
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CFTO-TV re "Tom Clark's Canada"

(CBSC Decision 97/98-0009)

Decided February 26, 1998

A. MacKay (Chair), R. Stanbury (Vice-Chair), R. Cohen (*ad hoc*),
P. Fockler and M. Ziniak

THE FACTS

During its early evening newscast of August 14, 1997, CFTO-TV aired a segment entitled "Tom Clark's Canada" which dealt with a report aired on Czech TV which promoted Canada as a safe haven for Roma gypsies. Clark reported that "The alarm bells are ringing in both Canada and the Czech Republic. Officials are taking seriously the prospect that, within weeks, thousands upon thousands of Roma gypsies will arrive here seeking refugee status." The segment contained video footage and a description of the Czech report, an interview with an immigration lawyer and an exchange of views between Tom Clark and BBS commentator Mike Duffy. The Clark/Duffy conversation, which generated the complaint, was as follows:

Tom Clark: Duff, I just want to read you something coming out of that conversation with Mr. Kubes [the immigration lawyer interviewed moments earlier by Clark]. The Canadian government [is] trying to convince these refugees, or these gypsies, not to come over here. Lucienne Robillard, who is the Minister of Immigration, said this, she said: "If they come to Canada we will study their cases and they could be accepted. You never know." "You never know" c That's coming from the Immigration Minister.

Mike Duffy: Well, we just heard it's a 100% acceptance rate so far. You know, Tom, what really bothers me about this is not that Canada is seen as a safe haven by people who are persecuted. That's been part of our history and something we valued going back for many, many, many decades but the problem is, is that we have the flavour of the month. A television crew puts on a story saying "Guess what some people are getting here; they're getting free food, free lodging, free money" and all of a sudden we get hundreds of people piling in. These people ...

Tom Clark: Don't stop there; it's not just that. I mean, it's free health care, it's welfare. I mean, for many people, that is the definition of paradise.

Mike Duffy: There's no question about it. And yet what happens to legitimate immigrants, people who want to come here from other countries? We've been receiving mail, you and me, from a woman in Whitby for over two years. She's got a daughter married to a young man in England, or her son is married to a woman in England who is a nurse and they want to move back to Canada to be close to the grandparents but she's not allowed to come into the country because we don't need nurses; we're busy closing hospitals here. Well, one of the reasons why we don't have room for relatives of people who are already here, who speak the language, who have skills and so on is because we're so busy taking everybody and their dog who makes any kind of a complaint in the front door.

Tom Clark: But I guess the question is, Mike ... Here is a case where we know there is a human wave about to hit us in the next week or so and it appears that there is absolutely nothing that the government can or will do about this in terms of trying to tighten things up.

Mike Duffy: And that's what the politicians want. There's no visa requirement. The Minister has that within her purview. She could snap her fingers and issue an order today saying, from now on, anybody coming from Prague must have a visa; but they're not going to do that. Why? Because Czechoslovakia is a friend of Canada's [*sic*]; and we believe the Czechs and Slovaks are good people. So, if they're good people, why are we saying they're discriminating against this minority? It's bad news all around and what it shows is that the bureaucrats are running the system and not the politicians.

Tom Clark: Yeah. Well it's certainly going to re-ignite the whole issue of immigration in this country, I think. Duff, thank you very much.

Mike Duffy: My pleasure, Tom. See you tomorrow night.

The Letter of Complaint

On August 16, 1997, a couple wrote a letter of complaint to CFTO-TV, copying the letter to the CRTC. The complainants stated:

On Thursday, August 14, my husband and I were watching our local (London), BBS supper hour news programme. We were appalled and disgusted when we listened to the comments of Tom Clark and Mike Duffy. They were talking about the gypsy refugees from the Czech Republic who may be applying for refugee status in Canada. To paraphrase Mike Duffy, "Everybody and his dog can come to Canada". Other derogatory and demeaning comments were made concerning immigrants and refugees.

Any viewer who holds racist and bigoted opinions would certainly have applauded Clark and Duffy's comments and also would consider these words, by two highly visible media personalities, as reinforcement of their personal views. As well, we believe that people in Canada who may be or were immigrants or refugees to Canada would have been deeply offended.

Tom Clark's Canada should be an informative and well-researched section of the news format, not a biased and destructive opinion piece.

The Broadcaster's Response

The Vice President, News and Public Affairs, of CFTO-TV replied to the complainants on August 27, 1997. His letter reads as follows:

The remarks on Thursday August 14, 1997 by Tom Clark and Mike Duffy had to do largely, as I read them, with the process of entry into Canada and less to do with any particular individuals who may come here.

The process is known as immigration policy which requires immigrants to come to Canada in an organized fashion. The refugee policy permits the people to arrive and, pending a hearing which will take an unstated time, either stay or be deported. These two matters are a source of legitimate public discussion and I believe the remarks on this date fall into that category.

In a further letter to the complainants dated September 24, 1997, the Vice President, News and Public Affairs, added the following:

As I said in my previous correspondence that [sic] I believe the discussion centred on the refugee process, less than it did on the nature or character of any individual claiming refugee status. I am enclosing a transcript of the remarks from the program of Thursday, August 14th, 1997, which I believe indicates that this is the case. This being so, I would wish to offer the view that there was nothing racist, bigoted, derogatory or demeaning about what was said with respect to refugees, or the concept of immigration.

It's our view that the matter of refugee policy, and how it is applied, is a legitimate topic of public discussion in Canada today.

On September 21 (prior to receiving the broadcaster's second letter), the complainants requested 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 Clauses 2 and 6 of the *Code of Ethics* of the Canadian Association of Broadcasters (CAB) and Article 2 of the *Code of (Journalistic) Ethics* of the Radio Television News Directors Association Canada. The texts of these provisions read as follows:

CAB Code of Ethics, Clause 2 (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.

CAB Code of Ethics, Clause 6 (News)

It shall be the responsibility of member stations to ensure that news shall be represented with accuracy and without bias. The member station shall satisfy itself that the arrangements made for obtaining news ensure this result. It shall also ensure that news broadcasts are not editorial. News shall not be selected for the purpose of furthering or hindering either side of any controversial public issue, nor shall it be designed by the beliefs or opinions or desires of the station management, the editor or others engaged in its preparation or delivery. The fundamental purpose of news dissemination in a democracy is to enable people to know what is happening, and to understand events so that they may form their own conclusions.

Therefore, nothing in the foregoing shall be understood as preventing news broadcasters from analyzing and elucidating news so long as such analysis or comment is clearly labeled as such and kept distinct from regular news presentations. Member stations will, insofar as practical, endeavour to provide editorial opinion which shall be clearly labeled as such and kept entirely distinct from regular broadcasts of news or analysis and opinion.

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.

RTNDA Code of (Journalistic) Ethics, Article 2

News and public affairs broadcasts will put events into perspective by presenting relevant background information. Factors such as race, creed, nationality or religion will be reported only when relevant. Comment and editorial opinion will be identified as such. Errors will be quickly acknowledged and publicly corrected.

The Regional Council members viewed a tape of the program in question and reviewed all of the correspondence. The Council considers that the segment in question does not violate the Code provisions cited above.

The Content of the Program

In the over 120 decisions of the CBSC, the Council has dealt with the issue of discriminatory comment on numerous occasions. Indeed, the “human rights” clause of the *CAB Code of Ethics* is one of the most interpreted provisions of all in the Codes administered by the CBSC. It is not surprising, therefore, that the Council’s approach in dealing with complaints about discriminatory comment has become fine-tuned.

Early on, the Council recognized that Clause 2 of the *CAB Code of Ethics* requires a weighing of competing values. In *CHTZ-FM re the Morning Show* (CBSC Decision 92/93-0148, October 26, 1993) the Council noted that “it must balance the right of audiences to receive programming which is free of abusive or discriminatory material ... with the fundamental right of free speech in Canadian society.” The application of this balancing act in various CBSC decisions evolved into an “abusiveness criterion”; i.e. the establishment of a “test” whereby a comment must not merely be *discriminatory* to constitute a breach of Clause 2, it must be *abusively* so.

In this case, the Council would be hard pressed to find Mike Duffy's commentary discriminatory, much less *abusively* discriminatory. First, the Council finds that Mr. Duffy's remarks did not focus on Roma gypsies. Rather, they targeted Canada's refugee policy and the passive response of the Minister of Immigration to the Czech report which made Canada "the flavour of the month". Such an expression of political views falls squarely within the ambit of freedom of expression.

Second, the Council is not perturbed, as were the complainants, by Mr. Duffy's use of the vernacular expression "everyone and their dog". This common slang phrase is customarily used to describe something as being non-restrictive, or all-inclusive, and would rarely, if ever, be understood as equating anyone to canine status. While on "first listening" one could recognize the *potential* for misinterpretation, a review of the transcript makes it clear that, in his commentary, Mr. Duffy was not using the phrase to describe the Roma gypsies or any other specific group of potential immigrants to Canada derogatorily, but rather the *broad-minded or wide-open immigration policy itself*, which, as he noted earlier, has "been part of our history."

Council members also note the complainants' statement that "Tom Clark's Canada should be an informative and well-researched section of the news format, not a biased and destructive opinion piece." While they do not agree with the complainant's assessment of the segment, they find it relevant to consider the requirement in Article 2 of the *RTNDA Code of (Journalistic) Ethics* that "Comment and editorial opinion [in the news] will be identified as such." In the Council's view, CFTO-TV has committed no breach. To be more specific, the station has not *surreptitiously* included commentary and editorial opinion in the news contrary to the RTNDA Code given that "Tom Clark's Canada" is a stand-alone segment in CFTO's newscast and, moreover, Mike Duffy was introduced as a "BBS *Commentator*" [Emphasis added.], not a news *reporter* or *correspondent*.

Broadcaster Responsiveness

In addition to assessing the relevance of the Codes to the complaint, the CBSC always assesses the *responsiveness* of the broadcaster to the substance of the complaint. In this case, the Council considers that the broadcaster's response addressed fully and fairly all the issues raised by the complainant and met the Council's standard of responsiveness. Nothing more is required.

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.