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## CANADIAN BROADCAST STANDARDS COUNCIL

### QUEBEC REGIONAL PANEL

#### CHOI-FM re comments made during a segment of *Le Retour de Radio X*

(CBSC Decision 08/09-0492)

March 17, 2009

D. Meloul (Chair), G. Moisan (Vice Chair), Y. Bombardier, R. Cohen (*ad hoc*), M. Ille,  
J. Pennefather (*ad hoc*)

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### THE FACTS

*Le Retour de Radio X* is the CHOI-FM afternoon show broadcast from 3:00-6:00 pm, each weekday. At all times material to this decision, the show was co-hosted by Stéphane Gasse and Jérôme Landry. The “best moments” of the day’s broadcasts are rebroadcast from 6:00-7:00 pm. The following exchange took place during the broadcast on May 15, 2008:

[translation]

Stéphane: Jérôme, do one more to finish off.

Jérôme: Well, there was a lot of kissing between gays today in the streets of San Francisco –

Stéphane: Ah!

Jérôme: A lot of, of mustachios were kissing each other. Why? Because the California Supreme Court issued an important decision today, a decision that opens the way to gay marriage, um, according to the Supreme Court of California, the prohibition against gay marriage is unconstitutional. California becomes the second state after Massachusetts to allow gay marriage. This is an extremely important matter. I know that everyone gets up in the morning with this question on their minds: “Will they allow gay marriage in California?” Except that this opens the door to ... many gays! Do you get my meaning? Because there’s a heck of a lot of queerness down there in San Francisco, and –

Stéphane: Yes, sir!

Jérôme: – the state has thirty-three million inhabitants; California is extremely important, in fact it is the state with the highest population in the United States.

Stéphane: Look. If they want to get married, that's one thing, but I don't understand. Look, straight people get married and there have never been as many divorces. Eh? And divorce is a big hassle. Look, I've been there, I know. Been there, done that, got the t-shirt and she, then she got it back. You know? Um, but one thing is clear, though. And that is, marry all you want, celebrate your union all you want, but da –

Jérôme: Screw all you want! Do it up the ass all you want!

Stéphane: Could you stop kissing on TV, please?

Jérôme: Well, that's; as far as that goes it doesn't bother me.

Stéphane: Ah! That, for me, no –

Jérôme: We don't have to watch them. Do you know what my problem is? It's when they want to adopt. That's where my problem lies. When they want to adopt a child. Now that upsets me. I do have a problem with that.

Stéphane: Me neither, look –

Jérôme: That means involving someone else's life in their, um, in their queerness [laughs]. I have difficulty there; a lot of difficulty.

Stéphane: I just want them to stop kissing on TV. And as far as kids are concerned, I agree. I agree with you, but it's ... As long as, as long as they stop kissing on TV, look –

Jérôme: Two goatees rubbing together, don't you like that? [laughs]

Stéphane: Oh! Stop, some people are eating. And while we're at it, should you still be hungry, Mélissa, what could we give as –

Mélissa: Can they go eat in a restaurant together?

Stéphane: Ah, well they certainly have the right to do that!

Mélissa: It's all right?

Stéphane: Ah yes, yes, yes!

Mélissa: Okay.

Stéphane: Especially the restaurants that advertise.

Mélissa: Fifty dollars at the Smoked Meat Factory, for instance?

Stéphane: Well that makes perfect sense.

As the result of a mix-up as to the CBSC membership status of CHOI-FM, a complaint from a listener dated May 16, 2008 was only received by the CBSC in December. That complaint asserted that the broadcast of May 15 constituted [translation] “Hateful propaganda against homosexuals. Indecent comments at a time when children could hear.” (the full text of the complaint and all other correspondence can be found in the Appendix to this decision, available in French only). CHOI-FM responded to the complainant on June 10 (i.e. before the CBSC’s involvement in the file) in the following terms:

[translation]

We wish, first of all, to thank you for the interest you have shown in our programming.

We do not feel that the comments you found irritating as a listener are slanderous. These comments were made within the context of a commentary on current events and represent the opinion of one of the hosts, in keeping with the provisions of the station’s Code of ethics and the applicable regulations. Though critical of certain attitudes or behaviours, these comments were not expressed with the purpose of being prejudicial to individuals, but rather to reflect a point of view, among others, concerning developments in this area.

We truly regret that you were irritated or hurt by these comments, as that was not the intention of the hosts of the program.

We hope that CHOI can continue to count you among its listeners. Best regards.

Unsatisfied with this response, the complainant wrote to the CRTC on June 15:

[translation]

Thank you for your reply. However, I find it unsuitable as you are attempting to sidestep the issue. My concern is not the subject in question, but rather the comments expressing a lack of respect for homosexuals, among others. It is of no concern to me if you discuss them or if you criticize certain behaviours. However, the comments were disrespectful. It is as if someone discussed women by referring to them as “chicks” or even “pussies”. Would that concern you?

## **THE DECISION**

The Quebec Regional Panel examined the complaint under the following provisions of the Canadian Association of Broadcasters’ (CAB) *Equitable Portrayal Code* and the *CAB Code of Ethics*:

### *CAB Equitable Portrayal Code, Clause 2 – Human Rights*

Recognizing that every person has the right to the full enjoyment of 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, gender, sexual orientation, marital status or physical or mental disability.

### *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 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:

[...]

(b) Unduly sexually explicit material.

The Quebec Panel read all of the correspondence and listened to the recording of the program. While the Panel considers that there are elements of the broadcast that were “on the edge” of acceptability, it found none in breach of any of the foregoing Clauses.

### **Abusive Comments on the Basis of Sexual Orientation?**

It has long been established that it is not just *any* discriminatory reference to an identifiable group that will constitute a breach of Clause 2 of the *CAB Code of Ethics*; it will only be a comment that is abusive or unduly discriminatory that will rise to that level. (It should be noted the Clause 2 of the *CAB Equitable Portrayal Code* is, to all intents and purposes relevant to the present matter, worded identically; consequently, the discussion of abusive comment herein may be read as applying in equal measure to the Human Rights provisions of both Codes.) Offending comments may fall into such a category on the basis of the words used, to be sure, but also on the basis of their tone and context [see *CHOG-AM re the Shelley Klinck Show* (CBSC Decision 95/96-0063, April 30, 1996) and *CKRS-AM re comments made on Champagne pour tout le monde* (CBSC Decision 06/07-0904, August 20, 2008)]. In *CHOI-FM re Le monde parallèle de Jeff Fillion* (CBSC Decision 02/03-0115, July 17, 2003), for example, the name-calling by the CHOI-FM host targeted its competitor, Radio Énergie, and its employees as a “gang de fifis” [translation: “a bunch of faggots”]. This Panel relied on the principle established in the Ontario Panel's decision *CILQ-FM re The Howard Stern Show (Staff Insults)* (CBSC Decision 97/98-1223, February 3, 1999). In the *Stern* decision, the host

had used the words “retard” and “retarded” to insult one of his own production staff with whom he was apparently extremely displeased in terms of an aspect of the production for that day’s show. Although the Ontario Regional Panel acknowledged that “the terms are generalizations which carry a negative connotation”, it concluded that Stern’s remarks

[were] directed at an individual and [did] not attribute negative stereotypical characteristics to a defined minority group in such a manner as to amount to a breach of the human rights provision of the Code. Moreover, the references stand alone without any additional characterisation of the referenced group elsewhere in *that* show. The remarks did not mock or make fun of members of the handicapped group generically but rather attributed diminished mental capacity to an *unchallenged* individual.

In the *Fillion* decision, this Panel concluded similarly: “Given that the insult ‘faggots’ was hurled anonymously at radio stations and their unidentified staffs, the offensiveness was even more remote.” The context was somewhat different in *Comedy Network re Comedy Now (“Gord Disley”)* (CBSC Decision 05/06-0290, January 20, 2006), a program on which, in the National Specialty Services Panel’s view, the potshots were equally taken at straights and gays. Nonetheless, the National Panel had to respond to the appropriateness of use of the word “fag”, which was the cornerstone of the complainant’s concern. As it framed its rhetorical responsibilities,

Does its presence in the segment [i.e. the word “fag”] colour the skit? Does it turn an anodyne presentation into a heavy-handed, bludgeoning or nasty one? Is the term “fag” the equivalent of some of the well-publicized racial epithets that are *per se* unacceptable?

The Panel’s conclusion was that it was not. In arriving at this determination, it cited the words of the Ontario Regional Panel in *CILQ-FM re Parody Skit* (CBSC Decision 95/96-0218, May 8, 1997).

While possibly an unflattering term, it does not, in the Council’s view, rank with certain racial or ethnic epithets (which it does not wish to repeat here), particularly since members of the gay community use the word themselves from time to time in a non-discriminatory fashion.

The Specialty Services Panel added:

This is not to suggest that there might not be circumstances in which it might be presented in a sneering, derisive, nasty tone but that is not what the Panel considers the present usage to be. It is benign, light-hearted, distinctively tickling. The Panel finds no breach of the Human Rights Clause.

In the context of an aggressive interview by host Louis Champagne of a representative of the Parti Québécois in *CKRS-AM re comments made on Champagne pour tout le monde* (CBSC Decision 06/07-0904, August 20, 2008), this Panel concluded that it had encountered just such “a sneering, derisive, nasty tone”. It explained its perspective in the following terms:

While the interview under consideration was anything but a comedy routine, the Panel considers that a “sneering, derisive and nasty” comment is as problematic in terms of the Human Rights Clause in a non-comedic case as it was in the comedic example anticipated by *Comedy Now*. It considers that Louis Champagne’s tone was “sneering, derisive and nasty”, hence in breach of Clause 2 of the Code.

As to the word “fag” [“tapette” in French] itself, the Panel considers that it balances tentatively on the fence, acceptable in some circumstances as noted above, but totally unacceptable, when used in the aggressive, hostile manner of the February 19 broadcast of *Champagne pour tout le monde*, where its effect was spread more widely, and perhaps more derisively by reason of the broad stroke, in the characterization of the political party as a [translation] “club for fags”.

In the matter at hand, the Quebec Panel considers that the word “queerness” (“fifure” in the original French), like the words considered in the *Stern*, *Fillion* and *Disley* decisions, was discourteous, rude and on the edge of acceptability, but did not rise to the “sneering, derisive and nasty” level of the *Champagne* decision. The co-hosts were clearly uncomfortable with *some*, but not all, aspects of the gay lifestyle, including the issue of adoption of children by homosexual couples, and they urged, for example, that kissing and such physical demonstrations between gays take place out of the public eye. Marriage and sexual relations between gays did not trouble them, although the adoption issue did. More than anything, though, it was the kissing *on television*. The Panel has no difficulty with the hosts’ policy positions on homosexuality both pro and con, but it would have preferred that the serious elements of the discussion be dressed in less objectionable language than “fifure”. In any event, the Panel concludes that the simple use of the term has not converted the otherwise acceptable, if marginally distasteful, discussion into a breach of the Human Rights provisions of the *CAB Code of Ethics* and the *CAB Equitable Portrayal Code*.

## **Sexual Explicitness**

The general principles established by the CBSC for analyzing sexual content on the radio were laid down in *CIRK-FM re K-Rock Morning Show* (CBSC Decision 01/02-0713 & -1113, February 5, 2003), among other decisions. The Prairie Panel set out those rules as follows:

In past decisions, the CBSC has distinguished between the type of sexual comment that is acceptable on radio at times of the day when children are likely to be listening and that which is not. In general, its Panels have determined that mild sexually suggestive content, often in the form of innuendo or double entendre, is not considered to be in violation of the *CAB Code of Ethics*; on the other hand, more sexually explicit or detailed commentary is considered to be in breach of the Code when broadcast during morning drive radio (and at other times of the day when children are likely to be listening).

There are several examples dealing with unduly sexually explicit content, which, in the view of the Panel, do not need to be reviewed here since the issue in the matter at hand

is reduced to its view of a single rhetorical “instruction”: “Screw all you want! Do it up the ass all you want!” [Those other CBSC decisions include, but are not limited to: *CFMI-FM re Brother Jake Morning Show* (CBSC Decision 00/01-0688, January 23, 2002), *CFNY-FM re the Show with Dean Blundell* (CBSC Decision 01/02-0267, June 7, 2002), *CIKI-FM re a joke on Tout le monde debout* (CBSC Decision 02/03-0358, July 17, 2003), *CHOI-FM re Le monde parallèle de Jeff Fillion (Sexual comments)* (CBSC Decision 03/04-0018, April 22, 2004), *CKOI-FM re comments made on Y’é trop d’bonne heure* (CBSC Decision 04/05-0891, September 9, 2005), and *CKAC-AM re an episode of Doc Mailloux (Money)* (CBSC Decision 05/06-1379, December 11, 2006).] While the Panel also considers the element of tastelessness unobtrusively present in the choice of language used by the co-hosts to describe their standards of acceptability of homosexual acts, it does not consider that the hypothetical “instruction” is *unduly* explicit. There is no graphic or realistic description of sexual activity, which is an important, although not the sole, component of unduly sexually explicit content. The Panel finds no breach of Clause 9(b) of the *CAB Code of Ethics* on this account.

### **Broadcaster Responsiveness**

In addition to assessing the relevance of the Codes to the complaint, the CBSC always assesses the *responsiveness* of the broadcaster to the substance of the complaint. The Panel considers that, in this respect, the broadcaster’s letter, while not lengthy, expressed a not unreasonable perspective on the issues raised by the complainant. Moreover, broadcasters are under no obligation to agree with the complainant, even in circumstances in which the CBSC Panel may support the complainant’s point of view. In the matter at hand, no further action was required. The Panel concludes that the broadcaster has met its membership requirement in respect of broadcaster responsiveness 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.*

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## ANNEXE

### Décision du CCNR 08/09-0492 CHOI-FM concernant des commentaires faits dans le cadre de *Le Retour de Radio X*

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#### La plainte

La plainte suivante en date du 16 mai 2008 a été envoyée au CRTC et acheminée au CCNR :

Poste de radio CHOI (98,1 FM), à Québec. Jeudi le 15 mai 2008, entre 18 h et 19 h.

<http://www.radiox.com/contacts.php>

Propagande haineuse envers les homosexuels. Propos indécents à l'heure où les enfants peuvent entendre.

Je cite :

« ... les fifettes ... les fifettes ... Ils peuvent ... s'enculer s'ils veulent ... S'ils pouvaient arrêter de s'embrasser à la télévision. »

#### La réponse du radiodiffuseur

Le radiodiffuseur a répondu le 10 juin :

Monsieur,

Nous avons reçu votre plainte.

Nous désirons en premier lieu vous remercier de l'intérêt que vous portez à notre programmation.

Les propos qui vous ont irrité en votre qualité d'auditeur ne sont pas diffamatoires selon nous. Ces propos sont exprimés dans le cadre de commentaires sur l'actualité et représentent une opinion des animateurs conforme aux prescriptions du Code d'éthique de la station et de la réglementation applicable. Ces propos, quoique critiques de certaines attitudes ou comportements, n'ont pas été exprimés en vue de porter préjudice aux personnes mais plutôt pour refléter un point de vue parmi d'autres sur ce qui se passe dans ce domaine.

Nous sommes vraiment désolés que vous ayez été irrité ou blessé par ces propos car ce n'était pas l'intention des animateurs de l'émission.

Nous souhaitons que vous demeurerez à l'écoute de la station CHOI et vous assurons de nos sentiments les meilleurs.

## **Correspondance additionnelle**

Le plaignant a envoyé la note suivante le 15 juin :

Bonjour,

Merci de votre réponse mais elle ne me convient pas car vous essayez de noyer le poisson. Ce n'est pas le sujet dont il est question mais les propos qui exprimaient un non respect des homosexuels (entre autre). Que vous parliez de ces derniers, que vous critiquiez certains comportements, peu m'importe. Mais les propos étaient irrespectueux. C'est comme quelqu'un parlait des femmes en disant les «femelles» ou même les «plotes». Est-ce que ça vous dérangerait?

Cordialement.