
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL PANEL**

CKTB-AM re an episode of the *Phil Hendrie Show*

(CBSC Decision 02/03-0383)

Decided May 2, 2003

R. Stanbury (Chair), M. Ziniak (Vice-Chair), J. David, H. Hassan,
M. Maheu and M. Oldfield

THE FACTS

The Phil Hendrie Show is a parody talk radio program that originates in the United States. The show features commentary from its host and conversations with both real and fictional callers and guests. It is broadcast in Canada, among other places, on CKTB-AM (St. Catharines, Ontario) at 7:00 pm.

On the episode of November 26, 2002, Hendrie provided his thoughts on some recent news stories, one of which concerned the alleged cloning of a human baby by an Italian doctor. Hendrie made the following comments:

And an Italian doctor, going against all civilized convention and international law, went ahead and cloned a baby anyway. After everything we've been telling you, after everything that we said, some wop made a baby. And not just any kind of a baby, another guinea baby is foisted upon the world and it was cloned. Eww. Little greasy kid.

Hendrie went on to deliver his point of view on a few other stories. After a commercial break, he provided an explanation for the comments he had made about Italians:

Of course I use the word "wop", "guinea". I don't know if you can understand this, but there's no, really, any real offence intended. And yesterday I was on WOAI in San Antonio. They said to me, I forget what we were asking. Oh yeah, I mentioned that I was fortunate enough in the television show that we're writing to be working with a guy named

Peter Tolan who wrote the movie *Analyze This*, which was a funny movie. And I said to the guys “You thought that was a funny movie, didn’t you?” And they said “Well, not if you were Italian, they didn’t think it was funny.” And I said “You know who the Italians oughta sue? They oughta sue the Mafia.” Why don’t you try doing that? Why don’t you Italians that don’t like the way you’re portrayed in the media, why don’t you turn around and file a lawsuit against the Gambinos. Try that. They’re the guys that got you in that place in the first place. That’s the whole reason why Italians are looked upon as hoods, is because there are Italian hoods. And I know what you’re gonna say: There’s Irish hoods and Arabian hoods. Yeah, but you gotta admit, man, how many blockbuster movies are made about them? How flashy and colourful and interesting to look at are they compared to the multi multi billion dollar business that the Mafia has run in this country for decades? And besides, the Irish, the Jews, all of us, we have other things we’re able to do. Apparently all Italians are capable of is breaking the law. I’m joking.

Hendrie addressed other news stories in a similar manner. For example, he mentioned the case of a Canadian politician who called U.S. President George W. Bush a “moron” and said “Some frog in Canada called Bush a ‘moron’”. He suggested that the incident was not a big deal to Americans since presidents are often criticized and burned in effigy. In another case, after noting that actor Nicolas Cage had divorced Lisa-Marie Presley, he said it was probably because Cage “couldn’t take the smell.”

The CBSC received a complaint about the Italian comments dated December 12 (the full text of all correspondence can be found in the Appendix to this decision). The listener found the use of the term “wop” to describe the Italian scientist to be “derogatory and racist” and suggested that the comments about Italians and the Mafia were “extremely border-line”.

The Operations Manager of CKTB-AM responded to the complainant on December 19. In that reply, the Operations Manager explained that the *Phil Hendrie Show* takes a “tongue-in-cheek approach” to “contemporary social issues” and “attempts to uncover North American culture for what it is rather than its facade of political correctness.” She pointed out that Hendrie’s “objective is to bait listeners into addressing uncomfortable subjects” and that listeners can telephone into the show to express their opinions. She also noted that Hendrie portrays many characters on the program, including his own “guests”, but that listeners are made aware of this fictional aspect.

The complainant responded to the broadcaster on December 20, emphasizing that it was the term “wop” that concerned him most about the episode. He informed CKTB-AM that he appreciates “humour that has an edge and challenges conventional norms and political correctness,” but that the line must be drawn at the use of racist language on the airwaves.

CKTB-AM responded a second time on December 20. The Operations Manager stated that, in using the term “wop”, Hendrie was “attempting to show his disgust with the doctor’s actions, not making social comment on his ethnic background.” She also noted

that occasionally some Italians refer to themselves as “wops”. She went on to mention that CKTB-AM aims to encourage “public dialogue and debate,” but acknowledges that it will not be able to satisfy all tastes all the time.

The complainant sent a further reply to CKTB-AM on January 19, 2003. He reiterated his acceptance of different styles of social commentary, as well as his primary concern of the use of “racial epithets” on the airwaves. CKTB-AM reiterated its position, indicating that it had nothing further to add to its previous letters with respect to his complaint. On February 17, the complainant requested that the CBSC refer his complaint to the appropriate Adjudicating Panel.

THE DECISION

The CBSC Ontario Regional Panel examined the complaint under Clause 2 (Human Rights) of the Canadian Association of Broadcasters’ (CAB) *Code of Ethics* which reads as follows:

Recognizing that every person has the right to full and equal recognition and to enjoy certain fundamental rights and freedoms, broadcasters shall ensure that their programming contains no abusive or unduly discriminatory material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status or physical or mental disability.

The Panel listened to a tape of the broadcast and reviewed all of the correspondence. The Ontario Regional Panel concludes that the broadcast of host Phil Hendrie’s comments about Italians is in breach of the Human Rights clause.

Racial Epithets

That elements of the population have succeeded in creating a number of catchwords, nicknames or appellations intended to apply to identifiable groups (frequently minorities distinguished by their ethnicity, nationality, religion or skin colour) is not one of society’s notable achievements. While there may be some such terms that are positive and admiring in their nature, many, perhaps most, and certainly all of those at issue here, are not. They tend to be epithetic, denigrating, even derisive in nature. Generally consisting of a single word, they are frequently meant to evoke disparaging reactions with respect to the targeted groups they “define”. At worst, they are ugly and nasty. At best they are condescending, a shorthand reference by the user to others who do not have the “right stuff”.

The CBSC has, in the past, in *CKTF-FM re Voix d'Accès* (CBSC Decision 93/94-0213, December 6, 1995), acknowledged that

[i]t 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.

The issue in the matter at hand is whether the terms “wop” and “guinea” are, even if epithetic, not so problematic that they pass the “pure, antiseptic and flawless” test. In the view of the Panel, they do not. They fall within the category of sweeping racial slurs. They are disparaging terms, utterly without redemptive value. While there may be some dramatic programming circumstances (not encountered here) in which the use of such words *may* be contextually justified, their appropriateness should be carefully monitored. In any event, they had absolutely no place in the non-dramatic programming at issue here. As this Panel said, with respect to the use of the racial epithet “wog”, in a relevant decision, namely, *CFRA-AM re The Lowell Green Show (Somalia Commission Report)* (CBSC Decision 96/97-0238, February 20, 1998):

Stripped of the rhetorical overlay for the sake of this preliminary part of the discussion, the Council has no hesitation in finding that the use of the term “wogs” to describe persons of Somali origin is abusively discriminatory and has no place on Canadian airwaves.

In *CHOM-FM and CILQ-FM re The Howard Stern Show* (CBSC Decision 97/98-0001+, October 17-18, 1997), the Quebec and Ontario Regional Panels jointly concluded:

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.”

In the case at hand, the challenged words constitute abusive or unduly discriminatory comment, exacerbated by the remarks that the baby was “foisted upon the world” and was a “little greasy kid”. If, as suggested by the broadcaster, the host was “attempting to show his disgust with the doctor’s actions, not making social comment on his ethnic background,” there can be no doubt but that he failed miserably. The Panel concludes that the broadcast by CKTB-AM of the terms “wop” and “guinea”, as well as “little greasy kid”, on the challenged episode of the *Phil Hendrie Show* constitutes a breach of the *CAB Code of Ethics*.

“No Offence, Just Joking”

Coming back after the commercial break, the host tried to dig himself out of the hole he had already made by saying that “there’s no, really, any real offence intended.” He said this, though, in the breath following his affirmation that he had used the challenged terms. He did not recognize their impropriety. He did not attempt to withdraw them as utterances in error. To the contrary, he repeated them and *confirmed* that he had done so, emphasizing this fact by the addition of the words “of course” to explain his on-air choice. By saying “no offence”, perhaps he was emphasizing that he who had spoken the words was not offended. It would have done little to salve the sentiments of those of whom he had spoken. And then, as if to rub a little salt in the wound, he added, “Apparently all Italians are capable of is breaking the law. I’m joking.”

The Code breach was, if anything, exacerbated by those words. They certainly did not serve his declared purpose.

Broadcaster Responsiveness

In all CBSC decisions, the Adjudicating Panels assess the broadcaster’s responsiveness to the complainant. Although the broadcaster need not agree with the complainant, it is expected that its representatives charged with replying to complaints will address the complainant’s concerns in a thorough manner. In this case, the Panel finds that CKTB-AM’s Program Director carefully attempted to describe the basis for the program that, in her view on behalf of the station, explained, if not justified, the use of the challenged terms. She took the trouble to respond again to the complainant’s dissatisfied reply and even personalized her perception of the issue in good faith to be of assistance, she hoped, in the resolution of the matter. As is apparent, she did not succeed, perhaps in part because there was not, in the Panel’s view, any method of justifying the abusive epithets at the end of the day. Her efforts were, however, serious. In the view of the Panel, she has met the CBSC’s obligations of responsiveness by engaging in a dialogue with the complainant through the exchange of multiple e-mails. Indeed, the complainant himself stated his appreciation for the “reasonable and appropriate” dialogue process and insisted on allowing CKTB-AM an opportunity to respond to each of his e-mails before pursuing formal adjudication.

ANNOUNCEMENT OF THE DECISION

CKTB-AM is required to: 1) announce this decision, in the following terms, once during peak listening hours within three days following the release of this decision and once

more within seven days following the release of this decision during the time period in which the *Phil Hendrie Show* is broadcast; 2) within the fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the statement to the complainant who filed the Ruling Request; and 3) at that time, to provide the CBSC with that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by CKTB-AM.

The Canadian Broadcast Standards Council has found that CKTB-AM breached the clause of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* dealing with human rights. By broadcasting an episode of the *Phil Hendrie Show* on November 26, 2002 in which the host used disparaging racial epithets to refer to Italians and their offspring, CKTB-AM aired abusive or unduly discriminatory comment contrary to the terms of Clause 2 of the *CAB Code of Ethics*.

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

APPENDIX

CBSC File 02/03-0383 CKTB-AM re an episode of the *Phil Hendrie Show*

The Complaint

The following complaint dated December 12, 2002 was sent to the CRTC and forwarded to the CBSC in due course:

To whom it may concern,

Listening to the Phil Henry [sic] show on CKTB 610 in St. Catharines Ontario Tuesday Nov. 26 at 7:15 pm, I was shocked to hear the host use the derogatory and racist term 'wop' to describe an Italian scientist. There was subsequent discussion about Italians and the mafia which I found extremely border-line. I am disappointed to see radio programming descend to this offensive level.

I would appreciate an assurance that CKTB will reconsider the status of Phil Henry's [sic] show, and perhaps replace it with something smarter.

Broadcaster Response

The broadcaster responded to the complainant's letter on December 19 with the following:

I regret that you were offended by the November 26th, 2002 Phil Hendrie program. Based on the message you forwarded to the CBSC, you were shocked by the host's language and you were disappointed in the programming. It is my understanding that you would appreciate an assurance that CKTB will reconsider the status of Phil Hendrie's show and replace it with something you think is smarter.

Mr. [C], your concern about programming being under review is very relevant. On a daily basis we review what we do and how we offer it.

The Phil Hendrie program is an extreme look at contemporary social issues. In a tongue in cheek approach, he attempts to uncover North American culture for what it is rather than its facade of political correctness. Mr. Hendrie portrays many roles in his show from the interviewee to the interviewer. His objective is to bait listeners into addressing uncomfortable subjects. While I regret his style is not for you, you do have an opportunity to call in and voice your opinions. In fact, he encourages caller participation on a frequent basis. And, allows his callers ample opportunity to make their points.

None of the guests on the show is a "real guest" - instead it is Mr. Hendrie portraying characters. So often he is interviewing himself with the caller being the only "true" personality. This is not an attempt to deceive the audience. During the show, Mr. Hendrie frequently informs listeners of what's happening.

Again, I regret you feel offended and hope that the information I have shared with you will provide you with an understanding and different perspective on the program.

I thank you for listening and taking time to voice your concerns.

Additional Correspondence

The complainant wrote back to CKTB on December 20 and copied the CBSC:

Thank you for your prompt reply.

As a journalist, I'm disappointed that anyone would produce a talk show where the guest is invented. I'm even more disappointed that you would air it.

I can only take your word that there are clear disclaimers stating that the intent is humorous and pure entertainment and that the studio 'guests' are fictitious. I will listen for that more carefully.

However, it is the use of the derogatory term 'wop', to describe an Italian scientist, that I originally wrote you about. Tongue-in-cheek is one thing, and I admit I like humour that has an edge and challenges conventional norms and political correctnesses of all stripes. But, is racist language really appropriate for our airwaves? Is this what CKTB and Standard Broadcasting stand for? Are CKTB and S.B. truly the lowest common denominator?

The broadcaster responded a second time on December 20:

Thanks for your email.

Once again I reiterate, I regret your disappointment in the Phil Hendrie program. As a journalist, you can appreciate that social comment comes in many styles and formats. And, it is regrettable that this particular programming forum disappoints you.

As I indicated, throughout the show, Mr. Hendrie (himself) states that he is the interviewer and interviewee. However, you raise a great point, some listeners may not be aware of his style. Subsequently, we will include a locally produced message to run during the program.

I have listened to the passage in question, where Mr. Hendrie was discussing the Italian doctor who had cloned a human. In reviewing the story and voicing his objections to the process he said, "An Italian doctor going against all civilized convention and international law went ahead cloned a baby . . . some wop made a baby".

While the term in some circles may be offensive, it seems to me that in context, he was attempting to show his disgust with the doctor's actions not making social comment on his ethnic background.

As person who hails from Newfoundland, I can understand how claims about a person's heritage can be offensive. And, given that my brother in-law is first generation Italian – who often refers to himself as a wop – I have difficulty agreeing with your racist claim. But, then that's the purpose of public debate. And, as a person with a differing point of view, we welcome your comments on-air.

As I indicated previously, Mr. Hendrie encourages caller participation. If, direct engagement of a host makes you uncomfortable, on our John Michael program, we offer a one hour "Freedom Friday" – where listeners are invited to share their social comment.

You asked what does CKTB stand for – I think we stand for public dialogue and debate. As a news talk station, I know not everyone is going to like everything we do. I know there are times when we say or present something that someone will find offensive. And no matter how hard you try – you can never please everyone. Again, I regret the Phil Hendrie program is not to your taste.

I'm not sure what you mean by the final comment/question in your email response. However, I take exception to the inference that we are somehow racist. I think our company and stations offer outstanding products; our broadcast journalists are well trained and credible; and our talk show hosts are great entertainers serving the needs of our respective communities offering people with different points of view a place to be heard.

In this matter, I think we will have to agree to disagree.

The dialogue between the complainant and broadcaster continued with the complainant's e-mail on January 19, 2003:

Thank you, [CKTB-AM Program Director], for your reply. I was away over the New Year, and am finally getting to matters at hand.

I do appreciate that social comment comes in many styles and formats, and I am glad CKTB will run a locally-produced message during the program indicating the fictitious nature of Mr. Hendrie's guests.

However, I stand by my complaint about Phil Hendrie's use of the term 'wop' to describe an Italian scientist:

"An Italian doctor going against all civilized convention and international law went ahead cloned a baby . . . some wop made a baby".

There is simply no place on our airwaves for the use of racial epithets.

This is my complaint. I am happy to see all points of view on the air; I happen to share Mr. Hendrie's view on cloning - But that is neither here nor there.

If CKTB cannot agree not to air racial epithets in the future, and to review Mr. Hendrie's show in this light, then I would appreciate a response from the Canadian Broadcast Standards Council.

In response to that e-mail, the CBSC informed the complainant on January 20 that it would pursue the matter. He replied on January 21 with the following:

Thank you for your prompt reply.

I am happy to wait until I receive a reply from [the Program Director] at CKTB before launching any proceedings of the kind you describe. Your initial approach, to have someone at the station respond to me first, is reasonable and appropriate, and I would like to try to see

this process through. I would prefer to give the station as much opportunity as possible to address the matter, and to attempt to settle or resolve matters before pursuing formal adjudication. However, I do appreciate your cooperation.

CKTB's Program Director replied again on January 21:

Thank-you for your email concerning your complaint. During the previous correspondence we attempted to detail our station's response to your concern.

In addition to running the disclaimer we make sure the program is run in delay.

If you would like to visit us to further talk about your concerns, I would be happy to meet with you.

The complainant responded to that e-mail on January 22:

My concern is simply the host's use of a racist term, in this particular case, to describe an individual. I don't think that belongs on the air. I'm not sure what there is beyond that to discuss. If you do run a delay, then how did the remark air? Or did you implement the delay following my complaint (which would mean there was no delay running prior to my complaint).

On February 17, the complainant informed the CBSC that he would like to pursue the complaint:

I have not heard from the station following my most recent correspondence. Please proceed with my complaint.