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**CANADIAN BROADCAST STANDARDS COUNCIL  
ONTARIO REGIONAL COUNCIL**

CHOG-AM re *Connections*

(CBSC Decision 96/97-0040)

Decided May, 8, 1997

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

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**THE FACTS**

*Connections* is a late night open-line program hosted by Dr. Jerry Green and broadcast by CHOG-AM in Toronto. On its October 28, 1996 broadcast, one of the topics of discussion was the "Days of Action" protest against the cutbacks of the Ontario government. The complaint concerns comments made by a caller to the program, identified only as "Don from Brampton", at about 2:45 a.m. on the 28<sup>th</sup>. The following are excerpts from Dr. Green's discussion with "Don":

**Don:** ...this is not just a class struggle. To us we're at war and we'll do whatever is necessary. And what we did in the past two days of protest is just Act One and it's going to get worse. And as long as the Tories keep putting up the ante we'll counter attack and if he...if Harris wants war, we'll give him war. Believe me. And this is just the beginning. It's going to get rougher and tougher as it goes along.

**Jerry Green:** Well you know, Mr. (Inaudible) was on just before me and he didn't agree with the protest either. He is sort of a spiritual person and he was saying "you should work out a way with the Harris government so that we both get what we want." Rather than getting into a war with them. What would you say to that?

**Don:** I say that we couldn't come together with Benitto Mussolini or Adolf Hitler and we're not going to try to negotiate with people who are unwilling to listen, who don't give a darn about the people of Ontario. This is strictly their own doing and the reason that there weren't more that showed up at the days of protest is because they are a cowardly lot. They were hiding looking out their Bay Street windows and they did the same thing at the convention center.

They haven't got the courage to come and face the public anymore. To me that's disgusting and that's contemptuous and cowardly.

...

**Don:** ...we have every democratic right to protest and that's exactly what we are going to do. We're going to make his life, the rest of the Tories lives so miserable that they are going to be happy to go out when the next election comes.

**Jerry Green:** They'll be happy to have their one term in government and then they can go on to higher levels of ...

**Don:** They can go back to Bay Street or wherever they go because they always seem to land on their feet. Those people, people of that sort, and by the way, the reason they don't care about the children of Ontario is because Tories don't have children they have piglets. And that's essentially the kind of people...

**Jerry Green:** You're getting very nasty, Don. Those are your words. See, I wouldn't be as nasty....

## The Complaint

A listener wrote to the CRTC to complain about this broadcast. This letter was in turn forwarded to the CBSC. In his letter, the complainant stated that the host had allowed caller "Don from Brampton" to make "hateful, threatening and derogatory statements without being challenged and/or being muted."

## The Broadcaster's Response

The Vice-President/Programming of the station responded to the complainant on November 12<sup>th</sup>. His letter reads, in part, as follows:

We've had the chance to review the programming material of concern to you and found that the station was programming an open line session. Listeners are asked to call in and offer their opinions on various topics. The topic in this case was the "Days of Action" protest in Toronto. I can confirm that the caller you identify as Don did make it on the air. He did express some harsh criticism of Ontario's Progressive Conservative Government and their supporters and certainly made his view known on where he stands with the Mike Harris cutbacks, and organized labour's response to such. His comments were expressed as his opinion only, and were acknowledged by the host as such.

Having heard Don on the air before, I can tell you that his views have sometimes been philosophically aligned with some of our hosts and callers, and yet strongly challenged and chastised by others. He is what we call in the radio business an "active participant" in talk show programming and appears on our station several times a week. We feel that his opinions have been fairly balanced in the past, with differing opinion and will continue to be so in the future.

In this particular case, we can see where some listeners would be offended by his opinions, and they would not be shared by all of our audience.

We don't feel that the host acted inappropriately in this case. He allowed the caller to express his belief and the same courtesy was afforded to other callers to the program.

The complainant was unsatisfied with this response and requested, on November 18, 1996, that the CBSC refer the matter to the appropriate Regional Council for adjudication. The standard form for this request was accompanied with a letter in which the complainant stated:

...I will defend Don's rights to "CIVILLY and OPENLY" air his views, but I do take objection to the comments, threats and hatred he expressed on Dr. Greene's program...Don, as a self proclaimed spokesman and official of a political party, seems to constantly pursue his agenda of overthrowing a duly elected democratic government with his vile terminologies [*sic*]. The culminating statement being "TORIES DON'T HAVE CHILDREN THEY HAVE PIGS."

## **THE DECISION**

The Ontario Regional Council considered the complaint under Clause 6, paragraph 3 of the *Code of Ethics* of the Canadian Association of Broadcasters (CAB). The text of this paragraph reads as follows:

### Clause 6, paragraph 3

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 Regional Council listened to the tape of the program in question and reviewed all of the related correspondence. The Council concludes that the broadcaster is not in breach of the *Code of Ethics*.

## **Broadcaster Responsibility for All Material Aired**

Before determining whether the broadcaster breached the *CAB Code of Ethics* for permitting some or all of "Don's" comments to be broadcast, the Ontario Regional Council considers it important to deal with the issue of broadcaster responsibility for the airing of *all* material, including the comments of a caller on an open-line show. In general, as provided in the CRTC's *Policy Regarding Open-Line Programming* (Public Notice CRTC 1988-213, 23 December 1988), the broadcaster is responsible for the content of all material aired.:

A licensee is responsible for the actions of its employees, including open-line hosts, producers and programmers. *A licensee is also responsible for comments made by guests or callers during open-line programs.* [Emphasis added.]

While this is the first occasion on which the CBSC is called upon to deal with a caller's comments, the Council's view of the matter was discussed in *CHAN-TV re Sportscast* (CBSC Decision 95/96-0108, December 18, 1996), a program which dealt with an invited guest's comments. In that matter, the British Columbia Regional Council stated:

It is, of course, clear that, to the extent the words in question offend the Code, the broadcaster bears full responsibility for them despite the fact that the commentator is not a regular station employee. Broadcasters are, in general, responsible for any programming which they air. This includes programming which they do not originate (see *CKVR-TV re Just for Laughs*, CBSC Decision 94/95-0005, August 23, 1995), advertising (see *CFTO-TV and CFMT-TV re Walk to Work Commercials*, CBSC Decision 93/94-0015, June 22, 1994) and the comments of callers-in to talk shows.

In light of the above, the Ontario Regional Council does not find that its decision is at all affected by the fact that Dr. Green stated "Those are *your* words... I wouldn't be as nasty [Emphasis added]." The broadcaster is as responsible for them as if they had come from Dr. Green's mouth.

### Open-Line Programming

The CBSC has in the past interpreted and applied the standards required of broadcasters airing open-line programs. Broadcasters must balance freedom of expression against abuses of that freedom. In *CFRA-AM re the Lowell Green Show* (CBSC Decision 93/94-0276, November 15, 1994), the Council stated:

In Canada, the freedom of expression as guaranteed in Section 2(b) of the *Canadian Charter of Rights and Freedoms* is not without limitations (see Section 1 of the *Charter*). As the CBSC affirmed in its April 15, 1994 decision concerning CKTB-AM, "it is that delicate weighing of freedom and restriction which the host must accomplish and which, in the event of a listener complaint, the CBSC must judge."

The host in this instance is being blamed for not cutting off a caller soon enough. Several other complaints have dealt with a host's responsibility to *enable*, not *restrict*, access, concluding that, as the moderator, the host must not intimidate, insult, cut off or abuse callers. In the *CFRA* decision quoted above, the talk show host cut off the caller as soon as she had identified herself as a Christian. The Council considered the broadcaster's actions unacceptable and stated that:

by cutting her off on such flimsy and discriminatory grounds, the host had not only infringed her freedom of expression, but had also precluded the "free flowing expression of views of public concern" deemed essential to this type of programming. The host of the program had clearly insulted the female caller and silenced her because he believed that she had a point of

view different from his. The Regional Council unanimously agreed that, by limiting debate in this manner and for this reason, the station breached clause 6 of the CAB *Code of Ethics*.

In *this* case, far from cutting off the caller, whose frequent participation was apparently known to the station, the host permitted him to continue to offer his opinions. Dr. Green stepped in assertively only once, when, in his view, the caller began to “cross the line” of *acceptable* comment. While the Council considers that, for the most part, the comments of caller “Don” constituted political rhetoric, it acknowledges that the host must have the latitude to determine when a caller has gone too far. Even though such political expression holds a very high status in terms of the constitutional guarantee of freedom of expression, the Council believes that the host acted appropriately in dealing with this part of Don’s comments both in letting “Don” continue as long as he did (the complainant’s criticism) and in cutting him off when he judged the moment apt.

With respect to Don’s specific comment that “Tories don’t have children, they have piglets”, the Council is of the view that the comment is silly rather than abusive. Accordingly, the Council does not find that CHOG-AM violated broadcast standards by allowing the comment to be aired. However, the Council is of the view that such a comment did deserve mitigation, given its venomous intent. Accordingly, the Council finds that Dr. Green acted appropriately in this regard when he stated “You are getting very nasty, Don.”

### **Broadcaster Responsiveness**

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. It is the view of the Regional Council that the broadcaster's obligation of responsiveness in this case has been fulfilled.

*This decision is a public document upon its release by the Canadian Broadcast Standards Council. It may be reported, announced or read by the station against which the complaint had originally been made; however, in the case of a favourable decision, the station is under no obligation to announce the result.*