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**CANADIAN BROADCAST STANDARDS COUNCIL  
ONTARIO REGIONAL COUNCIL**

CFTR-AM re Dick Smyth Commentary

(CBSC Decision 95/96-0062)

Decided March 26, 1996

A. MacKay (Vice-Chair), R. Cohen (*ad hoc*), P. Fockler, R. Stanbury<sup>1</sup>

**THE FACTS**

Since this broadcast is so closely linked to the facts involved in the *CHUM-AM re Brian Henderson* (CBSC Decision 95/06-0008, March 26, 1996) matter, it will be necessary to briefly summarize those facts before adding those relating exclusively to the Dick Smyth broadcast.

The Henderson aspect of the chronology began with his commentary, following his reading of the news, at approximately 7:10 a.m., on September 14, 1995. The pertinent portion of the text of his commentary was as follows:

Provincial Attorney General Charles Harnick may not realize it but the root cause of the crisis in the Legal Aid system is Jewish mothers. I don't ever recall my parents suggesting a career choice for me but, rightly or wrongly, Jewish mothers are infamous for advising their offspring to become doctors or dentists or lawyers, or marry a doctor or dentist or lawyer, and the result is we have too many of all three in this province ... most especially lawyers.

And even a bad lawyer can make a good living through Legal Aid. ...

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<sup>1</sup> Since Madeline Ziniak, a broadcaster member of the Council, and Taanta Gupta, a public member of the Council, work for companies which, like CFTR-AM, are corporately related to Rogers Communications Inc., they abstained from consideration of this matter.

We also have too many laws, which may actually be the real problem but for now it's more convenient to just blame the lawyers.

There's a Jewish proverb about two farmers who both claim to own the same cow. And so there they were: one farmer pulling the cow's head, the other man yanking the cow's tail, with a lawyer right in the middle -- milking the cow for all he's worth.

Something like legal aid.

I'm Brian Henderson.

An apology by the CHUM Group Radio President was read on air that day but the matter was not thereby put to rest. That apology was put in the following terms:

Today, in his commentary, Brian Henderson made remarks that were interpreted as being anti-Semitic.

I must first make the point that, as far as we at CHUM are concerned, Brian Henderson is in no way anti-Semitic and has, in past commentaries, been very supportive of the Jewish community.

We at CHUM Group Radio are very concerned about any feeling that we or our employees harbour any anti-Semitic feelings. Such is just not the case.

We are deeply concerned that the remarks made on our radio station may have offended any of our listeners.

We can only ask those who were offended by the remarks to accept our most sincere apologies.

CFTR-AM commentator Dick Smyth said the following at 7:38 a.m. on September 18:

There's truth and then there's political correctness. Item: My old colleague Brian Henderson finds himself in a confrontation with the Jewish community because of some rash but nevertheless true words. A quick inspection of the Toronto phone book reveals that there is indeed a disproportionate number of Jewish lawyers, dentists and doctors. In many cases their profession is the result of family pressure ...

The CBSC received complaints from many individuals, only one of whom ultimately requested that the matter be referred to the Ontario Regional Council for adjudication. That listener expressed her unhappiness with Dick Smyth's comments in the following way in her letter of September 21:

I did not appreciate Dick Smyth's comments that supported Brian Henderson's anti-Semitic remarks. Smyth's sleazy and selective interpretation of Henderson's graphically bigoted comments once again indicates how "fair-minded" Smyth really is.

It is not an issue of being "Politically correct" or thin-skinned as Smyth stated. Henderson blamed a very specific ethno-religious group, i.e. the Jews for the economic ills of several societal institutions without providing any supporting evidence, and to make matters worse, Smyth backed him up.

I find many of Smyth's commentaries offensive and his support of Henderson's remarks is one more example.

On the following morning at exactly the same time, the station broadcast its own rebuttal of Smyth's commentary in the following language:

I'm John Hinnen, Vice President and Executive Editor of 680 News. Yesterday at this time, Dick Smyth delivered a commentary with which the management of this radio station vehemently disagrees. Dick chose to support the recent comments of a broadcaster on another radio station who, according to reports, suggested that the Legal Aid system was in jeopardy because too many Jewish mothers had encouraged their children to become lawyers. We found those comments to be unfair and *totally* without basis and for Dick to condone these remarks was, we feel, completely inappropriate. Dick is paid to do commentaries on 680 News. Sometimes we agree with his views and sometimes we do not; however, in this case, we felt he was entirely wrong and that we could not let this issue pass without comment. To stereotype people in this way is totally against everything this company stands for. It is not, as Dick suggested, a matter of political correctness. It is a matter of common decency. We apologize to all those listeners whose confidence in this radio station was diminished in any way by Dick's remarks.

Thank you.

B'nai Brith Canada, a Jewish community organization, which had been very involved in the reaction to the Brian Henderson Commentary, issued a press release on September 19, the title and sub-title of which speak for themselves: "B'nai Brith

Encouraged by Quick Response to Biased Broadcast: CFTR apologizes, but host refuses to retract remarks”. In that press release, the Executive Vice-President of B’nai Brith, Frank Dimant, stated:

Yesterday, we were shocked to hear Mr. Smyth’s blatantly anti-Semitic commentary. We immediately sent a letter to the station asking for an apology to be made. We are pleased that they acted in such a quick and responsible manner. It is encouraging to see that 680 News took our comments seriously, and that they acted in such a positive way.

The apology was both heartfelt and substantial. It demonstrated a true commitment to the fight against bigotry in our community.

At the same time, we are dismayed that Mr. Smyth is refusing to apologise for his remarks. He has expressed no remorse regarding his commentary, and in fact has claimed that his program was merely a recitation of facts, rather than an anti-Semitic diatribe. He fails to see the link between his observations and the incitement of hatred against Jews.

Dick Smyth did, in fact, broadcast his own apology on September 21. In that statement, he said:

Well, it has been a difficult week. For Rogers Broadcasting, for me and my family and for the Jewish community.

I would like to put to rest the controversy in which we all find ourselves. My commentary Monday was on the issue of saying unpopular things. My quotation of Brian Henderson, widely but wrongly seen as a blanket endorsement, was used only as an example. I never endorsed the concept that mothers of Jewish lawyers were the root cause of our Legal Aid difficulties.

The word “disproportionate” has had a negative connotation to many listeners and I regret having chosen that word. It hurts me deeply that I have been branded an anti-Semite for remarks broadcast on this station. I have written at rather more length on the subject in the *Toronto Sun* this morning.

I would like to get on with the business of living in this wonderful community ... of community [*sic*] of ours, of reporting and commenting on the news it generates. Even though it was unintended, I apologize most sincerely. Please accept my personal apology. I am Dick Smyth.

For unexplained reasons, the complainant's letter of September 21, which has been quoted above, was apparently received only on October 20 by the CRTC, which forwarded it to the CBSC on October 26. The Council's Secretariat then sent it to the broadcaster requesting that it reply directly to the complainant, which the station did on November 15. The station's Executive Vice President and General Manager made it clear that CFTR shared her view:

We agree that those remarks were offensive and I think it is important for you to know that we responded firmly and quickly in reaction to them.

Mr. Smyth's remarks were made at 7:38am during his regularly scheduled commentary. The management at 680News received a copy of the commentary and immediately set out to compose on behalf of 680News an unequivocal corporate repudiation of the opinions expressed by Mr. Smyth.

The letter then referred to the B'nai Brith press release and went on to explain that station management

met with Mr. Smyth to review the commentary with him. Mr. Smyth expressed genuine and sincere regret about his remarks and offered to issue an apology as soon as possible.

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We have since met with representatives of B'nai Brith and The Canadian Jewish Congress, both of whom have indicated that our response to this issue was appropriate and satisfactory.

We believe that we have demonstrated our corporate sensitivity with regard to this matter and will make every effort possible to ensure that there will be no recurrence.

The listener was unsatisfied with this response and requested, on November 24, that the CBSC refer the matter to the appropriate Regional Council for adjudication.

## **THE DECISION**

The CBSC's Ontario Regional Council considered the complaint under the *Code of Ethics* of the Canadian Association of Broadcasters (CAB). Clauses 2 and 6(3) of that Code read as follows:

Clause 2, *CAB Code of Ethics* (Human Rights)

Recognizing that every person has a right to full and equal recognition and to enjoy certain fundamental rights and freedoms, broadcasters shall endeavour to ensure, to the best of their ability, that their programming contains no abusive or discriminatory material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, sex, marital status or physical or mental handicap.

Clause 6(3), *CAB Code of Ethics* (News, etc.)

It is recognized that the full, fair and proper presentation of news, opinion, comment and editorial is the prime and fundamental responsibility of the broadcast publisher.

The Regional Council members also listened to a tape of the original program, the apology by Mr. Hinnen and the subsequent apology by Mr. Smyth and then reviewed all of the correspondence. The Council determined that the program had breached the *CAB Code of Ethics*.

### **The Content of the Program**

As indicated above, the elements of this case are closely related to those of the *Henderson* case. It was, in fact, the view of the Council that, by his choice of words, Dick Smyth had, in his Commentary, effectively incorporated Brian Henderson's comments. It was Smyth who had chosen to say that Henderson's current difficulties were "because of some rash but nevertheless *true* words" (emphasis added) he had used. Smyth added fuel to the fire, as he himself later admitted in his apology, by stating that a perusal of the Toronto telephone directory would reveal that "there is indeed a *disproportionate* number of Jewish lawyers, dentists and doctors" (emphasis added) in the city.

Smyth later indicated that he had not *intended* to leave a biased or racist residue. He stated that his "commentary Monday was on the issue of saying unpopular things" and that his "quotation of Brian Henderson, widely but wrongly seen as a blanket endorsement, was used only as an example." He had, nonetheless, described Henderson's words not merely as "rash" but also as "true" and then appeared to underscore the truth to which he had referred by referring to the Toronto telephone directory and describing the number of "Jewish lawyers, dentists and doctors" as "disproportionate". That he then went on to say that he had "never endorsed the concept that mothers of Jewish lawyers were the root cause of our Legal Aid difficulties" hardly suffered scrutiny in the light of his previous remarks. In the Council's view, the Smyth commentary constituted abusive and discriminatory

comment based on racial, national, religious or ethnic origin. It was, furthermore, not a fair and proper presentation of opinion or editorial comment in accordance with the provisions of Clause 6(3) of the *CAB Code of Ethics*.

The Council can do no better, in expressing its attitude regarding Mr. Smyth's commentary than to cite the terms which it had used to describe the inappropriateness and unacceptable nature of the Henderson Commentary.

To illustrate his point, he had reached for an unrelated, irrelevant and factually unsupportable claim. His original commentary was incorrect and inappropriate, a textbook case of what Canada's private broadcasters sought to avoid when they mandated in the *Code of Ethics* which they created *for themselves* that "their programming contain no abusive or discriminatory material ... based on matters of race, nation or ethnic origin [or] religion".

The wording chosen by the private broadcasters parallels, not inadvertently, the Council believes, that used in the *Radio Regulations, 1986*. Whether intended to be humorous or serious in tone, programming, whether live or pre-recorded, which "tends or is likely to expose an individual or class of individuals to hatred or contempt on the basis of [their] race, national or ethnic origin, colour [or] religion" is not tolerable on Canadian airwaves. While each individual must determine his or her limits of tolerance *at home*, the manifestation of such intolerance on the *publicly*-owned airwaves is unacceptable. The freedom to speak or express does not include the freedom to defame.

In an era when the airwaves are transformed more readily and frequently from music and drama to talk and comment, there are, as a matter of fact, more talk and comment and more *words* on the air. Consequently, on a simple proportionate basis, there are more opportunities to err regarding the social responsibilities and community values ensconced in the *Code of Ethics*. More care is, therefore, required by broadcasters to ensure that the Code provisions are respected.

In the Henderson matter, the newscaster had made, as he later admitted, a poorly conceived attempt at ethnic humour. In the Smyth case, the broadcast was not humorous in intention but nonetheless a poorly executed attempt to support a beleaguered colleague. In radio, where there is no video component, words are, if not everything, *nearly* everything. Poor or unskilled choices reflect on the person broadcasting. Thoughtless or wrong choices which are abusive or discriminatory reflect on the person listening. The broadcaster's liberty of expression does not extend that far.

### **The Broadcaster's Response**

In the *CHUM-AM re Brian Henderson* matter, the initial on-air response by the broadcaster was insufficient as a result of its equivocation; however, as stated in the conclusion to that case, the broadcaster very shortly thereafter “had taken extraordinary steps to deal with both the short-term issue of the broadcast itself and with the longer term issue of the ease with which such a problem might again arise and the societal steps which needed to be taken to avoid such a dilemma in the future.”

In this case, CFTR-AM dealt firmly and unequivocally with its errant commentator. Its response to the complainant, although determined by her to be unsatisfactory, was, in the view of the Council, thorough, complete and, from the beginning, apologetic. The CBSC would not have asked the broadcaster for more. In the view of the Council, CFTR amply fulfilled its responsibilities to the complainant.

### **Broadcaster Announcement of the Decision**

The broadcaster is generally required to announce an unfavourable decision of the Regional Council during peak listening hours within thirty days of the publication of the decision. While the Council considers that the broadcaster's act constituted a breach of the industry's *Code of Ethics*, it has determined that the text of the announcements read the following day by the station's Vice-President and Executive Editor of 680 News, and two days later by the on-air host were the equivalent of what it would normally have required. In the particular circumstances of this case, as in the previous case of *CJMR-AM re the Voice of Croatia* (CBSC Decision 92/93-0205, February 15, 1994) and *CHUM-AM re Brian Henderson* (CBSC Decision 95/96-0008, 0060 and 0061, March 26, 1996), the Council considers that the broadcaster has by anticipation fulfilled its obligations regarding an unfavourable decision.

*This decision is a public document upon its release by the Canadian Broadcast Standards Council.*