
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CHFI-FM re the Don Daynard Show

(CBSC Decision 94/95-0145)

Decided March 26, 1996

A. MacKay (Chair), P. Fockler, T. Gupta, R. Stanbury,
M. Ziniak

THE FACTS

During CHFI-FM's Don Daynard's show of March 10, 1995, the hosts told a series of "light bulb" jokes. They had apparently been sent in by a listener. Before the host began to read them, he said, "Now these are jokes, okay. Don't get upset." They began with "How many feminists does it take to screw in a light bulb? That's not funny." There followed "How many Marxists does it take to screw in a light bulb? None. The light bulb contains the seeds of its own revolution." The next was "How many Jewish mothers does it take to change a light bulb? None. That's all right, I'll just sit here in the dark." Another couple of light bulb jokes followed: "How many surrealists ..."; "How many accountants ..."; "How many members of the Mission Impossible Force ..."; and "How many gorillas ..."

A listener thought that the Jewish mothers version of the joke should not be taken as lightly as the host had suggested. In his letter of March 10 to the CRTC, which was in turn forwarded to the CBSC by the Commission, he put the issue in the following terms:

Mr. Daynard prefaced this joke by making it clear that it was only a joke. The implication of this is that it should not be taken seriously.

... The joke was, in my opinion, anti-semitic and offensive to Jews in general and Jewish women in particular. ...

... I have concerns that the real harm in telling such "jokes" is not understood by several individuals at this radio station. It is my feeling that, if this is permitted, Mr. Daynard and other talk show hosts may feel that they can attack ethnic groups with impunity. Informing the public beforehand that it is only a joke, further victimizing the targeted racial or ethnic group [*sic*].

The CBSC forwarded the complainant's letter to CHFI-FM and the station's Vice President of Programming responded to the listener on March 28. He pointed out that the offending joke fell

within the context of a series of jokes about light bulbs and was not offered with any malice whatsoever. In Mr. Daynard's recitation of the joke he does not mention anything about guilt or making her child feel guilty. There is no reference to a child. It may have been a better idea for Mr. Daynard to delete any reference to a nationality, but he was reading from a published book and read the item verbatim.

Mr. Daynard has informed me that he meant no offence with his recitation of the "joke" and that his comments were not meant to in any way be taken as "anti-semitic, offensive to Jews in general or Jewish women in particular."

Our intention is to inform and entertain and in doing so we do our best to follow what we believe to be acceptable guidelines based on the many factors involved in determining the sociological make up of our audience in particular and our community in general.

Yours was the only phone call or comment that I received in regards [sic] to this matter and I would like to assure you that as a programmer I apologize for any discomfort you may have experienced as a result of your personal feelings about this item.

The listener was unsatisfied with this response and requested, on April 4, 1995, that the CBSC refer the matter to the appropriate Regional Council for adjudication.

THE DECISION

The CBSC's Ontario Regional Council considered the complaint under the *Code of Ethics* of the Canadian Association of Broadcasters (CAB). Article 2 of that Code reads as follows:

CAB Code of Ethics, Clause 2:

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 is not of the view that the program in question breached the *CAB Code of Ethics*.

The Content of the Program

Before entering into a discussion of the reasons for its general conclusion, the Council considers that it ought to deal with a point raised in the broadcaster's letter. In the last paragraph of the letter quoted above, the Vice President of Programming stated that "Yours was the only phone call or comment that I received in regards [*sic*] to this matter." It was also the only complaint received by the CBSC regarding this program. This does not, in general, diminish the importance of the complaint from the Council's perspective. The Council does not believe that it should be influenced in arriving at a decision in any matter by anything other than the weighing of the programming complained of against the standard or standards imposed by the Codes it administers. It does not believe that a *single* complaint is less meritorious by reason of its solitary nature or that a multitude of complaints about a particular broadcast makes the substance of those complaints *more* deserving of a negative result against the broadcaster. The CBSC's mandate is not to count heads; it is to weigh the legitimacy of the claim made against industry standards.

The Thorny Question of Ethnic Jokes

The CBSC has frequently been called upon to consider ethnic humour found offensive by a listener or viewer. In *CFOX-FM re the Larry and Willie Show* (CBSC Decision 92/93-0141, August 30, 1993), it laid down the basic principle by which all subsequent discussions on the subject have been guided, namely, that

It is not *any* reference to "race, national or ethnic origin, religion, age, sex, marital status or physical or mental handicap" but rather those which contain "abusive or discriminatory material or comment" based on the foregoing which will be sanctioned.

In a matter dealing with sexist, rather than racist, comment, it emphasized the importance of freedom of speech in such matters and the balance which must be struck between the two principles.

In *CKTF-FM re Voix d'Accès* (CBSC Decision 93/94-0213, December 6, 1995), the Quebec Regional Council considered that the broadcaster had clearly exceeded the boundary of that which, by Canadian standards, could be justified in the name of freedom of expression. In that case, the on-air host told a "Newfie" joke in which Newfoundlanders were described as "trous de cul" ("assholes" in English), which the Council found totally unacceptable.

The question, of course, is to determine which "ethnic" jokes or comments will be understood as crossing the boundary of acceptability. There are those which are sanctionable and those which, even if tasteless or painful to some, are not. It would be unreasonable to expect that the airwaves be pure, antiseptic and flawless. Society is not. Nor are individuals in their dealings with one another. Nonetheless, the airwaves are a special and privileged place and those who occupy that territory are expected to play a more restrained and respectful social role.

What may constitute the limits of acceptability in each challenged case will need to be appreciated in its context. Certain cases will clearly fall on one side or the other of the boundary. Others will lie uncomfortably on the line. The matter at hand was, however, free of doubt; the depiction of “Newfies” as “assholes” was clearly unacceptable. Whether intended seriously or in jocular fashion, the use of that term in reference to this or any ethnic, racial, national or other discernible group was derogatory, abusive and discriminatory and in violation of clause 2 of the *CAB Code of Ethics*.

In *CHUM-FM re Sunday Funnies* (CBSC Decision 95/96-0064, March 26, 1996), the Council drew a distinction between “acceptable” and unacceptable forms of ethnic humour, in slightly different terms. That case involved Polish jokes and was, in many respects, similar to what the Ontario Regional Council faces here. In the *CHUM-FM* case, the Council first drew the distinction between serious and humorous context. It said:

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.

As the Council explained,

It is not that the *standard* to be applied to the potentially offending statement will be different. It is rather the question of audience perception.

While the context in *this* case is clearly comedic, the Council refers to the foregoing comments to emphasize its agreement with the importance of “audience perception”. The *CHUM-FM* decision did, however, also involve an ethnic joke and the Council believes its next comments to be particularly pertinent.

The situation is different where the context is clearly comedic. After all, where the audience is given no reason to expect that the substance of the comments made is serious, their attitude could *reasonably* be expected to be different. A remark which might reasonably be assessed as abusive in a serious context and thus in breach of the *Code of Ethics* may not be so viewed in the comedic environment.

Furthermore, humour is commonly based on national, ethnic, racial or gender traits, as often as not related to background matters best-known to the comedian. Even stereotypes are not unknown in such a context. Such issues cannot *alone* be the cause of a broadcast sanction. They must be *coupled* with another defining criterion; namely, they must be abusive or discriminatory.

In *CHUM-FM*, the Council concluded that the Polish joke had not exceeded the standard on which it relied, namely, “The issue, ultimately, is to decide *when* a humorously intended comment may *reasonably* be viewed as having gone too far.”

Similarly, in the case at hand, the Council considers that the Jewish mothers light bulb joke, while ethnically pointed, was neither demeaning nor abusive. It was told in the context of a series of light bulb jokes aimed at feminists, Marxists, surrealists, accountants, etc. It poked fun but did not bludgeon. It tickled but was not nasty. It touched on what

some might view as stereotypical characteristics as did the Polish humour in the *CHUM-FM* case and perhaps the Irish humour in the *CFOX-FM* case but was not ugly as in the “Newfie” humour in the *CKTF-FM* case. The CBSC does not expect that the airwaves will be pure, antiseptic and flawless when society is not.

The Council's duty is to put a potentially offensive ethnic joke on its societal scale and determine whether it could *reasonably* be viewed as having gone too far. The Ontario Regional Council considers that the Jewish mothers joke does *not* exceed that standard of reasonableness. It certainly does not consider that, to use the complainant's term, it amounted to an “attack [on an] ethnic group” or that “the targeted racial or ethnic group” was victimized.

The Broadcaster's Response

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. It is a responsibility of membership in the CBSC to be responsive to audience complaints. The letter responded thoughtfully to the issues raised and included the Vice President of Programming's intention to advise Don Daynard to remove the joke in question from his files. Nothing more is required of the broadcaster.

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.