
CANADIAN BROADCAST STANDARDS COUNCIL

BRITISH COLUMBIA REGIONAL PANEL

CHAN-TV (Global BC) re reports on *News Hour*

(CBSC Decision 08/09-1422)

Decided November 10, 2009

S. Warren (Chair), R. Cohen (*ad hoc*), J. Doobay, G. Leighton, T. Plasteras, J. Rysavy

THE FACTS

On March 23, 2009 at 6:00 pm, CHAN-TV (Global BC) broadcast *News Hour*, its supper-hour newscast. The first three stories involved activities by police officers. Just before the newscast began, there were teasers that highlighted two of those three top stories, which were introduced with the words “Tonight on the *News Hour* ...”. There was then a scene of a man in a suit surrounded by other men in suits walking down a corridor into a room. A woman approached him from behind as he entered the room. The caption at the bottom of the screen read “Top Story: Man in Charge” and the voice-over narration stated:

An emotional mother confronts the Mountie in charge the night her son was Tasered. His testimony from the Dziekanski inquiry.

The teaser then switched to the next story. The visual was a city street with police and medical professionals around a gurney, which was then wheeled towards a waiting vehicle. The caption for that scene was “One Fatal Shot” and the voice-over was

One fatal shot from an officer’s gun and we learn more about the man who was killed. And a witness who says he has video.

Following another teaser for a report not relevant to this decision, the newscast itself, anchored by Chris Gailus, began. The first report, entitled “Senior Officer on Stand”, was introduced by Gailus.

Anchor Chris Gailus: Good evening. His answers were short and to the point. Today, RCMP Corporal Monty Robinson took the stand at the Braidwood Inquiry. He was the supervising officer the night Robert Dziekanski died after being Tasered at the Vancouver Airport. Robinson testified that, even though he wasn’t authorized to carry a Taser, he did order another officer to use it on Dziekanski.

Reporter Ted Chernecki: Twice now, Robert Dziekanski’s grieving mother has tried to get the attention of one of the officers there when her son died. And, as did Constable Millington, so too did Corporal Robinson ignore her.

The newscast cut to Robinson walking into an inquiry room. Robert Dziekanski’s mother called out to him, “Nice to meet you. Hello.” Chernecki’s interview of RCMP Spokesman Peter Thiessen followed:

Chernecki: Robert Dziekanski’s mother has twice now tried to approach officers here at this inquiry.

Thiessen: Yes.

Chernecki: And both times the officers have ignored her, if not just turned away. Given that, you know, we hear all the time that public confidence is key to a successful police force, why wouldn’t you instruct your officers to at least address her?

Thiessen: ‘Kay, firstly, that’s wrong. That is not accurate. That actually couldn’t be further from the truth, Ted. Uh, we were certainly well aware when, uh, Mr. Dziekanski’s, uh, mother, uh, called out, uh, to Corporal Robinson. Uh, he had already entered the, the courtroom. I immediately had a discussion with Corporal Robinson and asked him if he wanted to have a discussion with her. He said “Absolutely, if that’s what she wants.” We then asked her if she wanted to, uh, have some discussions with him in a private setting. Uh, she had declined at that point.

The visual footage then showed Thiessen approaching Dziekanski’s mother in the corridor.

Female reporter to Zophia Cisowski (Robert Dziekanski’s mother): Do you feel any better now that you’ve seen the final officer?

Cisowski: [crying] No, even worse. Because this officer give, uh, to them, uh, [she struggles to find the word she is seeking and looks to someone off-camera for assistance].

Man’s voice off-camera: Order.

Cisowski: Order.

Chernecki: Today on the stand, Corporal Robinson admitted his training on the Taser had expired months earlier, yet he was the one ordering Constable Millington to fire as many as three times.

Those comments were followed by scenes from inside the inquiry room and footage of the October 14th, 2007 Dziekanski incident at the Vancouver Airport, with officers trying to subdue Dziekanski, who was then lying on the ground.

Chernecki to Thiessen: Corporal Thiessen, can I ask you, should an officer who's not current in the use of Tasers be giving out orders of "hit him again"?

Thiessen: That's a good question, Ted. And I don't have that answer.

Chernecki: And for the first time, we'll hear from the officer himself about what looked like his knee on Dziekanski's neck during the takedown.

More footage from the incident was then included in the report. It showed four officers standing over Dziekanski, followed by Robinson being interviewed at the inquiry.

Questioner: Can you tell Mr. Commissioner where the placement of your knee was?

Robinson: Um, my knee is, um, across the shoulder blades. So it's, it comes, it comes across [gestures to shoulder on himself & accidentally bumps microphone]. I'm going to stab myself in the head here [moves microphone]. Um, it comes across, uh, when you put your, uh, when you put your knee on the shoulder to prevent him from pushing up. Um, I was never trained to control or do anything on the neck.

Chernecki: It's expected cross-examination tomorrow will suggest Dziekanski was not trying to push up, but his muscles were reacting to the total of 31 seconds of 50,000 volts being pumped into him during five separate jolts.

Following another scene of the Dziekanski Taser incident, the report concluded.

The second report was entitled "Another Controversy" and also involved Corporal Robinson.

Gailus: It turns out Corporal Robinson has another controversy to deal with. Last autumn, while he was off-duty, Robinson was involved in a fatal car accident that killed a 21-year-old motorcyclist. While he admitted he'd been drinking and his licence was suspended for a time, he has still not been formally charged.

Reporter Darlene Heidemann: Corporal Benjamin Monty Robinson has another cloud hanging over his head. Last October he was arrested for drinking and driving after an accident in Tsawwassen where 21-year-old Orion Hutchinson was killed. That was almost five months ago and charges have yet to be forwarded to Crown [sic].

The accompanying visuals were: a photograph of Robinson; footage from the night-time accident of emergency vehicles' flashing lights and people milling around; a photo of Hutchinson; and more footage of the accident scene.

Press conference by Cst. Sharlene Brooks, Delta Police: Essentially what we're dealing with here is a homicide. At this point, uh, the investigation into the Orion Hutchinson fatality is still underway. Uh, the Delta Police are still awaiting, uh, additional reports before we're able to submit our report to Crown Counsel for charge approval.

Heidemann: Delta Police say they're still waiting for a key report from an independent engineer to prove what happened that night. The details are slowly coming to light, though. Bystanders said right away that Robinson passed someone his driver's licence then left the scene with two children in tow. Last month at Supreme Court, as he attempted to get his licence back, he revealed a possible defence: that he wasn't drunk at the time of the crash. Instead, he had two beer [sic] at a party. Then advised police he had two shots of vodka after the collision occurred during a ten-minute time period between leaving the scene, walking home and returning to the scene.

The report then showed the exterior of the Delta Police headquarters; more footage of the accident scene; an image of a legal document from which Global News put key words up on screen: "Driver advised police he had 2 shots of vodka after the collision occurred during a ten minute time period between leaving the scene, walking home and returning to the scene."

John Banovich, Former MADD spokesperson: What is the issue is the truth. And I think we can certainly point to a number of circumstances in our community recently where, uh, people of authority have tried to evade the laws to which they stand for [sic]. The laws to which they, they enforce [sic].

Heidemann: It's a similar argument that was used by Howard Berg, the former head of the Law Society when he blew point one four after crashing into a rock wall in Kelowna. He too argued that he wasn't drunk at the time of the crash. Instead he became impaired sometime later. In Berg's case, the impaired driving charge was dropped. Corporal Monty Robinson allegedly blew point one two and point one zero on the night Orion Hutchinson was killed. The Mountie has been suspended with pay since October 27th.

Those comments were accompanied by footage of Berg drinking coffee outside a building; scenes of city streets; footage of Robinson at the Braidwood Inquiry; and the photo of Hutchinson again.

Banovich: Well, this is a bit of a, a, a black eye for law enforcement in, in our province. Because there, there are a lot of good officers out there trying to, to change the condition of impaired driving, trying to enforce the road safety. And this sort of thing really brings their efforts to a grinding halt and it sends the wrong message to the community and to the public.

That report concluded with more footage of accident scene.

The third story involved developments on an incident that had occurred the previous week involving Vancouver Police. The report was entitled "Cell Phone Video" and Gailus introduced it as follows:

Gailus: Vancouver Police have identified the man who was shot by a female officer late Friday morning in downtown Vancouver. He is Michael van Hubbard of no fixed address, dead of a single gunshot wound. Abbotsford Police are now investigating what happened before and immediately after the shooting. As Rumina Daya reports, that includes an interview with a witness who says he recorded the whole thing on his cell phone.

Reporter Rumina Daya: The man who was fatally shot by a female Vancouver police officer last Friday has now been identified as 58-year-old Michael van Hubbard of no fixed address. An autopsy has revealed that Hubbard was killed by a single gunshot. Police are reviewing surveillance videos from two unidentified sources. Witness Adam Smolcic says he also had video of the deadly shooting, but he alleges a police officer erased it from his cell phone.

At this point, the report included footage from an incident which the caption indicated was “Vancouver, Last Friday”. It showed paramedics working on a person beside gurney, followed by a scene of Smolcic walking into a room followed by another man.

Interview with Smolcic: Uh, the officer had my phone for about four or five minutes. He was looking through the phone. I assumed he was previewing the film. Um, then he handed back the phone and told me to, quote, “Get lost”. I went into my phone to look at the video and I discovered it was gone.

Smolcic was shown sitting at a table holding a cell phone.

Daya: Today Smolcic handed his phone over to a forensics company. Global News is covering the cost for an expert who will attempt to retrieve the video.

Smolcic to forensics expert: Now, what’s the likelihood you’ll be able to recover something?

John Anderson, Sherlock Forensics: Uh, there is a very good chance. Um, essentially the only way that we couldn’t is if the file was overwritten.

Daya: The VPD did not comment on camera today, but last week they said the officer only opened fire on the robbery suspect after he refused to drop an Exacto utility knife.

There was then footage of the crime scene cordoned off with police tape.

Press conference by Cst. Jana McGuinness: The two officers held the man at gunpoint, but as he advanced he was shot and regret-, regrettably he died at the scene.

Daya: Smolcic has a very different story.

Smolcic: Um, I don’t believe that, um, he advanced towards the officers. I don’t believe that their, their lives were in jeopardy and I don’t believe the use of deadly force was justified.

Interview with David Eby, BC Civil Liberties Association: We, uh, believe that, looking at the Dziekanski incident, looking at the shooting in Houston of Ian Bush, uh, and now this most recent, uh, shooting, that there have been serious allegations about police inability to investigate themselves and, uh, that the province needs to move to bring in a civilian investigation unit.

Daya: Before the shooting, Smolcic admitted he had taken marijuana for medical reasons, but he’s adamant it did not impair his vision. Police continue to investigate the allegations. We should know by tomorrow whether experts had any luck recovering the alleged video evidence from Smolcic’s phone.

The report concluded with an image of Smolcic and Anderson sitting at table as the camera zoomed in on Smolcic holding the phone.

The CBSC received a complaint about this broadcast dated March 23, 2009. The complainant felt that the presentation and content of these three stories demonstrated an anti-police bias on the part of Global BC. He outlined his concerns as follows:

I wish to complain about Global TV BC. Specifically, I am concerned about what I consider to be their outright incitement of hatred towards law enforcement in the province of BC. During the 6:00 pm newscast of March 23, 2009, I witnessed as the lead stories two separate stories with a decidedly anti-police bias. First, we were treated to two stories related to the YVR Dziekanski incident, during which reporter Ted Chernecki asked questions of the RCMP spokesman with uncontained hostility and obvious bias, characterizing the interaction between Cpl. Robinson and Dziekanski's mother in a flatly misleading and scurrilous manner. This was then followed by a story outlining Cpl. Robinson's personal and legal problems. Next, we were treated to a one-sided set of unsubstantiated allegations about Vancouver Police members involved in a shooting, being treated to a Global-funded photo op. This concerned a filmed surrender of a cell phone to a forensics firm, then a monologue by the civilian witness in which he gives his no doubt expert testimony on the need for deadly force. Unlike peace officers, these witnesses are never subjected to any background scrutiny, so we cannot know what their agendas may be. Meanwhile, the streets run red with blood as criminals wreak havoc on our streets. Maybe it's because peace officers are so demoralized and disgusted that they don't want to risk being the next media victim, so they won't take on the criminal element. I am sick, outraged, and disgusted by the blatant bias, outright twisting of facts, and emotionalism of this channel in particular, and our media in general. I will encourage all my friends and family to file similar complaints. Were this hatred directed against a racial group instead of an occupation, undoubtedly there would have been action taken already by the government.

After the CBSC acknowledged receipt of that complaint, the complainant sent further information on March 27. That e-mail read, in part, as follows (the full text of this and all other correspondence can be found in the Appendix):

Since my initial complaint, I have become aware of further information regarding the supposed "witness" to the VPD shooting incident covered in this broadcast. It appears that the "witness", Adam Smolcic, is a well-known marijuana advocate, recently arrested by VPD members. This fact was never mentioned in the March 23 broadcast. Since I found this information out from public sources (the *Province* newspaper and a Google search), I would like a response from CHAN-TV to the following question:

Did they not research Smolcic's background, or did they know about it, and chose to present him as an impartial witness? And where is this cell phone video we were assured should be easily recovered?

The station's News Director responded to the complainant on April 14 with the following:

First, let me inform you that as responsible broadcasters, our entire news team strives to uphold the highest level of journalistic integrity and ethics at all times. Our staff members are educated to make programming decisions thoughtfully and with sensitivity and to produce, purchase and schedule material in accordance with community standards and with the Canadian Association of Broadcasters' (CAB) *Code of Ethics, Equitable*

Portrayal Code for Television and Radio Programming, and the *CAB Violence Code*. Global News also adheres to the Radio Television News Directors Association of Canada (RTNDA) *Code of Ethics*.

Broadcasters are given the task of providing a broad spectrum of entertainment and information for a wide variety of audiences. What one viewer may consider to be an interesting and exciting program may lead another to change the channel. Each viewer will have his or her own interpretation based on personal background, experience and values.

As to your specific complaint, regarding our coverage of two stories involving police officers – and your suggestion that we are somehow trying to incite hatred against them – I would suggest that nothing is further from the truth. Our coverage of crime and law enforcement over the years has been fair and balanced. We've run many stories congratulating police officers – and on the ongoing gang shootings in recent months we have actually brought teams of detectives live on our shows to help illuminate the problem for our viewers and help identify criminals.

The Dziekanski case has been the subject of literally dozens of stories, and this one story was based on that day's newsworthy events. It was the first time the public had heard from the main investigator, Monty Robinson. It was clear by the end of his testimony that he and his three colleagues told very different stories from the ones they had given within hours of Dziekanski's death. Not one of them apologized to his mother, who has been at the commission most days. Clearly that was the issue of the day for her, and her lawyer. I'd suggest if you took the entire coverage from the day this tragic event happened until now, our coverage has been fair and accurate. The second story on Monty Robinson's other legal problems focused on a very high profile hit and run death, which he was involved in. No charges have yet been laid, and it is very much in the public interest that we continue to make sure the case is kept under a microscope. Just recently a drunk RCMP officer was allowed off the hook because of time delays in dealing with his case.

It should be noted that as recently as Monday of this week, the B.C. Attorney-General suggested the question of criminal charges against the officers may be reconsidered after the inquiry.

As for the Vancouver Police Department, we discovered that the man who died was not the person police were originally pursuing. This was an important story, and a clear-cut case worthy of the public's right to know. While we continue to have police investigating themselves, it is important we remain vigilant. We had been made aware of potential video in the case, so we – along with other media outlets – went looking for it.

We also made it abundantly clear in some of our stories that the man who purportedly took cell-phone video was a marijuana advocate. We at no time said it would be an easy job to extract the video, but we felt – again in the public interest – that if the images existed, we should try to extract them and show them.

We live in an age where video can change the official version of events. The Dziekanski case is a perfect example. Before that video appeared we were told an extremely different story by authorities.

Again, I want to stress we are not "anti-police." Quite the opposite. We have done myriad positive stories on police officers over the past year. However, it is our duty as the leading broadcast media station in this province to ensure we continue to ask the tough questions, and represent fair and accurate coverage for our viewers.

The complainant wrote back to the Global BC News Director on April 14 and indicated that he wanted the CBSC to pursue the matter:

This is pretty much what I expected. In no way does this response address any of my concerns with the obvious bias displayed in your reporting. I note with interest that [the News Director] tries cleverly to maintain that his reporters addressed the issue of Adam Smolcic's background in "some stories". NOT the first story, mind you, in which they portrayed him as an impartial witness. I believe this is a clear-cut case of "allege on the front page, retract on page 14". I believe Global's subsequent reporting on this case has shown an unadmitted embarrassment with their original rush to judgment. I would prefer to see a "mea culpa", but I don't think that is forthcoming, given the tone of [the News Director]'s response.

[...]

I have never maintained that the Dziekanski case is not newsworthy, nor do I suggest the police conduct in this case is not deserving of investigation by an impartial and questioning media. But that's not what we're getting. We are getting emotional outbursts by reporters (If I'd been standing in the same room with Chernecki in that press conference, I'd have been concerned with his stability). Distortion of the facts (Correct me if I am wrong, but didn't your own report in question state that Dziekanski's mother refused to meet with officers after being approached by Cpl. Thiessen? Is [the News Director] not aware of this, or does he simply ignore it?) Finally, what bothers me most is the double standard applied here. Cpl. Robinson's off duty conduct is raised (rightly so) to impeach his credibility as a witness. Yet an anti-police witness like Smolcic never even has his background investigated. Why not? Do your reporters have no training in such research? Are they unfamiliar with the Internet? That's where I got my info. That and the *Vancouver Province*. Did they never ask Smolcic "Who are you? How do feel about the VPD? Have you ever had any problems with them?" Too hard? Or does it get in the way of a good story? Has Global TV even considered that the so-called "video" of the VPD shooting may not even exist?

He also filed his official Ruling Request that same day. He pasted the above letter and added some further points:

To clarify and simplify the above, here are my main points of objection, both to the March 23 story, and to [the News Director]'s response:

1. The broadcaster used a clear double standard in evaluating the credibility of police vs. civilian witnesses. Cpl. Robinson's testimony at the Braidwood Inquest is presented in the light of his recent alleged criminal off-duty conduct. Adam Smolcic, the alleged "VPD shooting witness", does not have his background highlighted or even mentioned in the original broadcast.
2. The conduct of the reporter at the Braidwood Inquest, Ted Chernecki, is emotional and factually incorrect. He must be corrected by Cpl. Thiessen, the RCMP spokesman, on his characterisation of the interaction between RCMP members and Dziekanski's mother. [The News Director] repeats this mistake in his rebuttal, telling me that RCMP members have refused to meet with her. In the broadcast in question, Thiessen meets with her, and states that she has refused to meet the RCMP members. [The News Director] must be confused, or perhaps I am not recalling this correctly?
3. The lack of focus on relevant issues, and apparent lack of background investigation surrounding the VPD shooting story continues to alarm and concern me. In no way is

this addressed by [the News Director]. I believe his network is now trying to produce a more balanced version of events, after initially realising they were off the mark. [The News Director] states that it was "in the public interest" that his reporters called attention to the fact that the suspect shot by VPD was not the original break-in suspect sought. I consider this to be completely irrelevant to the story. Police are not authorized to shoot people for breaking into cars. They are, however, authorized to shoot people who come at them with knives, presenting a threat to their lives. This is the issue, and the only one, in my opinion. Furthermore, the lack of research into Mr. Smolcic's background as a marijuana advocate who has been in conflict with police at best demonstrates lack of professionalism, and at worst outright deception on the part of Global TV. His initial presentation as an impartial witness is inexcusable in my opinion. [The News Director] tries to side-step this by saying that in "some stories" Mr. Smolcic's background has been explored. No doubt it has (after other media outlets broached the issue), but as any media expert knows, it's the first story that sticks in people's minds, not the fourth or fifth. If police witnesses can be examined and questioned (as Cpl. Robinson rightly is), so can civilians whose point of view suggests police wrongdoing. As we have strong grounds to suspect now, Mr. Smolcic was wrong about the VPD shooting. And Global was wrong to stake their credibility on him.

I await your reply. I do not believe the issues I have with Global's coverage of the events surrounding the YVR Taser incident can ever be suitably resolved. These are questions of subtle bias and emphasis. However, I wish to see Global apologize for its sloppy handling of the VPD shooting story.

THE DECISION

The British Columbia Regional Panel examined the complaint under the following provisions of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* and the Radio Television News Directors Association of Canada (RTNDA – The Association of Electronic Journalists) *Code of (Journalistic) Ethics*.

CAB Code of Ethics, Clause 2 – Human Rights

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

CAB Code of Ethics, Clause 5 – News

- 1) It shall be the responsibility of broadcasters to ensure that news shall be represented with accuracy and without bias. Broadcasters shall satisfy themselves that the arrangements made for obtaining news ensure this result. They shall also ensure that news broadcasts are not editorial.
- 2) News shall not be selected for the purpose of furthering or hindering either side of any controversial public issue, nor shall it be formulated on the basis of the beliefs, opinions or desires of management, the editor or others engaged in its preparation or delivery. The fundamental purpose of news dissemination in a democracy is to

enable people to know what is happening, and to understand events so that they may form their own conclusions.

CAB Code of Ethics, Clause 6 – Full, Fair and Proper Presentation

It is recognized that the full, fair and proper presentation of news, opinion, comment and editorial is the prime and fundamental responsibility of each broadcaster. This principle shall apply to all radio and television programming, whether it relates to news, public affairs, magazine, talk, call-in, interview or other broadcasting formats in which news, opinion, comment or editorial may be expressed by broadcaster employees, their invited guests or callers.

RTNDA Code of (Journalistic) Ethics, Article 1 – Accuracy

Broadcast journalists will inform the public in an accurate, comprehensive and fair manner about events and issues of importance.

The Panel Adjudicators read all of the correspondence and reviewed the broadcast of the three reports in question. The Panel concludes that Global BC did not violate any of the aforementioned Code provisions.

The Human Rights Clause and the Police

The complainant closed his letter of complaint of March 23 with the following assertion: “Were this hatred directed against a racial group instead of an occupation, undoubtedly there would have been action taken already by the government.” To the extent that he was being at all speculative in this regard, the Panel can confirm that there *is* a distinction drawn by the CBSC between abusive or unduly discriminatory comments concerning an identifiable group (one of the enumerated groups in Clause 2 of the *CAB Code of Ethics* or the *Equitable Portrayal Code*) and one concerning an identifiable group not in that list. In *CKLZ-FM re Announcer Comments* (CBSC Decision 94/95-0113, December 18, 1996), the B.C. Regional Panel explained that conclusion in the following terms:

This is, however, the first occasion on which a listener has complained of language used with respect to an *occupation*. The only previous circumstance which has led the CBSC to broaden the interpretation of “matters of race, national or ethnic origin, colour, religion, age, sex, marital status or physical or mental handicap” arose in *CHQR-AM re Forbes and Friends* (CBSC Decision 92/93-0187, August 8, 1994), in which the Prairie Regional Council ruled:

Although Clause 2 does not contain a specific reference to “sexual orientation” the Regional Council considered that the term “sex” could reasonably be understood as being broad enough to include “sexual orientation”.

It is not the view of the B.C. Regional Council that it would be possible by definition to extend “race, national or ethnic origin, colour, religion, age, sex, marital status or physical or mental handicap” to include occupation or profession.

The rationale for that perspective can be found in the opinion of Mr. Justice La Forest of the Supreme Court, in *Egan v. Canada* [1995] 2 S.C.R. 513, a decision of the Supreme Court of Canada in which the Court read sexual orientation into section 15 of the *Canadian Charter of Rights and Freedoms*. Mr. Justice La Forest stated:

I have no difficulty accepting the appellants’ contention that whether or not sexual orientation is based on biological or physiological factors, which may be a matter of some controversy, it is a deeply personal characteristic that is either unchangeable or changeable only at unacceptable personal costs, and so *falls within the ambit of s. 15 protection as being analogous to the enumerated grounds*. [Emphasis added.]

And the CKLZ-FM decision was followed in *CJKR-FM re Announcer Comments* (CBSC Decision 99/00-0130, May 5, 2000). The Prairie Panel put the matter in the following terms:

[I]t is quite clear to the Council in this case that the principle established in the *CKLZ-FM* decision regarding occupation would be supported under the *Egan* decision. There is not, in other words, any more reason to protect the occupation here than there was in the *CKLZ-FM* case.

In the matter at hand, the B.C. Panel sees no reason not to follow that established line of CBSC jurisprudence. Simply stated, the Panel finds no compelling societal reason to elevate occupation to a level that deserves a measure of protection against abusive or unduly discriminatory comment equivalent to that based on race, national or ethnic origin, colour, religion, age, gender, sexual orientation, marital status or physical or mental disability.

Full, Fair and Proper Presentation of Comments re the Police

Although an occupation, including the police, will not be protected from abusive comment under the Human Rights Clause, there is no restriction on the applicability of the requirement that broadcasters ensure the full, fair and proper presentation of news, opinion, comment and editorial regarding any subject. And, as to news, there are additional, complementary requirements in Clause 5 of the *CAB Code of Ethics* and Article 1 of the *RTNDA Code of (Journalistic) Ethics* that news be presented accurately, comprehensively, fairly and without bias. It follows that the very comments that may not fall afoul of Clause 2 of the *CAB Code of Ethics* may breach any or all of the clauses cited in this paragraph.

One fundamental issue for this Panel is, therefore, to assess and determine whether the reporting was, as the complainant has alleged, so hostile, biased, scurrilous, misleading, distorted or one-sided as to breach any of the immediately preceding clauses. In order to make that determination, the Panel will consider each of the three incidents noted by the complainant in turn.

In the first story, "Senior Officer on Stand", there were three elements. The first was that Corporal Robinson was on the stand (hence the title to this news segment), where "[h]is answers were short and to the point" and which included his acknowledgement that "he wasn't authorized to carry a Taser." There were related bits of information in this news item, including testimony from RCMP spokesperson Cpl. Peter Thiessen. The second point reported was that "Robert Dziekanski's grieving mother has [twice] tried to get the attention of one of the officers there when her son died," and that she was twice ignored. The third point related to the question of "what looked like his [Cpl. Robinson's] knee on Dziekanski's neck during the takedown."

The Panel can detect absolutely no unjustified direction in the reporting of points one and three in the foregoing piece. The question of the entitlement to carry a Taser, the expiry of Cpl. Robinson's training on the Taser and the appropriateness of his giving the order to someone else to employ the Taser on Mr. Dziekanski all appear entirely appropriate, germane and not the least bit overwrought. It is true that the facts do not look good for Cpl. Robinson or law enforcement, but that is a function of the *facts*, not of the reporting of them. This is also true of the third point.

As to the second point, reporter Ted Chernecki provided Cpl. Thiessen the longest single statement opportunity in the newscast to correct, if need be, the perception that the police had ignored Robert Dziekanski's mother. In that mini-interview, Thiessen took the opportunity to *deny* the allegation, to explain why it was inaccurate, and to assert that it was the *mother* who "declined at that point."

Regarding the first story, the Panel disagrees with the complainant; it finds not a modicum of anything that could be characterized as "uncontained hostility [or] obvious bias" in the treatment of points one or three. Nor, given the inclusion of the Thiessen perspective on the contact with Robert Dziekanski's mother, does it consider that the interaction was treated in anything approaching "a flatly misleading and scurrilous manner" in the second point context.

In the second report, "Another Controversy", CHAN-TV told the story of "another cloud hanging over his [Cpl. Robinson's] head." The report was that "while he was off-duty", Cpl. Robinson was "involved in a fatal car accident that killed a 21-year-old motorcyclist." It was reported that "he admitted he'd been drinking" and, without explaining whose determination it was, that "his licence was suspended for a time." It was also pointed out in the same sentence that he "has still not been formally charged."

It does appear that the complainant has no fundamental disagreement with the raising of that matter, saying that “Cpl. Robinson's off duty conduct is raised (rightly so) to impeach his credibility as a witness.” The Panel agrees entirely with the pertinence of reporting on such an issue relating to a person integrally involved in the death of the visitor to Canada, although it does not agree with the complainant’s assertion that the story was told “to impeach his credibility as a witness.” It *may* relate to that, but it may equally relate to the character of the police officer, his attitude toward the law, his stability, reliability, competence, and so on.

In any event, the complainant’s concern is rather that, in the third story, “Cell Phone Video”, there was no attempt to impeach the character of “an anti-police witness like Smolcic [who] never even has his background investigated.” An initial, and important, element of that story was the identification for the first time of the individual killed by the police officer, namely, Michael van Hubbard of no fixed address. The Smolcic story was a second and important element of that news item. Unlike Cpl. Robinson, though, Smolcic was not an *actor* in the story of the shooting. Nor was he a principal *actor* in the second element of the story, namely, the cell phone “witnessing” of the shooting. It was his phone, but the actor was the officer who took the phone for several minutes, and returned it without the video that Smolcic *alleges* was there. Perhaps it was never there, as the complainant implies by his argument that Smolcic’s own credibility should have been verified. What is material is that the broadcaster was under no obligation to conduct that investigation as a part of its news story. CHAN-TV was entitled to take the facts as they were presented at the time of the news story, unless, of course (and this was not the case here), there was *reliable* information so readily available on the face of the record that it would have had reason to believe that what it was reporting was dubious or, worse, *inaccurate*. At that, the broadcaster did provide its audience, in the last statement in the item by reporter Rumina Daya, that “Smolcic admitted he had taken marijuana for medical reasons, but he’s adamant it did not impair his vision.” And the further information regarding Smolcic’s marijuana advocacy, beyond the admission of the usage which *was a part of the story*, and which the complainant reported *four days after the news report*, does not in any direct way impeach the accuracy of the story (and it is that that is material).

As to the fundamental aspect of the second point in the Rumina Daya news story, it cannot be forgotten that, in British Columbia, if not all of Canada (and beyond), the Paul Pritchard experience in the reluctant return by the police of his film of the Dziekanski death might have engendered some nervousness on the part of the broadcaster in the possible disappearance of another potentially incriminating film. In other words, the broadcaster was cautious and correct in reporting the Smolcic story as it did, and it had no responsibility to *seek the impeachment* of the Smolcic assertions at the time of the report. After all, if contradictory information to Smolcic’s allegations emerged a day, two

days, a week or a month later, there would have been ample opportunity to rebut his original story then.

The Bottom Line

To take the complainant's own three-part argument raised in the letter accompanying his Ruling Request of April 14, he argues: 1) The broadcaster used a clear double standard in evaluating the credibility of police vs. civilian witnesses; 2) The conduct of the reporter at the Braidwood Inquest, Ted Chernecki, is emotional and factually incorrect. He must be corrected by Cpl. Thiessen, the RCMP spokesman, on his characterization of the interaction between RCMP members and Dziekanski's mother; and 3) The lack of focus on relevant issues, and apparent lack of background investigation surrounding the VPD shooting story continues to alarm and concern me.

The Panel has made its perspective on the witness issue clear. It sees no difficulty whatsoever in the broadcaster's choices and treatment of the second and third stories, including its characterization of the witnesses. The Panel found no problem with the reporting by Mr. Chernecki of the interaction with Robert Dziekanski's mother. Moreover, it does not view the statement by Cpl. Thiessen as a "correction"; it rather sees that mini-interview as a balancing perspective, one handled as countervailing information ought to be in a balanced news piece. As to the story relating to the shooting of Mr. Van Hubbard, the Panel has nothing to add to its observations above regarding that news item.

The Panel finds nothing close to a breach of any of the above-cited standards in CHAN-TV's handling of any of the news issues in the 6:00 pm newscast on March 23, 2009.

Broadcaster Responsiveness

In all CBSC decisions, the Council's Panels assess the broadcaster's responsiveness to the complainant. In the present instance, the Panel finds that the response of CHAN-TV's News Director was, perhaps with one hesitation, thoughtful, responsive and appropriate. That hesitation relates to the reference to "a drunk RCMP officer [who] was allowed off the hook because of time delays in dealing with his case." The Panel considers the inclusion of that sentence somewhat unnecessary and perhaps provocative and reflective of a tinge of bias. The response was otherwise thorough, detailed and focussed on the station's full coverage of the subject. The Panel considers that the broadcaster has fully met its responsiveness responsibilities of CBSC membership.

This decision is a public document upon its release by the Canadian Broadcast Standards Council. It may be reported, announced or read by the station against which the complaint had originally been made; however, in the case of a favourable decision, the station is under no obligation to announce the result.

APPENDIX

CBSC Decision 08/09-1422 CHAN-TV re reports on *News Hour*

The Complaint

The following complaint, dated March 23, 2009, was sent to the CRTC and forwarded to the CBSC in due course:

I wish to complain about Global TV BC. Specifically, I am concerned about what I consider to be their outright incitement of hatred towards law enforcement in the province of BC. During the 6:00 pm newscast of March 23, 2009, I witnessed as the lead stories two separate stories with a decidedly anti-police bias. First, we were treated to two stories related to the YVR Dziekanski incident, during which reporter Ted Chernecki asked questions of the RCMP spokesman with uncontained hostility and obvious bias, characterizing the interaction between Cpl. Robinson and Dziekanski's mother in a flatly misleading and scurrilous manner. This was then followed by a story outlining Cpl. Robinson's personal and legal problems. Next, we were treated to a one-sided set of unsubstantiated allegations about Vancouver Police members involved in a shooting, being treated to a Global-funded photo op. This concerned a filmed surrender of a cell phone to a forensics firm, then a monologue by the civilian witness in which he gives his no doubt expert testimony on the need for deadly force. Unlike peace officers, these witnesses are never subjected to any background scrutiny, so we cannot know what their agendas may be. Meanwhile, the streets run red with blood as criminals wreak havoc on our streets. Maybe it's because peace officers are so demoralized and disgusted that they don't want to risk being the next media victim, so they won't take on the criminal element. I am sick, outraged, and disgusted by the blatant bias, outright twisting of facts, and emotionalism of this channel in particular, and our media in general. I will encourage all my friends and family to file similar complaints. Were this hatred directed against a racial group instead of an occupation, undoubtedly there would have been action taken already by the government.

After the CBSC acknowledged receipt of that complaint, the complainant sent further information on March 27:

Thank you for your prompt reply. Since my initial complaint, I have become aware of further information regarding the supposed "witness" to the VPD shooting incident covered in this broadcast. It appears that the "witness", Adam Smolcic, is a well-known marijuana advocate, recently arrested by VPD members. This fact was never mentioned in the March 23 broadcast. Since I found this information out from public sources (the *Province* newspaper and a Google search), I would like a response from CHAN-TV to the following question:

Did they not research Smolcic's background, or did they know about it, and chose to present him as an impartial witness? And where is this cell phone video we were assured should be easily recovered?

Thank you for your time.

Broadcaster Response

The station responded to the complainant on April 14 with the following:

Your letter to Canadian Broadcast Standards Council regarding Global TV news coverage has been passed to me for response.

First, let me inform you that as responsible broadcasters, our entire news team strives to uphold the highest level of journalistic integrity and ethics at all times. Our staff members are educated to make programming decisions thoughtfully and with sensitivity and to produce, purchase and schedule material in accordance with community standards and with the Canadian Association of Broadcasters' (CAB) *Code of Ethics, Equitable Portrayal Code for Television and Radio Programming*, and the *CAB Violence Code*. Global News also adheres to the Radio Television News Directors Association of Canada (RTNDA) *Code of Ethics*.

Broadcasters are given the task of providing a broad spectrum of entertainment and information for a wide variety of audiences. What one viewer may consider to be an interesting and exciting program may lead another to change the channel. Each viewer will have his or her own interpretation based on personal background, experience and values.

As to your specific complaint, regarding our coverage of two stories involving police officers – and your suggestion that we are somehow trying to incite hatred against them – I would suggest that nothing is further from the truth. Our coverage of crime and law enforcement over the years has been fair and balanced. We've run many stories congratulating police officers – and on the ongoing gang shootings in recent months we have actually brought teams of detectives live on our shows to help illuminate the problem for our viewers and help identify criminals.

The Dziekanski case has been the subject of literally dozens of stories, and this one story was based on that day's newsworthy events. It was the first time the public had heard from the main investigator, Monty Robinson. It was clear by the end of his testimony that he and his three colleagues told very different stories from the ones they had given within hours of Dziekanski's death. Not one of them apologized to his mother, who has been at the commission most days. Clearly that was the issue of the day for her, and her lawyer. I'd suggest if you took the entire coverage from the day this tragic event happened until now, our coverage has been fair and accurate. The second story on Monty Robinson's other legal problems focused on a very high profile hit and run death, which he was involved in. No charges have yet been laid, and it is very much in the public interest that we continue to make sure the case is kept under a microscope. Just recently a drunk RCMP officer was allowed off the hook because of time delays in dealing with his case.

It should be noted that as recently as Monday of this week, the B.C. Attorney-General suggested the question of criminal charges against the officers may be reconsidered after the inquiry.

As for the Vancouver Police Department, we discovered that the man who died was not the person police were originally pursuing. This was an important story, and a clear-cut case worthy of the public's right to know. While we continue to have police investigating themselves, it is important we remain vigilant. We had been made aware of potential video in the case, so we – along with other media outlets – went looking for it.

We also made it abundantly clear in some of our stories that the man who purportedly took cell-phone video was a marijuana advocate. We at no time said it would be an easy job to extract the video, but we felt – again in the public interest – that if the images existed, we should try to extract them and show them.

We live in an age where video can change the official version of events. The Dziekanski case is a perfect example. Before that video appeared we were told an extremely different story by authorities.

Again, I want to stress we are not "anti-police." Quite the opposite. We have done myriad positive stories on police officers over the past year. However, it is our duty as the leading broadcast media station in this province to ensure we continue to ask the tough questions, and represent fair and accurate coverage for our viewers.

Additional Correspondence

The complainant wrote back to the station on April 14 and indicated that he wanted the CBSC to pursue the matter:

This is pretty much what I expected. In no way does this response address any of my concerns with the obvious bias displayed in your reporting. I note with interest that [the Global BC News Director] tries cleverly to maintain that his reporters addressed the issue of Adam Smolcic's background in "some stories". NOT the first story, mind you, in which they portrayed him as an impartial witness. I believe this is a clear-cut case of "allege on the front page, retract on page 14". I believe Global's subsequent reporting on this case has shown an unadmitted embarrassment with their original rush to judgment. I would prefer to see a "mea culpa", but I don't think that is forthcoming, given the tone of [the News Director]'s response.

I also note that [the News Director] brings up a case outside the scope of my complaint, while busily maintaining he is not "anti-police", of a "drunk" RCMP officer who was "allowed off the hook due to delays in dealing with his case". Is [the News Director] aware that such "facts" do not legally exist until they have been proven in court? Would he use the same presumption in dealing with anyone else? I am sure the phrase "allegedly drunk" would be used.

I have never maintained that the Dziekanski case is not newsworthy, nor do I suggest the police conduct in this case is not deserving of investigation by an impartial and questioning media. But that's not what we're getting. We are getting emotional outbursts by reporters (If I'd been standing in the same room with Chernecki in that press conference, I'd have been

concerned with his stability). Distortion of the facts (Correct me if I am wrong, but didn't your own report in question state that Dziekanski's mother refused to meet with officers after being approached by Cpl. Thiessen? Is [the News Director] not aware of this, or does he simply ignore it?). Finally, what bothers me most is the double standard applied here. Cpl. Robinson's off duty conduct is raised (rightly so) to impeach his credibility as a witness. Yet an anti-police witness like Smolcic never even has his background investigated. Why not? Do your reporters have no training in such research? Are they unfamiliar with the Internet? That's where I got my info. That and the *Vancouver Province*. Did they never ask Smolcic "Who are you? How do feel about the VPD? Have you ever had any problems with them?" Too hard? Or does it get in the way of a good story? Has Global TV even considered that the so-called "video" of the VPD shooting may not even exist?

I am an educated person. I am not a "frequent complainer", nor am I a crank. I am not satisfied with this response. I intend to pursue this matter further with the CBSC.

He also filed his official Ruling Request that same day. He pasted the above letter and added some further points:

I am certain you have received a copy of [the News Director]'s response. I will attach first my response to him, then enumerate my points of concern. First, my response:

This is pretty much what I expected. In no way does this response address any of my concerns with the obvious bias displayed in your reporting. I note with interest that [the News Director] tries cleverly to maintain that his reporters addressed the issue of Adam Smolcic's background in "some stories". NOT the first story, mind you, in which they portrayed him as an impartial witness. I believe this is a clear cut case of "allege on the front page, retract on page 14". I believe Global's subsequent reporting on this case has shown an unadmitted embarrassment with their original rush to judgment. I would prefer to see a "mea culpa", but I don't think that is forthcoming, given the tone of [the News Director]'s response.

I also note that [the News Director] brings up a case outside the scope of my complaint, while busily maintaining he is not "anti-police", of a "drunk" RCMP officer who was "allowed off the hook due to delays in dealing with his case". Is [the News Director] aware that such "facts" do not legally exist until they have been proven in court? Would he use the same presumption in dealing with anyone else? I am sure the phrase "allegedly drunk" would be used.

I have never maintained that the Dziekanski case is not newsworthy, nor do I suggest the police conduct in this case is not deserving of investigation by an impartial and questioning media. But that's not what we're getting. We are getting emotional outbursts by reporters (If I'd been standing in the same room with Chernecki in that press conference, I'd have been concerned with his stability). Distortion of the facts (Correct me if I am wrong, but didn't your own report in question state that Dziekanski's mother refused to meet with officers after being approached by Cpl. Thiessen? Is [the News Director] not aware of this, or does he simply ignore it?). Finally,

what bothers me most is the double standard applied here. Cpl. Robinson's off duty conduct is raised (rightly so) to impeach his credibility as a witness. Yet an anti-police witness like Smolcic never even has his background investigated. Why not? Do your reporters have no training in such research? Are they unfamiliar with the Internet? That's where I got my info. That and the *Vancouver Province*. Did they never ask Smolcic "Who are you? How do you feel about the VPD? Have you ever had any problems with them?" Too hard? Or does it get in the way of a good story? Has Global TV even considered that the so-called "video" of the VPD shooting may not even exist?

I am an educated person. I am not a "frequent complainer", nor am I a crank. I am not satisfied with this response. I intend to pursue this matter further with the CBSC.

To clarify and simplify the above, here are my main points of objection, both to the March 23 story, and to [the News Director]'s response:

1. The broadcaster used a clear double standard in evaluating the credibility of police vs. civilian witnesses. Cpl. Robinson's testimony at the Braidwood Inquest is presented in the light of his recent alleged criminal off-duty conduct. Adam Smolcic, the alleged "VPD shooting witness", does not have his background highlighted or even mentioned in the original broadcast.
2. The conduct of the reporter at the Braidwood Inquest, Ted Chernecki, is emotional and factually incorrect. He must be corrected by Cpl. Thiessen, the RCMP spokesman, on his characterisation of the interaction between RCMP members and Dziekanski's mother. [The News Director] repeats this mistake in his rebuttal, telling me that RCMP members have refused to meet with her. In the broadcast in question, Thiessen meets with her, and states that she has refused to meet the RCMP members. [The News Director] must be confused, or perhaps I am not recalling this correctly?
3. The lack of focus on relevant issues, and apparent lack of background investigation surrounding the VPD shooting story continues to alarm and concern me. In no way is this addressed by [the News Director]. I believe his network is now trying to produce a more balanced version of events, after initially realising they were off the mark. [The News Director] states that it was "in the public interest" that his reporters called attention to the fact that the suspect shot by VPD was not the original break-in suspect sought. I consider this to be completely irrelevant to the story. Police are not authorized to shoot people for breaking into cars. They are, however, authorized to shoot people who come at them with knives, presenting a threat to their lives. This is the issue, and the only one, in my opinion. Furthermore, the lack of research into Mr. Smolcic's background as a marijuana advocate who has been in conflict with police at best demonstrates lack of professionalism, and at worst outright deception on the part of Global TV. His initial presentation as an impartial witness is inexcusable in my opinion. [The News Director] tries to side-step this by saying that in "some stories" Mr. Smolcic's background has been explored. No doubt it has (after other media outlets broached the issue), but as any media expert knows, it's the first story that sticks in people's minds, not the fourth or fifth. If police witnesses can be examined and

questioned (as Cpl. Robinson rightly is), so can civilians whose point of view suggests police wrongdoing. As we have strong grounds to suspect now, Mr. Smolicic was wrong about the VPD shooting. And Global was wrong to stake their credibility on him.

I await your reply. I do not believe the issues I have with Global's coverage of the events surrounding the YVR Taser incident can ever be suitably resolved. These are questions of subtle bias and emphasis. However, I wish to see Global apologize for its sloppy handling of the VPD shooting story.