
CANADIAN BROADCAST STANDARDS COUNCIL

PRAIRIE REGIONAL PANEL

CITV-TV (Global Edmonton) re a *News Hour* report (“Daughter Sues Foster Mom”)

(CBSC Decision 07/08-1158)

Decided May 12, 2008

K. Johnston (Acting Chair), J. Fong, R. Pagtakhan, G. Spenrath

THE FACTS

On January 16, 2008, during its 6:00 pm *News Hour* newscast, CITV-TV (Global Edmonton) aired a report about a woman who was suing her adoptive mother, the transcript of which is provided below.

As a preliminary matter, it should be noted that, as a simple courtesy to the parties to the litigation, whose names have been disclosed in the challenged broadcast and in other media, their initials only are used in this decision. This is not a reflection of any legislative or codified privacy rules. It is rather the long-standing practice of the CBSC, which is not a news organization, not to publish the names of individual complainants or subjects of news stories where there is no over-riding need to do so. Indeed, a review of the CBSC’s decisions will indicate that not even the names of the broadcaster representatives who respond to complainants are disclosed, even though they are generally considerably more public figures than the persons who complain to them. Briefly put in other terms, the CBSC is more interested in the substance of its decisions than the possible distraction presented by the identification of the individuals involved in the complaints process.

Anchor Lynda Steele: She adopted a baby girl more than four decades ago and now she’s being sued for her attempt to give the child a better life. The 71-year-old senior is

facing a half-million dollar lawsuit launched by her adopted daughter from Edmonton. Fletcher Kent explains why.

[scene of Fletcher Kent and D.M. sitting at her kitchen table looking at photographs]

D.M.: It brings back memories. Good memories.

Kent: Sitting at the table in her apartment, 71-year-old [D.M.] reflects on better days, ones in which she and her now-44-year-old adopted daughter [D.P.] weren't embroiled in a lawsuit.

D.M.: Hard. I think I've lost.

[D.M. looking at a document.]

Kent: In December, [D.M.] was served with a half-million dollar lawsuit. The document alleges in 1963 [D.M.] worked with doctors in Royal Alexandra Hospital to convince [D.P.]'s birth mother that her daughter had died. All this was allegedly done in order for [D.M.] to adopt [D.P.]. It also claims [D.P.] grew up in sub-standard housing.

D.M.: When I read through it, like, it was just like somebody yanked part of my heart away.

[clips from old home videos: groups of children sitting on steps, in the back of a station wagon, and on a swing-set.]

Kent: [D.M.] is also confused. She thought [D.P.]'s life was good growing up. She took [D.P.] into her home as a foster child six weeks after her birth upon the request of Child Welfare. As for the living conditions, ...

D.M.: We'd just finished buying a brand new show home. And brand new furniture, so how can that be sub-standard?

[family photos: a group of people around a dining room table; a school photo of a girl (presumably D.P.).]

Kent: One of [D.M.]'s three biological sons is angry. Speaking from his Saskatchewan home, he questions his sister's motivations.

Voice of [Mr. D.P.], Defendant's son, Elrose, SK: After they raised my sister for many years and then for her to turn around and do something like this.

[family photos: D.M., D.P. and an elderly woman holding a baby; D.P. putting flowers in D.M.'s hair; D.M. helping D.P. with the veil of her wedding dress; bride, groom, D.M., a man and a young boy.]

Kent: [D.M.] has yet to respond to the lawsuit. She says she can't afford a lawyer. She hopes to soon figure out what to do next. In the middle of her legal woes, she tries to come to terms with a heartbreaking family feud too.

D.M.: And a part of me will always love her. She's [points at her heart]. Well, here's my family ring [points to ring on her finger] and she's closest to my heart [close-up of ring].

Kent: Fletcher Kent, Global News.

Steele: According to [D.M.], [D.P.] did contact her birth mother a few years ago. The two apparently remain close. [D.P.] is also suing the Royal Alexandra Hospital, two doctors who were involved with the delivery and the Province of Alberta.

The CBSC received a complaint dated January 25 from the woman who had initiated the lawsuit against D.M. She outlined her concerns as follows (the full text of all correspondence can be found in the Appendix; note that all emphasis in the following letter is original):

January 16/2008, Global TV Edmonton (Canwest Global Communications Corp) grossly violated my privacy by publicly broadcasting all my **Personal Identifiable Information** [sic] with **No Consent** on the evening headline news while covering "Daughter Sues Foster Mom" story.

Global TV Edmonton was contacted by my lawyer on the afternoon of January 16/2008 prior to their release of the evening news. Global TV was advised at that time to **not release any of my Private or Personal Identifiable Information** [sic], as **this case is subject to a publication ban, *note *Child and Youth Family Enhancement Act, Sec. 126.2.***

Global TV was informed at that time that it would be inappropriate for myself or lawyer to comment as this case is currently under criminal investigation.

Global TV Edmonton gave no thought to the consequences and in my view behaved recklessly in revealing the following:

Name in full

Birthdate & Year

Birthplace

Current Residing city

Video clips Baby to 4 yrs old

My Photos thru the years including wedding pictures

In my opinion, Global News could have covered their story "Daughter Sues Foster Mom" without publishing my Personal & Private Information. I spent the greater part of my life researching with the hopes of one day relocating my birth biological family, as there are privacy laws that forbid me to access this Identifiable Information or publish [sic]. I question the media's integrity while covering this story, as they were notified by my lawyer and preceded [sic] without any regard to his request, my identity or the investigation.

The News Director of Global Edmonton replied to the complainant with a letter dated February 14:

As responsible broadcasters, our entire news team strives to uphold the highest level of journalistic integrity and ethics at all times. Our staff members are educated to produce material in accordance with community standards and with the Canadian Association of Broadcasters' (CAB) *Code of Ethics*, *Sex-Role Portrayal Code*, and the *Voluntary Code*

Regarding Violence in Television Programming. Global News also adheres to the Radio Television News Directors Association of Canada (RTNDA) *Code of Ethics*.

At the time of our story, there was no publication ban in place and the correspondence from your lawyer, Mr. [R. L.], suggested we seek legal advice about reporting on your story, which we did. After consultations with our lawyer, we learned we were within our legal rights to both interview your foster mother and show the photos and other items.

While the use of the photos and documents in our report may have caused you some discomfort, we are confident it was not in violation of the *Child Youth and Enhancement Act* nor any of the broadcast codes referred to above.

The complainant wrote to the CBSC on February 25 indicating that she would like to proceed with her complaint. She reiterated her concern that the station had broadcast personal information about her without her consent and wrote that Global's letter indicated that it "has no regard for any of the issues above. Least of all, they are not even apologetic!" She also attached a copy of a fax from her lawyer that had been sent to Global on January 18. The fax read in part that, pursuant to section 126.2 of the *Child, Youth and Family Enhancement Act*, "nobody can publish the name of my client. I strongly suggest that you seek legal advice if you intend to publish a story on this case."

THE DECISION

The Prairie Regional Panel examined the complaint under the following article of Radio Television News Directors Association's (RTNDA – The Association of Electronic Journalists) *Code of Ethics*:

Article 4 - Privacy

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

The Panel Adjudicators viewed a tape of the broadcast and read all of the correspondence. It concludes that the broadcast did not violate Article 4 of the *RTNDA Code of (Journalistic) Ethics*.

The Infringement of Privacy: Some General Principles

The Prairie Regional Panel acknowledges that the broadcaster has disclosed information of a private nature, but the Panel's challenge is to determine whether this

disclosure breaches the privacy rights of the complainant. The Panel hastens to add that the article makes it clear that the obligation of broadcasters is not to *entirely avoid* infringement of the privacy of everyone with whom they deal, but rather to use their best efforts to ensure that they do not *unreasonably* infringe their privacy. Any Panel assessing a privacy-related complaint will, in other words, first consider whether there has been an infringement at all and, if so, whether it has been unreasonable. Assuming that a Panel finds that there *has* been an unreasonable infringement, it must next assess whether that infringement was *justified* and, to make that determination, the Panel must consider whether the disclosure was “necessary in the public interest.”

Privacy and the Courts

On the matter of justification, as a general principle, the CBSC has concluded that the reporting of court proceedings, whether civil or criminal is, in the absence of a court-ordered publication ban, fair. In *CHBC-TV re Newscast* (CBSC Decision 93/94-0292, December 18, 1996), for example, the British Columbia Panel dealt with a news segment dealing with the general issue of the difficulties plaintiffs may encounter when trying to collect their court awards. In that challenged news segment, the defendant in a judicial proceeding used as an example had been identified, photographed and, protected to some extent by the curtains in his living room, interviewed across those curtains. The defendant complained to the CBSC. The BC Panel considered that his complaint should be dismissed. On the broadcast of court proceedings, the Panel said (all of the following emphasis is original):

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

In the matter at hand, one of the parties, the defendant, would have preferred that the final step, namely, the collection of amounts awarded under these particular court proceedings, be kept away from the public's awareness. The Council considers that a broadcaster is entitled to conclude that the public interest extends equally to the proceedings themselves and to the results of the proceedings. This interest may be: in the general precedent established by a court decision, which may ultimately serve as a guide for members of the public to determine how they will carry on their activities, civil, commercial or private; or in the actions of the specific parties which gave rise to the proceedings in question.

[...]

It is to be expected that the complainant who, in this case, was the defendant in the B.C. Supreme Court and the other party in the on-air newscast, felt sensitive at *being* the example. This fact taken alone does not, however, validate his complaint. No story is, after all, told in a vacuum, unrelated to real people and real events. Had the story been

biased, the issue would have been a different one. In this case, there was no suggestion by the complainant that the coverage was slanted or unfair; his complaint was that there was coverage of the incident *at all*.

The issue was also discussed by the Ontario Panel in *CKCO-TV re a News Item (Disappearance)* (CBSC Decision 00/01-0739, June 28, 2001), which involved a news report about the disappearance of a man who had been charged with possession and distribution of child pornography. That report identified him as the owner of a local tavern and it showed footage of this place of business. The complainant felt that this presentation was unfair to the family of the accused and the tavern's employees since the accused's business was unrelated to the charges laid against him. In disagreeing with the complainant, the Ontario Regional Panel made the following comments with respect to reports about people involved in legal proceedings:

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

The Prairie Regional Panel sees no reason to deviate in any respect from the foregoing established principles. The courts are a public, not a private, forum. In launching court proceedings, one voluntarily enters the public domain, although it is true that, even in defending an action, one is equally in that public domain. In the absence of a prohibitory Court order, or an equivalent legislative or regulatory prohibition, broadcasters are entitled to air news stories related to judicial proceedings, whether civil or criminal. Moreover, untrammelled judicial proceedings are by definition, in the sense of Article 4, in the public interest. Stated in other terms, the public interest in judicial proceedings supersedes the interest of individuals in protecting their privacy. The foregoing being said, such judicially-oriented broadcasts are subject to all other laws of the land, including those relating to defamation. The point is that there is no *per se* prohibition against broadcasting the details of judicial proceedings.

The Application of the Foregoing Principles to the Challenged Broadcast

The Panel understands the complainant's perspective regarding the disclosure of details associated with her person and her life. She falls into the familiar category of individuals who would prefer to "fly under the radar" despite their presence in the courts of the land. She cannot, however, avoid the consequence of her decision to begin her litigation against her adoptive mother. It rendered an otherwise private issue very public. Moreover, the personal details revealed are inextricably linked to the legal proceedings she herself instituted. Consequently, in the view of the Panel, their broadcast does not constitute an unreasonable infringement of complainant's privacy, on the one hand, or a matter that would not be considered other than in the public interest, on the other. The Panel concludes that the broadcast of January 16, 2008 was not in breach of Article 4 of the *RTNDA Code of (Journalistic) Ethics*.

In her original letter, the 44-year old complainant has also referred to Section 126.2(1) of the Alberta statute entitled the *Child, Youth and Family Enhancement Act 2000*, which deals with the issue of publication bans on information "serving to identify a child." While it is not the role of the CBSC to interpret or enforce provincial or federal statutes, the Panel does note that Section 1(1)(b) of that Act defines "child" as "a person under the age of 18 years". It sees no reason to modify its conclusions regarding Article 4 of the basis of this statute.

Broadcaster Responsiveness

It is a fundamental step in the CBSC's process that broadcasters respond to complaints about their programming. While not required to agree with a complainant, broadcasters are expected to respond in a timely and thoughtful manner to those audience members who have taken the time to express their concerns. In this case, CITV-TV provided a brief but focussed letter which outlined its rationale for electing to broadcast the news segment. While the broadcaster's arguments did not resonate with the complainant, the Panel considers that the broadcaster has met its obligations in terms of responsiveness and nothing further is required in this regard on this occasion.

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 07/08-1158 CITV-TV (Global Edmonton) re a *News Hour* report (“*Daughter Sues Foster Mom*”)

The Complaint

The CBSC received the following complaint on January 25, 2008 (emphasis original):

I am writing you in regards to our January 24/08 telephone conversation pertaining to a violation of my personal & private information.

January 16/2008, Global TV Edmonton (Canwest Global Communications Corp) grossly violated my privacy by publicly broadcasting all my **Personal Identifiable Information** [*sic*] with **No Consent** on the evening headline news while covering “*Daughter Sues Foster Mom*” story.

Global TV Edmonton was contacted by my lawyer on the afternoon of January 16/2008 prior to their release of the evening news. Global TV was advised at that time to **not release any of my Private or Personal Identifiable Information** [*sic*], as **this case is subject to a publication ban, *note *Child and Youth Family Enhancement Act, Sec. 126.2.***

Global TV was informed at that time that it would be inappropriate for myself or lawyer to comment as this case is currently under criminal investigation.

Global TV Edmonton gave no thought to the consequences and in my view behaved recklessly in revealing the following:

Name in full
Birthdate & Year
Birthplace
Current Residing city
Video clips Baby to 4 yrs old
My Photos thru the years including wedding pictures

In my opinion, Global News could have covered their story “*Daughter Sues Foster Mom*” without publishing my Personal & Private Information. I spent the greater part of my life researching with the hopes of one day relocating my birth biological family, as there are privacy laws that forbid me to access this Identifiable Information or publish [*sic*]. I question the media’s integrity while covering this story, as they were notified by my lawyer and preceded [*sic*] without any regard to his request, my identity or the investigation.

In closing, I would like to take this opportunity to thank you. I look forward to a reply.

Pls note: That I, [D. P.], viewed the 6:00 pm News on Global Edmonton, January 16, 2008, where they broadcast my personal & private identifiable information with no consent.

Broadcaster Response

The station replied to the complainant with a letter dated February 14:

This is in response to your complaint filed with the Canadian Broadcast Standards Council on January 25, 2008 about the Global Edmonton news report regarding your lawsuit.

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

At the time of our story, there was no publication ban in place and the correspondence from your lawyer, Mr. [R. L.], suggested we seek legal advice about reporting on your story, which we did. After consultations with our lawyer, we learned we were within our legal rights to both interview your foster mother and show the photos and other items.

While the use of the photos and documents in our report may have caused you some discomfort, we are confident it was not in violation of the *Child Youth and Enhancement Act* nor any of the broadcast codes referred to above.

Additional Correspondence

The complainant sent the CBSC a note on February 25:

I would like to proceed with my complaint to the next level of action.

Thank you.

She attached a copy of the letter she had received from Global, on which she had made the following notes:

- 1) What happened to statutory publication ban? "Foster Child"
- 2) This is not my story, this was [D. M.]'s!
- 3) Ø consent, attached lawyer's letter to the media.
- 4) All my identifiable information [sic] published with no regards to consent or merit!!

This letter indicates to me that Global Edmonton has no regard for any of the issues above. Least of all, they are not even apologetic!

She also attached a copy of the lawyer's letter which was apparently faxed to Global Edmonton on January 18:

TO THE MEDIA

I represent a client who is suing regarding a fraudulent adoption. Pursuant to s. 126.2 of the *Child, Youth and Family Enhancement Act* it states that nobody can publish the name of my client. I strongly suggest that you seek out legal advice if you intend to publish a story on this case.