
**CANADIAN BROADCAST STANDARDS COUNCIL
PRAIRIE REGIONAL PANEL**

CJKR-FM re a morning show parody (Osborne 24)

(CBSC File Number 03/04-0393)

Decided November 1, 2004

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

THE FACTS

On December 9, 2003, at approximately 7:15 am, Winnipeg's CJKR-FM ("Power 97") aired a parody segment during its *Wheeler and Hal* morning program. The segment was inspired by a recent news event in which the body of a young man was found behind the wall of a bar in Winnipeg's Osborne Village neighbourhood. There was no suggestion that he had been the victim of foul play or had himself been associated in any way with criminal gangs or activities. Although his identity was made known at the time, there was no suggestion that he was a figure known to the public in any way. Referring to the popular television program, *24*, the Power 97 segment ran as follows:

Host 1: Anyways, "24" is on tonight.

Host 2: You'll be watching.

Host 1: I will be watching. And, for you, again this morning, another episode of "Winnipeg 24".

Narrator [music in background]: Osborne Village 24. The following takes place sometime between the hours of 2 am and 3 am. This occurs in real time.

A muffled and screaming voice: Help me, I'm in the wall.

Respondent: Shopping in the mall? Uh, no, thanks, I'm done shopping.

Muffled voice: No, you idiot, I'm stuck in the wall.

Respondent: Tickets for the New Year's Eve Power Ball? No, I got it.

[Host laughing in the background]

Muffled voice: No, for God's sake, I'm in the wall.

[Host laughing in the background]

Respondent: Hmm, I'm 6'1". I'm pretty tall.

[Laughing continues]

Muffled voice: Oh, for the love of God, I'm stuck in the wall. Help me. I can't breathe.

[Laughing]

Respondent: These voices are bugging me. I'm out of here.

[Laughing]

Narrator: "Osborne 24"

On the morning of the broadcast, the complainant sent an e-mail to the CRTC, which in turn forwarded the complaint to the CBSC. In her e-mail, the complainant described her concerns with the segment as follows (the full correspondence is included in the Appendix):

The segment of the morning show that aired at approximately 7:15 in the morning of December 9, 2003 entitled "Winnipeg 24", it's supposed to be a spoof on the TV show "24" I guess. Well, in Winnipeg very recently the body of a young man who had been missing for some time was discovered in the walls of the night club he worked at. What the radio spoof had was one man with a muffled voice crying for help, saying stuff like he was in the wall and running out of air, the other voice answered all of his pleas as though he couldn't quite hear what the man in the wall was saying, and making stupid comments about it. This segment was completely tasteless and senseless, showing a lack of respect for members of the Winnipeg community who lost their family member, friend and colleague in this tragic accident [...]

The station's Program Director responded to the complainant on January 26, 2004. In his response, he stated:

[T]he Program, like many other contemporary music, news and entertainment radio shows can sometimes be controversial in nature. It attracts listeners, in particular adults in the 18 - 44 category from a wide variety of listener backgrounds including young professionals, blue and white collar workers, looking for entertainment in their drive to work in the morning. The Program uses a blend of sarcasm, humour and information, with a steadily growing audience [...] In particular, your email sets out your concerns regarding a parody of the popular television show "24". The Program parodied this show with a segment entitled "Osborne 24" ("Parody") centering on the recent events in Winnipeg's Osborne Village in which a body was found behind the wall of a bar.

We deeply regret that the comments made in the Parody offended you. We agree that those comments may have been in poor taste. However, be assured that the Program host was not trying to encourage disrespect for a tragic situation – he was merely making those comments in a humorous context. You will appreciate that humour and taste are extremely subjective elements and relative to the point of view of an individual [...] We deeply regret that the Parody offended you for that was not our intent. However, we have taken the time to thoroughly review the tape of the program in an effort to properly respond to your complaints and are of the view that while the language and subject matter of the

Parody may have been in poor taste, it did not breach the CBSC Code [...]

Dissatisfied with this response, on January 27, 2004 the complainant e-mailed her Ruling Request form to the CBSC.

THE DECISION

The CBSC's Prairie Regional Panel considered the complaint under the following provision of the Canadian Association of Broadcasters' (CAB) *Code of Ethics*:

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.

The Panel reviewed all of the correspondence and listened to a logger tape dub of the segment in question. The Panel finds that the segment was not in breach of the foregoing *Code of Ethics* clause.

Tragic Events as a Springboard for Humour

While the Prairie Regional Panel places great importance on the principle of freedom of expression, it is conscious of the countervailing responsibilities of broadcasters not to overstep the codified bounds defined in the various Codes administered by the CBSC. Although humorous, comedic or satirical intention may reflect the context in which the comments were originally made and the expectation of the audience, such pre-broadcast purpose does not constitute a defence to comments that would otherwise breach one or more of the codified standards.

Broadcast humour has in the very recent past taken on some new overtones, drawing sad or tragic events into its ambit. In *CHMJ-AM re a segment on Loveline* (CBSC Decision 02/03-0459, July 22, 2003), for example, the broadcast in question was a "best of" episode of the show 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 lasting 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 appeared not to understand what the hosts were suggesting and had apparently never heard of the Holocaust. As a result of her inability to even recognize the historical event, the hosts made sarcastic

comments such as “burn those Jews” and “gas ’em in the shower, baby.” One listener complained to the CBSC that this broadcast was offensive, racist and ridiculed the Holocaust experience. The broadcaster responded that the Holocaust was 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 was 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. With respect to the full, fair and proper presentation of comment, the Panel had significant concerns. It said:

The issue here is the employment of the apocalyptic historical event as a humorous crutch. The Panel readily understands the suggested dampening effect of such non-risible concepts as cancer, Vietnam (in reference, of course, to the 1960s war) and the Holocaust on Lorraine's yearning telephone clients. It equally 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 of “Yeah, yeah, burn those Jews. Gas ’em in the shower, baby,” and so on, even in aid of their sarcastic view of the ignorant “telephone actress”, they exceeded any reasonable level of propriety. The laughter of the hosts directed at the notion of the concentration camp trains and lethal “showers”, which combined to exterminate six million Jewish persons, accentuated the inappropriateness.

The humorous constructs erected here on the base of great tragedy constitute improper comment. The broadcast of this segment of *Loveline* constitutes a breach of the standard requiring the “full, fair and proper presentation of news, opinion, comment and editorial.”

In *CIGL-FM re Announcer Comments (Pygmies)* (CBSC Decision 02/03-0514, February 10, 2004), the Ontario Regional Panel examined a broadcast during which the afternoon host attempted to convert a then-current news report regarding a U.N. investigation about Pygmies being subject to cannibalistic practices in north-eastern Congo into a humorous story. As a part of the bit, he opined that Pygmies were perhaps like lobsters, the sweetness of their meat being a function of their size. A listener found the comments to be offensive and contributory to the desensitization of the public toward serious issues. In its reply to the complainant, the broadcaster pointed out that it was becoming more difficult to inform and entertain in the “present state of ‘Political Correctness’”. In examining the issue under Clause 6, the Ontario Regional Panel dealt with the issue of “political correctness” and the challenged humour in the following terms:

The problem with “political correctness” is that the phrase suggests an artificial correctness, one that is driven by “political” motivations, a desire to please or to be responsive, without necessarily otherwise supporting the underlying principle. The issue for the Panel is that there are statements that are, on the one hand,

discriminatory but acceptable and those, on the other hand, that are discriminatory and unacceptable. Not because someone might be “politically” offended but because the statements are themselves inherently *offensive*. While there *may* have been an era in which Canadian society was untroubled by such statements, Canada has evolved. It is a better place, rich in the ethnocultural multiplicity which is its make-up, proud of the diversity which it reflects, and conscious of its collective merit.

Had it ever been different is not the issue. It is *now*. Statements which are either unduly discriminatory or otherwise constitute improper comment do not meet the standards which Canada’s private broadcasters have seen fit to impose on themselves collectively. [...] The standards are, from the point of view of the CBSC and its members, honoured in their observance because it is correct to do so. Period.

In the end, the Panel explained that the humour used by the host diminished the human tragedy of the Pygmies in a mocking and dehumanizing tone, and thus fell afoul of the Codes. It stated that

The host of the hour may well have been unaware of the apparent plight of the Pygmies or, if aware, was insensitive to their reported problem. In any event, the situation which he chose to mock appeared to be a serious one, involving the murder of Pygmies, who were not even implicated in any form of conflict with the alleged perpetrators of the indignities. The Panel cannot know why the host chose to make light of this reported tragedy. Was it because he viewed the sufferers as unfamiliar and remote? Was it because cannibalism is a practice which is to all intents and purposes unknown to him and to Canadians generally? The underlying reasons matter little. [...]

The issue is not the size of the tragedy; it is its nature. That the Holocaust is better known does not diminish the awful experience of the Congolese Pygmies. The mocking, dehumanizing tone of the “joke” constitutes improper expression of opinion, comment or editorial pursuant to the terms of Clause 6 of the *CAB Code of Ethics*.

In the third of the CBSC decisions dealing with this issue, namely, *CJAY-FM re Forbes and Friends (Parody song re Chinese restaurant & Thai Sex Trade workers)* (CBSC Decision 03/4-0259, April 16, 2004), this Panel drew parallels between the *Loveline* decision and the broadcast of comments by the CJAY-FM hosts regarding a news story on a series of police raids on Calgary massage parlours believed to have been operating as common bawdy houses. The Panel did not find that the comments made in relation to the sex trade workers breached any codes and it explained its position in the following terms:

While some parallels can be drawn between the two cases, the Panel finds a material distinction between the *Loveline* decision and the facts of this case. First, in the *Loveline* case, the humorous device was clearly linked to the tragic events of the Holocaust. The hosts used real, morbid and painful Holocaust references in their attempt to carry further the humorous situation created by the phone sex operator’s lack of knowledge of the historical occurrence. In this case, the humour and the tragedy are merely coincidental. The application of the Singapore Whore skit may have been inspired by the sad current Alberta events but it does not use them as part of the humour itself. There is, for example, no

reference to sex-slavery in the skit in question. The second important distinction relates to the on-air recognition of the inappropriateness of the humour. The Panel notes that, on the morning following the November 6 broadcast, Gerry Forbes and his crew again dealt with the topical story of the sting operation but this time commiserated with the Thai women who came to Canada only to be forced to work in the sex trade under slave-like conditions. There was no such follow-up broadcast in the *Loveline* case. Quite the opposite, in the *Loveline* case, the inappropriate segment had in fact been repeated as part of a “best of” episode.

All in all, the Panel does not consider that the skit concerning Singapore sex workers crossed the line for inappropriate humour so as to constitute a breach of Clause 6 of the CAB Code of Ethics. That being said, the Panel urges broadcasters to exercise care and sensitivity in developing humour based on tragic events, no matter how topical the stories may be.

To the extent that common threads may be found in the cases, one might conclude that humour directly linked to, and constructed on, a tragedy is improper. Moreover, it would appear that the issue is not the size of the tragedy but its nature. On the other hand, a skit that may have been inspired by sad current events but does not use them as part of the humour itself is not necessarily in breach of the improper presentation provision of the *CAB Code of Ethics*.

The Application of the Precedents to the Matter at Hand

In the present case, there can be no doubt but that the underlying story is a sad one, no doubt a tragic one to friends and family, involving the death of an individual. Those in the majority on this Panel are not of the view that the segment constitutes a breach of Clause 6 of the *CAB Code of Ethics*. It is their view that the broadcaster did not primarily focus in any way on the individual who had inadvertently come to be trapped behind the wall. They consider that the humour the on-air host found in the story was strictly associated with the undeniably bizarre circumstances associated with the disappearance and death of the individual. They also consider that, because he was not well-known to the public, the humour was impersonal and detached. In the Holocaust and Pygmy cases cited above, it was not the individuals but the groups that were well-known to the audiences likely to have heard the joking at the expense of the groups. The Panel does acknowledge that the humour in the matter under consideration was tasteless and insensitive but not in breach of Clause 6 of the Code.

Dissenting Opinion of Panel Members R. Cohen (*ad hoc*) and V. Dubois

The dissenting Adjudicators do not differ from the majority with respect to their understanding of the principles established in the CBSC precedents. They do, however, differ in the conclusions they would draw from the application of the CBSC jurisprudence to the challenged segment. They consider that the joke was

local (and therefore likelier to affect individuals in the area of the broadcast), modern and fresh. Because the death was recent, it was likely to be rawer than if it had been an event of years before, long passed from the public consciousness. In the light of the time and geography associated with the Osborne Village death, the dissenting Adjudicators consider that the mocking of the undoubtedly lengthy, frustrating and painful demise of the young man would constitute a breach of the broadcaster obligation of “fair and proper presentation of [...] comment.”

Broadcaster Responsiveness

The CBSC considers, as a part of every decision, whether the broadcaster has complied with its obligation to respond appropriately to the complainant’s concerns. That dialogue is not only a part of every broadcaster’s CBSC membership obligations, it also represents the public’s sense of security in the process of self-regulation. While broadcasters are always involved with the reaction of their audiences to what they put on air, this dialogue with a listener is the manifestation to the complainant of that involvement. The Panel considers that the response by CJKR’s Program Director has fulfilled the station’s membership obligations on this occasion.

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
CJKR-FM re a morning show parody (Osborne 24) (CBSC Decision 03/04-0393, October 22, 2004)

I. The Complaint

The following complaint dated December 9, 2003 was sent to CRTC and forwarded to the CBSC in due course:

Power 97 fm in Winnipeg

The segment of the morning show that aired at approximately 7:15 in the morning of December 9, 2003 entitled "Winnipeg 24", it's supposed to be a spoof on the TV show "24" I guess. Well, in Winnipeg very recently the body of a young man who had been missing for some time was discovered in the walls of the night club he worked at. What the radio spoof had was one man with a muffled voice crying for help, saying stuff like he was in the wall and running out of air, the other voice answered all of his pleas as though he couldn't quite hear what the man in the wall was saying, and making stupid comments about it. This segment was completely tasteless and senseless, showing a lack of respect for members of the Winnipeg community who lost their family member, friend and colleague in this tragic accident. I really think the radio station owes it to those people to issue a public apology. I have complained to the radio station personally and was not at all satisfied with the response I received. I was told that Power 97 must push the envelope to keep listeners happy. This is so far beyond pushing the envelope I can't even imagine how someone could justify this segment with that statement.

II. Broadcaster Response

The broadcaster responded to the complainant's letter on January 26, 2004, with the following:

The Canadian Broadcast Standards Council ("CBSC") has asked us to respond to your email of December 9, 2003. In your e-mail, you raised concerns regarding comments made during the Wheeler & Hal Morning Show (the "Program") aired on CJKR-FM (the "Station") on December 9, 2003.

As you may know, the Program, like many other contemporary music, news and entertainment radio shows can sometimes be controversial in nature. It attracts listeners, in particular adults in the 18 - 44 category from a wide variety of listener backgrounds including young professionals, blue and white collar workers, looking for entertainment in their drive to work in the morning. The Program uses a blend of sarcasm, humour and information, with a steadily growing audience. In fact, the Bureau of Broadcast Measurement ratings have recently rated the Program as No. 1 for the adult 18 - 44 category.

In particular, your email sets out your concerns regarding a parody of the popular television show "24". The Program parodied this show with a segment entitled "Osborne 24" ("Parody") centering on the recent events in Winnipeg's Osborne Village in which a body was found behind the wall of a bar.

We deeply regret that the comments made in the Parody offended you. We agree that those comments may have been in poor taste. However, be assured that the Program host was

not trying to encourage disrespect for a tragic situation – he was merely making those comments in a humorous context. You will appreciate that humour and taste are extremely subjective elements and relative to the point of view of an individual. The Canadian Association of Broadcasters' Code of Ethics, administered by the CBSC ("Code") clarify that "the broadcaster's programming responsibility does not extend to questions of good taste." The CBSC applies current social norms in its interpretation of the Codes. In previous decisions, the CBSC has acknowledged that a program "will not be everyone's "cup of tea" and it assumes that some members of society would be offended... That is not, however, the criterion by which the program must be judged." In a subsequent decision, the CBSC noted, "it would be unreasonable to expect that the airwaves be pure, antiseptic and flawless. Society is not. Nor are individuals in their dealings with one another... What may constitute the limits of acceptability in each challenged case will need to be appreciated in its context."

The CBSC "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 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...Such issues cannot alone be the cause of a broadcast sanction. They must be coupled with another defining criterion; namely, they must be abusive or discriminatory."

We deeply regret that the Parody offended you for that was not our intent. However, we have taken the time to thoroughly review the tape of the program in an effort to properly respond to your complaints and are of the view that while the language and subject matter of the Parody may have been in poor taste, it did not breach the CBSC Code. We have however, reviewed your concerns internally and have had discussions with our on-air staff about appropriate on-air content and we will continue to exercise greater diligence on such matters so as to demonstrate greater sensitivity to our listeners. Please be assured that we take our responsibilities as a broadcaster seriously. At POWER 97, we work to ensure all our programming complies with the Broadcasting Act, the Radio Regulations and the codes and standards expected of us as a member of the CBSC. Following our internal review of this matter, we are of the opinion that the comments made in the Program were not in breach of the Codes.

We trust the foregoing responds to the concerns you raised in your letter regarding the Program and the parody. At POWER 97, we recognize the importance of listener feedback and appreciate all comments. We thank you for taking the time and initiative to share your concerns with us.