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**CANADIAN BROADCAST STANDARDS COUNCIL  
QUEBEC REGIONAL PANEL**

CJMF-FM re a commentary on *Bouchard en parle*

(CBSC Decision 05/06-0326)

Decided February 3, 2006

M.-A. Murat (Chair *ad hoc*), L. Baillargeon, R. Cohen (*ad hoc*), B. Kenemy,  
G. Moisan, R. Parent

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**THE FACTS**

CJMF-FM (le 93.3, Quebec City) broadcasts the program *Bouchard en parle* weekdays from 6:00 to 9:30 am. Hosted by Sylvain Bouchard, the show features discussions about current events, opinion segments and interviews. On November 3, 2005, the host made the following comments:

[translation]

I'll cheer up; I'll cheer up a bit. I'll have, I'll tell you. I'm sick to death of getting eight e-mails from outraged people who want my head on a platter every time, as soon as there's an argument that leans a little too much to the right. Do you know what? I've got some things to say to you. It's people from the left, I know it. You hate Bush, you hate Americans, you get rid of unions. Listen to me carefully. It's the same damn bunch, the same bunch. I didn't agree with you, yet I said nothing. I have already openly stated my opinion against the closing of CHOI. It's the same bunch that assigns blame to Jeff Fillion, and others, for thinking they're always right and wanting to quash any opposition, eh? Do you remember that? Closing CHOI? All that. You find fault with, you find fault with Fillion for being, for being. You're the same, tabernac! You're the same thing. You do the same. For my part, I'm trying to do a show here where people can, I have my arguments. Go ahead, I read the e-mails, those in favour, those against, and we take your calls. And, since I don't share your way of thinking, because I'm too far to the right – shut your trap!

You're no better. You're doing exactly what you blame another host for being, to, to, to, block all opposition, always thinking you're right. All the same. It's no better. Is there any way to find a middle ground, left and right? Yes, we all have our own opinions. I'm not anti-American; I'm far more to the right than the

majority, a certain majority. No, I'm not sure it is the majority, not in Quebec City. I think even Quebec City, not sure it isn't a bit more to the right. Anyway, no big deal. Keep your cool, stay cool.

You know, filing a complaint on the spot, those types of things, oh no, writing to the CRTC. I've had it with that, with losing my time on that. And, I know exactly where it's coming from. I know which bunch is behind all this. And, I know very well what you aim to accomplish. Sending a complaint to the CRTC because you heard the word "fuck" on the air. Geez! You hear it about thirty times a day on Radio-Canada. Whether it is soap operas, anything and everything, ADISQ, singers. For pity's sake! And here I am having to defend myself [Bouchard groans] for having said that word. It makes absolutely no sense.

Sometimes, I find it all quite tedious; and it's not the same everywhere, let me tell you. There are people here who appear to be very well organised when it comes to censorship and attempting to take measures. I don't understand it. I spent five years in a region without any problem. I was saying essentially the same things. We stirred things up, yes we did. I like that. People would react, you know in the [???] and all that. But, I never had a problem with censorship or things of that kind.

On the day of the broadcast, a complainant sent an e-mail to the CRTC, which forwarded it to the CBSC in accordance with its customary practice. It said in part (the full text of all the correspondence can be found in the Appendix, in French only):

[translation]

I am outraged by Mr. Bouchard's (FM93) behaviour.

At about 8:00 am today, he cast aspersions on the CRTC saying he was fed up with it. He swore, he blasphemed and said he wanted to mention the word "fuck" because it is commonplace elsewhere.

[...]

In addition to swearing, blaspheming, mentioning the word "fuck" and denigrating the CRTC by invoking his mentor Fillion, he then went on to attack women. [...]

A serious investigation is warranted. I was in the car with my young children and I had to switch frequencies to hear something decent ...

The General Manager of the station replied in part as follows on November 22:

[translation]

We have traced and examined the pertinent excerpt of the program addressed in your complaint that was broadcast on November 3.

We have included the audio excerpt of the comments which are the basis of your complaint to demonstrate our good faith in this matter. While we recognize that Mr. Bouchard turned up the heat, we do not feel that he breached the radio ethics code that we are subject to in any way. To ensure clarity, we will quote a

few sentences from your complaint and follow them with an explanation in each case:

*"... he cast aspersions on the CRTC saying he was fed up with it. He swore, he blasphemed and said he wanted to mention the word 'fuck' because it is commonplace elsewhere."*

Mr. Bouchard did not cast aspersions on the CRTC, an organisation which he respects, incidentally. He said he was fed up with complaints, not the CRTC. He added that he never did blaspheme according to the definition that this consists of adding the term "maudit" [damned] to a sacred word. He did in fact use the word "tabernac" in a fit of anger, in the style of Michel Chartrand, Pierre Falardeau, or that of one of Michel Tremblay's characters. He wishes to state, however, that it is always the exception and not his standard practice. Moreover, he never said he wanted to use the word fuck, but rather that he felt the complaint on that issue was ridiculous.

*"He even said that he wanted Jeff Fillion to continue to flourish."*

While Mr. Bouchard makes no apology for having Jeff Fillion as a mentor, it seems to him that opposing the closing down of CHOI-FM in no way constitutes a defence of Jeff Fillion, but rather the expression of an opinion that he feels is entirely legitimate.

*"In Mr. Bouchard's view, a woman wearing a low-cut top is nothing more than a tease ... this is scandalous"*

Mr. Bouchard never said that women wearing low-cut tops are teases, but he did in fact say that women dressed in that fashion can expect that we could have a discreet look.

The complainant was dissatisfied with the broadcaster's response and returned his Ruling Request on December 7. Among other things, he asserted that some parts of the recording of the program furnished by the broadcaster were incomplete. The broadcaster assured the complainant and the CBSC that this was not the case.

## **THE DECISION**

The Quebec Regional Panel examined the complaint under the following clauses of the Canadian Association of Broadcasters' (CAB) *Code of Ethics*, which read as follows:

*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 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:

- [...]
- (c) Unduly coarse and offensive language.

The Quebec Panel Adjudicators reviewed all of the correspondence and listened to a recording of the challenged broadcast. The Panel concludes that certain parts of the broadcast were in breach of Clause 9(c) but none were in violation of Clause 6.

### **Comments about the CRTC**

The CBSC has had the opportunity to discuss critical statements made about governments, governing bodies and government policies on several occasions. In an early example, namely, *CHOG-AM re Connections* (CBSC Decision 96/97-0040, May, 8, 1997), in dealing with some critical comments made about the government of the day, the Ontario Regional Panel observed that "political expression holds a very high status in terms of the constitutional guarantee of freedom of expression." In another early decision, namely, *CKTB-AM re the John Gilbert Show* (CBSC Decision 92/93-0179, October 26, 1993), that Panel was called upon to deal with an issue of government policy. It concluded

that an opinion on the government *policy* of bilingualism constituted an *opinion* on that issue and was not *racially* driven. Nothing can be more fundamental to the principle of freedom of speech enshrined in the *Charter* than the entitlement of an individual to express a differing view on a matter of public concern, including government policy.

In *CKTB-AM re the John Michael Show (Middle East Commentary)* (CBSC Decision 01/02-0651, June 7, 2002), the Ontario Regional Panel addressed the basic entitlement to discuss political issues, even when the perspective taken is not popular:

[I]t is of the essence of statements that are political that the point of view expressed need not be popular. While democracy is a numbers game in the election of lawmakers, it is not that in the marketplace of ideas. The freedom of expression which flows from the nature of a stable and mature democracy protects the enunciation of minority, even unpopular, ideas.

Although there may be limits, this will generally even be the case when the language chosen is contentious, as in both the CHOG-AM decision referred to above (in which a caller to the radio show stated that members of one of the main political parties “don’t have children, they have piglets”) and in *CHOM-FM and CILQ-FM re The Howard Stern Show* (CBSC Decision 97/98-0001+, October 17-18, 1997), where the Ontario and Quebec Panels stated:

Those comments relating to the state of radio in Canada, the use of English in Quebec, the value of French culture, Canada as an appendage of the United States, the role of the vanquished French in Vichy France, the issues relating to separatism, and so on, are the host’s *opinions* and, unless utterly and irresponsibly uninformed [...] they are his to espouse. [...] It is the view of the Regional Councils that these political and historical comments fall squarely within the bounds which freedom of expression is meant to protect.

In the matter at hand, comments that, in the view of the Panel, did not even rise to the level of *criticisms*, had been directed by Sylvain Bouchard at the CRTC, a government commission with which the CBSC itself collaborates on an ongoing basis. Needless to say, this does not render it immune from on-air criticism on the basis of its policies and decisions, any more than the CBSC itself would be. Although the Panel would not even characterize the observations of the host as criticisms (he was really referring to the mind-set of persons who *send* complaints to the CRTC), it is the Panel’s view that the host’s comments of November 3 relating to the Commission fall within the ambit of freedom of expression and are not in breach of Clause 6 of the *CAB Code of Ethics*.

### **Coarse Language: Differing Appreciations**

There are two distinctly separate words used by the host about which the listener has complained: “tabernac” and “fuck”. The Panel will treat each of these separately. The first of the words is a Francophone, and the second an Anglophone, epithet. The first is religious and the second secular.

#### Tabernac’

On the only occasion that this Panel has been called upon to assess such language, namely, in *CKAC-AM re a Comedic Sketch by Michel Beaudry* (CBSC Decision 01/02-0966, December 20, 2002), the words “tabernac”, “calice” and “hostie” were used in a parody at 4:30 *in the morning*, not a time when children would likely be listening. Moreover, the nature of the sketch was an imitation of the well-known boxing promoter Régis Lévesque, who was widely known as a user of coarse language, generally peppered with curse words. On that occasion, this Panel ruled, in the special circumstances of that broadcast:

In the case at hand, the Québec Regional Panel agrees with the broadcaster that the words in question have slipped into common and marginally acceptable usage, whether or not the broadcaster’s characterization of them as “patois” is

justified. The Panel notes that “Christ”, “tabernac”, “calice” and “hostie” were employed in the context of a parody of a public figure, namely Régis Lévesque, who is not unknown to use such language himself.

The Panel understands, and is sensitive to, the perspective of the complainant. It concludes, however, that, while the words may be unacceptable in some households and are certainly not tasteful, they are not today so severe as to restrict their usage on radio, especially in the very early hours of the morning, namely between the hours of 4:00 and 5:00 am.

On the present occasion, the Panel considers the circumstances meaningfully different. First, the context. The Régis Lévesque parody was intended to be understood as *comedy*. While that does not provide a wholesale excuse to justify commentary that would otherwise be in breach of a codified standard, the expectation of the audience *may* be taken into account. It could, for example, be argued that the use of swear words was essential to a credible, albeit humorous, portrayal of the boxing promoter. Nothing could be farther from the truth in the matter case of Sylvain Bouchard’s show, on which, it may be added, the use of the language was gratuitous. Not only was it unnecessary, it was irrelevant to the phrases it adorned.

Second, the time of day and the likely audience. The audience at 4:30 in the morning could be described as both very different from, and minuscule relative to, that during morning drive, the peak radio listening period each weekday. Among other things, there are likely to be almost no children listening during the former period and undoubtedly many more during the latter. Moreover, there may be other differences in both time periods which reflect the market to which any program is broadcast. To the extent that the opening words of Clause 9, which refer to “local community standards”, suggest that there may be differences between regions, on the one hand, or major urban and small-market or rural environments, on another, this factor may also be relevant but that issue is not before this Panel today. Where, as in the matter at hand, very coarse language is used during the day in any Canadian market, it will likely be problematic.

Third, the nature of the words. It is obvious that not all swear words will be problematic, even during times of the day when children could be listening. It is the view of the Panel that “tabernac” and certain other words of the genre (which the Panel is not called upon to list in the circumstances under consideration) is one word which does fall on the list of words generally to be avoided in Francophone broadcasting.

Taking into consideration the foregoing criteria, the Panel concludes that the usage of “tabernac” by Sylvain Bouchard in the show of November 3 constitutes a breach of Clause 9(c) of the *CAB Code of Ethics*.

## Fuck

The general rule of CBSC Panels dealing with the f-word in the radio environment has been that it is a breach of Clause 9(c) to broadcast the word at a time of day when children could be listening. That principle has also been applied in French-language programming, such as *CJMF-FM re comments made on an episode of Le trio de l'enfer* (CBSC Decision 04/05-0761, October 24, 2005). In that decision, the expression “Fuck off” was used and this Panel arrived at the following conclusion on that point:

The Panel also finds that the use of the English expression “Fuck off!” by host Louis Lacroix was, on this occasion, also in breach of the same Code provisions, although not for the same reason. The language was unduly coarse and offensive and was used at a time of day (the after-school period) when children could be expected to be listening to the radio.

In another decision dealing with an English-language radio broadcast in Quebec, rendered by this Panel, namely, *CHOM-FM re the song “Locked in the Trunk of a Car” by the Tragically Hip* (CBSC Decision 04/05-0324, April 4, 2005), the f-word was a part of the lyrics of a song played at a time of day when children could be listening (3:15 pm in that case). The Panel found it in breach. In the matter at hand, the Panel comes to a different conclusion for a very precise and limited reason. Taking into account the criteria discussed above, it finds that the use of the word was in the context of a point being made about coarse language. It was not a usage of coarse language to describe a *different* subject but rather the word itself *was* the subject. In other words, he did not *use* the word; he was speaking *about* the word: “Sending a complaint to the CRTC because you heard the word ‘fuck’ on the air.” In the view of the Panel, it was a rare example of a contextually acceptable usage of the f-word. In the circumstances, its use did not constitute a breach of Clause 9(c) of the *CAB Code of Ethics*.

## **Broadcaster Responsiveness**

It is the practice of all CBSC Adjudicating Panels to assess the broadcaster’s responsiveness to the complainant. Although it is, of course, the case that the broadcaster need not 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 the matter at hand, the broadcaster took the trouble to set out his response as a point-by-point reference to the complainant’s concerns. While the complainant did not accept the broadcaster’s explanation and expressed a specific concern about the completeness of the content of the transcript (the Panel has no means of verifying the correctness of this contention), thoroughness of the response to the complainant was entirely acceptable. The Panel finds no breach of the broadcaster’s obligation of responsiveness on this occasion.

## **ANNOUNCEMENT OF THE DECISION**

CJMF-FM is required to: 1) announce the 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 *Bouchard en parle* 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 a copy of that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by CJMF-FM.

The Canadian Broadcast Standards Council has found that CJMF-FM has breached Clause 9(c) of the Canadian Association of Broadcasters' *Code of Ethics*. By broadcasting a religious epithet on the morning program *Bouchard en parle* on November 3, 2005, CJMF-FM breached the provisions of the clause of the *Code of Ethics* which requires that broadcasters ensure that programming on their stations does not contain unduly coarse and offensive language.

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

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## ANNEXE

### Décision du CCNR 05/06-0326

#### CJMF-FM concernant un commentaire diffusé dans le cadre de *Bouchard en parle*

#### La plainte

La plainte suivante du 3 novembre 2005 a été envoyée au CRTC and acheminée au CCNR :

Je suis outré par le comportement de M. Bouchard (FM93).

Ce matin, vers 8h00, il a calomnié le CRTC en disant qu'il était tanné du CRTC, il sacrait, il blasphémait et il mentionnait qu'il désirait mentionné le mot « fuck » parce que cela était courant ailleurs.

Il a même mentionné qu'il voulait que Jeff Fillion continue à sévir.

Mais qu'est-ce que ce personnage. Toute cette rage parce qu'un auditeur a osé contredire son point de vue par courriel.

Outre sacrer, blasphémer, mentionner le mot « fuck » et dénigrer le CRTC en invoquant son mentor Fillion, il a ensuite enchaîné en s'attaquant à la femme. En usant habillement de stéréotypes pour dénigrer la femme, s'intéressant uniquement à leurs poitrines généreuses [*sic*] .... Pour M. Bouchard, la femme qui porte un décolleté n'est qu'une agace ... c'est scandaleux.

Une enquête sérieuse s'impose. J'étais avec mes jeunes enfants en voiture et j'ai dû changer de fréquence pour entendre quelque chose de décent ...

#### La réponse du radiodiffuseur

CJMF-FM a répondu au plaignant le 22 novembre :

Monsieur,

Nous avons bien reçu votre plainte le 14 novembre 2005 par l'entremise du CCNR. Nous vous remercions d'avoir pris le temps de signaler vos préoccupations, car il nous importe d'offrir un service de qualité dans le respect de nos auditeurs et des normes applicables au sein de notre industrie.

Nous avons retracé et examiné l'extrait pertinent de l'émission et qui fait l'objet de votre plainte et qui a été diffusé le 3 novembre dernier.

Nous joignons à cette lettre l'extrait sonore des propos sur lesquels vous fondez votre plainte afin de vous démontrer notre bonne foi dans ce dossier. Bien que nous reconnaissons que M. Bouchard ait haussé le ton, nous n'estimons pas qu'il ait contrevenu de quelque manière que ce soit au code de déontologie radiophonique auquel nous sommes assujettis. Pour une meilleure compréhension, nous extrairons quelques phrases de votre plainte et les explications qui s'y rattachent :

« ... il a calomnié le CRTC en disant qu'il était tanné du CRTC, il sacrait, il blasphémait et il

*mentionnait qu'il désirait mentionné le mot fuck parce que cela était courant ailleurs. »*

M. Bouchard n'a pas calomnié le CRTC, organisme qu'il respecte d'ailleurs. Il a dit qu'il était tanné des plaintes, pas du CRTC. Il ajoute n'avoir jamais blasphémé, selon la définition qui est d'ajouter maudit devant un mot sacré. Il a effectivement employé le mot tabarnak dans un excès de colère, à la Michel Chartrand, à la Pierre Falardeau, ou à la façon d'un personnage de Michel Tremblay. Il tient à dire, cependant, que c'est toujours très exceptionnel, jamais la norme. De plus, il n'a jamais dit qu'il voulait employer le mot fuck, mais plutôt qu'il trouvait ridicule la plainte reçue à ce sujet.

*« Il a même mentionné qu'il voulait que Jeff Fillion continue à sévir. »*

M. Bouchard se défend bien d'avoir Jeff Fillion comme mentor. Cependant, il lui semble que le fait de s'opposer à la fermeture de CHOI-FM ne constitue en rien à défendre Jeff Fillion, mais seulement à émettre une opinion qu'il considère tout à fait légitime.

*« Pour M. Bouchard, la femme qui porte un décolleté n'est qu'une agace ... c'est scandaleux. »*

M. Bouchard n'a jamais dit que les femmes en décolleté étaient des agaces, mais bien que les femmes affichant un décolleté pouvaient s'attendre à ce que nous puissions, discrètement, le regarder.

Nous regrettons que le contenu de l'émission en cause ou sa présentation en ondes vous ait heurté et nous nous en excusons sincèrement. Recevez par ailleurs l'assurance que nous avons porté votre plainte à l'attention de l'animateur Sylvain Bouchard afin qu'il puisse tenir compte de vos préoccupations à l'avenir.

Veillez agréer, Monsieur, l'expression de notre meilleure considération.

## **Correspondance additionnelle**

Le plaignant a remis sa Demande de décision le 7 décembre accompagnée de la note suivante :

Réponse insatisfaisante. Aucun blâme à l'animateur. L'extrait fourni est incomplet. On minimise les « sacres », l'agressivité et les commentaires sexistes.

Le Secrétariat du CCNR a noté que l'extrait fourni par le radiodiffuseur ne renferme aucun commentaire concernant les femmes et que le plaignant a indiqué que l'extrait était incomplet. Le Directeur général de CJMF-FM a fait des vérifications et a dit que l'extrait est complet :

Nous avons fait toutes les recherches possible et tout est dans cet extrait audio. Le plaignant fait erreur sur notre intention de cacher des extraits sonores, tout est là, le contexte et les propos reprochés.