



Canadian Radio-television and
Telecommunications Commission

Conseil de la radiodiffusion et des
télécommunications canadiennes

Ottawa, Ontario
K1A 0N2

Ottawa, Ontario
K1A 0N2

CBSC / CCNR

AUG 13 1997

AUG 5 1997

Our File: 4637-469

[REDACTED]

Dear [REDACTED]:

Re: Complaint about the Weekly Comedy Show Sunday Funnies aired on CHUM-FM: [REDACTED] vs. CHUM-FM--"Appeal" from Decision of the Canadian Broadcasting Standards Council (CBSC)

This is the Commission's determination in the case of an "appeal" from a 26 March 1996 CBSC decision (released on 19 December 1996), concerning the 22 October 1995 broadcast of a comedy routine on CHUM-FM Toronto. A copy of the CBSC's decision is attached for ease of reference, and it sets out in detail the facts and background to the determination. For reasons explained below, the Commission considers that CHUM-FM's broadcast did not breach any of the obligations (including the "high standard" requirement) imposed on broadcasters under the *Broadcasting Act* (the *Act*).

As explained in your letter faxed to the Commission on 17 February 1997, you submitted that the CBSC should not have examined the intent of the broadcast, but rather its effects. Viewed in that light, you submitted that it was apparent that the broadcast in question was discriminatory and offensive, and many people and organizations were concerned about this broadcast. You maintained that the comedy routine amounted to "Polak jokes", intended to humiliate Poles, and that the CBSC should not have evaluated the humour according to how typical listeners (who might be prejudiced against Polish persons) might have perceived it, but rather it should have been considered as a human rights infringement. You also submitted that the CBSC showed a lack of seriousness about the complaint, as demonstrated by the long delay between the filing of the complaint (28 October 1995) and release of the CBSC decision (19 December 1996), and the fact that it mistakenly referred to you as a "viewer" rather than as a "listener".

Upon receipt of your 17 February 1997 letter, the Commission obtained the whole file of the complaint from the CBSC. By letter dated 11 March 1997 addressed to CHUM (and copied to you), the Commission stated that it had received [REDACTED]'s "appeal" plus the entire record of the CBSC determination (including CHUM's original reply to the complaint), and asked if CHUM wished to comment on any of the concerns that had been raised. The letter stated that the Commission intended to review

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██████████'s complaint and make a determination based on the merits of the case. Neither party has responded to the Commission's 11 March 1997 letter.

In the Commission's view, the particular jokes made during the comedy segment do not raise the issue of the abusive comment provision in the *Radio Regulations, 1986* (the *Regulations*), since the jokes were not directed towards Polish persons, but rather towards the comic's "brother-in-law". However, even if they could be perceived as having been directed towards Polish persons, and in a disparaging manner, the Commission considers that these still do not constitute a breach of the abusive comment provision, since the jokes in question did not go so far as to expose Polish persons to hatred or contempt. The Commission agrees with the CBSC's assessment that not every comment that refers to matters of race, national or ethnic origin (etc.) falls afoul of the abusive comment provision of both Clause 2 of the *Code* or s. 3(b) of the *Regulations*.

The Commission has also considered whether the jokes breached the "high standard" requirement—one which is not defined in the *Act*. In such a situation, the Commission considers that it is appropriate to take note of the standard that is applied by the broadcasting industry in assessing humor, and, if the standard is reasonable, to apply it to the circumstances of the case. The Commission strongly agrees with the CBSC that the standard to be applied to potentially offending statements will be not be different between serious and comedic situations. However, the Commission agrees with the CBSC that the audience perceptions and expectations may be different in these two situations. Thus, the humorous environment is relevant to the context in which the comments are to be evaluated and assessed. In this case, the jokes were not intended to be taken seriously, and their primary thrust was not towards Polish persons.

For these reasons, the Commission finds that CHUM's broadcast did not breach any of the obligations (including the "high standard" requirement) imposed on broadcasters under the *Act*. Thank you for expressing your concerns to the Commission. The present exchange of correspondence will be placed on the public examination file of CHUM-FM.

Yours sincerely,

██████████
 ██████████ for

██████████
 Secretary General and
 Chief Operating Officer

Encl.

cc: CHUM-FM
 CBSC ✓