
**CANADIAN BROADCAST STANDARDS COUNCIL
NATIONAL SPECIALTY SERVICES PANEL**

Comedy Network re *Open Mike with Mike Bullard* (Leah Pinsent film)

(CBSC Decision 99/00-0482)

Decided January 31, 2001

R. Cohen (Chair), P. O'Neill (Vice-Chair), S. Crawford, M. Hogarth, E. Holmes,
H. Pawley, S. Teicher

THE FACTS

During the course of the March 17, 2000 broadcast of the *Open Mike with Mike Bullard* show on the Comedy Network, the host's interview with actress Leah Pinsent led to a discussion about the release of Ms. Pinsent's latest movie, in which she plays a serial killer who preys on paedophiles. During that discussion, the following dialogue took place:

Mike Bullard: [...] A woman serial killer.
Leah Pinsent: Serial killer. I kill paedophiles [laughs and gives the "two thumbs-up"].
Mike Bullard: You kill paedophiles!
Leah Pinsent: Yeah. I felt completely justified.
Mike Bullard: I don't see any harm in that.
Leah Pinsent: I didn't either.
Mike Bullard: [Laughing] I think it's a public service [then shakes her hand].

On April 12, a viewer sent a letter of complaint to the CRTC, which was forwarded to the CBSC in the normal course. It stated, in part, that he considered Mike Bullard's comment regarding paedophiles to be "a very inappropriate comment - derogative [*sic*], prejudice [*sic*] and inhumane". Further, the complainant stated: "I do not condone paedophilia, nor do I condone killing anyone who may be afflicted with any such tendencies." The full text of this complaint and the broadcaster's response are provided in the Appendix to this decision. The Vice-President of Programming and General Manager of The Comedy Network replied in the following terms:

First, we regret that you were offended by Mr. Bullard's comment concerning paedophiles. Mike Bullard's approach to comedy is to poke fun at the headlines and newsmakers of the

day, and to him all topics represent potential material, despite possible controversy. While we appreciate that the subject matter is one of a serious and sensitive nature, his remark was not meant to be a commentary or social statement on the issue, but only a comedic response to one of his guests when she indicated that she was playing a role in a movie which involved the killing of paedophiles. I agree that perhaps Mr. Bullard could have said something different but his comments on his shows are largely spontaneous - not scripted - and this was a spontaneous comedic remark consistent with his approach to comedy.

The viewer was unsatisfied with this response, and requested on April 25 that the CBSC refer the matter for adjudication by the appropriate Adjudicating Panel.

THE DECISION

The CBSC's National Specialty Services Panel considered the complaint under the Canadian Association of Broadcasters' (CAB) *Code of Ethics*. The relevant provisions of the Code read as follows:

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.

Code of Ethics, Clause 6, Paragraph 3

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.

The National Panel Adjudicators viewed a tape of the program in question and reviewed all of the correspondence. The Panel does not consider that the challenged episode of *Open Mike with Mike Bullard* breaches either of the foregoing Code provisions.

Preliminary Issue: Are Paedophiles Protected Under Clause 2?

The Panel does not suggest that the complainant has proposed or alleged that paedophiles are entitled to protection against abusively discriminatory comments under the human rights provision of the Code; however, it considers that a brief discussion of this point is appropriate. Since it is obvious that paedophiles as a group are not anticipated by Clause 2, the question is whether one might argue that they ought to be protected against discriminatory comments made on the basis of their "mental handicap". The Panel does not think that the codifiers had such a prospect in mind. The term "mental handicap" cannot, in the view of the Panel, be used to protect those who commit crimes against society from commentary related to those sociopathic activities. The purpose of the human

rights provision is to protect those who may be subject to abusively discriminatory comment made as a function of *who* they are by reason of: 1) innate characteristics, such as their gender, the colour of their skin, their nationality, their ethnicity, their age, or a physical or mental disability; or 2) other characteristics which are changeable only at great personal cost, such as their religious affiliation or their marital status. The protection is not accorded to persons by reason of *what* they do, even where such activities or actions are lawful. It will no more be applied to protect comments made regarding those whose activities or actions are unlawful, even where the reason for such unlawful acts may be a mental illness.

Incitement of Violence

It remains for the Panel to consider whether the commentary falls afoul of the requirement that the expression of opinion, editorial or comment be “full, fair and proper”. Such comments would likely be in breach of the provision if they could reasonably be understood as being an incitement to violence.

In many ways, the Panel considers this matter similar to *CKAC re an episode of the Gilles Proulx Show* (CBSC Decision 98/99-1108, February 21, 2000), in which the host “advocated” the dropping of an atomic or a neutron bomb on the home of the host’s radio arch-rival André Arthur. After reviewing the CBSC’s jurisprudence on the use of sarcasm to deal with such situations, the Quebec Regional Panel said:

The Council does not for a moment believe that there was any intention on the part of the host to advocate violence. In a way, its conclusion is simplified by the exaggerated nature of the host’s “violent” suggestion. Had it been a *realistic* suggestion, it *might* have been reasonable for the Council to conclude that the host had *in fact* been advocating a criminal act; however, the utter absurdity of the “suggested” use of nuclear or neutron bombs, which are obviously inaccessible weapons, makes it clear that this is simply a hyperbolic device used as a part of the well-known rivalry between the two Quebec radio hosts.

In another matter in which the “proposed” level of violence was less far-fetched, namely, *CIQC-AM re Galganov in the Morning* (CBSC Decision, 97/98-0473, August 14, 1998), the Quebec Regional Panel had to rule on the comment “we have to ... beat the crap out of all these ... crapheads” spoken by host Howard Galganov, well-known activist, anti-separatist campaigner and advocate for the rights of Anglophone Quebecers. Despite the fact that one might reasonably conclude that such acts of violence were more plausible in nature, the Panel did not conclude that the host, in making the statement, had seriously advocated violence against whoever he considered to be the “crapheads” at the time. The Panel stated:

Leaving aside for the moment the issue of vulgar language ..., the Council does not find the statement “we have to ... beat the crap out of all these ... crapheads” to be in breach of the fairness requirement of the Code. The Council does not view this statement as “[translation] a call to violence”, as contended by the complainant. While the meaning sought to be conveyed by Mr. Galganov in making this pronouncement is ambiguous, to say the least, the Council does not consider this isolated comment to be more than an unpleasant, tasteless,

juvenile comment, but not a genuine pre-meditated attempt to encourage the commission of a criminal offence.

The Council considers this example to be analogous, to some extent, to the statements dealt with in *CJWW-AM re the Geoff Franklin Show* (CBSC Decision 92/93-0181, October 26, 1993). In that case, the Ontario Regional Council also dealt with an allegation that the host of an open-line radio show was advocating violence. In that case, the host had responded to a case of animal cruelty by encouraging callers to suggest methods of "getting even" with the perpetrator of the crime. The Council did not find any breach of a Code.

It determined that the host had, as a dog-lover himself, been motivated by anger in marshalling the listeners' calls but that he had not ever meant to be taken as a serious advocate of criminal activities. In the result, it considered Mr. Franklin's comments to be in poor taste but not constituting a breach of any of the provisions of the *Code of Ethics*.

Similarly, in this case, the Panel finds that Mike Bullard was trying to be funny and could not reasonably be understood to be seriously advocating violence against paedophiles. Any such suggestion is, in fact, a further step away from reality when one considers that the statement was made with reference to a *film* rather than a factual circumstance. The film which, like most other such cinematic endeavours, requires the willing suspension of disbelief, was the source of the dramatic concept which, one might imagine (without having seen the film), posits that the serial killing (customarily viewed as an antisocial activity) *might* be morally justifiable where juxtaposed with paedophiles as victims. Such dramatic tension would not be unlike that created by the John Grisham book (and film) *A Time to Kill*, to name but a single example of a sympathetic killer and unsympathetic victims. The host carries that dramatic proposition a small step further by making light of the idea. The dialogue between the host and guest is a flippant look at the moral dilemma posed by the dramatic thesis of the film itself, a matter wholly outside of their own creation.

While being comedic is not an absolute defence to comments made in breach of one of the broadcaster Codes, the Ontario Regional Panel has said that it is reasonable to draw a distinction between a broadcast which is intended to be taken seriously and one which is not. Thus, in *CHUM-FM re Sunday Funnies* (CBSC Decision 95/96-0064, March 26, 1996), the Panel held,

There is an essential distinction to be drawn between the serious and humorous dialogue. Each has its content limitations but *what* those limitations are will vary according to the *nature* of the broadcast in question.

...

The Council believes that it is essential to draw a distinction between a broadcast which is *intended* to be serious or at least leaves the impression that it intends to be serious and one which *clearly* does not. It is not that the *standard* to be applied to the potentially offending statement will be different. It is rather the question of audience perception. The Brian Henderson and Dick Smyth commentaries foundered on *that* rock.

The situation is different where the context is clearly comedic. After all, where the audience is given no reason to expect that the substance of the comments made is serious, their

attitude could *reasonably* be expected to be different. A remark which might reasonably be assessed as abusive in a serious context and thus in breach of the *Code of Ethics* may not be so viewed in the comedic environment.

The National Specialty Services Panel finds that there was no serious intention to advocate violence by the host and his guest. The Panel considers that, at worst, Mike Bullard's comments may be taken to be in bad taste, which, as the CBSC Panels have always said, is a matter to be regulated by the viewer's use of the on/off switch. The CBSC's sanctions are reserved for the more serious breaches of Canada's private broadcasters' own Codes and standards. Taste, by itself, is a marketplace issue.

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 Panel considers that the broadcaster's response addressed the issues raised by the complainant in a detailed and personalized way. The response was thorough and touched on relevant issues although the outcome was not to the liking of the complainant. That is necessarily the case, it should be remembered, on every occasion when a CBSC Panel is called upon to adjudicate a matter. There would otherwise be no reason for the adjudication. In any event, the Vice President and General Manager of the service has provided a thorough reply. Consequently, the broadcaster has not breached 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.

APPENDIX
TO CBSC DECISION 99/00-0482
Comedy Network re Open Mike with Mike Bullard (Leah Pinsent film)

I. The Complaint

The following complaint dated April 12, 2000 was sent to the CRTC and forwarded to the CBSC in due course:

I agree to have my name on public file in regards to this complaint.

I was watching Open Mike - with Mike Bullard on March 17, 2000 (I am uncertain of the time) when I heard Mike make what I, and my associates consider to be a very inappropriate comment - derogative, prejudice [*sic*] and inhumane to be forthright. He announced that it would be a public service to kill paedophiles. I do not condone pedophilia, nor do I condone killing anyone who may be afflicted with any such tendencies. I believe that everyone is entitled to receive help for any problem that they may be experiencing, and it is our job, as a society, to make sure that help is available - no matter of a person's race, creed, color, religion (or lack of), gender, sexual preference, or disability.

Open Mike - With Mike Bullard is presently being aired on The Comedy Network (44 in Toronto, on Rogers Cable).

I would like to know if anything can be done about this matter. Please let me know if you need any more information.

II. The Broadcaster's Response

The broadcaster responded to the complainant's letter on April 26, 2000 with the following:

The Canadian Broadcast Standards Council (CBSC) has forwarded to us a copy of your electronic mail correspondence of April 12, 2000 to the CRTC regarding comments made by Mike Bullard on the March 17, 2000 episode of Open Mike with Mike Bullard, for our attention and response.

First, we regret that you were offended by Mr. Bullard's comment concerning paedophiles . Mike Bullard's approach to comedy is to poke fun at the headlines and newsmakers of the day, and to him all topics represent potential material, despite possible controversy. While we appreciate that the subject matter is one of a serious and sensitive nature, his remark was not meant to be a commentary or social statement on the issue, but only a comedic response to one of his guests when she indicated that she was playing a role in a movie which involved the killing of paedophiles. I agree that perhaps Mr. Bullard could have said something different but his comments on his shows are largely spontaneous - not scripted - and this was a spontaneous comedic remark consistent with his approach to comedy.

I understand that you have also expressed your concerns in telephone conversations with both Mike Bullard and the producer of the show, and that they have assured you that the remark was not intended to encourage any improper action against paedophiles. Rather, the remark was only presented in a light and humorous way, and was not intended to be taken seriously by the audience or viewers of "Open Mike".

The CBSC has in various decisions made a distinction between a broadcast which is intended to be serious and one which is not intended to be taken seriously. In *CHUM-FM re Sunday Funnies* (CBSC Decision 95/96-0064 March 26, 1996) the Council held:

"a remark which might reasonably be assessed as abusive in a serious context and thus in breach of the Code of Ethics may not be so viewed in the comedic environment."

In addition, although The Comedy Network does not endorse Mr. Bullard's remark, we do believe that freedom of expression and free speech in this country must nevertheless be safeguarded to allow for the differing expression of views on matters of public interest. The CBSC in many of its decisions has recognized the importance of freedom of expression. For example, in *TQS re: Black-Out* CBSC Decisions 97/98-0078 and 0080, January 29, 1999 - The Quebec Regional Council held as follows:

"In coming to this conclusion, the Council is mindful of the fact that the freedom to express views and opinions on controversial topics of public interest is central to the freedom of expression guaranteed by the Canadian Charter of Rights and Freedoms."

Once again, we regret that you were offended by Mr. Bullard's comment and we wish to assure you that it is never our intent to offend our viewers. We would, however, like to reiterate that the comment was made in the context of a comedy program and was not expected to be taken seriously by the audience or viewers of "Open Mike".

We thank you for taking the time to write to express your concerns.

III. Additional Correspondence

The complainant was unsatisfied with the broadcaster's response and requested, on April 26, 2000, that the CBSC refer the matter to the National Specialty Service Panel for adjudication. On May 11, 2000, the complainant sent the following e-mail to the broadcaster:

I would like to appeal your decision in the below matter. You will be notified shortly by my legal counsel. I am also requesting that all materials relating to this complaint be retained for further disclosure - including broadcast tapes of the March 17, 2000 show of Open Mike with Mike Bullard. I trust that you will notify all involved parties of this appeal and request.

Given the complainant's threat of legal action, the CBSC's Executive Director sent the complainant the following e-mail, dated May 19, 2000:

We have received your e-mail requesting confirmation of receipt of your Ruling Request. We hereby confirm that we have received your request and are processing your file accordingly. We

have also been copied on your note to Mr. Robinson on May 11, 2000 which indicates that you would like to "appeal [his] decision" and that he would be notified shortly by your legal counsel. This has created some confusion as to your intentions in this matter. The CBSC is mandated to arbitrate complaints between its broadcaster members and the viewing/listening public. At this time, no decision has yet been rendered by the CBSC in this matter. In fact, we are still in the process of reviewing your file.

Please note though that any real threat of legal action may effectively take this matter out of our hands. We understand and respect the entitlement of any individual to choose the courts of the land as a method of resolving dispute; however, we consider that such a choice is incompatible with the CBSC's process. Pending or threatened legal proceedings stifle any potential dialogue between the complainant and the broadcaster, which is why the CBSC considers that it should not deal with matters which a complainant has chosen to bring before the courts.

Please advise us if you intend to pursue legal action. Until such further notice, we will continue our investigation into the matter.

The complainant responded with the following e-mail, dated May 25, 2000:

I must apologize for my last email to you specifying involvement of legal counsel. I was under the impression that the response I had received from CTV was final and conclusive of my complaint. It eases me to know that the CBSC is still involved and conducting an investigation into the matter. I will therefore not proceed with any legal options available to me at this time.

Once again, my apology. Thank you for your continued support.