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June 10, 2020

Dear Mr. Richardson:

Attached please find the review to your complaint of February 21, 2020.

COMPLAINT

You were upset by an article first published online on February 25th, 2019 that was headlined [City of Winnipeg manager in charge of police radios arrested after 2-year investigation](#).

The story was written by investigative journalist Caroline Barghout, and its essence was captured in the opening two paragraphs:

Winnipeg police have arrested a manager with the city for allegedly updating police radios with fraudulent software he got from a person considered to be a security threat by the U.S. Department of Homeland Security, CBC News has learned.

Back in 2011, Ed Richardson allegedly obtained millions of dollars worth of illegal software and instructed city employees to use it, police said in a January 2018 sworn affidavit, submitted to the Provincial Court of Manitoba when officers were seeking permission to search the man's emails.

The article affected you personally, as Ed Richardson is your father. You identified many concerns with the process followed by Ms. Barghout, and communicated those concerns to CBC News. Among them was a suggestion that the reporter was biased against your father; that she was in a conflict of interest because her husband was a former officer with the Winnipeg Police Services; that she was in a further conflict of interest because the unnamed "person considered to be a security threat" had done past work with CBC; that the methods she used to gather information and interview your father contravened CBC's [Journalistic Standards and Practices](#); and perhaps most importantly, that it was inappropriate to name him in the article when he had not been charged:

To date, no charges have been laid against my father, and they may never be. Fraud over \$5000 is an indictable offense and carries no statute of limitations.

The crown could decide to just never lay charges, and never drop the case. So how does a reporter ensure Fair treatment and reporting of outcome after naming somebody that never gets charged?

What was the journalistic purpose and public interest in reporting this story, and naming my father before charges were laid? This was hardly a “breaking news” story, as the alleged events happened nearly a decade ago, and as she says in her story, “there is no allegation ... any police radios [were] at risk”. I fail to see the public interest that naming Richardson, based solely on a police affidavit used to obtain a production order. This article was published on February 25th, and charges were expected to be laid in April.

Why couldn’t Barghout have either refrained from publishing my father’s name, or at least waited less than 6 weeks to see if any charges were laid before naming him in this article?

Doing so would have saved my entire family a year of hell. I would like to know what consideration was given to Richardson’s reputation before this article was published.

MANAGEMENT RESPONSE

Melanie Verhaeghe, the Senior Manager of Journalism for CBC in Manitoba, replied to your complaint. She maintained that Caroline Barghout followed appropriate procedures throughout her reporting.

She rejected the claim that Ms. Barghout had any conflict of interest. She said that the reporter’s husband had no involvement whatsoever in the story, offering no information or assistance in the reporting process.

Ms. Verhaeghe described some of that process, including how CBC learned about the story:

In the course of Ms. Barghout’s routine court checks in 2017, she found an Information to Obtain a Production Order for the address of 510 Main Street, Technical Services at Winnipeg City Hall. At that time, the document was sealed. One year later, the document was unsealed and became publicly accessible.

When Ms. Barghout was able to see the full document in 2018, she discovered that it outlined the allegations against your father. She felt it was a story of public interest that someone in a role of public trust was the subject of such an inquiry.

Ms. Verhaeghe defended the manner in which CBC’s reporter spoke to your father, and also how she used that material in her story. Ms. Barghout contacted your father on the phone and they had a lengthy conversation. He appeared familiar with the facts at the heart of the allegations, but said he had no knowledge that he was under investigation.

Ms. Barghout called Mr. Richardson and clearly identified herself by name and stated she is a reporter with CBC News. Mr. Richardson acknowledged he was aware of her name. She told Mr. Richardson she was seeking his comment on the allegations contained in the court documents. In fact, I can confirm she read the entire 12-page document to him over the phone. In the course of the 35-minute conversation, Mr. Richardson said he appreciated her reaching out to him for comment and for taking the time to explain the documents to him. He went on to say he'd never been questioned by the police. He also said he would like to speak with the police about it before commenting. Ms. Barghout gives her cell number and office number and she said she would like to hear back from him the following week.

After multiple attempts to reach Mr. Richardson again, he did not reply.

CBC's position is that it was fair to paraphrase your father in its article, even though during the phone conversation with Ms. Barghout he had declined the chance to do a formal interview. The article noted that, saying:

When CBC News contacted Richardson earlier this month, he said he was surprised to learn he had been under investigation for more than two years. No one from the Winnipeg Police Service had ever questioned him about any allegations, he said.

Richardson declined an interview request, citing concerns it could compromise the case, but said he was going to get in touch with officers to see if he could talk. Richardson also said he was aware police were at one point looking into the radio enthusiast, who he knows through the broader radio community, but said he wasn't sure if that investigation was still ongoing.

While CBC does not always name people who have not been formally charged, Ms. Verhaeghe said that Ms. Barghout consulted the appropriate manager and followed protocols to make that decision:

It was newsworthy and of public interest that a manager in charge of sensitive equipment such as police radios was arrested. We have endeavored to follow up monthly with the courts and police to see if Mr. Richardson has been charged and we will continue to do so.

Ms. Verhaeghe also rejected the idea that CBC faced a conflict of interest because of the "other" person in the story, a ham radio enthusiast who had attracted the interest of the U.S. Department of Homeland Security:

To be clear, that person was never an employee at CBC. Years ago, CBC would on occasion purchase video from that individual."

REQUEST FOR REVIEW

You were not satisfied with CBC's explanation, and identified several remaining areas of concern.

You did not accept Ms. Verhaeghe's assurance that Caroline Barghout's husband had no involvement in the story, arguing that it raises "at the very least a perceived conflict of interest and raises questions about her access to police information and her ability to write about police matters in an unbiased way." You said CBC should take steps to mitigate that perceived conflict.

You argued that the very act of reporting interfered with your father's rights in three different ways: first, by basing its story on the unsealed court document, CBC violated the privacy of your father because he had not yet been charged; second, by pursuing the story based only on this document, CBC was improperly interfering with a police investigation; and third, by influencing the outcome of this long-running investigation. After all, your father had never been questioned; it could hardly be coincidence that he would be arrested shortly after CBC began interviewing him and his employer.

You reiterated your belief that CBC should have given more consideration than it did to the impact on your father's reputation:

While I support the Freedom of the Press rights provided under the Charter, those rights should not trump the rights of the citizens of Canada for their assumption of innocence. Naming a suspect before charges, irreparably damages that person's reputation and creates a bias that jeopardizes the legal process. Mr. Richardson was not a public figure, a celebrity, not even a manager as suggested by the article. There was nothing to be gained by naming him at the time of the article.

REVIEW

"Public interest" is a phrase that is used a great deal by the media. On the surface, it speaks to the high-mindedness of the journalistic enterprise. Information that might ordinarily be private is reported because it serves the broader interest of the community to have it brought to light.

The challenge is that the term "public interest", in its journalistic form, can be difficult to define. It could be misused to allow the media to make any number of choices.

Sure enough, the concept comes up repeatedly in CBC's Journalistic Standards and Practices. And, to its credit, CBC attempts to explain in various sections what it means by "public interest". Here, for instance, is an excerpt from the JSP's section on privacy:

We exercise our right of access to information and our freedom of expression within the context of individual rights. One of these is the right to privacy.

In situations involving personal suffering and pain, we balance the public's right to know against individual human dignity.

We disclose information of a private nature only when the subject matter is of public interest.

Without limiting the meaning of public interest, we work in the public interest when we reveal information that helps our audience make decisions about matters of public debate and when we expose illegal activity, anti-social behavior, corruption, abuse of trust, negligence and incompetence, or a situation that poses a risk to the health and safety of others.

In this instance, I find Ms. Verhaeghe's explanation about the public interest being served by reporting on your father's case to be reasonable. Here was a public official in charge of police radios suspected of improper conduct relating to that work.

It was appropriate for Ms. Barghout to be making inquiries about the story before any police investigation was concluded. CBC needs to be mindful of what it reports to the public in such situations, but there is no reason why the act of journalistic investigation, such as research, interviews, and the gathering of information, sound and images - needs to be delayed based on the timeline of the police, the courts, or any other organization. There are many instances in which journalism prompts those institutions to act, and justice is served when it might not otherwise have happened.

It was also appropriate that CBC reported on your father's arrest, even though charges had not yet been laid. An arrest is a significant act, and meets the threshold for public interest in reporting on the story.

It is true, though, that reporting on the arrest does not necessarily mean that your father needed to be named. Here is what the JSP says in a section entitled "Identification of Persons Involved in Legal Proceedings":

Before charges are laid, we carefully weigh the public interest against the consequences to a reputation before disclosing the identity of a suspect in a police investigation. In assessing the public interest, we consider the importance of contributing to openness in the administration of justice, in particular when a suspect is arrested, when a search warrant is executed or in the course of any other court proceeding. A decision to publish the identity of a suspect at this stage is referred to the Managing Editor.

While it is true that the default position is not to use the name of the suspect in a case like your father's, that section of the JSP makes it clear that naming is still an option. It is a judgment call, and requires extra deliberation. So rather than making the decision herself, Ms. Barghout needed to go to her Managing Editor.

In this case, I discovered that she and the Managing Editor (Ms. Verhaeghe) went even higher up the corporate ladder, consulting with the Director of Investigative Journalism at CBC News. They all agreed that it was suitable. I respect that you disagree with the decision, but CBC followed its procedures scrupulously in this respect.

On the subject of conflict of interest, the JSP has specific language:

CBC's journalists are, first and foremost, expected to be independent and impartial. This means that our primary allegiance is to the public. Any conflict, real or perceived, between that allegiance and our personal or professional interests risks corroding the trust placed in us by Canadians.

This section of the JSP includes language on situations where a reporter is covering a story that involves family members:

Integrity is one of our journalistic principles. We refrain from any involvement with stories in which a member of our immediate family (including in-laws) has a strong stake. It is the responsibility of the employee to inform his/her supervisor of the potential conflict.

In the rare instance that such a conflict is unavoidable, news managers and the employee will develop a protocol to protect the integrity of our journalism.

To suggest that Ms. Barghout's husband had a "strong stake" in this issue is not reasonable. There is zero evidence that he had anything to do with this story. Nor do I agree that there is enough here to assert that there is an appearance of conflict.

The other potential conflict of interest you raised concerned the ham radio enthusiast. He was not an employee of CBC, but in the past he had sold material to CBC as well as other media outlets. You felt it unfair that he was not named by CBC, a different treatment than your father received. CBC's explanation is that this individual was not named in the court document, while your father was - and that it was your father who was the subject of the investigation at the heart of the story. I understand your discomfort on this point, but again I find that CBC's logic on this point is sound.

As part of this review, I listened to the recording of the phone conversation between the reporter and your father. In my view, Ms. Barghout conducted herself appropriately. Although he declined a formal interview, the description of his comments within the article was done responsibly. It acknowledged that he did not want to be interviewed, it brought forward the curious detail that your father did not know that for some two years he had been under investigation, and it made clear that CBC made an effort to allow him to tell his side of the story.

The fact that your father was not charged on the original timeline, and that he has not been charged at all to this point, is not something that CBC could have foreseen. However, it is something that CBC ought to address.

CBC policy currently talks about the corporation's obligation, when it covers a legal proceeding such as this, to provide the public with the outcome once it is known. But to date, there has been no outcome for your father - his status is stuck in limbo. I think you are entirely correct in finding this to be unfair to him after this long a period of time. It should be made clear to the public that to this point, at least, the arrest has not led to any criminal charges.

Ms. Verhaeghe told me that CBC has expressed a willingness to do a follow-up story on the case. It is clear that from your comments to her and your correspondence with me that you believe such a follow-up story would only exacerbate his suffering.

I believe that it is possible to acknowledge the strange circumstance here without doing an entire separate story. CBC could craft an editor's note and apply it to the original article indicating that to this point no charges have been laid. That is not a magic pill to make everything better for your family, but it would ensure that anyone in the future who reads about your father's arrest would understand that he has never faced criminal charges on this matter. If and when the case does come to a definitive conclusion, I would expect CBC to report on that outcome in a more comprehensive way.

My quick summation of the above is this: I appreciate why you are frustrated that CBC put this matter into the public domain, and that you disagree vehemently with the decisions made by the programmers. There is no doubt that CBC journalists have an obligation to think very carefully before naming someone who has been arrested, but not charged with a crime. However, the programmers' reasoning in this instance was sound, and the correct processes were followed. The reporting by Ms. Barghout does not violate CBC's journalistic policies.

Sincerely,

A handwritten signature in cursive script that reads "Jack Nagler".

Jack Nagler
CBC Ombudsman

cc: Brodie Fenlon, Editor in Chief, CBC News
Melanie Verhaeghe, Senior Manager, Journalism, CBC Manitoba