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**CANADIAN BROADCAST STANDARDS COUNCIL  
ONTARIO REGIONAL COUNCIL**

CFRA-AM re the Steve Madely Show

(CBSC Decision 93/94-0295)

Decided November 15, 1995

M. Barrie (Chair), R. Cohen (*ad hoc*), P. Fockler, R. Stanbury, M. Ziniak

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**THE FACTS**

On the morning of August 3, 1994, CFRA broadcast the Steve Madely Show, an open-line show during which the host, on this particular day, was encouraging listeners to call in on the subject of drunk driving. Following the 9:00 a.m. news, the host pessimistically introduced the subject as follows:

And I'm trying to get some people excited about drunk driving although, quite frankly, it's the third time I've tried to do it and I, eh, judging by the phone lines, I've failed again.

The host took two calls (from Chris and Diane) and then said:

And that's it. I'm going to close the topic. And I can't tell you how sad I am to do that. But I am going to close this file and I'm going to put the file away because no-one gives a damn. And that's the way it is, folks. And if I'm ticked off, I've never been so ticked off at an audience as I am right now. I mean, I can't believe, I don't know what it will ever take to get you motivated, other than to take you to a funeral or to pull you into a living room or into an emergency room, 'cause that file is closed, dammit. And I just, what will it ever take to get people to notice the suffering that goes on around them? These are 450 families out there a year that someone's been killed, a father or a mother or a daughter or a son or a cousin or an uncle or an aunt. And the kids whose lives are ruined, who, paraplegic and quadriplegic, and brain injury and back, and loss of limbs, and the lives that are put into a state of limbo because of this crime that has taken place in Ontario.

And no goddam wonder that you can't get politicians involved if you can't get the people involved. If you can't get angry about it and you can't get upset about it and you can't demand action on it, no wonder you have politicians who can't. It's your own damn fault. And don't blame them. Don't blame the Premier and don't blame the politicians for failing to get involved 'cause you can't give a damn. All right, we'll talk about whatever you want to talk about. You want to talk about the weather, call.

The next call following this emotional reaction and concluding sarcastic remark regarding the weather was from Anne.

*Madely:* Anne, do you want to talk about the rain?

*Anne:* No, as a matter of fact, I would like to talk about drunk driving.

*Madely:* Oh, no, no-one wants to talk about it. Let's talk about the rain. It's a cloudy day.

*Anne:* You mean I'm no-one? Do you mean I'm no-one? So, would you please listen to me?

*Madely:* Oh, you're the only one. [Over the listener's voice] But listen, I'll tell you something. It's going to get sunny later today and a high of 28.

*Anne:* Are you going to let me speak about this subject or have you decided?

*Madely:* No, I've closed the file. It's closed. The file is closed. I'm not going to talk about it.

*Anne:* You're nuts, stupid.

It was then unclear whether the caller hung up on the host or the host on the caller. While the former seemed to be the case, the Regional Council did not consider that the decision would have altered materially on that account.

The complainant's explanation of what happened was put in the following terms:

Prior to 9 am, Mr. Madely gave an introduction to his topic, the fact that the issue had been aired before and that it was time something was done about it. He invited callers to phone in with their comments. I had no problems with this part of the broadcast.

However, immediately after the 9 am news, after listening to one or two callers he suddenly got very angry. He said "Goddammit" and again used profane language. He used the word "Damn" more than once. By his tone of voice, there was no question he lost his temper while doing a live broadcast.

I was shocked and couldn't believe what I was hearing. After several minutes, he said "That's it folks -- the file is closed and it's going to stay closed!" and continued on speaking angrily. He then said (sarcastically) "OK, let's talk about the weather..." Well, he wouldn't listen to her, told her the subject (file) was closed and hung up on her.

[...]

My main objection, however, is the way he spoke to us, the listener (*sic*), his tone of voice, his use of profanity and that he allowed himself to vent his anger at the general public because we did not respond the way he wanted us to.

The complaint, which had originally been forwarded to the CRTC, was in turn referred to the CBSC, of which CFRA-AM is a member. In accordance with its usual procedures, the CBSC sent the letter to the station for response.

CFRA-AM's General Manager responded to the complainant on September 2, 1994. His response stated that:

Mr. Madely's program has been and always will be one that involves a great deal of controversy and passion. In talk radio, these two explosive ingredients are the essence of why listeners tune in. They want to hear a divergence of opinions, passionate arguments and points of view. When people are passionate about things, they get emotional. Since people are only human, that emotion is bound to spill over, on to the air. What you heard from Mr. Madely was genuine passion for the subject matter.

The language and approach on the program is part of mainstream culture. Television programs, newspaper columns, magazine articles and even computer bulletin boards and networks all share this commonality.

Shortly after receiving this response, the complainant wrote a lengthy letter to the CBSC. In her second letter, the complainant defended her position, stating that:

[The General Manager] does not appear to have any problem with regard to Mr. Madely's behaviour, actions or language used during that particular broadcast.

The complainant went to the trouble of referring to several sections of the *CAB Code of Ethics*, a copy of which had been sent her by the CBSC with its initial letter, in particular emphasizing the general principle established in the second paragraph of the "Background" at the beginning of the Code:

It is recognized that the most valuable asset of a broadcaster is public respect which must be earned and can be maintained only by adherence to the highest possible standards of public service and integrity.

The complainant admitted that she was a frequent listener to CFRA and the Steve Madely show for a long time. From her letter, she clearly found *this* particular day's program atypical of the show as a whole.

Never before have I heard him so angry at the listeners. Steve has, in the past, made his points quite clear without getting angry and losing his temper. Steve has the ability to get people to the point where it sometimes does become an explosive issue. BUT Steve should not allow himself to get so personally involved and the issue to become so explosive to the point where it gets out of hand (which is what happened during that broadcast). Steve does not have control over what the caller says but he does have control over what he says and the way he says it.

We cannot and should not condone this type of behaviour on the air. If callers are "beeped" when using "choice" words surely the same restrictions should apply to the host of the show. Mr. Madely felt that he had the right to do and say what he pleased. I disagree for two reasons:

- 1) As an employee of CFRA, he is bound by the CODE OF ETHICS to conform to "the highest possible standard of public service and integrity" and according to CLAUSE 16, "the manner in which he conducts himself..."
- 2) As a professional broadcaster, he "crossed the line" the moment he became angry and lost control of the situation.

Everyone has the right to an opinion, even Steve Madely, BUT ask yourself this. Did he have the right to:

- a) refuse to take more calls, on the subject of “drunk driving”
- b) refuse to keep the file open
- c) cut the last caller off without letting her have her say and hanging up on her.

Ask yourself also, whether Steve Madely had the right to:

- a) say whatever he pleased.
- b) swear or use profane language.
- c) use sarcasm aimed at the public.

She pointed out that she became so upset that she turned off the rest of the show. Her letter concluded that the host should not become so negative “that people won’t bother to tune in any more.” The complainant requested that the CBSC Ontario Regional Council review the matter.

## **THE DECISION**

The Regional Council reviewed the complainant's two letters and that of the CFRA General Manager. It also listened to a tape of the relevant portion of the program, as transcribed above.

The Regional Council considered the complaint under Clauses 2, 6, 7 and 16 of the Canadian Association of Broadcasters' *Code of Ethics*. The texts of these clauses read as follows:

### *Clause 2, CAB Code of Ethics (Human Rights)*

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

### *Clause 6(3), CAB Code of Ethics (News, etc.)*

It is recognized that the full, fair and proper presentation of news, opinion, comment and editorial is the prime and fundamental responsibility of the broadcast publisher.

### *Clause 7, CAB Code of Ethics (Controversial Public Issues)*

Recognizing in a democracy the necessity of presenting all sides of a public issue, it shall be the responsibility of member stations to treat fairly, all subjects of a controversial nature. Time shall be allotted with due regard to all the other elements of balanced program schedules, and to the degree of public interest in the questions presented. Recognizing that healthy controversy is essential to the maintenance of democratic institutions, the broadcast

publisher will endeavour to encourage presentation of news and opinion on any controversy which contains an element of the public interest.

#### Clause 16, *CAB Code of Ethics* (Employees) (in pertinent part)

Each member station shall endeavour to secure the highest possible type of employees and people who are qualified for and suitable to the duties for which each is hired.

In its unanimous decision, the Regional Council agreed that the station had not contravened any of the foregoing clauses of the *Code of Ethics*. While the behaviour of the on-air host had not been to the liking of the complainant, the members were not in agreement with her that the host or the station had been in breach of the Code.

That being said, the Council members felt that the letter of complaint was as seriously and carefully presented and argued as any which they had previously been called upon to examine and that they would attempt to individually weigh each of the arguments presented in this decision. Furthermore, they were conscious of the complaint decided at this same sitting of the Council *against* CFRA in an *apparently* similar matter and of the need to explain the distinction between the two matters.<sup>1</sup>

#### **Full, Fair and Proper Presentation of Opinion and Comment**

Basically, the Regional Council considered the program as it always considers open-line or talk radio, namely, under the third paragraph of Clause 6 of the *Code of Ethics*, which refers to the "full, fair and proper presentation of news, opinion, comment and editorial." The Council was particularly concerned about opinion and comment, the issues of news and editorial not being pertinent to this complaint. The Council was guided, in its interpretation of this general provision, by policy statements regarding open-line programming. As it has done previously (for example, in *CKTB-AM re the John Michael Show* (CBSC Decision 92/93-0170, February 15, 1994) and in *CFRA-AM re the Lowell Green Show*, (CBSC Decision 93/94-0276, November 15, 1994), the Ontario Regional Council reviewed the *Proposed Guidelines for Open Line Programs*, Public Notice CRTC 1988-121, the ultimate *Policy Regarding Open-Line Programming*, Public Notice 1988-213, and the Canadian Association of Broadcasters' *Submission to the CRTC in the Matter of Public Notice CRTC 1988-121*.

In Public Notice CRTC 1988-121, the CRTC notes that open line programs "offer... an opportunity for lively public discussion..." by "...[providing] the public with an outlet for the expression of a wide range of differing views." Nonetheless, the Commission identified three areas of concern in this category of programming, namely:

the broadcasting of comments considered abusive on the basis of remarks about race, colour, religion, national or ethnic origin, age, sex, mental or physical disability; failure to provide reasonable, balanced opportunity for the expression of differing views on matters of

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<sup>1</sup> *Lowell Green Show* (CFRA-AM, 93/94-0276, released on September 07, 1995).

public concern; and a failure to meet the high standard of programming required of broadcasters. This last issue usually involved personal attacks against individuals or groups, sensationalism, lack of program preparation, inaccurate statements or overall carelessness in dealing with controversial issues.

The role of the moderator is often a determining factor in the quality of open-line programs. Intimidating and insulting callers, cutting off those with different points of view and expressing personal biases are among the abuses that some moderators have committed.

The Canadian Association of Broadcasters' *Submission* regarding the CRTC's Public Notice underlines the role open line programs can play as a home of public debate in a democracy, by stating:

[...] open line programs have evolved as the most instantaneous, the most natural and the most spontaneous forum for free flowing expressions of views on matters of public concern. In our view they represent an important expression and reinforcement of true democracy and as such are characteristic of only the most secure and mature democratic societies.

Given the concerns expressed by the Commission regarding open-line programming, and the comments raised by the CAB concerning the role such programming plays in fostering discussion about important public issues, the Regional Council recognized the requirement of broadcasters to balance freedom of expression against abuses of that freedom. In Canada, the freedom of expression as guaranteed in Section 2(b) of the *Canadian Charter of Rights and Freedoms* is not without limitations (see Section 1 of the *Charter*). As the CBSC affirmed in *CKTB-AM re the John Michael Show* (CBSC Decision 92/93-0170, February 15, 1994), "it is that delicate weighing of freedom and restriction which the host must accomplish and which, in the event of a listener complaint, the CBSC must judge."

With respect to the program under consideration, the Regional Council members did not believe that the host's on-air comportment was in violation of the Code as being unfair or improper. He did appear to lose his temper, as alleged. He did appear to be angry, as alleged. He did refuse, *temporarily*, to keep the file open and to take more calls on the subject of drunk driving, as alleged. He did use sarcasm aimed broadly at his audience, as alleged. It was unclear whether the caller Anne had hung up on him or he on her, as the complainant alleged. He did use the words "damn" and "Goddammit", as alleged. The question is whether all or any of the foregoing acts constitute a Code violation *per se*. The Council thought not.

Council here refers again to an excerpt of the CRTC Public Notice cited above:

The role of the moderator is often a determining factor in the quality of open-line programs. Intimidating and insulting callers, cutting off those with different points of view and expressing personal biases are among the abuses that some moderators have committed.

In this case, the host had *not* insulted any callers nor, it appeared had he even intimidated any. It was, after all, Anne who had insulted *him*, not the other way around. She, it is true, had been frustrated by his refusal to carry on the debate *at that moment* but, as the host of the show, it did not seem unreasonable for him to take such a decision, particularly since it had not been taken on ideological grounds or on the basis that others had different views

from his own which he would not countenance. If anything, the source of the problem appeared to be that the audience had, for a period of time, been unwilling to put forward *any* views. The host was clearly being dramatic in order to stir his audience but not, in the Council's view, on a discriminatory or abusive basis. Consequently, the Regional Council felt that there was no violation of Clause 2 of the *Code of Ethics*.

### **Inappropriate Language**

There is no doubt that the host used the words "damn" and "Goddammit" during the course of his broadcast on the morning in question. It is equally clear that the complainant was offended by the use of those words. The use or misuse of these would, in the view of the Council, fall within the purview of Clause 6(3) of the *Code of Ethics* as an example of the proper or improper presentation of comment or opinion. The Council has also frequently felt it appropriate to look for guidance in determining acceptable standards of broadcaster actions to the *Radio Regulations, 1986* or the *Television Broadcasting Regulations, 1987*. In this case, it is section 3(c) of the *Radio Regulations, 1986* which refers to language. It provides that "A licensee shall not broadcast ... (c) any obscene or profane language." In its determination of what constitutes "obscene or profane language", Council considered that current broad social norms must be applied. The Council also had to face the fact that some language which may at another time have been broadly considered obscene or profane had now slipped into common and marginally acceptable usage. Terms formerly considered blasphemous or irreligious are today non-religious and inoffensive to the population as a whole, even if perhaps in poor taste. In general, the Regional Council concluded that there may be words which ought not to be used in the medium but whose use could not be raised to the level of profanity or obscenity. While the word "damn" gave the Council no difficulty by current standards, this was a case which fell into that middle ground insofar as the word "Goddammit" was concerned. In their view, the host used the term as an epithetic expression of frustration but not in an *intentionally* irreverent, blasphemous or irreligious way. While good taste and judgment might have dictated the non-use of the expression on the public airwaves, it was not a sanctionable usage.

### **Controversial Public Issues**

The complainant wisely raised the question of Clause 7 of the *Code of Ethics*, which deals with subjects of a controversial nature. In terms of the requirements of that clause, the broadcast publisher, through its host, was, as required, *endeavouring* to "Encourage presentation of news and opinion" on a controversial subject. The host's problem was, in his view, that the audience was not interacting, not that *he* was *refusing* access. Furthermore, he returned to the subject once his dramatic stratagem pulled the listeners back into the dialogue.

## **Employee Qualities**

Overall, on the basis of all of the foregoing considerations, Council did not consider that there had been any unfair or improper presentation of opinion or comment and that, consequently, there was no breach of Clause 6(3) of the *Code of Ethics*. Furthermore, the Council concluded that there was *nothing* in the on-air comportment of Mr. Madely that entitled the complainant to suggest that he was other than “qualified for and suitable to the duties for which [he had been] hired”, in accordance with the terms of Clause 16.

## **The Standard of Responsiveness**

The CBSC has noted in a number of past decisions, the broadcaster's obligation, as a CBSC member, to be responsive to complainants. In this case, the Regional Council felt that the response from CFRA's General Manager had covered the major issues, although not necessarily as the complainant had wished (as is, of course, *always* the case or the complaint would not become a ruling request in the first place). Therefore, the station did not breach the Council's standard of responsiveness.

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