
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CHUM-FM re Sunday Funnies

(CBSC Decision 95/96-0064)

Decided March 26, 1996

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

THE FACTS

During its broadcast of the weekly comedy show *Sunday Funnies* between 10:00 and 11:00 p.m. on October 22, 1995, CHUM-FM played a routine by American comedian Foster Brooks.

Brooks explained that his wife was from Buffalo, New York, and was of Polish descent. He purported to tell stories about his own brother-in-law, without further referring to the matter of ethnic background. In one tale, he said that he and his brother-in-law had gone off fishing. On the way they passed a bait shop at which his brother-in-law inquired about the cost of the bait. The owner replied, "I can let you have all you want for a dollar," to which offer the brother-in-law replied, "Give me two dollars worth."

Brooks then said that he had another brother-in-law and proceeded to tell a story about him. Last winter, he recounted, his brother-in-law went ice-fishing for the first time. "He brought home two hundred pounds of ice. [Audience laughter.] His wife fried it and they both drowned. [Audience laughter.]"

As the final joke in his routine, Brooks described the death of his father-in-law, who, he explained, "was a Polish sea captain", whose last request had been that, when he passed away, he be buried at sea. Brooks concluded: "Two of my brothers-in-law drowned while digging his grave."

A listener wrote to the CRTC on October 28 and that complaint was forwarded to the CBSC by the Commission on November 8. The essence of the complaint was that "The

comedian on the show attempted to portray Polish people as stupid and brainless via a series of denigrating jokes.” The complainant detailed the reasons for his concerns:

I cannot believe that in 1995, in a pluralistic society that Canada aspires to, CHUM had the nerve to air such an obvious attack on Poles. ... We are not aware that CHUM was in the business of using the airways [*sic*] to promote negative images of ethnic groups.

I do not think that CHUM has the right to force my young children to grow up in a Canada where other members of the Canadian public think they must be stupid because they are of Polish background...

... Does the CRTC accept and therefore condone this abusive obnoxious form of ethnic bashing in the name of humour? ...

... Only a few short months ago as I remember, Dick Smyth, a daily news announcer and commentator on CHUM-AM (Toronto) got into hot water over an offensive statement he made leveled at the members of the Jewish community over the public airways [*sic*]. What is going on here?

Normally such abusive jokes and comments come from the mouths of loudmouth jerks in backroom bars and they reflect more on the person speaking than on the subject in question. Accordingly, we must question the integrity of this radio station in the light of their programming policy on this matter.

The station's Program Director responded to the complainant on November 3, even before the correspondence was initially received by the CBSC from the CRTC. He said:

I can assure you that it never was, nor ever will be, CHUM's intention to portray Polish people as "stupid or brainless." This also applies for any ethnic groups, a person's religious affiliation, a person's employment status, or any other person with a perceived handicap or disability.

Unfortunately, the problems arise when it comes to comedy. What one person perceives as funny is not necessarily the same for the next person. The Foster Brooks piece is not a direct reference to Polish people. Rather it's a humorous attempt to portray people (in this case, in-laws) in funny situations. The specific reference to Polish people in this instance is completely secondary to the routine. In fact, you could say that it was unnecessary as the piece was funny without this reference. However, Foster Brooks happens to come from Buffalo, which has a very large Polish community, and he probably bases his humour on part of his upbringing in the Buffalo area.

Be that as it may, this still does not resolve your concern about negative remarks against the Polish race. Unfortunately, situations like this one happen to help mould the foundation for a lot of comedy. Whether you are Catholic, Protestant, Black, White, Jewish or from Newfoundland, Scotland, Poland or wherever, comedians have always used these real life realities [*sic*] to develop their humorous routines. It is not uncommon for Black people, Jewish people, or Newfoundlanders to poke fun at themselves. This does not mean they are racist, bigots or anti-Semitic. It is simply their attempt at humour, and nothing more.

He added that the Sunday night program had been on CHUM-FM for 15 years and that the station always ran a disclaimer at the beginning of the show "advising listeners that some

of the material they hear may be objectional [*sic*]. This allows our audience to make their own choice on whether or not to listen to the show.”

The viewer was unsatisfied with this response and requested, on November 20, 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). Clause 2 of that Code reads as follows.

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

In his letter, the listener had also referred to the CRTC’s *Radio Regulations, 1986* on the question of abusive comment and reference is made to them as well. The text of Section 3(b) of the *Radio Regulations, 1986*, reads 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, colour, religion, sex, age or mental or physical disability;

The Regional Council members listened to a tape of the program in question and reviewed all of the correspondence. The members unanimously agreed that the program had not violated either Clause 2 of the *Code of Ethics* or Section 3(b) of the *Radio Regulations, 1986*.

The question of abusive or discriminatory comment has arisen on numerous occasions and the CBSC has had the opportunity to review the issue from many angles over the past three years. From an overall perspective, many of the previous decisions are reviewed and summarized in *CHUM-AM re Brian Henderson Commentary* (CBSC Decision 95/96-0008, 0060 and 0061, March 26, 1996) and *CFTR-AM re Dick Smyth Commentary* (CBSC Decision 95/96-0062, March 26, 1996).

Since the latter matter was referred to by the complainant in this case, this may be the best point at which to consider what the Council believes is a fundamental difference between the Smyth matter and cases of the nature of the *Sunday Funnies* broadcast. It is as follows. There is an essential distinction to be drawn between the serious and humorous dialogue. Each has its content limitations but *what* those limitations are will vary according to the *nature* of the broadcast in question. The Ontario Regional Council was, in fact, quite clear about the serious nature of the Smyth commentary although it did note an *apparent* distinction between the original Brian Henderson Commentary and the Dick Smyth Commentary.

In the Henderson matter, the newscaster had made, as he later admitted, a poorly conceived attempt at ethnic humour. In the Smyth case, the broadcast was not humorous in intention but nonetheless a poorly executed attempt to support a beleaguered colleague. In radio, where there is no video component, words are, if not everything, *nearly* everything.

As it happened, it was not the view of the Council that the Henderson matter was humorous. The Council stated that, in that case,

[T]he newscaster and editorial commentator, Brian Henderson, was attempting to address a valid, indeed important, public concern, namely, the state of the legal aid system in the Province of Ontario. As the announcer himself admitted, his choice of example was a “clearly poorly conceived” attempt at “ethnic humour”, which had the effect of undermining the legitimacy of his commentary and, further, violated clauses 2 and 6(3) of the *CAB Code of Ethics*.

The decision emphasized the relevance of the serious material dealt with there and related it to Clause 2 of the *Code of Ethics*:

To illustrate his point, he [Henderson] had reached for an unrelated, irrelevant and factually unsupported claim. His original commentary was incorrect and inappropriate, a textbook case of what Canada’s private broadcasters sought to avoid when they mandated in the *Code of Ethics* which they created *for themselves* that “their programming contain no abusive or discriminatory material ... based on matters of race, nation or ethnic origin [or] religion”.

The wording chosen by the private broadcasters parallels, not inadvertently, the Council believes, that used in the *Radio Regulations, 1986*. Whether intended to be humorous or serious in tone, programming, whether live or pre-recorded, which “tends or is likely to expose an individual or class of individuals to hatred or contempt on the basis of [their] race, national or ethnic origin, colour [or] religion” is not tolerable on Canadian airwaves. While each individual must determine his or her limits of tolerance *at home*, the manifestation of such intolerance on the *publicly*-owned airwaves is unacceptable. The freedom to speak or express does not include the freedom to defame.

The Council believes that it is essential to draw a distinction between a broadcast which is *intended* to be serious or at least leaves the impression that it intends to be serious and one which *clearly* does not. It is not that the *standard* to be applied to the potentially offending statement will be different. It is rather the question of audience perception. The Brian Henderson and Dick Smyth commentaries foundered on *that* rock.

The situation is different where the context is clearly comedic. After all, where the audience is given no reason to expect that the substance of the comments made is serious, their attitude could *reasonably* be expected to be different. A remark which might reasonably be assessed as abusive in a serious context and thus in breach of the *Code of Ethics* may not be so viewed in the comedic environment.

Furthermore, humour is commonly based on national, ethnic, racial or gender traits, as often as not related to background matters best-known to the comedian. Even stereotypes are not unknown in such a context. Such issues cannot *alone* be the cause of a broadcast sanction. They must be *coupled* with another defining criterion; namely, they must be abusive or discriminatory. The Council has on numerous occasions enunciated that it is not *every* comment which refers to matters of race, national or ethnic origin, colour, religion, age, sex, marital status or physical or mental handicap which falls afoul of Clause 2 of the *Code of Ethics* but only those which could be reasonably understood as being abusive or discriminatory.

In *CFOX-FM re the Larry and Willie Show* (CBSC Decision 92/93-0141, August 30, 1993), the Council concluded that, in the alleged telling of Irish jokes during St. Patrick's Day week, "there was neither in implicit nor explicit terms any labelling of the Irish people as 'stupid' or as 'Paddies'; the Irish people were not referred to derogatorily; and the hosts had used no 'abusive or discriminatory material or comment' in relation to Irish people."

In *CHQR-AM re Forbes and Friends* (CBSC Decision 92/93-0187, August 8, 1994), it was alleged that there had been abusive or discriminatory comment made regarding well-known performer k.d. lang's sexual orientation. On that show, the host had made comments regarding an article in *Vanity Fair* magazine, which featured photographs of k.d. lang with model Cindy Crawford. He parodied a fictitious "Vegetable Institute", advising that eating vegetables would "put hair on their chests too". The Prairie Regional Council did not consider that the extension of the humorous reference by the host violated k.d. lang's rights. They believed that k.d. lang herself had parodied her own sexual orientation on that cover and had, in that sense, set the tone for popular reaction.

The majority of the Regional Council members were of the view that the spot was directed primarily at k.d. lang's vegetarianism rather than her sexual orientation. In any event, to the extent that the spot might reasonably be understood as a spoof of her sexual orientation, the Regional Council did not consider that it could be interpreted as discriminatory in terms of Clause 2 of the Code of Ethics. The segment had, after all, been prompted by a *Vanity Fair* article in which Ms. lang had chosen to present herself in masculine clothing beside one of the most adulated of female models. This, Regional Council members felt, was an unequivocal indication of Ms. lang's ability to joke about her own sexuality. In the context of the *Vanity Fair* article, Ms. lang's own public declarations regarding her sexual orientation and the timing of the spot, the Regional Council considered that the spot was intended to be humorous in a way which did not constitute a breach of Clause 2 of the Code.

The question of offensive humour arose again in *CKVR-TV re Just for Laughs* (CBSC Decision 94/95-0005, August 23, 1995). During the broadcast of a CBC-produced show

based on the annual Montreal humour festival, a segment included a comedienne playing “Sister Mary Immaculate” and several of the jokes referred to religion and homosexuality. The Council referred to several of its earlier decisions in arriving at its decision in this matter. They concluded that those principles applied squarely to that case, which involved abusive or discriminatory comment based on a matter of religion.

The Regional Council noted one reference to homosexuality in Sister Mary’s routine; it further noted that some of her jokes had nothing to do with religion at all. While “Sister Mary”’s routine might not have been humorous to the complainant, none of her jokes -- including the reference to homosexuality highlighted by the complainant -- could be construed as abusive or discriminatory to Christians or Catholics.

The issue, ultimately, is to decide *when* a humorously intended comment may *reasonably* be viewed as having gone too far. In *CKTF-FM re Voix d’Accès* (CBSC Decision 93/94-0213, December 6, 1995) the Quebec Regional Council put that issue in the following terms:

The question, of course, is to determine which “ethnic” jokes or comments will be understood as crossing the boundary of acceptability. There are those which are sanctionable and those which, even if tasteless or painful to some, are not. It would be unreasonable to expect that the airwaves be pure, antiseptic and flawless. Society is not. Nor are individuals in their dealings with one another. Nonetheless, the airwaves are a special and privileged place and those who occupy that territory are expected to play a more restrained and respectful social role.

In that particular matter, the Quebec Regional Council was of the view that the humour in question had gone too far.

What may constitute the limits of acceptability in each challenged case will need to be appreciated in its context. Certain cases will clearly fall on one side or the other of the boundary. Others will lie uncomfortably on the line. The matter at hand was, however, free of doubt; the depiction of “Newfies” as “assholes” was clearly unacceptable. Whether intended seriously or in jocular fashion, the use of that term in reference to this or any ethnic, racial, national or other discernible group was derogatory, abusive and discriminatory and in violation of clause 2 of the *CAB Code of Ethics*.

It was the view of the Ontario Regional Council in *this* case that the humour did not exceed the bounds of reasonableness. Neither was there any intent to abuse persons of Polish background nor did Council members believe that such persons would be reasonable in believing that this would be the effect of such jokes. Members of the Council were themselves rather of the view that the primary thrust of the humour was toward in-laws (traditional targets of stand-up comics) and *not* persons of Polish descent. They also agreed, however, that, had the latter been the case, they would not have found the jokes abusive or discriminatory. That being said, they understood equally that some persons might be offended by the humour. It was, therefore, cautious and good judgment, even in the case of a program which had built up certain expectations by being on the air for 15 years, that an advisory be added at the beginning of the weekly show. The Program Director was correct to point out to the complainant that this was CHUM-FM’s practice.

The Broadcaster's Response

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. It is a responsibility of membership in the CBSC to be responsive to audience complaints. Clause 2 of Section VI of the *CBSC Manual* states that,

Stations voluntarily becoming members of the Council agree to:

...

(f) Co-operate fully whenever a complaint is received, by:

...

responding to all complaints quickly and directly, attempting to resolve the issue to the complainant's satisfaction

The Council considered that the response of the Program Director had been particularly thoughtful and sensitive to the issues raised by the complainant, as well as to the broader question of ethnicity in humour.

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