
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CJBK-AM re Brian Henderson Commentary ("Southern Baptist Convention")

(CBSC Decision 96/97-0253)

Decided February 26, 1998

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

THE FACTS

On June 20, 1997 at about 12:35 p.m., CJBK-AM (London) broadcast regular contributor Brian Henderson's commentary, which focussed on the Southern Baptists' decision to boycott the Disney company. The commentary was presented in the following terms:

Brian Henderson: The two most dangerous things in society today aren't the street criminals or crazy drivers or gangster rappers. The most dangerously influential elements that affect so many lives are politicians who rule in secret and the religious right that is far too public.

Twenty-two thousand Southern Baptists have been conventioning in Dallas, Texas, this week, passing a resolution to boycott everything Disney. Southern Baptists are probably the most judgmental of any mainstream religious sect; it's their way to salvation or straight to Hell, although it should be noted that all religions include certain dictates that are carved in granite. Well, I don't think any are as exclusionary as these people.

Fifteen and a half million registered Southern Baptists in the U.S., part of a Christian coalition that is so powerful even presidents of countries and corporations are forced to pay attention. And so when the right-wing with the God-squad puts a hex on Disney, the Mouse certainly takes notice. The Baptists are upset that Disney offers spousal benefits for their same-sex employees; they're outraged that Disney World in Orlando hosts an annual Gay-Day; and they are really peeved that Disney television allowed Ellen to come out of the closet in prime-time. And so they are urging Christians worldwide to tell their children "No, you can't buy a Goofy t-shirt from the Disney store"; "I'm sorry but God says we have to cancel our vacation to Disneyland"; and "Too bad, Billy, but the Reverend says we have to burn your video of the *Lion King*."

Things like this have been tried before, of course, and some threatened boycotts do work, but this is silly to the extreme. It's not like Minnie is having an extra-marital affair or that Donald and Daffy are coming out holding webbed feet. This is all about mind-control. Although as someone said the other day, with all the children still being starved and slaughtered in Africa, do you really think that God gives a damn about who's humping who in the Magic Kingdom?

But the foundation of all religious zealotry is the claim of an exclusive pipeline to God as in "I'm right and everyone else is wrong because Jesus told me so." I think more than anything it's their arrogance that bothers me. A situation though that will be closely monitored in a lot of head offices and political backrooms over the next year or so, remembering that these same people also say they want to rule the world.

The Complaint

A listener who objected to the commentary wrote directly to the General Manager of CJBK-AM on June 20, the date of the broadcast. She focussed on Brian Henderson's "poisoned rantings" and his allegation that the greatest danger to society lay in "the right-wing in the Southern U.S.A." rather than in the drug-dealers and criminals. She described his manner as "most defamatory and vituperative" and his tone as "vitriolic [and] malicious" as directed against "the Christian (and like-minded) community." The complainant seemed acutely offended by the "outright slander and lies" which she found in the conclusion to "his tirade [where he said that] <the Southern Baptist Convention in the USA has said that they want to rule the world.' What nonsense. What unsubstantiated lies." She herself concluded by stating that she "fully support[ed] Mr. Henderson's right to his opinion" but found it "quite disturbing that such an angry, mis-informed, hate-filled bigot has so easy an access to public airwaves." She requested that the station apologize "to all individuals who consider the family unique, important, and worthy of protection." She concluded by noting that "Equal rebuttal time for less virulent and non-vicious opinion should be encouraged on your station."

The complainant and the President of the station evidently spoke thereafter and, when it was clear that the broadcaster would be unable to satisfy the complainant, its President and General Manager provided the necessary information to enable the complainant to contact the CBSC. She did that by letter of July 20, 1997, sent directly to the Council. That letter, which made many of the same points raised in the June 20 letter, albeit in different terms and after reflection, reads (in part) as follows:

My concerns with Mr. Henderson's commentary are as follows:

One, his first sentence violates one of your codes pertaining to "fairness and accuracy in the news", *i.e.* he said that the greatest danger existing on our streets is not the drug dealers ... criminals ... etc. ... it is the right-wing in the Southern U.S. (Please understand that I must of necessity, paraphrase, as I could not possibly write verbatim his actual comments). I find it to be not only an unfair characterization to compare the members of the Southern Baptist Convention to criminals, it is a deliberate, malicious and false attack upon law-abiding citizens and members of a particular faith group.

Mr. Henderson then went on to rant for the duration of his commentary against this same group, the Southern Baptists, condemning them for their recent decision at a meeting of their leadership to recommend to their own membership that a boycott be enacted against the Disney corporation. Disney, as you may recall, recently embroiled itself in controversy with its decision to extend same-sex benefits to its "gay" employees, and to hold "gay pride days" at Disney World.

I feel that Mr. Henderson's attack upon the Southern Baptist Convention and their boycott was not only bigoted, unfair and evidence of great intolerance on his part, it was directed against one particular faith group in a vituperative manner such as would never be tolerated had it been directed against any other faith community.

Since the resolution recommending the boycott was democratically passed by a democratically elected body, was binding only upon their own voluntary membership, and was based on their own freely held values and beliefs, and did not impact Mr. Henderson in any way, nor threaten any of his freedoms, nor was it imposed on anyone else, I fail to comprehend the degree of anger and hostility and sarcasm evidenced in his tone.

My second concern was in Mr. Henderson's closing statement, when he made the claim that "they want to rule the world."

This is such an unsubstantiated, unproven, unprovable, disingenuous falsehood I can scarce believe a so-called "professional" could dare utter such, but it would seem that the political device of "the big lie" has made its way into broadcasting. It is a personal offense to me that such unbridled bigotry has any place on public airwaves.

Both radio stations CJBK and CFRA (and any others who air Mr. Henderson's "Commentaries") should pre-screen in future to avoid any further untrue and unfair comments. Both stations should apologize to the Southern Baptist Convention and to their respective audiences for the unwarranted and unfair portrayal of the faith community so insulted. It would seem to me that if one is to publically criticize the actions of another, so be it, however, those in positions of trust (the media) must at least criticize fairly, accurately, truthfully, and with accountability to those who do not have equal time to defend themselves.

Ensuing Dialogue Between the Broadcaster and Complainant

The broadcaster did not respond in writing to this complaint. Instead, the General Manager explained in a letter to the CBSC Secretariat that

when [the complainant] wrote to me I phoned her to discuss her concerns and offered equal time for rebuttal. I was prepared to run Mr. Henderson's comments on our talk show and have [the complainant] live or on tape voicing her opposition to his editorial. She refused, so I asked [her] what I could do to make her happy, she didn't know and that's when I suggested contacting you.

The complainant was unsatisfied with this explanation by the broadcaster and requested, on August 18, that the matter be referred to the appropriate Regional Council for adjudication. The completed Ruling Request form was accompanied by the following note, explaining that she was unsatisfied with the broadcaster's response received by way of a phone call:

... I received a phone call from [the] station manager of CJBK, asking me "what I wanted". Apparently he had heard from you?? He reminded me that he had offered me air-time to debate Mr. Henderson (the gentleman whose commentary I have complained about).

I stated that now, as I had requested of him then, I would like a sincere, honest apology made by both Mr. Henderson and CJBK to the Southern Baptist Conference and other faith communities (Judaism, Islam, Catholic) who would be in agreement with the Disney Boycott and therefore as targeted for insult as I was by Mr. Henderson's comments. Mr. Henderson's unsubstantiated and unverifiable claim that "they want to take over the world" violated the CBSC clause 2 - Human Rights wherein it is stated that programming should contain no... "abusive or discriminatory ... comment which is based on matters of ... religion." It is the religious belief of many faith groups, and not all of them "right-wing" in their political persuasion, that homosexuality is wrong. Disagreement with the gay community's aspirations does not constitute an intent toward world conquest. Can Mr. Henderson produce a tape or video proving that the Southern Baptist Convention passed any resolution calling for world conquest? Mr. Henderson's statement was not only untrue, it was ridiculousness bordering on the bizarre.

...

This brings me to the second request I made of [the station manager], namely, could he give me assurances that in future CJBK will demonstrate more actively and circumspectly their commitment to uphold their responsibility to ensure appropriate and fair and truthful use of public airwaves.

Until that day when [the station manager] and Mr. Henderson can extend to their listeners an admission that they made an error in judgement, I feel quite comfortable in signing the "Ruling Request" enclosed.

THE DECISION

The CBSC's Ontario Regional Council considered the complaint under Clauses 2 and 6 of the *Code of Ethics* of the Canadian Association of Broadcasters (CAB), which 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.

CAB Code of Ethics, Clause 6 (News)

It shall be the responsibility of member stations to ensure that news shall be represented with accuracy and without bias. The member station shall satisfy itself that the arrangements made for obtaining news ensure this result. It shall also ensure that news broadcasts are not editorial. News shall not be selected for the purpose of furthering or hindering either side of

any controversial public issue, nor shall it be designed by the beliefs or opinions or desires of the station management, the editor or others engaged in its preparation or delivery. The fundamental purpose of news dissemination in a democracy is to enable people to know what is happening, and to understand events so that they may form their own conclusions.

Therefore, nothing in the foregoing shall be understood as preventing news broadcasters from analysing and elucidating news so long as such analysis or comment is clearly labelled as such and kept distinct from regular news presentations. Member stations will, insofar as practical, endeavour to provide editorial opinion which shall be clearly labelled as such and kept entirely distinct from regular broadcasts of news or analysis and opinion.

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 members listened to a tape of the program in question and reviewed all of the correspondence. The Council considers that the program in question does not violate the *CAB Code of Ethics*.

The Entitlement to Comment on the Decision to Boycott

Although the nature of the comment on the Southern Baptists' boycott of Disney was different in *CJXY-FM re the Scott and Lori Show* (CBSC Decision 96/97-0239, February 20, 1998), aspects of that decision are relevant to the matter at hand. In the *CJXY-FM* case, morning show host Lori referred to the boycotters as "wackos". The Ontario Regional Council found that her comment was not abusively discriminatory.

The decision in this matter ultimately turns on the Council's understanding of the use by co-host Lori of the term "wackos". It is only if the epithet were directed at the Southern Baptists by reason of their *religion* that the Council could find that the broadcaster was in breach of the Code. If the epithet were, on the other hand, directed at the admittedly religious group by reason of something other than their religion (race, national or ethnic origin, colour, age, sex, sexual orientation, marital status or physical or mental handicap not being relevant to this matter), then the conclusion would likely be different. In the view of the Council, the epithet was not directed at the religious group by reason of anything other than the group's stated boycott of Disney by reason of their association with the television series *Ellen*. That stance by the Baptists was, in the Regional Council's view, an economic action regarding a political issue. There is, of course, no doubt whatsoever regarding the entitlement of the Southern Baptists to hold and to express its views on controversial matters of a political or publicly controversial nature. The point is only that, if they choose to do so, they render themselves fair game on the public playing field of political controversy. They cannot expect that they have the right to *publicly* express controversial political opinions and to be sheltered by reason of the fact that they are a *religious* group from the resulting fallout from the ideological seeds which they have sown.

... [I]t is clear that the host's views regarding the Disney boycott differ from those of the Southern Baptists whose views on *that* issue she was criticizing. She is, however, undeniably entitled to differ on such a public issue from anyone else *and to express such a view on the airwaves*.

The complainant in this case appears to be of the view that the decision taken by Southern Baptists to boycott Disney should not be subjected to public comment and criticism as it was “democratically passed by a democratically elected body, was binding only upon their own voluntary membership ... and did not impact Mr. Henderson in any way. [Emphasis original.]” This argument is surely, at best, naïve. It is clear that the Southern Baptists neither held their vote in secret nor made any attempt to maintain the confidentiality of the results. On the contrary, one has the sense that it was their purpose to make their position as widely known as possible, likely with the intention of convincing others of the rectitude of *their* cause and position, which, surprisingly enough, the complainant described as *binding* on the Southern Baptists. The complainant has, in the view of the Council, failed to take into account the very unprivate nature of the Baptists' decision to announce a public boycott. In reaching this conclusion, the Regional Council finds no fault with the Southern Baptists' position on the issue; their political stance is their business and their entitlement to publicize it their right. It is just to say that, in so doing, they place themselves in the public arena, justifiably open, in the purest democratic sense, to the criticism, even if exaggerated, of those who do not share their political/economic perspective.

In light of the above, the Council has no hesitation in finding that the broadcaster has not breached the Codes in broadcasting Mr. Henderson's commentary on the subject matter of the Southern Baptists' boycott of everything Disney.

What Was Actually Said?

While, as the Council has decided above, the Southern Baptists are not entitled to a protective shield from adverse comment on the sole basis of the religious nature of their organization, there is no doubt that they are entitled to the benefits accorded any identifiable group by Clause 2 of the *CAB Code of Ethics*. Consequently, the Council must determine whether Brian Henderson's commentary crossed the line into the territory of abusively discriminatory comment on the basis of religion.

The Council's first duty is to establish what was actually said in the commentary. In this regard, it must point out that some of the allegations contained in the complainant's letter are based on her erroneous recollection of what was actually said. The Council has previously observed, with the greatest understanding and sympathy for a listener, that it is not always possible for a complainant to accurately recollect a fleeting comment which leaves the listener with some sense of offence. The Ontario Regional Council dealt with that very issue in the following terms in *CHUR-AM re a Newscast (Abortion Poll)* (CBSC Decision 92/93-0207, February 15, 1994).

The Council noted a number of errors in the complainant's report of the hosts' on-air statements. While, in general, each complainant to the CBSC uses his or her best efforts to reconstruct with accuracy the words used by the broadcaster, it is understandably difficult to expect that complainants will be able to supply precise and total recollection of the on-air moment. Regional Council members always have the benefit of logger tapes and the ability

to play and re-play the material moments of an allegedly offending broadcast until they have been able to fairly assess the *tone* as well as the actual words used.

Accordingly, the Council notes that, whereas the complainant paraphrases Mr. Henderson's commentary as having stated "the greatest danger existing on our streets is not the drug dealers ... criminals ... etc. ... it is the right-wing in the Southern U.S.", the transcript prepared by the CBSC indicates that Mr. Henderson's actual words were: "The two most dangerous things in society today aren't the street criminals or crazy drivers or gangster rappers. The most dangerously influential elements that affect so many lives are politicians who rule in secret and the religious right that is far too public."

Was the Commentary Abusively Discriminatory?

The Council does not find that the language used in the actual broadcast violates the "Human Rights" provision of the *CAB Code of Ethics*. In the Council's view, the commentary addresses a socio-political issue (*i.e.* the place of religion in business and politics) and is not a comment, abusive or otherwise, about the religious right *qua religious group*.

In this regard, the Council finds it relevant to quote further from its decision in *CJXY-FM re the Scott and Lori Show* in which the Council explained its position regarding the distinction to be made between comments directed at an individual or group *on the grounds* of race, national or ethnic origin, colour, religion, age, sex, marital status or physical or mental handicap and those on some other point that is only *incidentally* related to the "protected" grounds enumerated in Clause 2 of the *CAB Code of Ethics*.

In partially analogous circumstances, the host in *CKTB-AM re the John Gilbert Show* (CBSC Decision 92/93-0179, October 26, 1993) expressed his views regarding the government's policy of bilingualism. The complainant objected to the remarks on the grounds that they constituted comments which were "degrading to francophones." The Ontario Regional Council disagreed with the complainant. While the host's remarks were *incidentally* related to French-Canadians, they were principally directed to bilingualism as a policy. The Ontario Regional Council

considered that an opinion on the government *policy* of bilingualism constituted an *opinion* on that issue and was not *racially* driven. Nothing can be more fundamental to the principle of freedom of speech enshrined in the *Charter* than the entitlement of an individual to express a differing view on a matter of public concern, including government policy.

Where, on the other hand, in *CKTB-AM re the John Michael Show* (CBSC Decision 92/93-0170, February 15, 1994), the Ontario Regional Council viewed a series of misstatements of fact and inaccuracies regarding French-Canadians as being made to further discriminatory objectives, they concluded that the broadcaster had breached Clause 2 of the *Code of Ethics*.

[T]he Regional Council considered that the multiplicity of inaccurate statements of the host were used by Mr. Michael to disparage or abuse the reputation of French-speaking Canadians as a group or expose them to the

contempt of other listeners. Consequently, the Regional Council concluded that the statements collectively amounted to a breach of Clause 2 of the *Code of Ethics*.

Another decision of the CBSC which the Council considers applicable by analogy is that rendered in *CHOG-AM re the Jessie and Gene Show* (CBSC Decision 93/94-0242, November 15, 1994). On the program in question, the hosts had done a skit parodying Member of Parliament Jag Bhaduria. They used re-worded Beatles songs sung with an accent intended to resemble Bhaduria's. The Ontario Regional Council did not consider that the parody fell afoul of the Human Rights clause of the *Code of Ethics*.

All members agreed that public figures, such as politicians, are often held up to criticism and parody. Indeed, it is the most essential component of the principle of free speech that the fullest criticism of political figures and political positions be permitted in a free society. Provided that the satire or criticism is levelled at political persons on the basis of their actions as public figures *and not on the basis of their national or ethnic origin*, it must be permitted, if not encouraged. In this case, the Council agreed with the station that the parody had been directed toward Mr. Bhaduria himself, and not toward Indian people as a group.

The point of the foregoing decisions is that, in order to fall afoul of the requirements of Clause 2 of the *Code of Ethics*, the challenged comments in those cases and in this must have been abusively discriminatory with respect to one or more of the grounds established in that clause.

While the complainant believes that Brian Henderson's concluding allegation that "these same people also say they want to rule the world" constitutes abusively discriminatory comment on the basis of religion, the Council reads the comment as figurative rather than literal. Council members believe that the statement is *hyperbolic* and merely the final fillip in the case the commentator has tried to build regarding the Baptists' attitude to the Disney issue. As Henderson says in his commentary, the Baptists "are urging Christians *worldwide* [emphasis added]" to boycott all things Disney to the extent that their children will no longer wear Disney t-shirts, visit Disneyland or watch the *Lion King*. The Council does not consider that the assertion is meant as a *realistic* assessment of organizational purpose in the sense in which the Prairie Regional Council found that the religious broadcast in *CKRD-AM re Focus on the Family* (CBSC Decision 96/97-0155, December 16, 1997) had contained abusively discriminatory comment against homosexuals by "attribut[ing] to the gay movement a malevolent, insidious and conspiratorial purpose, a so-called 'agenda'".

Broadcaster Responsiveness

In addition to assessing the relevance of the Codes to the complaint, the CBSC generally always assesses the *responsiveness* of the broadcaster to the substance of the complaint.

In this case, however, the Council is of the view that it is not in a position to assess CJBK-AM's responsiveness given that its response to the complaint was substantially in verbal

form thereby making it impossible for the Council to determine the content and tone of the response.

While the Council is of the view that direct oral dialogue between the broadcaster and a concerned listener or viewer may often be a very good way to resolve programming concerns, it also prefers that, when an “official” complaint is made to the CBSC, the broadcaster’s position should ultimately be documented in writing, in the same way that complainants are required to “voice” their concerns in writing when seeking to engage the CBSC complaints resolution process. The Council acknowledges the administrative burden this conclusion puts on broadcasters but notes the inherent fairness of such a position. In *CIII-TV (Global Television) re an episode of Seinfeld* (CBSC Decision 96/97-0074, May 8, 1997) the Council noted that

The process by which the CBSC becomes involved in adjudicating a dispute between a broadcaster and a listener/viewer places reasonable, but not insignificant, demands on the complainant. A simple phone call is not enough to trigger the process. The CBSC procedures require that a complainant must take the time to put his/her concerns *in writing*, and while no knowledge of broadcast codes is required of the complainant, the concerned individual must outline why he or she believes that the content of the broadcast was not appropriate. Often, in the experience of the Council, the letters provide lengthy explanations of the reason for the complainant’s concern.

In the end, the Council finds no fault with the broadcaster which, although not responding in writing, did, in some important respects, *exceed* its obligations by offering the very “equal rebuttal time” which the complainant requested in her original letter of June 20 to CJBK-AM, but which she ultimately chose not to use. As the British Columbia Regional Council observed in *CFOX-FM re the Larry and Willie Show* (CBSC Decision 92/93-0141, August 30, 1993), in which the broadcaster offered rebuttal time which the complainant accepted and used,

In the present case, the Regional Council considers the steps taken by the General Manager of CFOX-FM to be of a thoughtful and collaborative nature and, indeed, exemplary in the fulfilment of broadcaster responsiveness to a complainant, despite the fact that the station itself did not consider that it had acted in a racist or offensive manner.

Consequently, the Ontario Regional Council finds no breach of the broadcaster’s standard of responsiveness in this matter.

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.