
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

Crossroads Television (CITS-TV) re *Nite Lite*

(CBSC Decision 98/99-1129)

Decided March 22, 2000

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

THE FACTS

On the program *Nite Lite* broadcast on Crossroads Television (CITS-TV) on July 13, 1999, a complainant stated that, on this particular edition, which was hosted by someone named Billy, there were comments ranging from "hairy penis" to "anal sex" to "licked my scrotum". The complaint was duly filed by e-mail on that very date, noting that "there is seemingly no delay on what is said by a call-in person" and that "all of these [comments] were said [in order] to offend not educate." The broadcaster's Program Director responded only a few days later, saying,

First, we fully acknowledge the basis of your complaint and have ourselves given serious consideration to this "problem".

For your information we are initiating new methods of call-screening and additional security in order to avoid similar calls in future. In addition, we are investigating electronic means of "delay" on this program.

When, however, the logger tapes were requested by the CBSC, the Program Director wrote:

After further investigation, we now find that neither of these programs [of July 13 or 14] are hosted by "Billy" nor contain the language as indicated in the complainant's original e-mail of July 13, 1999. We cannot understand the discrepancy.

I should point out at this time that we have implemented additional measures of "call screening" which have virtually eliminated similar incidents. In addition, we have quotes pending to install a rather expensive delay system. While there is no precise date set for this, it is considered as a priority item for CTS.

It turned out that the reason for which the tapes in question did not have Billy as host was that the tapes, although *labeled* July 13 and 14 on the outside, were in fact tapes of the episodes of *June* 13 and 14. By the time the error was discovered, the July tapes were no longer available.

THE DECISION

It is perfectly clear in this case that there is no way for the Ontario Regional Council to review the tapes in order to determine whether the broadcast in question was in compliance with, or in breach of, any of the Codes. It is equally clear that the broadcaster is, however, in breach of its undertakings as a member of the CBSC and under the *Television Regulations*. It should be made clear, at the beginning of this decision, that such an infraction is a *rare* occurrence. It has, in fact, occurred only twice since the CBSC has been rendering decisions.

In *CJSB-AM re The Wendy Daniels Show* (CBSC Decision 92/93-0219, February 15, 1994), the logger tapes had been ordered to be retained by the CBSC but, for unexplained reasons, were not available for the use of the Regional Council in its adjudication. It found the station in breach of its responsibilities as a CBSC member under the *Manual*.

It is clear that the standard of the CBSC in this regard is in no more or less stringent than that to which the broadcaster must adhere as a part of his responsibility under the *Broadcasting Act* and *Regulations*. There was no justifiable explanation proffered by the broadcaster for the loss of the tapes, whose retention ought to have been viewed as a matter of considerable responsibility for it.

In *CJCL-AM re Stormin' Norman* (CBSC Decision 93/94-0073, June 22, 1994), the station lost the logger tapes which it had been obliged to retain for purposes of the CBSC adjudication. Its only explanation was that it must have inadvertently recycled them.

The loss of tapes was, in this case, without justification and tape retention should have been viewed by the broadcaster as a normal broadcaster responsibility. The loss of tapes of a program under Regional Council consideration is, in the view of the CBSC, a serious breach of standards inherent in the conditions of CBSC membership.

Under all of the CRTC's Regulations pertaining to radio and television, every licensee is *obliged* to "retain a clear and intelligible audio-visual recording of all of its programming" for a period of four weeks from the broadcast and, then, for longer periods when complaints are received and programs are under investigation. The Commission's insistence on the importance of this requirement has been made amply clear in its decisions. For example, in *Licence renewal for CKDX-FM* (Decision CRTC 2000-44, February 17, 2000), the Commission pointed out that, as a part of its preparations for the Hearing, it had asked for the tapes for the period from May 4-10, 1997, and that "tapes for the entire week were unintelligible." It pointed out that it had received the assurance that "The licensee has

installed an additional VHS logger unit that runs simultaneously with the original reel-to-reel logger system.” In the circumstances, it provided a short licence renewal (just over three years), to ensure that it could verify compliance with this and the other two matters of concern in that renewal. See also, as recent examples of CRTC decisions in which the retention and delivery of logger tapes was a material issue in a licence renewal: *Licence renewal for VOAR* (Decision CRTC 99-540, December 13, 1999), *Licence renewal for VOWR* (Decision CRTC 99-539, December 13, 1999) and *Licence renewal for CFNI* (Decision CRTC 99-497, November 17, 1999). In the case of *Short-term Licence renewal for CKCU-FM; Issuance of a Mandatory Order* (Decision CRTC 98-124, April 17, 1998), the Commission went considerably further (ordering a two-year licence renewal), despite the fact that

In a letter dated 8 January 1997, the licensee advised that *human error* had "resulted in one of the two logger tapes being *inadvertently* recorded over". Accordingly, the licensee was unable to provide complete logger tapes as requested by the Commission. [Emphasis added.]

The Commission elaborated:

At the hearing, the Commission reminded the licensee that the availability of a complete, clear and intelligible logger tape is particularly important as it allows the Commission, not only to initiate its own monitoring of programming, but also to act on complaints from the general public concerning programming matters.

The requirements of membership in the CBSC merely parallel the regulator's exigencies. There should be no doubt that the retention of logger tapes by broadcasters is a *cornerstone* of the self-regulatory process. Because the CBSC is not an evidence-gathering body, it relies *solely* on the program tapes as the "evidence" of what was said or shown on the airwaves. It is these tapes alone which are the measure of the broadcaster's compliance with the Codes to which all CBSC members adhere. The self-regulatory process relies on the availability of these tapes and the *serious* respect by broadcasters of any request by the CBSC Secretariat to retain these *for as long as necessary* while a file remains open. The members of the public who file complaints with the CBSC or which are referred to the CBSC by the Commission *must* have the sense of security that the broadcaster will comply with this requirement in order for them to retain faith in the process.

In this case, the broadcaster *thought* it had retained the July 13 and 14 tapes and was sending these to the CBSC when they were requested. As noted above, the programming on the tapes was that of a totally different date. The CBSC has no reason to believe that this was a purposeful act; however, the Council wishes to underscore that inadvertence, innocent mistake or the acts of third parties which interfere with the preservation of requested logger tapes are not and cannot be accepted as excuses for the non-availability of the correct tapes in reviewable condition at the time at which they are needed by the Council. Although the program itself may not have been in breach of any of the broadcast Codes (something which the Council is unable to determine in this case), the broadcaster

is in breach for the failure to comply with this essential requirement of membership in the CBSC and of licence holding in the Canadian broadcasting system.

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 the broadcaster's response somewhat curious. In the first letter, directed to the complainant, the broadcaster appeared to recognize the validity of the viewer's request regarding the substantive matter having to do with callers; however, in the letter subsequently addressed to the CBSC, the Program Director, in not having the correct tape in hand, no longer believed that the points raised by the complainant were correct. In any event, the Council considers that the initial reply was a candid recognition of improvements which were required and commends the broadcaster to that extent. Consequently, the broadcaster has not breached the Council's standard of responsiveness.

CONTENT OF THE ANNOUNCEMENT OF THE DECISION

Crossroads Television is required to announce this decision forthwith, in the following terms, during prime time and, within the next thirty days, to provide confirmation of the airing of the statement to the CBSC and to the complainant who filed the Ruling Request.

The Canadian Broadcast Standards Council has found that Crossroads Television has breached its requirements of membership in the CBSC. When requested to furnish tapes of the program *Nite Lite* for July 13, 1999, it was unable to do so despite the requirement under both the CBSC's terms of membership and the requirements of the CRTC under its Television Service Regulations. The CBSC was thus unable to assess the validity of a complaint made by a member of the public relating to the July 13 episode of *Nite Lite*.

This decision is a public document upon its release by the Canadian Broadcast Standards Council.