
CANADIAN BROADCAST STANDARDS COUNCIL

PRAIRIE REGIONAL PANEL

CFWF-FM re comments made on the *Big Breakfast Show*

CBSC Decision 09/10-0726

Decided October 1, 2010

D. Ish (Chair), H. Montbourquette (Vice Chair), D. Dobbie, K. Johnston, E. Shia

THE FACTS

The Big Breakfast Show is CFWF-FM (The Wolf, Regina)'s morning show, which has a rock music format, and includes songs, traffic, weather and news reports, and banter among the hosts. On January 14, 2010 at approximately 7:25 am, one of the hosts reported and commented on a case of a sexual assault. The following is a transcript of his remarks:

There's only so much information about this story, but it's really horrifying so I'll pass it along. Last September, a 45-year-old German guy named Hans met up with a friend, Alexander, at a bar in Germany. Hans and Alexander got completely wasted and then stumbled back to Hans' apartment where Alexander passed out on the couch. So far, so good, right? But here's where things get weird and disturbing. While Alex was asleep, Hans pulled down his friend's pants and started playing with his junk. But when Alexander's member failed to stand at attention, Hans became furious. In fact, according to court officials, Hans became so upset he quote "twisted Alexander's scrotum and repeatedly twisted it back and forth until it broke. Then he took the testicles and hurled them from the window." You heard that correctly. Hans ripped off his friend's gonads and threw them out the window. Alex woke up and was rushed to hospital. A few hours later, the cops found his nuts lying in a snowbank. [laughs] I'm sorry. But that's just hilarious. It's unclear whether they were able to re-attach his gonads. Hans was arrested and charged with sexual abuse and grievous bodily harm. The case is ongoing. We're still not sure about Alex's nuts though. [laughs]

The following complaint was sent on the date of the broadcast to the Canadian Radio-television and Telecommunications Commission (CRTC), which forwarded it to the CBSC in due course (the full text of the correspondence can be found in the Appendix):

As trivia or entertainment, the announcer read graphical details of sexual assault by one man to another. This broadcast was, I submit, "obscene and profane" and/or "sexually explicit" which is prohibited by your regulations.

The station's Program Director and Morning Show Co-Host responded to the complainant on January 19 in the following terms:

First I would like to thank you for listening to The Wolf. Complaints that are submitted to the CBSC are something we take very seriously at Harvard Broadcasting.

I have reviewed the tapes from January 14, 2010 and while the story is disturbing, it was a news story. The story was in bad taste; however, there was no profane language used outside of everyday terms. If the Wolf offended you, for that we are sorry and we hope that you will continue to use the Wolf as your station of choice.

The complainant, dissatisfied with the broadcaster's response, filed his Ruling Request on January 24:

The broadcaster's response is unsatisfactory and I request a ruling from the CBSC Panel.

The response from the broadcaster is unsatisfactory for the following reasons:

1. The broadcast was obscene and/or profane and this is not admitted by the broadcaster.
2. The broadcast was "sexually explicit" and this is not admitted by the broadcaster.
3. The broadcast was a violation of CRTC radio regulations including those which prohibit "sexually explicit" material and "obscene or profane" language and this is not admitted by the broadcaster.
4. The broadcaster claims that the words used were "everyday terms" and this is not accurate.
5. The broadcaster claims that the words used were not profane and this is not accurate.
6. The broadcaster admits that the story was in "bad taste" but this admission is insufficient.
7. The broadcaster appears to indicate that similar stories and language will be repeated in the future, whereas the broadcaster purports nothing was wrong. They appear to claim that the regulation violations alleged, will continue.

THE DECISION

The CBSC's Prairie Regional Panel examined the complaint under the following provision of the Canadian Association of Broadcasters' (CAB) *Code of Ethics*:

Clause 9 – Radio Broadcasting

Recognizing that radio is a local medium and, consequently, reflective of local community standards, programming broadcast on a local radio station shall take into consideration the generally recognized access to programming content available in the market, the demographic composition of the station's audience, and the station's format. Within this context, particular care shall be taken by radio broadcasters to ensure that programming on their stations does not contain:

[...]

(b) Unduly sexually explicit material

It also referred to Article 6.3 of the *CAB Violence Code*:

Article 6.0 – News & Public Affairs Programming

6.3 Broadcasters shall advise viewers in advance of showing scenes of extraordinary violence, or graphic reporting on delicate subject matter such as sexual assault or court action related to sexual crimes, particularly during afternoon or early evening newscasts and updates when children could be viewing.

The Panel Adjudicators read the correspondence and listened to the challenged broadcast. The Panel concludes that CFWF-FM did not breach either of the foregoing codified standards.

Sexually Explicit? Otherwise Problematic?

In dealing with Clause 9(b) of the *CAB Code of Ethics*, the interpretive issue almost always faced by the Panel has been whether the level of sexual activity has been *unduly* explicit. The Prairie Regional Panel views the matter at hand differently. The Panel doubts that the challenged content is substantially a matter of sexual activity at all. It is undeniable that there was a sexual *intention* on the part of Hans, but the story makes it clear that that plan went nowhere. It is equally undeniable that the desecrated body parts referred to in the case of the sleeping Alexander frequently play a sexual *role* in the lives of adults. The reality, though, is that they played no such role in this instance.

The Panel's conclusion regarding the sexual *assault* is that it was not sexually explicit material at all, much less unduly sexually explicit material. Indeed, the references to the genitalia were almost all limited to the anatomical terms "scrotum", "testicles" and

“gonads”. There were few uses of the more everyday characterizations, “nuts” and “junk”. The Panel does not consider that the use of either the colloquial or the anatomical terms is either obscene or profane. If anything, the Panel believes that there was an attempt by the broadcaster to avoid being crude with his choice of words and the Panel has no difficulty whatsoever with the careful tiptoeing around the terminology.

The Panel does, however, wonder about the appropriateness of broadcasting such a gruesome, undeniably sexually-tinged, story on a Thursday morning at 7:25 am, when families, including children, are rushing about, heading toward work or school. The Panel simply cannot understand that program choice by the broadcaster. The way the story was reported was, at the very least, in bad taste, juvenile, crude and highly inappropriate for the hour of the morning when it was broadcast. Although the CBSC has long held that programming in bad taste does not *on that account alone* breach any codified standard, the Panel does counsel CFWF-FM and any other broadcasters to give more thought to the time of day at which risky material is brought to air.

In terms of the codified standard, though, the Panel finds no breach of Clause 9(b).

The Value of a Warning

All of the foregoing has been exacerbated by the absence of any alert to listeners that would have given them the opportunity to avoid the news item. It is true that there is no requirement in the codified standards that apply to radio broadcasting that corresponds to the notion of viewer advisories for television. That said, under Article 6.3, the News & Public Affairs Programming heading of the *CAB Violence Code*, broadcasters, through their journalists and news anchors, are expected to *advise* viewers of problematic content as may be appropriate. That is a sound and considerate principle, bearing in mind audience sensitivities, one that, on an anecdotal basis, the Panel finds is frequently applied by broadcasters to their radio newscasts. Indeed, the Panel is of the view that a warning *should* be given to radio listeners when a gruesome story is coming.

In the matter at hand, the host recognized that the news story was “really horrifying” and the Panel wonders why, in the circumstances, rather than *warning* listeners, he appeared to entice them, by saying “it’s really horrifying so *I’ll pass it along*. [Emphasis added.]” While there is no Code breach on this account, the Panel is disappointed that the host did not add a sentence or two before telling the story, so that listeners would have had enough time to turn their radios off or change the station for the minute or so it took to tell the story.

Broadcaster Responsiveness

In all CBSC decisions, the Council's Panels assess the broadcaster's responsiveness to the complainant. In the present instance, the Panel finds that the response of the broadcaster's Program Director and Morning Show Co-host was particularly short but the Panel considers that it was not at all dismissive. Moreover, it focussed directly on the issue that concerned the complainant. That said, the complainant did not share the broadcaster's perspective, which is his right and the reason for which any complaint file is ultimately referred to a CBSC Panel for adjudication. In the end, it is the thoughtfulness of the response that determines whether the broadcaster has met the CBSC membership responsibility of responsiveness, which the Panel considers that CFWF-FM has fully met in this instance.

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.

APPENDIX

CBSC Decision 09/10-0726 CFWF-FM re comments made on the *Big Breakfast Show*

The Complaint

The following complaint dated January 14, 2010 was sent to the CRTC and forwarded to the CBSC in due course:

Broadcast was approximately 7:25 am Thursday, January 14, 2010 on 104.9 FM in Regina, Saskatchewan (The Wolf).

As trivia or entertainment, the announcer read graphical details of sexual assault by one man to another. This broadcast was, I submit, "obscene and profane" and/or "sexually explicit" which is prohibited by your regulations.

I ask that you review this broadcast and reprimand the station, if my submission is correct.

Broadcaster Response

The station responded to the complainant on January 19:

First I would like to thank you for listening to The Wolf. Complaints that are submitted to the CBSC are something we take very seriously at Harvard Broadcasting.

I have reviewed the tapes from January 14, 2010 and while the story is disturbing, it was a news story. The story was in bad taste; however, there was no profane language used outside of everyday terms. If the Wolf offended you, for that we are sorry and we hope that you will continue to use the Wolf as your station of choice.

Additional Correspondence

The complainant submitted his Ruling Request on January 24:

The broadcaster's response is unsatisfactory and I request a ruling from the CBSC Panel.

The response from the broadcaster is unsatisfactory for the following reasons:

1. The broadcast was obscene and/or profane and this is not admitted by the broadcaster.
2. The broadcast was "sexually explicit" and this is not admitted by the broadcaster.

3. The broadcast was a violation of CRTC radio regulations including those which prohibit "sexually explicit" material and "obscene or profane" language and this is not admitted by the broadcaster.
4. The broadcaster claims that the words used were "everyday terms" and this is not accurate.
5. The broadcaster claims that the words used were not profane and this is not accurate.
6. The broadcaster admits that the story was in "bad taste" but this admission is insufficient.
7. The broadcaster appears to indicate that similar stories and language will be repeated in the future, whereas the broadcaster purports nothing was wrong. They appear to claim that the regulation violations alleged, will continue.