



Broadcasting Decision CRTC 2013-645

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Ottawa, 3 December 2013

Canadian Broadcasting Corporation
Across Canada

CBC News Now – Complaint regarding the “Duchess of Cambridge hoax call”

The Commission finds that the Canadian Broadcasting Corporation (CBC), in broadcasting on CBC News Now a pre-recorded audio clip of a hoax telephone call made by radio hosts of the Australian radio station 2DayFM to King Edward VII hospital in London, England, did not violate any of its obligations under the Television Broadcasting Regulations, 1987.

Further, the Commission finds that broadcasting the audio clip was not inconsistent with the high standard objective set out in section 3(g) of the Broadcasting Act.

Background

1. On 5 December 2012, the Canadian Broadcasting Corporation (CBC) aired, as part of a news item broadcast on its weekday television news program *CBC News Now*, an audio clip of a hoax telephone call made to King Edward VII hospital in London, England by two radio hosts from the Australian radio program *Summer 30*, which is broadcast on 2DayFM, a commercial FM radio station in Sydney, Australia. Presenting themselves as Queen Elizabeth II and the Prince of Wales, the radio hosts succeeded in speaking to a nurse and eliciting medical information about the Duchess of Cambridge, who was being treated at the hospital.
2. Shortly following the broadcast, the CBC received a complaint that the airing of the audio clip revealed confidential patient information, was cruel and tasteless, and was done without the consent of the Duchess of Cambridge and of hospital staff. The complainant alleged that the CBC had violated section 3 of the *Television Broadcasting Regulations, 1987* (the Television Regulations). The CBC responded by qualifying the “heavily edited excerpt of the telephone conversation” as not especially revealing, and stated that the information was not confidential when it aired the audio clip. It further stated that the hoax itself had already become a news story that was carried worldwide across various media that had captured the public’s imagination.
3. The complainant expressed dissatisfaction with the broadcaster’s response and requested that the CBC Ombudsman review the complaint. In its response, the CBC Ombudsman stated that the excerpt contained details that were “already in the public domain” and thus “were not very revelatory,” and that in choosing to air the brief excerpt, the broadcaster had weighed the impact on privacy against the value of airing the segment. The CBC Ombudsman argued

that running the segment allowed the audience to make up their own minds about the hoax as well as the state of hospital security, noting that the hospital was ultimately responsible and accountable for the breach of security. It concluded that neither the broadcast in question nor the process behind the broadcast violated CBC policy,¹ and that according to legal advice received, no breach of regulations occurred.

Request for Commission review

4. The complainant subsequently requested that the Commission review the CBC Ombudsman's review. In its request, the complainant alleged that the CBC, in airing excerpts of a private conversation, violated section 3 of the *Broadcasting Act* (the Act).

Commission's analysis and decisions

5. In examining the complaint, the Commission has taken into consideration the complainant's concerns, the CBC's response, the CBC Ombudsman's review, and its own review of the broadcast of the hoax call. It considers that the issues to be addressed are the following:
 - Did the CBC's broadcast of the audio clip violate the Television Regulations?
 - Was the CBC's broadcast of the audio clip inconsistent with the broadcasting policy set out in section 3(1)(g) of the Act whereby the programming originated by broadcasting undertakings should be of high standard?

Violation of the *Television Broadcasting Regulations, 1987*

6. The Commission notes that section 3 of the Act does not set out any specific obligation with respect to the broadcast of telephone conversations. Rather, a prohibition on the broadcast of a conversation without written or oral consent by the parties involved is set out in section 3(e) of the *Radio Regulations, 1986* (the Radio Regulations), which only apply to programming broadcast by radio stations. Accordingly, this provision does not apply to the television program on which the audio clip was broadcast and that is the subject of the present complaint.
7. Further, the Commission notes that the Television Regulations do not contain an analogous privacy provision. Accordingly, the Commission finds that in broadcasting the audio clip in question on the television news program *CBC News Now*, the CBC did not violate any specific obligations under the Television Regulations relating to the content of programming.

High standard objective of the *Broadcasting Act*

8. The Commission has examined the complaint in light of the broadcasting policy for Canada set out in section 3 of the Act, in particular section 3(1)(g), which provides that "the programming originated by broadcasting undertakings should be of high standard." In

¹ See <http://cbcrc.ca/docs/policies/journalistic/xml/policies.asp>.

assessing a program in light of the high standard objective, the Commission must take into account the broadcaster's "freedom of expression" as guaranteed in the *Canadian Charter of Rights and Freedoms* and recognized in section 2(3) of the Act. In light of the guaranteed freedom of expression, the Commission will only find that a program is inconsistent with the high standard objective where the failure to meet this objective is manifest.

9. Furthermore, in assessing whether the broadcast of the audio clip containing the hoax telephone call is inconsistent with the high standard objective, it is necessary to consider the specific context in which the CBC made its decision to play the clip.
10. The Commission's key concern in this matter relates to the CBC's broadcast of the nurse's voice and the Duchess of Cambridge's medical information in the broadcaster's own edited excerpt of the recorded conversation. Given the high profile of the story, the Commission has considered whether this aspect of the broadcast contributed to the depiction of the story, or sensationalized the story.
11. The CBC's position, as supported in the CBC Ombudsman's review, is that the story of the hoax was itself major news and a matter of public interest, and that confidentiality was lost when the recorded conversation became well-established in the public domain. While coverage of news stories to satisfy the public's curiosity may have the effect of increasing viewership and ratings, the Commission is not convinced that the coverage at issue in the present case was necessarily required in the public interest. The Commission reminds broadcasters, and in particular public broadcasters, of their duty to ensure that the programming they originate be of a high standard. The public interest must not be blindly equated with everything that might interest the public. Nevertheless, the Commission accepts that the licensee made a judgement call that weighed privacy concerns against the value of airing the excerpt. It notes that the hoax call had already gained the immense interest of the public, that the story was being reported in many places worldwide, and that the recorded conversation was available online.
12. As the Commission has stated in previous decisions,² in light of the guarantee of freedom of expression, the Commission will not interfere with the editorial judgment of the licensee except in the most flagrant of cases where such judgment violates regulatory requirements or is otherwise inconsistent with the high standard objective of the Act. In light of the context in which the clip was broadcast, in particular the fact that the hoax call was already available to the public, the Commission considers on balance that the CBC's editorial decision to broadcast the clip in question was not unreasonable. Consequently, the Commission finds that broadcasting the audio clip was not inconsistent with the high standard objective set out in the Act, and that regulatory action is not warranted.

Secretary General

² See, for example, Decision CRTC 90-772, 20 August 1990.