
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CFGO-AM re a Jim Rome Commentary

(CBSC Decision 98/99-0093)

Decided June 17, 1999

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

THE FACTS

On October 6, 1998, an all-sports radio station, CFGO-AM (popularly known as OSR 1200 in Ottawa) broadcast a report about the current developments in the ongoing saga of the new baseball stadium projected for the Montreal Expos. That commentary included some "political" observations; it went as follows:

Bud Selig is getting two mentions today. He has a meeting with Quebec Premier Lucien Bouchard. They're trying to figure out what to do about that new ballpark in Montreal. Now that's important from a couple of standpoints.

Number one, of course keeping baseball in Montreal. And number two, Felipe Alou factors into this. It's much easier for them to get that crib built if they've got a stable, consistent figure like Felipe Alou still there.

Bouchard says that no public funds will be used to build that stadium. Kind of nice for Bud Selig to get involved in the middle of that whole thing. Go to Canada, and try to move that process along.

Very forward thinking, however, I was of the impression, that the only Frenchies that we had in baseball were the brothers Lache. You know, Marcel and René. Now I have to contend with Lucien. I thought René and Marcel were bad but Lucien. I would not want some guy named Lucien in my ballpark, much less financing the ballpark and running the nation.

Man, now what are you gonna do, Bud? That's brutal, how did the people of Quebec elect this guy? I mean, if I see Lucien on the ballot, I'm voting for the other guy even if it's a Pierre or a Marcel or even a René. I'd vote Communist before I voted for Lucien.

Good luck Frenchies. Baseball will be leaving Montreal soon the way it should. Boy, the Frenchies are too much, aren't they? Marcel and René, those guys should not be in big league baseball they should have a bakery. "Marcel, where are the eclairs?" It's kind of an Angel thing slash Frenchie thing.

The Letter of Complaint

On October 21, a viewer wrote to the Secretary General of the CRTC stating that:

While listening to Ottawa Sports Radio (OSR 1200) the other day, I heard commentary that I found objectionable and insulting. It took place between 15:00 and 15:30 on Tuesday, October 6. While reading a wire report dealing with the state of the Montreal Expos baseball team, the announcer began editorializing about the contribution of Francophones to baseball, the Province of Quebec and Lucien Bouchard; all in a very negative manner.

As a native of Montreal, I found this offensive. I request that you investigate this matter, as I would like to hear the radio station's explanation. The program director has yet to return the voice mail I left him.

That letter was in due course forwarded to the CBSC to be dealt with by the Council under its mandate.

The Broadcaster's Response

The Vice President and General Manager of the station replied to the complainant on November 9 in the following terms:

Thank you so much for taking the time to write to us about your concerns with the Jim Rome Show, as heard on CFGO on October 6, 1998.

We see your point, and quite frankly were quite surprised to hear political comments on a sports talk show. Usually, sports talk is more innocuous and score/coach/fan related.

We are new at sports talk, and have learned from this to be more vigilant. We have alerted our producers and hosts to watch for and delete such banter from on-air broadcasts.

For the live shows, our producers have been given detailed instructions on how to properly screen callers for content. Also, both the producer and host have a seven-second delay button that can delete offensive phrases from airing. At any time during a call, they will cut the caller off if the subject matter is not suitable - the delay will prevent this from airing. For the syndicated shows, such as Jim Rome, the operators have been instructed to monitor the shows more closely for content. If the content is questionable, they are able to substitute the program.

Let me assure you that we will continue to take steps to make sure this doesn't happen again, and thank you for your interest in working with us to get it right.

The complainant was unsatisfied with the broadcaster's response and requested, on November 23, 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). The relevant clauses of that Code 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 broadcast in question and reviewed all of the correspondence. The Council does not consider that the broadcast in question violated the aforementioned provision of the Code.

Insulting an Identifiable Group vs. Giving an Opinion on Politics and History

While the Council finds the tone and wording of the Jim Rome Commentary distasteful and unpleasant, it does consider that it is politically driven, specifically driven by the decision of Quebec Premier Lucien Bouchard not to fund a new baseball park in Montreal. While it clearly smacks of a discriminatory approach to the question, the combination of a political issue and a discriminatory tone renders this matter, in some respects, similar to that dealt with in the Council's decision in *CHOM-FM and CILQ-FM re The Howard Stern Show* (CBSC Decision 97/98-0001+, October 17-18, 1997). In that decision, the Quebec and Ontario Regional Councils jointly concluded that, on one level, the September 1997 broadcasts of the *Howard Stern Show* contravened the *Code of Ethics* and *Sex-Role Portrayal Code*. On his premier show in Montreal and Toronto, Stern made several comments about the French in France and in Canada which outraged both Francophone and Anglophone complainants and were found to breach the *CAB Code of Ethics*. In brief, the Quebec and Ontario Councils concluded as follows:

The CBSC has no hesitation in finding that, in this case, the expressions "peckerheads", "pussy-assed jack-offs", "scumbags", "pussies", "Frig the French" and "Screw the French" are ... abusive."

The CBSC differentiated, however, between such abusively discriminatory comment aimed at identifiable groups and Stern's political or historical comments. The Code breaches referred to above did not include those comments which were more aptly characterised as political or historical in nature.

Those comments relating to the state of radio in Canada, the use of English in Quebec, the value of French culture, Canada as an appendage of the United States, the role of the

vanquished French in Vichy France, the issues relating to separatism, and so on, are the host's *opinions* and, unless utterly and irresponsibly uninformed ... they are his to espouse. ...

It is the view of the Regional Councils that these political and historical comments fall squarely within the bounds which freedom of expression is meant to protect.

In the Council's view, the overall majority of Jim Rome's comments made in that sports commentary were of a political nature and, therefore, "fall squarely within the bounds which freedom of expression is meant to protect." They related to the new baseball stadium, the role of the Expos' coach Felipe Alou, the involvement of de facto baseball commissioner Bud Selig and the political implications of the involvement of Premier Lucien Bouchard in the matter. Incidentally, the commentator found it appropriate to inject his own irrelevant views on "voting for Lucien", a matter which certainly exceeded the thrust of his Commentary and, to the Council, an obvious "cheap" and unnecessary shot. He also went even further in extending his inappropriate and incorrect cheap shots to "Frenchies" and their entitlement to have a major league baseball club.

Similarly to the *Stern* case, however, the Council does consider that some of the comments go beyond the bounds of political commentary. Comments such as "Boy, the Frenchies are too much, aren't they?" must be distinguished from comments such as "I'd vote Communist before I voted for Lucien" because it is no longer merely expressing a political opinion; it is rather labelling a group on the basis of its culture or ethnic origin. This constitutes discriminatory comment which must be weighed against the standards of the human rights provision of the *CAB Code of Ethics*.

Abusively Discriminatory Comment

The Council has often stated that, in order for a comment to violate the human rights provision of the Code, it must not merely be *discriminatory* but must be *abusively* so. As stated in *CFUN-AM re The John and JJ Show (Immigration Policy)* (CBSC Decision 97/98-0422, May 20, 1998):

It could not be every instance of discriminatory comment which would be found to be in breach of the "human rights" provision of the *CAB Code of Ethics* for, in a technical sense, 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 *CFUN-AM* decision dealt with a discussion on Canada's refugee policy in light of a crime committed by a man who, despite an earlier deportation order, had remained in the country because China had not yet issued the necessary travel documents. The Council noted that "while John and JJ did not mince words, ... they were also careful not to 'paint with the same brush' all refugee claimants or immigrants." The Council further stated:

The Council considers that in the circumstances, John and JJ's discussion of Canada's refugee policy, and of the specific case of Wing Fu Hau, did not cross the line into *abusively* discriminatory comment. Specifically, the Council considers that the hosts' use of an analogy to "garbage" and "refuse" did not constitute a breach of the Codes. The analogy was not, in the Council's view, used to discriminate against all refugees but rather to make the hosts' point concerning flaws in Canada's "open-door" refugee policy. The Council notes that, while freedom of expression has its limits in Canada, the freedom to criticize Government policies and practices is a core example of freedom of expression, in some senses the very *root* of that right in a democratic system. Unless, therefore, the exploiter of that right to challenge Government policies has overstepped another equally basic standard, such as, for example, the right of members of an identifiable group to be free from abuse, that right to challenge will be sustained. In this case, the Council finds that the exercise of their freedom of expression by the hosts, John and JJ, must outweigh any danger, as suggested by the complainant, that the references "cast suspicion on all immigrants."

In this case, the Council is of the view that the sports commentator did paint all "Frenchies" (whether the term was meant to designate Francophones in general, the Québécois people, or only the Francophone segment of that population) with the same brush of being "too much". The Council does not consider, however, that such a comment is so offensive and demeaning as to be considered *abusively* discriminatory. While the statement and, especially, the tone in which it was delivered left the Council frankly uncomfortable, the Council does not find the offensive comments so egregious that they amount to a breach of the human rights provision of the *Code of Ethics*.

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 frank response fairly admitted both its lack of experience in such matters and willingness to take steps to ensure that such questionable material would not appear in the future. In this sense, the Council also considers that the broadcaster addressed fully and fairly the concerns raised by 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.