
**CANADIAN BROADCAST STANDARDS COUNCIL
BRITISH COLUMBIA REGIONAL PANEL**

CKVX-FM re comments made on the *Pepper and Crash Show*

(CBSC Decision 02/03-0237)

Decided July 22, 2003

S. Warren (Chair), R. Cohen (*ad hoc*), P. Gill, G. Leighton, M. Loh

* E. Petrie, who sat on other B.C. Regional Panel adjudications on this date, is employed by CKVX-FM and, consequently, did not participate in the Panel deliberations leading to this decision.

THE FACTS

CKVX-FM (Xfm, Vancouver) broadcast the *Pepper and Crash Show* each weekday during the morning drive period. On October 30, 2002, one of the two hosts announced (at 6:50 am) that the topic of the day's show would be "snowballing". In the dialogue introducing the possibly unfamiliar sexual subject to the audience, the two hosts joked about "snowballing" in the following terms (the full transcript of their remarks can be found in Appendix A):

- Host #1: All right, so snowballing is the topic of today's show. Little did we know. I kinda thought, you know what I thought honestly? I thought sorta, that it had to do with, like something, like, like growing exponentially in size. I thought snowballing might have had some connections to tantra.
- Host #2: Right. You know, or maybe it was something cold too? You know, who knows, right?
- Host #1: But I was always way behind the curve with these things. Like I never, you know, like, uh, I didn't know what a blow job was 'til I was in grade six.
- Host #2: Okay.
- Host #1: You know?
- Host #2: 'Til the question period in health class when somebody put it in the question box?

- Host #1: Exactly. And then the teacher was like “Yeah, a blow job is when, you know, the female takes the male's penis into her mouth.”
- Host #2: Right.
- Host #1: And I was like “Ahh”. And then she goes on, “It's also called ‘a hummer’.
[Host #2 laughs] Or ‘head’”.

At this point in the conversation, the hosts provided a form of listener alert or disclaimer to their audience.

- Host #2: Now's as good a time as any to throw the disclaimer here on the, uh, program. You know how it is. We've got some adult conversation going on so if there's the little ones listening...
- Host #1: It's probably not good.

Then, one of the callers to the program provided a succinct but graphic explanation of the sexual practice.

- Rachel: Snowballing is when a guy receives oral pleasure from his girlfriend or boyfriend and he ejaculates into their mouth and then they keep it in their mouth and they kiss him and he swallows his own ejaculation.

The conversation with Rachel on the subject continued and then Gord, the next caller, dialogued with the hosts on a similar basis. He extended the discussion, however, to what he viewed as a double standard.

- Gord: Okay? But, you know, there's a bit of a double standard here because every, every guy expects the girl to swallow, but then when this subject comes around, it's a little, a little bit of a dicey subject for guys.
- Host #1: Uh huh?
- Gord: And, uh, you know, it's a bit of a double standard here we got goin'.
- Host #1: I agree with you Gord.
- Host #2: It's true, yeah.
- Gord: So that might be the next portion of your question: Why is there a double standard here?
- Host #1: Well the question I've been asking everybody about the snowballing is, like, when you're having sex with a girl...
- Host #2: Mm hm.
- Host #1: ... and then, you know, you stop having the sex for a few minutes...
- Gord: Yeah?

Host #1: ... and then you start having the, uh, the oral sex, you know, it's like the exact same thing.

Host #2: It seems a little backwards.

Host #1: You're act -. Well, uh, why? What's wrong with that?

Host #2: From my past experiences it seems backwards.

Host #1: Different strokes for different folks and for some, no strokes at all.

Host #2: Okay.

Host #1: But, you know, but you're doin', you're doin' the, the, you know, copulation thing and then you stop and go on to oral, you're basically snowballing the girl.

Host #2: It's a fireball.

Host #1: Fireball, yeah!

Gord: There you go!

The complainant sent her complaint to the CBSC two days later. In it, she described both what she had heard on the air and how it affected her two teen-aged children, who had also listened to the segment (the full text of the letter and all other correspondence can be found in Appendix B).

The event was so disturbing and disgusting - I feel I must explain to you the nature of this graphic discussion of a particular sex act on the radio. I have never heard of this before and would be content to live my life without knowing about it.

The act described on the radio was in precise graphic detail - here it is! A man gets oral sex, the partner then balls up the stuff in the mouth and then passes this onto the man by kissing; the stuff is then swallowed by the man. This is supposed to be called "snowballing".

[...]

My daughter who is 16 was at home and had this on the radio for over 45 minutes; she listened to it and went to her high school where it was discussed yet again.

My son and I heard it, but I did change the station, as we were in the car - I was driving him to his school. This subject was again discussed at his school.

She also wrote directly to the Station Manager / Program Director at Xfm and raised the following point:

Trying to change the channel [*sic*] did no good, we had already heard it all in the space of about 12 seconds - the detailing of this sexual act was so explicit as to leave nothing to

the imagination. The picture this produced was both mind numbing and so disgusting - to hear it on a radio station was as low as you can go.

I cannot understand why you would have something like this with no warning on air; if they were trying to be like Howard Stern your morning show should try something different, they don't have Howard's talent.

As I turned to look at my son while I was driving and also trying to change the station, my son had the most shocked look on his face; thanks to you I will always remember that look.

The Station Manager / Program Director replied on December 6. He said, in part:

Although not recognizable by all of our audience, the issue discussed that morning is certainly not unknown to our listeners. A number of them called in that morning to identify the act in question and even to provide further information or opinions on the topic. Overall, the discussion on the issue was light-hearted and slightly humorous in nature. The intent was certainly not to discuss the issue in a disgusting or repulsive way. In fact, our morning show team and call-in listeners often took the opportunity to discuss the issue in a way that certainly tried to downplay the supposed sensationalism of the act.

We also recognize that this type of discussion is not for everyone. On many occasions during the discussion, our Xfm morning show hosts (Pepper and Crash) issued on-the-air disclaimers about the adult nature of the content. Moreover, the target audience for Xfm is largely men in the 18 to 24 year old or 18 to 35 year old range. These listeners are often well aware and interested in specific economic, political and social issues, controversial or otherwise.

The complainant was not satisfied with that response and sent the Council her Ruling Request on December 11.

THE DECISION

The CBSC's British Columbia Regional Panel examined the complaint under Clause 9 (Radio Broadcasting) of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* which reads as follows:

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:

- (a) Gratuitous violence in any form, or otherwise sanction, promote or glamorize violence;
- (b) Unduly sexually explicit material; and/or
- (c) Unduly coarse and offensive language.

The Panel listened to a recording of the broadcast and reviewed all of the correspondence. The B.C. Regional Panel concludes that the broadcast of October 30 is in breach of Clause 9(b) of the *CAB Code of Ethics*.

The Treatment of Sexual Content on Radio

This is one of the first occasions on which a CBSC Panel is called upon to deal with the provision dealing with sexual content under the aegis of the new *CAB Code of Ethics*, which came into effect on August 1, 2002. Prior to that date, the CBSC had dealt with the issue under Clause 6, paragraph 3 of the 1988 *CAB Code of Ethics*, which required the "full, fair and proper presentation of news, opinion, comment and editorial." In summary, past decisions of the various CBSC Panels have concluded that sexual innuendo and sexually suggestive content are acceptable on morning radio and at other times of the day when children are likely to be listening, but that sexually explicit content is not. It should also be understood that, in the context of radio programming, "sexually explicit" has generally been defined as programming providing detailed descriptions of sexual activity.

The 2002 *CAB Code of Ethics* deals more directly with the issue. It provides that radio broadcasters should take particular care to ensure that their programming does not include "unduly sexually explicit material." The Panel understands that the combined effect of these words is mandatory and that the codifiers intended that the broadcast of any unduly sexually explicit material would constitute a breach of Clause 9(b) of the 2002 *CAB Code of Ethics*.

Unduly Sexually Explicit Material

In *CFMI-FM re Brother Jake Morning Show* (CBSC Decision 00/01-0688, January 23, 2002), this Panel concluded that a lengthy conversation in which one host recounted his date of the previous night on which he was "givin' it to her" on a workbench using, among other things, the descriptive words "she's goin' nuts grabbin' my nuts", as well as a comedic sketch in which a woman with a Mexican accent is clearly in the throes of passion yelling out things like "Oh, the tongue" constituted explicit sexual content. In *CFNY-FM re The Show with Dean Blundell* (CBSC Decision 01/02-0267, June 7, 2002), the Ontario Regional Panel was called upon to deal with a morning radio program which often included sexually oriented banter, skits or contests. During the challenged episode of that program, the Panel found that some of the conversations about the sex lives of the hosts and celebrities, including a specific discussion of fellatio, were too sexually explicit for times of the day when children could be expected to be listening.

In *CIRK-FM re K-Rock Morning Show* (CBSC Decision 01/02-0713 & -1113, February 5, 2003) the Prairie Regional Panel dealt with two complaints about a radio morning show which included considerable sexual banter, much of which was characterized as innuendo. The Panel did, however, make particular mention of a conversation with a listener where the hosts described in detail how to masturbate with a washing machine; a mock commercial for a "Solo Sex" exercise machine; a "Dear Penthouse" joke song that referred to a teacher with a "dynamite ass" undressing and inviting a student to do the same; and the "Prison Bitch" song, which contained mostly strong innuendo, but also more explicit references to "doin' you" and being "a sex machine". The foregoing segments were found to be unduly sexually explicit.

For examples of sexual commentary not amounting to explicit content, see, among other decisions, *CFMI-FM re Brother Jake Morning Show (Wake up Contests)* (CBSC Decision 01/02-0875, January 14, 2003) and *CFRQ-FM re Morning Show ("Faking It" Contest)* (CBSC Decision 01/02-1137, March 7, 2003).

In the matter at hand, the broadcaster has exceeded by a considerable measure the comments in the first *CFMI-FM re Brother Jake Morning Show* decision, the *CFNY-FM re The Show with Dean Blundell* and the *CIRK-FM re K-Rock Morning Show* decisions referred to above. The discussion of blow jobs which preceded the first reference to a disclaimer and the explicit discussions and definition of "snowballing" that followed it fall unequivocally into the category of unduly sexually explicit content targeted by Clause 9(b). The terminology is precise, descriptive, even graphic. It is exactly what the codifiers intended to avoid when they drafted the new provision. Its broadcast by Xfm constitutes a breach of the radio provision of the *CAB Code of Ethics*.

The Effect of the Disclaimer

The Panel considers that the "thrown in" disclaimer of Pepper and Crash has the appearance of having been an afterthought, in the sense that it only occurred *after* the broadcast of content considered unduly sexually explicit by the Panel (although admittedly *before* some of the more graphic definition of the term "snowballing"). In the Panel's view, even if the disclaimer had been proposed more seriously rather than humorously, and had been more usefully made *before* the offensive content so as to allow listeners the time to react to the warning, a "listener advisory" is not likely to achieve equivalence with the viewer advisory required in the television context.

In the visual medium, where advisories are required, they must precede the program to which they apply, which provides, in principle, considerable lead time before potentially offending material may even be expected to appear. They are also required following every commercial break during the entirety of the program (the occasional exception to this principle is not germane to the discussion here). Moreover, they must be precise and focussed regarding the type of programming for which they provide an alert and

they must appear in both oral and written form. In radio, particularly in the amorphous format of an unscripted talk show, the hosts may not always know what subject matter will be coming. Even where they do, they may not know precisely when the contentious matter will arise. For the aurally-oriented medium, the materially effective visual advisory, which is one half of the double-barrelled television tool, is unavailable.

Thoughtful broadcasters have, in the experience of the CBSC, introduced listener advisories from time to time when they wished to assist their audiences in avoiding potentially problematic material. It is a practice that the Council applauds. Such warnings are not generally, however, a defence for the broadcaster against the airing of otherwise inappropriate programming, as they may be in post-Watershed television broadcasting.

Broadcaster Responsiveness

In all CBSC decisions, Adjudicating Panels consider the broadcaster's responsiveness to the complainant. While it is understood that the broadcaster is under no obligation to agree with the complainant, it is expected that its representatives charged with replying to complaints will address the complainant's concerns in a thorough and respectful manner. In this case, the B.C. Regional Panel concludes that CKVX-FM has met its responsibilities of membership in this regard on this occasion.

ANNOUNCEMENT OF THE DECISION

CKVX-FM is required to: 1) announce this decision, in the following terms, once during peak listening hours within three days following the release of this decision and once more within seven days following the release of this decision during the time period in which *Pepper and Crash* was broadcast; 2) within the fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the statement to the complainant who filed the Ruling Request; and 3) at that time, to provide the CBSC with that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by CKVX-FM.

The Canadian Broadcast Standards Council has found that CKVX-FM has breached the clause of the Canadian Association of Broadcasters' *Code of Ethics* which requires that particular care shall be taken by radio broadcasters to ensure that programming on their stations does not contain unduly sexually explicit material. By describing certain sexual activities during the October 30, 2002 episode of the *Pepper and Crash Show*, CKVX-FM violated the requirements of Clause 9 of the *Code of Ethics*.

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

APPENDIX A

CBSC File 02/03-0237 CKVX-FM re comments made on the *Pepper and Crash Show*

The following conversation was broadcast during CKVX-FM's *Pepper and Crash Show* on October 30, 2002 at approximately 6:50 am:

- Host #1: All right, so snowballing is the topic of today's show. Little did we know. I kinda thought, you know what I thought honestly? I thought sorta, that it had to do with, like something, like, like growing exponentially in size. I thought snowballing might have had some connections to tantra.
- Host #2: Right. You know, or maybe it was something cold too? You know, who knows, right?
- Host #1: But I was always way behind the curve with these things. Like I never, you know, like, uh, I didn't know what a blow job was 'til I was in grade six.
- Host #2: Okay.
- Host #1: You know?
- Host #2: 'Til the question period in health class when somebody put it in the question box?
- Host #1: Exactly. And then the teacher was like "Yeah, a blow job is when, you know, the female takes the male's penis into her mouth."
- Host #2: Right.
- Host #1: And I was like "Ahh". And then she goes on, "It's also called 'a hummer'. [Host #2 laughs] Or 'head'".
- Host #2: Now's as good a time as any to throw the disclaimer here on the, uh, program. You know how it is. We've got some adult conversation going on so if there's the little ones listening ...
- Host #1: It's probably not good.
- Host #2: ... they might learn something. Jeremy sends in an e-mail; said he just met this girl. He's been dating her for a little while and she's very adventurous. Every time they're together, they do something new. And then she says "So Jeremy, are you into snowballing?" He says "Sure, whatever", not knowing what it was.
- Host #1: Snowballing? I love winter sports.
- Host #2: So he asks us if we knew. We didn't know, but now, let's see, we've talked to Shawn and Cody off the air; they've verified the same thing. Now Rachel, third time lucky I would think. Okay, go ahead, Rachel.

Rachel: Snowballing is when a guy receives oral pleasure from his girlfriend or boyfriend and he ejaculates into their mouth and then they keep it in their mouth and they kiss him and he swallows his own ejaculation.

Host #2: That's pretty clinical right there.

Host #1: Yeah, yeah.

Rachel: Yeah, I just like to put it in somewhat tasteful terms.

Host #1: You must be a nurse or work in a brothel.

Rachel: [giggles] No.

Host #1: Wow. Are you into snowballing?

Rachel: No.

Host #1: No? Why not?

Rachel: It's just a tad bit icky. But if the person was into it, I'd be like "Fine, I don't have to swallow it for once." [Hosts laugh]

Host #1: Okay Rachel.

Host #2: Good point Rachel. Again ...

Host #1: Thanks a lot.

Host #2: ... the material this morning may not be suitable for all listeners. We got Gord on the line?

Host #1: Yeah, Gord is on the line. Hey Gord, how are you, man?

Gord: Pretty good.

Host #1: 'Kay, now you, you agree with Rachel's definition of 'snowballing'?

Gord: Oh, it's right on the money.

Host #1: It's on the money. Now have you ever snowballed, Gordo?

Gord: No I haven't.

Host #1: Oh you haven't. But now my question though is, like, let's say, you know, you receive oral sex from, uh, your girlfriend. Or your boyfriend, I suppose. Girlfriend, Gordo?

Gord: Yeah, yeah, girlfriend.

Host #1: Okay.

Gord: Definitely girlfriend.

Host #1: And then as a circumstance, you know, of the, uh, of the act of love, you kiss her afterwards.

Gord: Mm hm?

Host #1: And you can taste that indeed, you can confirm that this was the girl just giving you oral sex.

Host #2: Maybe not a full snowball, just a snowflake.

Host #1: Yeah.

Gord: Yeah?

Host #1: Is there a problem with that?

Gord: Well not if it's my own, my own ejaculation, I wouldn't see that as a problem.

Host #1: I agree with that!

Gord: Okay? But, you know, there's a bit of a double standard here because every, every guy expects the girl to swallow, but then when this subject comes around, it's a little, a little bit of a dicey subject for guys.

Host #1: Uh huh?

Gord: And, uh, you know, it's a bit of a double standard here we got goin'.

Host #1: I agree with you Gord.

Host #2: It's true, yeah.

Gord: So that might be the next portion of your question: Why is there a double standard here?

Host #1: Well the question I've been asking everybody about the snowballing is, like, when you're having sex with a girl ...

Host #2: Mm hm.

Host #1: ... and then, you know, you stop having the sex for a few minutes ...

Gord: Yeah?

Host #1: ... and then you start having the, uh, the oral sex, you know, it's like the exact same thing.

Host #2: It seems a little backwards.

Host #1: You're act -. Well, uh, why? What's wrong with that?

Host #2: From my past experiences it seems backwards.

Host #1: Different strokes for different folks and for some, no strokes at all.

Host #2: Okay.

Host #1: But, you know, but you're doin', you're doin' the, the, you know, copulation thing and then you stop and go on to oral, you're basically snowballing the girl.

Host #2: It's a fireball.

Host #1: Fireball, yeah!

Gord: There you go!

Host #1: Okay!

Gord: There you go.

Host #1: So I'm just suggesting that maybe the guys should be a little bit less "Oh no, that's gross! Ugh!"

Host #2: Yeah.

Gord: Well, it's, uh ...

Host #1: A little bit more understanding anyway.

Gord: Yeah, yeah we guys gotta deal with our own sexuality I guess, you know.

Host #2: All right. Thanks for the call Gord.

Gord: All right. Have a good day guys.

Host #2: So we figured something new. This is like one of those word-of-the-day calendar kind of shows. We just figured out a new word, what it meant.

Host #1: We are learning and growing together.

APPENDIX B

CBSC File 02/03-0237 CKVX-FM re comments made on the *Pepper and Crash Show*

I. The Complaint

The following complaint dated November 1, 2002 was sent to the CBSC:

Dear CBSC

This is a letter to report a disgusting event on X FM Radio here in Van. B.C. It is a newer station playing music young teenagers like to listen to.

This happened on October 30th at 6:50 AM to past 7:30 AM.

The event was so disturbing and disgusting – I feel I must explain to you the nature of this graphic discussion of a particular sex act on the radio. I have never heard of this before and would be content to live my life without knowing about it.

The act described on the radio was in precise graphic detail – here it is! A man gets oral sex, the partner then balls up the stuff in the mouth and then passes this onto the man by kissing; the stuff is then swallowed by the man. This is supposed to be called “snowballing”.

I am sorry to have to write this or repeat it, and hope you can understand why I, a mother of two teenage children who both listened to it described and discussed like last night’s dinner, on XFM at regular listening time.

My daughter who is 16 was at home and had this on the radio for over 45 minutes; she listened to it and went to her high school where it was discussed yet again.

My son and I heard it, but I did change the station, as we were in the car – I was driving him to his school. This subject was again discussed at his school.

The complainant also attached a letter she had written directly to the station:

I have a complaint! I have never in my life written to anyone with a complaint! I consider myself very easy going – not much fazes me, I don’t get upset easily – nor am I easily offended.

Every school day morning I drive my son to school in Kitsilano; we have about an hour drive together and he loves your station. He adores Pepper and Crash and jokes all day about the funny stuff that goes on in the morning with other friends who listen at the same time. My son is 14 years old and goes to grade 9.

I kind of like your morning show myself – but listen mostly because of the music and my son.

This morning was different! I have never heard anything so disgusting; it was “so over the line” I feel I can’t even repeat it. If you have not heard it – I would gladly tell it to you so you can have the same visions my son and I had to endure as I tried in vain to change the

channel. I say it was in vain as the topic started out innocently enough “what is snowballing?” This seemed to be interesting and we both were wondering “what could this be?” You then had a “guest” phone in who graphically described this event in quick succinct detail.

Trying to change the channel did no good, we had already heard it all in the space of about 12 seconds – the detailing of this sexual act was so explicit as to leave nothing to the imagination. The picture this produced was both mind numbing and so disgusting – to hear it on a radio station was as low as you can go.

I cannot understand why you would have something like this with no warning on air; if they were trying to be like Howard Stern your morning show should try something different, they don't have Howard's talent.

As I turned to look at my son while I was driving and also trying to change the station, my son had the most shocked look on his face; thanks to you I will always remember that look!

We have listened as Pepper and Crash have talked about disgusting things like vomit and such – my son being a 14 year old guy would laugh and I would say “yuck” and he would laugh again. This, however, was beyond any scope of understanding – maybe they should do the 12 midnight till 4 AM show, then they would not have to worry about grade 9 students listening to graphic sexual acts explained in grand detail.

This all happened Wednesday morning October 30 at 10 minutes to 7.

To say we will be listening to other radio stations in the next while is an understatement.

II. Broadcaster Response

The broadcaster responded to the complainant's letter on December 6 with the following:

We have received both of your listener complaint letters dated November 1, 2002; one addressed directly to CKVX-FM (Xfm) and the other to the Canadian Broadcast Standards Council (CBSC).

As a self-regulating decision-making body, the CBSC regularly reviews and examines listener complaints about radio and television programming matters. The CBSC's established procedure is to ask radio stations to respond directly to any complaints it has received. This procedure is outlined in correspondence sent to both the complainant and the radio station involved. In your case, the CBSC's letter of November 18 has requested that we provide you with a response within 21 days.

Given the dual process nature of your complaint letters, we considered it appropriate for our response to address both of the complaints, including that in the CBSC's file. Unfortunately, as a result, our response to your letter to us may seem to be a long time in coming. We apologize for any inconvenience or frustration this may have caused. Our intent was merely to effectively deal with both complaint processes at the same time.

In your letters, you clearly express your discontent with a programming segment that was broadcast on Xfm on the morning of October 30, at approximately 7:00 am. The segment in question discusses a particular sexual act popularly known as “snowballing”.

Although not recognizable by all of our audience, the issue discussed that morning is

certainly not unknown to our listeners. A number of them called in that morning to identify the act in question and even to provide further information or opinions on the topic. Overall, the discussion on the issue was light-hearted and slightly humorous in nature. The intent was certainly not to discuss the issue in a disgusting or repulsive way. In fact, our morning show team and call-in listeners often took the opportunity to discuss the issue in a way that certainly tried to downplay the supposed sensationalism of the act.

We also recognize that this type of discussion is not for everyone. On many occasions during the discussion, our Xfm morning show hosts (Pepper and Crash) issued on-the-air disclaimers about the adult nature of the content. Moreover, the target audience for Xfm is largely men in the 18 to 24 year old or 18 to 35 year old range. These listeners are often well aware and interested in specific economic, political and social issues, controversial or otherwise.

Admittedly, this type of programming is not for everyone and does not suit the tastes and interests of all of our listeners. We regret that you found our programming segment on the morning of October 30th to be inappropriate. Please understand that it was never our intention to offend or embarrass you in any way. We sincerely apologize for any frustration we may have caused.

Thank you for taking the time to comment and for allowing us the opportunity to respond to your concerns. I hope that we have addressed your concerns. We appreciate the opportunity to address your concerns and respond to your complaint directly.

If you wish to discuss this issue or any other regarding the programming at Xfm, please feel free to contact me anytime.

The complainant returned her Ruling Request dated December 11.