

Review: Three complaints about Kevin O’Leary, co-host of The Lang & O’Leary Exchange

April 14, 2011

REVIEW

Three complaints have been lodged concerning Kevin O’Leary, the co-host of the CBC News Network program, [The Lang & O’Leary Exchange](#). They provide an opportunity to review his involvement as a contracted employee on CBC news and information programming.

One complaint, from Kyle Mytruk, concerned a remark by O’Leary on the January 27, 2011 program. During a wider discussion about General Motors, O’Leary said labour unions were a “parasite” on business. Mytruk asserted that the comments were unfair, were not even-handed, and violated CBC Journalistic Standards and Practices.

Mytruk acknowledged that the standards and practices applied to CBC journalists, but observed that “when someone is given a pedestal” it confers journalistic status. “Also, CBC has to be accountable to anyone they give this pedestal to regardless of whether they are a journalist or not.”

Another, from Carl Hunt, concerned remarks by O’Leary in CBC Television promotional spots that “greed is good” and “I love money.” He said CBC had provided O’Leary a soapbox to provide “American-style economics.” He said O’Leary’s values, fully applied, would deprive the country of its ability to help the less fortunate. Hunt wanted to know the dollar value of the commercials.

A third complaint, from Julian Lepinski, concerned O’Leary’s on-air disclosure of a conflict-of-interest in a discussion on regulatory issues on usage-based billing of internet services with an official from BCE Inc. O’Leary noted he was a shareholder but did not note his equity and income fund held BCE shares.

“Listen, I love this policy because I’m a shareholder,” O’Leary said. “That’s all I care about. If you could suck every last cent out of users, I’m happy for you.”

Later in the program, a representative of an internet service provider also pointed out that O’Leary was a BCE shareholder in arguing for consumers in the issue.

CBC responded to the three complaints individually.

On the matter of the remark about unions, the program's executive producer, Robert Lack, wrote Mytruk on February 9, 2011, to say O'Leary's role was within [CBC Journalistic Standards and Practices](#) as an expression of opinion. The January 27 episode was not the first time he had expressed that view, Lack said.

He noted the program had presented interviews with several labour leaders, including the former head and current chief economist of the Canadian Auto Workers, the president, national director and chief economist of the United Steelworkers of Canada, and the president of the Ontario Public Service Employees Union.

"As a program, we take our responsibility to present a diversity of perspective seriously," he wrote.

Mytruk asked for a review of the matter.

On the promotional commercials, CBC News Network executive director, Todd Spencer, wrote Hunt on January 19, 2011 to say that any opinions expressed were O'Leary's and not the CBC's.

"CBC is prohibited by regulation and policy from supporting or promoting a particular point of view," Spencer wrote. "It is our mandate as a public broadcaster to present a wide range of views on matters of public interest and concern affording Canadians the opportunity and the information they need to make up their own minds about the nature or quality of the views expressed."

Hunt wrote back April 2, 2011, that he was dissatisfied with the response. He didn't get an answer about the commercial value of the promotional spots or that they should highlight O'Leary's opinions. He asked for a review by this Office.

"Mr. O'Leary is welcome to express his opinions but I fail to see why Canadian taxpayers that support the CBC should foot the bill," he wrote.

On the conflict-of-interest disclosure, Lack wrote Lepinski that the two references in the program, one by O'Leary and one by a guest, left no doubt O'Leary was a BCE shareholder. Those declarations satisfied policy, Lack asserted.

CBC Journalistic Standards and Practices offer several relevant passages that intersect with the complaints.

They espouse a commitment to *"reflecting accurately the range of experiences and points of view of all citizens."*

To achieve fairness, *"we treat individuals and organizations with openness and*

respect . . . We treat them even-handedly.”

To achieve balance, *“our content on all platforms presents a wide range of subject matter and views . . .we ensure that divergent views are reflected respectfully . . .we also ensure that they are represented over a reasonable period of time.”*

The policy permits expressions of opinion. *“This content adds public understanding and debate on the issues of the day. When presenting content (programs, program segments, or digital content) where a single opinion or point of view is featured, we ensure that a diversity of perspective is provided across a network or platform and in an appropriate time frame.”*

When a single point of view is presented, *“it is clearly labeled and . . .it does not misrepresent other points of view.”*

A key point involves who falls under the policy. The policies are stronger for CBC employees than for contractually engaged contributors: *“Our value of impartiality precludes our news and current affairs staff from expressing their personal opinions on matters of controversy on all our platforms.”*

In a passage on the scope of the policy, it says the standards apply to *“news, current affairs and public affairs personnel and to information content produced, broadcast and posted online by these teams.”*

On conflicts of interest, the policy notes wider corporate policies that guide ethical conduct. In this area, though, it expands its scope to take in contributors: *“Credibility is the foundation of our reputation. . .The integrity of the organization is ultimately shaped by the individual integrity and conduct of our employees in their work, and in their outside activities. To preserve that independence, **all employees involved in the creation of news and current affairs content** (emphasis added) *must carefully consider what organizations they are publicly associated with.”**

It adds: *“It is the employee’s responsibility to make his or her immediate supervisor aware of any conflict of potential conflict . . .it is possible to establish a protocol so the employee can keep working in a specific area.”*

CONCLUSION

O’Leary’s presence is unique in CBC news and information programming.

He is a veteran entrepreneur and current chairman of an equity and income fund. He is employed not to be a journalist but to bring his professional experiences to bear on a range of topics in the world of business. By all appearances, he has not been hired to be a shrinking violet.

He appears not only as a co-host on The Lang & O'Leary Exchange and on the CBC News Network as a regular commentator on business, but on CBC's The Dragons' Den as a co-host. There are plans for him to be featured in a co-production on the CBC 2011-12 schedule, Dealer to Leader.

His main role on The Lang & O'Leary Exchange is to provide opinion and to engage in debate with co-host Amanda Lang. It is clear from the program that he is not positioned as a journalist. Nor does he present news content as a journalist would. Any of his scripted reading on the program presages an exchange of views with Lang, who serves at times as a foil and other times as an adversary while maintaining a discipline of impartiality, or with guests of the show. The program provides a daily disclaimer at the end of the show to note his opinions are his own and not those of CBC.

There is no denying O'Leary's outspokenness, or the draw of it for many viewers, and the program is designed in part to accommodate that controversial quality in the context of competitive business journalism elsewhere on television. Other CBC News programs feature an environment for commentary, but none so prominently, and this cuts both ways with the audience.

The program's success very clearly owes in no small way to his presence. In the context of CBC news and information culture, though, this program is a bit of a departure from straightforward formats of news presentation with limited analysis and no opinion. The email received by this Office suggests the presence of his views unsettles some viewers who do not easily embrace news and opinion when they so commingle. Of course, some viewers simply don't agree with his views or don't want to hear them expressed.

It is commendable that CBC has chosen to establish a protocol with O'Leary as it might with a staff employee. It has stationed O'Leary as a contracted commentator somewhat outside the ambit of CBC Journalistic Standards and Practices but kept the program within that policy.

Among other things:

- The program continues to feature a diverse blend of guests.
- His co-host regularly challenges his opinions.
- Other viewpoints are regularly presented.
- He isn't directly involved in news presentation.
- He declares any potential conflicts of interest when he expresses opinion.

Since he is not a CBC staff member, it is incorrect to assert he has no right to express opinions on the program as a co-host. It is also incorrect to expect that his opinions will be immediately countered. The program is permitted under CBC policy to feature diverse opinion over a reasonable period of time.

And O'Leary's conduct is not without boundaries. Like all those employed in some capacity by CBC, he is subject to corporate policies that reflect legal and regulatory principles for broadcasting and public service.

As a result, some of the responsibility for optimal conduct rests with O'Leary in ensuring he does not stray offside. Some responsibility rests with the program to remain editorially diverse and to divide labour so personnel under the journalistic policy handle news elements. If O'Leary strays offside, it is up to the program to address it, either alone or in concert with him.

This shared duty is an innovative model. It is outside of this Office's mandate to presume operational direction, but it is clear that his successful presence paves the way if CBC chooses to generate similarly co-hosted programming.

In all three complaints, I have concluded there was no violation of CBC policy.

O'Leary's remark about unions was stark but within his historic playbook. It has been strongly challenged by several guests over a reasonable period of time.

The promotional commercial content, somewhat outside of the ambit of journalistic policy and this Office, simply reflected the provocative tone of the program. Their content was not a violation of policy. I note also that those commercials are regularly replaced with new campaigns.

And, while it might have been best to declare his funds held BCE shares, his personal declaration as a shareholder effectively and sufficiently identified his conflict as he conducted the discussion. There was no doubt O'Leary was in the discussion with a personal stake.

Nevertheless, it is important never to dismiss complaints that reflect certain unease with a program format or its strong personality. They speak to the importance of monitoring practices to ensure CBC can continue to serve the public interest as it presents program models featuring an increased quotient of analysis and comment.

Of particular importance will be the public perception of contracted hosts and whether, through frequent appearances, they are perceived simply as CBC personnel. If that became the case, it might be necessary to address that perception with refined policy.

As it stands, however, the existing framework provides healthy freedom of individual expression and preservation of CBC program impartiality.

Kirk LaPointe
CBC Ombudsman