
**CANADIAN BROADCAST STANDARDS COUNCIL
PRAIRIE REGIONAL COUNCIL**

CIRK-FM re T-Shirt Promotion Spot

(CBSC Decision 96/97-0206)

Decided December 16, 1997

S. Hall (Chair), D. Braun (Vice-Chair), K. Christensen, D. Dobbie, V. Dubois, D. Ish

THE FACTS

On May 12, 1997, CIRK-FM (familiarily, K-97) (Edmonton) broadcast the following promotional announcement ("promo") for K-97 T-shirts being sold in Edmonton:

You are 97 feet tall. You walk through the streets of Edmonton stepping on anyone who gets in your way. You can squish a house with one footstep. You pick up cars and throw them across town. You can have anything you want. There's only one problem. There are no 97 foot tall chicks. [Background scream] Y-a-a-a . Life's a bitch. Wear a Rock Shirt. The K-97 Rock Shirt available now at all Jean Outlet stores. All proceeds benefit the Edmonton Food Bank.

The Letter of Complaint

In a letter of complaint of May 12, an Edmonton listener wrote:

During the advertisement, I was surprised to hear the words "Kick Ass" and "Life's a Bitch"! In my opinion, this is unprofessional and irresponsible radio at best. (Just what, for that matter, is the purpose of K-97 selling these T-shirts? - what is the radio station promoting? - what "community event"?). Although I have used the odd profanity myself, I make sure that the wrong ears (i.e. kids) don't hear me. Having four children ages ten to 13, I try to maintain that they watch the words that come out of their mouths, and show respect towards others by using acceptable language. This type of advertising on the radio undermines what I'm trying

to teach my children, and I really don't appreciate your station promoting inappropriate language as acceptable.

I am a long-time listener of K-97, but after hearing this type of advertisement on your radio station, and the flippant attitude that your program manager gave me when I telephoned to express my dissatisfaction, I am wondering how appropriate your station is for myself and my family. I feel that inappropriate language is not the way to reach your audience - I find it deplorable and mediocre that your station has to lower its standards - to sell a T-Shirt?! (Is this a shoddy imitation of [a rival station] to increase ratings?) Wake up and smell the coffee! Be more responsible to the public - young and old.

The Broadcaster's Response

The Operations and Program Manager replied to the complainant on May 29.

Thank you for taking the time to write K-97 expressing your concerns with regard to one of our promotional announcements. We take your complaint seriously, and will be filing a copy of this letter with the Canadian Broadcast Standards Council, and our Chief Operating Officer.

We are of the opinion that the terms in question, "Kick Ass" and "Life's a Bitch" are no longer profanity, but have passed into common accepted usage in many areas of life, and conform with community standards, which is the measurement used in these issues.

Occurrences of these words and phrases in public and in the broadcast medium are too numerous to mention, including within the body of songs, public speeches and statements on newscasts, and on many popular prime time television shows. As such, K-97 is of the opinion that these words conform to community standards of acceptable language.

The complainant was unsatisfied with this response and requested, on June 2, that the CBSC refer the matter to the appropriate Regional Council for adjudication.

THE DECISION

The CBSC's Prairie Regional Council considered the complaint under Clauses 6, paragraph 3, and 8 of the *CAB Code of Ethics*. The texts of the relevant portions of these clauses read as follows:

Clause 6, paragraph 3, *CAB Code of Ethics* (News and comment):

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.

Clause 8, paragraph 1, *CAB Code of Ethics* (Advertising):

Recognizing the service that commercial sponsors render to listeners and viewers in making known to them the goods and services available in their communities and realizing that the story of such goods and services goes into the intimacy of the home, it shall be the

responsibility of member stations and their sales representatives to work with advertisers and agencies in improving the technique of telling the advertising story so that these shall be in good taste, simple, truthful and believable, and shall not offend what is generally accepted as the prevailing standard of good taste.

The Regional Council members listened to a tape of the station's T-shirt promo in question and reviewed the correspondence. (The tape provided by the station did not include the words "Kick Ass"; however, the station, in its reply, seemed to acknowledge that the term may have been used. The Council's decision is, therefore, rendered on the assumption that the term was included in the promo to which members listened or in another promo which may not have been provided.) The Council considers that the promo in question does not violate the *CAB Code of Ethics*.

The CBSC Approach to Offensive Language

The CBSC has been called upon on several occasions to deal with the question of offensive language. While the Codes and clauses under which the Council has treated this issue vary as a function of the type of programming dealt with, the outcome has been the same. When the words challenged have arisen in the context of an open line show or, as in one case noted below, a sports program commentary, the CBSC has relied on the third paragraph of Clause 6 of the *Code of Ethics*. It has also, in the case of a dramatic program, an example of which is referred to below, relied upon the scheduling provisions of the *CAB Violence Code*.

While the CBSC has frequently been called upon to deal with issues relating to advertising and program promos (which are, for these purposes, assimilated to advertising), this is the first occasion on which a complainant has referred to the *language*, as opposed to the subject matter, used in the advertising in question. The CBSC believes that neither this matter nor any of the previous decisions have required, or do yet require, it to measure questions of language by any other than the same barometer. It is for that reason that the decisions referred to under the heading "Good Taste and the Special Case of Clause 8" are considered by the Prairie Regional Council to be of application to the matter at hand.

The CBSC Approach to Questions of Taste

In dealing with a previous broadcaster promo in *CITY-TV re "Ed the Sock" Promotional Spots* (CBSC Decision 94/95-0100, August 23, 1995), the Ontario Regional Council explained its perspective on questions of taste in the following terms:

The CBSC began its consideration of this complaint, as it generally does, with the proposition that broadcasters benefit from the application of the principle of freedom of expression to what they transmit, as do those who watch or listen to those transmissions. There are, however, limitations on the exercise of that freedom by broadcasters and the CBSC believes that Canada's private broadcasters have generally been extremely receptive to the definition

of those limitations as enunciated by the Council. It is known and expected that the CBSC is *extremely* cautious about the application of the principle of good taste as a restriction of that fundamental freedom.

While the complainant was extremely articulate in the enunciation of her apprehensions, the Council did not consider that the concerns outweighed the freedom at stake.

In other words, the CBSC will be reluctant to interfere with a programming or advertising matter unless there is a clear breach of a provision of one of the Codes. In general, it has long considered that questions of bad taste alone will not be sufficient to result in a breach of a provision of one of the Codes. While the specific matter of advertising under Clause 8 will be dealt with below, excerpts of three of the Council's decisions referring to taste are noted here. In *CHTZ-FM re the Morning Show* (CBSC Decision 92/93-0148, October 26, 1993), the Ontario Regional Council stated:

On the questions of fact in this case, the Regional Council agreed that the tone of the host's statement was accurately recalled by the listener and that the host's statement was in extremely poor taste. At the same time, the Council was unanimous in view that the bad taste did not amount to a breach of any of the Code provisions cited above. ... The sanctioning of bad taste, unpalatable as it may be, does not fall within the ambit of the CBSC's mandate under its Codes.

In *CIWW-AM re the Geoff Franklin Show* (CBSC Decision 92/93-0181, October 26, 1993), the host had responded to a case of animal cruelty by encouraging callers to suggest methods of "getting even" with the perpetrator of the crime. The Council did not find any breach of a Code.

It determined that the host had, as a dog-lover himself, been motivated by anger in marshalling the listeners' calls but that he had not ever meant to be taken as a serious advocate of criminal activities. In the result, it considered Mr. Franklin's comments to be in poor taste but not constituting a breach of any of the provisions of the *Code of Ethics*.

In the more recent CBSC decision in *CHOM-FM and CILQ-FM re Howard Stern Show* (CBSC Decision 97/98-0001+, October 17-18, 1997), the Quebec and Ontario Regional Councils jointly concluded that the September 1997 broadcasts of the Howard Stern Show contravened the *Code of Ethics* and *Sex-Role Portrayal Code*. While acknowledging that there were parts of the show that could likely be classified as being in bad taste, the two Regional Councils were unwilling to find the stations in breach of the Codes with respect to issues of bad taste for the following reasons (the stations were ultimately found in breach of the two Codes with respect to matters other than bad taste).

Many of the complaints received regarding the Howard Stern Show related to questions of taste. Stern was accused of being offensive, vulgar, adolescent, rude, unsuitable, outrageous, sick, tasteless and so on. ... The Quebec and Ontario Regional Councils are, however, agreed that, under the present Codes, matters of taste must be left to be regulated by the marketplace. Such choices remain those of the listener. This is the time when the on/off switch is the listener's coping mechanism. Unless comments made by a broadcaster are of a nature to breach provisions of one or more of the Codes, the CBSC will not judge them one way or the other.

Good Taste and the Special Case of Clause 8

Despite the CBSC's general reluctance to deal with questions of taste, the Prairie Regional Council acknowledges that the term "good taste" is actually used in Clause 8. This necessitates an explanation of the Council's understanding of the term in *that* context.

The Council notes that the term "good taste" does not appear on an isolated basis. While the drafting of the paragraph is not the most felicitous, an explanation, if not a definition, of the terms is provided in the closing words of that paragraph. These are: "and shall not offend what is generally accepted as the prevailing standard of good taste." It appears to the Prairie Regional Council that the drafters were explaining that "good taste" means that the advertising content shall not offend *prevailing standards* of good taste. The Council understands this to be a *higher* test than merely being characterisable as *good* taste. In a sense, the wording suggests that the material questioned must not be the *opposite* of good taste to be in breach; it must actually *offend* prevailing standards to be sanctionable. It may be that the "prevailing standards" test in Clause 8 could be more easily met than the general "taste" threshold which, as discussed above, the CBSC applies more generally. In any event, it is the view of the Prairie Regional Council that the expressions "Life's a bitch" and "Kick ass" do not breach the "prevailing standards" test and that it is not necessary to consider the other issue at this time.

It is appropriate to provide a sense of the Prairie Regional Council's view of "prevailing standards" and how these are to be assessed. It is clear that it cannot be the function of the CBSC or the various Regional Councils to *conduct surveys* in order to determine what prevailing standards are; it is rather the function of the Councils to apply the reasoning and sense of a balanced group of public and industry representatives to the programming under consideration. It is indeed a reflection of that "balance" that has enabled the various Regional Councils to arrive regularly at conclusions in such matters without dissenting voices, whether the conclusions favour or run against the broadcasters.

It is the view of the Regional Council that, in general, for a matter to breach the "prevailing standards" test of Clause 8, it must extend beyond the level of offensiveness, if not even crudeness or vulgarity. This is not to suggest that the CBSC *approves* in any way of offensiveness, crudeness or vulgarity on the airwaves but rather that, in the interest of preserving a broad range of scope for freedom of expression, *such* matters of taste must be left to the marketplace.

Some Previous Decisions Dealing with Offensive Language

The question, then, for the Prairie Regional Council in this case is to determine whether the terms in question meet the "prevailing standards" test. In this regard, the Council considers it appropriate to review some of the earlier decisions of other Regional Councils. in *CFRA-*

AM re Steve Madely (CBSC Decision 93/94-0295, November 15, 1994), the Council was called upon to deal with the word "Goddammit". The Ontario Regional Council stated that:

In its determination of what constitutes "obscene or profane language", Council considered that current broad social norms must be applied. The Council also had to face the fact that some language which may at another time have been broadly considered obscene or profane had now slipped into common and marginally acceptable usage. Terms formerly considered blasphemous or irreligious are today non-religious and inoffensive to the population as a whole, even if perhaps in poor taste. In general, the Regional Council concluded that there may be words which ought not to be used in the medium but whose use could not be raised to the level of profanity or obscenity. While the word "damn" gave the Council no difficulty by current standards, this was a case which fell into that middle ground insofar as the word "Goddammit" was concerned. In their view, the host used the term as an epithetic expression of frustration but not in an *intentionally* irreverent, blasphemous or irreligious way. While good taste and judgment might have dictated the non-use of the expression on the public airwaves, it was not a sanctionable usage.

In *CHAN-TV re Sportscast* (CBSC Decision 95/96-0108, December 18, 1996), an interviewee sports expert used the words "crap" and "ass" in a description of a hockey team. A viewer felt that such "gutter words" were completely unacceptable and were setting a very poor example to the younger generation of B.C. Applying current broad social norms, the British Columbia Regional Council concluded that this language, while not "attractive, articulate or perhaps even appropriate to the airwaves," nevertheless did not violate the Code.

They may even be, to use the characterization of the complainant, "gutter or crude" language. They are not, however, in the view of the B.C. Regional Council, either obscene or profane, which is ultimately the test which the Regional Council must apply.

In *CJOH-TV re "White Men Can't Jump"* (CBSC Decision 94/95-0060 March 12, 1996), the broadcaster had aired a feature film based on California street life which, as the Ontario Regional Council observed, was "replete with epithets and very coarse street language." The 9:00-11:00 p.m. broadcast began with and as followed by the required viewer advisories. The Council, in dealing with the complainant's concerns regarding language, began by acknowledging that the language was indeed coarse:

The Council is entirely in agreement with the complainant that the language is coarse, even incessantly so for at least the first half hour of the film. The Council is equally of the view that the language used is that of the streets of California portrayed in the motion picture.

In the result, the Council found that the broadcasters in each of the above instances were not in breach of the Codes with respect to the language used. Moreover, it is the view of the Prairie Regional Council in this case that the expressions "Life's a bitch" and "Kick ass", while admittedly crude, have fallen into more commonly acceptable usage than a number of the expressions used in the decisions previously cited. In the circumstances, the Council can find no breach of the Code.

Broadcasters are, however, generally members of the communities in which they function and will regularly attempt to respond to the concerns of their listeners or viewers, even on matters of taste which do not fall within the purview of the Codes. That, though, is a matter for the determination of each station and the broadcaster is under no compulsion in this regard.

Broadcaster Responsiveness

The CBSC always recognizes the broadcaster's obligation, as a CBSC member, to be responsive to complainants. In this case, the Regional Council considers that the response from the broadcaster dealt directly with the issues raised by the complainant. It was not lengthy but it was sufficiently responsive. Consequently, the station did not breach the Council's standard of responsiveness.

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.