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**CANADIAN BROADCAST STANDARDS COUNCIL  
ONTARIO REGIONAL COUNCIL**

CJRQ-FM re Opinion Poll

(CBSC Decision 94/95-0135)

Decided March 26, 1996

A. MacKay (Vice-Chair), R. Cohen (*ad hoc*), P. Fockler, T. Gupta,  
R. Stanbury, M. Ziniak

## **THE FACTS**

On February 17, 1995, CJRQ-FM (Sudbury) conducted an informal poll of its listeners. The on-air host asked the question "Should taxpayers pick up the tab for sex-change operations that are deemed medically necessary? Callers to Citizen-Q have their say next." Following a commercial break, the host continued:

From a strictly money point of view, seven sex-change operations a year at \$25,000 apiece is a drop in the bucket for Ontario's health-care budget but many of you have raised your voice in opposition to something Ontario's Health Minister says we have a responsibility to provide. Ruth Grier's comments come on the heels of funding cutbacks for procedures like circumcisions and *in vitro* fertilization. Here's what some of you told our response line.

*First caller:* These are pretty sick times when the health-care system would refuse to finance a leg-brace for a small child but would willingly open its purse strings if some sick demented obviously mentally disturbed homosexual minces into a hospital or clinic demanding a vagina. And the health-care professionals are tripping over each other to accommodate this misfit of the natural order.

*Second caller:* OHIP does not pay for plastic surgery. If I wanted a bust enlargement, they wouldn't pay for it but if a man wants one, they would?

*Third caller:* If you do enough crying and whining in this country then minorities seem to get whatever they want, which is a little bit crazy, don't you think?

*The Host:* Well, 90% of callers to Citizen-Q said we shouldn't be paying for sex change operations even if they are deemed medically necessary; 10% have no problem with the Health Minister's point of view. 198 people took the time to call our hotlines this morning. We'll have another question calling for your opinion Monday morning at 7.

A listener sent a letter to the CRTC, the CBSC and other organizations on the 20<sup>th</sup>. In it, she said:

On February 17, 1995 at approximately 12:15 p.m. comments were aired on your radio station which were extremely offensive. There was an opinion poll concerning OHIP and sex change operations, one caller launched into a tirade about "mincing queers" and other comments too offensive to repeat.

I spoke with Gates Cooney of your station, and while she agreed with me that she found the comments offensive, she said people had a right to their opinion. I think this is exactly the attitude which let these homophobic comments be broadcast over public airwaves in the first place. My husband also spoke with an employee of Q92 and this person did not even give any indication he thought these comments were offensive in any way, just "people are entitled to their opinions!".

I do not agree with your employees that any opinion can be broadcast and I don't think Canadian licensing laws would condone this situation. Your employees have made a serious error in judgement in this case and I would like assurances from your management that this type of comment will not be broadcast again. Disgusting comments of this type about any member of society have no place on Canadian airwaves. ...

I think your employees should be reminded that you do not own the frequency FM92.7 but are only licensed to broadcast on this frequency provided certain standards are upheld and adhered to.

The General Manager of the station responded on February 27. His letter was extremely brief; it said simply that

This incident has been a learning experience for our news room.

It has forced them to "examine" their policies related to the daily "poll" and the listeners' comments.

We appreciate your input.

He also enclosed with his letter a copy of the one-page statement of the station's news room policies, which are:

Under CRTC regulations, it is the responsibility of the stations to make sure that news shall be represented with accuracy and without bias.

Information is not to be selected for the purpose of furthering or hindering either side of a controversial public issue, nor should it be discriminatory in nature.

The fundamental purpose of news is to let people in the community know what is happening and give them an understanding of events.

Controversial public issues often arise in news broadcasting. The stations recognize that healthy controversy is acceptable and it is important to present fair opinions when a story or issue is considered to be of public interest or concern.

Editorial opinion and listener comments are acceptable on a controversial issue, provided they are clearly labelled as such, presented in a fair manner, and kept separate from a regular newscast.

#### Human Rights

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, colour, religion, age, sex, marital status or physical or mental handicap.

The viewer was unsatisfied with this response and requested, on February 20, 1995, that the CBSC refer the matter to the appropriate Regional Council for adjudication.

### **THE DECISION**

The CBSC's Ontario Regional Council considered the complaint under the *Code of Ethics* of the Canadian Association of Broadcasters (CAB) and the *Code of (Journalistic) Ethics* of the Radio and Television News Directors Association. The pertinent clauses of those Codes read as follows:

#### *CAB Code of Ethics, Clause 2, Human Rights*

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, colour, religion, age, sex, marital status or physical or mental handicap.

#### *RTNDA Code of (Journalistic) Ethics, Article 3, in part*

Broadcast journalists will not sensationalize news items and will resist pressures, whether from inside or outside the broadcasting industry, to do so.

The Regional Council members listened to a tape of the program in question and reviewed all of the correspondence. The Regional Council considers that, in airing that program, CJRQ-FM was in breach of both Codes of Ethics.

### **The Applicability of Clause 2 of the *Code of Ethics***

Since the wording of Clause 2 of the *Code of Ethics* includes "sex" but not "sexual orientation", the Ontario Regional Council is compelled to deal with the applicability of the Clause to the matter at hand. Fortunately, the question of "sexual orientation"

was dealt with by the Prairie Regional Council in *CHQR-AM re Forbes and Friends* (CBSC Decision 92/93-0187, August 8, 1994). That Regional Council determined that

Although Clause 2 does not contain a specific reference to "sexual orientation", the Regional Council considered that the term "sex" could reasonably be understood as being broad enough to include "sexual orientation".

The Ontario Regional Council agrees with this interpretation as reflecting the intention of the private broadcaster codifiers but believes that it would be worthwhile to add further observations regarding the issue.

It should be borne in mind that the *CAB Code of Ethics* was created in 1988. When, two years later, the private broadcaster codifiers created the *Sex Role Portrayal Code*, with the approval of the CRTC, they provided, in Article 3, for "fair and equitable demographic diversity" in the following terms:

(3) *Demographic Spectrum:*

Television and radio programming shall portray the wide spectrum of Canadian life. Women and men shall be portrayed with fair and equitable demographic diversity taking into account age, civil status, race, ethnocultural origin, physical appearance, sexual orientation, background, religion, occupation, socio-economic condition and leisure activities, while actively pursuing a wide range of interests. Portrayals should also take into account the roles and contributions of the mentally, physically and socially challenged.

Similarly, in creating the 1993 *CAB Violence Code*, the private broadcaster codifiers, again with the approval of the CRTC, provided a corresponding protection on the basis of sexual orientation in Article 8:

8.1 Broadcasters shall not telecast programming which sanctions, promotes or glamorizes violence based on race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or mental or physical disability.

Furthermore, Section 3(b) of the *Radio Regulations, 1986* provides that "A licensee shall not broadcast any abusive comment that, when taken in context, tends or is likely to expose an individual ... to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability."

In all, the Ontario Regional Council considers that, until such time as the Code is formally amended, the only appropriate application of the human rights provision of the *CAB Code of Ethics* is to include "sexual orientation" within the Council's understanding of "sex".

## **The Content of the Program**

The Ontario Regional Council takes no issue with the entitlement of the station to conduct informal unscientific opinion polls, identified as such, and to broadcast the results, together with voice excerpts of individuals who are aware that the messages they leave may be used for such purposes. It is, however, clear that, in choosing sound bites from these recorded messages to broadcast, a station will be as responsible for the words used as if one of its own announcers had made the statements brought into question.

## **Responsibility for Material Broadcast**

The foregoing principle is established by the *Broadcasting Act*, which provides, in Section 3(1)(h), that “all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast.” In its *Policy Regarding Open-Line Programming* (PN CRTC 1988-213, December 23, 1988), the Commission declared more pointedly that “A licensee is also responsible for comments made by guests or callers during open-line programs.” Finally, this principle is, in fact, only a portion of one of the paragraphs of the *Background* section of the *CAB Code of Ethics* which extends the responsibility of the broadcaster for what is aired on its station even further. That paragraph reads, in part:

Each broadcaster is responsible for the programming of the licensed station. This responsibility can only be met by bringing influence to bear upon all who have a hand in the production of programs including networks, sponsors, producers of live and recorded programs, advertising agencies and talent agencies.

The Council has often laid down the principle enunciated by the complainant to the effect that broadcasters do not *own* the frequencies on which they broadcast; they are only licensed to use them. In the exercise of that license, they must adhere to the standards laid down by Parliament and the regulator. At the same time, on a voluntary basis, Canada’s private broadcasters have agreed to adhere to the standards laid down in the various Codes administered by the Canadian Broadcast Standards Council. Those standards which are applicable to this case are laid out in the various statutes, regulations and codes which are discussed below.

## **The Offending Language**

In this case, the offending phrases used on air were those of the first caller. They included the following unacceptable phraseology: “some sick demented obviously mentally disturbed homosexual”, “minces into a hospital or clinic” and “this misfit of the natural order”. Two other callers shared the point of view of the first caller

regarding the financing of sex change operations, as did, apparently, 90% of the listeners who called in. The language used by the other callers as well as that used by the on-air host was temperate, opinionated but not of a nature to trample on the human rights of any identifiable group. The Council is never troubled by the expression of opinion, as long as it does not become abusively discriminatory. In *CFRB re Ed Needham (OWD Publication)* (CBSC Decision 92/93-0096, May 26, 1993), the language used by the on-air host was not dissimilar from that in question here and, in that case, the Ontario Regional Council decided against the station whose host had

used abusive, degrading and discriminatory language when referring to women, in particular, when he claimed that, "A lot of women nowadays will vomit this one at you ... 'why do you feel threatened?' ... 'This is their favourite little way, because they can't think and they can't argue properly -- these radical feminist nutcakes' .... 'Don't even respond to that' ... 'Don't talk to the dumb stupid idiots', and 'bug off, bimbo!'" The host added, "That's how these crazed, unhappy, twisted creatures who turn out this kind of swill are. These are unhappy people, hard to get along with in the world, can't find a real job, so they turn to producing this kind of nonsense. You know, it's a shame. They need help. They really need help."

The Council has no hesitation in concluding that the language of the first caller cited above is blatantly homophobic and that, based on its analysis of Clause 2 of the *CAB Code of Ethics* above, it contains "abusive or discriminatory material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, sex, marital status or physical or mental handicap" in contravention of the Code. Furthermore, Council members note that the broadcaster's own one-page statement of news room policies includes the text of the human rights provision of the *CAB Code of Ethics*. In other words, the station's management were not unaware of their responsibilities in this regard.

### **Sensationalization of the Story**

Even if there had not been a *single* other choice, the running of the first caller's message was not appropriate; however, the Regional Council assumes that, of the "198 people [who] took the time to call our hotlines this morning", there were other sound bites for the program's producer to select. In either event, it is the view of the Regional Council that the choice of the first caller's message was made for the purpose of sensationalizing the item, contrary to the provisions of Article 3 of the *RTNDA Code of (Journalistic) Ethics*.

### **The Broadcaster's Response**

In addition to its application of the Codes to the complaint, the CBSC always assesses the *responsiveness* of the broadcaster to the substance of the complaint.

The response of the broadcaster in this case is not unlike that in *CKVR-TV re Just for Laughs* (CBSC Decision 94/95-0005, August 23, 1995). In that case, the brief (114-word) reply was considered by the Ontario Regional Council to be “apologetic, and thus not totally *unresponsive* to the viewer.” In that case the Council decided that the response did not at all address “the substance of the viewer’s complaint.” In this matter, the station’s reply was shorter (only 32 words), not at all apologetic and did not respond to *any* of the concerns of the viewer. In the circumstances, the Ontario Regional Council considers that CJRQ-FM did not adhere to the standard of responsiveness expected of all CBSC members.

### **Content of Broadcaster Announcement of the Decision**

The broadcaster is required, within thirty days of the release of this decision, to announce it, in the following terms, during peak listening hours and to confirm to the Secretariat of the CBSC and to the complainant that it has done so:

The Canadian Broadcast Standards Council has found that CJRQ-FM breached provisions of the *CAB Code of Ethics* and the *RTNDA Code of (Journalistic) Ethics*. By airing blatantly homophobic remarks from a listener in a broadcast on February 17, 1995, the station had broadcast programming containing abusive or discriminatory material based on sexual orientation, and this for the purpose of sensationalizing its poll results. The Council also found that CJRQ breached one of its responsibilities of membership on the Council by not responding adequately to the listener’s complaint.

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