
CANADIAN BROADCAST STANDARDS COUNCIL

QUEBEC REGIONAL PANEL

CHMP-FM re a segment broadcast on *Puisqu'il faut se lever*

(CBSC Decision 06/07-0607)

Decided April 7, 2008

D. Meloul (Chair *ad hoc*), R. Cohen (*ad hoc*), M. Ille, G. Moisan, J.P. Murdoch

THE FACTS

Puisqu'il faut se lever is broadcast each weekday morning from 5:30 to 10:00 am on CHMP-FM (98.5 FM in Montreal). On December 19, 2006, its host, Paul Arcand, invited TQS television host, Stéphane Gendron (who was also the Mayor of Huntingdon), to speak about his firing from TQS. Their dialogue ran as follows:

[translation]

Arcand: Five minutes past seven in the morning. Mr. Mayor, you remained on your estate this morning?

Gendron: Yes. Yes, yes, somewhat like a, like a wounded warrior. But it's not the end of the world; the wounds have been bound.

Arcand: So, for those who don't know – front-page news in the *Journal de Montréal* – you were fired from TQS.

Gendron: Yes. It took place, um, [coughs] excuse me, sorry. It took place in a rather, um, cavalier fashion, but you know, some organisational structures are very difficult to change. So, um, it took place last night after the program. And if you can imagine this, I'm not worked up over the employer's decision. I think you have to respect that; it's part of the risks of the job – walking a thin tightrope without a net – except that last night I was told in a straightforward manner that six complaints had been filed against me with the CRTC [*sic*]. I learned that last night. This morning, I read Danny Bouchard's article, who was personally contacted, but who did not call me to obtain my version of the

facts. I learned that six complaints were filed against me involving Madame Justice Lise Côté, the Quebec Bar, and it is also said that some ethnic groups complained about me. I have difficulty believing that. If there was ever a guy who is not racist and who always advocated separating church and state for all concerned ... In any case, I don't understand. Then, there are complaints from André Chenail, my good MNA who helped us, and, um, a formal demand from Finance Minister Michel Audet. I'm being blamed even though I don't want to wash dirty laundry in public. My colleague was the one who said he was involved in fraud, you know, creative accounting and government financial statements, you know, it related to that controversy. I'm realizing that TQS is not on top of things, not aware, and didn't keep me informed ... And the bottom line is *Tout le monde en parle*, do you understand? Yesterday, my boss told me that their confidence in me no longer existed as of last week when we had our meeting on "Should I go to *Tout le monde en parle*, or not?"

Arcand: But, you don't seriously think that's the reason?

Gendron: Well, that's what he told me.

Arcand: Yes, but, I don't know what he said to you, but –

Gendron: Well that's it word for word. That's what he told me.

Arcand: Well no, but I don't think a host gets fired because he's moving to *Tout le monde en parle*.

Gendron: Well, if it isn't –

Arcand: So, um, it may be the outcome of, or the –

Gendron: Ah!

Arcand: - the, the result of a series of events.

Gendron: Yes but, Paul, I understand. But telling me yesterday evening for the first time since September 2005 that I have six complaints against me ... I'm sorry, but I would have liked to know about it before now. I would have liked to have been informed as they occurred. I would have liked to have had access to the files. I don't even know what is being held against me, do you understand? I discovered it this morning in the paper –

Arcand: Well, you must have a pretty good idea of what the judge and the Bar hold against you.

Gendron: Yes, yes. I know. But I mean, you don't fire someone because six complaints were filed against him um, and he received letters *plural* of reprimand. I received *one* letter of reprimand at, at the beginning of the month of November, when I was advised of the action taken against me by the Bar thirty seconds before going on the air, do you understand? It was done in a peculiar fashion.

Arcand: But they're saying you lack judgement. That's what I read this morning.

Gendron: Well yes, I know. But if I lacked judgement, and it's an accumulation over a long period. I mean, this is the first I've heard of it, that is last night, do you understand?

Arcand: Hmm, hmm.

Gendron: I don't have a problem with the employer's decision, but pfff, it makes me, it makes me smile.

The mention of the name of the individual who was the Member of the National Assembly for Gendron's riding, Huntingdon, drove him to send the following complaint to the CBSC a little more than a month later, on January 22, 2007. He wrote, in principal part (the full text of all the correspondence can be found in the Appendix):

[translation]

In citing one of the reasons put forward by TQS management to support his dismissal, Stéphane Gendron said that TQS allegedly received "6 complaints from the CRTC" [*sic*]. He then took the petty step of identifying me among the complainants, while also identifying, among these same complainants, Madame Justice Côté, the Quebec Bar and "ethnic groups". In addition, he talked about a formal demand that the Quebec Finance Minister, Michel Audet, allegedly sent him.

Broadcasting the names of the complainants in the group, mine included, clearly runs counter to broadcasting general ethics and journalistic ethics. This is, in fact, an unjustified exercise of the power of the microphone for vindictive purposes. Stéphane Gendron had no possible justification for revealing my identity. His only motivation was bitterness and nastiness. This is all the more true given that said complaints were related to his behaviour on television and in no way concerned 98.5 FM.

Not only has the fundamental respect for the complainants' privacy been literally held up to ridicule, but using the airwaves in a manner that is contrary to ethics has serious social repercussions. His comments were far from being inoffensive; they were clearly aimed at exposing me, as well as the entire group of complainants, to public condemnation.

As far as I am concerned, the complaint I filed at that time and to which I received an official apology from TQS, was not a public act and did not concern 98.5 FM in any way. That complaint was meant to be confidential. Broadcasting my identity as a complainant, as well as the identity of other complainants, is a clear violation of Section 6 of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* and of Section 4 of the RTNDA's *Code of Journalistic Ethics*. In fact, maliciously taking advantage of the enviable ratings of the program *Puisqu'il faut se lever* in order to publicly reveal the identity of a complainant was nothing other than vindictive and did not serve the public interest in any way, any more than it did the interests of 98.5 FM.

A licence brings with it a civil responsibility. Those who have a licence and the power of the microphone must not lose sight of the fact that these powerful tools were not given to them to allow a broadcaster to engage in acts of personal vengeance. We are stunned by the unwanted publicity brought to us by Stéphane Gendron, and we are dismayed by the fact that this type of publicity can be considered ethical. The simple rules of common sense therefore require a vigorous application of the measures provided in the applicable regulation.

As we doubt the broadcaster still has the audio recording of said program, we took the initiative of attaching 2 certified copies to this complaint, one of which can be forwarded to the broadcaster.

The Vice President of Corus Montreal responded on February 20 in principal part as follows :

[translation]

Your letter raises certain points concerning comments made by the host of the program, Stéphane Gendron, during a discussion on his firing by the TQS television station. You state that in discussing the basic reasons for his dismissal, Mr. Gendron said that TQS was the subject of 6 complaints to the CRTC concerning him and that he identified you as being part of the group of complainants. You also say that broadcasting your name is a vindictive act that did not serve any public interest, thereby violating Section 6 of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* and of Section 4 of the RTNDA's *Code of Journalistic Ethics*.

With all due respect, the program did not violate any rule of law whatsoever. As you know, one of the criteria the CBSC must consider when called upon to determine if there has been a violation of Section 6 of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* or of Section 4 of the RTNDA's *Code of Journalistic Ethics* consists of establishing if the information broadcast was in the public interest and if it caused undue prejudice. In CBSC decision *CTV re Canada AM* [CBSC Decision 94/95-0159], the CBSC maintained that "Circumstances do, moreover, arise from time to time in which the public interest in an event may override the otherwise legitimate interest of individuals to keep their identity and activities free from filmed scrutiny."

In this case, we are of the opinion that the public interest amply justified the broadcasting of your identity by Stéphane Gendron. In fact, the very existence of your complaint concerning the comments made by Mr. Gendron at TQS is part of the public interest since you are a member of the Quebec National Assembly and therefore accountable to the media. More specifically, it is in the public interest to know that the MNA from Huntingdon has filed a complaint with the CRTC concerning comments made at TQS by the mayor of the city of Huntingdon. Moreover, it appears the CBSC is not the only forum you are using to attempt to put a stop to Mr. Gendron's comments, and more specifically the comments made by the latter concerning you. In fact, it appears that you recently launched a defamation suit against Mr. Gendron in the amount of \$1,075,000 for the avowed purpose of ordering him to cease making comments of a supposedly defamatory nature about you. The simple fact that you launched this civil suit against Mr. Gendron reinforces our opinion to the effect that the very existence of your complaint with the CRTC against Mr. Gendron is in the public interest. Lastly, it is difficult to claim that you suffered undue prejudice because your identity was revealed, since you are a public figure whose actions are always subject to media attention.

On February 27, the complainant filed his Ruling Request in the following terms :

[translation]

Our first disappointment concerns the obvious lack of responsiveness towards our complaint. This lack of responsiveness is such that it makes the solution we sincerely favour impossible to apply at the outset concerning the complaint of January 22, 2007, namely a direct dialogue with the broadcaster. We submit that in and of itself, the

absence of any form of sensitivity to our complaint runs counter to the CBSC's standards of responsiveness.

In fact, although "anonymous sources" may have "leaked" the existence of some sort of defamation suit to the media, that suit is a civil remedy that in no way concerns the comments made by the host Stéphane Gendron on December 19, 2006. Consequently, no link may be established between the two since the comments that are the subject of our complaint of January 22 are in no way covered by a defamation suit. There is, therefore, an element of intellectual dishonesty flowing from the purely vindictive motives of referring to some other action that is completely foreign to this case, in order to justify denying the right to privacy, as well as not presenting information in a fair and just manner.

The fact that the complainant has indicated his discontent in the past with respect to defamatory comments concerning him in no way negates the broadcaster's duty of responsiveness. And, at the risk of repeating ourselves, it is all the more true that this entire subject falls outside the debate in this case.

The argument put forward by the broadcaster makes us rather uncomfortable since it is predicated on the assumption that it is impossible to use a civil remedy in the case of a series of comments that have been determined, without abandoning the right to privacy in all other circumstances having no relation to this civil remedy. To put it more clearly, the broadcaster claims that defending one right necessarily incurs the abandonment of all other rights. We respectfully submit to the Panel that this unreasonable argument does not hold up.

On a number of occasions, the CBSC has confirmed the principle that the identity of complainants is confidential. As stated in *TQS re Gilles Proulx comments on Journal du midi (transportation strike)* (CBSC Decision 03/04-0334, April 22, 2004):

The general principle is that complaints *are confidential*, at least insofar as the broadcast of any personal information about those who make them is concerned. The broadcast of the name of the complainant [...] constitutes a breach of the [...] CAB and RTNDA Codes.

The Panel arrived at an analogous conclusion in *CIQC-AM re Galganov in the Morning (Invasion of Privacy)* (CBSC Decision 97/98-0509, August 14, 1998):

The Quebec Regional Council considers that revealing the complainant's full name [...] was merely vindictive and served no public interest whatsoever. By violating the complainant's overriding right to privacy in this case, the broadcaster has breached Clause 6 of the *CAB Code of Ethics* as well as the spirit of Article 4 of the *RTNDA Code of Ethics*.

The Panel's decision in *CKAC-AM re the Gilles Proulx Show* (CBSC Decision 94/95-0136, December 6, 1995) specifies the mandatory nature of this rule.

It is clear to the Regional Council that the host infringed the complainant's fundamental right to privacy in circumstances where there was no public interest, much less an *overriding* public interest, in revealing her identity on the airwaves. The Regional Council concludes that CKAC breached article 4 of the *RTNDA Code of Ethics*.

In that sense, the broadcaster adds absolutely nothing by referring to *CTV re Canada AM* (CBSC Decision 94/95-0159) to set out the rule of public interest. However, while he is

careful to avoid defining what he means by “public interest”, he gives it a scope that would elicit sarcasm from any reasonable listener.

For example, a reasonable listener would have to have a really fertile imagination to conclude that the identity of the group of complainants to which we belong along with the Quebec Bar, Madame Justice Côté, etc. was divulged within the context of a relationship between a mayor and his MNA. The context here involves the host commenting on his dismissal from a television station for “lack of judgement”. Moreover, TQS publicly affirmed that it was no longer able to control this host. Therefore, this has nothing to do with his mayoral duties, nothing to do with the duties of an MNA and especially nothing to do with the professional relationship that a mayor could eventually have with his MNA.

And, on the actual issue of public interest raised by the broadcaster, our initial contention to the effect that nothing justifies bypassing the rule of ensuring the confidentiality of complaints remains unchanged despite the broadcaster’s reply, since revealing our identity as complainants served no social efficiency. Broadcasting this “information” does not aid in understanding the event that was reported, namely the existence of a stormy relationship between an employer and his host, that eventually led to his dismissal. This “information” was broadcast to a presumably favourable audience with the sole and clear intention of having an adverse effect on the complainant(s).

Yet, the broadcaster justifies his “flexible interpretation” of the concept of public interest on the basis of *CTV re Canada AM* (CBSC Decision 94/95-0159) where the issue at stake was nothing less than Canada’s reputation abroad in its peace-keeping role. Is this a comparable situation? To ask the question is to answer it. It would be risky, at the very least, to put a situation involving the artistic field in the same category as an international diplomatic blunder that altered Canada’s image abroad.

We would likely have shown some degree of openness had this been a case of protecting the public against a danger or scourge of some kind. We maintain, however, that revealing the identity of the complainants in this matter was in no way necessary for the well-being of current and future generations, a concept which forms the very base of public interest, whether it is on the economic, environmental, health, public safety or human rights level. This case is nowhere near the exceptional circumstances determined by the Panel in *CTV re Canada AM* (CBSC Decision 94/95-0159). It seems to us that invoking this same principle of public interest to justify unilaterally contravening the rule ensuring the confidentiality of complainants is, to say the least, risky in a context where the public interest embodies a set of economic, environmental and social interests reflecting the values and preferences of a society.

In the alternative, however, even if the Panel were to come to the unlikely conclusion that the identity of the complainants could be revealed, the host would have had to at least deal with the issues raised in the complaints filed by these complainants. *CKAC-AM re the Gilles Proulx Show* (CBSC Decision 94/95-0136, December 6, 1995) is very definite in this regard:

Had the host genuinely wished to answer the charges which his critic had levelled against him, he could have done so by dealing with *those issues* which had been raised. Instead, he ignored the *issues* and tore after the *messenger*.

According to the above-cited decision, even if the Panel were to come to the unlikely conclusion that the identity of the complainants could be revealed, this would still constitute a violation of Section 6 of the Canadian Association of Broadcasters’ (CAB) *Code of Ethics* and of Section 4 of the RTNDA’s *Code of Journalistic Ethics*. It would

constitute a violation by the simple fact that the host concealed the substance of the complaints from the listeners in order to attribute his recent dismissal to the group of complainants. In this way, the host sought to take unfair advantage of an audience he considered favourably inclined towards him in order to expose these complainants to public condemnation. This is all the more true given that said complaints were related to his behaviour on television and in no way concerned 98.5 FM.

By neglecting to deal with the issues raised by the complaints and opting instead to break the rule of confidentiality, host Stéphane Gendron did not present information in a fair and proper manner.

And, given that he relies on this much touted Section 6 of the Canadian Association of Broadcasters' (CAB) *Code of Ethics*, we note the fact that the broadcaster never sought to refute our apprehensions on this point, since he dwelled only on the "privacy" aspect in Section 4 of the RTNDA *Code of Journalistic Ethics*. Rather, he more or less adopted the famous debatable argument put forth by former host André Arthur to the effect that a public person does not have a private life. We can only conclude from this that the broadcaster does not in any way contest our claims that the behaviour of host Stéphane Gendron in revealing the identity of the complainants, without even addressing the merits of the issue, is an outright contravention of the very wording of Section 6. There should therefore theoretically be no debate on this point.

THE DECISION

The Quebec Regional Panel examined the complaint under the following provisions of the Canadian Association of Broadcasters' (CAB) and Radio Television News Directors Association of Canada's (RTNDA – The Association of Electronic Journalists) *Codes of Ethics*:

CAB Code of Ethics, Clause 6 – Full, Fair and Proper Presentation

It is recognized that the full, fair and proper presentation of news, opinion, comment and editorial is the prime and fundamental responsibility of each broadcaster. This principle shall apply to all radio and television programming, whether it relates to news, public affairs, magazine, talk, call-in, interview or other broadcasting formats in which news, opinion, comment or editorial may be expressed by broadcaster employees, their invited guests or callers.

RTNDA Code of (Journalistic) Ethics, Article 4 – Privacy

Broadcast journalists will respect the dignity, privacy and well-being of everyone with whom they deal, and will make every effort to ensure that news gathering and reporting does not unreasonably infringe privacy except when necessary in the public interest. Hidden audio and video recording devices should only be used when it is necessary to the credibility or accuracy of a story in the public interest.

The Panel Adjudicators read all of the correspondence and listened to a recording of the challenged interview. The Panel concludes that the segment did not violate either of those Code provisions.

Entitlement of Complainants to Total Privacy

The Panel has taken note of the forceful and cogent case put by the complainant, much of which hinges on the jurisprudence of this very Panel. On three previous occasions, this Panel has dealt with the on-air identification of individual complainants. In each of these decisions, the vindictive rationale for the divulgence of the complainant's identity was a major consideration. In *TQS re Gilles Proulx comments on Journal du midi (transportation strike)* (CBSC Decision 03/04-0334, April 22, 2004), this Panel also laid down the underlying general principles in the area. This Panel stated:

Subject to some possible exception in extraordinary circumstances (of which there are none here), there is nothing in the filing of a complaint that renders the *identification* of the complainant of the remotest interest to the public. Nor can there be any argument that a complainant waives his or her entitlement to privacy by making a complaint. If anything, the facts of the matter under consideration make it abundantly clear that the complainant was stunned by the involuntary publicity given to him by the program host and was shocked that any such publicity could be considered ethical.

In fact, in the view of the Panel, the broadcast of the complainant's name on the airwaves was contrary to both general broadcast ethics and to journalistic ethics. [...] That the complainant had written Proulx directly was a private matter, that he filed a complaint with the CRTC was also intended by him as a non-public act. Canada's private broadcasters, in fact, established a process nearly 15 years ago to encourage audience members who have complaints to feel comfortable in bringing them forward to the self-regulatory body they had created. It would make no sense for them to render that process user-unfriendly or to create disincentives to the audiences they serve. [...]

[...] Audience members are *entitled* to complain and, in the vast majority of cases that pass through the hands of the CBSC, broadcasters deal responsively and responsibly with them.

[...]

The general principle is that complaints *are confidential*, at least insofar as the broadcast of any personal information about those who make them is concerned.

On this occasion, the Panel finds no reason to interfere with the general principles laid down there, except to the extent that it notes that it is the practice of the CRTC to place on a broadcaster's *public* file any correspondence which it receives relating to that licensee (except for such communications as are forwarded to the CBSC for resolution and are no longer retained by the Commission). In other words, in the absence of other extenuating circumstances, and there are *many* of those in the matter at hand, the Panel takes the position that a broadcaster should *not* reveal the identity of an individual from whom it receives a complaint about its programming, much less any details about that individual's residence, place of business, or other co-ordinates that would facilitate his or her identification.

As noted above, there is, however, a *material* distinction to be drawn between the facts of the earlier CBSC decisions, on the one hand, and the matter at hand, on the other. In each of the three precedents, including the TQS matter just referred to, the host was clearly vindictive. While the complainant considers that the invited guest, Stéphane Gendron, was equally so in the matter under consideration, the Panel disagrees (it will discuss this point at greater length in the following section). At this point, though, the Panel will review the earlier CBSC decisions.

In *CKAC-AM re the Gilles Proulx Show* (CBSC Decision 94/95-0136, December 6, 1995), a listener, commenting on the treatment of other listeners and the use of the French language by one of the station's talk show hosts, wrote to the station to register her sentiments. The next day, the host, Gilles Proulx, commented on the listener's letter, quoting from it and stating, several times, the listener's full name and city. The tone of that broadcast can be felt in the host's words, which follow:

[translation]

This will make [name of the complainant] happy, a chick who sent me a nice Valentine this morning. I quote "Full of your own importance to an unhealthy degree (a trait particularly evident in small-minded people)" this young lady, [complainant's name] from St-Michel, and I'm tempted to give out your phone number, miss, she calls me "hick", which I am, and "dumb broad, momo, mimine" and all the others and says "If this is the only humour you are capable of, please spare us." Madam, who no doubt could use a good lay, doesn't like my language either, doesn't like momo - momo, someone doesn't like you, God, how can that be, momo, one of the great ones in Ville d'Anjou. She doesn't like mimine, one of the most colourful people on earth, or Madame Napoléoné, even though she's so energetic and funny. She doesn't like the petite niaiseuse, let's talk about [name of the complainant].

What do you think, of the energy, yes, [laughs] [name of complainant] from St-Michel, she doesn't like you. [laughs]. It doesn't seem to bother you, *petite niaiseuse*. Incredible! Laughter. Yes indeed, *petite niaiseuse*, [laughs], yes sir. She doesn't like my behaviour either. [laughs]. Okay my little nut, now I'm mad, and you can't be my friend anymore. She says that I despise Quebeckers, when I've been telling them for ten years to be proud, keep their heads high and fight, to defend themselves, incredible, incredible how much people don't want to understand, so miss, on this the day after your beautiful valentine, I only have one thing to say - I'm tempted to give out your telephone number, if I was an asshole, but I won't. [The host repeats the complainant's name] of St-Michel, you really need a good lay.

The complainant wrote back to the station's Program Director the next day and the host, predictably, responded in kind on the following day, once again providing the complainant's name and city of residence on air.

In *CIQC-AM re Galganov in the Morning (Invasion of Privacy)* (CBSC Decision 97/98-0509, August 14, 1998), the host, Howard Galganov, chose to discuss a complaint about his show which had been forwarded to the station by the CBSC for its response. He then made some harsh, tasteless, raving comments concerning the complaint and the complainant. This Panel had no problems with the comments about the CBSC but it

was concerned about his on-air identification of the complainant. Before he mentioned her name, though, he acknowledged that the Council had, in its standard letter, indicated that identification of the complainant was unacceptable practice. He said,

You can't publish the person's name, or you can't mention the person's name who is complaining about you, who sent the document off to the CRTC, who sent the document off to the Canadian Broadcast Standards Council and who's demanding an apology, or they're demanding an apology in her name. But yet I can't mention her name because I don't know why. So don't say another word, Jim, because this has nothing to do with you, it has nothing to do with the radio station, screw them and her. Her name is [he gives the complainant's full name]. If they don't like it, they can get me off the air but I'm not going to be censored.

The comments of one caller, referred to as "Robert", were particularly pointed towards the complainant:

Caller Robert: This [full name of complainant], is she the same [complainant's first name] that called you a couple of times?

Howard Galganov: I'm sure she is.

Both Galganov and the caller were nasty and vindictive, and the broadcaster of course has responsibility for the broadcast of both of their comments and revelations.

In *TQS re Gilles Proulx comments on Journal du midi (transportation strike)* (CBSC Decision 03/04-0334, April 22, 2004), host Proulx discussed the public transportation strike. He put a question to his audience and, in the course of his review of that issue, he discussed a complaint that had been registered against him at the CRTC in the following terms:

[translation] I received a nasty letter from [the host gives the complainant's name] who has complained to the broadcasting governing body, the CRTC, against me for the arguments I presented last week. The guy lives in Laval, works in Montréal and has understood nothing – couldn't get it into his thick head and his brain the size of a pea. I repeat, I repeat, I repeat, that the public is the boss of these arrogant individuals, not the government and not the city.

This Panel referred to the host's actions in the following terms:

In fact, in the view of the Panel, the broadcast of the complainant's name on the airwaves was contrary to both general broadcast ethics and to journalistic ethics. It was an unjustifiable exercise of the power of the microphone for petty and vindictive reasons. There was no conceivable justification for Gilles Proulx to mention his name, much less to identify the city where he lives and that where he works, on the air. The host's actions were taken in an atmosphere of nastiness and insult. [...] It should also be remembered that those who complain to the CRTC or the CBSC are not persons who have access to the power of a microphone and a broadcast licence. Those who receive such complaints and do have the power of a microphone and a licence must be conscious that those powerful tools have not been provided for personal retributive purposes. [...] The broadcast of the name of the complainant and the information relating to where he works and lives constitutes a breach of the above-cited provisions of the CAB and RTNDA

Codes and the broadcast of the insulting and vindictive comments such as “his thick head and his brain the size of a pea” is both unfair and improper and in breach of Clause 6 of the *CAB Code of Ethics*.

Special Circumstances of the Present Case

In the matter at hand, much turns on the special circumstances associated with the complaint filed. To begin, the Panel finds that the complainant’s characterization of Stéphane Gendron’s comment as “petty” is unfounded. The Adjudicators have reviewed the transcript and listened attentively to the tone of the fired host’s comments. The Panel considers that M. Gendron was not in any way aggressive in his tone regarding the list of the six complaints made to, he said, the CRTC (in fact, the complaints had been sent to, or dealt with by, the CBSC). Moreover, no one of them was even singled out as deserving of particular reaction and the present complainant “did not even make” the first string list. He was only, one might observe, in the second tier. Those named were more identified as a list of individuals or bodies of a similar type, namely, in this case, complainants about M. Gendron. They appear to have been referred to by name solely because they would have been better known to the public, the Panel assumes. Those who would not have been known seem to have been grouped under the description “ethnic groups”. If anything, Gendron appeared rather stunned by the entire turn of events and his own dismissal. The Panel detected neither hostility nor vindictiveness, a material issue in the cases decided by it in the past (and referred to above).

The Panel also puts considerable weight on the fact that the complainant in the matter under consideration was a public figure acting as such. Not only was the complaint filed in the CHMP case sent to the CBSC *on Assemblée nationale letterhead*, but the original complaint of October 30, 2006 regarding an episode of *L’avocat et le diable* on TQS was also sent on *Assemblée nationale letterhead*. Equally relevant, in the case of the 2006 matter is the fact that the complaint was initially sent to the CRTC (which forwarded it to the CBSC for disposition, in the normal course). In such a case, the practice of the CRTC is to file the actual complaint received on the broadcaster’s *public file*, and any member of the public would be presumed to know that or, at least, not to have any right to object to such “public” treatment. This is not, of course, to suggest that a legislator, whether provincial or federal, has no right to file a complaint, but rather that an individual doing so *on the stationery of the state* may reasonably be assumed to be engaged in the business of the state and thus subject to more public scrutiny.

The Panel hastens to add that it agrees with the point made by the complainant decrying [translation] “the famous debatable argument put forth by former host André Arthur to the effect that a public person does not have a private life.” When the complainant made that point, in his letter of February 27 cited above, he referred to

Article 4 of the *RTNDA Code of (Journalistic) Ethics*. While this is not the central matter in the present decision, the Panel wishes to ensure that the words in the Article which restrict the infringement of an individual's privacy "except when necessary in the public interest" are given full force and effect by the CBSC. In the end, for the reasons cited above, the Panel does not find any invasion of the complainant's privacy in the challenged broadcast of December 19, 2006.

Broadcaster Responsiveness

It is the practice of all CBSC Adjudicating Panels to assess the broadcaster's responsiveness to the complainant. Although it is, of course, the case that 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 and respectful manner. In the matter at hand, the Panel considers that the response of the Vice President of Corus Montreal to the complainant was focussed closely on the issue the latter raised in his original letter of complaint, although it also raised additional points not material to the broadcast in question. The Panel considers that the response has successfully fulfilled the broadcaster's obligation 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, where, as in the present case, the decision is favourable, the station is under no obligation to announce the result.

ANNEXE

Décision du CCNR 06/07-0607 CHMP-FM concernant une séquence diffusée dans le cadre de *Puisqu'il faut se lever*

La plainte

La plainte suivante en date du 22 janvier 2007 a été envoyée au CCNR :

Membres du Conseil,

Dans la matinée du 19 décembre 2006, l'animateur Stéphane Gendron, vers 7h05, sur les ondes de 98,5 FM, dans le cadre de sa chronique quotidiennement diffusée dans le cadre de l'émission *Puisqu'il faut se lever* animée par Paul Arcand, a commenté son récent congédiement par la station de télévision TQS.

En révélant l'une des raisons invoquées par la direction de TQS à l'appui de son congédiement, Stéphane Gendron a rapporté que TQS aurait reçu « 6 plaintes au CRTC » (sic). Il a alors commis le geste mesquin de m'identifier parmi les plaignants, tout en identifiant également parmi ces mêmes plaignants, le juge Lise Côté, le Barreau du Québec, ainsi que « les ethnies ». Il a de plus fait état d'une mise en demeure que lui aurait aussi expédié le ministre des finances du Québec, M. Michel Audet.

La diffusion du nom de l'ensemble des plaignants, y incluant le mien, est manifestement un geste contraire à l'éthique générale de la radiotélévision, ainsi qu'à l'éthique journalistique. Il s'agit en effet d'un exercice injustifié du pouvoir du micro à des fins vindicatives. Stéphane Gendron n'avait aucune justification possible lui permettant de révéler mon identité. Il n'a pas posé ce geste que pour des motifs d'amertume et de méchanceté. C'est d'autant plus vrai que lesdites plaintes étaient reliées à sa conduite à la télévision, et ne concernait [sic] aucunement 98,5 FM.

Non seulement le respect fondamental de la vie privée des plaignants a été littéralement bafoué, mais ce genre d'utilisation des ondes de manière contraire à l'éthique, comporte des répercussions [sic] sociales et graves. Loin d'être inoffensifs, ces propos visaient manifestement à m'exposer à la vindicte populaire, tout comme l'ensemble des plaignants.

Pour ma part, la plainte que j'avais déposée à l'époque, pour laquelle j'ai reçu des excuses formelles de la part de TQS, n'était pas un geste public, et ne concernait aucunement 98,5 FM. Cette plainte se voulait confidentielle. La diffusion de mon identité de plaignant, ainsi que la diffusion de l'identité d'autres plaignants, constitue une nette violation de l'article 6 du *Code de déontologie* de l'Association canadienne des radiodiffuseurs (ACR), ainsi qu'à l'article 4 du *Code d'éthique journalistique de l'ACDIRT*. En effet, profiter malicieusement des cotes d'écoute enviables de l'émission *Puisqu'il faut se lever* afin de révéler publiquement l'identité d'un plaignant, était uniquement vindicatif et n'a aucunement servi l'intérêt public. Pas plus d'ailleurs, qu'elle n'a servi les intérêts de 98,5 FM.

Posséder une licence engendre une responsabilité civile. Ceux qui détiennent une licence et le pouvoir du micro ne doivent pas perdre de vue que ces outils puissants ne leur ont pas été fournis pour permettre à un chroniqueur de se livrer à des actes de vengeance personnelle. Nous sommes stupéfiés par la publicité non voulue que nous a faite Stéphane Gendron, et

sommes consternés par le fait qu'on puisse considérer ce genre de publicité comme étant conforme à l'éthique. Les simples règles de bons [sic] sens commandent donc une application énergique des mesures prévues par la réglementation applicable.

Comme nous doutons que le télédiffuseur [sic] possède encore l'enregistrement audio de ladite émission, nous avons pris l'initiative de joindre 2 copies certifiées conforme à la présente, dont l'une pourra être transmise au radiodiffuseur. L'extrait pertinent (le CK0023157) est d'une durée totale de 3m24. Le CD démontre également que Stéphane Gendron a également profité d'une autre émission diffusée à la même antenne, afin de récidiver à 2 reprises. Toutefois, ces deux autres extraits feront l'objet d'une plainte distincte de la présente, étant survenus dans le cadre de l'émission *Le Couvre-feu*, et non dans le cadre de l'émission *Puisqu'il faut se lever*.

Pour les fins de traitements futurs de cette plainte, vous pourrez me contacter, à votre convenance, par la poste ou par courriel à l'une des adresses suivantes :

[xxxx]

Espérant que cette plainte sera traitée avec toute l'attention qu'elle nécessite, je vous prie de croire, membres du Conseil, à l'expression de mes sentiments les meilleurs.

La réponse du radiodiffuseur

CHMP-FM a envoyé la réponse suivante en date du 20 février :

Le Conseil canadien des normes de la radiotélévision (le « CCNR ») nous a demandé de donner suite à votre lettre datée du 22 janvier 2007 dans laquelle vous formulez une plainte au sujet de commentaires émis au cours de l'émission *Puisqu'il faut se lever* (l'« Émission ») diffusée sur les ondes de CHMP-FM (la « Station ») le 19 décembre 2006.

Votre lettre soulève certains points au sujet de commentaires émis par l'animateur de l'Émission, Stéphane Gendron, au cours d'une discussion concernant son congédiement par la station de télévision TQS. Vous déclarez qu'en discutant les raisons à la base de son congédiement, M. Gendron a rapporté que TQS avait fait l'objet de 6 plaintes au CRTC le concernant, et qu'il vous a identifié parmi les plaignants. Vous dites, en outre, que la diffusion de votre nom est un geste vindicatif qui n'a servi aucun intérêt public et donc, qui a violé l'article 6 de [sic] *Code de déontologie* de l'Association canadienne des radiodiffuseurs (« ACR ») ainsi que l'article 4 du *Code d'éthique journalistique* de L'ACDIRT.

Avec égards, l'Émission n'a violé aucune règle de droit quelle qu'elle soit. Comme vous le savez, un des critères [sic] que le CCNR doit considérer lorsqu'il est appelé à déterminer si l'article 6 du *Code de déontologie* de l'ACR ou l'article 4 du *Code d'éthique journalistique* de l'ACDIRT ont été transgressés, est d'établir si l'information diffusée était d'intérêt public et si elle a causé un préjudice indu. Dans la décision du CCNR *CTV re Canada AM*, le CCNR a soutenu que [traduction] « de temps en temps il y a des circonstances qui se présentent, dans lesquelles l'intérêt public peut neutraliser l'intérêt légitime des individus de ne pas diffuser leur identité ni leur activités ».

Dans la présente espèce, nous sommes d'avis que l'intérêt public justifiait amplement la diffusion de votre identité par Stéphane Gendron. En effet, l'existence même de votre plainte concernant les commentaires formulés par M. Gendron à TQS fait partie de l'intérêt public puisque vous êtes membre de l'Assemblée nationale du Québec, et par conséquent, redevable aux médias. Plus spécifiquement, il est dans l'intérêt du public de savoir que le

député d'Huntingdon à l'Assemblée nationale a formulé une plainte au CRTC concernant les propos tenus à TQS par le maire de la ville d'Huntingdon. Par ailleurs, il semble que le CCNR ne soit pas le seul forum par l'entremise duquel vous tentez de faire cesser les commentaires de M. Gendron, et plus spécifiquement, les commentaires formulés par ce dernier à votre égard. En effet, il appert que vous avez dernièrement entamé une poursuite en diffamation à l'encontre de M. Gendron au montant de 1 075 000 \$ dans le but avoué de l'enjoindre de formuler des commentaires de nature prétendument diffamatoires à votre endroit. Le simple fait que vous ayez entrepris cette poursuite civile contre M. Gendron renforce notre point de vue à l'effet que l'existence même de votre plainte au CRTC à l'encontre de M. Gendron est d'intérêt public. Enfin, il est difficile de prétendre que vous ayez subi un préjudice indu du fait que votre identité ait été dévoilée puisque vous êtes un homme public dont les faits et gestes sont toujours susceptibles d'être traités par les médias.

Par conséquent, nous sommes d'avis que l'Émission n'a aucunement violé le *Code de déontologie de l'ACR* ou le *Code d'éthique journalistique de l'ACDIRT*. Nous prenons très au sérieux nos responsabilités de diffuseur et nous nous efforçons de veiller à ce que toute notre programmation soit conforme à la *Loi sur la radiodiffusion*, au *Règlement des radiocommunications*, ainsi qu'aux normes et au *Code de déontologie* auxquels nous nous soumettons volontairement en tant que membre de l'ACR.

Nous espérons que la présente répondra à vos attentes. Nous, de la Station, reconnaissons l'importance des réactions de nos auditeurs et apprécions tous leurs commentaires.

Veillez agréer, Monsieur, nos salutations distinguées.

Correspondance additionnelle

Le plaignant a fait la demande d'une décision le 27 février :

Membres du Conseil,

Nous accusons réception de la réponse signée du radiodiffuseur datée du 20 février 2007, suite à la plainte que nous avons logée en date du 22 janvier 2007, et, ce ne sera pas une surprise pour personne, nous nous en déclarons évidemment insatisfait, d'où la présente demande de décision.

Étant donné que nous nous sommes constamment basés sur les décisions antérieures du Comité afin de réclamer la non diffusion du nom des plaignants, **nous demandons qu'en l'espèce de l'appelant ne soit pas révélée** par ce même Comité.

Notre première déception concerne le manque évident de réceptivité face à notre plainte. Ce manque de réceptivité est tel qu'il rend impossible l'application de la solution que nous privilégions sincèrement dès le départ concernant la plainte du 22 janvier 2007, à savoir un dialogue direct avec le radiodiffuseur. En soi, nous vous soumettons respectueusement que l'absence de toute forme de sensibilité à notre plainte constitue en soi une infraction aux normes de réceptivité du CCNR.

En effet, bien que des « anonymes » aient pu « couler aux médias » l'existence d'une quelconque poursuite en diffamation, celle-ci constitue un remède civil ne concernant aucunement les propos émis par l'animateur Stéphane Gendron en date du 19 décembre 2006. En conséquence, aucun lien ne doit être établi entre les deux, puisque les propos visés par notre plainte de 22 janvier ne sont aucunement couverts par une procédure en diffamation. Il y a donc un élément de malhonnêteté intellectuelle provenant de motifs

purement vindicatifs, à invoquer une autre procédure quelconque, complètement étrangère à la présente démarche, afin de justifier un non-respect de la vie privée, ainsi qu'un non-respect d'une présentation juste et équitable de l'information.

Le fait que le plaignant ait pu dans le passé manifester son mécontentement pour des propos diffamatoires dont il a pu faire l'objet, n'efface [sic] rien l'obligation de réceptivité qui incombe au radiodiffuseur. Et, au risque de se répéter, c'est d'autant plus vrai que le tout est étranger au débat soulevé par la présente.

La thèse soulevée par le radiodiffuseur nous rend passablement inconfortable [sic], puisqu'elle suppose qu'il est impossible d'utiliser un remède civil concernant une série de propos déterminés sans renoncer à son droit à la confidentialité dans toutes autres circonstances sans aucun lien avec ce même remède civil. En termes plus clairs, selon le diffuseur, la défense d'un droit entraînerait la renonciation de tous ces autres droits. Nous soumettons respectueusement au Comité de [sic] cette thèse abusive ne tient pas la route.

Le CCNR a d'ailleurs confirmé à plusieurs reprises, le principe voulant que l'identité des plaignants soit confidentielle. En effet tel que mentionné dans la décision *TQS concernant les commentaires de Gilles Proulx dans le cadre de l'émission « Journal du midi »* (Décision du CCNR 03/04-0334) :

Le principe général veut que les plaintes sont confidentielles, du moins en ce qui concerne la diffusion de toute information personnelle au sujet des plaignants. La diffusion du nom des plaignants ... constitue une violation ... des codes de l'ACR et de l'ACDIRT.

Le Comité est en arrivés à une conclusion analogue dans *CIQC concernant Galganov in the Morning* (Décision du CCNR 97/98-0509) :

Le Conseil régional du Québec considère que révéler le nom complet de la plaignante ... était simplement vindicatif et n'a pas servi l'intérêt public. En portant atteinte au droit primordial à la vie privée de la plaignante dans ce cas-ci, le radiodiffuseur a enfreint l'article 6 de Code de déontologie de l'ACR ainsi que l'esprit de l'article 4 du Code d'éthique de l'ACDIRT.

La décision émise par le Comité dans *CKAC-AM au sujet de l'émission de Gilles Proulx* (Décision du CCNR 94/95-0136) précise quant à elle le caractère impératif de cette règle.

Il semble évident au Conseil régional que l'animateur a enfreint les droits fondamentaux de la plaignante en matière de vie privée, dans les circonstances, et encore moins un intérêt public prédominant à révéler sur les ondes son identité. Le Conseil régional tire la conclusion suivante : CKAC a enfreint l'article 4 du Code d'éthique de l'ACDIRT.

En ce sens, lorsque le diffuseur évoque la décision *CTV re Canada AM* (CBSC Decision 94/95-0159) pour énoncer la règle de l'intérêt public, il ne nous apprend absolument rien. Par contre, bien qu'il se garde de nous définir ce qu'il entend par « intérêt public », il en donne une étendue que suscite le sarcasme chez n'importe quel auditeur raisonnable.

À titre d'exemple, il faudrait qu'un auditeur raisonnable ait l'imagination vraiment fertile, pour en venir à la conclusion que la révélation de l'identité de l'ensemble des plaignants, dont nous faisons partie, en compagnie du Barreau du Québec, le juge Lise Côté, etc, s'est effectuée dans le cadre d'une relation entre un maire et son député. Nous sommes dans un contexte où l'animateur commentait son congédiement d'une station de télévision, pour des motifs de « manques de jugement ». TQS avait de plus affirmé publiquement ne plus être en mesure de contrôler son animateur. Donc ... rien à voir avec ses fonctions du [sic] maire,

rien à voir avec les tâches d'un député, et surtout rien à voir avec les relations professionnelles éventuelles qu'un maire pourrait avoir [sic] son député.

Et sur cette question même d'intérêt public soulevé par la radiodiffuseur, nos prétentions initiale [sic] à l'effet que rien ne justifiait de passer outre la règle du respect de la confidentialité des plaintes restent inchangées malgré la réponse du radiodiffuseur, puisqu'il y a avant aucune utilité sociale à la révélation de notre identité en tant que plaignant(s). La diffusion de cette « information » n'ajoute rien à la compréhension de l'évènement rapporté, soit l'existence d'une relation houleuse entre un employeur et son animateur, ayant ultimement mené à son congédiement. La diffusion de cette « information », devant un auditoire estimé favorable, n'a été effectuée qu'avec l'intention manifeste de nuire au(x) plaignant(s).

Pourtant, le radiodiffuseur justifie son « interprétation élastique » de la notion d'intérêt public, en se basant sur une décision *CTV re Canada AM* (CBSC Decision 94/95-0159) où ce qui était en jeu, n'était rien de moins que la réputation du Canada à l'étranger dans son rôle de maintien de la paix. Sommes-nous dans une situation comparable? Posez la question c'est y répondre. Il serait pour le moins hasardeux de mettre dans la même catégorie une situation ayant alimenté les milieux artistiques, avec une bourde diplomatique internationale altérant l'image du Canada à l'étranger.

Nous aurions probablement manifesté une certaine ouverture dans un cas où l'on aurait voulu préserver le public d'un quelconque danger ou d'un quelconque fléau. Mais nous maintenons que la divulgation de l'identité des plaignants en l'espèce n'était aucunement nécessaire au bien-être des générations actuelles et futures, ce qui constitue la base même de l'intérêt public. Et ce, que ce soit au niveau économique, environnemental, de la santé, de la sécurité publique, ou des droits humains. Dans le cas qui nous concerne, nous sommes très loin des circonstances exceptionnelles déterminées par le Comité dans *CTV re Canada AM* (CBSC Decision 94/95-0159). Dans un contexte où l'intérêt public constitue un ensemble d'intérêt [sic] économiques, environnementaux et sociaux reflétant les valeurs et les préférences d'une société, il nous apparaît pour le moins hasardeux d'invoquer ces mêmes intérêts publics afin de justifier une transgression unilatérale de la règle de la confidentialité des plaignants.

Toutefois de façon subsidiaire, même si le Comité venait à la conclusion peu probable, que l'identité des plaignants pouvait être révélé [sic], l'animateur aurait au moins eu le devoir de traiter des questions soulevées par les plaintes de ces mêmes plaignants. La décision *CKAC-AM au sujet de l'émission de Gilles Proulx* (Décision du CCNR 94/95-0136) est formelle sur ce point :

Si l'animateur avait véritablement voulu répondre aux accusations que la critique avait porté contre lui, il aurait pu le faire en traitant des *questions* qu'elle avait soulevées. Au lieu de cela, il a ignoré ces *questions*, pour tourner sa vindicte sur la *messagère*.

Donc, selon cette décision, même si le Comité en arrivait à la conclusion peu probable que l'identité de plaignants pouvait être révélé [sic], nous serions tout de même en infraction face à l'article 6 du *Code de déontologie de l'Association canadienne des radiodiffuseurs* (ACR), ainsi que face à l'article 4 du *Code d'éthique journalistique de l'ACDIRT*. Nous serions en situation d'infraction de par le simple fait que l'animateur ait dissimulé la substance des plaintes aux auditeurs, pour plutôt attribuer son récent congédiement à l'ensemble des plaignants. L'animateur cherchait ainsi à profiter injustement d'un auditoire qu'il estimait favorable, afin d'exposer l'ensemble des plaignants à la vindicte populaire. Et c'est d'autant plus vrai, que lesdites plaintes étaient reliées à sa conduite à la télévision, et ne concernait [sic] aucunement 98,5 FM.

En négligeant de traiter des questions soulevées par les plaintes pour plutôt se contenter de briser la règle de confidentialité des plaignants, l'animateur Stéphane Gendron n'a pas présenté l'information de façon juste et convenable.

Et d'ailleurs puisque [sic] invoque ce fameux article 6 du *Code de déontologie de l'Association canadienne des radiodiffuseurs (ACR)*, nous prenons acte du fait que le radiodiffuseur n'a aucunement cherché à réfuter nos appréhensions sur ce point, puisqu'il ne s'est attardé qu'à l'aspect « vie privée » énoncé par l'article 4 du *Code d'éthique journalistique de l'ACDIRT*. Il a plutôt repris à son compte, le fameux théorème discuté de l'ex-animateur André Arthur, à l'effet que tout personnage public n'a pas de vie privée. Nous ne pouvons donc qu'en conclure que le radiodiffuseur ne conteste en rien nos prétentions à l'effet que la conduite de l'animateur Stéphane Gendron ayant révélé l'identité des plaignants sans même traiter du fond de la question, constitue une infraction manifeste au texte même de l'article 6. Donc théoriquement, il ne devrait pas y avoir de débat sur ce point.

Évidemment, la présente demande de décision ainsi que tout ce qui l'accompagne, vous est soumise avec tout le respect dû aux membres du Comité.

Espérant que cette demande de décision sera traitée avec tout [sic] l'attention qu'elle nécessite, je vous prie de croire, membres du Conseil, à l'expression de mes sentiments les meilleurs.