4, the complainant indicated that she was unsatisfied with the broadcaster’s response and requested that the Ontario Regional Panel rule on the matter. Customarily, the CBSC does not deal with Ruling Requests which are received prior to the receipt of the broadcaster’s response, to which the Council assumes the Ruling Request is a reaction. In this case, however, the CBSC Secretariat made an exception given the complainant’s

subsequent e-mail dated October 11 expressing her dissatisfaction with the broadcaster's response.

## THE DECISION

The CBSC's Ontario Regional Panel considered the complaint under Clauses 6 and 7 of the *CAB Code of Ethics*, which read, in pertinent part, as follows:

### *CAB Code of Ethics*, Clause 6, Paragraph 3

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 unusual nature of the complaint meant that there was not a program tape to listen to. In the circumstances, Panel Adjudicators reviewed all of the correspondence, considered it in terms of the aforementioned Code provisions and conclude that the station's decision to remove the program *The Touch of Health* is not in breach of any of them.

## Balanced Programming

This decision marks the CBSC's first opportunity to deal with the broadcaster's duty to maintain balance via its programming schedule. While the CBSC has dealt with the issue of *internal* balance in the context of a specific program, it has never before been asked to review a broadcaster's selection of programs in order to ensure that various points-of-view are represented.

In either case, the application of the Code provisions relating to balance does not differ substantially. In a case of internal program balance, namely, *CHOG-AM re the Shelley Klinck Show* (CBSC Decision 95/96-0063, April 30, 1996), the Ontario Regional Panel combined the effect of Clauses 6 and 7 of the *Code of Ethics* in the following way. It said:

Although the Council recognizes that Clause 6, paragraph 3 and Clause 7 of the *Code of Ethics* offer different nuances, it considers that their combined effect is to require balanced programming when dealing with controversial issues. Accordingly, rather than considering

each provision individually, the Council is of the view that it may deal with the “balance requirement” as a whole.

In that decision, the Panel was dealing with a complaint concerning the fairness and balance of an open-line discussion entitled “Women who falsely accuse men of rape”. In finding no Code breach, the Panel made the following comments regarding a broadcaster’s responsibility to ensure balance:

Generally, the format of open-line programs has the *potential* of offering an opportunity for balance; however, the Council recognizes the important role of the host (and the producer) in ensuring balance. They wield considerable power in terms both of the choice of callers who get to air and the ability of the on-air host to cut off callers at will. The Council finds that, in this case, Ms. Klinck made a valiant effort to achieve balance in the treatment of the controversial issue chosen as a topic for the show. As in the case of *CFRA-AM re Steve Madely* (CBSC Decision 93/94-0295, November 11, 1994), her success may have been limited but this may have been a matter beyond her control. In the *Steve Madely* decision, the Ontario Regional Council interpreted the requirements of clause 7 in the following way:

In terms of the requirements of that clause, the broadcast publisher, through its host, was, as required, *endeavouring* to “Encourage presentation of news and opinion” on a controversial subject. The host’s problem was, in his view, that the audience was not interacting, not that *he* was *refusing* access. Furthermore, he returned to the subject once his dramatic stratagem pulled the listeners back into the dialogue.

In this case, the Council is of the view that the host encouraged a balanced presentation and discussion of the issue of false accusations of sexual assault. The public had been given the opportunity to call in and comment, and the host herself tried to balance the viewpoint of her guest. As a result, the Council finds that the program did not violate clauses 6 and 7 of the *CAB Code of Ethics*

While balance may be achieved *within* the program in question, the CBSC has established, as a general rule, that balance in dealing with a controversial public issue may be achieved through the *overall programming* of the broadcaster. As long ago as its decision in *CTV re an episode of the Shirley Show* (CBSC Decision 93/94-0261, August 18, 1995), the Ontario Regional Panel put that point in the following terms:

Reflecting the CRTC’s policy, it has been the view of the CBSC that a program dealing with a controversial issue need not have *built-in* balance. Broadcasters are entitled to balance biased programming by presenting the other side of the issue on other programs dealing with the same issue. If an individual program is not internally balanced, the Council may need to look at the overall programming provided by the broadcaster in order to see whether the broadcaster has met its responsibility pursuant to Clause 7 of the *Code of Ethics*.

In the present matter, the Panel is of the view that the broadcaster has achieved balance in its overall programming. Based on the information provided to the Panel, CFYI has provided balanced programming in this area at all material times. While the *Touch of Health* was being broadcast by CFYI, balance was maintained between programs that provided traditional health information and those that provided alternative health information. Since CFYI’s decision to cancel the program in question, the Panel relies on

the broadcaster's statement that "[CFYI] has removed all medical (traditional and non-traditional) programs from [its] week-end programming." For the reasons discussed below, the Panel accepts the broadcaster's decision to meet its obligations by removing *all* programming dealing with that particular issue.

### Programming Choices

With respect to *this* issue, namely, the choice of the programming which makes up a broadcaster's schedule, the Panel must make it very clear that such decisions are *primordially* the responsibility of the broadcaster. They reflect a mix of commercial, creative and societal values and concerns, supplemented by a measure of programming instinct. They constitute the *formula* which is the basis of every broadcaster's carving of its niche in the marketplace. They are a part of every broadcaster's determination of those factors which will differentiate its programming from those of other licensees in order that it will be able to attract its own audience. Broadcasters are, needless to say, also entitled to make judgments as to the quality of their programming without those judgments being challenged except, in a sense, by the reception of the programming choices *by the marketplace*. It is hardly for the CBSC to supplant *that* quintessential broadcaster judgment unless the circumstances and apparent rationale for the broadcaster's decision are clearly so dire and egregious that CBSC intervention is, by any reasonable assessment, called for.

Moreover, it should be borne in mind that broadcasters are required to abide by specific broadcasting requirements, as set out in the various legislative instruments and codes that apply to this industry. For instance, subparagraph 3(1)(d)(ii) of the *Broadcasting Act* requires that broadcasters must, among other things,

encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view.

In addition, Section 2(3) of the *Broadcasting Act* expressly recognizes that broadcasters have a right to "freedom of expression and journalistic, creative and programming independence."

In this case, it appears that CFYI's decision to remove the *Touch of Health* fits into a general plan to reorganize its programming schedule with respect to matters of health. It provided reasons for the decision to remove the show which are, on their face, entirely reasonable. There is not a shred of indication that the reason was other than as stated in the broadcaster's reply and the Panel has dealt above with the issue of balance in programming. In the present matter, the Ontario Regional Panel considers that CFYI's decision to remove the *Touch of Health* from its programming schedule does not violate any Code provisions.

## **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, while the Panel would have preferred a more comprehensive explanation of the station's efforts to maintain balance in its programming, it considers that CFYI's response addressed the issues raised by the complainant fairly. Nothing more is required. Consequently, the broadcaster has fully complied with 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.*

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**Appendix**  
**TO CBSC DECISION 99/00-0720**  
***CFYI re Touch of Health***

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**I. The Complaint**

The following complaint dated July 20, 2000 was sent to the CBSC.

This is a FORMAL COMPLAINT made by, myself, Christine McPhee; against: 1. Corus Entertainment (owners of CFYI Talk 640 Radio Station). 2. The CHUM Radio Network (syndicates through their affiliate radio stations). 3. Dr. T. Polevoy. 4. Dr. P. Marchuk

I am the host and producer of a radio talk show called, "The Touch Of Health". It informs listeners on alternative / natural health matters. The show encourages a balanced and moderate use of natural health therapies and products. This show air Saturdays from 2pm - 4pm in the WIC/Corus radio network and the CHUM radio network.

On Friday July 14<sup>th</sup>, 2000 I received a letter from Joe Zenobio of WIC/Corus/Talk 640 informing me that the show is being cancelled as of Aug. 18, 2000. On July 19<sup>th</sup>, 2000, I received a call from Bob Laine of CHUM. He informed me that some of his affiliate stations are going to stop airing the show due to complaints made to them. I called the Windsor station on July 20<sup>th</sup>, 2000 to confirm what Bob Laine said. I was informed that they had NO INTENTION of taking my show off the air!!!

All of this had occurred as a direct result of harassment and opinionated complaints made by, primarily, two people, Dr. T. Polevoy and Dr. P. Marchuk. Several of the text of their complaints have not been made available to me by WIC/Corus and/or The CHUM Radio Network to give me the opportunity to send them to you or to give me a fair opportunity to respond to them or to verify their accuracy. The ones that have been given me are being followed up by legal action by the guest speakers who they were directed against. These people (Polevoy & Marchuk) are against the whole natural health industry. You can see this from their "hate" web site, [www.healthwatchers.com](http://www.healthwatchers.com) (which was shut down by regulators recently, but now has restarted). They are Canadian representatives of Quackwatch (this is a U.S. based group being funded by large drug manufacturers). Dr. Polevoy is a supposed Medical Doctor. I have personally been STALKED by this man. This really bothers me. Isn't this unprofessional conduct??

Great care is taken on every show to ensure that everything said is in accordance with CRTC and CBSC guidelines and regulations. None of these regulations and/or guidelines has been contravened.

This action against the show and it being taken off the radio stations is a direct social and political assault against natural/alternative health. It has breached provisions of:

1. Freedom Of Speech in Canada
2. Canadian Broadcast Standards Council guidelines. (Section 6 of their guidelines, entitled "Balance", requires equal representation. In this matter between conventional and complementary medicine, the show being removed does not represent this balance.) (Also CBSC's regulation on Freedom Of Expression)

3. The Broadcasting Act.
4. Code For Television and Radio Programming.
5. Canadian Charter of Rights and Freedom (Section 2(b) protects freedom "of thought, belief, opinion and expression, including freedom of the press and other media communication) (Section 1 guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can demonstrably justified in a free and democratic society) (this cannot be called democratic when complaints from TWO people can cause this reaction?!?!)
6. The Canadian Association of Broadcasters Code of Ethics. (specifically Ethics clause 6(3) which states: 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.)
7. Honorable Mr. Allan Rock's efforts for The Canadian Health Coalition.
8. Honorable Mr. Monty Kwinter's bill on Alternative Medicine.

THIS IS A SERIOUS SOCIAL AND POLITICAL ISSUE. The Angus Reid Poll stated that 56% of Canadians have used complementary medicine in the last 6 months and 50% of Canadians are using natural health products. The Alternative / Natural Health field has a large interest group in Canada and the USA. The number of people interested in this field is growing RAPIDLY!!! With the inevitable loss of the Touch Of Health radio show, there will be a loss of "balance" broadcasting in this sector. On the Corus Entertainment and CHUM Radio Networks there is 11 hours a week of radio time dedicated to conventional medicine. There "was" only two hours (The Touch Of Health) dedicated to alternative medicine!!! The stopping of this radio show is an astonishing step backward in social and political standards. With Canadian Federal Minister, Mr. Allan Rock, taking steps to have complimentary medicine available to the Canadian public to the point of suggesting much of it be covered by the national health insurance plan, taking The Touch Of Health off the airwaves is against what many are working in behalf of.

This action by Corus and CHUM is sufficiently specific and serious to require your adjudication. Is it to your interests and the Canadian listening-public's interest to ensure balanced broadcasting? What is your stand on this issue? What can you do to resolve this? Your help and assistance to resolve this is requested. It is shocking that Corus and CHUM have succumbed to the radical action of a "hate" group.

## **II. The Broadcaster's Response**

The Operations Manager, CFYI, responded to the complaint with the following letter, dated August 8, 2000:

I am responding to the complaint you have filed with the CBSC, dated July 20, 2000, which was forwarded to us by the CBSC on July 31, 2000.

As detailed in my letter of July 13, 2000 and subsequent meeting of July 21, 2000, and subsequent letter of July 21, 2000 (copies of both letters attached), your show was cancelled for business reasons.

Specifically, as discussed, we have removed all medical (traditional and non-traditional) programs from our week-end programming. As I shared with you, the rationale for this is two-fold: first is the concern over legal liability with respect to giving medical advice. The second reason is our desire to improve the quality of our weekend programming in order to generate increased ratings and revenue.

It is my belief that TALK640 and the former WIC Radio properties have always tried to present balanced programming on all of their talk stations. I believe that TALK640 still continues to provide balance and informative programming throughout all of its day parts. As you are aware, TALK640 is a talk, news-based, information station. Part of our local programming includes discussion amongst our announcers and listeners on many topical and controversial issues. We believe we do a very good job of providing balanced opportunity to present all sides of an issue, which will allow our audience to make up their own minds on the matters under discussion.

I appreciate that this change has dramatically impacted you financially. We are sensitive to that and to this end, have tried to provide you with a reasonable amount of time to either find new programming or other sources of revenue. As a result, your other weekend programming on TALK640 is still continuing. In addition, we have had discussions with you regarding other paid programming.

### III. Additional Correspondence

Parameters for this decision were set in the Secretariat's initial response to the complainant.

Dear Ms. McPhee,

I acknowledge receipt of the above-referenced correspondence. At the outset, I would like to take this opportunity to give you some general information about the CBSC, the Codes it administers and the complaints process.

The CBSC deals with broadcast standards, regardless of the origin of programming. It is a private, self-regulatory, voluntary organization set up to consider complaints about programs aired by our members, Canada's private sector broadcasters. Four industry codes, namely a code of ethics, a code concerning television violence, a sex-role portrayal code and a code of journalistic ethics, serve as guidelines for television and radio programming. All the Codes and the CBSC's decisions can be found on the CBSC's website located at <[www.cbsc.ca](http://www.cbsc.ca)>.

The CBSC considers that direct dialogue between a complainant and a broadcaster is the best means of resolving a concern. This dialogue is most productive when engaged soon after the broadcast in question, as broadcasters are only required (as you probably know from your own broadcasting experience) to retain tapes of their programming for 28 days following its broadcast. When a broadcaster receives a complaint, it replies to the complainant within 14 days and retains tapes of the broadcast until the complaint is satisfied or until any Council process is concluded.

Your complaint, Ms. McPhee, is a bit unusual in that it does not so much concern something that *has aired* on CFYI but rather CFYI's decision to *no longer broadcast* a specific show. Moreover, you raise numerous issues in your complaint, many of which are beyond the scope of the CBSC's mandate. In the circumstances, the CBSC Secretariat considers it appropriate to set some parameters on how it will deal with your complaint.

First, please understand that the CBSC's jurisdiction, as a self-regulatory body, extends only to its broadcaster members, each of which is an individual station or specialty

television service. Accordingly, the CBSC is only able to deal with the parts of your complaint which relate to CFYI (Talk 640), the only broadcaster member mentioned in your complaint. No action can or will be taken by the CBSC with respect to those other persons (whether physical or legal persons) named in your complaint, i.e. Corus Entertainment, the CHUM Radio Network, Dr. Polevoy (whom you accuse of stalking as well as campaigning for the removal of your show from the airwaves) and Dr. Marchuk (also accused by you of campaigning for the removal of your show).

Second, with respect to your allegations that your freedom of expression has been infringed by CFYI's removal of your show from its programming schedule, the CBSC notes that the guarantees of freedom of expression found in the *Canadian Charter of Rights and Freedoms* and in the *Broadcasting Act* and which have been applied by the CBSC in its interpretation of the Codes, in no way amount to an *obligation* on the part of a broadcaster to allow certain persons, indeed *any* persons, access to their airwaves. In *CJCB-AM re TalkBack* (CBSC Decision 96/97-0065, February 14, 1997), in dealing with a complaint that a listener to a call-in show was denied access to have his opinion heard, the Atlantic Regional Council put the matter thus:

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.

Given that it is the broadcaster which is ultimately responsible for all its programming, it is the beneficiary of the constitutional and statutory guarantee of freedom of expression. The CBSC never reviews a broadcaster's programming and creative decisions; indeed, it cannot. It rather assesses, after the fact, whether the broadcaster's choices conformed to the standards set out in the Codes. In this sense, your statements that "Great care is taken on every show to ensure that everything said is in accordance with CRTC and CBSC guidelines and regulations" and that "none of these regulations and/or guidelines has been contravened" are technically irrelevant to the Council. They are actually not the issue. May I even add that both the CRTC and the CBSC would always assume that conformity with the rules and Codes of the land is the case for broadcasters and the hosts and producers of the shows they air. The broadcaster is entitled to remove any programming for creative, business, programming orientation and manifold other reasons despite the fact that these are unrelated to non-compliance with Canadian broadcast standards. Thus, the CBSC will not review CFYI's decision to remove *The Touch of Health* from its programming schedule.

In the end, the only issue which the CBSC will address through its formal complaints process (and subject to the conditions and terms laid down below) is the allegation of lack of balance of viewpoints on a controversial issue, to the extent that such an issue can be identified. It should be noted that the CBSC's mandate to deal with such concerns stems from Clause 7 of the *CAB Code of Ethics*. The CBSC set out a framework of how it will deal with concerns regarding balance in its decision *CTV re an episode of The Shirley Show* (CBSC Decision 93/94-0261, August 18, 1995). There, the Ontario Regional

Council stated

Pursuant to Clause 7 of the *CAB Code of Ethics*, broadcasters must “endeavour to encourage presentation of ... opinion on any controversy which contains an element of the public interest.” This Code provision reflects the principle enunciated in paragraph 3(1)(i) of the *Broadcasting Act* which declares that, as part of the broadcasting policy for Canada, “the programming provided by the Canadian broadcasting system should ... provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern”. This principle is often referred to by communications specialists as the balance requirement. The CRTC has interpreted this “requirement” in the following manner in Public Notice CRTC 1988-213, *Policy regarding Open-Line Programming* (December 23, 1988):

The Commission, in a number of pronouncements, has encouraged licensees to discuss a wide variety of issues in their programming, including matters of public concern. It considered that the public, through exposure to various points of view on such issues, should be in a better position to reach informed opinions on such matters.

The Commission has, on such occasions, required that balance in the broadcasting system be maintained in the following manner:

- a) Each undertaking must comply with the requirement of the Act regarding balance in its own programming.
- b) Not all programming need be balanced, only that relating to matters of public concern.
- c) In general, balance need not be attained in each program or series of programs, but rather in the overall programming offered by each undertaking over a reasonable period of time.
- d) To attain balance, equal time need not necessarily be given for each point of view. Rather, it is expected that in the programming offered by an undertaking, a variety of points of view will be made available to a reasonably consistent viewer or listener over a reasonable period of time.

The Commission has always considered that it is the licensee’s responsibility to decide whether an issue is a matter of public concern and to determine the manner in which balance is to be achieved....

Reflecting the CRTC’s policy, it has been the view of the CBSC that a program dealing with a controversial issue need not have *built-in* balance. Broadcasters are entitled to balance biased programming by presenting the other side of the issue on other programs dealing with the same issue. If an individual program is not internally balanced, the Council may need to look at the overall programming provided by the broadcaster in order to see whether the broadcaster has met its responsibility pursuant to Clause 7 of the *Code of Ethics*.

As the CRTC’s guidelines also provide, the CBSC takes the position that, while time allotted to the various sides of the issue is an important consideration in assessing a broadcaster’s compliance with Clause 7, it is not alone determinative.

It should also be noted that the CBSC was not set up as an evidence-gathering body and, thus, it has neither the mandate nor the resources to collect information outside of what is presented in the complaint, the broadcaster’s response and, in cases involving a concern about something which has been aired, the logger tapes of the programming in question. In certain circumstances, the CBSC will accept outside information, but only if such information does not give rise to a dispute as to the facts.

We have asked CFYI to respond to your concerns, in accordance with the parameters set

out above. You should be receiving their response shortly. **If you are not satisfied with this response, please sign and return the attached Ruling Request form within 14 days of receipt of the broadcaster's response.** The CBSC will then consider your request for a ruling.