
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CTV re CANADA-AM (Airborne Hazing)

(CBSC Decision 94/95-0159)

Decided March 12, 1996

R. Cohen (National Chair), P. Fockler, T. Gupta, R. Stanbury, M. Ziniak¹

THE FACTS

On January 19, 1995, during its 7:00 a.m. newscast, Canada AM included a segment relating to the hazing practices of the since-disbanded Airborne Regiment of the Canadian Armed Forces.

Canada AM's regular newscaster, Wei Chen, began her reading of the 7:00 a.m. newscast with the Airborne Regiment story. She said:

Good morning, everyone. We begin this morning with another horrifying look at the ugly side of the Canadian military, from a home video that can only be described as a vulgar record of some very repulsive and racist acts. The video was shot in the summer of 1992 during a hazing ceremony for new members of the Canadian Airborne Regiment. You may not want to see this or hear this. It shows drunk soldiers being smeared with human feces, urine and vomit. Again a warning. You will find these pictures shocking and offensive.

The entire news segment was 1:10 long and the video clip used, which began 33 seconds into the item, was 15 seconds long. Her tone, visual cues and words made it apparent from the end of the first sentence that the news item would be unpleasant. Her explicit warnings were given before the video clip ran. Ironically, it would have been very difficult to determine from the poor quality home video most of what was happening but for Wei Chen's introductory description.

The viewer provided her complaint to the Coalition for Responsible Television on the day of the broadcast. It was only re-submitted by the Coalition to the CBSC two

¹ Broadcaster representative and Ontario Regional Vice-Chair Al MacKay did not sit in this adjudication because of his former association with CJOH-TV, a member of the CTV network.

months later, namely, on March 20 and received by the Council on March 29. While this is customarily well beyond the delays during which the broadcaster is required to retain logger tapes and, thus, beyond the time when the CBSC can be expected to deal with a matter, the record-keeping and co-operation of the broadcaster permitted the CBSC to deal with the citizen's complaint.

In the transcript of the complaint, the viewer described her reaction to the news item in the following way:

The scene of the Canadian military eating vomit and the acts of violence against the other members of the armed forces ... and the black man being abused ... I have been gagging. It was far too explicit. This was disgusting. I gagged three times.

The Vice-President of CTV News, Eric Morrison, responded to the complainant on April 28. He stated:

Please believe that I understand your concern and I ask you to accept my assurance that we debated this story thoroughly before playing the tape. It is unfortunate that horrible events, such as the dehumanization and degradation of human beings, occur, but to shy away from the reality and not make the facts available to the public only makes matters worse. CTV does have a policy of warning viewers about upcoming footage that may be disturbing, and this was effected in connection with the hazing video.

Just by way of information, the tape in our possession contained a number of segments which were even more disgusting than those shown on the News; these were omitted out of concern for our viewers' feelings.

The viewer was unsatisfied with this response and requested, on May 5, 1995, that the CBSC refer the matter to the appropriate Regional Council for adjudication. She also sent an accompanying letter addressed to the CBSC in which she commented:

I found Mr. Morrison's response somewhat cavalier at the least. I cannot recall a more disturbing display of "facts" in television news -- it was beyond explicit. I am a little alarmed at CTV's apparent option to "censor" what is seen by television viewers. I remain concerned about the victims' privacy -- I was appalled by such an exposure. ... I hope I, and my children, can continue to use television for information on local/national/international events.

With her letter to the CBSC, the complainant enclosed a copy of her letter replying to Mr. Morrison's letter, which elaborated on certain aspects of her letter to the CBSC.

Do not the victims have some right to privacy ... I remain very concerned at the exposure of these particular victims -- specifically, an Airborne member of "colour" -- efforts were not taken to conceal the identities of the victims of this debasement. What about these men's families and communities? ... [Y]ou go beyond what is necessary to convey acts of injustice and I ask you to step back.

In his covering letter of August 16, 1995, enclosing the logger tapes which members of the Ontario Regional Council ultimately viewed as a part of this adjudication, Mr. Morrison pointed out that

we did warn viewers of the disturbing footage, and that even without sanitizing we were sensitive as to what could be shown on a morning program.

He referred to two clauses of the *Violence Code* and asserted that

in this case CTV maintained the balance between the reality of degradation, cruelty and racism in the Airborne, while not exaggerating the situation, and we did use editorial judgment within the newscasts.

[...]

In addition, CTV has a policy, as set out in our Style and Journalistic Policy Manual, which advises us to question whether our coverage is likely to serve any constructive purpose beyond simply engaging the audience's attention, that our news judgment must hinge on what is important, and that there be no place in the news for exploitation or sensationalism. The story on the Airborne Regiment, together with the story about the incidents in Somalia, led to an independent public inquiry and the disbanding of the Regiment. Contrary to what [the complainant] feels, we did not go beyond the threshold of what the facts showed. The racism shown in a division of the Canadian military is something that warranted the discomfort we all felt with the images.

THE DECISION

The CBSC's Ontario Regional Council considered the complaint under the *Voluntary Code regarding Violence in Television Programming* of the Canadian Association of Broadcasters (CAB) and the *Radio and Television News Directors Association of Canada (RTNDA) Code of Ethics*. The relevant provisions of those Codes read as follows:

Section 6, *Voluntary Code regarding Violence in Television Programming*

6.1 Broadcasters shall use appropriate editorial judgment in the reporting of, and the pictorial representation of violence, aggression or destruction within their news and public affairs programming.

6.2 Caution shall be used in the selection of, and repetition of, video which depicts violence.

6.3 Broadcasters shall advise viewers in advance of showing scenes of extraordinary violence, or graphic reporting on delicate subject matter such as sexual assault or court action related to sexual crimes, particularly during afternoon or early evening newscasts and updates when children could be viewing.

6.6 While broadcasters shall not exaggerate or exploit situations of aggression, conflict or confrontation, equal care shall be taken not to sanitize the reality of the human condition.

Article 3, *RTNDA Code of Ethics*

Broadcast journalists will not sensationalize news items and will resist pressures, whether from inside or outside the broadcasting industry, to do so. They will in no way distort the news. Broadcast journalists will not edit taped interviews to distort the meaning, intent, or actual words of the interviewee.

Article 4, *RTNDA Code of Ethics*

Broadcast journalists will always display respect for the dignity, privacy and well-being of everyone with whom they deal, and make every effort to ensure that the privacy of public persons is infringed only to the extent necessary to satisfy the public interest and accurately report the news.

The Regional Council members viewed a tape of the program in question and reviewed all of the correspondence. The members agreed that the program did not contravene either of the Codes cited above.

News Issues and the Violence Code

This is the first occasion for the Council to consider the provisions of the News and Public Affairs section of the 1993 *Violence Code*. The Council has, on several occasions, previously noted its belief that there is a balance to be struck between freedom of expression and the constraining provisions of the *Violence Code*. In the case of *CIII-TV re Mighty Morphin Power Rangers* (CBSC Decision 93/94-0270 and 0277, October 24, 1994), the first decided under the Code, the Ontario Regional Council, in measuring the principle against the provisions protecting children, stated:

Since, as stated above, this is the first violence complaint to be considered under the new *Voluntary Code regarding Violence in Television Programming*, the Council considered it appropriate to remind Canadians that the protection of children was one of the pillars of the Code's existence. Furthermore, those who drafted the Code were conscious of the need to create this protection in an environment in which preservation of the freedom of expression remains a paramount but not immutable principle. Public Notice CRTC 1993-149 provides (at p. 2):

The Commission is generally satisfied that the CAB's revised Code achieves the appropriate balance between preserving freedom of expression and protecting the viewing public, especially children, from the harmful effects of television violence.

In the case at hand, the Council, in measuring freedom of expression and the provisions of the Code relating to the broadcasting of news and public affairs programming, has *additional* considerations to meld into its evaluative process. In a

sense, the balance is not simply between *customary* freedom of expression and *customary* restrictions on that right. News plays a different role in the lives of the public.

In a democratic society, one of the fundamental rights of individuals is access to the news of the day. It is the cornerstone of the citizens' collective knowledge base and the foundation of their own ability to evaluate public policy and the performance of their governments at all levels. Consequently, broadcasters' reporting of the news is more than a right; it is a responsibility. The introduction to the *RTNDA Code of Ethics* states in its preamble that

Recognizing the importance to a democracy of an informed public, the members of the RTNDA of Canada believe the broadcasting of factual, accurately-reported and timely news and public affairs is vital.

Clause 6(3) of the *CAB Code of Ethics*, in the statement and extension of that principle, also provides:

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.

Thus, if anything, there must be a greater tolerance by society in the reporting of *reality* than in the *creation* of dramatic programming to entertain the public. It is for this reason that Clause 6.6 of the *Violence Code* explicitly provides that "care shall be taken not to sanitize the reality of the human condition." The Code recognizes that society has a right, if not an obligation to have presented *to it* the reality of the news, however unpleasant or even intolerable that news may be from time to time.

This does not, however, open the floodgates to *every* bit of reality which could be defined as news or every bit of every story which *ought* to be brought to the attention of the Canadian public. Elements of editorial judgment must be exercised on many levels. Since, in the first place, there are innumerable stories competing for the time available in any newscast, a story ought to be reported for reasons "beyond simply engaging the audience's attention", as CTV News' Vice-President said in his letter of August 16. A story broadcast simply to engage the public's attention would likely be characterized as sensationalism and thus in breach of the *RTNDA Code of Ethics*.

Almost every story which must be told will require editorial judgment as to *how* it will be told. Nor will every story requiring such judgment ultimately come to the CBSC's attention. Such rare occurrences will generally be those which, in their edited form, still attract viewer attention by reason of their frightening, violent, graphic or other unpleasant characteristics. In each such case, the broadcaster must temper the public's need to know with the measure of how *much* needs to be known so as not to exceed the bounds provided in the *Violence Code*.

The clauses dealing with this point collectively require editorial judgment “in the reporting of, and the pictorial representation of violence, aggression or destruction” in news stories. Broadcasters must use “caution” in the selection of the video clips depicting violence which they run. They must not “exaggerate or exploit situations of aggression, conflict or confrontation” in such reports and they must be discreet in their “use of explicit or graphic language related to stories of destruction, accidents or sexual violence.” Finally, it should be noted that, in circumstances in which the exercise of careful editorial judgment still results in the legitimate need to broadcast “scenes of extra-ordinary violence, or graphic reporting on delicate subject matter”, the broadcaster “shall advise viewers in advance” of the sequence of what is to come. While the public in general *must* be informed, individual viewers are, of course, entitled to decide what is not palatable for them and their families.

The Content of the Program

How then did CTV’s handling of the Airborne incident rate against the foregoing measures?

In the view of the Council, the CTV News Department fulfilled all of its responsibilities. In the first place, it is clear that the story had to be told. With the benefit of hindsight, Canadians know that this story has remained a matter of great institutional importance up to and including the date of this decision and current events indicate that the end of this sorry episode of Canadian military history is not yet in sight. There can thus be *no* doubt but that CTV’s foresight in running the story was entirely justified.

The question is then whether the editorial judgment exercised was appropriate. Members of the Council were aware not only of what material was used by CTV but also, broadly speaking, of how much more video material *might* have been selected. However unpleasant was the material which was used, there were, Council concluded, *much* more explicit and lengthier clips which could have been chosen for airing. If anything, members were hard pressed, in viewing and re-viewing the 15 seconds of material, to find bits which were as visually unpleasant as the warning had suggested. In the view of the Council, CTV News, while clearly not *sanitizing* the report, had *not* either exaggerated or exploited it as a function of what *could* have been shown. Members were of the view that CTV had exercised caution, as required by the *Violence Code*.

There is a further question to consider, namely, whether the viewer advisory was required at all and, if so, whether it was appropriate as a function of the hour of the newscast in question. In this connection, the Council considered the wording of Clause 6.3 of the *Violence Code*, which provides for an advisory in advance of the broadcast of scenes of “extra-ordinary violence, or graphic reporting on delicate subject matter ... particularly during afternoon or early evening newscasts and

updates when children could be viewing.” In the Council’s view, despite the absence of an explicit reference to “morning” in the provision regarding the timing of newscasts, it was the intention of the framers of the Code to include *all* time periods “when children could be viewing” as requiring advisories. Hence, the 7:00 a.m. newscast would be included in the advisory *requirement*.

It was, furthermore, the view of the Council that the advisory read by the newscaster constituted an ample warning. It was clear and unambiguous. Viewers were alerted to the fact that what was about to be shown was “a vulgar record” and would be “shocking and offensive”. If anything, Council members did not consider that all of the elements described were visually apparent; some may not have been recognized as what they were without the announcer’s description.

The Privacy Issue

The complainant also raised a concern regarding the invasion of privacy of the persons shown on the home video taken by a member (or members) of the Airborne Regiment and broadcast by CTV. She was concerned that no attempt was made to conceal the identities of the “victims of this debasement.”

It would be right to observe here that Article 4 of the *RTNDA Code of Ethics*, in dealing with the issue of privacy, makes specific reference to the privacy of *public* persons and not to private persons. This is perhaps because there may otherwise be a tendency on the part of citizens to believe that they have a proprietary interest in the lives of persons who have chosen to make themselves, in part, very public. This could not be said to be the same in the case of non-public figures.

In general, it is also true to observe that the private lives of individuals are of little or no interest to the public. There must, however, be exceptions to this principle or we would never, as a society, be entitled to see news stories on television on the grounds that they may contain footage of an unwilling participant in the event. It would not be realistic, for example, for television station news teams to seek permission from everyone who might be seen on camera at a crime scene, an accident, the picketing of a shop or a legislature, the arrival of a public figure or other events too numerous to describe here.

The point is that the issue is not so much the recording and broadcasting of the *image* of the individual as it is the *identification* of the person. Where the broadcaster provides no information which permits the public at large to identify the individual, such as in this case, the broadcaster has not interfered with that person’s right to privacy. The fact that the individual filmed and those close to him may know who he is does not interfere with his right to be free from identification by the public at large.

Circumstances do, moreover, arise from time to time in which the public interest in an event may override the otherwise legitimate interest of individuals to keep their identity and activities free from filmed scrutiny. Even a situation such as the hazing ritual in which a *home video camera* rather than a broadcaster's equipment was present would give rise to this principle. The public had such an abiding interest in learning about the unorthodox and apparently discriminatory practices of the Regiment, whose members had killed Somalis in questionable circumstances thereby affecting the reputation of the *country* in its international peace-keeping role, that the private interest of any individuals seen in the film in question would have been overridden by the public's need to know.

Broadcaster Responsiveness

In addition to assessing the relevance of the Codes to the complaint, the CBSC always assesses the *responsiveness* of the broadcaster to the substance of the complaint. In this case, the broadcaster was extremely co-operative in providing the logger tapes long after the required date. In addition, Mr. Morrison's letter, although brief, was to the point and responded fully to the briefer comments provided in transcript form by the Coalition for Responsible Television.

The Council was unable to agree at all with the complainant's contention that Mr. Morrison was "cavalier" in his reply. That the incident was a "disturbing display" was not CTV's fault. The video record's explicitness was the major evidence of the story. The story's survival depended on the video existence of the "disturbing display". One might argue that, in this case, as in the Rodney King case in the United States, the public interest was served by the recording of the awful events. Their appalling nature might have disappeared from scrutiny had not the record been brought to the attention of the people. The broadcaster's editorial choices were even-handed and its response to the viewer equally fair; the broadcaster cannot always expect to *satisfy* the viewer who, after all, begins a complaint letter in a negative frame of mind but the broadcaster must be responsive. That was achieved in this case.

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