
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CFRA-AM re *The Lowell Green Show* ("Somalia Commission Report")

(CBSC Decision 96/97-0238)

Decided February 20, 1998

A. MacKay (Chair), R. Stanbury (Vice-Chair), T. Gupta, P. Fockler, M. Hogarth
and M. Ziniak

THE FACTS

On the morning of July 3, 1997, between 8:15 and 9:00 a.m., *The Lowell Green Show*, an open-line show broadcast daily on CFRA-AM (Ottawa), dealt with the controversy surrounding the findings of the Commission which had been inquiring into events surrounding the killing of two Somali teenagers by Canadian military personnel on a peacekeeping mission in Somalia. In what may have appeared to frequent listeners of *The Lowell Green Show* to be a tongue-in-cheek approach to the issue, Mr. Green stated the following:

I don't understand what all the fuss is about. Headlines everywhere about the Somalia Inquiry Commission. The Commission should have been shut down a long time ago. Look, Art Eggleton is right. The government is right for a change. I mean after all, let's face it, it was only a couple of Somalis. What's all the fuss about? I mean we're talking about a couple of Somalis here, for God's sake. Okay? Come on, come on, come on. All this fuss, all this expense, over a couple of Somalis.

And as for this crazy business about a cover-up. Let's get real, okay. Just for a change, let's get real. What do we civilians know about the stresses and strains of high command? Look, this thing is a military matter, better left to the military to resolve. Military high command should be left alone to handle the situation. The command knows very well that things like this are commonplace in a theatre of war. What do you expect? We train these guys to kill. We train these guys to do our dirty work for us, and then, when they do it, we get all upset over a couple of Somali teenagers, for God's sake. I mean, let's face it, they were trying to steal stuff from us, okay? Let's be honest about something else here. This country would be a heck of a lot better off if we didn't have a bunch of wimpy news people hanging around trying to pry into things that are none of their business, creating problems.

And as for the Commission itself, well, let's have a look here. No question, Art Eggleton is right. The Commission is the real problem. These guys just don't get it. These guys don't understand. The Commission should have left well enough alone, okay. That was the intention, I mean, find a few people at the lower echelons, guilty of excessive zeal, that's what's involved here, and then let the military high command handle it. Come on. I mean, we already jailed Kyle Brown. Why do we have to go any further than that? If there's anything wrong here, it's a couple of over-zealous soldiers who succumbed to front line stress. Let's leave it at that.

And let's not forget something else. The Canadian public has spoken on this matter. The Somalia Inquiry was cancelled by Doug Young. The Canadian people approved of that. The Canadian people re-elected the Liberal Government to another majority government. The entire Somalia issue wasn't even a campaign issue at all. The public understands very well. There's been far too much fuss and bother over a couple Somalis, for God's sake.

You know one of the things that really bothers me as well? This claim by the Commission C did you hear that? C that the officers lied to them. Of course they lied. It was their duty to lie, to protect national security. Officers are trained to reveal nothing, except their rank and serial number. The idea that well-trained military officers would reveal crucial, vital military secrets, to three blinking civilians, is ludicrous. God bless Art Eggleton. God bless Jean Chrétien and the Liberal Government. They understand what the public wants. All this fuss over a couple of Somalis. Couple of wogs. Come on, give us a break here. Couple of flip flops. Give us a break; nonsense. Let's get on with something that's really important in this country, okay? Do you agree with me? Far too much concern over a couple of Somalis?

...

Let's get on with the real problems in this country. I mean, there's a front page editorial, or at least a leading editorial, in the *Ottawa Citizen* today deploring the fact that Heritage Minister Sheila Copps didn't give the Queen a curtsy yesterday. Others are upset because Preston Manning took his jacket off. Now those are the real problems. Perhaps we should have some sort of an inquiry under that kind of thing.

Okay folks, you won't hear what I have just said any place else in this country. What do you think? Are you with me, are you applauding Art Eggleton, the Government? Have they done the right thing here - leave these things to the military? I mean, after all, it's only a couple of Somalis. I don't understand all the fuss. Do you understand what all the fuss is about? ... Those three Commissioners, they're the problem here, no question about it. Can you imagine, all this fuss over two Somalis? Come on.

At least one of the show's listeners was unclear as to Mr. Green's intent, as is evident from the following dialogue:

Mr. Green: Ashouk in Ottawa, good morning.

Ashouk: Good morning Lowell. Huh, are you really serious of what you're saying?

Mr. Green: Listen, this is what Art Eggleton is saying: the people of Canada have spoken here. The people of Canada approved the cancellation of the Somalia Inquiry. The people of Canada have said that the death of a couple of Somali teenagers, or whatever, is of no consequence, and Art Eggleton absolutely agrees with them. The real problem here is the Commission. No question about it. How do you feel, Ashouk?

- Ashouk:** I feel like, I don't know, I mean, I think this is... How can you say something about two people who just got killed? How can you say that?
- Mr. Green:** They're only Somalis. Ashouk, I mean, they're only Somalis.
- Ashouk:** They're human beings. They're human beings.
- Mr. Green:** They're only Somalis. I mean, I mean, wait a minute. This is in the best tradition. I mean, no, no, let's call a spade a spade here, okay. You think that that's the first time that people, I mean, do you think that British troops didn't kill a few Indians when they went in there? Do you think, I mean, look at what we did to the native Indians in this country and in the United States. It's in the best tradition, no, it's in the best tradition of the military. Nothing wrong with this. All that I'm saying, Ashouk, is that the people of Canada have deemed that this is of no consequence -- it was only a couple of Somalis -- and that the military should be left alone -- let the high command look after itself.
- Ashouk:** Mr. Green. You have said in the past that human life has no value, huh, cannot be put a price...
- Mr. Green:** Listen, I am a man that believes in democracy and the people of Canada. The people of Canada have spoken. People of Canada have ruled.
- Ashouk:** So what. So just 'cause the people of Canada, just because the majority of Canada and Canadian people are kind of foolish doesn't mean you have to accept that.
- Mr. Green:** Yeah, but Ashouk, we are civilians. We couldn't possibly know. We couldn't possibly know. How could we understand the stresses and strains of high command?
- Ashouk:** Ah, come on!!!
- Mr. Green:** No we can't, we can't and it's only a couple of Somalis. We'll be right back.

The Letter of Complaint

On the date of the program, July 3, 1997, a listener sent a complaint to the CRTC stating that:

I am writing to complain about an episode of racism and incitement I heard this morning on the radio.

...

Mr. Lowell Green's opening remarks dealt with the Somali [*sic*] Commission Report. Mr. Green stated that Somalis are "Wogs". Mr. Green also said it was not objectionable to kill Somali youth because they are not white. These remarks were repeated during his introductory remarks and later, when speaking to a caller.

The complaint was forwarded to the CBSC, which remitted it to the broadcaster for response.

The Broadcaster's Response

CFRA's News Director responded to the complaint in a letter dated July 17, 1997. He stated:

Further to your complaint letter regarding "The Lowell Green Show" of July 3, 1997, I have now had the opportunity to review a tape of the program segment in question.

Mr. ..., CFRA couldn't agree with you more. To hold the view that killing anyone because they are of a particular colour or creed is reprehensible. To whitewash a federal inquiry looking into two such deaths, unconscionable.

The Oxford dictionary defines a cynic as one who "shows contempt for ease and pleasure," and it says a critic is one who "censures, or criticizes harshly, reproves."

The program in question dealt extensively with the top news story of the day, namely the federal government's dismissal of the Somalia Inquiry findings, the Defence Minister's statement that the military is best left to handle its own affairs, and the Commissioners' comments on CFRA that the cancellation of the Inquiry just as it began to investigate the deaths of two Somali teens amounts to a cover-up.

Lowell Green has a well-established history of speaking up for the underprivileged, the underdog, the discriminated against. Spending countless hours talking about the greatness of Canada, even producing a nationally syndicated feature called "Lowell Green's Canada," he went on to do a facetious, cynical program on "why he is packing up and moving to the US." It was one of his most successful programs, prompting people to react strongly. But most important, prompting them to think about and talk about the issue of the day.

This ... is *exactly* the same issue. Federal regulations refer to a *reasonably consistent listener over a reasonable period of time*, and anyone who has heard even a few episodes of the Lowell Green Show knows he has been an adamant critic of the government's cancellation of the Somalia Inquiry. He has thoroughly denounced the government on numerous occasions for "using its power to hide the truth," and for pretending nothing unacceptable ever happened in Somalia.

Hearing the tape of the program, Mr. ..., and putting it in its proper context, it is abundantly clear that Lowell was being facetious when he made the remarks in question, and throughout the remainder of his three-hour program.

"I'm with Eggleton, I mean, c'mon eh, just a couple of Somalis. I don't understand this. This is the best tradition of the military. The military should be allowed to look after itself..."

It was only a couple of Somalis. I don't understand what all the fuss is about... If Larry Murray is good enough for Sheila Copps, if Larry Murray is good enough for Jean Chrétien, Doug Young and Art Eggleton, he's good enough for me..."

During the introductory remarks to his show, to which you refer...

No question Art Eggleton is right. The *Commission*, is the real problem here. These guys just don't get it. These guys don't understand. The Commission should have left well enough alone. That was the intention: Find a few people at the lower echelons guilty of excessive zeal. That's what's involved here. Then let the military high command handle it. Come on! We already jailed Kyle Brown, why do we have to go any further than that?...

... [I]f anyone still has not understood the criticism being levelled at the government and its response to the Inquiry findings, Mr. Green makes it obvious when he says "God Bless Art Eggleton," and he further "criticizes" by saying "**and this idea that the military is subject to the same kinds of laws that apply to the rest of the country is absurd. Of course they aren't.**"

In CBSC decision 95/96-0064 [*CHUM-FM re Sunday Funnies*, March 26, 1996], the Standards Council made it clear that "it is essential to draw a distinction between a broadcast which is intended to be serious ... and one which clearly does not."

The tone, delivery, style and context in which these statements were made make it abundantly clear that Lowell was being harshly critical -- underscoring the value of human life, and criticizing the government's whitewash -- through his use of appropriately cynical commentary.

The complainant was unsatisfied with the broadcaster's response and requested, on July 23, 1997, that the CBSC refer the matter to the appropriate Regional Council for adjudication. He added the following note to his Ruling Request:

CFRA maintains that Lowell Green attempted to be facetious in his remarks. If so, at some point in his broadcast, Mr. Green would have had to indicate that, in fact, he does not support the murder of Somali youth. This he fails to do. When talking with callers who support his stated views, Mr. Green does not argue with their perspective or condemn it. At best, Mr. Green's position is ambiguous - but in truth, he has taken an extreme position, called for murder, called people "Wogs" and done nothing to clarify his position.

According to CFRA's defense, Hitler could not be accused of making anti-Semitic speeches: he was just being "facetious".

THE DECISION

The CBSC's Ontario Regional Council considered the complaint under Clause 2 of the *CAB Code of Ethics*, which reads as follows:

CAB Code of Ethics, Clause 2 (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.

The Regional Council members listened to a tape of the program in question and reviewed all of the correspondence. The Council finds that the program contravenes Clause 2 of the *CAB Code of Ethics*.

The Content of the Program

On the surface, this matter may appear straightforward. It does, after all, involve the use of terminology which has every appearance of being abusively discriminatory; however, the broadcaster posits that its well-known on-air host was merely being facetious and cynical, characteristics of the host which, it argues, are well-known to his listeners. The matter is thus necessarily more complex than it may at first appear for its resolution involves the consideration of irony, sarcasm, facetiousness and the limits, if any, which may accompany these rhetorical tools.

First, the words themselves. If they would not, on their own, be viewed as abusively discriminatory, there would be no other issue to discuss. The Council must initially, therefore, turn its attention to Lowell Green's words. Stripped of the rhetorical overlay for the sake of this preliminary part of the discussion, the Council has no hesitation in finding that the use of the term "wogs" to describe persons of Somali origin is abusively discriminatory and has no place on Canadian airwaves. This is the moreso true in the context of remarks which disparage the value of the Somali lives destroyed by Canadian military personnel.

That matter having been decided, the crucial issue for the Council must relate to *pertinence* of the broadcaster's argument that its talk-show host was merely being facetious and cynical, that he has an extensive track record "of speaking up for the underprivileged, the underdog, the discriminated against" and that "he has been an adamant critic of the government's cancellation of the Somalia Inquiry." While the CBSC is not entitled to express an "official" view of the contribution made by Lowell Green to talk radio in Ottawa and beyond, it has no hesitation, for the purposes of evaluation of this three-hour program, in accepting the CFRA-AM News Director's contention that Green has been a strong and significant voice in dealing with important public issues. This does not, however, answer the question raised by the complaint since the News Director's argument goes to the issue of *balance* and not to the point of abusively discriminatory comment alleged in *this* case. As the Ontario Regional Council observed in *CHOG-AM re the Shelley Klinck Show* (CBSC Decision 95/96-0063, April 30, 1996), there is an important distinction to be drawn between the two issues

which relates to the nature of the remedial action which may be taken by the broadcaster. Abusive comments are, in and of themselves, a breach of the Code, if not also of the Radio Regulations, 1986. They, unlike an unbalanced or biased presentation of views, cannot be remedied by an offer of "rebuttal time", which is, in effect, a method of redressing balance.

The Council is mindful of the CRTC's pronouncement in Public Notice CRTC 1985-236 censuring CKNW of New Westminster, B.C. for racially abusive comments made against the Nishga Tribal Council and the Musqueam Indian Band. In that Public Notice, the Commission stated that

It is completely inappropriate to request the native groups to "balance" racially abusive remarks. The Commission agrees with the complainants who stated that abusive comments cannot be justified by offering equal time to the abused.

Thus, the News Director's argument regarding the host's track record cannot render him impervious to any claim that he has, in a *particular* instance, overstepped the bounds of Canada's broadcast standards.

Moreover, while the Ontario Regional Council considers that the rhetorical tools of sarcasm, parody, facetiousness, irony, hyperbole and the like may be an effective means of expressing an editorial perspective, the News Director's argument regarding the use of these devices does not either render the user impervious to any claim that the host has, in a particular instance, overstepped the bounds of Canada's broadcast standards.

It should also be noted that CFRA's News Director referred to a previous CBSC decision, namely, *CHUM-FM re Sunday Funnies* (CBSC decision 95/96-0064, March 26, 1996), explaining that "the Standards Council made it clear [in that decision] that <it is essential to draw a distinction between a broadcast which is intended to be serious ... and one which clearly does not." Although he was correct to do so, it is the view of the Council that there was another decision of that same date which is closer in principle to the matter at hand.

The Case of the Jewish Mothers

The case of *CHUM-AM re Brian Henderson Commentary* (CBSC Decision 95/96-0008, 0060 and 0061, March 26, 1996) is so relevant to this matter that a review of its facts is appropriate. In the *CHUM-AM* decision, the commentator took aim at the legal community and legal aid problems in Ontario. To make his point, he used terminology which several complainants found offensive. The pertinent parts of his Commentary are 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. ...

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.

The outcry was immediate and significant and the CBSC received a substantial number of complaints about the anti-Semitic nature of the comments. It should be noted that few, if any, of these accused the *commentator* of being anti-Semitic. Furthermore, the President of CHUM Group Radio immediately made the unequivocal point that "Brian Henderson is in no way anti-Semitic and has, in past commentaries, been very supportive of the Jewish community." The issue there, as here, was focussed on the message, rather than its messenger. As one of the complainants put the matter, "Brian Henderson ... is entitled to think what he likes. However, he should not abuse his position and power as a public figure on the radio to spew racist garbage."

There was no doubt in the *CHUM-AM* case that Brian Henderson *was attempting to be funny*. He tried to use a rhetorical tool to achieve a serious goal but he failed. He acknowledged as much in his on-air apology a week later. He himself put the issue in the following terms:

On my Commentary last Thursday, I made some remarks that justifiably raised the ire of both Jewish and non-Jewish members of our community.

My attempt, to preface a serious topic, with a not so subtle bit of ethnic humour, was clearly poorly conceived because it was not only misunderstood by many of our listeners but created an atmosphere of ill-will and mis-trust.

...

One thing that must be made perfectly clear....

I came up with the idea for that commentary... I wrote it... I read it ... and so, if there's any blame to be assigned, for the pain and in some cases even fear, that my obviously misguided attempt at making light of a serious situation caused, lay it on my desk.

I can't take it back (live radio doesn't allow for that), but I can offer a sincere and heartfelt apology, for an insensitive error in judgment. No excuses. I did it. I'm sorry.

Application of the Henderson Principles to This Case

The Ontario Regional Council understands perfectly well that Lowell Green was trying to ridicule the decision of the Federal Government to disband the Somalia Inquiry. It is apparent that he was trying to achieve this result by being sarcastic and facetious. The Council does not consider that his attempt to achieve his goal was poorly conceived but it

does consider that it was poorly executed. Careful thought before the fact would have led the host to understand that his comments would likely offend not only the brunt of his barbs, namely, the Federal Government, but also persons of Somali origin, as well as those right-minded Canadians who are sensitive to racial slurs about *any* identifiable group.

It is hardly necessary to say that the Council has no quarrel with the offence that might have been taken on the political side of the issue but it *does* consider that Lowell Green's failure to defuse at any point the racially offensive component of his remarks put him in the same situation as Brian Henderson in the *CHUM-AM* case.

The effect of his rhetorical attempt to skewer the political decision-makers was not, as it could have been, moderated so as *not* to skewer the compatriots of the slain teen-agers. He thus undermined the legitimacy of his own argument in that aspect of it which offended Clause 2 of the *CAB Code of Ethics*. This was made the moreso true by his *repetition* of the offensive statements without, at any time in the show, offering *any mitigation* which would have left the sarcastic element operational *vis-à-vis* the actual target but not *vis-à-vis* the unintended target. Moreover, he had the perfect opportunity to offer that mitigation or at least some moderation of his position in his response to the caller Ashouk, who, after all, had missed the irony and could have been assumed not to be the only such listener in that position.

The Special Role of Open-line Programming

In *CFRA re The Steve Madely Show* (CBSC Decision 93/94-295, August 3, 1994), the Ontario Regional Council underscored the role played by open-line programming in fostering discussion about important public issues. The Council quoted the CRTC's statement in its Public Notice CRTC 1988-121: *Policy Regarding Open-Line Programming*, to the effect that open-line programs "offer... an opportunity for lively public discussion..." by providing "the public with an outlet for the expression of a wide range of differing views."

In some respects, open-line programming is, or at least has the potential to be, the 20th century approximation of pure Athenian democracy, as close as we can often get to the essence of the town square meeting. It is not, however, without some reasonable restrictions. In the *Madely* decision, the Council recognized that such programming "require[s] ... broadcasters to balance freedom of expression against abuses of that freedom." The Council considers that the broadcaster failed to achieve this delicate balance on *The Lowell Green Show* of July 3, 1997.

A Word about the Comedic Defence

In raising the matter of *CHUM-FM re Sunday Funnies* (CBSC Decision 95/96-0064, March 26, 1996), CFRA's News Director assimilated the Lowell Green comments to rather straightforward *comedy*, which, in the view of the Council, they are not. There is, as the Council noted in that case, a

fundamental difference between the Smyth matter and cases of the nature of the *Sunday Funnies* broadcast. It is as follows. There is an essential distinction to be drawn between the serious and humorous dialogue. Each has its content limitations but *what* those limitations are will vary according to the *nature* of the broadcast in question. The Ontario Regional Council was, in fact, quite clear about the serious nature of the Smyth commentary although it did note an *apparent* distinction between the original Brian Henderson Commentary and the Dick Smyth Commentary.

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.

As it happened, it was not the view of the Council that the Henderson matter was humorous. The Council stated that, in that case,

[T]he newscaster and editorial commentator, Brian Henderson, was attempting to address a valid, indeed important, public concern, namely, the state of the legal aid system in the Province of Ontario. As the announcer himself admitted, his choice of example was a “clearly poorly conceived” attempt at “ethnic humour”, which had the effect of undermining the legitimacy of his commentary and, further, violated clauses 2 and 6(3) of the *CAB Code of Ethics*.

The *CHUM-FM* decision emphasized the relevance of the difference between the serious material dealt with in *CHUM-AM re Brian Henderson* (CBSC Decision 95/96-0008, 0060 and 0061, March 26, 1996) and *CFTR-AM re Dick Smyth Commentary* (CBSC Decision 95/96-0062, March 26, 1996) and the comedic material dealt with in the *CHUM-FM* matter.

It is that very difference which is applicable here. Lowell Green was trying to be facetious, not comical. The Council is not called upon to consider whether such comments would have been acceptable in the latter environment; they do not believe that they were in the former.

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, although the Council’s conclusion is not that of CFRA’s News Director, it considers that the broadcaster addressed fully, thoughtfully and fairly all the issues raised by the complainant. Nothing more is required. Consequently, the broadcaster has not breached the Council’s standard of responsiveness.

CONTENT OF THE BROADCASTER ANNOUNCEMENT OF THE DECISION

The station is required to announce this decision forthwith, in the following terms, during prime time and, within the next thirty days, to provide confirmation of the airing of the statement to the CBSC and to the complainant who filed a Ruling Request.

The Canadian Broadcast Standards Council has found that CFRA breached provisions of the Canadian Association of Broadcaster's *Code of Ethics* in its broadcast of an episode of the *Lowell Green Show* of July 3, 1997. In the Council's view, Lowell Green's apparent attempt to use sarcasm and facetiousness to criticize the actions of the Federal Government in shutting down the Somalia Inquiry resulted in abusively discriminatory comment against persons of Somali nationality contrary to the human rights provision of the *CAB Code of Ethics*. While the Council found no fault with Lowell Green's rhetorical device, the CBSC considered that the host's failure to defuse the racially offensive component of his remarks at any point in his show resulted in a Code violation.

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