
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CJOH-TV re an episode of *Ellen*

(CBSC Decision 96/97-0095)

Decided May 8, 1997

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

THE FACTS

Ellen is a weekly half-hour American situation comedy which focuses on the life of bookseller Ellen Morgan (played by Ellen DeGeneres). The program is broadcast in Ottawa on CJOH-TV. The January 22, 1997 episode included a subplot in which Joe, an employee in Ellen's bookstore, tries to sell jokes to a stand-up comedian. It is this subplot which gave rise to the complaint.

Joe boasts of having great success with certain jokes in a Niagara Falls comedy club and this enables him to sell two jokes to a stand-up comedian for \$10 each. In a later scene, the comedian is heard giving the following punch line: "And then the guy from Newfoundland says 'Get away from him, that caribou's spoken for.'" He receives no laughter or applause from the members of the audience, except Joe. When Joe sees that he is the only one laughing, he tries to get a reaction from the audience (his remuneration for the joke depends on it) by saying "It's so true. Those Newfies are so stupid..." The comedian then follows up with a one-liner purchased from Joe: "The sign when you get there 'Entering Newfoundland', why?". Joe laughs loudly (again alone), then makes the sound of a cash register and says to his companion at the table "Another sawbuck for Joe."

The subplot ends with the comedian losing his spot in the comedy club. In the show's last scene (shown only in a small corner of the screen while the credits roll), the comedian is now performing at 'Canuckleheads' in Vancouver, B.C. This time, the caribou joke receives huge applause.

The Letter of Complaint

A viewer wrote to the CRTC on January 23 and this complaint was in turn forwarded to the CBSC. His letter read in part as follows:

I must express my strong condemnation to the derogatory references contained in the program regarding "Newfoundland" and "Newfoundlanders". These references promote a disparaging stereotype which, even in comedy, is not acceptable for broadcast. It would be unlikely that contemptuous references based on race or religion would be broadcast and it is equally unsuitable in these circumstances. A program which characterizes any segment of society as "stupid" is offensive and bigoted.

Newfoundlanders take pride in, and are renowned for, sharing their wonderful sense of humour. However, they are always keenly aware of the difference between laughing "with" someone and laughing "at" someone. Obviously the producers of this "comedy" program need to be informed of this nuance.

The Broadcaster's Response

The broadcaster's Program Manager responded to the complainant by letter dated February 4. In her letter, the Program Manager stated:

Your concerns regarding "derogatory references contained in the program" are indeed taken seriously by Baton Broadcasting Incorporated. Baton has taken action by forwarding a copy of your letter to the Canadian distributor, asking that it be passed along to the production company in the U.S.A.

The producers of the series and its star, Ellen DeGeneres, have publically [*sic*] apologized to the people of Newfoundland. In their apology, they said "we are truly sorry if last night's episode of ELLEN offended the people of Newfoundland... our efforts to entertain were truly short-sighted and we apologize."

Baton Broadcasting Incorporated has been an active participant in the development of the V-chip classification system in Canada. Presently, many Baton stations, including CJOH, are taking part in a nation-wide test of the Canadian V-chip system; we are proud to be a part of this.

Thank you for having taken time to write; we hope your concerns have been adequately addressed. It may interest you to know that all Baton stations are members of the Canadian Broadcast Standards Council. The Council provides members of our viewing public with a formal means to address concerns. If you feel your concerns have not been adequately responded to, you have recourse to correspond with the Council. We have attached a CBSC information brochure for your perusal.

The complainant was unsatisfied with this response and requested, on February 17 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 Clause 2 of the *CAB Code of Ethics*, which reads 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.

The Regional Council members viewed a tape of the program in question and reviewed all of the correspondence. The Council finds that the program in question does not violate the *CAB Code of Ethics*.

The Content of the Program

The series in question is a comedy. The Council has recognized in previous decisions that there is a distinction to be drawn between ethnic humour told in a *comedic* context and disparaging comments made about certain ethnic groups in a *serious* context. This distinction was first drawn by the CBSC in *CHUM-FM re Sunday Funnies* (CBSC Decision 95/96-0064, March 26, 1996). In that decision, the Council stated

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 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 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.

In a comedic context, to amount to a breach of the human rights provision of the *Code of Ethics*, a comment must not merely be discriminatory, it must be *abusively* so. The point

was first made in the B.C. Regional Council's decision in *CFOX-FM re the Larry and Willie Show* (CBSC Decision 92/93-0141, August 30, 1993). In that decision, the Council acknowledged that the station had told a series of Irish jokes during St. Patrick's Day week but concluded that there was no breach of the Code in that

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.

The Ontario Regional Council came to a similar conclusion in both *CHFI-FM re the Don Daynard Show* (CBSC Decision 94/95-0145, March 26, 1996), where the Council dealt with a "lightbulb" joke featuring "Jewish mothers", and in *CHUM-FM re Sunday Funnies* where the Council dealt with Polish jokes.

The Council notes that these decisions stand in stark contrast to the "Newfie joke" that was the focus of the Quebec Regional Council's decision in *CKTF-FM re Voix d'Accès* (CBSC Decision 93/94-0213, December 6, 1995). In that case, the Council found totally unacceptable the joke told by the on-air host in which Newfoundlanders were described as "trous de cul" ("assholes" in English).

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.

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*.

The context in this case is that of a sitcom in which a story is told about a stand-up comedian who must buy jokes to make a living. In the Council's view, the "Newfie joke" used in the program was clearly intended to demonstrate the ineptitude of the joke-teller. The Council also considers that the joke was for the most part harmless, if understandably offensive to some; however, the added comment by Joe ("Those Newfies are so stupid...") could be understood as more directly provocative. When taken in context of the storyline *and the buffoonish joketeller* - Joe is clearly incompetent and engaged in an obviously desperate attempt to get some laughter from the audience in order to get paid for the joke which the audience does not seem to find interesting, much less amusing - the Council does not find that this comment was abusively discriminatory.

The Council notes that the broadcaster's letter states that the producers of *Ellen* apologized for the episode stating that their "efforts to entertain were truly short-sighted". While this may appear as an acknowledgment that the comments made regarding Newfoundlanders were inappropriate, it does not mean that the "short-sighted" comments amount to a *breach* of the Codes. Broadcasters frequently respond to such audience concerns; however, the question of whether a particular program issue amounts to a breach of a Code is one which is decided by the Council. Since the Council does not generally concern itself with matters of bad taste, on most such occasions an issue only involving a point of taste will not constitute a breach of a Code. Thus, for example, a joke in bad taste will not be found in breach if it 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 CBSC put this issue in the following terms in *CHTZ-FM re the Morning Show* (CBSC Decision 92/93-0148, October 26, 1993):

In general terms, the CBSC is conscious of the fact that it must balance the right of audiences to receive programming which is free of abusive or discriminatory material based on sex and free of negative or degrading sexist comment, with the fundamental right of free speech in Canadian society.

Broadcaster Responsiveness

The CBSC always recognizes the broadcaster's obligation, as a CBSC member, to be responsive to complainants. In this case, the Regional Council considers that the broadcaster's response, while not entirely unresponsive to the complainant's concerns, could nonetheless have been more receptive to the points raised by the complainant. In the Council's view, had the broadcaster been more responsive, the complainant might not have returned a signed Ruling Request to the CBSC at all, thereby avoiding an adjudication of the matter by the Council.

In another complainant adjudicated by the Council at the same meeting of May 8, 1997, namely *CIII-TV (Global Television) re an episode of Seinfeld* (CBSC Decision 96/97-0074), the Council considered that the written reply from the broadcaster was "on the edge" of not fulfilling the obligation of providing a full and fair response to the issues raised by the complainant. The Council was concerned, among other things, that the broadcaster was attempting to "pass the buck" to the producers of the show rather than taking full responsibility for its programming. While the Council does not find that the broadcaster's response in this case is similarly "on the edge", it is troubled by the manner in which the broadcaster stated that they would be forwarding the complaint to the producers of the show. The Council finds that its comments in the *Seinfeld* decision also apply in this case. In the *Seinfeld* decision, the Council stated that

There can be no doubt regarding the broadcaster's responsibility for the programming which it airs, *wherever* it is produced. Nor is there anything improper with the provision of the

address of the program's producers. As the Ontario Regional Council found *in CFMT-TV re an Episode of "The Simpsons"* (CBSC Decision 94/95-0082, August 18, 1995),

A broadcaster may, for quite positive reasons, wish to encourage a viewer to *also* contact the producer of the program but should not attempt to sidestep its *own* responsibility in that regard on the grounds that *it* was not the producer of the show at issue.

Canadian broadcasters are also required to direct complainants to *Canadian* resources, specifically the Canadian Broadcast Standards Council, when they have a problem with material they have aired which they have been unable to resolve directly with the complainant. As members of the CBSC, broadcasters are encouraged to enclose the Council's brochure with their initial response as a means of advising viewers that they have an additional recourse available to them.

The Council reminds the broadcaster that taking action "by forwarding a copy of your letter to the Canadian distributor, asking that it be passed along to the production company in the U.S.A." may not always be sufficient to fulfil its responsibilities *vis-à-vis* complaints received regarding programming broadcast on its station.

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.