
APPENDIX

CBSC Decision 08/09-0213 & -0281 CTV Newsnet re an episode of *Mike Duffy Live Prime Time* (Stéphane Dion Interview)

The Complaints

The CBSC received 10 complaints about this CTV Newsnet broadcast (and an additional 39 about the original broadcast of the Dion interview on CJCH-TV). Of those 10, six provided enough information to trigger the CBSC's process. Of those six, only two complainants filed Ruling Requests. Their correspondence is reproduced here.

File 08/09-0213

The following complaint dated October 16, 2008 was sent to the CRTC and forwarded to the CBSC:

I am writing to you about what I think is a serious breach of journalistic ethics. I wonder what you will do about it.

I watched (on the Mike Duffy CTV program) an interview with an ATV journalist and Stéphane Dion. Mr. Dion had problems understanding the question asked and requested that the interview restart. Mr. Duffy chose to show the original questioning and the "retakes" on his program. This put Mr. Dion in a difficult situation, which was accentuated by Mr. Duffy's facial expressions.

My question to you is about the ethics of Mr. Duffy showing this on his program, given that "Hurst (the CTV executive responsible) insisted that even though Halifax anchor Steve Murphy had said he 'indicated that it would not be' aired, the network decided to show the interview in its entirety." (*Toronto Sun* 2008-10-10)

Is it ethically permissible to tell an interviewee one thing, and then do another? Is it permissible for a network like CTV to make a decision that can affect an election outcome on such flimsy grounds?

This is quite separate from the actual question asked by the grammatically challenged interviewer, which I have asked CTV to explain.

On October 17, the complainant sent a copy of the e-mail he had sent to CTV on October 11:

This is with respect to my query re the ethics of CTV showing its interview with M. Dion with the out-takes.

This is the email I sent to CTV and to which I received a form-letter type of reply.

I have watched the interview that your CTV interviewer had with Dion about his reaction to the current financial crisis.

The question asked by your interviewer was:

"If you were Prime Minister today, what would you have done that would be different from Stephen Harper in respect to your reaction to the current U.S. and global financial crisis?"

This is incomprehensible and grammatically incorrect because of a sloppy use of tenses. What was he trying to say?

- If you had been prime minister for the last few years, what would you have done differently (in the past)?
- If you were prime minister today, what would you do?

No wonder Dion had problems answering it. My native language is English and I have problems with your interviewer's question.

Dion probably had an additional problem in that hypothetical questions like this, in French, are always very precise:

- If this happens, what will you do?
- If this were to happen, what would you do?
- If this had happened, what would you have done?

My question to you is this: just what, precisely, was the question that your interviewer wanted Dion to answer?

This is quite separate from the question of your journalistic ethics and why you saw fit to make public all "takes" of your interview with Dion. I will be sending an e-mail to the CRTC about this (copy to yourselves of course -- please give me a proper e-mail address).

I have a final issue with you. Why is it so difficult to find a way to communicate with you on your web site? Are you trying to discourage communication? I wanted to send this to your management, but according to your website they are completely impossible to reach.

BTW, I am not a liberal. I just find your actions terribly partisan. I am one of the small minority who will be voting Green so that they get \$1.98/year!

In response to CBSC's request for the date and time of the program, the complainant sent the following e-mail on October 17:

I watched the interview on Oct. 9 2008 on the program *Mike Duffy Live* on CTV Newsnet. It must have been some time between 1700-1800 EDT. If you wish, you can see what I saw on <http://www.youtube.com/watch?v=mv-5biChVrA>.

(I later checked on YouTube because I couldn't quite believe what I saw on the Duffy program!)

I sent my complaint to the CRTC because, quite frankly, I didn't know your organization existed. I would be interested in knowing your function, status and source of funding.

I sent a copy of my email to the Mike Duffy program, but have yet to receive a reply.

As mentioned in my note to the CRTC, I also contacted CTV about the sloppy questioning by their interviewer. I received an acknowledgment but no reply. I will send you a copy of my original email on this subject, since it may be relevant.

I am also sending a copy of this email to Mr. Duffy.

File 08/09-0281

This complainant wrote to the CBSC on October 25:

To Whom This May Concern,

I am writing to echo the concern expressed by many about the so-called editorial decision by CTV Halifax and Toronto to air the 'out-take' footage of Stéphane Dion's recent interview with the Halifax host. Despite the agreement to the contrary – and any decent consideration that journalists surely offer to each other with 'takes 2 and 3' all the time! – this seems to be a mean-spirited and overtly partisan intrusion into the election process. Indeed, I believe it was unfortunately influential and matched the malicious and defamatory advertising campaign of the Conservative Party. Those advertisements – and the networks that have been willing to run them – are the basis of a separate complaint!

In response to the CBSC's request for a specific date, time and station, the complainant replied on October 27:

Greetings,

Thanks for your prompt reply.

As I recall, I saw the clip on CTV Newsnet, on Thurs. Oct. 9th at approx. 10:00 p.m. EDT, as part of the CTV National News broadcast.

Thanks for forwarding my concerns to CTV (network website). I had written to them directly on Fri. Oct. 10th, and have not received any acknowledgement.

Broadcaster Response

CTV sent the following response to all complainants in November:

This letter is in response to various viewer complaints to the Canadian Broadcast Standards Council (CBSC) regarding an October 9th 2008 interview between Liberal Leader Stéphane Dion and CTV Atlantic anchor Steve Murphy. The interview was broadcast by CTV Atlantic on the Six o'clock News and subsequently on the *Mike Duffy Live* program on CTV Newsnet later that evening.

We believe a review of the chronology of this matter will be of assistance.

Chronology:

Wednesday October 8th 2008:

CTV Atlantic arranged a one-on-one interview with Liberal Leader Stéphane Dion. It was to be Mr. Dion's second one-on-one interview with CTV Atlantic anchor Steve Murphy during the election campaign. The earlier interview was broadcast Monday, September 15th, live from CTV's Halifax newsroom at 6:45 pm ADT. It ran for 8 minutes.

The arrangements for the 2nd interview were the same, a live one-on-one unedited interview. Mr. Dion's campaign schedule, however, would not permit him to be live in the CTV Halifax newsroom for the Six O'clock News, so arrangements were made to record the interview, one hour before airtime, at a downtown Halifax Hotel. It was understood that the format for the second interview would be the same as the first, a one-on-one interview that would not be edited nor interrupted. The only difference in the second interview – it would be live-to-tape instead of live-to-air. Mr. Dion's staff agreed to these arrangements.

Thursday October 9th 2008:

A room was set up as a temporary television studio at Halifax's Delta Barrington Hotel.

4:10 pm ADT: Global News interviewed Mr. Dion. A "pool camera" from other television networks was in the room recording the interview.

4:20 pm ADT: CTV Atlantic's Steve Murphy interviewed Mr. Dion. The "pool camera" continued to record the CTV interview.

During the interview, there were three re-starts and an interjection by a Liberal aide, who tried to assist Mr. Dion to understand a question.

6:36 – 6:52 pm ADT: CTV Atlantic broadcast the full interview, including the restarts and the Liberal aide's interjection.

8:00 pm EDT: *Mike Duffy Live*, a program that reports and discusses the election campaign on a daily basis, aired the Dion re-starts. Liberal candidate Geoff Regan explained Mr. Dion's stumbles by claiming Mr. Dion could not hear the questions. This statement by Mr. Regan was inaccurate.

That evening and the next day, the interview and the restarts were reported by several news organization including The Canadian Press, CBC, Newsworld, Global News, *The Globe and Mail* and *The Toronto Star*.

The Pool Camera:

During the Global and CTV interviews, there was a pool camera in the room (a camera person from Radio-Canada). During election campaigns, by network agreement, all one-on-one interviews with party leaders are recorded and fed to network newsrooms. All leaders were aware of this arrangement and agreed to it. As such, the Global and CTV interviews could be broadcast by any of the television networks.

The Interview: Three Re-starts and a Liberal Aide Interjection:

Mr. Murphy began the interview by reviewing Mr. Dion's luncheon speech in Halifax earlier that day. Mr. Dion had attacked Prime Minister Harper on the economy:

Murphy: ***"Today, you said Mr. Harper has offered nothing to put Canadian minds at ease, and (he) offers no vision for the country."***

Mr. Dion nods his head in affirmation.

Murphy: ***"If you were Prime Minister now, what would you have done about the economy and this crisis, that Mr. Harper has not done?"***

Mr. Dion asked for a clarification on the question then began answering. He stumbled when he described a "30 – 50 day plan" for the economy. He corrected himself and described it as an 80-day plan. Mr. Dion then appeared flustered, abruptly stopped, and asked if the interview can be re-started. Mr. Murphy acceded to this request.

On the second attempt at the question, Mr. Dion said: "We need to start again." This was not a request, it was a declaration from Mr. Dion that the interview would be re-started.

Then a Liberal aide (who appeared to clearly understand the question), interjected herself from off-camera, and explained the question to Mr. Dion while the cameras were recording.

The interview then resumed. Mr. Dion stopped and said: "Lets start again." This too was not a request of Mr. Murphy, it was another declaration from Mr. Dion that the interview would be re-started for a third time.

What Undertakings, If Any, Were Made By CTV News to Mr. Dion?:

Politicians are media savvy. They know that everything they say is on the record, especially during an election campaign.

Mr. Murphy made no undertaking to Mr. Dion or anyone in the Liberal campaign that something would be off the record or not for broadcast. In this case, there were several journalists, three television cameras and technical crews in the room. In such a setting, and during an election campaign, everything that was said would be on the record and available for broadcast by all television networks.

After Mr. Murphy's first question, Mr. Dion **ASKED** if the interview could be re-started. Mr. Murphy agreed to this initial request as a courtesy – perhaps thinking that Mr. Dion did not hear the question or perhaps he was tired or distracted after a long election campaign. But that courtesy does not extend to an interviewee declaring restart after restart. It was Mr. Dion (not Mr. Murphy) who declared there would be a second re-start, and then a third. Mr. Murphy had few options but to continue along with the interview.

Subsequent Actions Taken by CTV - Was This Newsworthy?

The Canadian Radio-television and Telecommunications Commission (CRTC) recognizes that it is up to the individual broadcaster to be responsible for the programming that it chooses to air, provided that it is balanced. This editorial independence is an important keystone of the Canadian broadcast system and an important recognition of the Charter right of freedom of expression. The CRTC, too, in various rulings and decisions supports the principle that it is up to the broadcaster to determine what is newsworthy, the content of the news, the length of news stories and the order in which they will run in a newscast. CTV News takes these responsibilities very seriously. After the Dion interview was finished, CTV

News was put in a position where it had to determine whether it was appropriate to air the complete interview including the restarts. An intensive editorial review began. The tape was reviewed and the matter was first considered by the CTV Atlantic News Director and his staff and then subsequently considered by myself as President of CTV News and senior editorial personnel in Toronto.

In a Canadian political campaign, it is highly unusual for a party leader to spend three minutes trying to figure out a question and his answer to it. It is even more unusual for an aide, off-camera, to speak up and interject herself into the middle of an interview, to explain a question to a party leader.

In its consideration, CTV News editors discussed several issues, including the following:

- Could Mr. Dion hear the questions?
- Were there any clear undertakings or promises that the videotape would not air in its entirety?
- Were we being fair to Mr. Dion, posing questions in English, his second language?
- Why were Mr. Dion's aides so insistent that the re-starts be deleted?
- If we deleted the re-starts, would we be offering a favour or benefit to the Liberal party leader?

To these questions, CTV News concluded the following:

- Mr. Dion could hear the questions.
- No clear or direct undertakings were made to delete the re-starts.
- We believed we were being fair with an English question since Mr. Dion received clarification from his own aide.
- We believed we would be providing a benefit to Mr. Dion if we removed the restarts.

The three minute exchange of re-starts also raised other issues:

- Was Mr. Dion's understanding of his second language, English, so poor that he could not understand a question with different tenses?
- How often do aides explain important questions to Mr. Dion?
- Does Mr. Dion understand issues like the faltering Canadian economy?
- Is Mr. Dion able to think on his feet and answer questions directly and with precision?
- Was Mr. Dion so scripted and programmed with his key messages that he refuses to say anything else?
- Was Mr. Dion exhausted nearing the end of an election campaign, and if so, how does he handle pressure and public scrutiny at such times?

In our opinion, these were legitimate questions for voters to consider in an election campaign. After careful review, CTV News deemed the interview newsworthy and made the decision to air the interview in its entirety, because the issues involved were of such important public interest. This decision was one that favoured openness over censorship in order to let the viewers decide for themselves. We also believe that this decision was in compliance with The Canadian Association of Broadcasters *Code of Ethics* - Clause 6 [*sic*, actually Clause 5]:

“The fundamental purpose of news dissemination in a democracy is to enable people to know what is happening and to understand events so they may form their own conclusions.”

CTV News Obligations During An Election Campaign:

Our objective and our obligation is to expose viewers to the political parties, the platforms and leaders so voters can be better informed on Election Day. Political coverage dominated CTV News programming during the campaign period on our local CTV newscasts, the *CTV National News*, *Canada AM* and *Sunday's Question Period*. During the campaign, we produced two hours of *Mike Duffy Live* on CTV Newsnet which is a close-up review and analysis of each day on the campaign. This daily program is the meeting point for political partisans to discuss the issues and the leaders' performance.

CTV News is well aware of its responsibilities under the Broadcasting Act and the Television Broadcasting Regulations, 1987 and more specifically, Broadcasting Circular CRTC 2008-4 which outlined the guidelines governing broadcasters in connection with the 2008 federal general election.

According to the Circular, there is an obligation on the part of broadcasters:

“... to provide equitable – fair and just treatment of issues, candidates and parties. It should be noted that “equitable does not necessarily mean ‘equal’ but generally, all candidates and parties are entitled to some coverage that will give them the opportunity to expose their ideas to the public.”

We also note that the Commission reiterates in this Circular that news coverage should generally be left to the editorial judgment of the broadcaster.

During election campaigns, each political party seeks to position its leader in the best possible light. The party war rooms are specifically designed to influence media coverage. CTV News is an independent agency that favors no political party. We do not run editorials endorsing leaders, platforms or candidates. In our news coverage of political campaigns, we also do not offer favours or benefits to any one party or candidate.

During this past campaign, Conservative Party officials and Tory partisans were loudly criticizing our coverage of the Gerry Ritz listeriosis affair, the “pooping puffin” controversy, and Prime Minister Harper's comments during the financial crisis. Similar complaints over other issues came from partisans for the NDP, Liberals and the Greens.

In the matter at hand, Stéphane Dion's aides asked CTV News to drop the opening portion of the interview. They were asking us for a favour, a benefit we could not give, nor had accorded to any other party or leader. We believe that if we had complied with such a request, CTV News would be in violation of Article Five of the RTNDA Code of Ethics which states:

“Broadcast journalists will resist pressures to change or alter the news. Intrusion into content, real or apparent, should be resisted.”

Not to have run the full interview would have been to cover up something of direct public interest and considerable importance.

RESPONSE TO SPECIFIC CONCERNS:

Are Re-Starts Common Practice?:

Just for clarification purposes, in daily television news, re-starts and re-takes of interviewees are uncommon. In fact, in feature political one-on-one interviews that last between 8-12 minutes and are formatted “live-to-tape”, re-starts and re-takes are extremely rare. The intention is for the broadcaster to air the complete unedited interview in the same way that a broadcaster would air a live interview. As previously stated, CTV Atlantic originally intended to conduct a second live one-on-one unedited interview with Mr. Dion during the campaign. Arrangements were changed to accommodate Mr. Dion’s campaign schedule and, as a result, the interview was changed to a live-to-tape interview instead.

Mr. Dion’s Hearing Problem:

Some individuals have written CTV News suggesting we have discriminated against someone with a disability because Mr. Dion has a hearing problem. Indeed, following the interview, Nova Scotia Liberal MP Geoff Regan stated on the *Mike Duffy Live* program that Mr. Dion could not hear the question. This statement was simply false. Mr. Murphy and Mr. Dion were sitting in a quiet room two metres apart. Mr. Dion confirmed himself that he had no difficulty hearing the questions.

RTNDA: Article Eight (Decency and Conduct)

Some individuals have suggested that CTV News violated Article Eight of the RTNDA’s Code which states:

“Broadcast journalists will treat people who are subjects and sources with decency. They will use special sensitivity when dealing with children. They will strive to conduct themselves in a courteous and considerate manner, keeping broadcast equipment as unobtrusive as possible. They will strive to prevent their presence from distorting the character or importance of events.”

While Mr. Murphy and his crew were confronted with an unusual situation which included partisan political pressure, they conducted themselves with the highest level of professionalism. They were courteous and considerate in their interpersonal discussions with Mr. Dion and Liberal party aides.

It was following this interview, that CTV News was required to make a determination as to how it would use the interview with Mr. Dion that was live-to-tape. Although it was never intended that this interview would be edited in any way and it was to be treated in the same way as a live interview, given the Liberal party interference and the very unusual and significant number of “restarts” demanded by Mr. Dion, it became incumbent on CTV News to give this matter serious consideration, from a professional journalistic perspective, before a final decision was made as to whether or not to air the interview in its entirety.

Did You Intend to Hurt Stéphane Dion’s campaign or Tip Off the Harper Campaign?

Some individuals have suggested CTV News was intent on harming Stéphane Dion five days before the general election. This is completely preposterous. Other allegations that somehow CTV tried to alert the Harper campaign to the Halifax interview were equally offensive.

These allegations are completely false and not representative of how CTV News conducted itself during the election campaign. We can assure you that CTV News would not take any action to aid or assist any political party or candidate during an election campaign. CTV News is an independent news agency that favors no political party. If something happens on any given day, during the campaign, we have an obligation to report what we believe is newsworthy.

Conclusion:

While CTV received numerous complaints about the broadcast of this interview by Liberal supporters, we also received numerous complaints from Conservative, NDP and Green Party supporters who complain that other news reports were biased against their parties. Politics is a very sensitive and complex issue and it is very difficult for broadcasters to satisfy all viewers all the time, especially during an election campaign. However, we can assure you that our newscasts are never intended to be biased against or favourable to any of the parties or their supporters.

CTV is a member in good standing with the CBSC and follows its guidelines. We believe the news reports in question were in full compliance with all industry codes administered by the CBSC and all applicable legislation.

Thank you for taking the time to write with your concerns. Hoping that this provides a better understanding of our position in this matter.

Additional Correspondence

File 08/09-0213

This complainant wrote back to CTV on February 8:

Thanks for this. It replies in part. However, I have two remaining problems:

1. The language used by the ATV interviewer.

Murphy: "If you were Prime Minister now, what would you have done about the economy and this crisis, that Mr. Harper has not done?"

Poor Mr. Dion was asked to reply to this skewering of the English language -- a language that is not even his own native tongue. Look at the mangling of tenses. What does it mean -- in what time? Murphy did not, according to the text you sent me, attempt to clarify this in any way. Journalistic ethics: is it justified to ask repeatedly a question which really has no logical answer?

2. The manner in which Mr. Duffy introduced this item. This is what annoyed me the most. I know what I saw and I have been searching to get confirmation for a long time. Now I've found it

http://video.google.ca/videosearch?q=mike+duffy-stephane+dion&oe=utf-8&rls=org.mozilla:en-US:official&client=firefox-a&um=1&ie=UTF-8&ei=n1aPSYGIGYzaNKKTa0L&sa=X&oi=video_result_group&resnum=4&ct=title#

Now, look at this and then try and convince me that Mr. Duffy's words and facial expressions reflect professional journalism?

So, I'm sorry [CTV] and CBSC, what you sent me does not fully respond to my concerns. Where do we go from here?

In response to that final question, the CBSC wrote back explaining to him that he could continue his dialogue with the broadcaster or file a CBSC Ruling Request. He replied on February 13:

Thank you for your prompt reply. At this point and in order to avoid a formal complaint, I would like to get an unambiguous reply from CTV to my two questions. Perhaps you could forward them to CTV. To repeat,

1. Can you please tell me what the following question means?

Murphy: "If you were Prime Minister now, what would you have done about the economy and this crisis, that Mr. Harper has not done?"

Poor Mr. Dion was asked to reply to this skewering of the English language -- a language that is not even his own native tongue. Look at the mangling of tenses. What does it mean -- in what time? "If you were prime minister right now, what would you have done (were you also prime minister then and if so when??), that Harper has not done (when, again??). Murphy did not, according to the text you sent me, attempt to clarify this in any way. Journalistic ethics: is it justified to ask repeatedly a question which really has no logical answer?

2. Mr. Duffy's introduction.

This was not addressed in Murphy's [*sic*, Hurst's] reply.

FYI this is what he (Duffy) said: "(Smirk) Well, the Harper Conservatives got some good news today and it wasn't just the World Economic Forum that rated our banking system as the best, the most secure in the world. This good news came in the form of a devastating reminder of Stéphane Dion's struggle with the English language. We'll have the tape in just a few moments. If you've got a PVR, set it on 'record'. This is one you're going to be talking about for days...."

Is this an acceptable statement from a (presumably) professional and objective journalist? Does this live up to your journalistic code of ethics?

Thank you for all the help you can provide in this matter.

The CBSC then explained to the complainant that a broadcaster is only obligated to respond once. He then filed his Ruling Request on February 17:

I would prefer that CTV reply to my remaining concerns. Their reply may well satisfy my remaining concerns. However, I infer from your response that this is unlikely, since they have

already sent me one response. I would therefore like to request a ruling, as you suggest. If you require any further information from me, please do not hesitate to ask.

File 08/09-0281

This complainant filed his Ruling Request via the webform on November 18:

Further to my original complaint about the airing of the TV out-takes of the CTV Atlantic interview with Federal Liberal Leader M. Stéphane Dion, I am impressed with the pace and scope of the CBSC complaints process, and grateful to CTV President Robert Hurst for his exhaustive response.

It raises several interesting points, but misses the main one: 'the spirit' of a code of ethics is as important as 'the letter'.

The response lacks any humility to acknowledge the consequences of their decision to 'make news' rather than simply report it. To wit, the smarmy news conference held by Stephen Harper 'armed' with the 'out-takes'. Further, a 'double standard' is apparent, based on my experience with the more gracious French-language media who tolerate the poor second language skills of most Anglophone politicians. And to paraphrase the candour of *Toronto Star* Editor-in-Chief J. Fred Kuntz, the onus is on the reporter to ask a clear question, rather than simply exploit the guest's attempt to answer an unclear one. (*Toronto Star*, Oct. 11/08, page A27)

Aside from the defensive tone of Mr. Hurst's response, perhaps the most incriminating aspect of the whole episode is his choice to quote from Article 8 of the RTNDA [Code] including the phrase about showing "special sensitivity when dealing with children". M. Dion and the voters of Canada are not children but, for the sake of the rapid decline in the calibre of discourse and candidates in Canadian public life, common courtesy is not too much to expect! Small wonder voter turn-out continues to decline, and good candidates – of whom I consider M. Dion to be one! – are reluctant to step forward.

Lest CTV News appoint itself to raise and answer several important "issues" about the worthiness of a candidate for elected office, I will now rely on the CBSC to rule on the capricious judgement of CTV News in this case. I have advised Mr. Hurst accordingly.

Thank you for your consideration.