
APPENDIX

CISS-FM re the broadcast of a recorded conversation (CBSC Decision 03/04-0135, February 10, 2004)

I. The Complaint

The following complaint (using the electronic form on the CBSC's website) was emailed to the CBSC on October 8, 2003:

station: 92.5 JACK FM
program: unknown
date: October 9, 2003 time: 3:45-4:00 p.m.
concern: October 9, 2003

Today, at 4:00 p.m., the Toronto radio station JACK 92.5 FM played, on air, a conversation that I had fifteen minutes earlier, with the person who answered their telephone line (416-870-5225).

I did not give permission for this conversation to be broadcast, nor was I ever told it was being recorded!

Since I had never participated in phone-in contests before and was going to attempt to win lottery tickets being given away by the station that day, I had called their general advertised telephone number to confirm that this was indeed the correct number to dial when contest time arrived.

At no point throughout the conversation did the disc jockey notify me that this call would be recorded and perhaps played on-air -therefore not giving me an opportunity to choose not to participate in this present dialogue.

I am a professional vocalist/musician and have used my voice in commercials and station identification spots throughout my career. My voice is distinguishable and I do not participate in frivolous unplanned public forums.

I wish to lodge a complaint against this station and seek compensation in some way, if the CRTC/or other broadcast regulations apply to this stations conduct relating to this incident.

I have not contacted the radio station about this matter yet as I am positive that they will dismiss my feelings regarding what I think is an ethical if not also legal issue.

On October 14, the complainant also sent a similar complaint to the CRTC which forwarded it to the CBSC in due course. That complaint stated:

October 9, 2003

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I did not give permission for this conversation to be broadcast, nor was I ever told it was

being recorded!

Since I had never participated in phone-in contests before and was going to attempt to win lottery tickets being given away by the station that day, I had called their general advertised telephone number to confirm that this was indeed the correct number to dial when contest time arrived.

At no point throughout the conversation did the disc jockey notify me that this call would be recorded and perhaps played on-air -therefore not giving me an opportunity to choose not to participate in this present dialogue.

I am a professional vocalist/musician and have used my voice in commercials and station identification spots throughout my career. My voice is distinguishable and I do not participate in frivolous unplanned public forums.

I wish to lodge a complaint against this station and seek compensation in some way, if the CRTC/or other broadcast regulations apply to this stations' conduct relating to this incident.

I have not contacted the radio station about this matter yet as I am positive that they will dismiss my feelings regarding what I think is an ethical if not also legal issue.

On October 31st, the complainant sent a further note the CBSC stating:

I have not received any response from the radio station in question. In 7 days, the recording of the broadcast will not be available anymore, according to your email below (stations are only required to keep broadcast tapes for 28 days following broadcast). Please respond ASAP.

The CBSC's Correspondence Officer responded to this email stating that the broadcaster has 21 days to respond, as of October 16 (the date on which the complaint was forwarded to the broadcaster). She further stated that the tapes had been held and that there was no need to worry on that account.

On November 7th, the complainant wrote again to the CBSC stating the following:

It seems that the broadcaster has not made any effort to contact me in the 21 days from the original date the complaint was forwarded. Yesterday was 21 days since Oct. 16/03. Also, I believe that the recording will soon be unavailable, as Nov. 11 is the 1 month anniversary of it being recorded & aired – is my contacting you considered an “official” complaint? (You Wrote: “Further, once the complaints process has begun and a broadcaster has been asked to hold a logger tape, the tape will be held until a resolution is found.”) Please advise.

The CBSC's Correspondence Officer sent a reminder to the broadcaster regarding a response to this complaint on November 11.

On November 18, the complainant wrote again to the CBSC stating the following:

Please advise of next step, as the radio station has not contacted me at all. They had until Nov. 11, 2003 to do so. My complaint had to do with unauthorized recording and broadcasting of telephone conversation between a station employee and myself.

II. The Broadcaster's Response

The Director, Regulatory and Business Affairs for the broadcaster responded to the complainant's letter on November 18 with the following:

Dear [...]:

We have received your email complaint to the CBSC regarding the broadcast on JACKfm in Toronto (CISS-FM) of a conversation you had with the telephone line operator at our station. The operator was taking calls about a phone-in contest we were conducting at our station. Prior to dealing with the substance of your complaint, I must first apologize for taking such a long time respond. Please do not take this delay as being indicative of any lack of concern on our part. We confused your complaint with another call we received from another listener. In that case, we explained the situation to the listener and she was satisfied as to our explanation of the broadcast of our conversation with her on-the-air. We thought that was the complaint sent to us by the CBSC. We realized it was not when the CBSC sent us a reminder as to your outstanding complaint. At JACKfm, we take each and every complaint very seriously and we appreciate the opportunity to respond to your issues directly.

The CRTC has formulated regulations which must be adhered to by all radio broadcasters. These regulations include a provision dealing specifically with the on-air broadcasts of interviews and conversations. There are essentially two situations in which a radio broadcaster can broadcast an interview or conversation. The first is the more obvious one, where the person has given written or oral consent to the broadcast. The second involves listeners who call the station for the purpose of participating in a broadcast.

In your case, you were calling the station to confirm the number to call to participate in the contest (\$92 in lottery tickets). Having listened to our station and heard the promotion of this contest, you may have noticed that many spots include portions of conversations with station listeners. For example, earlier in the hour in which your conversation was broadcast, a listener was commenting on how great it would be to win the potential \$30 million lottery. Your conversation is another example. Your question was limited to and confirmed the phone number to call in to win.

In this way, listeners are participating in the promotions for the contest itself. As a result, various aspects of the contest include commentary from our listeners. Having heard the heavy promotion of the contest on our station, we would expect our listeners to recognize that their conversations with us may be broadcast on-the-air. However, from your complaint, it is clear that you do not believe this to be the case. For that misunderstanding, we certainly apologize. Please understand that it was never our intention to offend or embarrass you in any way. The intention is simply to involve our listeners in the running of this popular contest.

Thank you for taking the time to express your opinion about the contests at JACKfm. We appreciate the opportunity to provide you with additional information in this matter. Please do not hesitate to contact us if you wish to discuss this issue further or any other concerns you may about JACKfm.

Sincerely,

[...]

Director, Regulatory and Business Affairs

III. Additional Correspondence

On November 26, the complainant wrote the following note to the CBSC and attached her response to the broadcaster:

Nov. 26, 2003

Dear [...], Please find attached the response from JACK-FM 92.5 radio station and my response back to them. I wish to have the appropriate organizations look further into this matter. By the way, his response to me was not dated, therefore I could not say whether or not the copies of the broadcast in question are still available. I do feel my rights have been violated and wish to launch further action into this issue. Please advise.
Thank you.

Nov.26, 2003

To:
[...]
Director, Regulatory and Business Affairs

c.c. CBSC

Dear [...],

I will make this in point form, quoting your response to me regarding my complaint of October 11, 2003 : the on-air disc jockey recording and broadcasting my telephone conversation with him, without my knowledge or consent.

You mention another complaint call you received, by another listener, who had her call recorded and aired without her knowledge or consent, and you state that you were confusing her complaint with mine.(1)

1-"Prior to dealing with the substance of your complaint, I must first apologize for taking such a long time respond. Please do not take this delay as being indicative of any lack of concern on our part. We confused your complaint with another call we received from another listener. In that case, we explained the situation to the listener and she was satisfied as to our explanation of the broadcast of our conversation with her on-the-air."

Apparently I am not the only person who's [*sic*] rights were violated and who took offense to that.

However, I, am not satisfied with your 'explanation' or apology.

You state that my conversation occurred with a "telephone line operator". This is not what disc jockeys are usually referred to. The person I spoke to was not in fact, an "operator", not a secretary, nor a receptionist. It was the on-air personality radio show host, colloquially known as "the DJ".

I, in fact have had dealings with other radio stations in Toronto and, if calling a telephone number advertised on-air, I was always greeted first by an administrative person or an actual telephone customer service representative, and THEN, passed on to the on-air personality, if I was requesting this. At this point, I was told PRIOR to any broadcast, that we were about to go on-air. Or that the call would be taped and, using time-delay technology, would be aired in a few moments. Each time I did this, I was warned and given the right to decline or withdraw from the call.

You also stated that I called the station to participate in a contest. I did not call to participate. I called to confirm a telephone number should I wish to participate in the future. I also did not call to participate in an on-air promo spot for the contest.(2)

"In this way, listeners are participating in the promotions for the contest itself. As a result, various aspects of the contest include commentary from our listeners. Having heard the heavy promotion of the contest on our station, we would expect our listeners to recognize that their conversations with us may be broadcast on-the-air."

2-"In your case, you were calling the station to confirm the number to call to participate in the contest (\$92 in lottery tickets)." ... "In this way, listeners are participating in the promotions for the contest itself. As a result, various aspects of the contest include commentary from our listeners. Having heard the heavy promotion of the contest on our station, we would expect our listeners to recognize that their conversations with us may be broadcast on-the-air."

Expecting someone to recognize that their telephone calls may be broadcast - while first being recorded without their knowledge - is not an acceptable statement from the "Director, Regulatory and Business Affairs" for a commercial radio station bound by regulations of broadcasting and privacy laws.

You also state that, I,

3- "Having listened to our station and heard the promotion of this contest, you may have noticed that many spots include portions of conversations with station listeners. For example, earlier in the hour in which your conversation was broadcast, a listener was commenting on how great it would be to win the potential \$30 million lottery." and

4-"Your conversation is another example. Your question was limited to and confirmed the phone number to call in to win."

The question being limited to - and confirming the number to call in when the contest was announced in the future - is simply because that is all I actually said. Not because of you editing my conversation to pertain to this subject only.

Also, (3), whether or not others have been subject to this action by your station and had no problems having their calls recorded without their knowledge or consent, and, broadcast without their consent, does not give my consent or negate my rights. This is not an acceptable explanation. Furthermore, it is my opinion that this is an obnoxious position, opinion-wise, to hold. Apparently JACK FM's mission statement is to be rude and obnoxious - as I've now learned from having to listen to your station to be informed further of the "schtick" that is promoted on-air and in programming. That is great fodder for slogans, station identity [*sic*] and P.R., however, it is not what must be respected, regarding broadcasting regulations, to keep one's licensing agreement.

The fact remains that my call was taken by the on-air host, was recorded without my knowledge or consent, and was broadcast without my consent.

Since I was NOT calling to actually participate in any broadcast at this point in time, nor was my call intended to join the odds of winning any actual contest at that moment, your station has violated my rights, as well as disregarded the regulations set out by the CRTC. (3)

3-"The CRTC has formulated regulations which must be adhered to by all radio broadcasters. These regulations include a provision dealing specifically with the on-air broadcasts of interviews and conversations. There are essentially two situations in which a radio

broadcaster can broadcast an interview or conversation. The first is the more obvious one, where the person has given written or oral consent to the broadcast. The second involves listeners who call the station for the purpose of participating in a broadcast."

I am forwarding this to all appropriate organizations.

Sincerely,
[...]