

Review by the Office of the Ombudsman, French Services, CBC/Radio-Canada, of a complaint regarding the actions of journalist Marie Isabelle Rochon during filming of a sequence for a news story in a bakery located in St. John's, Newfoundland and Labrador, on July 31, 2018. The complainant, the owner of the business, believed that Ms. Rochon had failed to secure sufficient prior approval to film there.

THE COMPLAINT

On August 3, 2018, Mr. Christopher Rusted, the owner of a bakery in St. John's, Newfoundland and Labrador, filed a complaint regarding the actions of a journalist, Ms. Marie Isabelle Rochon, who he claims intruded into his place of business on July 31, 2018, without having obtained prior consent from him. Mr. Rusted believes that this was a violation of the CBC/Radio-Canada Journalistic Standards and Practices (JSP¹).

Mr. Rusted explains that the journalist went to the bakery early in the morning and attempted to film the store, as well as staff and customers present, "with only a very casual approval" from a "low-level employee" of the establishment. According to his staff, he says, the journalist let them believe that she had obtained prior consent from "someone in authority" to record images, saying she was simply "[t]here to film a transaction with a customer." As the journalist proceeded to film, another employee telephoned the owner and complainant, Mr. Rusted, at home to tell him what was going on. He asked to speak to the journalist, and then offered to go to the store to speak with her. She apparently told him she was in a hurry, such that the conversation concluded with an order: Mr. Rusted told Ms. Rochon to leave the premises immediately, send an apology by email, and confirm that the recorded video images had been destroyed.

"When the email of apology arrived," Mr. Rusted's complaint continues, "there was no mention of destruction of the video." At Mr. Rusted's insistence, the journalist referred him to her News Director, Mr. Denis Robichaud, who "quickly left [Mr. Rusted] with the view he felt the matter was without consequence."

Mr. Rusted feels that this affair was a waste of his time, and that the rights of his store's staff and customers were infringed upon. His complaint concerned the following three aspects:

- "1. That the journalist "did commit 'Trespass' as defined by [the CBC/Radio-Canada JSP] and that M. Robichaud supported that 'Trespass'".
- "2. That as a consequence of the Trespass, we are entitled to confirmation that the videos from our premises be destroyed and further, that we receive written (or electronic) confirmation from an Officer at CBC authorized to make such a commitment.
- "3. That we suffer no further losses as a consequence of the negligence of Ms. Rochon and M. Robichaud."

¹ <http://www.cbc.radio-canada.ca/en/reporting-to-canadians/acts-and-policies/programming/journalism/>

THE RESPONSE FROM THE NEWS DEPARTMENT

On August 3, 2018, the same day the complaint was received, Mr. Denis Robichaud, News Director, Radio-Canada Acadie, sent a brief reply to Mr. Rusted, summarizing the main points of the many email messages they had exchanged in the days previous. He wrote:

“As I stated before, our reporter received a verbal consent, from an employee in your store, to film images. She did her due diligence and asked for permission. As soon as our reporter was advised by you, over the phone, that you did not agree to this, no other images were shot in your property. As mentioned before, the images were not used nor archived. With the assurance of my Senior Production Manager, the video supports used by our reporters are erased daily. So these images are nonexistent.”

THE REQUEST FOR REVIEW

Mr. Rusted was not satisfied with the response from Radio-Canada, and so on August 7, 2018, he asked me to review his case and address the three aspects of his initial complaint as he had stated them.

THE REVIEW²

I should begin by clarifying that my mandate as Ombudsman does not authorize me to rule on the third-party liability of Radio-Canada or its journalists. The Office of the Ombudsman is a non-judicial body, and as its current holder, I have no legal training. My authority is limited to matters pertaining to journalistic ethics. More specifically, the Ombudsman’s responsibility is to determine whether the conduct of Radio-Canada employees engaged in producing news content is compliant with the Corporation’s Journalistic Standards and Practices (JSP).

The JSP contain a provision on “Trespass”, found in the section “Investigative Journalism”³:

“Trespass

“We understand and respect private property. We should be aware of the legal issues of violating private space and seek advice when unsure. The definition of private space is not the same in every province and territory.

“We usually do not enter private space without obtaining permission from those with authority to provide it.

“This is different from observing or recording events taking place on private property from a public space. But, we weigh the value and importance of doing so against the principles of privacy as laid out in this section.”

² <http://www.ombudsman.cbc.radio-canada.ca/en/about/mandate/>

³ <http://www.cbc.radio-canada.ca/en/reporting-to-canadians/acts-and-policies/programming/journalism/investigative-journalism/>

The circumstances of the event

On July 31, 2018, journalist Marie Isabelle Rochon was filming a story on a problem experienced by many residents of isolated villages in Newfoundland & Labrador: a lack of neighbourhood stores requires them to travel great distances to buy fresh food products. She had decided to illustrate her story by following a woman, Carol Monsigneur, who drives for three hours at a time, twice a week, to St. John's to buy groceries. One of the stores she regularly shops at is the bakery owned by Mr. Rusted. Ms. Rochon and Ms. Monsigneur went to the bakery, where the journalist asked an employee if she could film some shots of Ms. Monsigneur buying bread; the employee consented. Another employee then telephoned the owner at home; the owner demanded to speak to the journalist, expressed his discontent at her not having contacted him directly to ask permission, and told her to stop filming, leave the premises, issue an official apology, refrain from using any images already filmed, and destroy said images.

Later in the morning of the same day, the journalist emailed Mr. Rusted, repeating the apology she had earlier made over the phone. She wrote:

"I really thought I was talking with the owner of the place when I asked if I could film Carol, the lady who I was following who comes to your bakery every week."

She added:

"I should have called yesterday to get your consent first and it was my mistake," concluding: "Please be reassured that there will not be any image of your bakery on air without your consent."

A few hours later, Mr. Rusted replied to the journalist by email, accusing her of having violated the CBC/Radio-Canada Journalistic Standards and Practices by trespassing on his premises, and of failing to respect the privacy of his customers and employees. He added that they had made an agreement that she would destroy the material filmed in his store, and said he was not satisfied with the simple promise that it would not be used on air. He demanded proof of its destruction, failing which he would inform the police and his lawyer.

Denis Robichaud, News Director, Radio-Canada Acadie, then wrote to Mr. Rusted the same day, inviting him to pursue the matter with him directly. He reiterated that the journalist had received verbal consent from a store employee, that she had ceased filming as soon as she was asked to, and that the material already shot would not be used in the story, nor archived for later use.

The next day, August 1, Mr. Rusted replied to Mr. Robichaud, expressing his surprise that the latter felt that "Corporate Policy was followed" (i.e., that the policy on trespass was not violated). He asked Mr. Robichaud to produce copies of signed, written releases received from the bakery's customers and staff giving their consent to appear in the material that was shot.

Mr. Robichaud replied the same day, reiterating that the images in question would be neither used nor archived, and that he considered the matter to be closed.

Two days later, Mr. Rusted filed a complaint with the Office of the Ombudsman, providing copies of the entire correspondence summarized here.

The story was broadcast the following week, on August 7. It contained no sequences filmed at the bakery.

Examination of the complaint

Yes, a retail business is a private space, but one that is put to public use. One is not required to ask permission to enter, as one would be in the case of a private home. The two parties in this matter agree on the fact that the journalist, Marie Isabelle Rochon, arrived at the bakery unannounced, accompanied by a customer, and that before filming any material, she obtained consent from an employee who was present. Indeed, it seems reasonable to conclude that Ms. Rochon entered in good faith, to request authorization to film sequences. Ms. Rochon has stated that she had the impression, in speaking to the employee, that she was dealing with the owner of the establishment. My interpretation of the JSP is that no proof of that needed to be provided, because they only mention “obtaining permission from those with authority to provide it.”⁴ If an employee to whom such a request is made gives consent, this means that said employee believes he has the (delegated) authority to do so. The employee had the option of replying that he would have to check with the owner. Since that employee gave consent to the recording of the images, the journalist had grounds to believe she had obtained authorization.

Of course, the situation changed as soon as another employee put the journalist in touch by telephone with Mr. Rusted, the owner of the premises. I note, however, that no one, including the complainant, has suggested that this particular employee tried to intercede earlier and cast doubt on his co-worker’s decision to give consent to the filming. Nor is there any mention of any objections to being “in the shot” that might have been raised by other employees or customers and shared with the journalist before she spoke with Mr. Rusted. Consequently, it is my opinion that the journalist was not in violation of the JSP in believing she had the green light to begin filming. In one of his exchanges with CBC/Radio-Canada management, Mr. Rusted asked to “obtain copies of the releases Ms. Rochon obtained from staff and customers” of the bakery. There is nothing in the JSP stating that such authorization must be obtained.

As soon as she was enjoined by Mr. Rusted to stop filming and leave the premises, the journalist respected his authority, and here too complied with the JSP. She apologized to him verbally and in writing, as he asked, and promised that the images recorded in his store would not be used; they were not.

I should point out that Mr. Rusted was not required to give any reason for his refusal.

⁴ <http://www.cbc.radio-canada.ca/en/reporting-to-canadians/acts-and-policies/programming/journalism/investigative-journalism/>

No one is under any obligation to allow images to be filmed inside their place of business, regardless of whether (as in this case) no negative connotations about said business are to be contained in the story. On the contrary, Ms. Monsigneur shops at the bakery regularly and enjoys doing so. The owner's wishes had to be respected, and I believe that they were, in full.

The question of the destruction of the images remains. Mr. Rusted demanded that "an officer at CBC authorized to make such a commitment" confirm in writing that the images recorded inside his place of business had been destroyed. In my opinion, Mr. Robichaud, as News Director, Radio-Canada Acadie, holds a sufficiently senior position at Radio-Canada to meet that criterion. He informed the complainant in writing, after checking with the Senior Production Manager, that "the video supports used by our reporters are erased daily." He has also specified that the images had not been archived. He concluded by writing: "So these images are nonexistent."

All this seems clear to me, and I find it hard to understand the complainant's continued dissatisfaction with this reply. CBC/Radio-Canada made the transition from film to digital decades ago, such that it is impossible to hand over any original film (or its ashes) to the complainant as proof of its "destruction".

CONCLUSION

The actions of journalist Marie Isabelle Rochon and her supervisor, Denis Robichaud, News Director, Radio-Canada Acadie, were compliant with the CBC/Radio-Canada Journalistic Standards and Practices.

Guy Gendron
Ombudsman, French Services
CBC/Radio-Canada
September 6, 2018