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**CANADIAN BROADCAST STANDARDS COUNCIL  
ONTARIO REGIONAL COUNCIL**

CJMR-AM re Voice of Croatia

(CBSC Decision 92/93-0205)

Decided February 15, 1994

Marianne Barrie (Chair), Al MacKay (Vice-Chair), Susan Fish,  
Paul Fockler and Robert Stanbury

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**THE FACTS**

During the course of the weekly Croatian language radio show *Voice of Croatia* on June 20, 1993, between 10:50 and 11:00 p.m., CJMR broadcast a message which the complainant had left on an answering machine at the station. On the following day, the complainant wrote a letter to the President of the station in which he stated that his voice message had been used in this way without his knowledge or permission. He explained further that "That created a lot of trouble for me with my family, my Croatian community, my work, and my life." He requested the opportunity to express his opinion on the program at the same time (presumably in the following week or two). It can be inferred from the subsequent correspondence that the President of the station telephoned the complainant and had a conversation or conversations with him.

The President then wrote the Producer of the show, copying the complainant, on June 23. In that memorandum, he laid out his understanding that the automatic answering machine was not a part of the *Voice of Croatia* show or even associated with CJMR. In that memorandum, the President noted the Producer's acknowledgment that the complainant's "claim was essentially correct." He added the further explanation that the complainant had not been named on air and that "the taped message aired was an anonymous voice to your listeners." He continued:

I have now gone over with you and reminded you that, in Canada, you may not broadcast someone's voice without their knowledge and permission. As such, the concerns expressed by [the complainant] are legitimate.

Consequently, he asked the Producer to air the following announcement on air during the same time period on the following Sunday:

On last week's program, at approximately this time, we aired, without his knowledge or permission, the comments of an unidentified gentleman that has been recorded on a telephone answering machine. This gentleman has rightly brought this indiscretion to the attention of CJMR Radio and the "Voice of Croatia" program and we, therefore, apologize for any inconvenience or embarrassment it may have caused him.

While the CBSC does not have a logger tape substantiating that the above apology was aired, it was clear that the order to do so was given, that the information regarding the order was in the hands of the complainant, and that the complainant made no further complaint to the effect that this order by the President of the station had not been followed.

In fact, the station President also requested that the Producer arrange that, following the announcement, there would be an explanation of the complainant's assertion "that a certain Croatian soccer club is older than another." In his words, "Perhaps, without mentioning [the complainant] by name, you could clarify this matter, too. I am sure he would appreciate it."

This elucidation was apparently aired on June 27 but the problem was, in some respects, exacerbated, rather than relieved, by this component of the second broadcast since, presumably pursuant to the final request of the President to the Producer referred to above, the latter read the complainant's letter on air. This provoked the complaint on June 28 that "in Canada, you may not broadcast someone's voice or private letter without their knowledge and permission." In this second letter, the complainant again requested that he be granted the opportunity to appear on air.

The initial correspondence had been with the CRTC, which referred the matter to the CBSC on August 4, approximately 45 days following the initial broadcast.

## **THE DECISION**

This was an unusual matter for the CBSC to consider since the logger tapes were not available to the Regional Council to review. While there is an *obligation* on broadcasters under the *Broadcasting Act* and the *Radio Regulations* to retain these tapes for a period of 28 days, the complaint did not arrive in the hands of the CBSC until 45 days following the broadcast. This might, in some circumstances, render a matter impossible to consider; however, in this case, the material facts appeared not to be in dispute. Accordingly, the Regional Council (composed of five members, broadcaster Don Luzzi being unavailable) reviewed all the correspondence relating to the program cited above as well as the complainant's final letter of July 16 to the CRTC, which had referred the matter to the CBSC as indicated above.

The CBSC considered the complaint under Clause 6, paragraph 3, of the Canadian Association of Broadcasters *Code of Ethics*, which reads:

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.

It further considered the requirement in the *Radio Regulations* that prohibits a licensee from broadcasting a telephone interview or conversation except in limited circumstances. Section 3 provides, in part:

3. A licensee shall not broadcast
- [...]
- (e) any telephone interview or conversation, or any part thereof, with a person unless
- (i) the person's oral or written consent to the interview or conversation was obtained prior to the broadcast, or
  - (ii) the person telephoned the station for the purpose of participating in a broadcast.

The Council is comfortable taking notice of a principle established in the *Radio Regulations*, since it is no more or less than a part of the standards by which it expects that broadcasters govern their daily on-air activities. While it is evident that the enforcement of the federal statute and regulations is the responsibility of the Commission, the CBSC has previously applied certain of the principles established in these public instruments in its decisions. In this connection, the CBSC can do no better than to refer to its decision in the matter of *CKTB-AM re the John Gilbert Show* (CBSC Decision 92/93-0179, October 26, 1993):

Insofar as the section of the *Radio Regulations* is concerned, it is not, of course, the CBSC which administers either the *Broadcasting Act* or the *Regulations* established thereunder by the CRTC. The body responsible for their administration is the CRTC. The CBSC does consider, where appropriate, that it may apply these in its decision-making to the extent that they elucidate or explain broadcasting standards which necessarily serve as the background to the Codes which it administers. These Codes have after all been adopted, albeit voluntarily, by the Association grouping the private broadcasters which are statutorily bound by the *Broadcasting Act* and *Regulations*.

Surely, the entire premise of a self-regulatory code is that those who adhere to it will first obey the law which is the cornerstone of their activities. In this case, by broadcasting the voice of the complainant without his knowledge or permission, as contemplated by the *Radio Regulations*, the Regional Council determined that the broadcaster did not *properly* present news, opinion, comment or editorial, thereby breaching Clause 6(3) of the *Code of Ethics*.

The CBSC also reviews the nature and quality of the broadcaster's response to the listener. As determined in the *CFOX-FM re the Larry and Willie Show* (CBSC Decision 92/93-0141, August 30, 1993):

The CBSC is equally conscious of the further responsibility which it has beyond the measurement of on-air programming against the standards established in the three voluntary CAB codes to encourage dialogue between the broadcasters and the members of their audiences.

Thus, in the course of complaint resolution, the CBSC considers that it is firmly within its mandate to evaluate not only the complaint itself against the standards established by the various Codes which it administers but also the responsiveness of the broadcaster in dealing with the viewer or listener.

In general, the CBSC does not consider that a listener is entitled to *demand* the right to appear on-air to express his or her point of view, even in circumstances in which the broadcaster may have been in error. (Any broadcaster may, of course, determine that its own and its listeners' interests are served by such an unusual and understanding course of action, as was chosen by CFOX-FM in the above-mentioned matter concerning that station.) In the present case, however, the Regional Council considers that the steps taken by the President of CJMR in explaining the Producer's error to him, copying the complainant on this memorandum, and providing a text for the Producer to air in the same time slot on the following week's show to have been effective, reasonable and responsive to the listener. In this respect, the CBSC considers that the station fulfilled its obligations of effective dialogue with its listener.

### **Broadcaster Announcement of Decision**

The broadcaster is generally required to announce an unfavourable decision of the Regional Council during peak listening hours within thirty days of the publication of the decision. While the Council considers that the broadcaster's act constituted a breach of the industry's *Code of Ethics*, it has determined that the text of the announcement read the following week on the show was easily the equivalent of what it would normally have required. In the particular circumstances of this case, the Council considers that the broadcaster has by anticipation fulfilled its obligations regarding an unfavourable decision.

Furthermore, with respect to the broadcaster's obligation to be responsive to its listeners, the Council found, as indicated above, that CJMR had fulfilled its obligations of effective dialogue with its listener.

*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 or this unusual case of an unfavourable decision, the station is under no obligation to announce the result.*