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

CHEK-TV re News Report (Landlord-Tenant Dispute)

(CBSC Decision 03/04-0712)

Decided October 14, 2004

S. Warren (Chair), H. Ainsworth, G. Leighton, M. Loh and R. Winters

THE FACTS

On February 5, 2004, as part of the 11:30 p.m. news (and apparently for the third and final time on that date), CHEK-TV (Victoria) aired a news report regarding a landlord and tenant dispute. (Since the logger tape viewed by Panel members bore a February 6 date, the news report may also have run on the following day.) Although the news report does not provide details of the background of the dispute, it appears to the Panel that Mr. M had had a lease with Mr. G and that, when that lease came to an end, he asked for his security deposit (of \$180) back. It also appears that the landlord refused to return the money and alleged that the tenant, Mr. M, had had an oral agreement with him to pay him an additional half month rent whenever Mr. M's nephew moved in with him. The reporter also explained that the Tenancy Arbitrator had ruled that, because the agreement regarding the nephew had been in oral, rather than written, form, it was not binding. In the circumstances, the Tenancy Arbitrator ruled that the landlord had to refund the security deposit to the tenant. The landlord obeyed the order but he did so principally in pennies (but entirely in coins).

The reporter told an abbreviated story of the events and interviewed the tenant, who explained what happened from his perspective. The reporter then stated the following:

The landlord of the house where Alain used to live didn't want to talk on camera about this situation but he feels he's the one who has been victimized because of the verbal agreement he thought they had.

Immediately following this statement, a clip was shown in which the landlord was answering the reporter's questions about the case and admitting that he had repaid the amount in petty change. The perspective used was not normal for an

interview. It barely showed the face of the landlord above a counter and was clearly taken from a camera positioned relatively close to floor level or, at the very least, well below the angle at which a customary interview is shot. The report then cut to the tenant, who explained that he had had to buy a coin-counter machine and rollers in order to count the pennies. The story continued with an interview with a representative of the Rental Owners and Managers Association, who gave his opinion on this particular landlord-tenant dispute by saying that the act of the landlord was “despicable and unconscionable”.

On February 6, the landlord filed a complaint with the CBSC which he headed, meaningfully, “Being put on the air when I didn't want to be”. He argued in part (the full text of this e-mail and all other correspondence can be found in the Appendix):

The news reporter Kim Emerson came and talked to the tenant to get his side of the story. He then came to my work and wanted to talk to me. I told him that I would tell him my side of the story, but I did not want to be put on the air. I own and run [an automobile] repair station [...]. I did not want to be on the air because it could affect my business. I told him many times not to put me on the air. I told my side of the story (which Kim did not fully relay in the broadcast). I found out after the fact that the camera man had the camera on while Kim was talking to me. They also put my face on the air! Even in the broadcast Kim stated that I did not want to be on the air. I feel that my rights have been violated.

The broadcaster's News Director replied on March 10. He said in part:

Let me clarify that our aim is always to present stories that are factual and balanced. Our job becomes more challenging when one of the main participants in the story does not agree to be interviewed on-camera. In this case, you did not want to be interviewed because you thought connection to this story could harm your automotive repair business - even though our reporter offered to interview you away from your workplace. When you refused, our reporter did his best to respect your privacy wishes by not using your name or showing anything that identified your business, which of course was unrelated to the landlord/tenant dispute we were reporting on. But he felt it was necessary to use the brief videotape that had already been gathered of you telling your side of the story in order to ensure the story presented was as balanced as possible.

Nothing that was recorded was said in private. You were speaking to a reporter and photographer in a place that is routinely accessed by members of the public.

The camera was in plane [*sic*] view at all times, even though you may not have realized that footage was being taken. The brief videotape clip that was used in the story was gathered prior to you instructing the reporter and photographer that you did not wish to be on camera. Our photographer ensures me that he shut the camera off once your request was made.

From what I have been able to gather, our crew made every effort to provide all the relevant facts, background and context of the dispute. We do not believe that we infringed your rights and have sought, at all times, to do a fair and balanced report.

The complainant was not satisfied with the response and, on March 12, he wrote back to the News Director, with a copy to the CBSC. He said in part:

It is an unfortunate fact that sensationalism is a part of journalism. This story is an example of the media's tenancy [sic] to sensationalize the plight of the perceived underdog - the poor, disabled tenant. This fact is apparent upon watching the report by the amount of time dedicated to the tenant's side, the clip of the man shuffling alone, counting his pennies (when in fact there were other coins as well) and the supportive appearance of the regulatory body for the landlord association.

With regards to the issue of invasion of privacy, I recently read an article in the *Times Colonist*, which stated that changes were being made to the privacy act, which would preclude the videotaping of unsuspecting people. [...]

I indicated immediately to Mr. Emerson that I did not wish to appear on camera several times (my staff are witness to this). As far as I am aware it is not a standard method to videotape someone when the camera is being held by the cameraman's side. The cameraman must have a very sore arm if this is standard practice. If, as you claim the camera was turned off upon request, it should have been obvious to Mr. Emerson that I did not wish to be identified on camera in any way. If you review the clip, there are obvious identifying characteristics including, my voice, my image, and a good shot of the inside of my business. The video clip is, in fact, remarkably like the work of a sneaky private investigator.

If your desire was truly to present a balanced story, Mr. Emerson should have obtained all of the facts from my side of the story, and presented them in a professional way. For example, Mr. Emerson could have stated, that the landlord did not want to appear on camera while in front of the rooming house.

I also consider it an invasion of privacy for Mr. Emerson to come to my place of business to begin with. One local newspaper received all of the information over the phone and portrayed a much fairer story. As you indicated in your letter, my place of business was completely unrelated to your story. I believe Mr. Emerson came here so he could videotape me in an unscrupulous manner and then claim he was in a public place.

The Decision

The B.C. Regional Panel considered the complaint under the following provisions of the Canadian Association of Broadcasters (CAB) *Code of Ethics* and the Radio and Television News Directors Association of Canada (RTNDA) *Code of (Journalistic) Ethics*:

CAB Code of Ethics, Clause 5 (News)

- (1) It shall be the responsibility of broadcasters to ensure that news shall be represented with accuracy and without bias. Broadcasters shall satisfy themselves that the arrangements made for obtaining news ensure this result. They shall also ensure that news broadcasts are not editorial.

- (2) News shall not be selected for the purpose of furthering or hindering either side of any controversial public issue, nor shall it be formulated on the basis of the beliefs, opinions or desires of management, the editor or others engaged in its preparation or delivery. The fundamental purpose of news dissemination in a democracy is to enable people to know what is happening, and to understand events so that they may form their own conclusions.
- (3) Nothing in the foregoing shall be understood as preventing broadcasters from analyzing and elucidating news so long as such analysis or comment is clearly labeled as such and kept distinct from regular news presentations. Broadcasters are also entitled to provide editorial opinion, which shall be clearly labeled as such and kept entirely distinct from regular broadcasts of news or analysis.
- (4) Broadcasters shall refer to the *Code of Ethics* of the Radio and Television News Directors of Canada ("RTNDA") for more detailed provisions regarding broadcast journalism in general and to the *Voluntary Code Regarding Violence in Television Programming* for guidance with respect to the depiction of violence, graphic reporting of delicate subject matter or the use of explicit language in news and public affairs programming on television.

CAB Code of Ethics, Clause 6 (Full, Fair, and Proper Presentation)

It is recognized that the full, fair and proper presentation of news, opinion, comment and editorial is the prime and fundamental responsibility of each broadcaster. This principle shall apply to all radio and television programming, whether it relates to news, public affairs, magazine, talk, call-in, interview or other broadcasting formats in which news, opinion, comment or editorial may be expressed by broadcaster employees, their invited guests or callers.

RTNDA Code of Ethics, Article One (Accuracy)

Broadcast journalists will inform the public in an accurate, comprehensive and fair manner about events and issues of importance.

RTNDA Code of Ethics, Article Four (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.

The Panel reviewed all of the correspondence. It is of the view that the clandestine videotaping of the landlord constituted a breach of Article 4 of the *RTNDA Code of (Journalistic) Ethics*.

Accuracy in the News

The Panel does not find the news story inaccurate. It does agree with the landlord complainant that he does not fare well in the telling of the tale but this results from the facts that were reported. In fact, with respect to the material elements of the story, the landlord has little going for him. He clearly believed that he had made a deal with respect to a higher rental payment in the event of the addition of another individual to the leased premises *and he had the full opportunity* to make that point. That being said, the Tenancy Arbitrator disagreed with the enforceability of that understanding and, having lost, the landlord vented his displeasure with the decision by paying in pennies and other small change. He even admitted that he had made such a payment, arguing (he believed in his favour) that it was not only pennies that were involved (although, from the rolls of coins poured on the table by Mr. M, the tenant, it appeared to be principally in the smallest form of currency available in this country.) The gesture appeared to be vindictive. Moreover, the law does not even consider such a form of payment to constitute a legal payment of indebtedness. That was the principal focus of the story and there can be little argument with the perspective any viewer would have in seeing the visual arguments that were marshalled by the broadcaster. The Panel concludes that the broadcaster accurately reported the news and that there is no breach of any of the foregoing articles and clauses in the broadcast.

Invasion of Privacy

The Panel considers that the reporting of the story constituted an invasion of the privacy of the landlord. Although the proceeding was of a quasi-judicial nature and a matter of public record, the issue was not the provision of the information regarding the matter but rather the broadcast of film of the landlord taken surreptitiously. That nuance was underscored by this Panel in its decision in *CHBC-TV re Newscast* (CBSC Decision 93/94-0292, December 18, 1996).

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.

The Panel does not, in other words, dispute the right of the station to report the specific story and this even by reference to the individuals involved in it. It does, however, draw the line at the broadcast of the interview with the landlord. He specifically requested that there be no filming of him; however, the station ignored the request. Their claim is that they did so in the interests of the landlord "in order to ensure the story presented was as balanced as possible." It rather appears to the Panel that CHEK-TV broadcast the footage in their own interest, whether in order to appear balanced in their report or because the story played better. They could equally have observed in their report that the landlord

declined to be interviewed on camera but did admit that he had repaid the award of the Tenancy Arbitrator in small change, so that this essential element of the story would have been corroborated.

The Panel finds the matter at hand very similar in principle to a broadcast that came before the Quebec Regional Panel in *CFTM-TV (TVA) re Tôt ou tard* (CBSC Decision 00/01-1080, April 5, 2002), which concerned the appearance of the complainants in a comedic news sketch filmed at a drive-in movie theatre. They were seated in their automobile when they were approached by the program host, Éric Salvail, acting as a reporter inquiring into the plight of drive-in cinemas and offering humorous products and services, such as mouthwash, car deodorizers and windshield washing services. At one point, Salvail's cohort, Yves Corbeil, actually sat in their vehicle to "translate" the film for them. The complainants were smiling throughout the sketch, but, apparently after filming had ceased, they asked Mr. Salvail to refrain from broadcasting their images. The following day, the complainants also contacted the program producer and the broadcaster to make this same request. Although they had been told they would not appear, nearly two months later the sketch was broadcast with the segments featuring the complainants. The Quebec Panel said:

They took steps from the very beginning to ensure that their interview, even if *consensually granted* at the time of filming, would *not* be shown. They spoke to the "reporter" at the time. They called the broadcaster the next day. They wrote swiftly to TVA. They could not have done more. They were entitled to expect that their request would be honoured, as all in authority agreed it would be. The Panel finds the broadcaster's excuse flimsy. Its failure to respect the complainants' privacy constitutes a breach of the privacy principle exemplified in the *RTNDA Code of (Journalistic) Ethics* and constitutes an unfair and improper comment under the *CAB Code of Ethics*.

In the matter at hand, the complainant made it clear from the very start that he did not wish to be filmed. By so doing, the broadcaster breached the provisions of Article 4 of the *RTNDA Code of Ethics* and Clause 6 of the *CAB Code of Ethics*.

The Use of Hidden Recording Devices

The Panel is of the view that, although the camera was apparently in full view of the landlord during the course of the interview, he had reason to believe that it was not recording. While, in a sense, the camera was not *hidden*, the fact that it was functioning appears to have been kept from the complainant. The Panel considers that this renders the situations equivalent. The rule in the case of the use of hidden recording devices is clear. They should only be used when they are necessary to the credibility or accuracy of a story in the public interest and the information thus revealed could only reasonably be discovered by their use (a

principle established by the CBSC and subsequently consecrated in Article 4 of the *RTNDA Code of Ethics*). In the first place, the Panel does not consider that the issues raised here are particularly important, in terms of the public interest. They do not involve health, medical or public safety issues, as was the case in several of the earlier matters dealt with by various CBSC Panels. The present matter is one of inconvenience and possibly the right and wrong way of making payment of a judicially-ordained indebtedness. Whether, in any event, the issues would amount to a matter of worthy public interest is in any event unnecessary to determine since the use of hidden recording devices founders on the second test. As the Quebec Regional Panel said in *TVA re J.E. (Report on HMS 90)* (CBSC Decision 97/98-0472, August 14, 1998), it “believes that the information in question would not have been comprehensively and credibly unearthed without the use of hidden recording devices.” The B.C. Regional Panel concludes that the information provided in the on-air interview would readily have been unearthed without the use of hidden recording devices. It was *in fact* granted freely by the landlord. Nothing more was needed. There was no cause for hidden recording devices, other than the desire of the managers of the visual medium to have a videotape component to their story. Their determination to do so constituted a breach of Article 4 of the *RTNDA Code of (Journalistic) Ethics*.

Broadcaster Responsiveness

The CBSC considers, as a part of every decision, whether the broadcaster has complied with its obligation to respond appropriately to the complainant's concerns. That dialogue is not only a part of every broadcaster's CBSC membership obligations, it also represents the public's sense of security in the process of self-regulation. While broadcasters are always involved with the reaction of their audiences to what they put on air, this dialogue with a viewer (or listener in radio matters) is the manifestation to the complainant of that involvement. The Panel finds that the News Director's letter constituted a full reply to the complainant. Nothing more is required of the broadcaster on this occasion.

ANNOUNCEMENT OF THE DECISION

CHEK-TV is required to: 1) announce this decision, in the following terms, once during prime time within three days following the release of this decision and once more within seven days following the release of this decision in the time period in which the newscast is broadcast; 2) within fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the announcements to the complainant who filed the Ruling Request; and 3) to provide the CBSC with that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by CHEK-TV.

The Canadian Broadcast Standards Council has found that CHEK-TV has breached the Canadian Association of Broadcasters *Code of Ethics* and the Radio Television News Directors Association *Code of (Journalistic) Ethics*. By broadcasting an interview with an individual who had specifically requested not to be on the air, CHEK-TV invaded his privacy, contrary to the provisions of Clause 6 of the *CAB Code of Ethics* and Article 4 of the *RTNDA Code of (Journalistic) Ethics*. By using a video recording device that was held in such a way as not to appear to be in use, CHEK-TV also breached the provision of the RTNDA Code that does not allow the use of a hidden recording device except when it is necessary to the credibility or accuracy of a story in the public interest.

This decision is a public document upon its release by the Canadian Broadcast Standards Council.

APPENDIX TO
CHEK-TV re a News Report (Dispute between Landlord and Tenant) (CBSC
Decision 03/04- 0712, October 14, 2004)

I. The Complaint

The following complaint was sent to the CBSC on February 6, 2004:

My name is P.G., I am a landlord for a rooming house. I had an issue with a tenant and the tenant called the TV station CH Vancouver Island. The news reporter Kim Emerson came and talked to the tenant to get his side of the story. He then came to my work and wanted to talk to me. I told him that I would tell him my side of the story, but I did not want to be put on the air. I own and run [an automobile] repair station at [...]. I did not want to be on the air because it could affect my business. I told him many times not to put me on the air. I told my side of the story (which Kim did not fully relay in the broadcast). I found out after the fact that the camera man had the camera on while Kim was talking to me. They also put my face on the air! Even in the broadcast Kim stated that I did not want to be on the air. I feel that my rights have been violated and I want something done about it. The story ran Thursday February the Fifth at 5PM, 6PM, and again at 11:30 PM. If you need to contact me you can call me at [...].

II. The Broadcaster's Response

The broadcaster responded to the complainant on March 10:

Dear Mr. G.,

I have reviewed the story from February 5th that is the subject of your letter of complaint to the Canadian Broadcast Standards Council. As a member of that organization, CH News is committed to addressing your concerns. It is a responsibility we take seriously, especially when the complaint alleges that we may have infringed on your privacy and failed to "fully relay" your side of the story.

Our entire news team strives to uphold the highest level of journalistic integrity and ethics at all times. Our staff members are educated to make decisions thoughtfully and with sensitivity and to produce, material in accordance with community standards and with the Canadian Association of Broadcasters' (CAB) Code of Ethics, Sex-Role Portrayal Code for Television and Radio Programming, and the Voluntary Code Regarding Violence in Television Programming. Global News also adheres to the Radio Television News Directors Association of Canada (RTNDA) Code of Ethics.

Let me clarify that our aim is always to present stories that are factual and balanced. Our job becomes more challenging when one of the main participants in the story does not agree to be interviewed on-camera. In this case, you did not want to be interviewed because you thought connection to this story could harm your automotive repair business - even though our reporter offered to interview you away from your workplace. When you refused, our reporter did his best to respect your privacy wishes by not using your name or showing anything that identified your business, which of course was unrelated to the landlord/tenant dispute we were reporting on. But he felt it was necessary to use the brief videotape that had

already been gathered of you telling your side of the story in order to ensure the story presented was as balanced as possible.

Nothing that was recorded was said in private. You were speaking to a reporter and photographer in a place that is routinely accessed by members of the public.

The camera was in plane view at all times, even though you may not have realized that footage was being taken. The brief videotape clip that was used in the story was gathered prior to you instructing the reporter and photographer that you did not wish to be on camera. Our photographer ensures me that he shut the camera off once your request was made.

From what I have been able to gather, our crew made every effort to provide all the relevant facts, background and context of the dispute. We do not believe that we infringed your rights and have sought, at all times, to do a fair and balanced report.

II. Additional Correspondence

The complainant sent the following message to the broadcaster and to the CBSC on March 12, indicating his dissatisfaction with the response:

Thank you for your letter of March 10/04. I am, however, disappointed that your response failed to address the concerns my original letter had raised.

It is an unfortunate fact that sensationalism is a part of journalism. This story is an example of the media's tenancy [*sic*] to sensationalize the plight of the perceived underdog - the poor, disabled tenant. This fact is apparent upon watching the report by the amount of time dedicated to the tenant's side, the clip of the man shuffling alone, counting his pennies (when in fact there were other coins as well) and the supportive appearance of the regulatory body for the landlord association.

With regards to the issue of invasion of privacy, I recently read an article in the *Times Colonist*, which stated that changes were being made to the privacy act, which would preclude the videotaping of unsuspecting people. Perhaps the CH news team should familiarize themselves with these updates, if you are in fact striving to uphold the highest level of journalistic integrity and ethics as you claim in your response.

I indicated immediately to Mr. Emerson that I did not wish to appear on camera several times (my staff are witness to this). As far as I am aware it is not a standard method to videotape someone when the camera is being held by the cameraman's side. The cameraman must have a very sore arm if this is standard practice. If, as you claim the camera was turned off upon request, it should have been obvious to Mr. Emerson that I did not wish to be identified on camera in any way. If you review the clip, there are obvious identifying characteristics including, my voice, my image, and a good shot of the inside of my business. The video clip is, in fact, remarkably like the work of a sneaky private investigator.

If your desire was truly to present a balanced story, Mr. Emerson should have obtained all of the facts from my side of the story, and presented them in a professional way. For example, Mr. Emerson could have stated, that the landlord did not want to appear on camera while in front of the rooming house.

I also consider it an invasion of privacy for Mr. Emerson to come to my place of business to begin with. One local newspaper received all of the information over the phone and

portrayed a much fairer story. As you indicated in your letter, my place of business was completely unrelated to your story. I believe Mr. Emerson came here so he could videotape me in an unscrupulous manner and then claim he was in a public place.

Your previous response was unsatisfactory to address the above situation. At the very least a public apology on the air in the same time slots as the show aired is in order. I think you need to familiarize your self with the privacy act witch [sic] prohibits situations such as this. It is my hope that CH News continues to strive for integrity, avoid sensationism [sic] and private eye type of reporting as this is much more appropriate in tabloids than respected journalism.

Please let me know what your intentions are.