
CANADIAN BROADCAST STANDARDS COUNCIL

NATIONAL SPECIALTY SERVICES PANEL

CTV Newsnet re two reports entitled “Anti-Terror Measures Voted Down”

(CBSC Decision 06/07-0745)

Decided November 29, 2007

R. Cohen (Chair), T. Rajan (Vice-Chair, Public), E. Duffy-MacLean, M. Hogarth,

V. Houle, G. Phelan

THE FACTS

On February 28, 2007, CTV Newsnet broadcast two reports relating to Canada’s anti-terrorism legislation, both entitled “Anti-Terror Measures Voted Down”. On the first, which aired from 1:10-1:14 pm Mountain Time, anchor Dan Matheson interviewed a former CSIS (Canadian Security Intelligence Service) Officer, Michel Juneau-Katsuya. The transcript of that discussion follows:

Matheson: Opposition parties joined forces in the Commons last night to vote down the extension of two contentious anti-terrorism measures. The motion was defeated by a vote of 159 to 124. Joining us now is Michel Juneau-Katsuya. He is a former senior CSIS intelligence officer and the president and CEO of the Northgate Group. Michel, was this a big deal? These two, these two provisions have been used, in total, just once.

Juneau-Katsuya: Good point. Uh, in a sense, it’s not a big deal in the sense that, you know, the world is not going to, to spin. For the law enforcement and the intelligence services, they’re still going to be doing their work and they’re going to go about doing it. The problem to a certain extent is that it’s just raised the bar a little bit higher when, uh, time is not, uh, always a luxury that we have when we deal with, uh, terrorism. See, the difference is that terrorism is not like organized crime or crime, period. Crime, there’s many things that can happen and we, it’s too bad but, you know, we can sort of say we need to, to exercise a certain, uh, justice process and exercise the legal procedures a certain way and in the process we, we will accept that, uh, some people might be victimized in the exercise. But terrorism, and particularly the type of terrorism that we’re currently dealing with, we’re talking about guys who are ready to blow themselves up at the same time they’re committing an attack. Uh, sometimes for, for the police or for the

intelligence services, time is not, uh, on their side. So they, they, they argued that they needed this kind of, uh, of tools [*sic*] to be capable to arrest people in a preventative way and even force people to testify and to communicate and share information that they have. These two elements have now been, uh, taken away and they're back to the, uh, normal procedures. And, like I said, a little extra work every time now.

Matheson: Well, give us some sense of how, how damaging that is for the Mounties and for CSIS in their efforts, uh, to keep in touch with these people and to track these things and to prevent anything from happening in this country. These things sound like pretty draconian measures to the average person. Uh, they don't sound like the Canadian traditional judicial system whatsoever. You can arrest a guy on suspicion, hold him indefinitely, force him to testify. That doesn't sound Canadian to a lot of people.

Juneau-Katsuya: No, no, it is not Canadian. Uh, just like terrorism is not Canadian to a certain extent and that's kind of the, unfortunate, uh, new era in which that [*sic*] we are currently living. Now for the law enforcement agencies, like I said, it is not earth-shattering. Uh, to a certain extent, they still going [*sic*] to be capable to do their work and will be capable to do it.

They concluded by discussing how the elimination of the measures would alter the approach to law enforcement in terrorism-related circumstances.

The second report, which aired between 7:40-7:45 pm, included an interview by anchor Sandra Jansen of the Secretary General of Amnesty International Canada, Alex Neve. The transcript of the material part of that interview follows:

Jansen: Alex Neve, Secretary General of Amnesty International Canada welcomes the House of Commons decision not to extend certain anti-terror measures. He joins me now from Ottawa. Alex, you were worried about these provisions back in 2001 when they were introduced. Tell me about that.

Neve: Uh, we were. Back in 2001, uh, Canadians will remember that we had a very rushed process of bringing in this new anti-terrorism legislation and there were a number of provisions in the Act which raised concerns from a human rights perspective. And these were two. Uh, the preventative arrest and investigatory hearing provisions we felt, uh, trod on civil liberties, on fair trial rights in an undue manner and in a way that had not been demonstrated to be necessary by the government. There was no indication of what it was about existing Canadian legal provisions that made these extraordinary provisions necessary. So five and a, a bit years later, uh, -- it's taken that long -- but we're pleased to see now that Parliament has decided that it is time to get rid of these provisions, uh, and that they will no longer be part of Canadian law.

Jansen: Well, there are those people who say those provisions were rarely used anyway. Why is this impactful?

Neve: Uh, well, the concern is that, uh, that they were there and cast, cast a pall over, uh, the anti-terrorism legislation. They were provisions which, if used, uh, would be, would operate in a manner that infringes on basic rights, uh, and, and whether they're used or not, we simply shouldn't have those kinds of provisions on the books in Canada. For our own legal system it's necessary that we have the, the strongest laws possible from a human rights perspective. But also in terms of the kind of legislation we're modelling to the rest of the world, we want to make sure we have the very best package that we can.

They then went on to discuss human rights issues in Afghanistan and the title changed to “Human Rights Watch”.

The CBSC received a complaint about the two reports via e-mail on February 28. It read in part (the full text of all correspondence can be found in the Appendix):

At approximately 1:42 pm MST today, 28 February 2007, during an interview of the former CICS representative "Michel" [Juneau-Katsuya] on CTV Newsnet Dan Matheson stated that under the anti-terror measures a person could be arrested and held "indefinitely" - preventative arrest. I believe that the provision limits detention to 48 hours. If so, this is a big discrepancy.

In addition, at approximately 19:15 MST Sandra Jensen was interviewing a human rights advocate and made the statement that these special powers for combating terrorism were "seldom used". Actually they have never been used. "Rarely" and "never" are two very different words and “rarely” implies that the provisions were, on occasion, invoked.

[...]

If these deviations prove to be correct, they only reinforce my views that CTV management and therefore their research is biased in favour of the Liberals. And I intend to make my point very strongly the next time that [their] broadcasting license is up for renewal. I should be able to engage with any media within Canada and expect to receive accurate and unbiased information from the reporters with opinion and spin reserved solely for the editorial page.

The complainant then sent an e-mail to CTV Newsnet on March 1 with a copy to the CBSC:

I have researched the provisions and this is what I found: "The two provisions within C-36 are 1) 'preventive arrest' without bail for 72 hours and 2) 'investigative hearings' of material witnesses."

On March 4, the complainant re-sent his initial complaint because he had received “no response or acknowledgement”.

CTV Newsnet sent its reply to the complainant on April 5:

First, we want to thank you for choosing CTV Newsnet as your source for News coverage and for taking the time to share your thoughts. Your email expressed concern over two separate interviews you saw on CTV Newsnet dealing with Parliament's vote against extending two provisions of the Anti-terrorism Act. The first provision allowed for preventative arrests, while the second allowed judges to compel witnesses to give evidence during an investigation.

In the first interview, when questioning former CSIS Senior Intelligence Officer Michel Juneau-Katsuya, anchor Dan Matheson, while framing a question, included the following: “you can arrest someone on suspicion, hold him indefinitely, force him to testify...” You point out in your letter that the provision limits detention to 48 hours. Later, when interviewing Alex Neve of Amnesty International Canada, Sandra Jansen asked: “there are people who say those provisions were rarely used anyway, why is this impactful?” Again, you point out that the provisions were never used.

Both anchors were questioning experts, posing questions seeking clarification on the law, its effects and its usefulness. They were not stating facts to the viewer, they were asking the guests to respond to views of this legislation that have been expressed by others. The expectation was that the guests would provide the facts and clarification and if necessary correct any misconceptions.

In your letter you add that "if these deviations prove to be correct they only reinforce my views that CTV management and therefore their research is biased in favour of the Liberals". On this point we strongly disagree with your assertion. After careful review we find that both interviews were balanced and allowed ample opportunity to respond.

While we regret that you were offended and that was certainly not our intent, we believe that both segments were fair and accurate and in accordance with all applicable industry codes, guidelines and legislation. [...]

The complainant expressed his dissatisfaction with that response on April 5:

In neither case cited in my complaint do you acknowledge that the questioner inserted incorrect information into their statements. It is as if journalistic accuracy is incidental to your station.

Furthermore, you state that "The expectation was that the guests would provide the facts and clarification and if necessary correct any misconceptions."

I find the latter rather disingenuous since it seems to imply that the questioners, who are arguably Canadian journalistic [sic] icons, are permitted to embed false information in a question that is seeking an answer to a broader point. Then to add insult to injury, your remedy seems to be that the person being interviewed then has the accountability to correct this cloaked misinformation before answering the core question.

At least that is how I interpret your response. Please correct me if you meant it in a different way.

I'm amazed that the CBSC allows its members this much latitude with the truth since it leaves the door open to sloppy journalism which is only called to account when someone gets caught asking loaded questions?

And I assign a bias to your editorial content since these "little slips" all seemed to reinforce the Liberal claims that these measures trample human rights and pose a danger to "Canadian values". They did not fall in the middle (i.e. neutral as they should have) and they certainly did not have a tone of "this is strong medicine but we need it in case something terrible was going to happen".

My advice to you is to verify the facts, stick to accurate information in your interviews and leave the emotive slant to the politicians. It's called credibility.

THE DECISION

The National Specialty Services Panel examined the complaint under the accuracy provisions of both the Canadian Association of Broadcasters' (CAB) *Code of Ethics* and the Radio Television News Directors Association of Canada (RTNDA) *Code of (Journalistic) Ethics* which read as follows:

CAB Code of Ethics, Clause 5 – News

- 1) It shall be the responsibility of broadcasters to ensure that news shall be represented with accuracy and without bias. Broadcasters shall satisfy themselves that the arrangements made for obtaining news ensure this result. They shall also ensure that news broadcasts are not editorial.
- 2) News shall not be selected for the purpose of furthering or hindering either side of any controversial public issue, nor shall it be formulated on the basis of the beliefs, opinions or desires of management, the editor or others engaged in its preparation or delivery. The fundamental purpose of news dissemination in a democracy is to enable people to know what is happening, and to understand events so that they may form their own conclusions.
- 3) Nothing in the foregoing shall be understood as preventing broadcasters from analyzing and elucidating news so long as such analysis or comment is clearly labelled as such and kept distinct from regular news presentations. Broadcasters are also entitled to provide editorial opinion, which shall be clearly labelled as such and kept entirely distinct from regular broadcasts of news or analysis.

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.

The Panel Adjudicators read all of the correspondence and reviewed a tape of the two reports. The Panel concludes that neither report was in violation of the aforementioned Code provisions.

A Preliminary Issue: Political Bias

The complainant has alleged political bias of the broadcaster in favour of the Liberal Party, which was the Official Opposition at the time of broadcast. In his letter of February 28, he said, "CTV management, and therefore their research, is [*sic*] biased in favour of the Liberals." And then again, in the correspondence of April 5 that constituted his Ruling Request, he expressed the same thought in the following language: "And I assign a bias to your editorial content since these 'little slips' all seemed to reinforce the Liberal claims that these measures trample human rights and pose a danger to 'Canadian values'." It appears to the Panel that the complainant has determined that, to the extent that any criticism of Conservative Government policy could be read into the

conduct of the interviewers (more on this issue below), the only explanation of motive could be anti-Conservative, pro-Liberal bias.

The Panel considers this allegation to be of the most speculative nature. It does not find a *shred* of evidence to support the notion in the words, tone or demeanour of either of the anchors. It also notes the strong disagreement of the CTV Newsnet Supervising Producer with that assertion, which it does not in any event *need* in order to dismiss the complainant's hypothetical and conjectural assertion.

Accuracy and Fairness

It is clear from the clauses in both the *CAB Code of Ethics* and the *RTNDA Code of (Journalistic) Ethics* that *accuracy* is a hallmark of both. As will be readily appreciated, though, accuracy is not a mathematically definable concept. It is evident that it cannot reasonably be expected that "every inadvertence or inappropriate comment will fall afoul of the various broadcaster Codes." [See *CHAN-TV re Newscast (Recycling Society)* (CBSC Decision 96/97-0004, March 10, 1997).] Thus, for example, in *CITY-TV re CityPulse (Tenant Relocation)* (CBSC Decision 96/97-0252, February 20, 1998), when the Ontario Regional Panel was called upon to assess the alleged inaccuracy of the reporting of the civic location of a building in the Toronto area, it said:

Few, if any, would know or even care whether 46 The Queensway is civically located in Parkdale or High Park. If a broadcaster inadvertently recounted a news story about Basque terrorists and carelessly reported that Barcelona was in Italy, could this possibly be a reason for any sanction in terms of the broadcaster Codes? Surely not. Barcelona is where it is, just as 46 The Queensway is. At worst, placing either location elsewhere could be embarrassing for the broadcaster, but certainly not an offence under any Code.

In other words, an insignificant and immaterial erroneous statement will not automatically amount to a breach of the Code. In order to determine the significance and materiality of any challenged statement, the adjudicating Panel will naturally examine the context of the report.

In another decision, which bears some similarity to the matter at hand, namely, *TQS re a report on Le Grand Journal ("Machine Gun by Mail")* (CBSC Decision 05/06-0785 & -0800, June 30, 2006), the broad subject reported on was Canadian firearm legislation. In response to the reporter's claim that powerful weapons were easily obtainable despite Canada's gun registry program, two complainants argued that the report contained inaccurate and misleading information about Canadian laws and the actual weapons shown in the report. The Quebec Regional Panel concluded that the report had "somewhat distorted" the information, but that it did not technically contain any inaccurate statements. In other words, although the Panel found no breach, it did have

some concerns with the broadcaster's presentation. It expressed its uneasiness in the following way:

[T]he Panel regrets the rather liberal or loose use of accurate terminology used by [the reporter] to illustrate his point. As he admitted in the TQS letter, duck and squirrel hunting permits do not exist in Canada. He then explained that an apparently material part of his story, relating to the age at which one can obtain a permit "has nothing to do with the subject of the report which did not relate to the age of acquisition of a firearm in Canada." His explanation for the use of such terms: "I was just illustrating my topic." His justification: "It is common in journalism to use lapidary [*sic*] and colourful formula in punch lines." The Panel disagrees. Colourful is fine. Terse and succinct are fine. Illustrative is fine. Irrelevant and misleading are not. They are a regrettable usage and suggest sloppier practices than are customary in the exercise of serious journalism. That being said, [...] the Panel is not of the view that any of the statements is materially incorrect or that the overall perspective left is materially misleading. The Panel wishes that the reporter had been more thoughtful in his presentation but, in conclusion, it finds no breach of the codified standards cited [in the TQS decision].

Beginning with the second of the reports, the Panel notes that the only contentious statement by news anchor Jansen, insofar as the complainant is concerned, was her interrogative observation that "there are those people who say those provisions were rarely used." The complainant's assertion was that "[a]ctually they have never been used. 'Rarely' and 'never' are two very different words and rarely implies that the provisions were, on occasion, invoked." Apart from the fact that the CBSC has not researched the issue in order to determine whether the provisions had been used at all, the Panel does not agree with the materiality of the complainant's contention that, in effect, "rarely" and "never" are poles apart. The Panel's view is that both words imply great infrequency; in a sense, the quantification of the level of infrequency is the only issue (as the *Oxford English Dictionary* says of "rarely", "Seldom, infrequently, in few instances" or "In an unusual degree; exceptionally"). Either once in a hundred or once in five hundred would constitute "rarely" but not, it is true, "never". The elimination of the "once" in either of those examples would become "never". Contrapuntally, the addition of "once" to a "never" designation would technically make it "rarely". This is, however, in the view of the Panel and for these purposes, a hair-splitting or "how many angels can dance on the head of a pin?" issue. It is immaterial, a distinction without a difference, a cautious use of words by a news anchor who cannot be certain that, by using "never" rather than "rarely", she would be correct. She has taken the safe fork-in-the-road option, and has thereby deceived no-one in any material way. There is no Code breach on this account.

The Panel turns now to the first of the reports, in which the issues are different. In this case, the Panel does consider that anchor Dan Matheson adopted a rather problematic approach to his role. Although he was the person asking the questions, he described matters as though he were answering them. In the first exchange, for example, he referred to the legislative measures with the following factual assertion: "These two,

these two provisions have been used, in total, just once.” Nor did he ask his expert interviewee whether that was accurate. He merely asked whether, in such factual circumstances, “this [was] a big deal.” And then, in the second exchange, he asserted, “You can arrest a guy on suspicion, hold him indefinitely, force him to testify.” He did not even put a question to the interviewee in connection with that statement; he merely asserted that “[t]hese things sound like pretty draconian measures to the average person. Uh, they don’t sound like the Canadian traditional judicial system whatsoever.”

The Panel finds that the anchor’s approach was unfocussed, exceedingly casual and without the rigour that an audience is entitled to expect from a news anchor. Nor should an anchor be entitled to rely (as the broadcaster’s representative stated in his letter) on “[t]he expectation [...] that the guests would provide the facts and clarification and if necessary correct any misconceptions.” While it *is* fair to expect that expert interviewees will provide facts, these should be delivered in reply to *questions* rather than apparently factual assertions on the part of the news anchor. Nor, in that sense, should there be any misconceptions to be corrected. The anchor should be asking questions, not proffering factual concepts susceptible of correction.

The bottom line, though, is that, while the Panel considers the Matheson interview to have been disappointingly conducted for the reasons stated in the preceding paragraph, it does not conclude that the interview was *materially* false or misleading and *that* is the element essential to a finding of breach of either of the foregoing codified news provisions.

Broadcaster Responsiveness

In all CBSC decisions, the Council’s Panels assess the broadcaster’s responsiveness to the complainant. In the present instance, the Panel finds that the response of CTV Newsnet’s Supervising Producer was, in this regard, thoughtful and responsive. It focussed on the precise elements of the complaint and dealt with them in a helpful manner. Although it was not a satisfactory reply from the complainant’s perspective, the broadcaster is never under any obligation to agree with the complainant. Not only is there no fault in the difference of perspectives, it is the case that every matter that goes to a Panel for adjudication begins with just such a disagreement between the complainant and the broadcaster. The Panel considers that CTV Newsnet has fully met its CBSC membership responsiveness responsibilities.

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

APPENDIX

CBSC Decision 06/07-0745 CTV Newsnet re two reports entitled "Anti-Terror Measures Voted Down"

The Complaint

The CBSC received the following complaint via e-mail on February 28, 2007:

At approximately 1:42 pm MST today, 28 February 2007, during an interview of the former CICS representative "Michel" on CTV Newsnet Dan Matheson stated that under the anti-terror measures a person could be arrested and held "indefinitely" - preventative arrest. I believe that the provision limits detention to 48 hours. If so, this is a big discrepancy.

In addition at approximately 19:15 MST Sandra Jensen was interviewing a human rights advocate and made the statement that these special powers for combatting terrorism were "seldom used". Actually they have never been used. "Rarely" and "never" are two very different words and rarely implies that the provisions were, on occasion, invoked.

Would seven days suffice for you to investigate these issues and if I am correct, to expect CTV to issue a public retraction on air?

Incidentally, I do not hold these alleged slips against the reporters. In fact Dan is one of my favourite people and I was delighted when he began anchoring Newsnet years ago. If these deviations prove to be correct, they only reinforce my views that CTV management, and therefore their research, is biased in favour of the Liberals. And I intend to make my point very strongly the next time that your broadcasting license is up for renewal. I should be able to engage with any media within Canada and expect to receive accurate and unbiased information from the reporters with opinion and spin reserved solely for the editorial page.

The complainant sent a second e-mail to a station employee on March 1, with a copy to the CBSC:

Since I sent you the original note yesterday, [K.], I have researched the provisions and this is what I found: "The two provisions within C-36 are 1) 'preventive arrest' without bail for 72 hours and 2) 'investigative hearings' of material witnesses."

I await your response.

On March 4, the complainant re-sent his initial complaint because he had received "no response or acknowledgement".

Broadcaster's Response

CTV Newsnet replied on April 5 with the following:

I have received your complaint of Wednesday February 28, 2007 to the Canadian Broadcast

Standards Council (CBSC) which in turn has forwarded it to CTV News for a response.

First, we want to thank you for choosing CTV Newsnet as your source for News coverage and for taking the time to share your thoughts. Your email expressed concern over two separate interviews you saw on CTV Newsnet dealing with Parliament's vote against extending two provisions of the Anti-terrorism Act. The first provision allowed for preventative arrests, while the second allowed judges to compel witnesses to give evidence during an investigation.

In the first interview when questioning former CSIS Senior Intelligence Officer Michel Juneau-Katsuya, anchor Dan Matheson while framing a question included the following: "you can arrest someone on suspicion, hold him indefinitely, force him to testify..." You point out in your letter that the provision limits detention to 48 hours. Later, when interviewing Alex Neve of Amnesty International Canada, Sandra Jansen asked: "there are people who say those provisions were rarely used anyway, why is this impactful?" Again, you point out that the provisions were never used.

Both anchors were questioning experts, posing questions seeking clarification on the law, its effects and its usefulness. They were not stating facts to the viewer, they were asking the guests to respond to views of this legislation that have been expressed by others. The expectation was that the guests would provide the facts and clarification and if necessary correct any misconceptions.

In your letter you add that "if these deviations prove to be correct they only reinforce my views that CTV management, and therefore their research, is biased in favour of the Liberals". On this point we strongly disagree with your assertion. After careful review we find that both interviews were balanced and allowed ample opportunity to respond.

While we regret that you were offended and that was certainly not our intent, we believe that both segments were fair and accurate and in accordance with all applicable industry codes, guidelines and legislation. CTV is a member in good standing of the CBSC and adheres to its guidelines.

Additional Correspondence

The complainant expressed his dissatisfaction with that response on April 5:

Thank you for your detailed reply.

However I am still not satisfied with your answer and here is why:

In neither case cited in my complaint do you acknowledge that the questioner inserted incorrect information into their statements. It is as if journalistic accuracy is incidental to your station.

Furthermore, you state that "The expectation was that the guests would provide the facts and clarification and if necessary correct any misconceptions".

I find the latter rather disingenuous since it seems to imply that the questioners, who are arguably Canadian journalism icons, are permitted to embed false information in a question that is seeking an answer to a broader point. Then to add insult to injury, your remedy seems to be that the person being interviewed then has the accountability to correct this cloaked misinformation before answering the core question.

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And I assign a bias to your editorial content since these "little slips" all seemed to reinforce the Liberal claims that these measures trample human rights and pose a danger to "Canadian values". They did not fall in the middle (i.e. neutral as they should have) and they certainly did not have a tone of "this is strong medicine but we need it in case something terrible was going to happen".

My advice to you is to verify the facts, stick to accurate information in your interviews and leave the emotive slant to the politicians. It's called credibility.

On June 25, the complainant wrote directly to the CBSC asking "How is the investigation into my complaints coming along?" with a copy of his above April 5 correspondence pasted into that e-mail.