
**CANADIAN BROADCAST STANDARDS COUNCIL
PRAIRIE REGIONAL COUNCIL**

CJKR-FM re Announcer Comments

(CBSC Decision 99/00-0130)

Decided May 5, 2000

S. Hall (Chair), D. Braun (Vice-Chair), D. Dobbie, V. Dubois,
R. Gallagher and D. Ish

THE FACTS

The following announcer comments and song were broadcast during the CJKR-FM (Winnipeg) Morning Show of November 2, 1999:

Announcer #1: Wrapping up on this disturbing thought: it was sixteen years ago today the Chinese Government decided all family pets should be killed because they were having an effect on the natural order of things.

Announcer #2: Hmm.

Announcer #1: It upset a lot of people living there, the Government taking food right out of their mouths, you know what I'm saying? Here's the Bruskan [sp.] Band at 8:52, "Down at the Peking Moon".

Song:

Did you ever think when you eat Chinese,
It ain't pork or chicken but a fat siamese.
Yet the food tastes great so you don't complain
But that's not chicken in your chicken chow mein.
Seems to me I ordered sweet and sour pork
But Garfield's on my fork.
He's purring here on my fork.

*There's a cat in the kettle at the Peking Moon
The place that I ate every day at noon.
They can feed you cat and you'll never know
When they wrap it up in dough, boy,*

They fry it real crisp in dough.

Chow Lin asks if I wanted more,
As he was dialling up his buddy at the old pet store.
I said not today, I lost my appetite,
There's two cats in my belly and they want to fight.
I was sucking on Roloids and a Tums or two
When I swear I heard it mew, boy.
And that is when I knew.

*There's a cat in the kettle at the Peking Moon
I think I got to stop eating there at noon.
They say that it's beef or fish or pork
But it's purring there on my fork.
There's a hair ball on my fork.*

The complainant initially sent a letter to the CRTC on November 2, which he followed with a revised version on November 30. It is that revised edition which the CBSC is considering in this decision. In that letter (which is reproduced in full in the Appendix hereto), the complainant said, in part:

I found this broadcast to be offensive. It was culturally insensitive and also served to dehumanize and perpetuate stereotypes. This process has been recognized by social scientists as the first steps in promoting hatred.

...

What I will not sanction, however, is a broadcasting company that is centred in my community promoting stereotypes and dehumanizing people as a moniker in promoting an image that is ethnically intolerant.

The station's Program Director responded with a short letter (reproduced in full in the Appendix), in which his principal position was as follows:

The comment referencing an historical action taken by the Chinese government was intended as a humorous introduction to the parody song that followed. There was certainly no intent to be insensitive to Chinese people, or to dehumanize or perpetuate stereotypes. This song, which is provided by an international radio service, will no longer receive airplay on CJKR-FM.

On December 17, the complainant filed his Ruling Request and a covering letter in which he stated, in part (the full letter forming a part of the correspondence reproduced in the Appendix):

The following excerpts are taken off your web site from rulings that have been made by your council relevant to this situation:

"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 addressed as abusive in

a serious context and thus in breach of the Code of Ethics may not be so viewed in the comedic environment.”

Please note that the operative word above is remark... not remarks plural, dialogue, song, minutes of, etc.

“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.”

This to my understanding is in keeping with Clause 2 - Human Rights.

I sent this material to the CRTC which I understood to be the government agency responsible for such matters. I find it strange that the matter would be referred to the Canadian Broadcast Standards Council, an organization that is set up to police the very members who fund it.

THE DECISION

The CBSC’s Prairie Regional Council considered the complaint under the human rights provision of the *Canadian Association of Broadcasters (CAB) Code of Ethics*. Clause 2 of that Code reads as follows:

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 listened to a tape of the relevant portion of the morning show and reviewed all of the correspondence. The Council is of the view that the program is not in breach of the *CAB Code of Ethics*.

A Preliminary Matter: The CBSC’s Mandate

The complainant expressed surprise in his second letter that the matter at hand should have been remitted by the CRTC, the Government agency responsible for the oversight of all broadcast matters in Canada, to the CBSC, a self-regulatory agency, which, in the words of the complainant, is “an organization that is set up to police the very members who fund it.” It is useful to take this moment to remind members of the public that, pursuant to the CRTC’s public notice entitled *The Canadian Broadcast Standards Council* (P.N. CRTC 1991-90, August 30, 1991), except in unusual circumstances which are not at play in this case, the Commission as a matter of practice forwards to the CBSC any complaints relating to those broadcasters, conventional and specialty, which are members of the

CBSC. The opening comments of the Commission in that Public Notice provide some of the rationale for the arrangement in the self-regulatory area.

The purpose of this public notice is to advise licensees and the public that the Commission fully supports the objective of the Canadian Broadcast Standards Council (the CBSC), which is to encourage high standards of professional conduct on the part of private radio and television broadcasters by ensuring that social concerns and values are reflected in their programming decisions. The Council administers specific codes of broadcast conduct and provides a means of recourse for members of the public regarding the application of these standards.

Later on in the Public Notice it explained:

As a means of demonstrating its confidence in the Council, the CRTC hereby advises that it intends to refer complaints from members of the public about programming matters that are within the Council's mandate to the CBSC for its consideration and resolution. The Council is committed to make every effort to resolve complaints at the level of the local broadcaster. If an issue is not settled to the satisfaction of all parties, a subsequent review would be conducted by the Council at the regional level ...

Over the course of the decade since that time, the Commission has retained a self-regulatory approach high on its agenda, not only on the broadcast side of its mandate. Self-regulation is, indeed, an approach used broadly in professions of all kinds, including doctors, lawyers and accountants, to name only a few of those associations which have created bodies to police their members and ensure a high standard of service to their constituency. Moreover, this Council has no hesitation in observing that it has rendered hundreds of decisions, all of which can be found on its web site and many of which, having been rendered against broadcasters, clearly demonstrate the CBSC's ability to render decisions without any interference on the part of those who fund the Council.

Another Preliminary Matter: The Meaning of "Remark"

It is not always the case that a complainant takes the time to review previous CBSC decisions in order to attempt to assess the merit of his or her complaint. Since, in this case, the complainant has, the Council considers it important to address the observation he made regarding the Ontario Regional Council's decision in *CHUM-FM re Sunday Funnies* (CBSC Decision 95/96-0064, March 26, 1996), namely, that the sentence in that decision "A remark which might reasonably be addressed as abusive in a serious context and thus in breach of the Code of Ethics may not be so viewed in the comedic environment" must mean "remark" in the singular and could not apply to "remarks plural, dialogue, song, minutes of, etc."

The Council respectfully disagrees with the complainant's interpretation. While the remark referred to in both the *CHUM-FM* decision and those which gave rise to that conclusion in both *CHUM-AM re Brian Henderson Commentary* (CBSC Decision 95/96-0008, 0060 and 0061, March 26, 1996) and *CFTR-AM re Dick Smyth Commentary* (CBSC Decision 95/96-

0062, March 26, 1996) *may* have been a single remark in each instance, the principle is one which is as applicable to a series of remarks. The issue relates to the *context* and not to a word count and has, in many subsequent decisions, been dealt with on that basis although there has not been any need to make this point on any such previous occasion. See *CHOM-FM and CILQ-FM re the Howard Stern Show* (CBSC Decisions 97/98-0001+ and 0015+, October 17 and 18, 1997), among others, as an example of a multi-remark application.

The Comments in this Case

The principal matter to resolve has to do with the characterization of the comments made by the hosts and by the creator of the song lyrics. The Council does not interpret these as the complainant does. It rather considers that they constitute a commentary in small part on the Chinese Government and in larger part on Chinese restaurants. The Council does not view these as a commentary on the Chinese people at all. Fundamentally, the combination plays on the idea that, when you order a dish in a Chinese restaurant, you *may* get cat rather than chicken, beef, fish or pork.

The foregoing “humorous” suggestion may be outrageous or in bad taste. If the latter, it is, as the Council has often said, simply a choice for the listener with the on/off switch. If the former, though, the Council notes that there is no protection granted under the human rights provision of the Code for a *profession or an occupation* and being a Chinese restaurateur, or any other type of business person of any other ethnic origin, will not entitle one to protection any more than being a policeman did in the case of *CKLZ-FM re Announcer Comments* (CBSC Decision 94/95-0113, December 18, 1996). In that matter, the B.C. Regional Council held:

This is, however, the first occasion on which a listener has complained of language used with respect to an *occupation*. The only previous circumstance which has led the CBSC to broaden the interpretation of “matters of race, national or ethnic origin, religion, age, sex, marital status or physical or mental handicap” arose in *CHQR-AM re Forbes and Friends* (CBSC Decision 92/93-0187, August 8, 1994), in which the Prairie Regional Council ruled:

Although Clause 2 does not contain a specific reference to “sexual orientation the Regional Council considered that the term “sex” could reasonably be understood as being broad enough to include “sexual orientation”.

It is not the view of the B.C. Regional Council that it would be possible by definition to extend “race, national or ethnic origin, religion, age, sex, marital status or physical or mental handicap” to include occupation or profession. Such a change, were one merited, would require the intervention of the codifiers.

The principle was extended and explained by this Council in *CKNG-FM re “Blond Moments”* (CBSC Decision 96/97-0060, December 16, 1997) by reference to the decision of the Supreme Court in *Egan v. Canada* [1995] 2 S.C.R. 513, in which Mr. Justice

LaForest explained the rationale for the extension of the protected grounds in s. 15 of the *Canadian Charter of Rights and Freedoms* to sexual orientation. He said:

I have no difficulty accepting the appellants' contention that whether or not sexual orientation is based on biological or physiological factors, which may be a matter of some controversy, it is a deeply personal characteristic that is either unchangeable or changeable only at unacceptable personal costs, and so falls within the ambit of s. 15 protection as being analogous to the enumerated grounds.

It was quite clear to the Council in that case that one's hair colour would not be a protected ground under the *Charter* or, indeed, under the *CAB Code of Ethics* and it is quite clear to the Council in this case that the principle established in the *CKLZ-FM* decision regarding occupation would be supported under the *Egan* decision. There is not, in other words, any more reason to protect the occupation here than there was in the *CKLZ-FM* case. Nor is it the view of the Council that there can be any reasonable inference that the announcer comments or the lyrics can be said to be directed at the Chinese people generally in such a way that the protection which is unquestionably extended to them under the human rights provision would come into play. In a not fundamentally dissimilar situation, an

announcer commented on an article in *Vanity Fair* magazine, which featured photographs of folksinger k.d. lang and model Cindy Crawford together. The announcer then aired a spot featuring an endorsement of "The Vegetable Institute", supposedly by k.d. lang. The item was narrated by a male voice, which advised children to eat their vegetables and stay away from red meat. The voice said that eating vegetables would "put hair on [their] chests too".

A listener wrote to the station to complain about this segment. She felt that the spot was "obviously referring to lang's sexual orientation and the stereotype that all lesbians are masculine". The listener argued that "such homophobia is loathsome and the promotion of such stereotypes unacceptable". She concluded by saying that "it is one thing to make light of her political stance on eating meat, but quite another to mock her sexual orientation".

In that case, namely, *CHQR-AM re Forbes and Friends* (CBSC Decision 92/93-0187, August 8, 1994), this Council also disagreed with the complainant's characterization of the spoof, concluding that

the spot was directed primarily at k.d. lang's vegetarianism rather than her sexual orientation. In any event, to the extent that the spot might reasonably be understood as a spoof of her sexual orientation, the Regional Council did not consider that it could be interpreted as discriminatory in terms of Clause 2 of the Code of Ethics. The segment had, after all, been prompted by a *Vanity Fair* article in which Ms. lang had chosen to present herself in masculine clothing beside one of the most adulated of female models. This, Regional Council members felt, was an unequivocal indication of Ms. lang's ability to joke about her own sexuality. In the context of the *Vanity Fair* article, Ms. lang's own public declarations regarding her sexual orientation and the timing of the spot, the Regional Council considered that the spot was intended to be humorous in a way which did not constitute a breach of Clause 2 of the Code.

In the end, *even if* one could conclude in this case that ethnic or national origin played a part in the humour in this case, the Council considers that the principle laid down in *CHFI-*

FM re the Don Daynard Show (CBSC Decision 94/95-0145, March 26, 1996) would be applicable here.

Similarly, in the case at hand, the Council considers that the Jewish mothers light bulb joke, while ethnically pointed, was neither demeaning nor abusive. It was told in the context of a series of light bulb jokes aimed at feminists, Marxists, surrealists, accountants, etc. It poked fun but did not bludgeon. It tickled but was not nasty. It touched on what some might view as stereotypical characteristics as did the Polish humour in the *CHUM-FM* case and perhaps the Irish humour in the *CFOX-FM* case but was not ugly as in the "Newfie" humour in the *CKTF-FM* case. The CBSC does not expect that the airwaves will be pure, antiseptic and flawless when society is not.

The Council's duty is to put a potentially offensive ethnic joke on its societal scale and determine whether it could *reasonably* be viewed as having gone too far.

To conclude, the Council also considers the words of the Ontario Regional Council in *Comedy Network re "Comedy Club 54"* (CBSC Decision 97/98-1242, February 3, 1999) to be applicable here.

While the humour in question was pointed and may even have been tasteless, the Council does not find that any of the "jokes" overstepped the boundaries in this case. In its words earlier cited here, "It poked fun but did not bludgeon. It tickled but was not nasty." By not finding it in breach of the Code, the Council should not be understood as supporting the humour in question and broadcasters which are concerned by audience reaction are always free to take steps to comply with audience concerns even when there is no Code breach involved. They may do so but they need not. It is their choice in the end just as viewers may choose to go elsewhere when programming offends them.

There is not, in other words, any ground on which the Council can find the comments in the case at hand to be in breach of the human rights provision of the *CAB Code of Ethics*.

The Broadcaster's Response

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 to be brief but otherwise responsive to the complainant's letter. By agreeing not to broadcast those lyrics again, even if they were ultimately not found to be discriminatory and in breach of the Code, the broadcaster has taken an extra very positive step in terms of resolving listener discontent for the future. Nothing more could reasonably be required or expected.

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.

APPENDIX
CBSC DECISION 99/00-0130
CJKR-FM re Announcer Comments

I. The Complaint

On November 2nd, the complainant sent a letter to the CRTC which forwarded the complaint to the CBSC in due course. The complainant then sent a “revised version” of this letter on November 30th, stating that “much to my dismay, I discovered that the letter that I printed off and sent you was the draft copy of my letter and not the finished product.” The final version of this letter of complaint was as follows:

To Whom it May Concern:

This correspondence is in regards to comments which were made by a local radio station 97.5 FM on the morning of November at approximately 9 am.

As I recall, the broadcast included some historical information presented by the announcer to mark the historical anniversary of the Chinese government’s edict that people should kill their house pets because they competed with or disrupted the cycle of nature. The announcer further commented “how could they do this, seeing that they were taking food out of the mouths of their people.” This was followed by a song about Chinese people eating house pets, neighbourhood pets going missing and questioning “What’s in the food Chinese restaurants serve?”

I found this broadcast to be offensive. It was culturally insensitive and also served to dehumanize and perpetuate stereotypes. This process has been recognized by social scientists as the first steps in promoting hatred.

This is not the first time that I had heard this type of broadcast from this radio station. Approximately two years ago, I called to complain to the CRTC and the station manager of 97.5 about a similar broadcast but instead the ethnic group targeted was East Indians. I recall my initial conversation with the station manager. He was belligerent and defended the program on the platform of what “Howard Stern and David Letterman” do and also on the artistic freedom of his employees. I reminded him that we live in Canada, and as Canadians we have regulations and laws that oversee the conduct of people in the broadcast industry. Upon making this clear to him and also making him cognizant that I made a telephone complaint with the CRTC, I was assured by the manager that he would address this issue with his employees and that my concern would be addressed.

It has now become apparent to me that these were not isolated incidents but rather are an integral part of the programming philosophy of this radio station. The other assumption that is made comes from the fact that this radio station bills itself as a classic rock radio station. The message that it passes onto younger audiences, those seeking to identify with this era, is that this view toward ethnic minorities was/is in keeping with those people who grew up in the 60's, 70's and 80's .

I do not support censorship because if I did, I would have registered a written complaint initially, with the CRTC two years preciously, instead of seeking to be assured redress could be achieved by having the station employees made aware that what they say on the public air waves has a direct impact on the quality of life of all Canadians, even the ones who don’t listen to their program. What I will not sanction however, is a broadcasting

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company that is centered in my community promoting stereotypes and dehumanizing people as a moniker in promoting an image that is ethnically intolerant.

II. The Broadcaster's Response

The Program Director of CJKR-FM responded to the complainant's letter on November 30, 1999 with the following:

I am sorry that you found the content broadcast on CJKR-FM the morning of November 2, 1999 offensive.

The comment referencing an historical action taken by the Chinese government was intended as a humorous introduction to the parody song that followed. There was certainly no intent to be insensitive to Chinese people, or to dehumanize or perpetuate stereotypes. This song, which is provided by an international radio service, will no longer receive airplay on CJKR-FM.

We are sensitive to our listeners concerns, and thank you for taking time to comment on our programming.

III. Additional Correspondence

The complainant sent the CBSC e-mail correspondence on December 17, 1999. It stated in part:

The excerpt from the *Code of Ethics* states - The CBSC considers that a direct dialogue between a complainant and a broadcaster is the best means of resolving a concern.

This is not a concern in this case. Using Clause 2 of your *Code of Ethics* as a benchmark, this broadcast was in direct violation of you own Human Rights clause. As such, I thank you for your thoughtfulness, but do not consider this to be a personal matter that requires dialogue between myself and this station. I am not concerned about relationships but rather about a violation of human rights that is, as I have noted (and you have dismissed), a repeated violation of your Human Rights clause.

My education and training also tell me that a conflict between two parties requires mediation. Are you going to provide that? Probably not. What this is about is a conflict between the broadcasting philosophy of this radio station and the minorities that if offends on an annual basis in the city of Winnipeg.

I have received no reply from the radio station from November 1st (the date of the complaint) through November 22nd (the date of your letter) nor have I received on to this date, December 8. I invite you to please freely pick 14 days within you ambiguously worded time frame. The station has clearly failed to contact myself in the time mandated in your letter.

As you have noted, I have tried to make the station aware of a similar "concern" in the past but you seem incapable of doing anything about this or even acknowledging that a history of this type of programming has existed. You state that the broadcasters are required to retain tapes of their programming for 28 days following the broadcast. I would be

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interested to know if the tapes of the broadcast in question still exist to this date and if the lessons of R.M. Nixon are not completely lost on a generation of classic rock music aficionados.

Your brochure states that "Canada's broadcasters respect codes that set a high standard for all their programming. The codes include rules limiting violence on television, for example, and forbidding discriminatory remarks".

The following excerpts are taken off your web site from rulings that have been made by your council relevant to this situation:

"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 addressed as abusive in a serious context and thus in breach of the *Code of Ethics* may not be so viewed in the comedic environment."

Please note that the operative work above is remark... not remarks plural, dialogue, song, minutes of, etc.

"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."

This to my understanding is in keeping with Clause 2 - Human Rights.

I sent this material to the CRTC which I understood to be the government agency responsible for such matters. I find it strange that the matter would be referred to the Canadian Broadcast Standards Council, an organization that is set up to police the very members who fund it.

I have spent too much time on a matter that I see to be a relatively simple one. Get the tapes, listen to them and do something about it. I do not consider myself to be a reactionary but rather an average Canadian who likes to listen to classic rock music. I will not tolerate minorities being degraded and dehumanized on the airwaves, public or private, just to be associated with the image of a radio station. This is where I live!

Please be advised that I am sending a copy of my original complaint to my Member of Parliament, the Federal Minister responsible for Broadcasting, my Member of the Legislative Assembly, the Race Relations Committee for the City of Winnipeg and the Manitoba Human Rights Association.