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**CANADIAN BROADCAST STANDARDS COUNCIL  
ONTARIO REGIONAL COUNCIL**

CFNY-FM re Humble & Fred (*South Park* Clip)

(CBSC Decision 97/98-0615)

Decided July 28, 1998

A. MacKay (Chair), R. Stanbury (Vice-Chair), R. Cohen (*ad hoc*),  
M. Hogarth, M. Ziniak

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**THE FACTS**

On February 16, 1998, the hosts of CFNY-FM's (Toronto) morning radio show, Humble & Fred, aired a short audio excerpt from Episode 111 ("Tom's Rhinoplasty") of the adult television cartoon series *South Park*. The excerpt was inserted between a station/morning show identification spot and a current hit song. The *South Park* excerpt among the boys and Cartman went as follows:

Stan: "What the hell are you doing, Cartman?"

Cartman: "My mom said, <If you wanted to become a lesbian, you had to lick carpet.""

Kyle: "Really?"

Stan: "Well, I got an Indiglow [*sic*] Girls CD. The guy at the record store said it was perfect."

Kyle: "And I got these killer Birkenstocks."

Cartman: "This is a bunch of crap. I've been licking this carpet for three hours and I still don't feel like a lesbian."

[Parody choral conclusion, apparently inserted by CFNY-FM but clearly not part of the original *South Park* episode, to the tune of Beethoven's Ninth] "That's disgusting, Hallelujah."

## The Letter of Complaint

On the day of the broadcast, a listener sent the Secretary General of the CRTC a letter stating:

Please treat this letter as a formal complaint against Q102 "The Edge", a Toronto radio station.

On the morning of February 16, 1998 at about 8:43 a.m. the station broadcast a joke which disparaged lesbians based upon their sexual orientation by suggesting that some people were trying to become lesbian or feel like a lesbian by "licking carpet".

I found this unacceptable discriminatory language and I ask that you treat this as a formal complaint against the station and commence a hearing with regard to the question of their continued licensing.

## The Broadcaster's Response

The General Manager of CFNY-FM replied to the complainant on March 27 in the following terms:

Your letter of complaint of February 18, 1998 to the Secretary General of the CRTC was forwarded to us by the Canadian Broadcast Standards Council. The matter as outlined in your correspondence relates to lesbianism with a specific reference to "licking carpet".

The material which you heard was aired on the "Humble & Fred" morning program at approximately 8:30 a.m. Upon review of the material I can report that the show's producer played an excerpt from the television show *South Park* from which the actual audio clip was taken. As you are probably aware, *South Park* is a highly popular television program aired on Canadian stations. This particular episode occurred on February 15, 1998 on the Global Television System.

The Edge is a "new-rock" based radio station that directs its programming fare to an audience between the ages of eighteen-to-thirty years. It is in this context that this presentation occurred. We hold the position that the programming content which was aired would not have been perceived by our audience as disparaging toward lesbians in any way. Our audience is young, progressive and demanding of irreverent humor and satirical analysis of contemporary issues. Considered in the context of our audience profile and tastes, we believe the remark was not inappropriate. The audience to which this station appeals is most vocal in any area where it believes the station over steps a boundary of good taste, or disparagement of any class of people, whether it be based on sexual orientation, race, creed, or color.

To the best of my knowledge, we have not received any additional complaints as a result of the single airing of this television clip.

We have retained the audio broadcast of February 16, 1998 at the request of the Canadian Broadcast Standards Council and if the audio clip, in the view of the Council, disparage lesbians or is viewed to have contained "unacceptable discriminatory language", then this station will abide by the decision of the Council.

We regret your discomfort with the material and apologize for any offense you may have taken as a result of this broadcast. As a defender of civil liberties and free speech you should be particularly appreciative of the fine balance between free expression and the establishment of appropriate limits. This is an exercise that we as broadcasters engage in on a daily basis. In this particular instance, we believe the remark did not contravene the standards of the day when considered in context and with regard to the target audience.

The complainant was unsatisfied with the broadcaster's response and requested, on April 6, that the CBSC refer the matter to the appropriate Regional Council for adjudication. With his request, the complainant added the following note:

Please note: the Supreme Court of Canada has now 'read in' the words "sexual orientation" into Alberta's Human Rights Code. You ought to do the same.

## **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 considers that the program in question is not in violation of clause 2 of the *CAB Code of Ethics*.

### **Sexual Orientation and Clause 2 of the *Code of Ethics***

As noted above, the complainant had added a note to the bottom of his signed form requesting a ruling by a Regional Council to the effect that "the Supreme Court of Canada has now 'read in' the words 'sexual orientation' into Alberta's Human Rights Code. You ought to do the same." In fact, the Canadian Broadcast Standards Council notes with some satisfaction that its Prairie Regional Council's decision in *CHQR-AM re Forbes and Friends* (CBSC Decision 92/93-0187, August 8, 1994) which "read in" sexual orientation as a protected ground in Clause 2 of the *Code of Ethics* preceded the Supreme Court decision referred to by the complainant. Nor was this the only decision in which the CBSC has had occasion to deal with sexual orientation as an enumerated and protected ground; the history of the CBSC's dealings with discriminatory comment on the basis of sexual orientation are set out at length in *CHCH-TV re Life Today with James Robison* (CBSC

Decision 95/96-0128, April 30, 1996). Suffice it to say in *this* decision that the Council has considered the current complaint from the same perspective which it has applied for the last four years, namely, that sexual orientation is deserving of equivalent protection as the other specified grounds enumerated in the “human rights” provision of the *Code of Ethics*.

## Humour and Discrimination

The Council has also long recognized that it is not just *any* reference to “race, national or ethnic origin, religion, age, sex, [sexual orientation], marital status or physical or mental handicap” which will be sanctioned; rather, it is only those which contain *abusively* discriminatory material or comment based on the foregoing grounds. To find otherwise would pose an undue constraint on freedom of expression for, in a technical sense, it is eminently arguable that *every* statement regarding an identifiable group is *discriminatory*. As this Council put the point in *CFTO-TV re “Tom Clark’s Canada”* (CBSC Decision 97/98-0009, February 26, 1998):

Early on, the Council recognized that Clause 2 of the CAB *Code of Ethics* requires a weighing of competing values. In *CHTZ-FM re the Morning Show* (CBSC Decision 92/93-0148, October 26, 1993) the Council noted that “it must balance the right of audiences to receive programming which is free of abusive or discriminatory material ... with the fundamental right of free speech in Canadian society.” The application of this balancing act in various CBSC decisions evolved into an “abusiveness criteria”; i.e. the establishment of a “test” whereby a comment must not merely be *discriminatory* to constitute a breach of Clause 2, it must be *abusively* so.

The Council also recognizes that much of society’s humour is based on discriminatory comment. For example, in *CHFI-FM re the Don Daynard Show* (CBSC Decision 94/95-0145, March 26, 1996) the hosts told a series of “light bulb” jokes, including one which asked, “How many Jewish mothers does it take to change a light bulb?” A viewer did not take this “joke” as lightly as the host as suggested and felt that it was anti-Semitic and offensive. The Council concluded that there had been no violation of the Code, and stated 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.

There are numerous similar examples in the CBSC’s jurisprudence; however, it is not all such jokes which will be found to be acceptable broadcast fare. A good statement of the Council’s position on, and rationale for, its view of such humour was put by its Quebec Regional Council in *CKTF-FM re Voix d’Accès* (CBSC Decision 93/94-0213, December 6, 1995), where it noted that “the question, of course, is to determine which ... 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.

In that case, the Quebec Regional Council found totally unacceptable a “Newfie” joke in which Newfoundlanders were described as “trous de cul” (“assholes” in English).

### **Humour and Sexual Orientation**

The issue is, of course, no different in the case of jokes based on sexual orientation and the CBSC has also dealt on numerous occasions with such humour. In the first such case, which was noted above, namely, *CHQR-AM re Forbes and Friends* (CBSC Decision 92/93-0187, August 8, 1994) the announcer commented on an article in *Vanity Fair* magazine which featured photographs of folksinger k.d. lang and model Cindy Crawford together. The announcer then aired a spot featuring an endorsement of “The Vegetable Institute”, supposedly by k.d. lang. The item was narrated by a male voice, which advised children to eat their vegetables and stay away from red meat. The voice said that eating vegetables would “put hair on [their] chests too”. While a listener felt that the spot was “obviously referring to lang’s sexual orientation and the stereotype that all lesbians are masculine”, the Council did not find the spot to be abusively discriminatory.

The majority of the Regional Council members were of the view that the spot was directed primarily at k.d. lang’s vegetarianism rather than her sexual orientation. In any event, to the extent that the spot might reasonably be understood as a spoof of her sexual orientation, the Regional Council did not consider that it could be interpreted as discriminatory in terms of Clause 2 of the Code of Ethics. The segment had, after all, been prompted by a *Vanity Fair* article in which Ms. lang had chosen to present herself in masculine clothing beside one of the most adulated of female models. This, Regional Council members felt, was an unequivocal indication of Ms. lang’s ability to joke about her own sexuality. In the context of the *Vanity Fair* article, Ms. lang’s own public declarations regarding her sexual orientation and the timing of the spot, the Regional Council considered that the spot was intended to be humorous in a way which did not constitute a breach of Clause 2 of the Code.

In *CILQ-FM re Parody Skit* (CBSC Decision 95/96-0218, May 8, 1997), the Ontario Regional Council dealt with a skit entitled “Bob the Fag Man” in which “Bob” is the host of “Fag Talk, the program where we talk about fags, or as they are called in America, cigarettes.” The Council found no breach.

There is nothing complex about the matter under consideration here. The short skit in question is intended as a parody. It plays on the *double entendre* of the word “fag”, which is used primarily in Britain and its former colonies as a slang term for cigarette, and which has a slang usage in North America to describe a gay man. The sole issue for the Council to consider is whether or not this use of the term was *abusively* discriminatory *vis-à-vis* gay men. In the view of the Council, it is not. While possibly an unflattering term, it does not, in

the Council's view, rank with certain racial or ethnic epithets (which it does not wish to repeat here), particularly since members of the gay community use the word themselves from time to time in a non-discriminatory fashion. At worst, "fag" could be considered to be in poor taste, a matter on which the CBSC does not rule. In consequence, the Council finds that there is no breach of the Code.

In this case, while the Council is fully aware of the attempt to make fun of a sexual proclivity of lesbian couples, it is equally aware that the particular sexual practice is one engaged in by heterosexual partners as well. The resounding reference to Beethoven's *Ninth Symphony's* Hallelujah chorus to underscore the allegedly "disgusting" nature of the practice delivers the program's less than serious perspective on that sexual activity but the truth is clearly that *South Park's* creators (and CFNY-FM by extension) thereby comment more on that practice than its practitioners. An irreverent spoofing it is, not unlike the general thrust of *South Park* itself. In poor taste, likely; however, in the Council's view, it would be a narrow interpretation of both *South Park* and CFNY-FM's broadcasts to conclude that the comments made regarding this non-exclusive sexual activity were intended to represent an abusively discriminatory undermining of lesbianism *per se*. In the view of the Ontario Regional Council, it falls far more into the category of the k.d. lang self-parody in *CHQR-FM re Forbes and Friends* decision noted above than into the category of bitter, hostile, abusively discriminatory material dealt with by this Council on some previous occasions. Whether or not it passes a taste test is not for the Council to judge, but the broadcast does not amount to a breach of any of the broadcaster Codes.

### **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 Council considers that the broadcaster's response responded to some aspects of the issues raised by the complainant although it seemed to dwell more on a justification of the *South Park* excerpt on the grounds of the popularity of the television series and the demographics of the radio station's audience. While irreverence is not *per se* unacceptable, the fact that the comments is question "would not have been perceived by [CFNY-FM]'s audience as disparaging toward lesbians in any way" is irrelevant. The question is rather whether the comments would reasonably have been viewed as abusively discriminatory by the CBSC Regional Council made up of broadcast and public representatives and charged with the interpretation of the industry's Codes. In any event, as discussed above, the Council has not found the comments in breach, and it does acknowledge the entirely collaborative approach of the station's General Manager regarding the Council's conclusion as well as his attempt to be responsive to the complainant. Consequently, the broadcaster has not breached the Council's standard of responsiveness. Nothing more is required.

*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.*