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**CANADIAN BROADCAST STANDARDS COUNCIL**  
**NATIONAL SPECIALTY SERVICES PANEL**

**Fairchild Television & Talentvision re news reports about a political campaign**

(CBSC Decision 05/06-1841 & 1842)

Decided November 29, 2007

R. Cohen (Chair), T. Rajan (Vice-Chair), E. Duffy-MacLean,  
M. Hogarth, V. Houle, G. Phelan

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## THE FACTS

Fairchild Television and Talentvision are Chinese-language specialty services. On July 27, 2006, both services broadcast the same story (in Cantonese and Mandarin respectively) about the campaign for the federal Liberal Party nomination in the Vancouver Kingsway riding (only the news anchors for the two services were different, a male in the case of Fairchild and a female in the case of Talentvision). The actual vote for the nomination was scheduled to occur two days later, on July 29.

Both the complainant and the broadcaster provided the CBSC with English translations of the news report; although they differ, they do so in ways that are not at all material to the outcome of this decision. Nonetheless, since they are relatively short, both translations are included here. For the one aspect of the story that *is* particularly material, namely, the non-oral printed component of the news stories, the CBSC hired its own translator.

### Complainant's Translation

Anchor: On Saturday, the Vancouver Kingsway riding, which became the focus of attention when International Trade Minister David Emerson switched political affiliation, will nominate its candidate to represent the Liberal Party in the next Federal election. Presently, the two persons vying for nomination are both of Chinese origin and are busy making preparations for the race. Vincent Ng reports:

[Scenes from campaign kick-off party at a restaurant]

Ng: Mr. [L], one of the candidates for nomination, was with two-hundred-odd supporters last night during his campaign kick-off held in a restaurant. He stated that, even though he had joined the race hastily, he was confident that he would win the nomination with his experience.

Interview with Mr. [L]: I feel that the Party Members of this riding should have a choice. They should not just be represented by someone without having had a choice.

Ng: Outside the restaurant, someone had left flyers on parked cars. The flyers, issued in the name of A Group of Righteous Traditional Chinese Medicine Practitioners, charge that, while Mr. [L] was Chairman of the College of Traditional Chinese Medicine Practitioners & Acupuncturists of British Columbia [CTCMA], he mishandled the termination of Mr. [W], causing the CTCMA to suffer losses. However, when this TV station tried to confirm this matter with some doctors of TCM today, no one wanted to admit that they had anything to do with these flyers.

There was no video shot of any cars with the flyer on their windshields; however, while the reporter was making the immediately preceding comments, the camera panned down the text of a page (written in Chinese), apparently the flyer mentioned in the news item, and then zoomed in on certain words. The first close-up was on the printed “signature” of the letter, which bore the anonymous designation, “A Group of Honourable and Just Chinese Medicine Practitioners”. The next close-up was on the last couple of sentences in the first paragraph, which constituted the first reference to the numbers which are the cornerstone of the complaint and this decision. The final close-up was on the text of the full sentence, which read: “the Administration was sued and will have to pay Mr. [W] for insulting his professional conduct and reputation. Mr. [W] will be paid 750 thousand dollars (made up of 500 thousand dollars plus two years of salary).” The news story then cut to a shot of Ms. [Y], the other candidate seeking the nomination in Vancouver Kingsway, walking down the street (the complainant’s translation continues):

Ng: Ms. [Y], the other candidate for nomination, was on her final round of vote soliciting.

Interview with Ms. [Y]: I feel that, as a representative of the people, the most important thing, the most important thing is to have contact with the real constituents of this riding, and to hear what their real concerns are. This is the only way to effectively represent them.

[Scene of a road]

Ng: On the other hand, some Party Members have pointed out that there were only four days between the announcement of the nomination meeting and the cut-off for filing papers, causing many candidates to not have enough time to prepare for the nomination. Mr. [G], Executive Director of the Liberal Party of Canada in BC, emphasized that the Riding Association had announced the nomination meeting in March.

Interview with Mr. [G] [in English]: We have in this situation a candidate who has found the time to file his papers and, and participate in the race. So I don't think at all it wasn't enough time.

Ng: Mr. [G] emphasized that the entire process was in accordance with the Party's rules and regulations concerning nomination. This is Vincent Ng, Fairchild TV.

### Broadcaster's Translation

Anchor: Since former Liberal MP David Emerson joined the Conservative Government and became the new International Trade Minister, all eyes are on who would represent the federal Liberals in Vancouver/Kingsway come the next federal election. By this weekend, the new Liberal candidate for Vancouver Kingsway will be born. The federal Liberals are hosting their nomination meeting this Saturday, and right now both candidates vying for this riding are from Chinese descent. And both are working hard to win the nomination this weekend.

[Scenes from campaign kick-off party at a restaurant]

Ng: [Mr. L] is one of the two candidates seeking Liberal nomination for Vancouver Kingsway riding. Last night, he hosted a pre-nomination party at an east-side Chinese restaurant. More than 200 guests joined the party. According to [Mr. L], although his decision to run in this nomination seemed rushed, he is confident his past experience will help him win this riding.

Interview with [Mr. L]: I feel that the Liberal members in this riding should have a choice ... instead of having no choice in who should represent them.

Ng: Outside of the party, however, some anonymous letters were stuck to the windshield of parked cars in the restaurant parking lot. The signature on the letter stated A Group of Traditional Chinese Medicine Practitioners with Conscience. The letters accused [Mr. L] (as chairman of CTCMA) of mishandling the firing of Mr. [W], executive director [actually the registrar] of CTCMA, leading to financial losses for CTCMA. We tried to contact a number of Chinese traditional medicine practitioners today but no one admitted responsibility of [*sic*] distributing the letters.

The flyers, described as "anonymous letters" in this translation, were shown under the preceding comments by the reporter; the translation and description of the document is given above. The news story then cut to a shot of Ms. [Y], the other candidate seeking the nomination in Vancouver Kingsway, walking down the street (the broadcaster's translation continues):

Ng: As for the other candidate, Ms. [Y], she spent her day trying to meet voters in the riding.

Interview with Ms. [Y]: I feel that as representative of the people, the most important thing is to listen to what they have to say, to learn what are the issues that concern them. This is the only way to represent their interests.

[Scene of a road]

Ng: On the other hand, while some Liberal members complained that the deadline for submitting their nomination was too short, only four days from calling for nomination,

causing candidates insufficient time to prepare, Federal Liberal Party's BC Executive Director Mr. [G] emphasized that the call for submission of nomination began in March at their general meeting.

Interview with Mr. [G] [in English]: We have in this situation a candidate who has found the time to file his papers and, and participate in the race. So I don't think at all it wasn't enough time.

Ng: Mr. [G] emphasized that the procedures that were followed were according to the proper nomination meeting process and regulations.

### Further broadcast reports

On July 28 Fairchild and Talentvision broadcast a follow-up report (an English translation and description of that report can be found in Appendix A), which covered a press conference held by Mr. [L] to respond to the allegations made in the anonymous flyer originally reported on both stations. The reports began with Mr. [L] criticizing the television coverage, accusing the broadcasters of attempting to influence the outcome of the race, and dismissing the accusations made in the anonymous letter as groundless. They also included an interview with Fairchild's News Director, who insisted that the stations had reported only the facts of the situation. It should also be noted that the subsequent broadcasts included the text of the anonymous flyer which is at issue in the present file. No complaint was received by the CBSC relating to the broadcasts of July 28. Consequently, this decision does not deal specifically with the later news reports.

### Complaints

The CBSC received a complaint about the broadcasts via its website form on July 28 (the full text of all correspondence can be found in Appendix B):

The news report was on Mr. [L]'s political campaign for the Federal Liberal Party nomination in Vancouver Kingsway. It included a reference to an anonymous circular being distributed which is highly defamatory towards Mr. [L]. The station did not verify the truthfulness of the allegations in the circular. Nor did it contact Mr. [L] for comment. It put the circular on screen and outlined some or all of the allegations therein.

I have concerns that the report is not accurate, it is not fair, nor is it balanced, among possible other breaches of your *Code of Ethics*. The timing of the broadcast is of particular concern because the vote in the campaign will take place tomorrow, July 29, 2006.

### The Broadcaster's Correspondence

Fairchild Television (which owns both stations) responded to the complainant on August 24:

We at Fairchild believe that we have upheld high journalistic standards of accuracy and fairness in this case. We did not report any allegations in the anonymous letter which

could not be verified. The one statement in the letter we reported was verifiable as a matter of public court record. We also broadcast Mr. [L]'s press conference the following day responding to the letter, criticizing Fairchild Television as well as announcing Mr. [L]'s intention to take legal action against Fairchild Television. Allow me to elaborate on our coverage of this story and to answer the specific complaints you have raised.

Your first complaint was that the news report did not verify the information reported. That is not the case. Fairchild made a specific point of only broadcasting the information that could be verified. The verification came from the judgment of the British Columbia Court of Appeal which held that the dismissal of Mr. [W] by the College of Traditional Chinese Medicine Practitioners and Acupuncturists of B.C. (CTCMA) which Mr. [L] handled personally as Chairman of the College, was wrongful and in breach of the duty of fairness to Mr. [W], such that Mr. [W] had to be reinstated and given two years back pay. The Court quoted the termination letter Mr. [L] personally signed and noted that Mr. [L] personally met with Mr. [W] regarding his termination. [...]

Accordingly, the one portion of the anonymous letter which was included in Fairchild's news report, which stated that Mr. [L], as Chairman of the CTCMA, had mishandled the firing of Mr. [W] resulting in financial losses to CTCMA, was an accurate account of the court decision. As you know, the Mr. [W] lawsuit was reported by various Chinese media including Fairchild on or after October 24, 2005 shortly after the court decision was released.

With respect to verification of other aspects of the anonymous letter, we did attempt to speak to various people, all of whom denied responsibility for the letter. We reported that fact so that viewers could judge for themselves whether the letter was credible. In addition, we reported fully on Mr. [L]'s news conference the next day responding to the letter, criticizing Fairchild Television and announcing Mr. [L]'s intention to sue Fairchild Television. Again, this gave viewers the opportunity to judge the circumstances, along with Mr. [L]'s response, for themselves. I note that although Mr. [L] generally denied the content of the anonymous letter, you did not identify any inaccuracy regarding the Mr. [W] matter.

You have asserted that Fairchild should not have even reported on the anonymous letter. I am afraid that as journalists we do not make the news but report on the news, and the appearance of the anonymous letter during the candidates' meeting was considered an important and newsworthy aspect. We recognized that it needed to be handled with care and that we could not report on any allegations in the letter which were not verified. It is for that reason that we did not report on any allegation other than the one pertaining to the Mr. [W] court case. Our job as journalists is to observe public events and report them with fairness and accuracy. We believe we did that.

Your concern about showing an image of the anonymous letter must be put into context. We did not show the entire letter. The only portion which was shown was a portion of the letter showing a signature of the author and the portion identifying the estimated amount of damages arising from the Mr. [W] court case. This was consistent with the amount of damages reported by our station and others on October 24, 2005 after the court decision, which was Mr. [W]'s own estimate of the amount he would be paid as a result of the decision. There has never been a complaint about inaccuracy regarding the amount and Mr. [W] confirmed to us that the October 24, 2005 newscast was accurate. Of course, if there is a factual correction to the amount of money involved, we would be happy to discuss that with Mr. [L] and clarify that matter.

Your last complaint is that Fairchild Television did not contact Mr. [L] for comment. If this were a case of a new and untested allegation, we would of course contact Mr. [L] for comment before broadcasting a news story. But in this case, the information was verified

by the court decision and we feel we were entitled to rely on that. In addition, we did broadcast Mr. [L]'s response from his news conference the following day. The obligation of providing balance in news coverage does not always mean that every response to a news story must be reported the same day. Some stories result in reaction that is reported in the days following a news story. The question of balance is to be judged looking at the whole series of broadcasts and not just a one day snapshot. In this case, we are confident that the accuracy of the report was verified by the court decision and the fairness to Mr. [L] was satisfied by broadcasting his response the very next day.

Based on all of the above, we believe that we have lived up to our obligations of fairness, accuracy and a high standard of journalism.

### The Ruling Request

After the resolution of some administrative issues at the CBSC, the complainant filed his Ruling Request on July 3, 2007. He included the following additional information:

1. Fairchild, in its response to my complaint, states that it does "not make the news but report[s] on the news". It should be noted that, to the best of my knowledge, no other media outlets reported on the anonymous letter on July 27, 2006. With its broadcast in question and report the next day on Mr. [L]'s complaint, Fairchild has made news with the anonymous letter, to Mr. [L]'s detriment.
2. Fairchild said it did not report on any unverifiable allegations in the anonymous letter. But in fact, it put the whole letter on screen. And the letter is clearly malicious on its face and full of inaccuracies and defamatory allegations.
3. Fairchild highlighted a portion of the anonymous letter in the broadcast which states that Mr. [L] was sued for smearing a dismissed employee and that CTCMA had to pay \$500,000 of damages in addition to \$250,000 for two years' salary to the employee. In fact, the appeal court ruling only dealt with the procedure and not the grounds for the dismissal of the employee or any other issues. And it did not set out an amount of the wages or damages. There was a separate lawsuit in which CTCMA sued the employee for financial irregularities and the employee counter-sued CTCMA, Mr. [L], another director and CTCMA's auditor for defamation. But that lawsuit never went to trial and was settled out of court. Fairchild acknowledges it got the damages figures from the employee, one party to a lawsuit, but did not independently verify them before reporting them. If it did, it would have known that the figures are grossly incorrect and the true figure is protected by the confidentiality provision in a settlement agreement. The anonymous letter is clearly malicious in its deliberate inaccuracy and Fairchild was reckless in its broadcast.
4. Fairchild acknowledged it did not contact Mr. [L] for comment before reporting on the anonymous letter but that it reported on his complaint against it the next day. This should all be viewed in the context of the nomination vote being held on July 29, 2006, a mere two days after the broadcast in question. Should it not be more imperative for a media outlet to be fair and balanced in a heated and tight political contest? Fairchild's report on July 28, 2006 of Mr. [L]'s complaint against it is very one-sided and defensive. It doesn't have the effect of balancing its report a day earlier. It states that the broadcaster had checked the letter before reporting on it. Therefore, it might have the effect of further confirming the credibility of the anonymous letter.
5. The margin of victory for Mr. [L]'s opponent in the nomination contest held on July 29, 2006, two days after the broadcast in question, was only 28 votes out of a total of

about 600. I believe the broadcast was not accurate, it was not fair and it was not balanced. It had prejudiced Mr. [L] and possibly cost him the nomination.

6. Mr. [L] has accepted the nomination result. But I believe a media outlet should have a duty to be more vigilant in its report of an anonymous letter which on its face is malicious and intended to influence a political vote.

7. My complaint is against both Fairchild TV and Talentvision.

### The Broadcaster's Further Responses

The broadcaster sent the following letter to the CBSC on July 27, 2007:

On reviewing this matter, it appears that we did not provide our answer to [the complainant]'s follow-up letter to the CBSC of August 24, 2006. Although that letter is mostly a repeat of Mr. [L]'s earlier letter of complaint to which we have responded, we do wish to respond to some of the points raised.

First, Mr. [L] told our reporter and we paraphrased him where he said he is confident his past experience will help him win this riding. He went on to give a direct clip by saying, "I feel that the Liberal members in this riding should have a choice ... instead of having no choice in who should represent them."

In this context, Mr. [L] raised the interest and question in [sic] whether his past experience and background would indeed help his nomination result. It is in this light that when the anonymous letter surfaced after the pre-nomination party and part of the letter raised a very prominent part of Mr. [L]'s past experience, that is his involvement as chairman of CTCMA, that made it relevant for our news report to include the anonymous letter because it was clear to us that a part of Mr. [L]'s background and past experience has raised concerns in the community or potential voters in the nomination party to issue an anonymous letter placed on the windshield of Mr. [L]'s guests' parked cars.

Second, as stated before, the part of the anonymous letter we reported in our story was limited to the court decision on mishandling of Mr. [W]'s firing. The visual we showed in our story also was not readable except for that page of the content. I would like to reiterate that the anonymous letter included many pages of information, we only reported on the one area that was factually supported by court decision.

The item from the letter which was reported was confirmed as a matter of public court record, and was directly relevant to an important issue in any nomination campaign, emphasized by Mr. [L] himself, namely, his past experience and performance. In our journalistic judgment this was both factually solid and in the public interest as voters in the community had taken issue with one part of Mr. [L]'s past experience and we merely included that fact in our news story.

Third, regarding the alleged inaccuracy in the amount of the dismissal award, we had direct factual information from a source which was privy to the information, and Mr. [L] fails to provide any details to judge whether his disagreement with the figure is simply based on a different calculation or estimate and whether the difference is of any significant amount. The full magnitude of wrongful dismissal awards requires the inclusion of the salary over time, interest and costs. Without further detail from Mr. [L], we can only assume the difference may lie in whether he is including all aspects of the award. We have offered to report a correction if any concrete error and amount is provided, and his letter fails to assist.

Fourth, as for Mr. [L]'s point that because the other media did not report on the same information, therefore we should not either, I wanted to emphasize that we reported on many stories that the other media did not cover. A free and energetic media thrives on differing approaches and stories, not behaving like sheep.

Lastly, I would also like to quote a radio audience [member] who called in a radio talk show about our coverage in question, and pointed out that if Fairchild TV did not include that letter, Fairchild TV would look as if we were trying to help Mr. [L] in his campaign. The letter was a relevant part of the campaign, we only reported the part which could be factually confirmed, and we broadcast Mr. [L]'s response.

The broadcaster's lawyer sent an additional letter on November 14 after the CBSC sent it copies of the translations provided by the complainant.

Fairchild Television submits that that translation provided by Mr. [L] does not provide a fair or realistic representation of what actual viewers of the newscast saw and understood.

First, it was apparent that Mr. [L]'s translator had an actual copy of the letter which was referenced in the newscast in preparing the translation, as the newscast did not show the entire letter. The most obvious illustration of this is that the translation includes a large title "[Mr. L]'s Wicked Conduct in the CTCMA" which was never shown onscreen in the newscast.

Second, the letter, which is quite lengthy, was only shown in a quick four second camera tilt-down, which viewers would not actually be able to read. The camera panned quickly from near the top of the letter to the bottom and was simply a visual depiction of what someone had placed on car windshields during the nomination meeting which was the subject matter of the newscast.

Obviously, the CBSC should judge the complaint based upon what an actual viewer actually saw. To provide the best evidence of this, our client has consulted translators in both the Mandarin and Cantonese languages as the newscasts are transmitted in both languages, to identify (in translation) what they could actually notice by watching the broadcast.

To ensure that Fairchild Television were being generously fair to the complainant, they had each translator watch the newscast in their respective languages twice, as Fairchild's newscasts are broadcast twice. Our client's research indicates that viewers tend to watch only one or the other, but given the possibility that a small number of viewers might have watched them both, our client wanted their translators to simulate that experience.

The translations, along with a document setting forth a translation of the voiceover which accompanied the image of the letter, are attached as follows:

1. Cantonese translation from the first viewing of the Cantonese broadcast, in which the translator was only able to catch the following words:

"Mr. [L] indicates" ... "A Group of Righteous Chinese Medicine Doctors" ... "as a result, the court awarded seven hundred fifty-five thousand dollars (five hundred thousand dollars)" ... "a group of righteous Chinese medicine doctors".

2. Cantonese translation after the translator's second viewing of the Cantonese newscast, in which he was able to glean the following from the image of the letter:

“The reputation of Mr. [W] as a result of the court awarded seven hundred fifty-five thousand dollars (five hundred thousand dollars) as a result five hun” ... “seven hundred fifty-five thousand dollars (five hundred thousand dollars)” ... “Mr. [W] the court awarded” ... “seven hundred fifty-five thousand dollars (five hundred thousand dollars)”.

3. Mandarin translation from the first viewing of Mandarin broadcast, in which the translator explained what he could understand from the letter showing the newscast as follows:

“I did see the flyer on the screen but did not get much of it because it was not a whole-page shot and it seems only the middle part of each sentence was displayed. I remember I saw some name (‘Huang’?) and some numbers (‘seven hundred fifty thousand’?) and saw what I guess (is) the signature part most clearly (‘A Group of Righteous ...’) because it was displayed relatively longer. I don’t remember I saw the heading of the flyer. These may be from different shots of the whole story because I don’t have the expertise to distinguish different kinds of shots.”

This interpreter goes on to say that he was unable to associate the translated voiceover with the image of the letter.

4. Mandarin translation after his second viewing of Mandarin broadcast. The translator states:

“On the second viewing, I saw the flyer more clearly. I don’t remember I saw the heading. I remember the moving shot was from top to bottom. Different from what I remembered from the first viewing, each line was displayed from beginning to end. I saw the signature/bottom part more clearly (‘A Group of Righteous Traditional Chinese Medicine Practitioners’). I saw the name ‘Huang Zhigiang’, the words ‘court’ and the numbers ‘750,000’. I saw other words but just don’t remember. What I saw may be different shots because I don’t have the expertise to distinguish different types of shots.”

It is apparent that even a professional translator, watching the newscast twice, was unable to catch any more than snippets of the letter. It is submitted that this is not surprising considering the quick pan of the letter was too fast for a reasonable person to read, and was intended to simply show a brief image of what was handed out. The voiceover explained the one aspect of the letter which our client felt confident reporting given that it was confirmed by judicial decisions in British Columbia, namely the wrongful dismissal award given to Mr. [W]. The other allegations in the letter were not reported by Fairchild Television and the quick pan of the image of the letter did not permit viewers to see them.

## THE DECISION

The National Specialty Services Panel examined the complaint under the following provisions of the Radio-Television News Directors Association of Canada (RTNDA) *Code of (Journalistic) Ethics* and the Canadian Association of Broadcasters’ (CAB) *Code of Ethics*.

*RTNDA Code of (Journalistic) Ethics*, Article 1 – Accuracy

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

### *CAB Code of Ethics, Clause 5 – News*

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.

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.

### *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.

### *CAB Code of Ethics, Clause 7 – Controversial Public Issues*

Recognizing in a democracy the necessity of presenting all sides of a public issue, it shall be the responsibility of broadcasters to treat fairly all subjects of a controversial nature. Time shall be allotted with due regard to all the other elements of balanced program schedules, and the degree of public interest in the questions presented. Recognizing that healthy controversy is essential to the maintenance of democratic institutions, broadcasters will endeavour to encourage the presentation of news and opinion on any controversy which contains an element of the public interest.

The Panel Adjudicators reviewed all of the correspondence and translations and watched the challenged reports broadcast on Fairchild Television and Talentvision. The Panel also reviewed the decision of the British Columbia Court of Appeal, which was provided to it by the broadcaster. The Panel concludes that the reports of July 27, 2006 violated Article 1 of the *RTNDA Code of (Journalistic) Ethics* and Clauses 5 and 6 of the *CAB Code of Ethics*, but did not violate Clause 7 of the *CAB Code of Ethics*.

### **Some Preliminary Issues regarding the Broadcast**

This matter has complex overtones, in the sense that it relates to the ultimate democratic process, namely, the selection and election of candidates to a legislature, whether federal or provincial. In the challenged newscasts, there is an additional and important related element, namely, the timing of any news reports that could affect that

process. In this case, the fuse was particularly short; there were two days between the news reports and the candidate nomination meeting. Sensitivities were running high. On the one hand, the broadcaster wanted to be sure it ran everything newsworthy and pertinent. On the other hand, each candidate for the Party nomination would wish no negative comment (in an ideal world) but certainly no *unfair* negative comment.

While the Panel does consider that reporting the placing of a flyer on car windshields may be newsworthy to some media, it also recognizes that there may be a danger in such a report where the document is anonymous and no-one can be found to stand behind its allegations. It is an interesting comparative observation that most, if not all, major daily newspapers will not even publish a letter to the editor without having the name and relevant co-ordinates of the writer of such a letter.

The Panel does not question Fairchild and Talentvision's right to report on the placing of such a flyer; it merely notes that there may have been indications that they ought to have been especially cautious considering they were according some on-air credibility to an *anonymous* document. That being said, the Panel does not consider the complainant's point that "no other media outlets reported on the anonymous letter on July 27" to be meritorious. It agrees with Fairchild's representative, when she stated in her letter of July 27, 2007, that they report on many stories that other media do not cover. She added that a "free and energetic media thrives on differing approaches and stories, not behaving like sheep."

It is, of course, correspondingly true that Fairchild cannot justify its broadcast on the fact that there had "never been a complaint about inaccuracy regarding the amount" which is challenged by the complainant.

### **The Material Issue**

In the matter at hand, the complainant has alleged inaccuracy, unfairness and a lack of balance in the report. The CBSC does not, as a matter of practice, assess the issue of balance within the confines of a single program (or newscast). It does, however, deal with accuracy and fairness. In the case of the challenged newscasts, the Panel notes the importance that both the complainant and Fairchild attach to their respective translations of the core of the newscast, namely, the report by Mr. Ng and the associated visuals. As the Panel has stated above, it is its view that the possibly conflicting translations provided by the complainant and the broadcaster were not material; the Panel's decision does not turn on the *spoken* word, but only on the on-screen *written* word. It is based on the broadcast of the text of the flyer and the close-ups of excerpts from it.

## What the Viewers See

Preliminarily, the Panel wishes to comment on the time issue that has been raised by the broadcaster's lawyer. He wrote:

Second, the letter, which is quite lengthy, was only shown in a quick four second camera tilt-down, which viewers would not actually be able to read. The camera panned quickly from near the top of the letter to the bottom and was simply a visual depiction of what someone had placed on car windshields during the nomination meeting which was the subject matter of the newscast.

He then put forth the test conducted by the broadcaster, which had translators view the news item twice and try to convey everything they had seen. As he explained:

To ensure that Fairchild Television were being generously fair to the complainant, they had each translator watch the newscast in their respective languages twice, as Fairchild's newscasts are broadcast twice.

While the Panel does not doubt the *bona fides* of the purpose and execution of the experiment, it does not agree that that is the test to be applied. When there is, for example, an image that broadcasters should not, or do not wish to, air, they do not show it *fleetingly*, they pixillate it (i.e. digitally scramble the image) for every instant of its on-screen presence, just as they bleep inappropriate language. If the content should not be seen, *that* is how broadcasters are expected to deal with it. And it is how they should do so. They cannot be unequivocal in their treatment of inappropriate content; they must not broadcast it.

This is the moreso necessary in the broadcast world of the 21<sup>st</sup> century. Programming is easily time-shifted, paused during broadcast, played and replayed at the instant, or recorded and saved for later consumption, when it can again be re-viewed, played back and paused. While there have been video recording devices for more than 30 years, the advent and prevalence of the personal video recorder in the very recent past has made that exercise astonishingly easy. It is the view of the National Specialty Services Panel that the brevity of the view of inappropriate material will not save a broadcaster from a Code breach.

The Panel also notes that, in the case of conventional radio broadcasts, it is *always* the case that moments pass in fractions of a second and are *gone*. They cannot be paused or played back, as they can on television. They can, of course, be recorded or purchased from one of the companies specializing in such a service, but that, in the experience of the CBSC in dealing with tens of thousands of complaints over time, has almost never occurred. If the test were strictly limited to "what actual viewers [or listeners] of the newscast saw and understood," and, presumably, recount, the CBSC

would virtually never be able to rule on radio issues. That is not, and cannot be, the test. The test today is *what was broadcast*. Full stop.

If, in the matter at hand, the broadcaster wished to show the flyer, it could have done so in its reported location, on car windshields, with, say, a sufficiently long lens, obliquely or on a pixillated basis, so that no wording could have been seen. It chose not to do so. Consequently, the determination of this Panel will be made on the basis of its view of the content as broadcast and seen, however fleetingly.

## The Content

The broadcaster has made it clear that it only broadcast “the information that could be verified.” It added: “We recognized that it needed to be handled with care and that we could not report on any allegations in the letter which were not verified.” That point was made in the correspondence numerous times. The broadcaster also was careful to identify the source of its confidence in the details it chose to reproduce from the letter or circular, which it explained in the following terms: “the information was verified by the court [of Appeal] decision and we feel we were entitled to rely on that [see Appendix C for links to that decision and to the decision of the Supreme Court of British Columbia, at trial].” In the letter of July 27, the News Controller, News & Current Affairs, made the point again: “I would like to reiterate that the anonymous letter included many pages of information, we only reported on the one area that was factually supported by court decision.”

It is, however, there that the Panel has its problem with both the full text *and* the close-ups. While there is an issue relating to the quantum, or the amount, of the reported payment, what is far more important to the Panel is the characterization of the *nature* of the decision of the Court of Appeal on which the broadcaster relies. The close-ups read, as noted above, “the Administration was sued and will have to pay Mr. [W] for *insulting* his professional conduct and reputation. Mr. [W] will be paid 750 thousand dollars (made up of *500 thousand dollars plus* two years of salary) [emphasis added].” That information is in fact wrong and finds no basis in the decision of the Court of Appeal. The message of the zoomed-in-on part of the flyer is fundamentally linked to “insult” and damages. While there is a *reference* to “two years of salary”, the *principal* part of the message is that there was an award of “500 thousand dollars”, which is tied to the insult to the “professional conduct and reputation” of the registrar.

That message appears to have been picked up in the subsequent correspondence of the broadcaster, in which the repeated emphasis is on the fact that the dismissal of Mr. [W] by the CTCMA was (all of the following emphases are added) “handled *personally* [by Mr. L] as Chairman of the College”, that “Mr. [L] *personally* signed” the termination letter, and that “Mr. [L] *personally* met with Mr. [W] regarding his termination.” Then the

broadcaster added that “the one portion of the anonymous letter which was included in Fairchild’s news report, [...] stated that Mr. [L], as Chairman of the CTCMA, had *mishandled* the firing of Mr. [W] resulting in financial losses to CTCMA.” There is, however, no indication anywhere that Mr. [L] was acting other than in his capacity as Chairman of the CTCMA or that he was doing anything other than the bidding of the College, which had been sufficiently concerned that it had hired an outside accountant to investigate the actions of the registrar. There is not so much as a hint that Mr. [L] was doing other than carrying out his corporate duties. Furthermore, the decision of the Court of Appeal on which the broadcaster relies does not include Mr. [L] or any other physical person as a party.

What is most important about the decision of the Court of Appeal is that it has nothing whatsoever to do with insults or damages. It was, as the plaintiff Mr. [W] himself alleged in his argument before the Court (cited frequently in the decision), and the Court itself repeatedly indicated, an issue of *procedural* fairness with which the Court was dealing. As the Court said, in its analysis of the matter, “Either the rules of procedural fairness were observed or they were not.” The Court was scrupulous in distinguishing between the “process [and] substantive issues. The two must remain separate for a clear-headed analysis.” The court of first instance, the Supreme Court of British Columbia, dealt in far more detail with the nature of the registrar’s conduct that led to his dismissal. Parenthetically, the Panel finds it curious that the broadcaster spent as much time during the news item on the personal involvement of the College’s Chair in the dismissal without adding a single word about the alleged insubordination and dishonesty of Mr. [W] which had led the College to dismiss its registrar.

As to the factual aspects of the Court of Appeal decision on which Fairchild and Talentvision relied, the broadcaster was not scrupulous. All that decision had concluded was that “Mr. [W] should be reinstated as registrar but the College need not bring him into active service.” Indeed, the Court added, “The fact that he would be back on the payroll provides an incentive to the College to get on quickly with the natural justice hearing.” The Court was also not shy about including in its decision references to the issues of insubordination and dishonesty of Mr. [W] on which the College had relied. The Court did, however, make the point that, notwithstanding such allegations, there was a proper procedure to be followed. It was not, with the consequence that the College had to return to square one in the pre-termination natural justice process. The point is that Mr. [W]’s victory was limited and strictly process-related. As the Court concluded, “I would quash the decision to terminate, reinstate Mr. [W] as registrar on *the limited basis described above*, and award full back pay and benefits *less earnings from other employment* [emphasis added].” There was not a word of discussion about defamation or damages. There was not even a full award of back pay for the period during which Mr. [W] did not act as registrar. He was obliged to reduce any such amount by any compensation he might have received during that roughly two-year period.

It is the view of the Panel that the anonymous flyer totally miscast the *nature* of the proceeding and its result on which the broadcaster focussed and relied. Moreover, it tied Mr. [L] tightly to that decision. The Panel finds the assertion of a *half million dollars* of damages a significantly misleading amount in any event, but the moreso when it is not even clear to viewers what the value of two years of salary “less earnings from other employment” would be. The Panel is even more troubled by the characterization of the amounts as damages associated with any insult to the reputation of Mr. [W] and the association of such damages with Mr. [L] personally.

While the flyer was not the creation of the broadcaster, it was the latter which decided to make some of the content its own. In this it took a risk, particularly when the flyer was, as discussed above, anonymous and Fairchild and Talentvision could find no-one to stand behind it or be answerable for its content. They chose to rely on information that was materially incorrect and that they ought to have known was materially incorrect. They admit to having the decision of the Court of Appeal in hand since October 24, 2005, a full nine months before the broadcasts of July 27, 2006. They had ample time to review it and, if necessary, seek the advice of legal counsel to understand what it meant. Their reliance on its text to support the broadcast of a hostile anonymous document was unfounded and, worse, erroneous in material respects. The news reports were neither accurate nor fair and consequently in breach of Article 1 of the *RTNDA Code of Ethics* and Clauses 5 and 6 of the *CAB Code of Ethics*.

The Panel has no way to assess bias in this matter and renders no opinion on that issue.

### **Broadcaster Responsiveness**

Since broadcasters are required, as a part of their membership requirements, to respond in a thoughtful and fulsome way to complainant(s), it is the practice of the CBSC to include, as a part of its decisions, an assessment of the broadcaster’s responsiveness. In the matter at hand, the broadcaster engaged in considerable correspondence on the issues, whether directly or via its outside legal representatives. It also went to considerable effort to provide translation of the broadcast material to the CBSC and was entirely collaborative in furnishing the CBSC with related documentation, such as the decision of the British Columbia Court of Appeal. While it is clear that Fairchild did not share the complainant’s view of the challenged broadcast, it is under no obligation to agree. Its only burden is to respond and explain its perspective. In the view of the Panel, the Fairchild organization could not have responded more thoroughly to the complaints they faced. Through their corporate owner, the specialty services have more than fulfilled their obligation of responsiveness with respect to the complaint about the challenged newscasts.

## ANNOUNCEMENT OF THE DECISION

Fairchild Television and Talentvision are required to: 1) announce the decision, in the following terms, on their respective services in the language of the original newscast, 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 during the time period in which the reports were broadcast; 2) within the fourteen days following the broadcasts of the announcements, to provide written confirmation of the airing of the statement to the complainant who filed the Ruling Request; and 3) at that time, to provide the CBSC with a copy of that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by Fairchild Television and Talentvision.

In the case of Fairchild Television, it is the following announcement that is to be used (in Cantonese):

The Canadian Broadcast Standards Council has found that Fairchild Television breached the Canadian Association of Broadcasters' *Code of Ethics* and the RTNDA-Association of Electronic Journalists' *Code of (Journalistic) Ethics* in its broadcast of a newscast on July 27, 2006. During the course of that newscast, Fairchild displayed an anonymous flyer with close-up shots which included inaccurate information about a lawsuit taken against the College of Traditional Chinese Medicine Practitioners and Acupuncturists of B.C. The document alleged that substantial damages had been awarded against the CTCMA for insulting the reputation of the College's registrar when the Court of Appeal had awarded no such damages at all. The document also implied the personal involvement of, and mishandling of the file by, the Chairman, who was not a party to the proceedings and against whom the Court of Appeal made no such finding. By broadcasting that document, Fairchild was found by the CBSC to have breached the accuracy and fairness provisions of Clauses 5 and 6 of the *CAB Code of Ethics* and Article 1 of the *RTNDA Code of (Journalistic) Ethics*.

In the case of Talentvision, it is the following announcement that is to be used (in Mandarin):

The Canadian Broadcast Standards Council has found that Talentvision breached the Canadian Association of Broadcasters' *Code of Ethics* and the RTNDA-Association of Electronic Journalists' *Code of (Journalistic) Ethics* in its broadcast of a newscast on July 27, 2006. During the course of that newscast, Talentvision displayed an anonymous flyer with close-up

shots which included incorrect information about a lawsuit taken against the College of Traditional Chinese Medicine Practitioners and Acupuncturists of B.C. The document alleged that substantial damages had been awarded against the CTCMA for insulting the reputation of the College's registrar when the Court of Appeal had awarded no such damages at all. The document also implied the personal involvement of, and mishandling of the file by, the Chairman, who was not a party to the proceedings and against whom the Court of Appeal made no such finding. By broadcasting that document, Talentvision was found by the CBSC to have breached the accuracy and fairness provisions of Clauses 5 and 6 of the *CAB Code of Ethics* and Article 1 of the *RTNDA Code of (Journalistic) Ethics*.

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

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## APPENDIX A

### CBSC Decision 05/06-1841 & -1842 Fairchild Television & Talentvision re reports about a political campaign

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Fairchild Television and Talentvision broadcast the same report on July 27, 2006. The report was broadcast once in Cantonese and once in Mandarin. Both the complainant and the broadcaster provided translations of the report, so we have included both here, along with the CBSC's own description of the video component.

On Fairchild, a male anchorperson introduced the report; on Talentvision it was a female anchorperson.

#### Complainant's Translation (signed by certified translator)

Anchor: On Saturday, the Vancouver Kingsway riding, which became the focus of attention when International Trade Minister David Emerson switched political affiliation, will nominate its candidate to represent the Liberal Party in the next Federal election. Presently, the two persons vying for nomination are both of Chinese origin and are busy making preparations for the race. Vincent Ng reports:

- scenes from campaign party

Ng: [M. L.], one of the candidates for nomination, was with two-hundred-odd supporters last night during his campaign kick-off held in a restaurant. He stated that even though he had joined the race hastily, he was confident that he would win the nomination with his experience.

Interview with [M. L.]: I feel that the Party Members of this riding should have a choice. They should not just be represented by someone without having had a choice.

At this point, the camera pans quickly over a letter written in Chinese (see the complainant's English translation of the entire letter above, as well as the broadcaster's comments about the appearance of the letter, also above), then zooms in on certain words. The CBSC Secretariat consulted with an independent Chinese speaker to determine exactly which words were highlighted. The first zoom is on the "signature" of the letter, namely, "A Group of Honourable and Just Chinese Medicine Practitioners". The next zoom is on the last couple of sentences in the first paragraph. It first shows the numbers. Combined with the surrounding words and the next zoomed pan of a sentence, it reads that "the Administration was sued and will have to pay Mr. [W.] for insulting his professional conduct and reputation. Mr. [W.] will be paid 750 thousand dollars (made up of 500 thousand dollars plus two years of salary)."

Ng: Outside the restaurant, someone had left flyers on parked cars. The flyers, issued in the name of A Group of Righteous Traditional Chinese Medicine Practitioners, charge that while [M. L.] was Chairman of the College of Traditional Chinese Medicine Practitioners & Acupuncturists of British Columbia, he mishandled the termination of [R. W.], causing the

CTCMA to suffer losses. However, when this TV station tried to confirm this matter with some doctors of TCM today, no one wanted to admit that they had anything to do with these flyers.

- woman walking down street

Ng: Wendy Yuan, the other candidate for nomination, was on her final round of vote soliciting.

Interview with Yuan: I feel that as a representative of the people, the most important thing, the most important thing is to have contact with the real constituents of this riding, and to hear what their real concerns are. This is the only way to effectively represent them.

- scene of a road

Ng: On the other hand, some Party Members have pointed out that there were only four days between the announcement of the nomination meeting and the cut off for filing papers, causing many candidates to not have enough time to prepare for the nomination. Mark Grant, Executive Director of the Liberal Party of Canada in BC, emphasized that the Riding Association had announced the nomination meeting in March.

Interview with Grant [in English]: We have in this situation a candidate who has found the time to file his papers and, and participate in the race. So I don't think at all it wasn't enough time.

Ng: Grant emphasized that the entire process was in accordance with the Party's rules and regulations concerning nomination. This is Vincent Ng, Fairchild TV.

### Broadcaster's Translation

Anchor: Since former Liberal MP David Emerson joined the Conservative Government and became the new International Trade Minister, all eyes are on who would represent the federal Liberals in Vancouver/Kingsway come the next federal election. By this weekend, the new Liberal candidate for Vancouver Kingsway will be born. The federal Liberals are hosting their nomination meeting this Saturday, and right now both candidates vying for this riding are from Chinese descent. And both are working hard to win the nomination this weekend.

- scenes from campaign party

Ng: [M. L.] is one of the two candidates seeking Liberal nomination for Vancouver Kingsway riding. Last night, he hosted a pre-nomination party at an east-side Chinese restaurant. More than 200 guests joined the party. According to [L.], although his decision to run in this nomination seemed rushed, he is confident his past experience will help him win this riding.

Interview with [L.]: I feel that the Liberal members in this riding should have a choice ... instead of having no choice in who should represent them.

At this point, the camera pans quickly over a letter written in Chinese (see the complainant's English translation of the entire letter above), then zooms in on certain words. The CBSC Secretariat consulted with an independent Chinese speaker to determine exactly which words were highlighted. The first zoom is on the "signature" of the

letter, namely, “A Group of Honourable and Just Chinese Medicine Practitioners”. The next zoom is on the last couple of sentences in the first paragraph. It first shows the numbers. Combined with the surrounding words and the next zoomed pan of a sentence, it reads that “the Administration was sued and will have to pay Mr. [W.] for insulting his professional conduct and reputation. Mr. [W.] will be paid 750 thousand dollars (made up of 500 thousand dollars plus two years of salary).”

Ng: Outside of the party, however, some anonymous letters were stuck to the windshield of parked cars in the restaurant parking lot. The signature on the letter stated A Group of Traditional Chinese Medicine Practitioners with Conscience. The letters accused [M. L.] (as chairman of CTCMA) of mishandling the firing of [R. W.], executive director of CTCMA, leading to financial losses for CTCMA. We tried to contact a number of Chinese traditional medicine practitioners today but no one admitted responsibility of distributing the letters.

- woman walking down street

Ng: As for the other candidate, Yuan Wei, she spent her day trying to meet voters in the riding.

Interview with Yuan: I feel that as representative of the people, the most important thing is to listen to what they have to say, to learn what are the issues that concern them. This is the only way to represent their interests.

- scene of a road

Ng: On the other hand, while some Liberal members complained that the deadline for submitting their nomination was too short, only four days from calling for nomination, causing candidates insufficient time to prepare, Federal Liberal Party’s BC Executive Director Mark Grant emphasized that the call for submission of nomination began in March at their general meeting.

Interview with Grant [in English]: We have in this situation a candidate who has found the time to file his papers and, and participate in the race. So I don’t think at all it wasn’t enough time.

Ng: Mark Grant emphasized that the procedures that were followed were according to the proper nomination meeting process and regulations.

Fairchild and Talentvision broadcast a second, follow-up report on July 28, 2006. The complainant and broadcaster also provided translated transcripts of that report.

The Fairchild report was introduced by a female anchorperson, and the Talentvision one by a male anchorperson.

### Complainant’s Translation (signed by certified translator)

Anchor: [M. L.], the Chinese Canadian candidate who will be facing the Federal Liberal nomination race tomorrow in the Vancouver Kingsway riding, called a press conference today. At the conference, [M. L.] criticized the News Department of this TV station, and demanded that it apologize, for reporting last night that outside the venue where his campaign kick-off was held on Wednesday night, some people had left open letters criticizing

him. He also responded to the content of the letter. Ada Luk reports.

- scenes from campaign party, followed by pan of letter and zoom in on a couple of words (the letter was on the screen for a shorter amount of time than the previous report)

Luk: In the evening news broadcast last night, this TV station reported that outside the venue where [M. L.] held his campaign kick-off on Wednesday night, some people had left flyers criticizing him. The flyers called into question [M. L.]'s performance while serving as Chairman of the College of Traditional Chinese Medicine Practitioners & Acupuncturists of British Columbia. Today, [M. L.] called a press conference and responded to the content of the flyers.

- scene of press conference

M. L.: The main purpose of the content of the poison-pen letter is to attack me. Accusations that are groundless, without reason, without proof and purely fictitious are made against me for my eight years' work at the CTCMA, my work as a volunteer.

- pan of letter & zoom-in on a couple of words (though it appeared on screen for less time than the previous report)

Luk: On the other hand, he also criticized Fairchild TV for reporting in the evening news broadcast that some of the people who attended the rally had received the flyers.

M. L.: Having done this at a very sensitive time, I believe they can be suspected of intending to influence the outcome of the race.

Luk: [M. L.] further pointed out that in the past, Fairchild TV had also reported negatively on him.

M. L.: This is not the first time that Fairchild TV has reported news in this manner, news about me.

Luk: Regarding that news report, [M. L.] demanded clarification and an apology from Fairchild TV. To this, Winnie Hwo, News Controller of Fairchild TV, responded this way.

Interview with Hwo: As for the report by our reporter yesterday, actually, we were just doing what we have always done, and that is to report the facts. The fact of the matter is that when some of the guests at the dinner left the venue, on their way to the parking lot, they received an open letter issued in the name of A Group of Righteous Traditional Chinese Medicine Practitioners, criticizing [M. L.]. Actually, the content of this open letter includes several subjects. However, we reported the termination of [R. W.] because the Court had already ruled that the termination of [R. W.] was unjustified and that the CTCMA had to pay monetary compensation to [R. W.]. During that whole incident, [M. L.] was the Chairman of the CTCMA and these are the facts.

- scene of exterior of B. C. Court of Appeal; CTCMA crest; man being interviewed

Luk: Winnie Hwo indicated that the News Department of Fairchild TV emphasizes reporting only the facts.

Hwo: We will certainly not pick, and we have never picked, a particular moment to target a particular person, because that is not within the scope of work of the News Department. About this incident, all we can say is that our reporter only reported the facts, and we also ran a check on the open letter. Also, during our news broadcast last night, we made it clear that

until now, no doctor of the TCM has claimed responsibility for the open letter.

Luk: As for [M. L.]’s demand that the News Department of Fairchild TV apologize for the incident, Winnie Hwo says

Hwo: Lawyer [M. L.] wants us to apologize openly. All I can say is that I totally do not understand what we have to apologize for. If we were to apologize because our reporter reported the facts, I would think that would be a bit absurd.

Luk: This is Ada Luk, Fairchild TV.

### Broadcaster’s Translation

Anchor: [M. L.] is one of the two Chinese candidates who will be fighting to represent the Liberals in the federal riding of Vancouver Kingsway in tomorrow’s nomination meeting. Today, [L.] called a press conference to criticize and demand an apology from Fairchild TV news department for reporting on the anonymous letters, letters that were left on parked cars outside of his Wednesday night pre-nomination party. [L.] also responded to accusations in the anonymous letters.

- scenes from campaign party, followed by pan of letter and zoom in on a couple of words (the letter was on the screen for a shorter amount of time than the previous report)

Luk: We reported in last night’s newscast that some anonymous letters were left on parked cars outside of [M. L.]’s pre-nomination party Wednesday night, criticizing the way [L.] handled his position as chairman of CTCMA. Today, [L.] called a press conference to respond to the content of the letters.

- scene of press conference

M. L.: The anonymous letters mainly attacked my role as CTCMA Chair. During those eight years of my voluntary involvement, the letters brought forward unfounded allegations and accusations.

- pan of letter & zoom-in on a couple of words (though it appeared on screen for less time than the previous report)

Luk: [L.] also criticized Fairchild Television’s news program for reporting on the anonymous letters.

Interview with Winnie Hwo: According to what we reported in our newscast last night, we only reported on the fact. The fact is, some of [L.]’s guests did get an anonymous letter as they were leaving the party to the parking lot. They did get a letter signed by “A Group of Traditional Chinese Medicine Practitioners with Conscience”. The letter criticized [L.] of many things, but we only reported on the one fact that we could verify, that is his mishandling of the firing of [R. W.], leading to a court-ordered financial compensation to [R. W.] by CTCMA. Throughout that time, [L.] was the chairman of CTCMA. All this is factual information.

- scene of exterior of B. C. Court of Appeal; CTCMA crest; man being interviewed

Luk: Winnie Hwo reiterated that Fairchild TV news department is only interested in reporting facts.

Hwo: We never choose to report on anyone at any time. Neither would we pinpoint on a

specific person in our news reporting. Our reporter only reported on the facts and tried to verify the source of the letter. Then we reported on what we found out, that no traditional Chinese medicine practitioners were willing to admit responsibility.

Luk: As to [L.]'s demand for an apology, this is what Hwo has to say.

Hwo: On [M. L.]'s demand for an apology, I simply do not understand what we are expected to apologize for. If he is asking for an apology because our reporter reported on facts, I think that is a little ridiculous.

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## APPENDIX B

### CBSC Decision 05/06-1841 & -1842 Fairchild Television & Talentvision re reports about a political campaign

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#### The Complaint

The CBSC received the following complaint via its website form on July 28, 2006:

station: Fairchild TV & Talentvision

program: Evening News

date: July 27, 2006

time: 7:00 and/or 11:00 pm

concern: The news report was on [Mr. L's] political campaign for the Federal Liberal Party nomination in Vancouver Kingsway. It included a reference to an anonymous circular being distributed which is highly defamatory towards [Mr. L.]. The station did not verify the truthfulness of the allegations in the circular. Nor did it contact [Mr. L.] for comment. It put the circular on screen and outlined some or all of the allegations therein.

I have concerns that the report is not accurate, it is not fair, nor is it balanced, among possible other breaches of your *Code of Ethics*. The timing of the broadcast is of particular concern because the vote in the campaign will take place tomorrow, July 29, 2006.

#### Broadcaster's Response

Fairchild Television (which owns both stations) responded to the complainant on August 24:

You have expressed concerns about a news story appearing on Fairchild Television/Talentvision ("Fairchild") on July 27, 2006. Specifically, you complained about Fairchild Television reporting on an anonymous letter which was placed on the windshields of the cars of people attending [Mr. L's] candidate's dinner.

We at Fairchild believe that we have upheld high journalistic standards of accuracy and fairness in this case. We did not report any allegations in the anonymous letter which could not be verified. The one statement in the letter we reported was verifiable as a matter of public court record. We also broadcast [Mr. L's] press conference the following day responding to the letter, criticizing Fairchild Television as well as announcing [Mr. L's] intention to take legal action against Fairchild Television. Allow me to elaborate on our coverage of this story and to answer the specific complaints you have raised.

Your first complaint was that the news report did not verify the information reported. That is not the case. Fairchild made a specific point of only broadcasting the information that could be verified. The verification came from the judgment of the British Columbia Court of Appeal which held that the dismissal of [R. W.] by the College of Traditional Chinese Medicine

Practitioners and Acupuncturists of B.C. (CTCMA) which [Mr. L.] handled personally as Chairman of the College, was wrongful and in breach of the duty of fairness to Mr. [W.], such that Mr. [W.] had to be reinstated and given two years back pay. The Court quoted the termination letter [Mr. L.] personally signed and noted that [Mr. L.] personally met with Mr. [W.] regarding his termination. A copy of the decision is attached.

Accordingly, the one portion of the anonymous letter which was included in Fairchild's news report, which stated that [Mr. L.], as Chairman of the CTCMA, had mishandled the firing of Mr. [W.] resulting in financial losses to CTCMA, was an accurate account of the court decision. As you know, the [R. W.] lawsuit was reported by various Chinese media including Fairchild on or after October 24, 2005 shortly after the court decision was released.

With respect to verification of other aspects of the anonymous letter, we did attempt to speak to various people, all of whom denied responsibility for the letter. We reported that fact so that viewers could judge for themselves whether the letter was credible. In addition, we reported fully on [Mr. L.'s] news conference the next day responding to the letter, criticizing Fairchild Television and announcing [Mr. L.'s] intention to sue Fairchild Television. Again, this gave viewers the opportunity to judge the circumstances, along with [Mr. L.'s] response, for themselves. I note that although [Mr. L.] generally denied the content of the anonymous letter, you did not identify any inaccuracy regarding the [R. W.] matter.

You have asserted that Fairchild should not have even reported on the anonymous letter. I am afraid that as journalists we do not make the news but report on the news, and the appearance of the anonymous letter during the candidates' meeting was considered an important and newsworthy aspect. We recognized that it needed to be handled with care and that we could not report on any allegations in the letter which were not verified. It is for that reason that we did not report on any allegation other than the one pertaining to the [R. W.] court case. Our job as journalists is to observe public events and report them with fairness and accuracy. We believe we did that.

Your concern about showing an image of the anonymous letter must be put into context. We did not show the entire letter. The only portion which was shown was a portion of the letter showing a signature of the author and the portion identifying the estimated amount of damages arising from the [R. W.] court case. This was consistent with the amount of damages reported by our station and others on October 24, 2005 after the court decision, which was [R. W.]'s own estimate of the amount he would be paid as a result of the decision. There has never been a complaint about inaccuracy regarding the amount and Mr. [W.] confirmed to us that the October 24, 2005 newscast was accurate. Of course, if there is a factual correction to the amount of money involved, we would be happy to discuss that with [Mr. L.] and clarify that matter.

Your last complaint is that Fairchild Television did not contact [Mr. L.] for comment. If this were a case of a new and untested allegation, we would of course contact [Mr. L.] for comment before broadcasting a news story. But in this case, the information was verified by the court decision and we feel we were entitled to rely on that. In addition, we did broadcast [Mr. L.]'s response from his news conference the following day. The obligation of providing balance in news coverage does not always mean that every response to a news story must be reported the same day. Some stories result in reaction that is reported in the days following a news story. The question of balance is to be judged looking at the whole series of broadcasts and not just a one day snapshot. In this case, we are confident that the accuracy of the report was verified by the court decision and the fairness to [Mr. L.] was satisfied by broadcasting his response the very next day.

Based on all of the above, we believe that we have lived up to our obligations of fairness, accuracy and a high standard of journalism.

The attached Court of Appeal decision read as follows:

**COURT OF APPEAL FOR BRITISH COLUMBIA**

Citation: ***[W.] v. College of Traditional Chinese Medicine Practitioners and Acupuncturists of British Columbia***  
2005 BCCA 509

Date: 20051021

Docket: CA032339

Between:

**[R. W.]**

Appellant  
(Petitioner)

And

**The College of Traditional Chinese Medicine Practitioners and Acupuncturists of British Columbia**

Respondent  
(Respondent)

Before: The Honourable Madam Justice Prowse  
The Honourable Mr. Justice Donald  
The Honourable Mr. Justice Hall

R.N. McFee, Q.C. and M.J. Westphal

Counsel for the Appellant

R.M.L. Basham, Q.C. and V.H. Stewart

Counsel for the Respondent

Place and Date of Hearing:

Vancouver, British Columbia  
23 September 2005

Place and Date of Judgment:

Vancouver, British Columbia  
21 October 2005

**Written Reasons by:**

The Honourable Mr. Justice Donald

**Concurred in by:**

The Honourable Madam Justice Prowse  
The Honourable Mr. Justice Hall

**Reasons for Judgment of the Honourable Mr. Justice Donald:**

[1] On 7 November 2003, the College of Traditional Chinese Medicine Practitioners and Acupuncturists of British Columbia (the "College") terminated [R. W.] ("[W.]") from his

position as registrar. This is a statutory office entitled [W.] to procedural fairness. In a petition for judicial review challenging the termination, [W.] alleged denial of procedural fairness. The reviewing judge dismissed his petition: (2004), 35 C.C.E.L. (3d) 216, 2004 BCSC 1212.

[2] In my respectful opinion, the reviewing judge erred in mixing the merits of the decision to terminate with the process of termination. Further, she made a palpable error of fact in holding that [W.] had notice of all the grounds for firing him when clearly and indisputably he was not aware of a report accusing him of dishonesty. The report formed the principal basis for the College's decision. [W.] had no notice of the report nor was he given an opportunity to address it prior to termination. This amounts to a denial of procedural fairness. Having been denied procedural fairness, he is entitled to an order quashing the decision to terminate him, reinstatement on terms later described with full back pay and benefits, less income from other employment earned in the meantime, and I would so order.

### **FACTUAL BACKGROUND**

[3] The College is a non-profit organization constituted under the **Health Professions Act**, R.S.B.C. 1996, c. 183, (the "**Act**"), to govern the traditional Chinese medicine and acupuncture profession. It has a nine-member board of directors. Section 21(1) of the **Act** provides for the appointment of registrar who is responsible for the overall administration of the College, including financial matters.

[4] For about three years, beginning in 2000, the board told [W.] to implement an accounting system but despite assurances he did not do so.

[5] In July 2003, the College's auditor found that none of the financial transactions for the previous year had been recorded in an accounting system, despite the fact that the auditor had provided [W.] with an accounting system in September 2002. Without any accounting entries, the College could not produce and make available its financial statements, as required by its bylaws. The College and Financial Committee therefore took charge of the matter and retained an accountant.

[6] The bookkeeping issue, and other irritants, came to a head in October 2003. The reviewing judge provided a narrative of the relevant events in her reasons at paras. 12-17:

[12] In October 2003, being concerned with [W.]'s actions and inactions in failing to implement an accounting system, in refusing to provide financial documents, in failing to provide financial statements to the Board, in failing to adequately prepare the budget, and in continuing to fail to cooperate with the Board, the Board retained the services of Mew & Co., Chartered Accountants to perform a special investigation audit of the College's financial affairs.

[13] Over the next several months new issues arose. [W.]'s improper transcription of Board minutes led to a Board decision that all Board meetings be tape-recorded. A complaint was advanced by the president of the QATCMA (Qualified Acupuncturists and Traditional Chinese Medicine Association) about difficulties dealing with [W.]

[14] On October 17, 2003 the Board Chair, Mr. [M. L.] ("[L.]", met privately with [W.]. [W.] complained of the Board's failure to support him and what he perceived as its infringement on financial matters, which he insisted fell strictly under his management responsibility. [L.] responded and pointed out the various ways in which [W.] was not fulfilling his duties, nor

following the Board's directions. [W.] promised to correct these matters and to cooperate with the Board.

[15] However, at the Board luncheon meeting which followed on October 19, 2003, [W.] refused to commit to any changes or to cooperate with the Board. He insisted the Board had not conducted itself properly and had not adhered to its bylaws. Nevertheless, it was agreed that members of the Board and [W.] would maintain a united front at the upcoming QATCMA meeting.

[16] At the QATCMA meeting which followed. [W.] openly attacked the Board and referred to the Board's alleged failure to comply with its own bylaws.

[17] On November 5, 2003 Mew & Co. provided its audit investigation and report to the Board. The report showed a number of irregularities totalling in excess of \$50,000, including [W.]'s alleged improper charging of overtime pay, as well as his alleged misappropriation of funds and diversion of property belonging to the College. The Board met to discuss the report at great length and ultimately was unanimous in its decision to terminate the petitioner's employment. The petitioner was given a termination letter at the time he was dismissed, which set out the reasons for dismissal.

[7] The grounds for dismissal were set out in a letter from the College dated 7 November 2003:

Dear Mr. [W.]:

We write to advise that your employment with the College is terminated effective immediately, for cause.

After an extensive audit investigation, we have discovered a number of your actions breach your duty of fidelity, honesty and loyalty to the College. A sample of the specifics of these breaches are as follows:

- You have claimed and collected a large sum of money in payment of overtime to which you have no entitlement under your contract or at law. In doing so, you took advantage of the trust relationship you have with the Board;
- You have claimed and collected vacation pay for a period of time when you were retained as an independent contractor with the College. Again, you were not entitled to vacation pay for this period and to obtain it, you took advantage of the trust relationship you have with the Board;
- You have deliberately claimed reimbursement for expense monies to which you were not entitled. Your conduct in this regard has occurred on a number of occasions and cannot be characterized as inadvertent;
- You have appropriated capital assets you purported to purchase for the College and for which you were reimbursed;

In addition to these actions, your continuing refusal to cooperate with the Board, specifically to provide financial information in a timely way, to respond to requests for information from Board members, to implement a computerized accounting system, to provide a taping system for Board meetings amount to insubordination.

Attached to this letter you will find a cheque for wages to date and vacation pay accumulated but unused. From this amount we have deducted the vacation pay improperly claimed for the period when you were a contractor to the College. Your

Record of Employment will be forwarded to you shortly.

You are required to return all College equipment, files, and information in your possession including any back-up tapes or other College materials and equipment you may have at your home. In addition, you will give us today any credit cards, security cards and keys belonging to the College. In return we will provide you with a receipt for same.

You are reminded that the duty of confidentiality which attaches to the position as Registrar of the College is an obligation which continues following your termination. You may not use any confidential College information for any purpose.

It is the Board's direction that you not return to the premises of the College from this point forward. Your personal possessions will be packed and returned to you. All access codes, locks and alarm codes have been changed. Should you return to the College's premises without the express, written permission of the Chair of the Board, the staff has been instructed to treat your entry as a trespass and to contact the RCMP to effect your removal. We trust this will not be necessary and you will respect the wishes of the Board. You are also requested not to telephone or email the College staff.

It is with sadness and disappointment that the Board has found it necessary to take this action.

Yours truly,

[signature]

[M. L.]  
Chair

[8] On 20 November 2003 [W.]'s solicitor wrote to the College's solicitor demanding reinstatement and proposing that they enter into discussion for a "fair and expeditious process" if the College wished to pursue termination. This offer was not taken up and so the petition was filed.

### **REVIEW DECISION**

[9] In her reasons, the reviewing judge discussed two of the leading cases in this area: ***Knight v. Indian Head School Division No. 19***, [1990] 1 S.C.R. 653, and ***Baker v. Canada (Minister of Citizenship and Immigration)***, [1999] 2 S.C.R. 817. The first decision established the right of a statutory office-holder to procedural fairness; the second set out factors relevant to the content of the duty of fairness.

[10] The judge embarked upon a discussion of "the appropriate standard of review" at para. 25:

[25] In this case I do not intend to engage in an exhaustive analysis of the appropriate standard of review. Assuming, but without finding, that the appropriate standard of review is reasonableness and simpliciter, this Court's role is not to substitute its own view of the facts for that of the Board to come to a different decision, but rather to determine whether or not the Board's decision was unreasonable and ought to be set aside. A court must not interfere unless the party seeking review has positively shown that the decision, taken as a whole, was unreasonable. If any of the reasons that are sufficient to support the conclusion are tenable, in the sense that they can stand up to a somewhat probing examination, the decision will not be unreasonable and the reviewing court must not interfere. The decision may satisfy the standard if it is supported by a tenable explanation. Even if this

explanation is not one which the reviewing court finds compelling, a reviewing court should not seize on one or more mistakes which do not affect the decision as a whole (*Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247).

[11] Having summed up [W.]’s submission to the effect that he was entitled to formal notice of the allegations against him and an opportunity to be heard, the judge wrote at paras. 26-29:

[26] Considering the statutory framework, the terms of the petitioner’s employment contract and the close communications and dealings between the Board Chair and the petitioner, I am not persuaded that even if there was a duty to act fairly, such a duty required any formal hearing in advance of the Board’s decision to terminate the petitioner’s employment.

[27] I am satisfied that by virtue of this earlier meeting with [L.] on October 17<sup>th</sup>, and his subsequent meeting with the Board on October 19<sup>th</sup>, [W.] was well aware of the Board’s underlying complaints. He had a full opportunity to be heard both by [L.], in their private meeting, and later at the Board meeting called to review the matter. In my view, the requirements of procedural fairness were met in this case even though no structured “hearing” was held immediately in advance of the decision to terminate. Here, I am satisfied there was a fulsome communication of the broad grounds of dismissal in advance of termination.

[28] [W.] has said that he [was] unaware of any problems in his employment, and that while he took from his discussions with the Board members, that there were certain outstanding issues regarding his day-to-day management of the College, he did not perceive his employment was in jeopardy. He insists he was unaware of the particulars of any of the problems complained of by the Board until some six weeks following his dismissal, when he received a copy of the investigation audit report prepared by Mew & Co. In my view, this evidence is disingenuous and is completely contradicted by the body of evidence tendered by the College. Further, this position flies in the face of [W.]’s difficult tenure as Registrar and the fact that all of the complaints had been raised at least six months prior to his dismissal.

[29] I conclude there are no grounds for reinstatement in this case. Reinstatement is a discretionary remedy. In any case, I note the courts are extremely reluctant to order an employee’s reinstatement, particularly where the circumstances show the working environment has been soured or the conduct of the employee would not be conducive to the effective operation of the employer’s business (*Cimolai v. Children’s and Women’s Health Centre of British Columbia* [(2003), 14 B.C.L.R. (4<sup>th</sup>) 199, 2003 BCCA 338]. Here, I accept that as a result of the petitioner’s conduct, the Board has lost all trust and confidence in the petitioner and that it would indeed be untenable for the petitioner to be reinstated to a position of trust in which he controls the College funds. In this regard, it should be noted that up to this point, the petitioner has yet to explain or respond in any way that to the alleged evidence of his deception and defrauding of the Board.

## **ISSUES**

[12] There is no dispute that, as registrar, [W.] was owed a duty of fairness in the process

of termination. At issue on this appeal is:

1. the content of the duty;
2. whether the duty was breached; and if so,
3. the appropriate remedy.

## **DISCUSSION**

### ***Content of the Duty***

[13] On appeal, [W.] argues that his case succeeds on the minimal standard of procedural fairness and there it is not necessary for him to assert any higher standard. In ***Knight***, the employee was an administrator holding office at pleasure. As such he was entitled only to the minimal standard described by L'Heureux-Dubé J. for the majority in this way at p. 683:

Since the respondent could be dismissed at pleasure, the content of the duty of fairness would be minimal and I would tend to agree that notice of the reasons for the appellant Board's dissatisfaction with the respondent's employment and affording him an opportunity to be heard would be sufficient to meet the requirement of fairness.

This is the standard applicable to [W.] since he held office at pleasure (subject to his employment contract).

[14] Since the content of the duty is uncontroversial, I will proceed to the next issue; namely, whether there was a breach of the duty.

### ***Breach of the Duty***

[15] The reviewing judge's finding at para. 28 of her reasons (quoted at para. 11 above) that "all of the complaints had been raised at least six months prior to his dismissal" is palpably wrong. The finding is correct only in relation to the secondary grounds in the letter relating to insubordination. As [W.] correctly submits, prior to his termination the College went no further than to reprimand him with regard to complaints and gave no ultimatum or other indication that they were on the verge of firing him.

[16] The termination letter makes it plain that the primary reason for [W.]'s dismissal was the dishonesty set out in the accountant's report. [W.] never saw the report before he was fired nor was he given any inkling that was under suspicion of dishonesty. With respect, the judge was incorrect in finding that [W.] was aware of the grounds for his dismissal.

[17] The judge's discussion of reasonableness as a standard of review (quoted at para. 10 of these reasons) is curious because the merits of the decision to terminate were not before her. I infer that the judge assessed the conduct of the College in the process according to the standard of reasonableness. I fear that approach led her astray in reasoning that since the College made many of their complaints known to [W.] ahead of time it was not unreasonable to fire him without giving him notice of the dishonesty allegations.

[18] Either the rules of procedural fairness were observed or they were not. Reasonableness does not come into the picture. The following portion of Binnie J.'s decision in ***Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)***, [2003] 1 S.C.R. 539, 2003 SCC 29 at paras. 102-3, make the point:

The content of procedural fairness goes to the manner in which the Minister went about making his decision, whereas the standard of review is

applied to the end product of his deliberations.

On occasion, a measure of confusion may arise in attempting to keep separate these different lines of enquiry. Inevitably some of the same “factors” that are looked at in determining the requirements of procedural fairness are also looked at in considering the “standard of review” of the discretionary decision itself. Thus in *Baker, supra*, a case involving the judicial review of a Minister’s rejection of an application for permanent residence in Canada on human and compassionate grounds, the Court looked at “all the circumstances” on both accounts, but overlapping factors included the nature of the decision being made (procedural fairness, at para. 23; standard of review, at para. 61); the statutory scheme (procedural fairness, at para. 24; standard of review, at para. 60); and the expertise of the decision maker (procedural fairness, at para. 27; standard of review, at para. 59). Other factors, of course, did not overlap. In procedural fairness, for example, the Court was concerned with “the importance of the decision to the individual or individuals affected” (para. 25), whereas determining the standard of review included such factors as the existence of a privative clause (para. 58). The point is that, while there are some common “factors”, the object of the court’s inquiry in each case is different.

[Emphasis in text.]

[19] See also *Moreau-Bérubé v. New Brunswick (Judicial Council)*, [2002] 1 S.C.R. 249, 2002 SCC 11, where Arbour J., writing for the court said, at para. 74:

The third issue requires no assessment of the appropriate standard of judicial review. Evaluating whether procedural fairness, or the duty of fairness, has been adhered to by a tribunal requires an assessment of the procedures and safeguards required in a particular situation. (See generally *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, and *Baker, supra*.)

[20] The College endeavoured to support the reviewing judge’s decision on the argument that there were ample grounds for dismissal prior to the audit report, that the Board had lost confidence in [W.], that he was aware of those grounds and that his job was at risk, and therefore it did not matter that [W.] received no notice of the dishonesty allegations. Put another way, the College’s argument is that lack of notice on later grounds did not invalidate the earlier grounds about which there can be no allegation of breach of fairness.

[21] This argument ignores the reality that [W.] was fired for dishonesty, the College having earlier decided to carry on with him despite the lack of an accounting system and the other problems. The termination letter cannot be read any other way. The insubordination grounds appear as additional reasons but they are clearly secondary or subsidiary to the dishonesty grounds. Moreover, the operative grounds alleged theft, fraud, and other dishonest acts which trigger a natural justice requirement that [W.] have the opportunity to clear up those accusations directly with the board, if he can, before his reputation in the community is ruined. I endorse what was said by the New Brunswick Court of Appeal in *Lasch v. Miramichi Planning District Commission* (2000), 49 C.C.E.L. (2d) 142 at para 6:

It is trite law that an employee to whom a duty of procedural fairness is owed by the employer may be heard without a formal hearing as such. That being said, the fact remains that the employee must be heard on the relevant issues and in such a way that he or she is given a fair opportunity to present his or her case and to influence the decision-maker. The right to be

heard also includes not only the right to challenge the grounds upon which disciplinary action might be taken by the employer but, as well, the right to plead, if necessary, in favour of leniency.

[22] [W.] was given no such opportunity. The College breached the duty of fairness and the reviewing judge erred in finding otherwise.

### **Remedy**

[23] The College submits that [W.] has never denied the allegations and therefore ought not to receive the Court's favourable exercise of discretion. The College further submits that [W.] can deal with the harm to his reputation by an action of wrongful dismissal or defamation and so it is unnecessary to reverse the process of termination at this stage.

[24] These arguments merge process with substantive issues. The two must remain separate for a clear-headed analysis. As for the lack of denial, [W.]'s petition is for the opportunity to make his case before the College board; it would have been inappropriate for him to debate the merits in a judicial review petition. Suits for wrongful dismissal and defamation do not provide an adequate alternative remedy to the claim of procedural fairness [W.] seeks in this case. This is because neither form of action could reinstate him to his office as registrar. The "*Harelkin* doctrine", regarding exhaustion of remedies, *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561, has no application here.

[25] Is there any point in giving [W.] a chance to put his position before the board given the history of the parties' relationship? First of all, we are cautioned not to speculate how things might turn out, lest a fundamental right be lost without our knowing all the facts. I refer to the statement of Le Dain J. for the court in the landmark case of *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 at 660-1. In what follows, Le Dain J. refers to the reasons of this Court in the case:

It is a possible implication of their [this Court's] approach that they were of the view that given the Director's reasons for refusing to follow the recommendation of the Board a hearing by him of the appellants would not serve any useful purpose. Certainly a failure to afford a fair hearing, which is the very essence of the duty to act fairly, can never of itself be regarded as not of "sufficient substance" unless it be because of its perceived effect on the result or, in other words, the actual prejudice caused by it. If this be a correct view of the implications of the approach of the majority of the British Columbia Court of Appeal to the issue of procedural fairness in this case, I find it necessary to affirm that the denial of a right to a fair hearing must always render a decision invalid, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a different decision. The right to a fair hearing must be regarded as an independent, unqualified right which finds its essential justification in the sense of procedural justice which any person affected by an administrative decision is entitled to have. It is not for a court to deny that right and sense of justice on the basis of speculation as to what the result might have been had there been a hearing.

[26] Second, the situation appears to be dynamic with shifting internal politics in the College. [W.] may face a differently constituted board if given the opportunity to answer the accusations.

[27] Third, [W.]'s counsel gave us a preview of some of the arguments available to [W.] in attacking the audit's report. For example, it seems that the allegation regarding the largest item, approximately \$47,000, depends on the accountant's interpretation of the employment

contract and he may have misconstrued the contract. So, even if we could examine the efficacy of the remedy, I cannot say that it is an exercise in futility.

[28] In my view, reinstatement is an appropriate remedy in this case. As a statutory body, the College owed a duty of fairness to its office-holders and in this case it did not satisfy the duty. It follows that [W.] never lost his office and, unless there is a strong reason for doing otherwise, we ought to exercise our discretion and restore him to that office. This will give him the full status to make his case to the board.

[29] On the footing that, at law, [W.] never lost his position, he should received full back pay and benefits, less earnings from other employment.

[30] The College resists reinstatement on the grounds that the College has replaced [W.] and the **Act** does not provide for more than one registrar; that there was ample cause for firing him for insubordination which pre-existed the College's default; and that the relationship is so poisoned that to bring [W.] back into the organization would be unduly disruptive.

[31] The order I would make for reinstatement avoids the first and third difficulties presented by the College: [W.] should be reinstated as registrar but the College need not bring him into active service. The fact that he would be back on the payroll provides an incentive to the College to get on quickly with the natural justice hearing. Unlike the petitioner in **Cimolai**, above, [W.] needs no such incentive: indeed, he proposed the development of a fair and speedy process shortly after termination.

[31] I regard the College's reliance on the insubordination grounds as a weak attempt to bring the merits into a petition relating solely to process and I accordingly reject the submission.

**DISPOSITION**

[33] In the result, I would set aside the order dismissing the petition. I would quash the decision to terminate, reinstate [W.] as registrar on the limited basis described above, and award full back pay and benefits less earnings from other employment.

"The Honourable Mr. Justice Donald"

I Agree:

"The Honourable Madam Justice Prowse"

I Agree:

"The Honourable Mr. Justice Hall"

**Additional Correspondence**

After the resolution of some administrative issues at the CBSC, the complainant filed his Ruling Request on July 3, 2007 with the following additional information:

1. Fairchild, in its response to my complaint, states that it does "not make the news but report[s] on the news". It should be noted that, to the best of my knowledge, no other media outlets reported on the anonymous letter on July 27, 2006. With its broadcast in question and report the next day on [Mr. L.'s] complaint, Fairchild has made news with the anonymous letter, to [Mr. L.'s] detriment.

2. Fairchild said it did not report on any unverifiable allegations in the anonymous letter. But in fact, it put the whole letter on screen. And the letter is clearly malicious on its face and full of inaccuracies and defamatory allegations.

3. Fairchild highlighted a portion of the anonymous letter in the broadcast which states that [Mr. L.] was sued for smearing a dismissed employee and that CTCMA had to pay \$500,000 of damages in addition to \$250,000 for two years' salary to the employee. In fact, the appeal court ruling only dealt with the procedure and not the grounds for the dismissal of the employee or any other issues. And it did not set out an amount of the wages or damages. There was a separate lawsuit in which CTCMA sued the employee for financial irregularities and the employee counter-sued CTCMA, [Mr. L.], another director and CTCMA's auditor for defamation. But that lawsuit never went to trial and was settled out of court. Fairchild acknowledges it got the damages figures from the employee, one party to a lawsuit, but did not independently verify them before reporting them. If it did, it would have known that the figures are grossly incorrect and the true figure is protected by the confidentiality provision in a settlement agreement. The anonymous letter is clearly malicious in its deliberate inaccuracy and Fairchild was reckless in its broadcast.

4. Fairchild acknowledged it did not contact [Mr. L.] for comment before reporting on the anonymous letter but that it reported on his complaint against it the next day. This should all be viewed in the context of the nomination vote being held on July 29, 2006, a mere two days after the broadcast in question. Should it not be more imperative for a media outlet to be fair and balanced in a heated and tight political contest? Fairchild's report on July 28, 2006 of [Mr. L.'s] complaint against it is very one-sided and defensive. It doesn't have the effect of balancing its report a day earlier. It states that the broadcaster had checked the letter before reporting on it. Therefore, it might have the effect of further confirming the credibility of the anonymous letter.

5. The margin of victory for [Mr. L.'s] opponent in the nomination contest held on July 29, 2006, two days after the broadcast in question, was only 28 votes out of a total of about 600. I believe the broadcast was not accurate, it was not fair and it was not balanced. It had prejudiced [Mr. L.] and possibly cost him the nomination.

6. [Mr. L.] has accepted the nomination result. But I believe a media outlet should have a duty to be more vigilant in its report of an anonymous letter which on its face is malicious and intended to influence a political vote.

7. My complaint is against both Fairchild TV and Talentvision.

The complainant provided a copy of the Supreme Court of British Columbia decision, which was overturned by the above Court of Appeal decision.

#### **IN THE SUPREME COURT OF BRITISH COLUMBIA**

***In the matter of the Judicial Review Procedure Act, RSBC 1996, c. 241 and in the matter of the Health Profession Act, RSBC 1996, c. 183***

Citation: **[W.] v. The College of Chinese Medicine Practitioners and Acupuncturists of British Columbia,**  
2004 BCSC 1212

Date: 20040917  
Docket: L033366

Registry: Vancouver

Between:

[R. W.]

Petitioner

And:

**The College of Traditional Chinese Medicine Practitioners and Acupuncturists of British Columbia**

Respondent

Before: The Honourable Madam Justice Boyd

**Reasons for Judgment**

Counsel for the Petitioner:

A.S. Albright

Counsel for the Respondent:

R.M. Lui Basham, Q.C.  
and V.H. Stewart

Date and Place of Hearing:

May 17-18, 2004  
Vancouver, B.C.

**Introduction:**

[1] This is an application by the petitioner, Mr. [R. W.] (“[W.]”), arising out of the termination of his employment with the respondent, The College of Traditional Chinese Medicine Practitioners and Acupuncturists of British Columbia (“the College”). The petitioner submits the College did not fulfill its duty of procedural fairness to the petitioner, and that accordingly, he ought to be reinstated as the Registrar, paid all income lost to date, and be awarded special costs. The College denies any procedural unfairness and submits that in light of the circumstances, it was entitled to dismiss the petitioner for cause.

**Background Facts:**

[2] The College is a non-profit organization constituted under the *Health Professions Act*, R.S.B.C. 1996, c. 183 (“the Act”) to govern the traditional Chinese medicine and acupuncture profession. The College has a nine member governing Board consisting of three appointed by the Provincial government and six elected members (“the Board”). Pursuant to s. 21(1), the College appointed the petitioner to act as of the Registrar of the College.

[3] The College Bylaws provided the petitioner with authority to deal with financial matters and to administer and operate the College on a daily basis. (see s. 26(1)(a),(b)(d) and (e)). In addition, the petitioner’s employment contract set out his responsibilities, including:

- C. to ensure the efficient and economical operation of the College;
- E. to be responsible for the administration and the efficient and economical operation of the College;
- F. to prepare the annual budget and control expenditures within the approved budget; and
- G. to act as principal liaison between the board and its registrants, and to foster a cordial and constructive working relationship with them.

[4] In effect, [W.] acted as the chief executive officer of the College, responsible for the overall administration of the Society, including the financial administration.

[5] Regarding the College's right to terminate [W.], the contract provided at paragraphs 4 and 5:

4. The Board may terminate [R. W.]'s employment without notice and without compensation on the grounds of just cause, as defined under the common law, including gross neglect of duties.

5. The Board may, in its discretion without just cause terminate [R. W.]'s duties as Registrar, provided that all board members are notified of such motion seven (7) days prior to a Board meeting, and more than 75% of the full board vote in favour of the termination. Upon such termination, [R. W.] will be served with twelve (12) months notification period of twelve (12) months of pay in lieu of notification.

[6] In the year 2000, the College's auditor expressed his concerns to the Board and to the petitioner about the College not having any accounting system in place. The Board directed the petitioner to implement an accounting system.

[7] In November 2001, the auditor advised the College's Financial Committee that an accounting system had not yet been implemented. The Board again directed the petitioner to implement the system. In 2002, the auditor had numerous discussions with the petitioner concerning the various accounting systems available and recommended the adoption of a particular system to record financial data.

[8] In March 2003, the petitioner still had failed to implement an accounting system. The auditor sent letters to each member of the Board, and to the petitioner, outlining his concerns and the implications for the College.

[9] The issue was discussed with the petitioner at the April 2003 Board meeting and once again, the Board directed the petitioner to implement an accounting system. The petitioner assured the Board he would have an accounting system implemented by June 2003.

[10] By the end of June 2003, an accounting system had still not been implemented. At the end of July 2003, the auditor found that no financial transactions for the previous fiscal year had been recorded in an accounting system. Although the College's auditor had provided [W.] with a form of accounting system in which to record financial data as of September 2002, the petitioner had not used that system and was thus unable to provide any financial data to the auditor for the purposes of preparing audited financial statements for the annual general meeting. The College's financial statements were required to be made available by publication or by mail to the membership by May 31, 2003, being 150 days following the end of the fiscal year (March 31, 2003). Thus being in breach of its bylaws, the College and Financial Committee took charge of the matter, and retained an accountant.

[11] In June 2003, three months following the fiscal year end, [W.] presented the Board with a budget for approval. Since no report of all revenues and expenditures for the previous year or any other financial statement had been produced in support, the Board refused to approve the budget as requested. The Board directed [W.] to provide additional financial information and documentation and to redo the budget in a correct form, with the necessary supporting information.

[12] In October 2003, being concerned with [W.]'s actions and inactions in failing to implement an accounting system, in refusing to provide financial documents, in failing to provide financial statements to the Board, in failing to adequately prepare the budget, and in continuing to fail to cooperate with the Board, the Board retained the services of Mew & Co., Chartered Accountants to perform a special investigation audit of the College's financial affairs.

[13] Over the next several months new issues arose. [W.]'s improper transcription of Board minutes led to a Board decision that all Board meetings be tape-recorded. A complaint was advanced by the president of the QATCMA (Qualified Acupuncturists and Traditional Chinese Medicine Association) about difficulties dealing with [W.]

[14] On October 17, 2003 the Board Chair, Mr. [M. L.] (“[L.]”), met privately with [W.]. [W.] complained of the Board’s failure to support him and what he perceived as its infringement on financial matters, which he insisted fell strictly under his management responsibility. [L.] responded and pointed out the various ways in which [W.] was not fulfilling his duties, nor following the Board’s directions. [W.] promised to correct these matters and to cooperate with the Board.

[15] However, at the Board luncheon meeting which followed on October 19, 2003, [W.] refused to commit to any changes or to cooperate with the Board. He insisted the Board had not conducted itself properly and had not adhered to its bylaws. Nevertheless, it was agreed that members of the Board and [W.] would maintain a united front at the upcoming QATCMA meeting.

[16] At the QATCMA meeting which followed, [W.] openly attacked the Board and referred to the Board’s alleged failure to comply with its own bylaws.

[17] On November 5, 2003 Mew & Co. provided its audit investigation and report to the Board. The report showed a number of irregularities totalling in excess of \$50,000, including [W.]’s alleged improper charging of overtime pay, as well as his alleged misappropriation of funds and diversion of property belonging to the College. The Board met to discuss the report at great length and ultimately was unanimous in its decision to terminate the petitioner’s employment. The petitioner was given a termination letter at the time he was dismissed, which set out the reasons for dismissal.

[18] Following his dismissal, the petitioner used the College’s database to e-mail every member of the college to support him by having his dismissal rescinded. He enlisted the support of some members in order to propose a resolution at the upcoming annual general meeting, which resolution was designed to restrict the Board’s right to deal with his employment. He refused to return the College’s property despite repeated request to do so and did not return the property until after the College commenced an action against the petitioner to recover that property and funds. Finally, in order to garner support to pressure the Board to rescind its decision to dismiss him, he engaged media and registrants by sending an open letter to members of the profession denouncing the Board’s termination of his employment.

**Analysis:**

[19] Relying upon the Supreme Court of Canada’s decision in ***Knight v. Indian Head School District No. 19*** (1990) 1 S.C.R. 653, the petitioner submits that in the case of statutory officeholder, an implied right of procedural fairness arises and must be met prior to any termination of employment. He submits that in the case at bar this implied duty of fairness is not excluded either by the governing statute or by the employment contract.

[20] Prior to the Supreme Court of Canada’s decision in ***Indian Head*** (supra), the weight of authority provided that where a statutory office is held at pleasure, there is no right to review. Although ***Indian Head*** (supra) provides that an employee in this position is entitled to fairness, it is only a minimal standard of fairness. Further, the standard of review in each case is to be determined by the specific provisions, if any, contained in the governing legislation and the employment contract, as well as the factual context of each particular case.

[21] In *Baker v. Canada (Minister of the Citizenship and Immigration)* (1999) 2 S.C.R. 817, the Court identified several factors which are relevant to determine the content of the duty of fairness:

- (a) the nature of the decision being made and process followed in making it;
- (b) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates;
- (c) the importance of the decision to the individual or individuals affected;
- (d) the legitimate expectations of the person challenging the decision; and
- (e) the choices of procedure made by the agency itself.

[22] In this case s. 16(1) of the Act provides it is the duty of the College at all times to serve and protect the public and to exercise its powers and discharge its responsibilities under all enactments in the public interest. Under s. 19 of the Act, the College may make bylaws to provide for the appointment, removal, functions, duties and remuneration of officers, employees and agents of the College. Section 21(1) of the Act requires the Board to appoint a registrar for the College and provides that the registrar will hold office during the pleasure of the Board. Although appeal procedures are included in the Act for registrants affected by decisions of the Board or one or more of its committees, there is no appeal procedure included which would apply to the registrar upon a decision being made by the Board to terminate his employment.

[23] As noted earlier, the petitioner's employment contract provides that:

The Board may terminate [R. W.]'s employment without notice and without compensation on the grounds of just cause, as defined under the common law, including gross neglect of duties.

[24] The petitioner submits that in this case, the statutory scheme, the legitimate expectations of the petitioner, and the choice of procedure by the Board are all neutral factors in assessing the content of the duty of fairness. However, he submits the significant and final nature of the decision, as well as the importance of the decision to the petitioner weigh in favour of the petitioner and that accordingly, he ought to have been provided with complete notice of reasons for the decision to terminate, an opportunity to consider the allegations, and an opportunity to present his own perspective to the Board in person, before any final decision to terminate was made by the Board. In other words, at a minimum, he submits he was entitled to notice of all the reasons why he was going to be terminated and an opportunity to try to change the College's mind. He submits that in these circumstances, given its failure to fulfil its duty of fairness, the Board's decision to terminate his employment should be declared null and void.

[25] In this case I do not intend to engage in an exhaustive analysis of the appropriate standard of review. Assuming, but without finding, that the appropriate standard of review is reasonableness simpliciter, this Court's role is not to substitute its own view of the facts for that of the Board to come to a different decision, but rather to determine whether or not the Board's decision was unreasonable and ought to be set aside. A court must not interfere unless the party seeking review has positively shown that the decision, taken as a whole, was unreasonable. If any of the reasons that are sufficient to support the conclusion are tenable, in the sense that they can stand up to a somewhat probing examination, the decision will not be unreasonable and the reviewing court must not interfere. The decision may satisfy the standard if it is supported by a tenable explanation. Even if this explanation is not one which the reviewing court finds compelling, a reviewing court should not seize on one or more mistakes which do not affect the decision as a whole (*Law Society of New Brunswick v. Ryan* (2003) 1 SCR 247).

[26] Considering the statutory framework, the terms of the petitioner's employment contract and the close communications and dealings between the Board Chair and the petitioner, I am not persuaded that even if there was a duty to act fairly, such a duty required any formal hearing in advance of the Board's decision to terminate the petitioner's employment.

[27] I am satisfied that by virtue of his earlier meeting with [L.] on October 17th, and his subsequent meeting with the Board on October 19th, [W.] was well aware of the Board's underlying complaints. He had a full opportunity to be heard both by [L.], in their private meeting, and later at the Board meeting called to review the matter. In my view, the requirements of procedural fairness were met in this case even though no structured "hearing" was held immediately in advance of the decision to terminate. Here, I am satisfied there was a fulsome communication of the broad grounds of dismissal in advance of the termination.

[28] [W.] has said that he unaware [*sic*] of any problems in his employment, and that while he took from his discussions with the Board members, that there were certain outstanding issues regarding his day-to-day management of the College, he did not perceive his employment was in jeopardy. He insists he was unaware of the particulars of any of the problems complained of by the Board until some six weeks following his dismissal, when he received a copy of the investigation audit report prepared by Mew & Co. In my view, this evidence is disingenuous and is completely contradicted by the body of evidence tendered by the College. Further, this position flies in the face of [W.]'s difficult tenure as Registrar and the fact that all of the complaints had been raised at least six months prior to his dismissal.

[29] I conclude there are no grounds for reinstatement in this case. Reinstatement is a discretionary remedy. In any case, I note the courts are extremely reluctant to order an employee's reinstatement, particularly where the circumstances show the working environment has been soured or the conduct of the employee would not be conducive to the effective operation of the employer's business (*Cimolai v. Children's and Women's Health Center of BC* (2003) B.C.J. No. 14313 (C.A.)). Here, I accept that as a result of the petitioner's conduct, the Board has lost all trust and confidence in the petitioner and that it would indeed be untenable for the petitioner to be reinstated to a position of trust in which he controls the College funds. In this regard, it should be noted that up to this point, the petitioner has yet to explain or respond in any way that to the alleged evidence of his deception and defrauding of the Board.

**Conclusion:**

[30] In all of the circumstances, I deny the petitioner's petition for reinstatement with pay to the position of registrar. The respondent is entitled to its costs of these proceedings.

"M.E. Boyd, J."

The Honourable Madam Justice M.E. Boyd

The complainant also sent an English translation of the letter that was placed on car windshields at the campaign event and was shown in the broadcasts. The document was signed by a professional translator.

[M. L.]'s Wicked Conduct in the CTCMA

As a lawyer, and ignoring the law, he purged people who held different views while the College of Traditional Medicine Practitioners & Acupuncturists of British Columbia was under his domination. In 2003, turning a deaf ear to the objection of Traditional Chinese Medicine

Practitioners such as Dr. [M. T. C.], he illegally terminated the former CTCMA Registrar, [R. W.], and intentionally smeared his professional integrity and reputation. As a result, he was sued by Mr. [R. W.]. The Court ruled in favour of Mr. [R. W.] and the CTCMA was forced to pay Mr. [R. W.] almost \$750,000.00 (\$500,000 in damages, plus two years' salary).

Faced with this huge amount of payment for damages, [M. L.] did not have the courage to take responsibility and he took to his heels. The huge amount of payment for damages brought on by his wicked conduct almost equals the aggregate annual dues paid by the thousands of Traditional Chinese Medicine Practitioners in BC over the years. As a result, the CTCMA will be forced to increase the yearly dues charged to all the Traditional Chinese Medicine Practitioners in order to meet the deficit. Complaints against [M. L.] are heard everywhere in the Traditional Chinese Medicine profession.

[M. L.] also abused his power and defied the existing Constitution by wantonly issuing Licences of Doctor of Traditional Chinese Medicine. One of his friends had neither clinical experience nor training in Chinese Medicine, but was issued a Licence of Doctor of Traditional Chinese Medicine by [M. L.], who had done this by overstepping his authority. This incident again caused a mighty uproar and controversy in the Traditional Chinese Medicine profession.

While the CTCMA was under his domination, [M. L.], ignoring the rule of Conflict of Interest and taking advantage of his own status as a lawyer, took on all the legal business. Using his office, he earned a large amount of legal fees. He has therefore made fame and gain.

[M. L.] fishes for fame and compliments and has earned an infamous reputation. He is still tangled with lawsuits and should not be trusted by the general public. People can imagine the disaster if he ever takes up public office!!

A Group of Righteous Chinese Medicine Practitioners

When the broadcaster sent the DVDs to the CBSC on July 27, it attached the following letter:

As requested, we are enclosing 8 DVD copies of the news story in our July 27, 2006 newscast with English translations. The DVD copies also include a related news story aired in our July 28, 2006 newscast, providing further fairness to Mr. [L.] by broadcasting his response; English translations for that story are also enclosed.

On reviewing this matter, it appears that we did not provide our answer to [the complainant]'s follow-up letter to the CBSC of August 24, 2006. Although that letter is mostly a repeat of [the complainant]'s earlier letter of complaint to which we have responded, we do wish to respond to some of the points raised.

First, Mr. [L.] told our reporter and we paraphrased him where he said he is confident his past experience will help him win this riding. He went on to give a direct clip by saying, "I feel that the Liberal members in this riding should have a choice ... instead of having no choice in who should represent them."

In this context, Mr. [L.] raised the interest and question in [sic] whether his past experience and background would indeed help his nomination result. It is in this light that when the anonymous letter surfaced after the pre-nomination party, and part of the letter raised a very prominent part of Mr. [L.]'s past experience, that is his involvement as chairman of CTCMA, that made it relevant for our news report to include the anonymous letter because it was clear

to us that a part of Mr. [L.]’s background and past experience has raised concerns in the community or potential voters in the nomination party to issue an anonymous letter placed on the windshield of Mr. [L.]’s guests’ parked cars.

Second, as stated before, the part of the anonymous letter we reported in our story was limited to the court decision on mishandling of [R. W.]’s firing. The visual we showed in our story also was not readable except for that page of the content. I would like to reiterate that the anonymous letter included many pages of information, we only reported on the one area that was factually supported by court decision.

The item from the letter which was reported was confirmed as a matter of public court record, and was directly relevant to an important issue in any nomination campaign, emphasized by Mr. [L.] himself, namely, his past experience and performance. In our journalistic judgment this was both factually solid and in the public interest as voters in the community had taken issue with one part of Mr. [L.]’s past experience and we merely included that fact in our news story.

Third, regarding the alleged inaccuracy in the amount of the dismissal award, we had direct factual information from a source which was privy to the information, and [the complainant] fails to provide any details to judge whether his disagreement with the figure is simply based on a different calculation or estimate and whether the difference is of any significant amount. The full magnitude of wrongful dismissal awards requires the inclusion of the salary over time, interest and costs. Without further detail from [the complainant], we can only assume the difference may lie in whether he is including all aspects of the award. We have offered to report a correction if any concrete error and amount is provided, and his letter fails to assist.

Fourth, as for [the complainant’s] point that because the other media did not report on the same information, therefore we should not either, I wanted to emphasize that we reported on many stories that the other media did not cover. A free and energetic media thrives on differing approaches and stories, not behaving like sheep.

Lastly, I would also like to quote a radio audience [member] who called in a radio talk show about our coverage in question, and pointed out that if Fairchild TV did not include that letter, Fairchild TV would look as if we were trying to help Mr. [L.] in his campaign. The letter was a relevant part of the campaign, we only reported the part which could be factually confirmed, and we broadcast Mr. [L.]’s response.

The broadcaster’s lawyer sent an additional letter on November 14 after the CBSC sent it copies of the translations provided by the complainant.

Dear Sirs/Mesdames:

We represent Fairchild Television, and write in response to a translation submitted by the complainant, of the leaflet which was briefly shown in our client’s newscast on July 27, 2006.

Fairchild Television submits that that translation provided by [the complainant] does not provide a fair or realistic representation of what actual viewers of the newscast saw and understood.

First, it was apparent that [the complainant]’s translator had an actual copy of the letter which was referenced in the newscast in preparing the translation, as the newscast did not show the entire letter. The most obvious illustration of this is that the translation includes a large title “[M. L.]’s Wicked Conduct in the CTCMA” which was never shown onscreen in the newscast.

Second, the letter, which is quite lengthy, was only shown in a quick four second camera tilt-down, which viewers would not actually be able to read. The camera panned quickly from near the top of the letter to the bottom and was simply a visual depiction of what someone had placed on car windshields during the nomination meeting which was the subject matter of the newscast.

Obviously, the CBSC should judge the complaint based upon what an actual viewer actually saw. To provide the best evidence of this, our client has consulted translators in both the Mandarin and Cantonese languages as the newscasts are transmitted in both languages, to identify (in translation) what they could actually notice by watching the broadcast.

To ensure that Fairchild Television were being generously fair to the complainant, they had each translator watch the newscast in their respective languages twice, as Fairchild's newscasts are broadcast twice. Our client's research indicates that viewers tend to watch only one or the other, but given the possibility that a small number of viewers might have watched them both, our client wanted their translators to simulate that experience.

The translations, along with a document setting forth a translation of the voiceover which accompanied the image of the letter, are attached as follows:

1. Cantonese translation from the first viewing of the Cantonese broadcast, in which the translator was only able to catch the following words:

"[M. L.] indicates" ... "A Group of Righteous Chinese Medicine Doctors" ... "as a result, the court awarded seven hundred fifty-five thousand dollars (five hundred thousand dollars)" ... "a group of righteous Chinese medicine doctors".

2. Cantonese translation after the translator's second viewing of the Cantonese newscast, in which he was able to glean the following from the image of the letter:

"The reputation of Mr. [C-K. W.] as a result of the court awarded seven hundred fifty-five thousand dollars (five hundred thousand dollars) as a result five hun" ... "seven hundred fifty-five thousand dollars (five hundred thousand dollars)" ... "[C-K. W.] the court awarded" ... "seven hundred fifty-five thousand dollars (five hundred thousand dollars)".

3. Mandarin translation from the first viewing of Mandarin broadcast, in which the translator explained what he could understand from the letter showing the newscast as follows:

"I did see the flyer on the screen but did not get much of it because it was not a whole-page shot and it seems only the middle part of each sentence was displayed. I remember I saw some name ('Huang'?) and some numbers ('seven hundred fifty thousand?') and saw what I guess (is) the signature part most clearly ('A Group of Righteous ...') because it was displayed relatively longer. I don't remember I saw the heading of the flyer. These may be from different shots of the whole story because I don't have the expertise to distinguish different kinds of shots."

This interpreter goes on to say that he was unable to associate the translated voiceover with the image of the letter.

4. Mandarin translation after his second viewing of Mandarin broadcast. The translator states:

"On the second viewing, I saw the flyer more clearly. I don't remember I saw the heading. I remember the moving shot was from top to bottom. Different from what I remembered from the first viewing, each line was displayed from beginning to end. I saw the signature/bottom part more clearly ('A Group of Righteous Traditional Chinese Medicine Practitioners'). I saw the name 'Huang Zhigiang', the words

'court' and the numbers '750,000'. I saw other words but just don't remember. What I saw may be different shots because I don't have the expertise to distinguish different types of shots."

It is apparent that even a professional translator, watching the newscast twice, was unable to catch any more than snippets of the letter. It is submitted that this is not surprising considering the quick pan of the letter was too fast for a reasonable person to read, and was intended to simply show a brief image of what was handed out. The voiceover explained the one aspect of the letter which our client felt confident reporting given that it was confirmed by judicial decisions in British Columbia, namely the wrongful dismissal award given to [R. W.]. The other allegations in the letter were not reported by Fairchild Television and the quick pan of the image of the letter did not permit viewers to see them.

Attached to this letter were signed declarations and hand-written notes by the translators employed by Fairchild/Talentvision.

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## APPENDIX C

### **CBSC Decision 05/06-1841 & -1842 Fairchild Television & Talentvision re news reports about a political campaign**

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The two judgements referred to in the decision can be obtained from the following World Wide Web links:

*Wong v. College of Traditional Chinese Medicine Practitioners and Acupuncturists of British Columbia*, 2005 BCCA 509

<http://www.courts.gov.bc.ca/Jdb-txt/CA/05/05/2005BCCA0509.htm>

*Wong v. The College of Chinese Medicine Practitioners and Acupuncturists of British Columbia*, 2004 BCSC 1212

<http://www.courts.gov.bc.ca/jdb-txt/sc/04/12/2004bcsc1212.htm>