
**CANADIAN BROADCAST STANDARDS COUNCIL
ATLANTIC REGIONAL COUNCIL**

CJYC-FM re Local Exotic Dance Bar Commercial

(CBSC Decision 97/98-0282)

Decided November 25, 1998

C. McDade (Chair), Z. Rideout (Vice-Chair), R. Cohen,
K. MacKaulay and H. Monbourquette

THE FACTS

On September 9, 1997, CJYC-FM (St. John, New Brunswick) aired a commercial for a local exotic dance bar called "Chez Cherie"; it read as follows:

Girls ... girls ... girls ..., the first time ever in St. John. Tia, Sierra, Lonnie, Maria and Sasha! Beautiful, talented ladies, making their dancing debut at Chez Cherie. Tonight, it's 50 cent Canadian mist shots, followed by "Double up Your Drink" for one dollar. Tomorrow, it's "Boys Night Out". Buy one bar refreshment get a second for two dollars. And don't miss Thursday's *Lamone* [pronounced "moan"] and groan contest. No cover charge before 8, at Chez Cherie, Southern New Brunswick's only exotic dance bar, where tonight it's all new girls.

The Letter of Complaint

In an undated letter, a listener wrote directly to the General Manager of CJYC-FM in the following terms:

I have been a daily listener of C/98 FM since moving to Saint John three years ago. On Tuesday, September 9, 1997 I was disturbed to hear your station advertising for Chez Cherie. Chez Cherie is a business that promotes the degradation of women by objectifying their bodies and reducing their humanity to a source of sexual pleasure for men. The negative impact such a business has on women, men, families, and society as a whole is vast and complex.

As one C/98 FM listener I have no direct power to influence your decisions, and I have no method of ensuring your programming promotes basic humanity and mutual respect between

the genders. However, I can exercise my choice to no longer listen to you station until I am assured no further advertisements promoting Chez Cherie will be aired. I will encourage others whom I know to do the same.

The Broadcaster's Response

On September 16, 1997, CJYC-FM's General Manager responded to the complainant with the following:

Thank you for your recent letter regarding C-98FM radio and our advertising for the Chez Cherie nightclub. We always welcome the thoughts and opinions of our listeners on any elements of our broadcasting product.

As a federally licensed radio broadcasting facility, CJYC-FM (C-98) is bound by the Broadcasting Act of Canada (1991) and the attendant regulations to ensure that our programming is of high standards in good taste [*sic*], and conforms to the laws of the land. Our authority extends only to the portrayal of a particular business, its products or services, within the context and content of the advertising which is broadcast. We have no jurisdiction in making any moral judgements on the nature of a business itself.

Further, CJYC-FM subscribes to the advertising codes of the Canadian Association of Broadcasters, the Canadian Advertising Foundation, and the CRTC Guidelines for Sex-Role Portrayal. In addition, we are a voluntary member of the Canadian Broadcast Standards Council. I have taken the liberty of including material on the CBSC and how you may contact them should you wish to pursue this matter further.

Further Correspondence between the Complainant and the Broadcaster

On September 17, 1997 the complainant wrote directly to the Executive Assistant of the CBSC, stating the following:

I am writing to express my concerns about an advertisement promoting a local strip bar (Chez Cherie) that continues to be aired on CJYC-FM (C-98) in Saint John, New Brunswick. I first heard this ad on Sept. 9, 1997, and I wrote to George Ferguson, General Manager of CJYC-FM, immediately. As I expressed to Mr. Ferguson, Chez Cherie is a business that promotes the degradation of women by objectifying their bodies and reducing their humanity to a source of sexual pleasure for men. The negative impact such a business has on women, men, families, and society as a whole is vast and complex.

I am particularly disturbed by the timing and content of CJYC's advertisement for Chez Cherie. This advertisement can be heard daily during supper and early evening hours. This is a time when families, particularly young children, are listening. The impact this kind of advertisement can have on the minds of children is by no means inconsequential. Children hearing such ads on a daily basis can become desensitized to the concept of a strip bar, and may come to assume that a strip bar is a natural and normal part of any community. They may also begin to view women merely as objects of sex; undeserving of the same degree of societal respect offered to men.

In terms of the actual content of this ad, I believe it is objectionable to promote a “Moan ‘n Groan Contest”. Broadcasting an ad for such a contest conjures up mental images that are deprecating to both women and men.

I have attached the letter I wrote to George Ferguson and his reply. Based on his obtuse noncommittal response, it seems that CJYC-FM is not dedicated to the promotion of basic humanity and mutual respect between the genders. I hope the Canadian Broadcast Standards Council is.

On October 6, 1997, the General Manager of CJYC-FM responded to the complainant's letter of September 17, 1997 as follows:

I am in receipt of a copy of a letter dated September 17, 1997 which you directed to the Canadian Broadcast Standards Council pursuant to your earlier letter (undated) directed to me regarding advertising for Chez Cherie on CJYC-FM (C-98). We have been requested by the CBSC to respond to your letter of the 17th and certainly it is my pleasure to do so.

Allow me to begin by noting that your letter to the CBSC was far more detailed and specific than your initial letter of complaint to me (copy attached). Upon reading that correspondence, I understood that you were disturbed with the general principle that C-98FM accepted advertising from Chez Cherie. Upon receiving your letter of September 17th to the CBSC, not only are you concerned with the morality of strip bar advertising, but also the precise wording and broadcast time of a particular commercial for this client. Perhaps that is why you found my response to be “obtuse and noncommittal”. I do apologize if I conveyed that impression.

As a member of the Canadian Broadcast Standards Council, CFBC and C-98FM are committed to the Council's Code of Ethics in radio advertising. The applicable codes pertaining to the complaint you have filed would appear to be under Clause 10:

(a) Broadcasters recognize that they are responsible for the acceptability of advertising material which they broadcast. All commercials should be in good taste and should conform with applicable laws and regulations.

(b) Broadcasters should adhere strictly to the provisions of all industry codes or guidelines relating to advertising, such as those pertaining to children's advertising, feminine hygiene products, and the advertising of alcoholic beverages.

(d) Broadcasters should ensure in the scheduling of commercial messages that they are appropriate for the likely listening audience at the time the commercials are scheduled, and they are both scheduled and inserted in a manner that will not detract from the effectiveness of the programming broadcast by the station.

In regards to the specific commercial which you heard broadcast on C-98FM on September 9, 1997 in the early evening (script copy and audio copy enclosed) we sincerely believe that the content, message, and production conforms and adapts to the above noted advertising codes.

You have noted in your letter of the CBSC [*sic*] that “This advertisement can be heard daily during supper and early evening hours. This is a time when families, particularly young children, are listening”. The radio industry in Canada depends on the Bureau of Broadcast Measurement (BBM) for the preponderance of its audience information (demographics, etc). Unfortunately, BBM does not survey individuals below the age of 12. Therefore, in regards to “young children” we have no idea of how many may be listening in any day part.

In so far as C-98FM specifically targets an audience of 18+, and broadcasts no programming explicitly targeting children, we can only assume a child would hear that commercial because of listening decision made by a responsible adult.

Further, you have stated “it is objectional [*sic*] to promote a “Moan ‘n Groan Contest”. Quite frankly, as a listener, I am not sure what that means. As a contemporary colloquialism I hear it often (as in “so and so’s moaning and groaning about that traffic ticket” etc). In a sexual context, the first mental image which springs to my mind is that classic scene in the 1989 motion picture “When Harry Met Sally”, in which actress Meg Ryan performed what many believe to be the best fake orgasm in movie history. That movie, by the way, was rated “AA” by the New Brunswick Film Classification Board, and as such, was open to anyone 14 years of age or older.

Finally, you have stated “Chez Cherie is a business that promotes the degradation of women by objectifying their bodies and reducing their humanity to a source of sexual pleasure for men”. To the best of my knowledge, Chez Cherie is a legally licensed business establishment which operates within the by-laws and ordinances of the City of Saint John, and the attendant legislation of the Province of New Brunswick. I cannot, and will not, enter into any debate on the morality or decency of the enterprise. I would respectfully suggest that you submit this issue to the politicians.

CJYC-FM (C-98) and our AM sister station CFBC are proud of our record of community service, leadership and efforts to mirror and reflect issues and concerns within our society, including the sensitizing of our programming people and our listeners to the intellectual and emotional equality of both sexes.

Again, I would thank you for taking this matter to the CBSC and I welcome their response. Please do not hesitate to contact me directly, should you wish to discuss this matter further.

The complainant was unsatisfied with the broadcaster’s response and requested, on October 7, 1997, that the CBSC refer the matter to the appropriate Regional Council for adjudication. The complainant informed the broadcaster that she was requesting a ruling by the CBSC with the following note:

I am in receipt of your letter of September 24, 1997. The fact remains that your radio station plays sexually suggestive advertisements during daytime hours, when they can be heard by young children. Therefore, I am requesting a ruling by the CBSC on this matter.

THE DECISION

The CBSC’s Atlantic Regional Council considered the complaint under Clauses 8 and 10 of the *CAB Code of Ethics*. The text of these clauses read as follows:

CAB Code of Ethics, Clause 8 (Advertising)

Recognizing the service that commercial sponsors render to listeners and viewers in making known to them the goods and services available in their communities and realizing that the story of such goods and services goes into the intimacy of the home, it shall be the responsibility of member stations and their sales representatives to work with advertisers and agencies in improving the technique of telling the advertising story so that these shall be in

good taste, simple, truthful and believable, and shall not offend what is generally accepted as the prevailing standard of good taste.

Advertising is to be made most effective not only by the use of an appropriate selling message but by earning the most favourable reaction of the public to the sponsor by providing the best possible programming. Nothing in the foregoing shall prevent the dramatization of the use, value or attractiveness of products and services. While appropriate legislation protects the public from false and exaggerated claims for drugs, proprietaries and foods, it shall be the responsibility of member stations and their sales representatives to work with the advertisers of these products and the advertising agencies to ensure that their value and use are told in words that are not offensive. Recognizing also, that advertising appeals or commentaries by any advertiser that cast reflection upon the operation of a competitor or other industry or business, are destructive of public confidence, it shall be the responsibility of member stations, so far as it lies within their power to prevent such advertising appeals or commentaries being broadcast by their stations.

Broadcasters subscribing to the Code of Ethics and Clause 8 approve adherence to the complimentary Canadian Code of Advertising Standards, published by the Advertising Advisory Board; the guidelines on sex-role stereotyping published by the Advertising Advisory Board; the Broadcast Code for Advertising to Children, published by the Canadian Association of Broadcasters; and to the Code of Consumer Advertising Practices for Non-Prescription Medicines, as published by the Advertising Advisory Board. The aforementioned codes and guidelines are all subject to endorsement by the Joint Board of the Canadian Association of Broadcasters from time to time.

CAB Code of Ethics, Clause 10 (Advertising on AM and FM Radio)

- (a) Broadcasters recognize that they are responsible for the acceptability of advertising material which they broadcast. All commercials should be in good taste and should conform with applicable laws and regulations.
- (b) Broadcasters should adhere strictly to the provisions of all industry codes or guidelines relating to advertising, such as those pertaining to children's advertising, feminine hygiene products and the advertising of alcoholic beverages.
- (c) Broadcasters should ensure that the time allocated to commercial messages is not excessive at any period during the broadcast day, and particularly during high audience periods. The total quantity of commercial messages broadcast on a given station in one week should not, in any event, exceed 1750 minutes.
- (d) Broadcasters should ensure in the scheduling of commercial messages that they are appropriate for the likely listening audience at the time the commercials are scheduled, and that they are both scheduled and inserted in a manner that will not detract from the effectiveness of the programming broadcast by the station.
- (e) Broadcasters should ensure that advertising material within a newscast is clearly distinguishable from the news information adjacent to it. To this end, any commercial message broadcast within a newscast should not be read by the newsreader.
- (f) Broadcasters should ensure that there is no influence by advertisers, or the perception of such influence, on the reporting of news or public affairs, which must be accurate, balanced, and objective, with fairness and integrity being the paramount considerations governing its reporting.

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 either of the provisions mentioned above.

Nature of the Business and the Content of the Commercial

It is clear from the complainant's letter that her concern lies with the very *existence* of strip bars, and with advertising for such businesses only to the extent that "Children hearing such ads on a daily basis can become desensitized to the concept of a strip bar, and may come to assume that a strip bar is a natural and normal part of any community." It is not the Council's mandate, however, to comment on the *nature of businesses* or their legal entitlement to operate. The Council's mandate with respect to advertising extends only to the *content of the advertisement*. As stated in *CITY-TV re Video Store Commercial* (CBSC Decision 94/95-0143, March 26, 1996),

The Council acknowledges that Clause 8 of the Code provides that a role of the commercial sponsor is to make "known to them [the public] the goods and services available in their communities." The members of the public then have the freedom to choose; those who are offended by the possibly prurient material available in the stores in question are not obliged to rent or buy therein. Whether such stores are or are not entitled to exist is a function of other laws. To the best of the knowledge of the Council, there is neither legal, regulatory nor Code restriction on the entitlement of the shops to tell of their wares.

In the *CITY-TV* case noted above, the Ontario Regional Council stated that "In order ... for the broadcaster airing the commercial to fall afoul of Clause 8, it is necessary that the telling of the advertising story be such that the commercial is not 'in good taste, simple, truthful and believable' or that it 'offend what is generally accepted as the prevailing standard of good taste.'" In *CIRK-FM re T-Shirt Promotion Spot* (CBSC Decision 96/97-0206, December 16, 1997), the Prairie Regional Council commented on the application of the "prevailing standard of good taste" test when it had to determine the acceptability of the phrase "Life's a Bitch" in a promotional announcement for K-97 T-shirts. It stated:

Despite the CBSC's general reluctance to deal with questions of taste, the Prairie Regional Council acknowledges that the term "good taste" is actually used in Clause 8. This necessitates an explanation of the Council's understanding of the term in *that* context.

The Council notes that the term "good taste" does not appear on an isolated basis. While the drafting of the paragraph is not the most felicitous, an explanation, if not a definition, of the terms is provided in the closing words of that paragraph. These are: "and shall not offend what is generally accepted as the prevailing standard of good taste." It appears to the Prairie Regional Council that the drafters were explaining that "good taste" means that the advertising content shall not offend *prevailing standards* of good taste. The Council understands this to be a *higher* test than merely being characterisable as *good* taste. In a sense, the wording suggests that the material questioned must not be the *opposite* of good taste to be in breach; it must actually *offend* prevailing standards to be sanctionable. It may be that the "prevailing standards" test in Clause 8 could be more easily met than the general

“taste” threshold which, as discussed above, the CBSC applies more generally. In any event, it is the view of the Prairie Regional Council that the expressions “Life’s a bitch” and “Kick ass” do not breach the “prevailing standards” test and that it is not necessary to consider the other issue at this time.

It is appropriate to provide a sense of the Prairie Regional Council’s view of “prevailing standards” and how these are to be assessed. It is clear that it cannot be the function of the CBSC or the various Regional Councils to *conduct surveys* in order to determine what prevailing standards are; it is rather the function of the Councils to apply the reasoning and sense of a balanced group of public and industry representatives to the programming under consideration. It is indeed a reflection of that “balance” that has enabled the various Regional Councils to arrive regularly at conclusions in such matters without dissenting voices, whether the conclusions favour or run against the broadcasters.

It is the view of the Regional Council that, in general, for a matter to breach the “prevailing standards” test of Clause 8, it must extend beyond the level of offensiveness, if not even crudeness or vulgarity. This is not to suggest that the CBSC *approves* in any way of offensiveness, crudeness or vulgarity on the airwaves but rather that, in the interest of preserving a broad range of scope for freedom of expression, *such* matters of taste must be left to the marketplace.

The Prairie Regional Council in *that* case concluded that the advertisement did not offend the prevailing standard of good taste. That conclusion is one which is shared by the Atlantic Regional Council in *this* case. Looking only to the *actual words used* in the Chez Cherie commercial, the Council does not find that it offends the advertising content provisions of the Code. The script for the advertisement is very straightforward and does not go beyond “telling of [the business’s] wares”. While the “Moan and Groan” contest admittedly has *some* sexual overtones, they are not sufficiently explicit, in the Council’s view, to run afoul of the prevailing standards of good taste.

Scheduling Issues and Radio Broadcasting

The complainant further states that she is “particularly disturbed by the timing ... of CJYC’s advertisement for Chez Cherie.” In her complaint, she indicates that “This advertisement can be heard daily during supper and early evening hours. This is a time when families, particularly young children, are listening.” While this may be true, this does not mean that there is a codified restriction regarding the commercial advertising in question here.

It should first be noted that radio broadcasting is not subject to the strong scheduling proscriptions imposed on television broadcasters. As more and more Canadians are aware, for television broadcasting, the *Violence Code* sets 9:00 o’clock as the “watershed” hour before which no violent content intended for adult audiences may be broadcast. The CBSC has often noted, since the introduction of the *Violence Code*, broadcasters have also come to regularly use the watershed hour as their own informal scheduling requirement for other programming which they consider might be unsuitable for children. That being said, no such “watershed” hour has been established for radio programming. The only “requirement” for radio broadcasters is to “ensure in the scheduling of commercial

messages that they are appropriate for the likely listening audience at the time the commercials are scheduled”.

There has only been one occasion when the CBSC has thus far been called upon to deal with a scheduling issue for radio programming. In *CHOM-FM and CILQ-FM re Howard Stern Show* (CBSC Decision 97/98-0001+, October 17-18, 1997), the Ontario and Quebec Regional Councils concluded that the “unsuitable language and graphic discussion of sexual situations” contained in the two weeks of the Stern Show reviewed by the Council was “not proper material for Canadian children and does not meet their needs in a broadcast sense.” The Councils further stated that the programming does not “meet the high standards of public service and integrity that the industry has set for itself when aired during a time of the day when children could reasonably be expected to be a part of the audience.” The Council noted that

It is a small irony that the host of the Howard Stern Show states that, in his own view, his “show is not appropriate for a 11-year old. I’m a parent and, as a responsible parent, I wouldn’t let my kid listen to the show.” In any event, it is the *Canadian* broadcast standards which apply to this program and the stations which broadcast it and, in the view of the Quebec and Ontario Regional Councils, descriptive opinion and comment such as that cited above regarding the sex life of Stern and his wife, details of which were broadcast during hours when children could be expected to be listening to radio is certainly not proper material for Canadian children. The Regional Councils also have no hesitation in concluding that Stern’s language is not at all suitable at an hour when children could be expected to be listening to radio. Moreover, the issue of unsuitable language and the graphic discussion of sexual situations occurs with consistency, day in and day out on the Howard Stern Show.

While the CBSC has always advocated the importance of the vigilance of parents in determining what their children should watch and see, the Canadian solution has always been more pro-active than that. There is a belief among Canada’s private broadcasters and on the part of the regulator that there ought to be rules in common, applied by the broadcasters themselves, to ensure that the entire responsibility for what is viewed or listened to in Canadian homes is not left *solely* to parents. The establishment of codified standards has been a mark of the responsibility of Canada’s private broadcasters in taking these fundamental burdens initially on *their* shoulders. While the envelope gets pushed from time to time, broadcasters have also shown their willingness to have a self-regulatory body, the CBSC, evaluate and interpret the meaning of the codified principles in their name.

The globalization of the late twentieth century village does *not* mean the abdication of the maintenance of order within its Canadian borders. The existence of *other* standards in *other* parts of the global village cannot weaken the need to apply home-grown standards within the Canadian bailiwick. The bar should not be lowered in Canada just because it is set at a lesser height elsewhere in the village. There is no need for the chain of vigilance *here* to be as weak as its weakest links elsewhere. If, however, an alert to the re-definition of principles is called for by what is created in other parts of the village, Canadian broadcasters have *consistently* shown their willingness and skill to rise to such challenges. Shock radio should be no more demanding than any other challenge which has hitherto been presented to them.

The Stern case, however, differs from the commercial being considered by the Council in this case . First, the Stern show airs in the early morning drive time slot, a time when children are *most* likely to be listening to radio. Since children are also likely, although not

as likely, to be listening in the supertime period, the decision in this matter does not turn on this point. It is the second point which is ultimately determinative, namely, that the content of the Stern show was considerably more “shocking” than the Chez Cherie commercial described above. In the end, there was nothing in the commercial itself which was problematic. The references were oblique; at their *worst*, “moan and groan” can in no way be equated to the *explicit* sexual discussion on the Howard Stern Show. If there is an issue of objectification of women involved with the club in question, it has nothing to do with CJYC-FM's broadcast of the commercial but rather with the commerce of the enterprise in question. In the Stern decisions, the objectification of women occurred in the host's own descriptions.

In light of the above, the Council considers that CJYC's scheduling of the Chez Cherie commercial in the early evening was not inappropriate “for the likely listening audience.” It finds no breach.

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. In this case, the Council considers that the broadcaster's response addressed fully and fairly all the issues raised by the complainant. Moreover, the broadcaster replied on more than one occasion and this in a way which was responsive to the complainant. The fact that their points of view differed is, as the Council has observed on previous occasions, not the issue. Such honest differences are to be expected. It is the broadcaster participation in the dialogue which is required. That was more than met in this case. Nothing more is required. Consequently, the broadcaster has not breached the Council's standard of responsiveness.

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.