
**CANADIAN BROADCAST STANDARDS COUNCIL
PRAIRIE REGIONAL PANEL**

CJAY-FM re *Forbes and Friends* (multiple choice “quiz”)

(CBSC Decision 02/03-0638)

Decided December 15, 2003

D. Ish (Chair), D. Braun (*ad hoc*), R. Cohen (*ad hoc*), V. Cownden, V. Dubois and F.
Fraser

THE FACTS

On February 10, 2003, between 8:30 and 9:00 am, CJAY-FM (Calgary)’s morning radio show, *Forbes and Friends*, aired a recurring parody “quiz” segment during which a caller is asked a few multiple choice questions which he or she *must* answer with the *third* choice, i.e. answer “c”, which is predictably the most provocative of all three possible choices. On the morning in question, there were three quiz questions. The short segment went as follows:

Gerry Forbes: Hi, CJAY!
Caller: Hello
Forbes: Hi. Who’s this?
Caller: It’s Pat.
Forbes: Pat, you wanna play?
Pat: Sure.
Forbes: You really can’t blow this one, buddy.
Pat: Okay.
Forbes: Okay. Muslims around the world continue to travel to Mecca on the week-end to celebrate: a) a celebration of forgiveness; b) homage to Allah; or c) just a way to build up some frequent flyer miles so you don’t have to pay the next time you want to ram an airplane in the stronghold of the Western civilization.
Pat: I’ll take C.
Forbes: Absolutely right there.
Announcer 2: You nailed that one. Yeah.
Forbes: Michael Jackson filed complaints over the recent documentary saying that people think that he’s a pedophile. And the interviewer had no right to: a) betray him; b) break a promise; or c) portray him accurately.
Pat: C
Forbes: Absolutely.
Announcer 2: Well done.

Forbes: He's doing a good job here.
Announcer 2: Jeez.
Forbes: Researchers followed over 2000 men for 20 years and found out that if they didn't shave everyday they were more likely to: a) die sooner; b) grow shorter; or c) give their girlfriends a nasty beard burn on their taints.

(Laughing)
Caller: I think it's C again.
Forbes: He nailed it. He's got the prize.
Announcer 2: That's enough.
Forbes: It's as simple as that.
Announcer 2: (Laughing) He's just happy he got taint on there.
Forbes: You don't want to get burned up taint.
(More laughter.)

The CBCS received a complaint from a listener who stated that the third answer to the Muslim-related question constituted a "comment [which] goes beyond the realm of what is acceptable for a shock-jock." (The full text of all correspondence may be found in the appendix to this decision.)

In its response of February 24, CJAY-FM's Vice-President and General Manager stated in part:

I have now had the opportunity to listen to the Gerry Forbes quiz that was aired on CJAY FM on February 10, 2003, between 8:30 and 9:00 AM. I do agree that the answer to the quiz was in rather poor taste and I have addressed my concern with the appropriate people.

CJAY FM is an adult radio station targeting a listening audience of males between the age of 18 to 49 years of age. Much of the programming aimed at that target group, is meant to be of a humorous nature, similar to the humour on many of the mainstream television shows such as The Simpsons, Saturday Night Live or the Comedy Network. I'm sure you can appreciate that humour is a very subjective issue. I'm sorry if we may have offended you with this comedy bit, but we certainly did not mean to do that. The contest was meant as comedy entertainment only.

The complainant was dissatisfied with this response and replied on March 2nd with a letter which read in part:

Thank you for your prompt, albeit inadequate, reply. I cannot help but read your response as implying that people who did not find the comment funny lacked a sense of humour (or perhaps, the right sense of humour), despite the comment being "in rather poor taste".

The comment was racist. Dressing this type of comment up in the veil of subjective humour for a target audience does not alter that fact. Comparing the show to programs such as The Simpsons does CJAY 92's program too much, and the Simpsons too little, credit. The Simpsons and other satirical programs are funny in large part because they manipulate stereotypes and poke fun at the assumptions people hold. Mr. Forbes' quiz show lacked any such subtlety or cleverness. Anti-Muslim is not an appropriate target audience.

THE DECISION

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

CAB Code of Ethics, Clause 2 – Human Rights

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

CAB Code of Ethics, Clause 6 – Full, Fair and Proper Presentation

It is recognized that the full, fair and proper presentation of news, opinion, comment and editorial is the prime and fundamental responsibility of each broadcaster. This principle shall apply to all radio and television programming, whether it relates to news, public affairs, magazine, talk, call-in, interview or other broadcasting formats in which news, opinion, comment or editorial may be expressed by broadcaster employees, their invited guests or callers.

CAB Code of Ethics, Clause 9 – Radio Broadcasting

Recognizing that radio is a local medium and, consequently, reflective of local community standards, programming broadcast on a local 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 the 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.

It is obvious that the multiple choice "quiz" was merely a platform for the expression of a series of jokes. The Prairie Regional Panel considers that, while the last two jokes were on the edge of acceptability, the first joke, the one relating to Muslims, was in breach of the Human Rights provision of the *CAB Code of Ethics*.

Just a Joke? – The So-called Comedic Defence

While appearing to acknowledge that the segment was "over the top", CJAY-FM's Vice President and General Manager relied heavily on the humorous intention of the "quiz" as a defence of its use. He spoke equally to the notion that humour is itself a very subjective issue. Both humorous intention and subjectivity are components of the comedic defence, a perspective raised frequently in the past by broadcasters in defence of their hosts or their

shows. The Panel in fact accepts the idea that comedy is a subjective matter; it acknowledges that what may appeal to some will not to others. Indeed, it realizes that what may appeal to some may actually *offend* others. There is not a right and a wrong to funniness. This does not, however, entitle those who would find something funny to defend its broadcast on *that* ground against all other values. Comedic intention is not, for example, a defence to a broadcast that would otherwise breach the Human Rights Clause of the *CAB Code of Ethics*. Comedic intention does not, in other words, sanitize or rehabilitate material that is unduly discriminatory under that provision.

In a leading example of the application of that principle, namely, *CHOM-FM and CILQ-FM re The Howard Stern Show* (CBSC Decision 97/98-0001+, October 17-18, 1997), the Quebec and Ontario Regional Panels jointly concluded that the September 1997 broadcasts of *The Howard Stern Show* contravened the *Code of Ethics* and *Sex-Role Portrayal Code*. The stations defended the show as satire/comedy and Stern put the matter in the vernacular. He said that he is not a head of state and ought not to be taken seriously. Reading between his lines, one might reasonably conclude that it was his position that, since nothing he said should be taken seriously, he could say anything he chose. Needless to say, the Regional Panels rejected that viewpoint in the Canadian context; they made the following comments regarding the comedic defence:

The fact that no-one mistakes him for a head of state does not mean that this gives him the entitlement to say whatever comes into his head and out of his mouth. The Regional Councils cannot comment on whether he might have such a privilege in the United States but, in their view, he cannot expect such a free rein in Canada. There are in this country limitations on what a broadcaster is free to air and the use of abusively discriminatory language such as he used on September 2 clearly surpasses the permissible. Even had his comments been understood as comedic by some elements of his audience, they would be excessive by Canadian standards.

That conclusion should not, however, be so extended as to render any and all humour that is dependent on an ethnic base ineligible for broadcast. That is not the case. There is a plethora of CBSC decisions supporting specific examples of the broadcast of ethnic humour. As the Ontario Panel held in *CHFI-FM re the Don Daynard Show* (CBSC Decision 94/95-0145, March 26, 1996), when it tickles and merely pokes fun, it will be acceptable. When it bludgeons, it will not be. When it is nasty, it will fail the test. When Newfoundlanders were described as “assholes” in *CKTF-FM re Voix d’Accès* (CBSC Decision 93/94-0213, December 6, 1995), the humour was considered seriously excessive. As the Quebec Regional Panel said,

Whether intended seriously or in jocular fashion, the use of that term in reference to this or any ethnic, racial, national or other discernible group was derogatory, abusive and discriminatory and in violation of clause 2 of the *CAB Code of Ethics*.

More recently, in *CKTF-FM re comments made on Les méchants matins du monde* (CBSC Decision 00/01-0705, April 5, 2002), the dialogue concerned the allegedly humorous, but in reality barbaric, notion of hunting Hindus. Not stopping there, the comments targeted that ethnic community’s “alleged habits, practices and conventions.” The Quebec Panel concluded:

The jokesters [...] did not joke with Hindus; they laughed at Hindus; they made fun of Hindus. They demeaned and denigrated the objects of their "humour". This was "grit your teeth", "cringe in discomfort" mockery; it had no cuteness or levity to offer. It did not belong on the public airwaves of Canada. The broadcast of this sketch constituted abusively or unduly discriminatory comment, in breach of the human rights clause of the CAB Code of Ethics.

In *CHMJ-AM re a segment on Loveline* (CBSC Decision 02/03-0459, July 22, 2003), the broadcast in question was of a different style of humour. The challenged program was a "best of" episode of *Loveline* in which the hosts took a call from a female listener, "Lorraine", a telephone sex operator, who was seeking advice on how to make her callers stay on the phone longer (she earned nothing from calls less than 7 minutes). In a humorous manner, the hosts suggested that she slip "subliminal" words (such as "Holocaust", "Vietnam", and "cancer") into her dialogue with the callers in order to dampen their ardour and prolong the calls. Lorraine failed to understand what the hosts were suggesting and had apparently never even heard of the Holocaust. As a result of the female caller's inability to even recognize the historical event, the hosts made "helpful" sarcastic comments such as "burn those Jews" and "gas 'em in the shower, baby." As a result, one listener complained to CBSC that this broadcast was offensive and racist, and ridiculed the Holocaust experience. The broadcaster responded that the Holocaust was only used as a word reflecting unpleasant images and that the humour in the segment was solely related to the inability of the caller to understand what had been suggested to her.

The B.C Regional Panel examined the complaint under the Human Rights Clause as well as Clause 6 of the CAB's *Code of Ethics*, which requires the "full, fair and proper presentation of news, opinion, comment and editorial". On the human rights issue, the Panel found that the comments were not unduly discriminatory.

It does not find that any of the comments quoted above were advocating violence toward the Jewish population. It does not consider that any of those comments were directed at that identifiable group. It does not believe that there was any attempt to denigrate or insult Jews. In short, the Panel does not find a scintilla of racist commentary in the remarks of either the co-hosts or their celebrity guest.

On the other hand, the Panel decided that the "humorous constructs erected here on the base of great tragedy," namely, the Holocaust in this instance, constituted improper comments. The Panel stated that it

understands the intended humour in the ludicrous concept of the sexual purveyor 'subliminally' mouthing such words in the midst of her erotic discourse. It also understands the mockable inanity of the intellectually hapless Lorraine. When, however, the hosts progressed to the level 'Yeah, yeah, burn those Jews. Gas' em in the shower, baby,' they exceeded any reasonable level of propriety.

In other words, as the foregoing decisions demonstrate, it is not the comedic defence that is determinative, it is the nature of the underlying material. If gently discriminatory, it will create no Code problem. If aggressively or oppressively discriminatory, it will fail. While the CBSC will not judge matters of taste, it will be seriously concerned about heavy-handed

discrimination. Broadcasters who cannot be sure whether a matter is a question of taste or unduly discriminatory comment ought to err on the side of respect for the identifiable groups which may be the object of their taunts. Freedom of expression is not a shield behind which unduly discriminatory material should expect to hide.

The Muslim “Quiz”

There are times in the life of a society when it is far too easy to single out an identifiable group as a recipient of harsh discriminatory comment. Society is frequently ready to find a scapegoat for segments of its ills, perhaps as a catharsis for their resolution. It is perhaps when such solutions come most easily that society ought to be most vigilant. Since the shocking events that have come to be known simply as ‘9/11’ and the proliferation of incidents of terrorism both before and after that date, it has been all too easy to target the Muslim communities with comments that are generalizations which are negative, hurtful and utterly unjustified.

That was the case with the challenged program. The humour in this broadcast was singularly unacceptable. The implication that all Muslims (how else could one interpret the words “Muslims around the world”?) might travel to their *holiest* city in order to fund terrorist activities is outrageous. To put it in perspective, the failure to distinguish between the Muslim community and terrorists is no more acceptable or justifiable than a failure to distinguish between (to choose one of many possible examples) white persons and the Ku Klux Klan. The Muslim community bears no more responsibility for persons within its ranks who break the laws than all white persons bear responsibility for the illegal actions of Klan members. To conclude, as the Vice President and General Manager of CJAY did, that the challenged humour was “in rather poor taste” is an example of understatement. The broadcast of this part of the “quiz” constitutes a breach of Clause 2 of the *CAB Code of Ethics*.

The Michael Jackson “Quiz”

The humour involved in this segment of the show revolves around the import of the word “paedophile”. It should, first of all, be borne in mind, that the use of the word does not constitute an accusation of criminal activity. According to the *Oxford English Dictionary*, paedophilia is defined as “sexual desire directed toward children.” It does not even imply acting on such desire. The *Criminal Code* includes no offence of “paedophilia” (although it does include the crime of “Sexual Exploitation”). While he currently stands accused of criminal activities before the American courts, there was no reference here to those. Even so, had the broadcast been a newscast, the “conclusion” that Michael Jackson was “accurately portrayed” as a paedophile might well be journalistically improper.

Since the matter at hand does not even involve an implication of criminal activity (and this in a context that is not journalistic), the criteria are not as exacting. The context is

humorous and the level of expectation of the audience is commensurate with that. In this segment, unlike the previous “quiz” question, fundamental issues such as human rights are not at issue. Michael Jackson is a public figure. Moreover, he is a willingly public figure. He has made, and continues to make, his living by presenting himself to the public. He has chosen the method and style of self-promotion, which have been a matter of public awareness and discussion in the past, as well as in the present. He, as well as others, has publicly commented on his lifestyle and the most recent judicial controversy relating to his involvement with children is not the first.

In any event, the matter involves satirical comment and bears a resemblance to the circumstances considered by the National Conventional Panel in *CTV re an episode of Open Mike with Mike Bullard* (CBSC Decision 01/02-0783+, January 15, 2003). That Panel said:

As a general principle, those news issues that are reported in the written and electronic media already are or soon become matters of public interest. They may be political, civic, social, religious, economic, financial, scientific, or sports or entertainment-related, to name some only of the categories or areas that may be said to be of such a nature. In any such categories, they may also be local, provincial, national or international in scope. Some may, by their nature, be humorous, others serious or tragic. Almost all matters of public interest are subject to becoming fodder for the pen, keyboard or microphone of the social commentator or satirist.

The Panel must ask itself when, if at all, such matters of public interest should be immune from satirical observation. In Clause 7 of the *CAB Code of Ethics*, the “necessity of presenting all sides of a public issue” is recognized; however, there is a limitation, namely, “to treat *fairly* all subjects of a controversial nature. [Emphasis added.]” In Clause 2 of the *CAB Code of Ethics*, it is provided that neither abusive nor unduly discriminatory material “based on matters of [...] religion” shall be broadcast. This would, the Panel believes, be another limiting constraint. There may be others; however, there is no need in the circumstances of the present complaint to seek these out. In any case, whether the satirically treated subject is judged to fall on the protected or the unprotected side, the Panel understands that the individuals or groups on the receiving end of the satirical commentary are likely to feel discomfited by the exposure. That is, after all, the nature of satire. The *Shorter Oxford English Dictionary* defines ‘satire’ as:

A work or composition in prose [...] which (usu. humorously) exposes prevailing vices or follies or ridicules an (esp. prominent) individual; a lampoon; a performance or broadcast of a similar nature.

Whether the individual or group exposed or ridiculed has been ashamed of the activity that has given rise to the satire is not generally the concern of the humorist. Indeed, the humorist is entitled to make the comments, subject to the limits noted immediately above, as he or she is the beneficiary of the principle of freedom of expression in his or her satirizing.

The Panel does not find that the Michael Jackson “quiz” question went beyond reasonable satirical comment on a matter of public familiarity and interest. Nor does it find that it amounted to improper or unfair presentation of opinion, comment or editorial, in breach of Clause 6 of the *CAB Code of Ethics*.

The Men's Shaving Research "Quiz" Question

This part of the "quiz" is, at worst, a case of bad taste and sexual innuendo. It falls into the category of some of the matters treated in *CFMI-FM re Brother Jake Morning Show* (CBSC Decision 00/01-0688, January 23, 2002), which the B.C. Regional Panel viewed as "juvenile, sophomoric, locker-room style and in poor taste," but not in breach of the Codes. The Panel stated:

The hosts frequently discuss and make jokes about masturbation, flatulence and bodily functions and engage in discussions about such matters as Jake in his boxer shorts, "blue angel" farts, and a 0-0 sports score as being "dog balls". Although potentially offensive to many listeners, in cases where such material is not sexually explicit, the Panel does not find it in breach of any broadcaster Codes.

While the term may be slang for genitalia, any reference to sexual activity in part 'C' of that "quiz" is obscure, rather than explicit. The Panel concludes that the third of the "quiz" questions is not in breach of Clause 9(b) of the *CAB Code of Ethics*.

Broadcaster Responsiveness

The requirement that a broadcaster be responsive to the letter of complaint sent by a member of the public is considered by the Adjudicating Panels to be a significant part of the membership requirements of the CBSC. That responsiveness is an essential part of the dialogue by which the CBSC considers that matters that trouble members of the public sufficiently to compel them to write are often successfully resolved. When accomplished in thorough and sensitive ways, such correspondence is also a way of letting the public know that broadcasters care about their audience's concerns. In this case, while the Panel disagrees with the broadcaster's position as set out in its response to this complaint, it nevertheless considers that the broadcaster has responded fully to the complainant's concerns and thus met the responsiveness requirement. Nothing further is required in this regard.

CONTENT OF THE ANNOUNCEMENT OF THE DECISION

CJAY-FM is required to: 1) announce this decision, in the following terms, once during prime time 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 the morning show *Forbes and Friends* is broadcast; 2) within fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the announcements 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 CJAY-FM.

The Canadian Broadcast Standards Council has found that CJAY-FM has breached the Human Rights provision of the Canadian Association of Broadcasters' *Code of Ethics*. During the episode of *Forbes and Friends* of February 10, 2003, CJAY-FM broadcast comments imputing terrorist actions to the Muslim community at large. By broadcasting such comments about the Muslim community, CJAY-FM breached Clause 2 of the *CAB Code of Ethics*, which prohibits the broadcast of abusive or unduly discriminatory material or comment which is based on matters of race, national or ethnic origin or religion.

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

APPENDIX B
To
CJAY-FM re Forbes and Friends (multiple choice “quiz”)(CBSC Decision 02/03-0638, December 15, 2003)

The following is a transcript of the segment broadcast on *Forbes and Friends* on February 10, 2003:

Gerry Forbes: Hi, CJAY!
Caller: Hello
Forbes: Hi. Who's this?
Caller: It's Pat.
Forbes: Pat, you wanna play?
Pat: Sure.
Forbes: You really can't blow this one, buddy.
Pat: Okay.
Forbes: Okay. Muslims around the world continue to travel to Mecca on the weekend to celebrate: a) a celebration of forgiveness; b) homage to Allah; or c) just a way to build up some frequent flyer miles so you don't have to pay the next time you want to ram an airplane in the stronghold of the Western civilization.
Pat: I'll take C.
Forbes: Absolutely right there.
Announcer 2: You nailed that one. Yeah.
Forbes: Michael Jackson filed complaints over the recent documentary saying that people think that he's a pedophile. And the interviewer had no right to: a) betray him; b) break a promise; or c) portray him accurately.
Pat: C
Forbes: Absolutely.
Announcer 2: Well done.
Forbes: He's doing a good job here.
Announcer 2: Jeez.
Forbes: Researchers followed over 2000 men for 20 years and found out that if they didn't shave everyday they were more likely to: a) die sooner; b) grow shorter; or c) give their girlfriends a nasty beard burn on their taints.
(Laughing)
Caller: I think it's C again.
Forbes: He nailed it. He's got the prize.
Announcer 2: That's enough.
Forbes: It's as simple as that.
Announcer 2: (Laughing) He's just happy he got taint on there.
Forbes: You don't want to get burned up taint.
(More laughter.)