
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CKTB-AM re the John Michael Show

(CBSC Decision 92/93-0170)

Decided February 15, 1994

Marianne Barrie (Chair), Al MacKay (Vice-Chair), Susan Fish, Paul Fockler,
Don Luzzi, Robert Stanbury

THE FACTS

During his open-line show on CKTB-AM on June 1, 1993, between 8:30 a.m. and noon, host John Michael took a number of calls which related to questions of bilingualism and French-Canadians. The host was a very active participant in the dialogue and it was to his comments, as well as those of the callers, that the complainant objected.

The listener wrote to the Canadian Radio-Television and Telecommunications Commission (CRTC) on the day of the broadcast and the CRTC referred the matter to the CBSC for its consideration. In her letter of June 1 to the CRTC, the complainant stated:

Remarks made by Mr. Michael and those permitted to be made by his callers during this specific broadcast ... were degrading to francophones.

As a Canadian, it bothers me to hear such offensive, divisive statements broadcast on the public airwaves.

The theme recurred during the course of the morning program but the principal problematic statements arose in dialogue with a single caller. Excerpts from that dialogue include the following exchanges between Mr. Michael (in regular typeface) and the caller (in italics):

What it amounts to that Quebec has got an enormous amount of power in this country for whatever reason. And, in order to keep them happy, we pander to them. And so now we've got to the time of our history where we have pandered to them to the extent that all our government buildings are in Quebec, our civil service is in Quebec, uh, this country's headquarters is in Quebec; it's in Hull and it's across the river from Ottawa, but it's in Hull.

Symbolically, the country is in Ottawa, but in fact, it is in Quebec. They control this country. So now the civil service is controlled by Quebeckers. The Ministers of our country have over the years been Quebeckers, and so they have imbedded the power of this country in that province. ...

... You don't think English is spoken in Cabinet Ministers sessions, do you? You don't think that English is spoken in the inner circles of the, um, of the governments of this country, do you?

I don't know, I...

Oh, I can tell you it is not!

Is that right?

Well, look at the Ministers, look at all of the Ministers that are in influential power. When five or six or seven Ministers, and that's all it takes to, uh, to have any influence in this country. When the Cabinet Ministers sit down, take a list and look at them and see who they are. They are all, probably ninety per cent of them, are French Canadians, therefore you don't think English is spoken in those meetings. I mean, they wouldn't get any work done... But the government of this country, the business is done in French. And whenever they go, whenever the governments of this country go abroad, they make sure that you understand that the French is first. Um, have you ever noticed the ambassadors we send abroad...

All French.

Well look at their names. Have we ever sent a John Smith to be an ambassador of an important country? Never. We always send, um, Jean Milfrustrialfasad. You know, and they are Madame Sophia Jeanne Nicolas. Have you noticed that? It is a very subtle thing. But you don't think the ambassadors of Canada going abroad speak English, do you? ...

... So every time you see an ambassador that's appointed to any place, especially in Europe, not so much in the States, but especially in Europe, note the names of the ambassadors.

Upon receipt of the letter from the CRTC, the CBSC forwarded it to the station to be dealt with by the broadcaster in accordance with the terms of the *CBSC Manual*. The General Manager sent a lengthy reply to the complainant on July 14, following a review of the three and a half hours of tape in question. The General Manager's response dealt principally with the allegation that the remarks were "degrading to francophones" with reference to the *CAB Code of Ethics*, Clause 2, and Section 3(b) of the *Radio Regulations, 1986*.

Code of Ethics, Clause 2:

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

Radio Regulations [under the *Broadcasting Act*], Section 3, in pertinent part:

A licensee shall not broadcast

[...]

(b) abusive comment that, when taken in context, tends or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin [...]

The General Manager began by stating that “none of the remarks on the program offend these provisions.” He elaborated:

The remarks simply represent the opinions of the host or the callers on a variety of topics of public concern, and whether or not such remarks may be rebutted, they are well within the ambit afforded freedom of expression on broadcast media.

The complainant had not been precise about the portions of the program which she had found objectionable and the General Manager then dealt item-by-item with *his* choice of three of the areas of remarks made by the open line show host.

First, he dealt with the allegations by Michael that so many “Canadian Prime Ministers hailed from Quebec”, that Quebec wields enormous political power and that “Quebeckers effectively control the civil service.” These, he stated, are “legitimate questions for discussion in a free democracy [...] and [the host’s] comments are not abusive or degrading.”

Second, he dealt with Mr. Michael’s opposition to the policy of official bilingualism and his statements that “only French is spoken in the inner circles of the present government and that Canada’s ambassadors abroad are typically francophones.” The General Manager characterised these comments as being “all opinions on matters of public concern.”

Third, he dealt with the host’s stated opinion that “French-Canadian politicians and activists, driven by an insane desire to have power, will trample you [...] and, if you lay down your guard, they’ll put up a thing here, a school there [...]” The General Manager stated that the host’s comments were not addressed to all francophone but rather to “francophone politicians and activists.” Such comments, he asserted, “were neither abusive nor degrading to francophones generally.” He explained further:

Politicians and activists of any kind are fair game for the opinions of radio hosts or callers to open line shows, and our open and democratic system should promote diverse opinions, not fetter them.

The complainant was not satisfied with the General Manager’s response and requested that the Ontario Regional Council consider the matter.

THE DECISION

The Regional Council (composed of five members, broadcaster Don Luzzi being unavailable) reviewed all the correspondence, listened to a tape of the program, and reviewed a transcript of the relevant portions of the dialogue.

The CBSC considered the complaint under Clause 2 of the Canadian Association of Broadcasters *Code of Ethics*, the text of which is cited above, and Clause 6 of the same *Code*, which reads, in pertinent part:

It is recognized that the full, fair and proper presentation of news, opinion, comment and editorial is the prime and fundamental responsibility of the broadcast publisher.

The Role of Public Statutory Instruments

It also applied the principles established in the *Broadcasting Act* and the *Radio Regulations* as a part of the standards by which it expects that broadcasters govern their on-air activities. While it is evident that the enforcement of the federal statute and regulations is the responsibility of the Commission, the CBSC has previously applied certain of the principles established in these public instruments in its decisions. In this connection, the CBSC can do no better than to refer to its decision in the matter of CKTB-AM (June 3, 1993):

Insofar as the section of the *Radio Regulations* is concerned, it is not, of course, the CBSC which administers either the *Broadcasting Act* or the *Regulations* established thereunder by the CRTC. The body responsible for their administration is the CRTC. The CBSC does consider, where appropriate, that it may apply these in its decision-making to the extent that they elucidate or explain broadcasting standards which necessarily serve as the background to the Codes which it administers. These Codes have after all been adopted, albeit voluntarily, by the Association grouping the private broadcasters which are statutorily bound by the *Broadcasting Act* and *Regulations*.

Open Line Programs

The Regional Council also considered the complex question of the responsibilities of broadcasters airing open line programs. In this regard, it reviewed the *Proposed Guidelines for Open Line Programs*, Public Notice CRTC 1988-121, the ultimate *Policy Regarding Open-Line Programming*, Public Notice CRTC 1988-213, the *Canadian Association of Broadcasters' Submission to the CRTC in the Matter of Public Notice CRTC 1988-121* and the *CCTA Guidelines for Open Line Community Programs*.

Paraphrasing the CRTC's introductory words in Public Notice CRTC 1988-121, open line programs are a vital part of Canadian broadcasting. They present an opportunity for lively public discussion. They are timely. They are, one might justifiably observe, an *essential*

home of public debate in a free democracy. They are also a locus for the expression of conflicting passions, which make for exciting radio. As stated in the *Canadian Association of Broadcasters' Submission to the CRTC in the Matter of Public Notice CRTC 1988-121*,

[O]pen line programs have evolved as the most instantaneous forum for free flowing expressions of views on matters of public concern. In our view they represent an important expression and reinforcement of true democracy and as such are characteristic of only the most secure and mature democratic societies.

While the CBSC neither underestimates nor discounts the importance of all of the foregoing, it is acutely conscious of the fact that open line radio does not come to the public without certain countervailing impediments and restrictions. Freedom of expression in Canada, as guaranteed in Section 2(b) of the *Canadian Charter of Rights and Freedoms* is not without limitations (see Section 1 of the *Charter*). Freedom of expression in “the use of radio frequencies, which are public property and limited in number by the radio spectrum [is] subject to the requirement for programming of high standard.” (See Decision CRTC 90-772, at p. 6.) It is that delicate role of weighing freedom and restriction, lively debate and imperturbable responsibility, which the host must play and which, when offence is declared by a listener, the CBSC must judge.

In categorising complaints generally received regarding open-line programming, the Commission referred (in Public Notice CRTC 1988-121, at p. 2) to three areas:

the broadcasting of comments considered abusive on the basis of remarks about race, colour, religion, national or ethnic origin, age, sex, mental or physical disability; failure to provide reasonable, balanced opportunity for the expression of differing views on matters of public concern; and a failure to meet the high standard of programming required of broadcasters. This last issue usually involved personal attacks against individuals or groups, sensationalism, lack of program preparation, inaccurate statements or overall carelessness in dealing with controversial issues.

High Standard

The instant case turns primarily on an appreciation of broadcaster compliance with the well-known principle of “high standard”, the third general area of complaints noted by the Commission. The issue of high standard is set down for broadcasters in the *Broadcasting Act*, sec. 3(g).

3. (1) It is hereby declared as the broadcasting policy for Canada that

[...]

(g) the programming originated by broadcasting undertakings should be of high standard;

In the view of the CBSC, the “full, fair and proper presentation of news, opinion, comment and editorial [which] is the prime and fundamental responsibility of the broadcast publisher”

includes the application to such programming of the “high standard” applied by the CRTC and by which it is assumed that all Canadian broadcasters attempt to run their broadcast endeavours.

This case is not complicated by the question of broadcaster responsibility for the remarks made by callers. While the complainant referred to comments made both by callers and the open-line host, the Regional Council’s analysis of the dialogue is such that it has concluded that Mr. Michael’s comments alone constitute a breach of the *CAB Code of Ethics*. Other matters may in future turn upon the comments of callers and the interplay between callers and the host. Such is not the case here.

The problem of adherence to the *Broadcasting Act’s* high standard requirement and the *CAB Code of Ethics* standard of “full, fair and proper presentation of news, opinion, comment and editorial” begins and ends in this case with the host’s performance. His comments were riddled with a multiplicity of factual inaccuracies, many of which were of the most elementary nature. They generally fell squarely within the CRTC’s definition of what does *not constitute* “high standard” as outlined in Public Notice CRTC 1988-121 (at p. 7): “unresearched and inaccurate reporting and failure to meet professional standards.” (See also Public Notice CRTC 1988-213, at p.6.) It is also instructive to note that this high standard is applied in the Canadian Cable Television Association’s *Guidelines for Open Line Community Programs*. Clauses 3 and 6 of the section on High Standard in the *Guidelines* read:

3. The licensee will be expected to maintain a reasonable level of accuracy in their programming.
6. A program host acting as a moderator must be sufficiently knowledgeable on the topic and sufficiently capable of controlling the program to allow for the expression of various points of view and the dispensing of factual information.

The *Canadian Association of Broadcasters’ Submission to the CRTC in the Matter of Public Notice CRTC 1988-121*, in opposing the need for formal CRTC guidelines, referred to the open line show as a “high quality, expensive form of programming” involving “well paid hosts whose attributes include wide-ranging knowledge”. In all of the foregoing, there is an assumed basic underlying expectation that hosts will be accurate, informed, knowledgeable, well researched and exhibiting high professional standards. This was not the case in Mr. Michael’s program of June 1, 1993.

Clause 2 of the Code of Ethics

Furthermore, the Regional Council considered that the multiplicity of inaccurate statements of the host were used by Mr. Michael to disparage or abuse the reputation of French-speaking Canadians as a group or expose them to the contempt of other listeners. Consequently, the Regional Council concluded that the statements collectively amounted to a breach of Clause 2 of the *Code of Ethics*.

Clause 6 of the Code of Ethics

The CBSC is conscious of the importance of free debate and the entitlement of a host to express politically contentious points of view on air. That liberty does not, however, extend to the expression of gross and multiple misstatements of fact which are calculated to distort the perspective of the listener. Mr. Michael expressed his opposition to the official government policy of bilingualism and stated “nor could I give a damn if Quebec stays in this country or not.” He added, among other things, that “We no longer wish to kneel and bow to this one province.” With these political perspectives, the Council takes no issue. The host also opined that Quebecers control the civil service and generally wielded enormous political power within Canada. These opinions may or may not be sustainable but they are at least legitimately debatable.

The CBSC does, however, not believe that the public debate in Canada is furthered in any way by the broadcast of such accumulated misinformation as was emitted by Mr. Michael on June 1. To provide an inexhaustive list of such misinformation, it is not true, as Mr. Michael alleged, that: Canada alternates Prime Ministers from English-speaking Canada to French-speaking Canada; all of Canada’s government buildings are in Quebec; Canada’s civil service is all in Quebec; this country’s headquarters is not *in reality* in Ottawa; English is not spoken in Cabinet meetings (much less that it is not spoken “in the inner circles of the [other] governments of this country”); ninety per cent of Cabinet Ministers are French-Canadians; ambassadors of Canada going abroad do not speak English; ambassadors to “important” countries are always French-Canadian; and so on.

It is the view of the Council that accumulated misinformation, and collective unresearched and inaccurate statements constitute a breach of high standard under the *Broadcasting Act* and a breach of the responsibility of the broadcaster to ensure the “full, fair and proper presentation of news, opinion, comment and editorial” as required by Clause 6(3) of the *CAB Code of Ethics*. The Council further considers that the goal of the host was to use this misinformation to conduct an attack on a group, which constitutes a further breach of Clause 2 of the *CAB Code of Ethics*.

Content of Broadcaster Announcement of Decision

The broadcaster is required to announce the decision, in the following terms, during prime time within thirty days of the publication of this decision:

The Canadian Broadcast Standards Council has found that CKTB breached clauses relating to human rights and to the full, fair and proper presentation of opinion and comment in the industry’s *Code of Ethics*. During the John Michael show of June 1, 1993, the host made numerous inaccurate statements that were abusive and discriminatory toward French-speaking

Canadians and exposed them to the contempt of other listeners. The Council also found that, by presenting an accumulation of unresearched and inaccurate information, the host did not fully, fairly and properly present his opinions and comments and did not maintain the high standard required of broadcasters.

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