
**CANADIAN BROADCAST STANDARDS COUNCIL
BRITISH COLUMBIA REGIONAL COUNCIL**

CKNW-AM re the Peter Warren Show (Logger Tapes)

(CBSC Decision 98/99-0643)

Decided May 9, 2000

S. Warren (Chair), H. Mack (Vice-Chair), M. Loh, D. Millette and J. Rysavy

THE FACTS

At just before 10:00 a.m. and again just before 11 a.m., on Good Friday, April 2, 1999, on CKNW-AM (Vancouver), talk show host Peter Warren is alleged by a complainant to have used "language in reference to a caller that is totally uncalled for and an abuse of this station's privilege to have access to our country's airwaves." The letter of complaint, which was sent on April 15, also explained (the full correspondence is reproduced in the Appendix hereto):

We have an 11 year old grandson in whom we are trying to instill some character and morality and this kind of profanity, and what might have been a racist comment as well, is not at all helpful.

On April 29, CKNW's Program Director responded to the complainant in the following terms:

Due to the live and spontaneous nature of talk radio, incidents like these happen from time to time. However, please rest assured that management of the station does not condone the use of foul language on the air.

Following this incident, we spoke with Mr. Warren and issued a memo to all our staff reminding them that foul language will not be tolerated in CKNW's programming.

The complainant replied two weeks later, saying

Receipt of your letter of April 29th is acknowledged and it would appear the tapes of Mr. Warren's program of April 2nd have not been reviewed and therefore the seriousness of his

conduct has not actually been determined. The caller to whom Mr. Warren was responding was very reasonable, rational and well spoken at all times. It was not, as such, a “spontaneous” situation inside which Mr. Warren should have felt taxed.

The Availability of Logger Tapes to a Complainant

It is worth noting that the complainant had requested an audiotape of the broadcast so that he could make his own evaluation of the words spoken by the host. As a result of that request, on July 9, the CBSC provided the following explanation of its policy regarding the issue, which it considers useful to make available in the context of a public decision:

Broadcasters are not required, either by law, by any broadcast code or by virtue of their membership in the CBSC, to provide tapes of their programming to complainants or any other members of the public upon request. Each broadcaster’s fundamental legal obligation (under the *Broadcasting Act*) and its CBSC membership obligation is to *retain* logger tapes of the programming broadcast on their station for a period of 28 days (some broadcasters choose to keep logger tapes for longer periods) and to provide copies of these logger tapes *to the CBSC*, if requested by it for the purposes of adjudicating a complaint. While it goes without saying that a broadcaster may at any time provide a logger tape copy to a complainant or other individual, broadcasters are under no obligation to do so. Moreover, once the CBSC complaint process is engaged, it is the more so appropriate for the involved broadcaster to respond to any such request by saying that the matter is in the hands of the Council and will be dealt with there.

It is worth adding here that it is the practice of the CBSC to append to its decisions a transcript of those portions of the texts of the programs which it adjudicates so that any persons wishing to understand the decision will be better able to relate its terms to the facts under consideration. In this sense, it is fair to conclude that rendering the tape available at an earlier moment would constitute an unnecessary additional burden on the broadcaster and the process.

The Ruling Request and Supervening Events

The complainant finally returned his Ruling Request on August 9. In its customary scheduling of adjudications, the CBSC Secretariat requested delivery of the required tapes on October 22. When this letter went unanswered, the Secretariat attempted by telephone to reach the broadcaster and was finally informed in writing on March 31 that the required tapes were no longer available. With respect to the missing tapes, the broadcaster’s Program Director explained:

The employee with the responsibility of preserving the tapes in April of last year has since moved to Australia and, after much effort, we have been unable to locate the secured tapes. We are extremely upset and embarrassed at this development but hope you will understand the unique circumstances surrounding this unfortunate occurrence.

On the level of the substance of the complaint, the Program Director stated:

[Mr. S's] complaint surrounded the use of foul language by Mr. Peter Warren during an April 2, 1999 broadcast. In our response to his complaint, we assured him that station management does not condone the use of foul language on air, that we spoke with Mr. Warren about the incident in question, and that we issued a memo to all staff reminding them that foul language will not be tolerated on air.

Without diminishing the seriousness of being unable to produce logger tapes when requested, I respectfully request that as deliberation continue, the CBSC consider the level of import given to this incident by CKNW.

THE DECISION

In a very recent decision of the CBSC, namely, *Crossroads Television (CITS-TV) re Nite Lite* (CBSC Decision 98/99-1129, March 22, 2000), the Ontario Regional Council was called upon to deal with a substantially similar situation. In that case, the broadcaster appeared not to even realize that they had not in fact retained the correct tapes. Those they sent along to the CBSC had the correct label on the outside but the wrong program on the recorded portion. Assuming inadvertence in both cases, the result is the same, namely, the Council here, as there, is unable to evaluate the substance of the complaint. In the *Crossroads Television* decision, the Council noted that occurrences of non-availability of the statutorily required logger tapes was a rare occurrence. In the two previous cases in which the CBSC had encountered the problem, namely *CJSB-AM re The Wendy Daniels Show* (CBSC Decision 92/93-0219, February 15, 1994) and *CJCL-AM re Stormin' Norman* (CBSC Decision 93/94-0073, June 22, 1994), the broadcasters had been found in breach of the requirement to retain logger tapes. The review of the previous jurisprudence and that of the CRTC in corresponding situations is reviewed in the *Crossroads Television* decision and need not be repeated here. That being said, this Council subscribes to the summary of the Ontario Regional Council's decision in that most recent case.

The requirements of membership in the CBSC merely parallel the regulator's exigencies. There should be no doubt that the retention of logger tapes by broadcasters is a *cornerstone* of the self-regulatory process. Because the CBSC is not an evidence-gathering body, it relies *solely* on the program tapes as the "evidence" of what was said or shown on the airwaves. It is these tapes alone which are the measure of the broadcaster's compliance with the Codes to which all CBSC members adhere. The self-regulatory process relies on the availability of these tapes and the *serious* respect by broadcasters of any request by the CBSC Secretariat to retain these *for as long as necessary* while a file remains open. The members of the public who file complaints with the CBSC or which are referred to the CBSC by the Commission *must* have the sense of security that the broadcaster will comply with this requirement in order for them to retain faith in the process. ... [T]he Council wishes to underscore that inadvertence, innocent mistake or the acts of third parties which interfere with the preservation of requested logger tapes are not and cannot be accepted as excuses for the non-availability of the correct tapes in reviewable condition at the time at which they are needed by the Council. Although the program itself may not have been in breach of any of the broadcast Codes, the broadcaster *is* in breach for the failure to comply with this

essential requirement of membership in the CBSC and of licence holding in the Canadian broadcasting system.

The B.C. Regional Council only wishes to add that its expectation is one of *result*, not of best efforts. Barring a natural catastrophe of the nature of a fire, broadcasters *must* retain and provide the tapes which are the essence of the self-regulatory, and regulatory, investigations. The failure to comply constitutes a breach of one of the broadcaster's fundamental obligations as a member of the CBSC. That is the conclusion of the B.C. Regional Council here, as it was the conclusion of the Ontario Regional Council in the previous matters.

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 the broadcaster's response was apologetic with respect to the host's comments and a candid acknowledgment of the need to impose some rules at the station with respect to the use of foul language and commends the broadcaster to that extent. Consequently, the broadcaster has not breached the Council's standard of responsiveness.

CONTENT OF THE ANNOUNCEMENT OF THE DECISION

CKNW is required to announce this decision forthwith, in the following terms, during prime time and, within the next thirty days, to provide confirmation of the airing of the statement to the CBSC and to the complainant who filed the Ruling Request.

The Canadian Broadcast Standards Council has found that CKNW has breached its requirements of membership in the CBSC. When requested to furnish tapes of the *Peter Warren Show* of April 2, 1999, it was unable to do so despite the requirement under both the CBSC's terms of membership and the requirements of the CRTC under its Specialty Service Regulations. The CBSC was thus unable to assess the validity of a complaint made by a member of the public relating to the April 2 episode of the *Peter Warren Show*.

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

**APPENDIX TO
CBSC DECISION 98/99-0643
CKNW-AM RE THE PETER WARREN SHOW (LOGGER TAPES)**

I. The Complaint

The following letter of complaint was forwarded to the CBSC by the CRTC on April 15, 1999:

Dear Sirs:

I wish to register a complaint against and have investigated Mr. Warren (Peter) of Radio Station CKNW. Acting as a talk show host he displayed such language and conduct that should prohibit him from having the privilege and/or access to Canadian airwaves. Specifically on April 2nd, Good Friday, at approximately 9:56 am and again at about 10:57 am, he used language in reference to a caller that is totally uncalled for and an abuse of this station's privilege to have access to our country's airwaves.

Considering the special meaning of Good Friday, the lack of good sense, morality and integrity displayed by this individual is unbelievable. It should not be allowed nor accepted on a public airwave nor tolerated in today's society.

We have an 11 year old grandson in whom we are trying to instill some character and morality and this kind of profanity, and what might have been a racist comment as well, is not at all helpful.

A review of the tapes of this particular program along with you comment in due course would be appreciated.

II. The Broadcaster's Response

The Program Director of CKNW responded to the complainant's letter on April 29, 1999 with the following:

Thank you for your letter of April 10, 1999 to the CRTC regarding Peter Warren and the use of foul language on the air.

Due to the live and spontaneous nature of talk radio, incidents like these happen from time to time. However, please rest assured that management of the station does not condone the use of foul language on the air.

Following this incident, we spoke with Mr. Warren and issued a memo to all our staff reminding them that foul language will not be tolerated in CKNW's programming.

I hope this adequately addresses your concerns regarding this matter. I thank you for writing the CRTC and for your interest in CKNW Radio.

III. Additional Correspondence

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The complainant wrote directly to the Program Director of CKNW, on May 12, 1999. This letter was as follows:

Receipt of your letter of April 29th is acknowledged and it would appear the tapes of Mr. Warren's program of April 2nd have not been reviewed and therefore the seriousness of his conduct has not actually been determined. The caller to whom Mr. Warren was responding was very reasonable, rational and well spoken at all times. It was not, as such, a "spontaneous" situation inside which Mr. Warren should have felt taxed.

Your response appears to me to be the standard format type of letter dispatched to all complainants and as such is not satisfactory to me.

I would appreciate a copy of the memo you issued to all your staff and as well, if possible, I would like the opportunity to review the tape myself, as I suggest foul language may not be the only problem with Mr. Warren.

I do not intend to let the matter rest until the privilege of allowing Mr. Warren to have access to the public airwaves is adequately addressed.

Looking forward to hearing from you in the near future.

On June 8, the complainant wrote to the CBSC indicating that he had not received an answer from CKNW regarding his letter of May 12, 1999.

Re: File No: 98/99-0643

A reply to my letter of May 12, 1999 to Mr. Plasteras of CKNW-AM (copy forwarded to you on same date) has not been received.

Your follow-up of this matter on my behalf would be appreciated!

The CBSC responded to this letter on July 9 as follows:

Re: Your complaint concerning Peter Warren's Talk Show by CKNW

Dear Sir/Madam,

I acknowledge receipt of your letter dated June 8, 1999 requesting the CBSC to follow up on your letter of May 12, 1999 to Mr. Plasteras of CKNW-AM.

In your letter of May 12, you requested copies of the memo that was issued to the staff of CKNW as well as an opportunity to review a copy of the tape yourself. Unfortunately, the CBSC cannot obligate the broadcaster to grant these requests. Permit me to explain. Broadcasters are not required, either by law, by any broadcast code or by virtue of their membership in the CBSC, to provide tapes of their programming to complainants or any other members of the public upon request. Each broadcaster's fundamental legal obligation (under the *Broadcasting Act*) and its CBSC membership obligation is to retain logger tapes of the programming broadcast on their station for a period of 28 days (some broadcasters choose to keep logger tapes for longer periods and to provide copies of these logger tapes to the CBSC, if requested by it for the purposes of adjudicating a complaint. While it goes without saying that a broadcaster may at any time provide a logger tape copy to a complainant or other individual, broadcasters are under no obligation to do so. Moreover,

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once the CBSC complaint process is engaged, it is the more so appropriate for the involved broadcaster to respond to any such request by saying that the matter is in the hands of the Council and will be dealt with there.

Mr. Tom Plasteras, Program director for CKNW has responded to your letter of complaint on April 29, 1999. Accordingly, we ask that you consider the broadcaster's response and return the CBSC's Ruling Request Form (another form attached for your convenience) if you remain unsatisfied with this response. The CBSC will then consider your request for a ruling.

A copy of this correspondence was forwarded to the broadcaster for their information.

The complainant sent in his ruling request on August 9th, 1999.

Further to a request for the logger tapes of the program in question by the CBSC on October 22, 1999, the following letter dated March 31 from the broadcaster was received:

It is with regret I must inform you that we are unable to comply with your request for cassette copies of the April 2, 1999 broadcast by Peter Warren.

The employee with the responsibility of preserving the tapes in April of last year has since moved to Australia and, after much effort, we have been unable to locate the secured tapes. We are extremely upset and embarrassed at this development but hope you will understand the unique circumstances surrounding this unfortunate occurrence.

Mr. ...'s complaint surrounded the use of foul language by Mr. Peter Warren during an April 2, 1999 broadcast. In our response to his complaint, we assured him that station management does not condone the use of foul language on air, that we spoke with Mr. Warren about the incident in question, and that we issued a memo to all staff reminding them that foul language will not be tolerated on air.

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