
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CJXY-FM re the Scott and Lori Show

(CBSC Decision 96/97-0239)

Decided February 20, 1998

A. MacKay (Chair), R. Stanbury (Vice-Chair), P. Fockler, T. Gupta, M. Hogarth,
M. Ziniak

THE FACTS

CJXY-FM (Hamilton)'s afternoon drive show hosts are "Scott and Lori". On June 17, 1997, the co-hosts commented on the decision of a Southern Baptist convention to boycott the Disney Studio for its relationship with the television series *Ellen* on the grounds that the star of the show, both in real life and her on-air persona, was gay. Their brief dialogue on the subject was as follows:

Lori: Yes, some Southern Baptists apparently think Mickey Mouse now has a pitchfork and horns.

Scott: Oh my God.

Lori: Yeah, they're voting this week to boycott Walt Disney. All due to Ellen. Insert joke here.

Scott: Oh, man.

Lori: Okay, that's all I need to say. Wackos.

The Letter of Complaint

On July 11, a listener sent a letter to the CRTC, which was, in the normal course, forwarded to the CBSC. The listener said:

I object to the broadcast by the FM on-air personality LAURIE [*sic*] LOVE ... of the words, "What a bunch of wackos" ...

What a bunch of wackos, was in reference to an American group of Baptist Christians and was clearly in violation of the Cdn. Broadcasting Act section 3 (b), part 1.1. She expressed her obvious contempt for both a definable religious group as well as a nationality.

[The Program Director], instead of immediately discussing with me or more correctly without the need even for a discussion what kind of apology would be acceptable in light of such an obvious insult, attempted to debate the laudability of her expressed opinion. Amateurish, sophomoric and anti-Christian zealotry. This from the perspective of an admitted non-Christian. In my opinion this type of comment is typical of the overall sentiment of management and staff of this group of broadcast stations which apparently are on a subtle and not so subtle mission to vilify those whose views differ from theirs. When measured against a plodding yet steadfast series of broadcast perceptions and innuendos this group of stations has not complied with their licensing agreement to act as responsible and respectful leasers of the publicly owned airways. With the exception, of course, of the doublespeak which they give to you. Apparently they quite enjoy wearing their egos on their sleeves when it comes to oneway communication and the rare to nearly non-existent access of their vilification targets to a microphone. Cowardly and convenient.

Which leads me to wonder why your offices license such stations. Is the tail wagging the dog? The truth be known just how disingenuous are they when it comes to their perception of the need to be licensed, to comply with the spirit of their license agreement, to respectfully serve their entire audience and to respond without malice to public complaints such as this?

Beyond whether or not the CRTC has the actual ability to demand better broadcasting, broadcasters and formats, it seems clear to me that the voice of those insulted will become heard in the very large and economically significant tourism cash registers of Ontario should a license to allow and encourage through the inability to effectively correct such openly and unabashedly defaming and vilifying remarks. The next time that you are in a store, a restaurant or theatre for example and someone over the P.A. system calls your friends and family 'a bunch of wackos' see just how warm and fuzzy that makes the money in your pocket on its way to another more grateful, respectful and welcoming environment. And of course Americans do know how to organize their displeasure should both Laurie Love and CJXY feel uncompelled to express a genuinely contrite apology, at a time not buried deep into the sleeping hours.

It is my hope that the CRTC guards carefully against this broadcast group's probable if not certain attempt to adroitly divert the real issue of professional, responsible broadcasting into a series of non-germane debates; because in the end proper broadcasting practices plays [*sic*] no small part in the happier shopping and service [*sic*] from more abundant foreign tourists as well as their local friends.

Unfortunately the price to individuals, like myself, who have sought to defend the better use of our airways [*sic*] will certainly continue the tacit, off-air persona non grata response policy of many broadcasters to set an example to the public at large to think twice before considering interfering with their perceived divine right to as much as possible broadcast their agenda. Lastly, it is not my purpose to force anyone to hold my beliefs on this or any other matter. Realistically their [*sic*] is no means for achieving such a dramatic change; regardless of those who hold to tenets such as the combination of assiduity and brainwashing. It would however serve as a giant step forward for these broadcasters - most especially management - to understand exactly what a license to broadcast is really all about.

The Broadcaster's Response

The Program Director responded to the complainant on July 29. He said:

On Tuesday June 17/97, during a regularly scheduled portion of our broadcast day, our afternoon drive hosts were talking about some currents [sic] events happening in and around the entertainment industry. During this segment they made reference to one news item from that day where "some Southern Baptists were boycotting Disney for their relationship with 'Ellen'". Our female host, Lori Love, then responded with one word "wackos".

Your stated concern is with reference to Lori's comment "wackos" and it's [sic] direct relationship to the Southern Baptist group. Having now gone over the tape it's my interpretation the comment was not geared to or about the Baptists as a religious group, but in fact pointed directly at the 'act' of boycotting Disney for their relationship with the 'Ellen' situation. The fact this group were southern Baptists was irrelevant to the comment, they could have been a group of business men from Alberta boycotting Disney and the comment, taken in context, would still apply. As you know the Ellen show and subsequent media attention has stirred a great debate on both sides of the border.

I don't believe we, as a licensee, have exposed any individual to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability. The comment was not with malice or intent to harm any person or group but in truth a social comment on the state of this specific current event.

It's apparent these comments offended you and for that I apologize on behave [sic] of Lori Love and the station. We are very aware of our public responsibilities and spend a great deal of time making sure we're in compliance with the regulatory bodies and the general public at large. Not everything we do will please everyone we serve but I can assure you our staff respects the privilege granted us with our license and take very seriously anyone's concern with our product. I can state without hesitation, 'We are not on any subtle agenda against any group or moral social position.'

The listener was unsatisfied with this response and requested, on August 15, 1997, that the CBSC refer the matter to the appropriate Regional Council for adjudication.

THE DECISION

The CBSC's Ontario Regional Council considered the complaint under the *Code of Ethics* of the Canadian Association of Broadcasters (CAB). Clause 2 of that Code reads as follows:

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.

The Regional Council members listened to a tape of the program in question and reviewed all of the correspondence. The Council considers that the program does not violate the *CAB Code of Ethics*.

The Commentary: Anti-Christian?

The complainant's letter contains considerable rhetoric; however, as to the issues which concern the Council, he alleges that the host expressed "her obvious contempt for both a definable religious group as well as a nationality." He also used the terms "[a]mateurish, sophomoric and anti-Christian zealotry" and "such openly and unabashedly defaming and vilifying remarks" to describe the host's comments. He also portrays the "group of broadcast stations [as] apparently [being] on a subtle and not so subtle mission to vilify those whose views differ from theirs." He concludes his letter with the comment: "Lastly, it is not my purpose to force anyone to hold my beliefs on this or any other matter."

Even if Lori Love's comments *could* be characterised as "amateurish and sophomoric" (the CBSC does not, needless to say, arrive at any such conclusion), this would not render them in breach of any Code. If there were, on the other hand, an "anti-Christian" aspect to the comments, this might well constitute a Code breach. While the "religious" aspect of the decision is dealt with immediately below, the Council believes it useful, on the anti-Christian point, to raise the decision of the B.C. Regional Council in the matter of *CHAN-TV re Last Temptation of Christ* (CBSC Decision 95/96-0011, December 18, 1996), in which the complainant argued that the controversial Martin Scorsese film was a "disgusting piece of religious hate material." The Council held that:

The difficult matter to resolve in each case where such conflict presents itself is whether the program in question amounts to the broadcast of *abusive or discriminatory* material or comment. Furthermore, this measurement must be made in the *overall* societal context, not in the *narrow* context of the sensibilities of individuals.

[...]

It is abundantly clear in this case that the complainant found the depiction of Christ questioning his faith and succumbing to temptation utterly unacceptable, even hateful. While members of the Council understand the complainant's profound disagreement with Paul Schrader's screenplay and Martin Scorsese's direction of the film and BCTV's broadcast of that creative collaboration, they believe that the freedom of these cinematic creators to express their view on such matters and the broadcaster's entitlement to air that film are fundamental in our society. Their careful viewing of the lengthy film has led none of them to consider that the filmmakers' approach was either flippant, casual or without respect. Nor do they find in the film any negative attitude toward either Christians or Christianity itself.

[...]

It is the view of the Council that the objectives of the film are not in any way inconsistent with this direction nor that the film was in any way abusive or discriminatory toward Christians or Christianity. The quest of both the book and the film is inquiring, probing, and uncertain as to its conclusions. That it may not be the representation of the perspective or understanding of

all or even many Christians regarding Christ is possible. That fact does not, however, make the perspective abusive, discriminatory or hateful. The Council considers that the film was intended primarily to explore the question of moral doubt and that it has accomplished *this* very effectively, even if it has not *solved* the religious mystery of the substance of Christ.

The Commentary: Political or Religious?

The decision in this matter ultimately turns on the Council's understanding of the use by co-host Lori of the term "wackos". It is only if the epithet were directed at the Southern Baptists by reason of their *religion* that the Council could find that the broadcaster was in breach of the Code. If the epithet were, on the other hand, directed at the admittedly religious group by reason of something other than their religion (race, national or ethnic origin, colour, age, sex, sexual orientation, marital status or physical or mental handicap not being relevant to this matter), then the conclusion would likely be different. In the view of the Council, the epithet was not directed at the religious group by reason of anything other than the group's stated boycott of Disney by reason of their association with the television series *Ellen*. That stance by the Baptists was, in the Regional Council's view, an economic action regarding a political issue. There is, of course, no doubt whatsoever regarding the entitlement of the Southern Baptists to hold and to express its views on controversial matters of a political or publicly controversial nature. The point is only that, if they choose to do so, they render themselves fair game on the public playing field of political controversy. They cannot expect that they have the right to *publicly* express controversial political opinions and to be sheltered by reason of the fact that they are a *religious* group from the resulting fallout from the ideological seeds which they have sown.

Unless the complainant is raising an issue concerning the *overall* programming of CJXY-FM when he accuses the station group of being on a mission "to vilify those whose views differ from theirs," the Council can find *no* evidence of any such mission in the comments of June 17. That being said, it is clear that the host's views regarding the Disney boycott differ from those of the Southern Baptists whose views on *that* issue she was criticizing. She is, however, undeniably entitled to differ on such a public issue from anyone else *and to express such a view on the airwaves*.

When the complainant concludes that "it is not my purpose to force anyone to hold my beliefs on this or any other matter," the Council is uncertain that he is being frank. At the very least, it appears that he wishes to ensure that this radio host not be entitled to hold and express a viewpoint different from that of the Southern Baptists, if not him as well, on the matter of the Disney boycott.

Previous CBSC Decisions Applicable by Analogy

In partially analogous circumstances, the host in *CKTB-AM re the John Gilbert Show* (CBSC Decision 92/93-0179, October 26, 1993) expressed his views regarding the

government's policy of bilingualism. The complainant objected to the remarks on the grounds that they constituted comments which were "degrading to francophones." The Ontario Regional Council disagreed with the complainant. While the host's remarks were *incidentally* related to French-Canadians, they were principally directed to bilingualism as a policy. The Ontario Regional Council

considered that an opinion on the government *policy* of bilingualism constituted an *opinion* on that issue and was not *racially* driven. Nothing can be more fundamental to the principle of freedom of speech enshrined in the *Charter* than the entitlement of an individual to express a differing view on a matter of public concern, including government policy.

Where, on the other hand, in *CKTB-AM re the John Michael Show* (CBSC Decision 92/93-0170, February 15, 1994), the Ontario Regional Council viewed a series of misstatements of fact and inaccuracies regarding French-Canadians as being made to further discriminatory objectives, they concluded that the broadcaster had breached Clause 2 of the *Code of Ethics*.

[T]he Regional Council considered that the multiplicity of inaccurate statements of the host were used by Mr. Michael to disparage or abuse the reputation of French-speaking Canadians as a group or expose them to the contempt of other listeners. Consequently, the Regional Council concluded that the statements collectively amounted to a breach of Clause 2 of the *Code of Ethics*.

Another decision of the CBSC which the Council considers applicable by analogy is that rendered in *CHOG-AM re the Jessie and Gene Show* (CBSC Decision 93/94-0242, November 15, 1994). On the program in question, the hosts had done a skit parodying Member of Parliament Jag Bhaduria. They used re-worded Beatles songs sung with an accent intended to resemble Bhaduria's. The Ontario Regional Council did not consider that the parody fell afoul of the Human Rights clause of the *Code of Ethics*.

All members agreed that public figures, such as politicians, are often held up to criticism and parody. Indeed, it is the most essential component of the principle of free speech that the fullest criticism of political figures and political positions be permitted in a free society. Provided that the satire or criticism is levelled at political persons on the basis of their actions as public figures *and not on the basis of their national or ethnic origin*, it must be permitted, if not encouraged. In this case, the Council agreed with the station that the parody had been directed toward Mr. Bhaduria himself, and not toward Indian people as a group.

The point of the foregoing decisions is that, in order to fall afoul of the requirements of Clause 2 of the *Code of Ethics*, the challenged comments in those cases and in this must have been abusively discriminatory with respect to one or more of the grounds established in that clause.

The Broadcaster's Response

The CBSC always recognizes the broadcaster's obligation, as a CBSC member, to be responsive to complainants. In this case, the Regional Council considers that the response from the broadcaster dealt fairly with the issues raised by the complainant. Moreover, the Program Director extended an apology on behalf of the host and the station for the comments which offended the complainant, which he was not required to do. Nothing more is called for.

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.