
CANADIAN BROADCAST STANDARDS COUNCIL

ONTARIO REGIONAL PANEL

CFMJ-AM re an *AM640 News* report about an elevator accident

(CBSC Decision 08/09-2014)

Decided April 1, 2010

H. Hassan (Vice-Chair), R. Cohen (*ad hoc*), J. David, J. Doobay (*ad hoc*), M. Hamilton,
G. Phelan (*ad hoc*)

THE FACTS

At various times on June 24, 2009, CFMJ-AM (AM640, Toronto) broadcast news reports about events taking place at an office building in downtown Toronto. Earlier that morning, an elevator technician had fallen down an elevator shaft and died. A group of people remained trapped in an elevator as rescue crews dealt with the situation. A listener complained about certain aspects of the reporting and identified 9:00 am to 12:00 noon as the period during which the troubling reports were broadcast.

The first of the reports to air occurred during the 10:00 am news break. Jen Watson was the newsreader and the report went as follows:

Watson: Rescue crews are at the TD Tower at Bay and Wellington after an elevator technician fell down a shaft.

Toronto Fire Captain Mike Strapko: However it appears that, um, the individual who fell down the elevator shaft was VSA because they did request the Ministry of Labour and a coroner.

Watson: Toronto Fire say police are stuck in elevators as crews try and recover the body.

The next report was at 11:00 am:

Watson: A number of people are stranded in an elevator at the TD Tower on Bay and Wellington this morning. It's after an elevator technician fell down the shaft. Mike Strapko with Toronto Fire tells AM640 News the Ministry of Labour has been called in.

Strapko: They've been notified because, if there's a critical injury or death, uh, Ministry of Labour's automatically notified and they'd have to do an investigation. And it doesn't look good because they've also requested a coroner.

Watson: And it looks as though the technician may have been a scab. Members of CEP Local 2003 have been locked out of the building since June 14th.

The noon newscast also covered the issue:

Watson: Ministry of Labour's been called in after an elevator technician fell to his death in the TD Tower downtown. Several people have been stuck in an elevator since 8:30 this morning. Toronto Fire says it isn't clear what happened.

Strapko: I don't know if he was just doing regular maintenance, um, maybe the result of the fall had, um, shut down the elevators after the fact. We don't have those details, whether or not the elevator was shut down before or after the individual fell.

Watson: And it looks as though the technician could have been a scab worker. Members of CEP Local 2003 have been locked out of the building since June 14th.

The listener expressed his concern in a letter of July 8. He was concerned with the use of the word "scab" in the reports and outlined his views in the following terms:

Radio stn 640 broadcast the elevator death two weeks ago as a scab worker. I heard the news description several times. The deceased was a union Otis Elevator mechanic on contract to the TD Centre, not on strike but working the day shift. He fell 42 floors trying to free trapped elevator passengers. I object to the callous and incorrect way the news was broadcast over and over, for a wife or child to hear the last words about their father that he was described as a scab is unacceptable. I am retired and not a union member but the callous way it was broadcast was disgusting.

The CBSC informed the complainant that he would need to provide the date and time of the news broadcasts in order for the CBSC to pursue the matter. He replied to that request on July 17, indicating that the reports had been broadcast multiple times between 9:00 am and 12:00 noon on June 24 (the full text of this and all other correspondence can be found in the Appendix to this decision). He also sent the CBSC copies of documents memorializing the deceased elevator worker.

CFMJ responded to the complainant on July 31. The station explained their decision to use the word "scab":

As members of the Canadian Broadcast Standards Council, we adhere to the Radio Television News Directors' Association of Canada ("RTNDA") *Code of Ethics*. Article 1 of this *Code of Ethics* requires that all news organizations "inform the public in an accurate, comprehensive and fair manner about events and issues of importance", and it is an obligation we take very seriously. We reviewed the broadcasts in question, and confirm that one of our newscasters stated, in relation to the accident, that "it looks as though the

technician may have been a 'scab' - members of C.E.P. local 2003 have been locked out of the building [TD Centre] since June 14th."

As you can appreciate, there are many pieces of information that surface rapidly during a breaking news story such as this, and we make every effort to confirm accuracy. In this case, we determined through one of our regular news sources that the union representing the elevator workers at the TD Centre had been locked out in a labour dispute. We also learned that the deceased was likely performing the functions that the union workers would have been doing, but for the lock-out. Based on this information, we concluded reservedly that the deceased "*may* have been a 'scab'". This particular term was used on two occasions, during the hour 11:00 am and 12:00 pm newscasts, rather than every half hour from 9:00 am to 12:00 pm as you suggest.

We realize that this was a sensitive matter, and we do regret that you were offended by the use of certain terminology in connection with this particular story. That being said, we don't believe that the newscasts in question violated the *RTNDA Code of Ethics*. We take our responsibilities as broadcasters very seriously, and work hard to make sure all of our programming complies with the *Broadcasting Act*, the *Radio Regulations* and the Codes and standards required of us as members of the CBSC and RTNDA.

Following an exchange of correspondence regarding administrative issues, the complainant sent an e-mail on September 3 in which he stated that he wished to pursue the matter further because "[t]he content and explanation of [the station] is not exactly as I remember the broadcast on that day." He also requested a copy of the broadcasts "to ensure the radio station was not criticized by me unfairly." The CBSC wrote back explaining that it could not provide him with copies of the tapes because they are considered property of the broadcaster, but that it customarily provides exact transcripts of programming in the body of, or the appendices to, its decisions. The complainant wrote again on September 11 confirming that he wished the CBSC to proceed with its review.

THE DECISION

The Ontario Regional Panel examined the complaint under the following provisions of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* and the Radio Television News Directors Association of Canada's (RTNDA – The Association of Electronic Journalists) *Code of (Journalistic) Ethics*.

CAB Code of Ethics, Clause 5 – News

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

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.

RTNDA Code of (Journalistic) Ethics, Article 7 – Corrections

Errors will be quickly acknowledged and publicly corrected.

The Panel Adjudicators read all of the correspondence and listened to the news reports in question. The majority of the Panel concludes that CFMJ-AM violated Clause 5 of the *CAB Code of Ethics* and Article 1 of the *RTNDA Code of (Journalistic) Ethics* for the use of the term “scab” in the challenged newscasts. The full Panel agreed that there was no breach of Article 7 of the RTNDA Code.

Appropriateness of Description of Worker as Scab: The Majority

The essence of this complaint is the use of the term “scab” on two occasions during the course of the morning news reports to describe the deceased elevator worker. There are two aspects to the description: first, the nature of the term itself; and, second, the necessity or even relevance of the term in the telling of the story. The view of the Panel is divided on the use and relevance issue. This section of the decision expresses the view of the majority.

As to the term itself, the *Oxford English Dictionary* makes it clear that the term is pejorative when used in a labour context.

4. *slang*. A term of abuse or depreciation applied to persons: a. A mean, low, ‘scurvy’ fellow; a rascal, scoundrel. b. A workman who refuses to join an organized movement on behalf of his trade; in extended uses: a person who refuses to join a strike or who takes over the work of a striker; a blackleg; a strike-breaker.

For those who may be unfamiliar with the term “blackleg” used in the above definition, it is defined by the *OED* as a “local name of opprobrium for a workman willing to work for a master whose men are on strike.” This does not, of course, mean that the term “scab” *cannot* be used to describe a strike-breaker; however, its very negative connotations mean that any broadcaster must be particularly careful before casting *such* aspersions.

In the matter at hand, the majority considers that such care was *not* taken. The individual, regrettably deceased, was identified as a scab although the evidence of that appears, on the basis of the broadcaster’s own letter, to have been tenuous. CFMJ’s Program Director said that the station had

determined through one of our regular news sources that the union representing the elevator workers at the TD Centre had been locked out in a labour dispute. We also learned that the deceased was likely performing the functions that the union workers

would have been doing, but for the lock-out. Based on this information, we concluded reservedly that the deceased “may have been a ‘scab’”.

The majority puts no stock in the broadcaster’s use of the word “may” in their incorrect conclusion that the deceased “may have been a scab.” Such a sentence would likely have been determined by many, if not most, listeners to have been as close as imaginable to an identification of the deceased as a scab. In other words, the majority is not at all convinced that the insertion of the apparent hedging word “may” brought the broadcaster far enough away from the edge of a crumbling terminological cliff to be safe. The sentence seems far more an identification of the deceased as a scab than not as a scab. And what the majority finds particularly reprehensible in that usage is that the identification of the deceased in that way was utterly irrelevant to the news item. It was not germane to the story being told and it was inaccurate. In terms of the news standards in the *CAB Code of Ethics* and the *RTNDA Code of (Journalistic) Ethics*, the story was inaccurate. The broadcasts characterizing the deceased as a scab were in breach of Clause 5 of the former Code and Article 1 of the latter.

The Timely Correction of Errors

Where information is found to be in error soon after the original broadcast, the expectation in the RTNDA Code is that the error will be quickly acknowledged and publicly corrected. When, in a non-news broadcast in *CFRA-AM re the Mark Sutcliffe and Lowell Green Shows* (CBSC Decisions 96/97-0083, 0084 and 0085, May 8, 1997), it was discovered that an individual identified in a broadcast as Jamaican was in fact St. Lucian, the error was corrected within thirty minutes. The Ontario Regional Panel found this correction sufficient and concluded that neither the RTNDA Code nor the *CAB Code of Ethics* had been breached. Similarly, in *CITY-TV re CityPulse (Neighbourhood Drug Bust)* (CBSC Decision 96/97-0216, February 20, 1998), the broadcaster quickly acknowledged that it had made a “sloppy generalization” in reporting that a drug bust had occurred in Parkdale, when in fact it had occurred in the West End of Toronto. In *CIII-TV (Global Ontario) re a report on News Final (“Dual Protests”)* (CBSC Decision 07/08-1677, October 22, 2008), a news report covered two demonstrations that occurred in Toronto, one to support China and its successful bid for the 2008 Summer Olympics, and the other to protest China’s treatment of Tibet. The report included a video clip with the caption “Lhasa, Tibet” that featured police aggressively throwing protestors into a pickup truck. Two days later, Global aired a correction, stating that the clip had actually been from Katmandu, Nepal, and not from Tibet. A viewer complained about the misidentification in the clip. This Panel made the following comments regarding broadcast errors and corrective statements:

In an era in which news travels faster than ever, it is understandable, indeed reasonable to expect, that errors will occasionally occur. From the audience’s point of view, it is

equally reasonable to expect that, when those errors are discovered, the correct information will be brought to their attention. This is, after all, consistent with the “fundamental purpose of news dissemination in a democracy [which] is to enable people to know what is happening, and to understand events so that they may form their own conclusions.” In the matter at hand, Global Ontario was made aware of its error soon after the March 29 broadcast and it ran a correction at about 6:15 pm on March 31, three days before the complaint was even filed. By acting so promptly, the broadcaster fulfilled the RTNDA’s codified expectations.

Although it is only an incidental point, it should be noted that, while the prompt broadcasting of the correction fulfills the requirements of Article 7 of the RTNDA Code, it does not, of course, have the effect of erasing the initial accuracy breach of Article 1 of that Code and Clause 5 of the CAB Code.

In *CFTO-TV (CTV Toronto) re a CTV News at Six report (Driveway)* (CBSC Decision 06/07-1301, April 14, 2008), the Ontario Regional Panel dealt with a complaint about a news report that told the story of a driveway renovation. It appeared that, according to the broadcaster’s letter in that matter, “shortly after the news item aired,” the complainant contacted the News Director about his concerns. Despite the fact that the complainant provided CTV Toronto with accurate information to enable the station to provide viewers with a full and accurate story *on a timely basis* soon after the original broadcast, it chose not to do so, and was thus found in breach of Article 7 of the RTNDA Code.

Applying the foregoing principles to the matter at hand, in order to find a breach of Article 7, the Panel needs to be in a position to determine that: a) it has a basis for being reasonably certain that the broadcaster was in a position to know that it had broadcast a material error; and b) the corrective information was available *soon after* the broadcast. As to what “soon after” means, it should also be borne in mind that some stories endure on the airwaves longer than others. “Soon after” ought to bear some relationship to the longevity of the news item. It goes without saying that a broadcaster is always in a position to issue its own correction at *any time* after the publication of an inaccurate story, but this Article deals with the existence of a breach when a broadcaster has *failed* to issue such a retraction.

In the matter at hand, although the station *may* have been in a position to correct its story, the Panel has no information that, relative to the life of the story, the broadcaster *was* in a position to issue a useful public correction. In other words, the Panel has no information on the basis of which it could conclude that, *soon after* the broadcasts in which it was said that the deceased “may have been a scab”, it would have been possible for the station to correct the story to indicate that he clearly was not a scab. Consequently it cannot conclude otherwise than to say that there was no breach of Article 7 of the RTNDA Code.

The Dissenting Viewpoint of G. Phelan and J. Doobay

Two of the Adjudicators consider that the speculative use of the term “scab” was not unreasonable based on the information available to the broadcaster *at the time* of the two challenged news reports. They do in other words place considerable weight on the notion of information that existed at *that* moment. They consider that the broadcaster was entitled to rely on its regular news sources for the information the station conveyed at the time. It was not a wild leap of faith that the broadcaster made, but rather a reasonable one in the context of a fast-breaking story of great moment to the public since, among other things, a worker unfortunately lost his life. There was a serious mishap; it occurred at the time of a labour dispute; and the station’s normally reliable sources said that the deceased was a replacement worker. Moreover, the broadcaster was cautious in its use of terminology; it said “*may have been a scab*”, which a reasonably attentive member of the audience would have agreed was not a *definitive* accusation. Finally, the dissenting Adjudicators do not in any event attach the same level of negative connotation to the word “scab” that the majority of Adjudicators do. They consider that, in the 21st century, scab is a common equivalent of “strike-breaker” or “replacement worker”. The minority Adjudicators would find no breach of Clause 5 of the *CAB Code of Ethics* or Article 1 of the *RTNDA Code of (Journalistic) Ethics*. As to the station’s duty to revise its earlier incorrect statement regarding the deceased, the minority Adjudicators believe that the correct information ought to have been provided for the record, perhaps in a statement of the following nature: “In earlier reports of the death of the elevator repairman, we told you that he may have been a scab; later information has indicated that he was not.” Since there is no information that indicates when the station learned the correct information or what, if anything, it did to correct its erroneous report, the minority Adjudicators conclude that, in agreement with the majority, they find no breach of the timely acknowledgment and public correction required by Article 7 of the RTNDA Code.

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 the Program Director of CFMJ-AM focussed on the complainant’s concern, which is fundamentally what is required as a component of CBSC membership requirements. The Panel recognizes that the broadcaster’s viewpoint was not that of the complainant, but that is always the case where a file is brought to a Panel adjudication level. Nonetheless, it is the thoughtfulness of the response that determines whether the broadcaster has met the CBSC membership responsibility of responsiveness, which the Panel considers CFMJ-AM has fully met in this instance.

ANNOUNCEMENT OF THE DECISION

CFMJ-AM is required to: 1) announce the decision, in the following terms, once during peak listening hours 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, but not on the same day as the first mandated announcement; 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 CFMJ-AM.

The Canadian Broadcast Standards Council has found that CFMJ-AM breached Article 1 of the Radio-Television News Directors Association – The Association of Electronic Journalists' *Code of Ethics* and Clause 5 of the *CAB Code of Ethics* in its broadcast of two news reports on June 24, 2009. In those news reports, CFMJ-AM referred to the death of an elevator technician by saying that he “may have been a scab” when he was in fact an ordinary accredited worker. The Panel concluded that the broadcaster had used a pejorative term inaccurately to describe the individual, contrary to the requirement of Article 1 of the RTNDA Code and Clause 5 of the CAB Code that news be presented accurately.

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

APPENDIX

CBSC Decision 08/09-2014 CFMJ-AM re AM640 News report about an elevator accident

The Complaint

The following complaint dated July 8, 2009 was sent to the CRTC and forwarded to the CBSC:

Radio stn 640 broadcast the elevator death two weeks ago as a scab worker. I heard the news description several times. The deceased was a union Otis Elevator mechanic on contract to the TD Centre, not on strike but working the day shift. He fell 42 floors trying to free trapped elevator passengers. I object to the callous and incorrect way the news was broadcast over and over, for a wife or child to hear the last words about their father that he was described as a scab is unacceptable. I am retired and not a union member but the callous way it was broadcast was disgusting.

The CBSC informed the complainant that he would need to provide the date and time of the news broadcasts in order for the CBSC to pursue the matter. He sent that information on July 17, along with a memorial biography of the deceased man and a letter from the man's union to its members notifying them of the death.

Thank you for your response to my complaint. The date was June 24, 2009, the news commentator was a female person who repeated the broadcast every half hour from 9:00 am to 12:00 noon on radio station AM640, Toronto.

I have supplied all the documents I have that may assist you with this investigation. Please be advised, if there is anything else you require, I will attempt to obtain them for you.

Broadcaster Response

AM640 responded to the complainant with a letter dated July 31:

The Canadian Broadcast Standards Council (the "CBSC") has asked us to respond to your email of July 8, 2009 and subsequent letter of July 17, 2009, in which you raised concerns regarding the content of newscasts that aired on CFMJ on June 24, 2009. Specifically, you raise concerns regarding what you consider the callous and inaccurate use of the term 'scab' to describe the elevator technician who recently died in a tragic accident in Toronto's TD Centre. You point out that "the deceased was a union Otis Elevator mechanic on contract to the TD Centre, not on strike but working the day shift." In addition you say you heard the news description "several times, and that it was repeated "every half hour from 9:00 am to 12:00 noon".

As members of the Canadian Broadcast Standards Council, we adhere to the Radio Television News Directors' Association of Canada ("RTNDA") *Code of Ethics*. Article 1 of

this *Code of Ethics* requires that all news organizations “inform the public in an accurate, comprehensive and fair manner about events and issues of importance”, and it is an obligation we take very seriously. We reviewed the broadcasts in question, and confirm that one of our newscasters stated, in relation to the accident, that “it looks as though the technician may have been a ‘scab’ - members of C.E.P. local 2003 have been locked out of the building [TD Centre] since June 14th.”

As you can appreciate, there are many pieces of information that surface rapidly during a breaking news story such as this, and we make every effort to confirm accuracy. In this case, we determined through one of our regular news sources that the union representing the elevator workers at the TD Centre had been locked out in a labour dispute. We also learned that the deceased was likely performing the functions that the union workers would have been doing, but for the lock-out. Based on this information, we concluded reservedly that the deceased “*may* have been a ‘scab’”. This particular term was used on two occasions, during the hour 11:00 am and 12:00 pm newscasts, rather than every half hour from 9:00 am to 12:00 pm as you suggest.

We realize that this was a sensitive matter, and we do regret that you were offended by the use of certain terminology in connection with this particular story. That being said, we don’t believe that the newscasts in question violated the *RTNDA Code of Ethics*. We take our responsibilities as broadcasters very seriously, and work hard to make sure all of our programming complies with the *Broadcasting Act*, the *Radio Regulations* and the Codes and standards required of us as members of the CBSC and RTNDA.

We trust that this letter has addressed your concerns. We recognize the importance of listener feedback and appreciate all comments.

Additional Correspondence

The complainant wrote to the CBSC on August 11, indicating that he had not received a response from the station and would like to continue with his complaint. The CBSC forwarded him a copy of the response that had in fact apparently been sent to him on July 31. After some additional back-and-forth correspondence regarding his ability to open the e-mail attachment, the complainant sent the following letter on September 3:

Thank you for sending the letter to me as I requested. The content and explanation of [the Program Director] is not exactly as I remember the broadcast on that day.

I wish to further pursue the matter at this end to make sure the facts explained to me are accurate for my part and to ensure the radio station was not criticized by me unfairly. Keeping with this endeavour, I would appreciate a copy of the taped broadcasts to ensure they are the same as I heard on that day.

I will also attempt to verify the strike information as reported because I was previously informed the elevator union was not on strike.

The CBSC wrote back explaining that it could not provide him with copies of the tapes because they are considered property of the broadcaster, but that he could try asking the station itself, though it would be under no obligation to provide them either. The CBSC pointed out that he could request a ruling if he wanted the CBSC to review the tapes and

that it customarily provides exact transcripts of programming in the appendices to its decisions. The complainant responded on September 11:

Yes, I would appreciate your assistance by listening to the tapes and advising me.

My source for the information is away and I have been unable to contact him, so until I do, I appreciate your assistance.

I will contact the radio station about the tapes as you advised.

The complainant apparently did contact CFMJ to request the tapes and was denied. A representative from the station informed the CBSC via e-mail that the complainant had contacted them regarding the tapes and he was denied because it is their policy not to provide tapes to anyone.