
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL PANEL**

CKCO-TV re a News Item (Disappearance)

(CBSC Decision 00/01-0739)

Decided June 28, 2001

R. Stanbury (Chair), M. Ziniak (Vice-Chair), R. Cohen (*ad hoc*), R. Moss,
S. Whiting

M. Oldfield, who customarily participates in Ontario Regional Panel decisions, did not on this occasion since he is employed by a broadcaster whose owner also owns CKCO-TV.

THE FACTS

On February 23, 2001, a local resident was charged with possession and distribution of child pornography. Information regarding these charges was broadcast for the first time by CKCO-TV (Kitchener) on February 26. In that initial broadcast, images of the accused's home were shown and his address was mentioned. A half hour after that newscast, the accused, who had been watching the newscast with members of his family, left the family home. The next day, when he had not returned home, the family reported him to the police as missing. His abandoned vehicle was found on the following day but police had not yet located the individual. On March 2, 2001, CKCO aired a news report concerning the disappearance of the accused. At the time of the broadcast of that report, it was presumed that the man was still alive and the case was still being treated by both the police and the broadcaster as a missing person matter. Subsequent to the broadcast date, the body of the missing man was recovered from the nearby Grand River.

In the March 2 news report, an appeal was made to the public by a police staff sergeant for any information as to where the missing man might be. The report named the missing man, included his physical description, and reported the fact that he was the owner of a local Waterloo pub and tavern. A photograph of the pub was shown. (A partial transcript follows; the full transcript of the report can be found in Appendix A.)

Anchor: Police are trying on to ... trying, rather, to track down a local businessman who faces pornography charges. CKCO's David Emery joins us now with the latest. David.

David: Well, Janine, the search is for the operator of the [XYZ Tavern]. That's a Waterloo restaurant and tavern.

Various shots of the tavern are shown for 14 seconds with the following

Voice over: Shock. Disbelief. The reaction of patrons at the [XYZ Tavern] to word that [the owner] can't be found. His family reported him missing Tuesday night, more than 24 hours after he was last seen in his home.

Police: The family advises us that he was in a distraught condition so we decided to do a search of the area in Conestogo near the golf course. So we've done actually three different searches.

Voice Over: Police have been combing the area around the Conestogo golf course. [The pub owner]'s car was found nearby on Wednesday. A week ago following a three month investigation, the OPP executed a search warrant at his Waterloo home. They seized computer equipment. [The accused] was charged with possessing and distributing child pornography.

The Complaint

On March 5, the CBSC received a complaint (originally sent to the CRTC and then, in the normal course, forwarded to the Council) from the sister-in-law of the man whose disappearance was reported by CKCO-TV. In her complaint, she indicated that she had pleaded with the News Director of the station not to broadcast the photo of the establishment on the grounds, first, that the business was in no way involved in the crime for which the missing man had been charged and, second, that airing the photo would negatively impact all those employed by the pub. She said, in part (the full text of this letter and all of the subsequent correspondence is included in Appendix B):

My brother in law has been charged with an alleged crime. He and my sister are partners in a business that is in no way involved in this crime. [The] News Director for CKCO-TV chose to air a photo of the establishment in any case. The company is the only source of income my sister has to support her children, and also employs twenty-seven people who rely on this income for their livelihood. It is my belief the irresponsibility of this act may impact my sister, her family and her employees through loss of income.

It should be noted that this decision deals solely with the complaint as it relates to the broadcast of March 2. While there are aspects of the February 26 broadcast which are noted in the correspondence, the complainant only raised the first broadcast on May 9, well after the expiry of the 28 days during which the broadcaster is required to retain the original logger tapes. In the circumstances, the tape had been recycled, leaving the CBSC unable to deal with the issues related to that newscast. Consequently, the decision is limited in its purview to the second of the two broadcasts.

The Broadcaster's Response

The Vice President and General Manager of CKCO-TV responded to the complaint on April 25. In his reply, he stated in part:

We first became aware of the story through our normal activities in monitoring police reports, and news releases. Once the police have made a charge the information becomes part of the public domain and any news organization is free to report on it. In our initial report we stated that your brother-in-law had been charged with a crime and that the police had executed a search warrant at his place of residence where they had seized evidence relating to the charges. This report showed a video image of his residence, which in fact was the crime scene.

Shortly after the initial report we received a phone call advising us that your brother-in-law's two teenage sons were being harassed and that by airing the pictures of their residence we were making it easy to identify them. Although we were under no legal obligation to cease using the image of their home we decided to do so in recognition of the terrible time the family was going through.

In our report we also mentioned that your brother-in-law was the owner/operator of the [XYZ Tavern], a well-known establishment in Waterloo. Once again we were contacted by yourself, and asked not to include this as part of the story for the reasons you mentioned in your letter. As we explained at the time we believe that this information was relevant to the story and in fact we had legitimate editorial reasons for including it.

The object in television news reporting is for the viewer to have [the] clearest possible understanding of what the story is about. A news story has to make clear who is involved, that may include full name, address or other relevant information, especially in stories involving criminal charges. For instance, if there were criminal charges laid against an adult who is best known in the community as a famous golf professional, we would use that description. If a person was best known as a Boy Scout leader we would use that information, or as in this case, if the person were best known in the community as the owner/operator of a business, then we would use this information. The association with the [XYZ Tavern] is relevant to this story and that is why it was included. We believe that to eliminate such information from news reports would ultimately be a disservice to our viewers because we would be withholding information that made a news story understandable and identified completely the individual involved.

Further Correspondence

Between the date of the complaint and the date of the broadcaster's reply, the body of the complainant's brother-in-law was found in the Grand River. She sent a further letter to the CBSC on May 2 with the details and relevance of this incident:

My brother-in-law [...] disappeared February 26, 2001 within minutes of the CKCO-TV broadcast at 6 pm. CKCO-TV showed [his] house and named their street. I wish to inform you that my brother-in-law's body was recovered from the Grand River Sunday, April 22, 2001. The coroner concluded that the death was asphyxiation due to drowning, cause unknown. [My brother-in-law] had promised his children he would not take any drastic

actions, but, after watching the newscast, he put on his coat, walked out the door and was never seen alive again.

Although my original grievance was with their telecast Friday March 2, 2001 where they named [my brother-in-law's] place of business, I believe the above information has some relevance to this case.

The complainant was dissatisfied with the broadcaster's reply and returned her Ruling Request on May 9 with a covering "rebuttal" letter, in which she said, among other things:

At the outset, I believe that this incident addresses an issue, which to my knowledge has not been before the CBSC previously. I have reviewed decisions on the CBSC web site and can find no parallel rulings. The issue in my view, is whether members of the public, even when they are charged with crimes, should be the subject of media crews who come to their homes and places of business, thereby exposing their families to humiliation. In this instance, there is an additional serious issue not previously dealt before by the CBSC, that is, whether those television news reports precipitated a sequence of events which resulted in a person (accused of a crime) taking his own life. There is the matter of a second television report telecast by CKCO, once [the accused] had "gone missing". I dealt directly with staff at CKCO before the second report was aired, expressing my concerns for privacy of the family, and the potential harm to a family business resulting from more televised coverage.

The complainant then cited Articles 3 and 4 of the *RTNDA Code of Ethics* and argued their applicability to her complaint.

The news crew attended at the family home approximately 72 hours after the computer was seized and charges were laid. Normally crime scenes, involve some tangible evidence or images which are captured on video, such as a scene where police are actively investigating a crime, i.e. searching for forensic evidence at the scene of a murder, or car crash. In this instance, CKCO recorded and telecast images of a home, some 3 days after it was an alleged "crime scene". For what purpose was the telecast of the images of [my brother-in-law]'s residence images made, other than to sensationalize the "crime"? In point of fact, the images might have been justifiable if captured on Friday, February 23, if the images showed the police in their active investigation removing the evidence from the home. But the delay in reporting, and the context of the images showing the family home, exposed family members, including two adolescent sons, to embarrassment and ridicule.

[...]

By recording and telecasting these images, days after the alleged crime and criminal investigation, CKCO failed to respect the dignity and privacy of family members, particularly the younger family members.

Please note, this issue was not articulated in my original grievance, but addressed in Dennis Watson's letter of April 25, 2001. I have had time to review the CBSC website and further examine the RTNDA Code of Ethics which I believe are germane to this complaint.

Further, if one were to audit CKCO's reporting of other crimes, I would suggest that CKCO-TV does not usually show the homes of people facing criminal charges. More often, people charged with crimes, are shown entering or leaving court, when making court appearances, or from time to time, at their homes, if they are taken into custody at their place of residence. Cameras normally do not invade their neighbourhoods, or show the homes of people charged

with crimes, or attend at their work place or business, when the crime is unconnected with the person's work place...

Therefore, CKCO-TV must have seen this news item as sensational. See Article Three: "Broadcast Journalists will not sensationalize news items..."

[...]

There was no evidence available to CKCO at that time (March 2), which would suggest in any manner that [my brother-in-law], in his place of business, put the community at risk, and therefore CKCO was not justified in attending his place of business or publicizing the location of the business. It seems as if Articles 3 and 4, and the over-riding (legal) presumption of innocence have taken back seat to CKCO's desire to sensationalize the story. While the test, which Mr. Watson articulated (protection of the community), might justify disclosing the whereabouts of a convicted child molester, released into the community on parole that is not the situation here. Due process before the law had not been completed, and no conviction had been registered.

While not to trivialize the issue of possession of internet pornography and the consequences of a trial and possible conviction, media in Canada have been generally sensitive to the right of an individual to receive a fair trial and have generally not engaged in sensationalism in reporting that people have been charged with possession. The judicial system has generally treated "first time offenders" with the same level of compassion accorded to individuals charged with other crimes.

I am aware of cases previously adjudicated by the CBSC, where "follow up" stories were deemed to have been in breach of the RTNDA Code of Ethics. I believe there is some parallel to the case adjudicated by the CBSC Atlantic Regional Council in the case of *CKEN-AM re Newscast* (CBSC Decision 95/96-0134).

[...]

I pleaded with each not to air this footage of the exterior of the [XYZ Tavern]. I told them it is the only source of income my sister, her two children and their employees have. To air footage of a totally unrelated family business in context with the charges laid against a co-owner, was not only unethical, but has been harmful to sales and jeopardized employment because of the drop in sales. It does not "...make the story more understandable..." Not airing footage of the [XYZ Tavern] CKCO-TV would not be showing a "...disservice to our viewers because we would be withholding information..."

Withholding information? Disservice to their viewers? These are preposterous statements on the part of CKCO-TV. Irrelevant and preposterous.

Any disservice done was to the [XYZ Tavern], [the accused's wife], her children and her employees. This represents thirty people, not including any family, children, and spouses etc. who depend on these incomes.

On May 22, 2001 the Vice President and General Manager of CKCO-TV replied as follows, in part:

You indicate that your brother-in-law was charged on February 23rd, but that CKCO Television did not cover this event until Monday, February 26th. The reason for that is that we were not aware of the charges being laid until we received a press release from the Ontario

Provincial Police Department. ... The fact that we did not find out about the charges being laid until 3 days after the event does not mean that his residence ceased to be the crime scene.

[...]

As I stated to you at the time of our phone conversation and again in my letter of April 25th, the reason we aired the footage of the [XYZ Tavern] was because the majority of people in the Kitchener Waterloo community knew your brother-in-law as the owner/operator of this business. It was germane to the identification of the person who had been charged with this criminal act.

[...] We did not show the [XYZ Tavern] because it was an alleged crime scene, or because it would put the community at risk. We aired the footage of the [XYZ Tavern] because it is how your brother-in-law was associated to the majority of people in this community.

We do not believe we have violated the Radio Television News Directors Association's Code of Ethics in any way. We did not act maliciously, we did not sensationalize this story and we operated with respect for the dignity, privacy and well being of everyone.

The dialogue between the complainant and the broadcaster ended there.

THE DECISION

The Ontario Regional Panel Adjudicators considered the complaint under the following provisions of the various Canadian Association of Broadcasters (CAB) Codes. They 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.

RTNDA Code of (Journalistic) Ethics, Article 2 (Old code)

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.

RTNDA Code of (Journalistic) Ethics, Article 2 (New code)

Broadcast journalists will report factors such as race, national or ethnic origin, colour, religion, sexual orientation, marital status or physical or mental disability only when they are relevant.

RTNDA Code of (Journalistic) Ethics, Article 3 (Old code)

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.

RTNDA Code of (Journalistic) Ethics, Article 3 (New code)

Broadcast journalists will present the news and public affairs without distortion.

RTNDA Code of (Journalistic) Ethics, Article 4 (Old code)

Broadcast journalists will respect 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.

RTNDA Code of (Journalistic) Ethics, Article 4 (New code)

Broadcast journalists will respect the dignity, privacy and well-being of everyone with whom they deal, and will make every effort to ensure that news gathering and reporting does not unreasonably infringe privacy except when necessary in the public interest.

The Adjudicators screened the challenged news report and reviewed all of the correspondence. While readily acknowledging the sadness of the events which preceded and followed the news broadcast in question, the Ontario Regional Panel is of the view that, for the reasons given below, the report does not violate any of the above-mentioned Code provisions.

The Old and New Versions of the RTNDA Code

The *RTNDA Code of (Journalistic) Ethics*, first drafted in 1970, was revised by the Radio and Television News Directors Association of Canada in 1986. The 1986 version of the Code was the one that the CBSC has been administering since October 1993. In June 2000, the RTNDA revised and updated the English version of the Code and it is that version that the CBSC has administered since June 15, 2001, the date as of which both the French and English texts were available. The challenged broadcast occurred in an intermediate time frame, namely, subsequent to the date that news director members of the RTNDA itself would have considered the new Code to be in effect but prior to the date as of which the CBSC had both French and English texts in order to begin its administration of the new Code.

There are some differences in wording between the old and new versions of Code articles covering the same issues. In the case of Articles 2 and 3, this *might* have had a bearing on the applicability of the *new* provisions to this matter. In the case of Article 4, the Panel considers that the change in wording would not have had any bearing in *this* instance. In order to deal with the issues raised by the March 2 broadcast, the Panel has decided that, taking into consideration the expectations of the public, it could not apply the more restrictive wording of the new version of the RTNDA Code so as to cut off public access to standards which have long since been applied by the CBSC to journalistic matters when the broad guarantee of “full, fair and proper presentation of [the] news” remains enshrined

in the *CAB Code of Ethics*. Given that, as will be noted in more pertinent detail below in the appropriate sections, while the new Code may not contain all the same wording regarding the sensationalization of the news or the broadcast of irrelevant background information, the Panel sees no contradiction between the new text and the general requirement of full, fair and proper presentation of the news found in the CAB Code. The Panel considers that it is its duty to reaffirm, for the benefit of audiences, that such principles continue to be a part of their entitlement and expectation of broadcasters, despite their current absence from the RTNDA Code.

The Relevance of the Death of the Subject of the Report to this Decision

It should be noted preliminarily that the sad and painful experience of the death of the complainant's brother-in-law is not a factor in the Panel's determination. The only question for it to assess is the state of the information *as it was known at the time of the newscast*. Even if, as the complainant alleges, the death of her brother-in-law resulted from what the decedent had seen on the newscast, the Panel clearly does not understand her to be suggesting that any responsibility for his death can be imputed to the broadcaster in any *legal* sense. That link would be both remote and fanciful. The issue at hand is limited solely to any Code-related aspects of the following assertion by the complainant in her letter of May 9:

In this instance, there is an additional serious issue not previously dealt before by the CBSC, that is, whether those television news reports precipitated a sequence of events which resulted in a person (accused of a crime) taking his own life.

Since the complainant is clearly referring to the broadcast of February 26, *which is not under consideration here*, the Panel only wishes to make its view on the foregoing assertion absolutely unequivocal. With or without a tape of the February 26 broadcast regarding the criminal charges in hand, the Panel understands that the laying of charges relating to child pornography would be disconcerting, even extremely distressing, to the accused. No-one could assume for a moment that any such charges would remain undisclosed and hidden from the public. *These* could readily be imagined to be the proximate causes of what appears from the sister-in-law's correspondence to be suicide. Such an act cannot be imputed to the broadcaster and the assessment in this decision of the March 2 broadcast, apparently following the death of the accused, is, therefore, unaffected by the death.

Sensationalization in News Reporting (Old and New Tools)

As noted above, this is the first occasion on which the CBSC is called upon to deal with a complaint regarding sensationalization since the revision of the RTNDA Code. In any event, whether applying the old or the new provision, the Ontario Regional Panel considers that the result would, for the reasons given above, be the same.

In the event that the old Code applied to the actions of the CKCO-TV News Director in this case, the provisions of Article 3 would be applicable; in it the RTNDA members had agreed that “Broadcast journalists will not sensationalize news items.” In the event that the CBSC were called upon to apply the provisions of the new RTNDA Code, it is clear that the RTNDA’s prohibition against sensationalizing news reporting is no longer found there (or anywhere else). In such circumstances, the Panel considers it entirely appropriate to apply the provision in the *CAB Code of Ethics* which affirms that “the full, fair and proper presentation of news, opinion, comment and editorial is the prime and fundamental responsibility of the broadcast publisher.” In so doing, the Ontario Panel observes that a sensationalized news report could not be characterized as either a fair or a proper presentation of news and would thus constitute a breach of Clause 6, paragraph 3 of the *CAB Code of Ethics*. See, for example, *CJRQ-FM re Opinion Poll* (CBSC Decision 94/95-0135, March 26, 1996), *CTV re News Report (Police Shooting)* (CBSC Decision 94/95-0213, March 26, 1996) and *CFTM-TV (TVA) re J.E. (Entreprises Pendagron)* (CBSC Decision 97/98-0390, August 14, 1998) for examples of sensationalized, unfair and improper presentations of news.

The question then for the Panel is to determine whether the reporting by CKCO-TV on March 2 amounted to sensationalism or not. In the view of this Panel, sensationalism involves the significant exaggeration of some element of a story to attract the attention of an audience in circumstances where that audience might not otherwise be drawn to the report. It might, as in the foregoing examples, involve the use of flagrant language in an otherwise sober listener poll, the videotape of a shooting of an individual with no context for the viewer other than the fact of the shooting, the ten-fold distortion of profits from an allegedly fraudulent activity, and so on.

In the matter at hand, there is nothing of the like. The objection of the complainant is that information was provided about the business of the accused which had no direct connection with the criminal offence with which he had been charged. While that is true, the information had a direct connection with the identity of the individual, who was well-known in the community. It was a fact. It was a current fact. It was a publicly known fact, although not in the context of a criminal indictment. As will be seen below, it was also a relevant fact, although one with potential problematic consequences to the colleagues and family of the accused. It was not exaggerated, untrue, distorted, speculative or “stretched”. It was not, in other words, sensationalized. The Panel finds no breach in this respect.

The Reporting of Irrelevant Background Factors

The issue of divergent Code texts presents itself here as well. In the original language, “News and public affairs broadcasts will put events into perspective by presenting relevant background information.” There was no limitation to “relevant background information” as there appears to be now. In the revised version of the Code, reporting of human rights type of information, such as race, skin colour, etc., is restricted to circumstances in which

that information is relevant to the report being made. In *CKEN-AM re Newscast* (CBSC Decision 95/96-0134, February 14, 1997), for example, the Atlantic Regional Panel found that the reporting of many details relating to the death of a young woman was justified.

There can be no question but that the reporting of the tragic death of the young woman in this case was a further unhappy moment for the grief-stricken family. In this instance, the identity of the deceased, the nature of her death and the location of the accident are all, however, justifiable, if sad, aspects of the news.

In that case, the broadcaster in a small community, in reporting on the death of the young woman in a car accident, chose to include information relating to a previous accident in which the complainants' daughter had been involved, one in which someone else had been killed and for which she had been "cleared of any wrongdoing in [the] fatal accident." The Panel held

that the broadcaster was *not*, in fact, malicious in reporting on the previous accident. The Council also agrees with the broadcaster that it did not exaggerate the story and that "The facts of the story are not in dispute and what [it] did was to report the facts."

The issue, however, goes beyond questions of accuracy, sensationalization, exaggeration and malice, for broadcasters *also* have an obligation, when they wish to include other material than the straight facts of the story they are reporting, to restrict their presentation of such material to issues of "*relevant* background information."

Despite that conclusion, the Atlantic Panel ruled that the broadcaster had breached the provisions of Article 2 of the RTNDA Code.

The Council found that there was no supportable purpose for suggesting a link between this private citizen's involvement in the past accident and the one that led to her death. The Council does not consider that the ironic twist to the fate of the young woman is a sufficient justification for the reporting of the earlier accident.

The Ontario Panel considers the *CKEN* decision very different from the matter at hand. In the former matter, the issue had nothing to do with the *identity* of the young woman. It had only to do with the tragic irony that she herself had killed someone with her vehicle a year and a half before and that she was herself killed in a fatal car accident. What in a sense was worse regarding that earlier report was that she had been *cleared of any wrongdoing* in connection with the death. In other words, the only justification for the story, as told, was *irony*. In the present matter, the issue is *identity*. That is, in the view of the Panel, entirely relevant. CKCO-TV has not, in reporting the information relating to the ownership of the pub, gone too far. There is no breach.

The Reporting of Judicial Proceedings

While the complaint does not specifically relate to the charges laid against the subject of the news report, the Panel considers it worthwhile to reiterate the CBSC's position relating

to court proceedings, which are, of course, public by their nature in a democratic system. In *CITY-TV re Newscast (Toronto Humane Society)* (CBSC Decision 95/96-0226, October 21, 1996), the issue involved the *fairness* of reporting an arrest when, in the view of the indicted complainants, they had no opportunity to “argue” their side of the charges in the television show dealing with their arrest. The Ontario Regional Panel made the following points, which deal, by analogy at least, with the public nature of the judicial process, particularly its criminal law aspect.

Insofar as the reporting of the arrest of the individuals is concerned, the Council has no difficulty. [...] It must be remembered that the reporting of an arrest is not the equivalent of the reporting of two or more sides of a controversial issue. In the latter case there is an obligation on the broadcaster to present the *various* points of view fairly. No such obligation exists in the simple reporting of a non-controversial news event, which is what an arrest is. If there is any counterpoint to the arrest itself, it is provided by the rules of the criminal justice system. There is necessarily attached to every arrest a *societal* presumption of innocence which is, in a sense, the counterpoint or balance to the news of the arrest itself. There is not otherwise any duty on the broadcaster to *seek* the almost inevitable claim of innocence on the part of the accused. A forum is provided for accused individuals to articulate that perspective; there is no need for the broadcaster to provide it before the trial.

In *CHBC-TV re Newscast* (CBSC Decision 93/94-0292, December 18, 1996), the broadcast giving rise to the complaint dealt with the difficulties plaintiffs may encounter when trying to collect court awards. While the essence of that complaint was different from that in the matter cited above as well as the matter at hand, the B.C. Regional Panel made the following point regarding judicial proceedings.

The Regional Council is of the view that the right of privacy of an individual ends when he or she becomes a party to court proceedings insofar as the reporting of those proceedings and their outcome are concerned. In the absence of a judicial order to the contrary, the CBSC considers that all court proceedings and their outcomes are *public* by their nature.

It is likely true that persons who become involved in legal proceedings, whether in the civil or criminal courts, do not intend to thereby become the subjects of media attention. Nonetheless, in the Canadian democratic system, in the absence of a Court order to the contrary (and assuming that the special rules of the *Young Offenders Act* are not in play), the identity of the parties and the substance and details of the proceedings are accessible by the public and the media which report these in the public interest. Nor should it be assumed that the public interest is *limited* to the safety and security of members of the public. It is a concept far broader than that and one which is particularly untrammelled when it comes to matters of Government, public figures and the courts. With respect to judicial proceedings, as is the case in the matter at hand, it can be safely assumed that, most of the time, the parties to civil proceedings and, probably almost all the time, those charged in penal and criminal matters, do *not* feel comfortable having their business conducted in the public eye. This is probably also true of their close friends and relatives, who may sense discomfort in the reflected glare. It is, however, a personal cost necessarily incurred for the benefit of the public. It follows that CKCO’s identification of the accused by name, address and business association was entirely justified as being in the

public interest, despite any pain which may have resulted to the brother-in-law and the members of his family.

Invasion of Privacy

At the end of the day, the material issue to be determined regarding the challenged newscast relates to whether or not the photographic inclusion of the pub owned by the brother-in-law in the news broadcast constituted an unwarranted invasion of privacy under the RTNDA Code or an improper presentation of news under the CAB Code. At that, there may also appear to be a need to draw a distinction between the interests of the accused, the complainant's brother-in-law, on the one hand, and the "sister [who] has to support her children [from the business], and [the] twenty-seven people who rely on this income for their livelihood." In fact, though, the only question for a broadcaster is whether it is justified in including such information in its story in the first place. That there may be consequential concerns on the part of those incidentally affected cannot be determinative.

As discussed above, the Panel has no doubt that the broadcaster had the right to name the individual and the charges laid against him. Where then were the limitations, if any, of the description by the broadcaster of the person indicted? The Panel can see few, particularly in the case of a person who, by his profession or public persona, would be likely to be known to the public. A photograph of the individual would be fair. So would the depiction of the person's home, particularly where, as in this case, it was the scene of the alleged criminal activity. Believing, though, that the request from the complainant *not* to show the house was reasonable "in recognition of the terrible time the family was going through," the broadcaster thoughtfully and sensitively pulled that shot from later newscasts dealing with the story. In any event, the Panel expects that showing the house was not as material to its viewing audience as showing the pub. The former was not known to, or frequented by, the public. The latter was. In fact, *that* is the issue. The identification of any place of business would help the members of the *public* understand who the individual was; where the enterprise was not merely a commercial establishment but one to which the public was liberally invited, there was a greater opportunity, in the context of a story about a missing person, to increase the likelihood that someone in the public who knew him by sight might be able to help locate him.

Incidentally, the broadcast of such a report might not also be unreasonable in order to provide members of the public with information enabling them to determine whether this was a place they wished to continue to visit or one which they wished, for their own reasons, to avoid. After all, the source of this potential problem, namely, the consequences to family, pub employees, and so on, was the *accused*, not the station, which had every right to fulfill its general responsibility to inform the public of matters of concern and interest.

The Panel understands and sympathizes with the complainant and her family and, indeed, with all of the persons affected by the alleged criminal behaviour of the accused (alleged,

since there will never be a trial of the accused in this case). It affirms, however, that the broadcaster exercised its reporting responsibilities entirely within the limits of the standards imposed by the RTNDA and CAB Codes. CKCO did exactly what it had every right, if not obligation, to do in the interest of the public. It generously withdrew the depiction of the personal residence of the accused from the story. It verified with other professionals what its instincts told it to do. It was sympathetic and professional. There is no Code breach here.

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 diligence and attention of the broadcaster to the issues and concerns of the complainant are clear. The correspondence was extensive and thorough. While the broadcaster and the complainant did not in the end agree (had they done so, this matter would not have required this adjudication), that is not the issue. What is essential is *communication, dialogue*. The broadcaster owes that to serious members of its audience who have genuine and material complaints. That was certainly the case here. The complainant articulated her concerns effectively. The broadcaster's representatives dealt with them that way. The dialogue was time-consuming but it constituted an excellent example of the two-way commitment that is of the essence of this process. The Panel commends CKCO-TV for its meaningful attempts to respond to the complainant.

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

Complaint File 00/01-739

CKCO-TV re: a news item (Disappearance)

The following is a transcript of the March 2, 2001 broadcast of the news item regarding the disappearance on *CKCO-TV*.

18:08:23

Anchor: Police are trying on to... trying rather, to track down a local businessman who faces pornography charges. CKCO's David Emery joins us now with the latest. David.

David: Well, Janine, the search is for the operator of the [XYZ Tavern]. That's a Waterloo restaurant and tavern.

18:08:40

Various shots of the tavern are shown with the following

Voice over: Shock. Disbelief. The reaction of patrons at the [XYZ Tavern] to word that [the accused] can't be found. His family reported him missing Tuesday night, more than twenty-four hours after he was last seen in his home.

The tavern is shown until **18:08:54**

Police: The family advises us that he was in a distraught condition so we decided to do a search of the area in Conestogo near the golf course. So we've done actually three different searches.

18:08:08

Shots of the area around the Conestogo golf course.

Voice Over: Police have been combing the area around the Conestogo golf course. [The accused's] car was found nearby on Wednesday. A week ago, following a three month investigation, the OPP executed a search warrant at his Waterloo home. They seized computer equipment. [The accused] was charged with possessing and distributing child pornography.

Shots of search shown until 18:09:25

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Police: His family has indicated to us that he's left without wallet and money, identification, bank cards.

Voice Over: The search has also taken police to an area near the Waterloo Regional Airport and to the banks of the Grand River.

Police: It's a dangerous place to search in a Zodiac boat right now because of fast flowing water and ice jams in many corners and we may do a search of the river when it's safer.

18:09:57

Blue screen with the following description:

DESCRIPTION

50 years old

5'9" 180 lbs

Goatee

Greying, brown hair

Brown leather bomber

Voice Over: [The accused] is 50 years old. Five feet nine inches tall weighing 180 lbs. He uses eyeglasses, he has a goatee and greying brown hair. He was wearing loose fitting jeans and a brown leather bomber jacket.

Police: We're presuming that he's alive and that he's been picked up by possibly a friend. He's got a lot on his plate right now. Maybe he needs some time to think and so we're appealing to the public to try and give us information as to where he might be.

David: So police are asking for help from anyone who might have some information that would assist them in this search. Reporting from the newsroom, David Emery, CKCO News.

APPENDIX B

Complaint File 00/01-0739

CKCO-TV re: a news item

I. The Complaint

The following complaint dated March 5, 2001 was sent to the CRTC and forwarded to the CBSC in due course:

I am writing on behalf of my family to lodge a formal grievance against CKCO-TV for the broadcast of unnecessary and potentially damaging information on Friday, March 02, 2001.

My brother in law has been charged with an alleged crime. He and my sister are partners in a business that is in no way involved in this crime. [The] News Director for CKCO-TV chose to air a photo of the establishment in any case. The company is the only source of income my sister has to support her children, and also employs twenty-seven people who rely on this income for their livelihood. It is my belief the irresponsibility of this act may impact my sister, her family and her employees through loss of income.

On March 2nd, 2001, I pleaded with [the] News Director not to further the damage to this family in crisis by showing the establishment. [The] News Director felt he was within his rights to both identify and air pictures of the place of business.

I am looking for accountability from CKCO-TV and the assurance that this station will hold to responsible journalism. I am looking for reform on policy dictating that no potentially harmful reporting be aired in regards to innocent people.

I would like to be contacted at your earliest convenience. I may be reached at my own business at [000-000-0000]. I appreciate your confidentiality at this time.

On May 2, 2001 the complainant sent the following additional letter to the CBSC as an update to her formal grievance of March 5:

This letter serves as an update to my formal grievance.

My brother-in-law, disappeared February 26, 2001 within minutes of the CKCO-TV broadcast at 6pm. CKCO-TV showed the house and named their street. I wish to inform you that my brother-in-law's body was recovered from the Grand River Sunday, April 22, 2001. The coroner concluded that the death was asphyxiation due to drowning, cause unknown. [The accused] had promised his

children he would not take any drastic actions, but, after watching the newscast, he put on his coat, walked out the door and was never seen alive again.

Although my original grievance was with their telecast Friday March 2, 2001 where they named the family's place of business, I believe the above information has some relevance to this case.

Thank you for your prompt attention to my grievance. If you have any questions or concerns, please contact me. I am at your disposal.

II. The Broadcaster's Response

On April 25, 2001, the Vice President and General Manager of CKCO-TV responded to the complaint with the following letter:

Please except [*sic*] my condolences on the loss of your brother-in-law. I am sure that the past few months have been a very trying and difficult time for you and your entire family. I would like to ensure [*sic*] you that it was never our intent to aggravate this situation in any way.

I am writing you today to respond to your letter of March 5, 2001 sent to the Canadian RadioTelevision-Telecommunications Commission. The CRTC then passed your letter on to the Canadian Broadcast Standards Council, who has asked us to dialogue with you about why we chose to cover this story the way we did.

We first became aware of the story through our normal activities in monitoring police reports, and news releases. Once the police have made a charge the information becomes part of the public domain and any news organization is free to report on it. In our initial report we stated that your brother-in-law had been charged with a crime and that the police had executed a search warrant at his place of residence where they had seized evidence relating to the charges. This report showed a video image of his residence, which in fact was the crime scene.

Shortly after the initial report we received a phone call advising us that your brother-in-law's two teenage sons were being harassed and that by airing the pictures of their residence we were making it easy to identify them. Although we were under no legal obligation to cease using the image of their home we decided to do so in recognition of the terrible time the family was going through.

In our report we also mentioned that your brother-in-law was the owner/operator of the [XYZ Tavern], a well-known establishment in Waterloo. Once again we were contacted by yourself, and asked not to include this as part of the story for the reasons you mentioned in your letter. As we explained at the time we believe that this information was relevant to the story and in fact we had legitimate editorial reasons for including it.

The object in television news reporting is for the viewer to have [the] clearest possible understanding of what the story is about. A news story has to make clear who is involved, that may include full name, address or other relevant information, especially in stories involving criminal charges. For instance, if there were criminal charges laid against an adult who is best known in the

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community as a famous golf professional, we would use that description. If a person was best known as a Boy Scout leader we would use that information, or as in this case, if the person were best known in the community as the owner/operator of a business, then we would use this information. The association with the [XYZ Tavern] is relevant to this story and that is why it was included. We believe that to eliminate such information from news reports would ultimately be a disservice to our viewers because we would be withholding information that made a news story understandable and identified completely the individual involved.

I should let you know, that because of the concerns you expressed we decided to seek a second opinion before continuing to mention this fact. We reviewed the CTV Journalistic Policy and indeed held discussions with senior CTV news executives, who after careful consideration of the matter agreed that the references to your brother-in-laws business were relevant.

The April 24th edition of the Kitchener-Waterloo Record did a follow up story on recent events pertaining to this story in which you are quoted. In this article they identified your brother-in-law as, "owner of the [XYZ Tavern] on [ABC] Street, Waterloo". Obviously they too felt that this information was germane to the story.

We believe that our actions in reporting this story are well within the guidelines of responsible journalism.

To suggest that a policy, "dictating that no potentially harmful reporting be aired in regards to innocent people" would completely negate our ability to cover news events. We know that any member of a family may suffer embarrassment because of a criminal charge or any other event relating to some other family member. In fact, the police know that laying charges will have an impact on other family members when they do so. If we were not allowed to report stories because it might be perceived as effecting [*sic*] innocent individuals we could not report on any crime or identify any criminal for fear that members of their family would be embarrassed and that any business enterprises that they run may be affected.

I should also point out that in some cases it could be argued that by not giving the public as much information as possible we could put the entire community at risk and would therefore be negligent in our duties.

In closing I would like to assure you that we take your concerns very seriously. Your views are undoubtedly heart-felt and we understand that. I cannot imagine what you and your family are going through, however I have to assume that it is an extremely painful matter for everyone.

I hope that the information I have provided here will aid in giving you an understanding of the decision-making that took place. I recognize that you disagree with our decision, but I hope you understand that our actions were not malicious in any way. Should you wish to discuss this further please do not hesitate to call me.

Kind Regards

Vice President and General Manager

III. Additional Correspondence

The complainant was unsatisfied with the broadcaster's response and requested that the CBSC refer the matter to the Ontario Regional Panel for adjudication. In addition to the Ruling Request, the complainant sent in the following correspondence on May 9, 2001:

I am writing to you today to response [*sic*] to a letter from CKCO-TV Vice President and General Manager..

I am not satisfied with the CKCO-TV response. I believe that having dialogue with CKCO-TV will not solve our diametric opposition. I believe intervention by the CBSC is the only way to proceed. I enclose this rebuttal letter with my Ruling Request and ask that the CBSC Regional Council consider my complaint.

In regards to the policy of anonymity, the media already has adversely affected my family. If their names could be protected from any public reference, it would be greatly appreciated. I, however, understand that my surname may be revealed upon request by the reporting media.

I believe CKCO-TV has broken their pledge to observe the Radio Television News Directors Association's Code of Ethics: articles Three and Four.

As [the] Vice President and General Manager has addressed far more issues than contained in the original grievance, I will now consider these pertinent to the original grievance.

I include a brief synopsis of events, so that all readers of this letter have a frame of reference. Please keep this in mind as we follow [the] Vice President and General Manager letter.

At the outset, I believe that this incident addresses an issue, which to my knowledge has not been before the CBSC previously. I have reviewed decisions on the CBSC web site and can find no parallel rulings. The issue in my view, is whether members of the public, even when they are charged with crimes, should be the subject of media crews who come to their homes and places of business, thereby exposing their families to humiliation. In this instance, there is an additional serious issue not previously dealt before by the CBSC, that is, whether those television news reports precipitated a sequence of events which resulted in a person (accused of a crime) taking his own life. There is the matter of a second television report telecast by CKCO, once [the accused] had "gone missing". I dealt directly with staff at CKCO before the

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second report was aired, expressing my concerns for privacy of the family, and the potential harm to a family business resulting from more televised coverage. You will see below, that I took proactive steps to consult police investigators, in order to have a complete and frank discussion with CKCO news staff. This was however, to no avail and a second broadcast took place, despite my attempts to act in the best interests of [the accused's] family members.

Friday, February 23, 2001:

[the accused], my brother-in-law, was charged with two counts of each: possession and distributing child pornography. A computer was seized from his home. He had no prior criminal history.

Monday, February 26, 2001:

CKCO-TV showed images of the [the accused's] private home, named [the accused], and gave [the] street name on their 6 o'clock news. [The accused's] family watched this newscast together, thirty minutes later [the accused] left the family home, never to be seen alive again.

Tuesday, February 27, 2001:

[The] Family reported a missing person for [the accused].

Wednesday, February 28, 2001:

[The accused's] abandoned car is located at Conestoga Country Club. Police search for [the accused].

Friday, March 2, 2001:

Late morning CKCO-TV went to the [XYZ Tavern], [the accused's] family business. They tried to do interviews with staff and customers (no staff or customers comply [*sic*]). I called CKCO-TV (prior to any airing) and talked to each: [the] General Manager, [the] Assistant News Director and [the] News Director. I requested they do not air the images of the [XYZ Tavern], as they would jeopardize the income and living of [the accused's] Family (all four members work there: 2 full-time, 2 part-time) in addition to 27 employees. CKCO-TV aired the images of [XYZ Tavern] on their 6 pm newscast.

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Any reporting CKCO-TV did after this date did not include [the accused's] family home or family business. I have no issue with their reporting after March 2, 2001.

In reference to [the] General Manager's letter:

This letter sets out to prove:

CKCO-TV has broken their pledge to observe the Radio Television News Directors Association's Code of Ethics: articles Three and Four. I will list them both for your convenience and reference.

Article Three of the Radio Television News Directors Association, Code of Ethics:

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.

Article Four of the Radio Television News Directors Association, Code of Ethics:

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.

Please see paragraph 3, CKCO-TV letter dated April 25, 2001:

What CKCO-TV chooses to show on television is exactly that, a choice. To show [the accused's] house, give the street name, on only charges laid, is unethical. In Dennis Watson's letter, and I quote "This report showed a video image of his residence, which in fact was the crime scene."

I respectfully disagree with [the] General Manager's assessment. The news crew attended at the family home approximately 72 hours after the computer was seized and charges were laid. Normally crime scenes, involve some tangible evidence or images which are captured on video, such as a scene where police are actively investigating a crime, i.e. searching for forensic evidence at the scene of a murder, or car crash. In this instance, CKCO recorded and telecast images of a home, some 3 days after it was an alleged "crime scene". For what purpose was the telecast of the images of [the accused's] residence images made, other than to sensationalize the "crime"? In point of fact, the images might have been justifiable if captured on Friday, February 23, if the images showed the police in their active investigation removing the evidence from the home. But the delay in reporting, and the context of the images showing the family home, exposed family members, including two adolescent sons, to embarrassment and ridicule.

Article Four states: "Broadcast journalists will always display respect for the dignity, privacy and well-being of everyone with whom they deal..." No

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thoughts of privacy or well being were considered for [the accused] or his family when the house and street name were given on CKCO-TV's news report.

By recording and telecasting these images, days after the alleged crime and criminal investigation, CKCO failed to respect the dignity and privacy of family members, particularly the younger family members.

Please note, this issue was not articulated in my original grievance, but addressed in [the] General Manager's letter of April 25, 2001. I have had time to review the CBSC website and further examine the RTNDA Code of Ethics which I believe are germane to this complaint.

Further, if one were to audit CKCO's reporting of other crimes, I would suggest that CKCO-TV does not usually show the homes of people facing criminal charges. More often, people charged with crimes, are shown entering or leaving court, when making court appearances, or from time to time, at their homes, if they are taken into custody at their place of residence. Cameras normally do not invade their neighbourhoods, or show the homes of people charged with crimes, or attend at their work place or business, when the crime is unconnected with the person's work place...

Therefore, CKCO-TV must have seen this news item as sensational. See Article Three: "Broadcast Journalists will not sensationalize news items..."

Please see paragraph 4, CKCO-TV letter dated April 25, 2001:

"Although we were under no obligation to cease using the image of their home we decided to do so in recognition of the terrible time the family was going through." This brings up an interesting point. It was very considerate of CKCO-TV to not show [the accused's] residence a second time. Having said that, did CKCO-TV think at all about the repercussions on the children, the first time CKCO-TV showed it? CKCO-TV claims in retrospect, they made considerations for the family as to their family residence, why didn't CKCO-TV apply this thinking to the family owned and operated [XYZ Tavern] and it's twenty-seven employees? See article Four "... journalists will always display...privacy and well-being of everyone with whom they deal... "

Please see paragraph 5 and 6, CKCO-TV letter dated April 25, 2001:

Please note: these two paragraphs address my main concern and grievance in my letter to the CRTC, dated March 5, 2001 and subsequently forwarded to the CBSC.

"...The object in television news reporting is for the viewer to have the clearest possible understanding of what the story is about..." The story is about a man charged with alleged crimes, of which OPP Officers removed possible evidence from [the accused's] family home. At no time did any alleged criminal activity occur at [the XYZ Tavern] [the accused's] place of business. To my knowledge, no evidence was disclosed by police, which would have linked the place of business to the alleged (internet) crime.

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[The] General Manager appears in retrospect to justify the broadening of the story, to include [the accused's] business on the basis that "...in some cases it could be argued that by not giving the public as much information as possible, we could put the entire community at risk and would therefore be negligent in our duties".

There was no evidence available to CKCO at that time (March 2), which would suggest in any manner that [the accused], in his place of business, put the community at risk, and therefore CKCO was not justified in attending his place of business or publicizing the location of the business. It seems as if Articles 3 and 4, and the over-riding (legal) presumption of innocence have taken back seat to CKCO's desire to sensationalize the story. While the test, which [the] General Manager articulated (protection of the community), might justify disclosing the whereabouts of a convicted child molester, released into the community on parole that is not the situation here. Due process before the law had not been completed, and no conviction had been registered.

While not to trivialize the issue of possession of internet pornography and the consequences of a trial and possible conviction, media in Canada have been generally sensitive to the right of an individual to receive a fair trial and have generally not engaged in sensationalism in reporting that people have been charged with possession. The judicial system has generally treated "first time offenders" with the same level of compassion accorded to individuals charged with other crimes.

I am aware of cases previously adjudicated by the CBSC, where "follow up" stories were deemed to have been in breach of the RTNDA Code of Ethics. I believe there is some parallel to the case adjudicated by the CBSC Atlantic Regional Council in the case of *CKEN-AM re Newscast* (CBSC Decision 95/96-0134).

I believe that the facts also support my contention that CKCO's reporting went beyond the boundaries established in the CKEN-AM case.

On Friday March 2, one week after [the accused] had been arrested and charged, my sister called me, very worried, that CKCO-TV was shooting outside their business. The staff and patrons at the [XYZ Tavern] understood how damaging this footage would be. No single person would allow an interview with CKCO-TV. The staff had concerns not only for the family, but also regarding repercussions of this footage on their incomes/employment.

I called CKCO-TV and spoke to [the] Assistant News Director, [the] General Manager, and [the] News Director, all separately. I pleaded with each not to air this footage of the exterior of the [XYZ Tavern]. I told them it is the only source of income my sister, her two children and their employees have. To air footage of a totally unrelated family business in context with the charges laid against a co-owner, was not only unethical, but has been harmful to sales and jeopardized employment because of the drop in sales. It does not "...make the

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story more understandable..." Not airing footage of the [XYZ Tavern] CKCO-TV would not be showing a "...disservice to our viewers because we would be withholding information..."

Withholding information? Disservice to their viewers? These are preposterous statements on the part of CKCO-TV. Irrelevant and preposterous.

Any disservice done was to the [XYZ Tavern], [the accused's wife], her children and her employees. This represents thirty people, not including any family, children, and spouses etc. who depend on these incomes. Regional Police, Community Relations Office, Superintendent Bill Stevens echoed my views. He also talked to [the] News Director and felt there was no reason to air [the XYZ Tavern] footage. [The] superintendent and I both felt we had been given no understandable reason as to why they would air [the XYZ Tavern] footage.

I wish to emphasize that I contacted the Police, and they were cooperative, in conveying my concerns to CKCO's staff. That CKCO chose to undertake the telecast notwithstanding my intervention, and a follow-up discussion with Police representatives, underscores the fact that a judgment call was made at CKCO to sensationalize coverage.

The non-involvement of the [XYZ Tavern], partnered with the foreknowledge that showing it on television would be harmful, should have been enough to make an ethical decision. Article Four states "...journalist will display respect for the dignity, privacy and well-being of everyone with whom they deal..."

Please see paragraph 8, CKCO-TV letter dated April 25, 2001:

"...the Kitchener-Waterloo Record ... did a follow-up story ... they too felt that this info was germane to the story..." and mentioned [the XYZ Tavern]. I took identical issue with the K-W Record that I did with CKCO-TV. My communication with them is not relevant. Note that CKCO-TV aired every scrap of information aforementioned in this letter, prior to it ever being printed in The Record. The Record has a circulation readership between 136,800 during the week, to 165,900 on Saturdays. CKCO-TV presently serves 2.8 million people, as mentioned on its web site. That makes CKCO-TV 20 times more influential. Television images have hundreds of times more impact than the written word in a newspaper. Because CKCO-TV and the Record had similar story lines, does not, in itself make either of them justified.

But the issue here is the fact that broadcasters have voluntarily agreed to have complaints concerning their broadcasts adjudicated by the CBSC. That a newspaper may have also engaged in similar sensationalist reporting is no defense to the conduct of a broadcaster under the RTNDA Code of Ethics.

Please see paragraph 11, CKCO-TV letter dated April 25, 2001:

"...it could be argued that by not giving the public as much information as possible we could put the entire community at risk and would therefore be negligent in our duties." It surprises me CKCO-TV might think that knowledge of ownership of the [XYZ Tavern] might put the community at risk. There has never been (according to Regional Police, OPP and The Ontario Court system)

any threat or risk posed to our community, in any way shape or form, by [the accused]. Intimating risk of any kind is irrelevant and inappropriate.

In conclusion, CKCO-TV has acted in an autonomous manner. I believe I have proven that CKCO-TV has forgotten their pledge to observe and respect the Radio Television News Directors Association of Canada Code of Ethics Articles Three and Four.

I ask for accountability only from CKCO-TV. I seek fair and democratic attention by the CBSC concerning this grievance. It appears that [the accused] took his own life. Whether or not the CKCO news broadcast precipitated that event is open to debate. However, I suggest that this matter is of sufficient importance, because other individuals will be charged with crimes, and are equally at risk that a news crew will invade their neighborhoods and businesses seeking to sensationalize stories. I would hope that other tragedies could be avoided, through a clear and unequivocal ruling by the CBSC. I am available by phone, fax or in person, given some advance notice.

On May 22, 2001 the Vice President and General Manager of CKCO-TV sent the following letter to the complainant:

Dear Ms...

I am in receipt of your letter of May 9, 2001 and I am sorry we are unable to resolve this matter between us, having said that, I agree with you that having the CBSC adjudicate the matter is in the best interest of everyone.

There are some issues that you raise in your letter that I need to respond to and that the Canadian Broadcast Standards Council will need to take into consideration as they review the case.

You indicate that your brother-in-law was charged on February 23rd, but that CKCO Television did not cover this event until Monday, February 26th. The reason for that is that we were not aware of the charges being laid until we received a press release from the Ontario Provincial Police Department. For your information I have attached a copy of that document to this letter and you can clearly see that it is dated Monday, February 26th. As I understand it after a 3 month investigation the police entered the home on Friday the 23rd with a search warrant and confiscated computers and related equipment, at that time your brother-in-law was charged with the possession, and distribution of child pornography. The fact that we did not find out about the charges being laid until 3 days after the event does not mean that his residence ceased to be the crime scene.

You make reference in your letters that you took "steps to consult police investigators, in order to have a complete and frank discussion with CKCO news staff". You specifically mention a conversation with the Regional Police Community Relations Office, and mention Superintendent Bill Stevens, who you say echoed your views. It should be noted for the record that Superintendent

Bill Stevens is a member of the Waterloo Regional Police and that the investigation into this matter was conducted by the Ontario Provincial Police and the charges were laid by that organization. It is true that Superintendent Stevens did call our news director to discuss this story.

On Tuesday May 15th at approximately 10:30 in the morning I spoke with Superintendent Stevens and advised him of your complaint to the Canadian Broadcast Standards Council and that you had mentioned him in your letter. Superintendent Stevens indicated to me that he would have preferred to have the opportunity to review a copy of your letter before it had been sent and asked me to fax him a copy, which I have done. He indicated to me that you called him and that in his conversation with you he told you that this was a high profile case and that you should expect this type of media coverage. He also said that he indicated that it was not a Waterloo Regional Police investigation. I asked him if he called us in an official capacity and he told me, "no it was not an official call", and that he called us at your request.

You indicated that both Superintendent Stevens and yourself had been not [*sic*] given an understandable reason as to why we would air the [XYZ Tavern] footage. As I stated to you at the time of our phone conversation and again in my letter of April 25th, the reason we aired the footage of the [xyz Tavern] was because the majority of people in the Kitchener Waterloo community knew your brother-in-law as the owner/operator of this business. It was germane to the identification of the person who had been charged with this criminal act.

On page 2 of my April 25th letter, in paragraphs 5 and 6, I offered comments in rebuttal to your suggestion that a policy, "dictating that no potentially harmful reporting be aired in regards to innocent people". My comments were not intended to refer to this specific situation but rather to situations that could be caused because of the policy you were proposing. We did not show the [XYZ Tavern] because it was an alleged crime scene, or because it would put the community at risk. We aired the footage of the [XYZ Tavern] because it is how your brother-in-law was associated to the majority of people in this community.

We do not believe we have violated the Radio Television News Directors Association's Code of Ethics in any way. We did not act maliciously, we did not sensationalize this story and we operated with respect for the dignity, privacy and well being of everyone.

Kind Regards
Vice-President and General Manager

On May 30, 2001 the complainant wrote the following letter to the CBSC and to the Vice President and General Manager of CKCO-TV:

In response to your letter of May 22nd, I do not believe that any issues in my previous two letters have been resolved to my satisfaction and I still hold the belief that CKCO contravened the Broadcast Codes as specified in my letters.

Consequently, I believe that it is in the public interest for the CBSC to adjudicate this matter, without further correspondence between parties.

With respect to your assertion regarding the date of the police press release, I have the following comments.

1. There is no obligation on the part of the media, including CKCO, to broadcast the contents of a so-called police "news release". In fact, the broadcast of the contents of such releases, may from time to time, contravene RTNDA Code of Ethics, and generally applicable laws, including the right of an accused to a fair trial. I reiterate my statement, that the telecast of [the accused's] home, on the news program three days after he was charged, may have precipitated an unfortunate and fatal chain of events.

2. I note for the record that the so-called Ontario Provincial Police "news release" did not reference [the accused's] business [XYZ Tavern]. I will provide a copy of that release to the CBSC.

3. It was CKCO, not the OPP, who made the judgment to extend their coverage to [the accused's] business.

4. I stand by my comment made previously, that I contacted a representative of a law enforcement agency, and that a law enforcement officer contacted CKCO, as a result of my concern for the effect that further news coverage, would have on [the accused's] family and the business enterprise. I believe that you are arguing mere semantics in your letter of May 22nd, where you stated "...the investigation into this matter was conducted by the Ontario Provincial Police and the charges were laid by that organization."

I disagree. You apparently have mis-read the press release, which you are using as justification for CKCO's reports. Clearly, the February 26, 2001 OPP press release states that their investigation was undertaken "IN CONJUNCTION WITH THE WATERLOO REGIONAL POLICE SERVICE". Consequently, I am of the view that the Waterloo Regional Police Service was aware of this case, and that it was appropriate for me to contact peace officers employed by the Waterloo Regional Police Service, concerning media coverage. [The] superintendent did echo and agreed with my views. Whatever angle you choose to put on your conversation with him does not change that fact.

I trust that the CBSC will carefully scrutinize the record, and review very carefully previous cases including those cited in my previous letter.

The complainant included the following Ontario Provincial Police Press Release in her letter of May 30:

Ontario Provincial Police/Police provinciale de l'Ontario
News Release/Communiqué

777 Memorial Ave.
Orillia, Ontario.
L3V 7V3.

FROM: Child Pornography Section

RELEASE: Feb.
26/01

Child Pornography Seizure and Arrest

(Waterloo, Ontario) - Members of the Ontario Provincial Police Child Pornography Section (Project "P"), in conjunction with the Waterloo Regional Police Service, have charged a 50-year-old Waterloo man following a child pornography investigation.

On Friday, February 23, 2001, as a result of a three-month investigation, a search warrant was executed at a residence at ...Waterloo, Ont. Officers seized one computer system, computer peripherals, floppy diskettes, CD Roms and other articles pertinent to the investigation. Numerous computerized graphic image files, some of which are believed to be child pornography, were found on the computer's hard drives. These images depict nude prepubescent children, involved in explicit sexual activity, including, sexual intercourse and oral sex.

Charged with two counts of possession of child pornography and two counts of distributing child pornography is [the accused] of ... Waterloo Ontario. [The accused] is scheduled for a first appearance in Ontario Provincial Court, Kitchener on March 23, 2001.

The investigation is continuing.

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**Contact: OPP D/Sgt. Frank Goldschmidt
Child Pornography Section (Project P)
(416) 234-4528**

IV. Notes and Transcripts of the Broadcast in Question

The broadcast in question, less than 3 minutes long, deals with the disappearance of [the accused]. Indeed, the primary subject of this news item is the disappearance and *not* the investigation into the charges that have been laid against him. From the outset, [the accused] is referred to as a "local businessman who faces pornography charges"(18:08:29). The reporter tells us that the "search is for the operator of the [XYZ Tavern]"

(18:08:34) at which time images of the outside of the pub are shown. Presumably, this is done to help viewers identify the missing person. We are told that he has disappeared following an investigation and child pornography charges. The report deals with the circumstances surrounding his disappearance, the way in which the search is proceeding (18:09:39), and his physical description (18:09:56) when he was last seen. This broadcast can best be described as an appeal to the public by the police for information regarding [the accused's] disappearance (18:10:15).

V. Relevant Code Provisions and Precedents

The following provisions of the *Radio Television News Directors Association Canada* (RTNDA) *Code of Ethics* are relevant to this complaint:

Article 4 - Privacy

Broadcast journalists will respect the dignity, privacy and well-being of everyone with whom they deal, and will make every effort to ensure that news gathering and reporting does not unreasonably infringe privacy except when necessary in the public interest. Hidden audio and video recording devices should only be used when it is necessary to the credibility or accuracy of a story in the public interest.

Article 8 - Decency and Conduct

Broadcast journalists will treat people who are subjects and sources with decency. They will use special sensitivity when dealing with children. They will strive to conduct themselves in a courteous and considerate manner, keeping broadcast equipment as unobtrusive as possible. They will strive to prevent their presence from distorting the character or importance of events.

Article 9 - Fair Trial

In reporting matters that are or may be before the courts, broadcast journalists will ensure that their reporting does not interfere with the rights of an individual to a fair trial.

The complainant alleges that the broadcaster breached the RTNDA Code of Journalistic Ethics in failing to respect the dignity and privacy of [the accused's] family by broadcasting images of [the accused's] place of employment. The complainant contends that these images were not relevant to the news report covering the criminal charges against the accused.

The broadcaster, on the other hand claims that the footage of the [XYZ Tavern] was necessary since "a news story has to make clear who is involved, that may include full name, address or other relevant information, especially in

stories involving criminal charges". The broadcaster thus defends the footage showing the pub, arguing that any information which could help the community fully identify the individual in question should be made available to the community.

Privacy

The issue with respect to Article 4 of the RTNDA *Code of Ethics* is whether the showing of the [XYZ Tavern] and of the accused's home after the arrest took place constituted an unreasonable infringement of privacy or whether these images were necessary to the reporting of the news in question. The following CBSC Decisions may be useful in evaluating this complaint:

- . *CHBC-TV re Newscast* (CBSC Decision 93/94-0292, December 18, 1996) [see p. E22 of your Annotated Codes], in which the Panel stated that "the right of privacy of an individual ends when he or she becomes a party to court proceedings insofar as the reporting of those proceedings and their outcome are concerned. In the absence of a judicial order to the contrary, the CBSC considers that all court proceedings and their outcomes are *public* by their nature."
- . *CHAN-TV re News (RCMP Investigation of Premier Clark)* (CBSC Decision 98/99-0440): The complaint concerned CHAN-TV's coverage of the investigation and, in particular, the filming of the RCMP service of the warrant at the home of then B.C. Premier Glen Clark. The Council stated that "[t]he 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."