
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CIGL-FM re a song entitled "The Bad Touch"

(CBSC Decision 99/00-0654)

Decided October 12, 2000

R. Stanbury (Chair), P. Fockler (Vice-Chair), M. Hogarth (*ad hoc*),
S. Whiting and M. Ziniak

THE FACTS

The CBSC has been called upon to consider two separate complaints dealing with song lyrics. In addition to the song which is dealt with in this decision, the Council is, at its meeting of today, rendering a decision based on the same basic principles in *CIOX-FM re a song entitled "Boyz in the Hood"* (CBSC Decision 99/00-619, October 12, 2000).

Insofar as the present decision is concerned, the song entitled "The Bad Touch", performed by the group Bloodhound Gang, was broadcast by CIGL-FM (Belleville) on an unspecified date in April 2000, as well, in all likelihood, as on other dates. The following lyrics from the song are the most pertinent insofar as this decision of the Council is concerned but the complete transcript of the song can be found in Appendix A:

Love, the kind you clean up with a mop and bucket
Like the lost catacombs of Egypt. Only God knows where we stuck it
Hieroglyphics? Let me be Pacific, I wanna be down in your South Seas
But I got this notion that the motion of your ocean means "Small Craft Advisory"
So if I capsize on your thighs high tide; B-5, you sunk my battleship
Please turn me on, I'm Mister Coffee with an automatic drip
So show me yours, I'll show you mine; "Tool Time" you'll Lovett just like Lyle
And then we'll do it [edited words] so we can both watch "X-Files"

Do it now
You and me, baby, ain't nothin' but mammals
So let's do it like they do on the Discovery Channel
Do it again now
You and me, baby, ain't nothin' but mammals
So let's do it like they do on the Discovery Channel
Gettin' horny now

In a letter dated June 6 (which is reproduced in full in Appendix B hereto), initially sent to the CRTC and forwarded to the CBSC in the normal course, the complainant said, in part:

I run a Girl Guide group and it's frustrating and worrisome to have to stop the 11 year old girls from teaching the younger girls all the words to the song and discussing how "horny" they feel when they hear it. Some know boys who are trying to imitate it. For the children's sake - ban it. I realize there may be other songs on the radio as bad. I hope you censor them too.

The President of CIGL-FM responded on May 8 in part as follows (the full text of the letter is also reproduced in Appendix B):

Thank you for your letter of April 26th regarding your concerns with MIX 97. We always appreciate feedback from our listeners.

In regards to your first concern with the song The Bad Touch by the Bloodhounds it has been station policy to only play the edited version of this song. If the unedited version has been played then the announcer has brought in his or her own copy against company policy. As a result of your letter we have copied all announcers with a stern warning about bringing their own unauthorized recordings to the station. We play this song because it is doing very well on the charts and all stations with the same format as ours are playing it.

The complainant was unsatisfied with the broadcaster's response and requested, on July 5, that the CBSC refer the matter to the Ontario Regional Council for adjudication.

THE DECISION

The CBSC's Ontario Regional Council considered the complaint under the Canadian Association of Broadcasters (CAB) *Code of Ethics* and its *Sex-Role Portrayal Code*. The relevant Code provisions read as follows:

CAB Code of Ethics, Clause 6, Paragraph 3

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.

CAB Sex-Role Portrayal Code, Article 4 (Exploitation)

Television and radio programming shall refrain from the exploitation of women, men and children. Negative or degrading comments on the role and nature of women, men or children in society shall be avoided. Modes of dress, camera focus on areas of the body and similar modes of portrayal should not be degrading to either sex. The sexualization of children through dress or behaviour is not acceptable.

The Regional Council members listened to a tape of the song in question and reviewed all of the correspondence. The Council is of the view that the song lyrics in question are not in breach of any Code provision.

A Preliminary Matter: Songs and Broadcaster Codes

Although the CBSC has from time to time received complaints relating to song lyrics, the decisions taken in this case and in *CIOX-FM re the song "Boyz in the Hood"* (CBSC Decision 99/00-0619, October 12, 2000) represent the first occasion for an adjudicating Council to consider such a complaint. In such circumstances, it is important for the CBSC to review those principles established in its jurisprudence which make it clear that broadcaster responsibility for all programming aired extends to songs.

Although no CBSC Council has specifically dealt with musical programming content, questions have from time to time arisen regarding other kinds of content for which it might seem that broadcasters might not have responsibility. Among these might be advertising, dramatic programming created by third parties, theatrical motion pictures, on-air telephone calls from the public and, generally, any form of programming not having been created by the broadcaster or persons for whom the broadcaster has direct responsibility.

Beginning with the *Broadcasting Act* itself, though, it is clear that broadcasters have responsibility for *all* programming which they air. Section 2 of the Act defines that term in an all-encompassing way.

“program” means sounds or visual images, or a combination of sounds and visual images, that are intended to inform, enlighten or entertain, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text.

Indirect confirmation of the universal applicability of that principle can be found in other locations. As an example, the introductory words of the *CAB Code of Ethics* provide (in the “Background” section), that

Each broadcaster is responsible for the programming of the licensed station. This responsibility can only be met by bringing influence to bear upon all who have a hand in the production of programs including networks, sponsors, producers of live and recorded programs, advertising agencies and talent agencies.

The CBSC has also made the point in relation to some of those other forms of programming noted above. In the advertising area, for example, as long ago as its decision in *CFTO-TV and CFMT-TV re Walk to Work Commercials* (CBSC Decision 93/94-0015, June 22, 1994), the Ontario Regional Council stated that “broadcasters are as responsible for the advertising content which they transmit as they are for the dramatic, journalistic and other content on their airwaves.” The principle was confirmed in *CITY-TV re Video Store Commercial* (CBSC Decision 94/95-0143, March 26, 1996), in which that same Council, after referring to the preceding principle, added:

It is thus no longer necessary to discuss whether the CBSC is entitled to deal with those advertising matters which it is called upon to treat from time to time. The Council considers this a settled matter.

Then, in *CIQC-AM re Galganov in the Morning* (CBSC Decision 97/98-0473, August 14, 1998), the Quebec Regional Council stated more generally:

The Council considers it appropriate to note, as a point of information for the complainant and possibly as a reminder for the broadcaster, that broadcasters are responsible for *all* material aired on their station, regardless of its origin or source.

In dealing with telephone calls by third parties to a call-in show, for example, the Ontario Regional Council confirmed in *CHOG-AM re Connections* (CBSC Decision 96/97-0040, May, 8, 1997) that broadcasters are responsible for the content of all material aired, including such third party comments. The Council made it clear in that case that the broadcaster would not have been entitled to avoid responsibility by dissociating itself from the source of the comments made (although that was not the issue in the case and the broadcaster was not attempting to do that).

... the Ontario Regional Council does not find that its decision is at all affected by the fact that Dr. Green stated "Those are *your* words... I wouldn't be as nasty [Emphasis added]." The broadcaster is as responsible for them as if they had come from Dr. Green's mouth.

In other words, it is not the intention of the Codes that any material broadcast by any private sector programming undertaking be exempt from consideration thereunder. Whether it is spoken word or set to music, the same rules apply. Music is, after all, no more or less a form of programming than other dramatic, documentary, news or, indeed, advertising material, all of which must conform to the terms of the various Canadian private broadcaster Codes.

It should, moreover, be noted that music recording companies, like distributors of motion pictures, generally create more than one version of their respective products. They understand that, in order to facilitate the responsibilities of broadcasters and to render broadcast markets more accessible to their products, they must provide versions that are susceptible of being aired. While broadcasters themselves frequently edit motion pictures, whether for content or to ensure that there are appropriate breaks for commercials, it is obvious that recorded popular songs are not as readily susceptible of broadcaster intervention. The decision for the broadcaster, when there is no edited version of a song, may, therefore, become, in black and white terms, whether to play or not to play. Knowing that, in order to assure air time, recording companies frequently provide a second version which they consider suitable for radio broadcast. As the President of the station explained,

it has been station policy to only play the edited version of this song. If the unedited version has been played then the announcer has brought in his or her own copy against company policy.

In this case, where the choice was available to the broadcaster, it made the decision, reflecting its anticipation of its audience's taste, that the song was playable in its edited form. The Council respects and agrees with that decision.

The Challenged Lyrics

The Council well understands the perspective of the complainant that, *even if* the version played was the *edited* version, it exceeds the bounds of what ought to be broadcast. While it is, of course, absolutely correct that the recording studio's choice in releasing an edited version may not meet the standards imposed by Canada's private broadcasters in every case much less the threshold of acceptability of all audience members, the Ontario Regional Council is of the view that the broadcaster has fulfilled its compliance requirements here. In this case, unlike the other decision released today, namely, *CIOX-FM re a song entitled "Boyz in the Hood"* (CBSC Decision 99/00-619, October 12, 2000), the Council does not find the song lyrics in breach.

In the first place, the Council does not actually find that there are any individual words in the song which are in and of themselves problematic. It remains, then, for the Council to determine in what other respect, if any, there may be breach of a Code. With respect to the issue of sexual content on the radio, on the only previous occasion on which a CBSC Council has found against a broadcaster for inappropriate comments, namely, *CHOM-FM and CILQ-FM re the Howard Stern Show* (CBSC Decisions 97/98-0001+ and 0015+, October 17 and 18, 1997), the host had been dealing with *explicit* sexual matters at a pinpointed time of the morning when children could be expected to be listening to the radio. In that case, the Quebec and Ontario Councils, ruling together, concluded on this point:

It is the view of the Quebec and Ontario Regional Councils that the unsuitable language and graphic discussion of sexual situations is not proper material for Canadian children and does not meet their needs in a broadcast sense. Nor does it 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. In addition, therefore, to the other concerns expressed by the CBSC, it is its view that the time period in which the Howard Stern Show plays is entirely inappropriate and that the unsuitable language and graphic discussion of sexual situations which the CBSC found in the two weeks of episodes it reviewed will be repeated on a daily basis in future episodes, thus rendering the broadcasters carrying it in constant ongoing violation of the *Code of Ethics*.

In this case, the circumstances are very different. While the Council agrees that the song makes several references to sexuality, the Council is of the view that such references consist mainly of *innuendo*. The song playfully alludes to the sexual fantasies of the songwriter without explicitly describing them. In one such reference, the songwriter muses "I got the notion that the motion of your ocean means 'Small Craft Advisory'." The lyrics are far removed from the explicitness of the graphic descriptions which led to a finding of breach in the *Howard Stern* decision or, although on slightly different grounds, the *Boyz in the Hood* decision.

In the end, the Council believes that most questions of potentially unpalatable material, amount to questions of taste, and, in such cases, should be left to the listener's discretion to listen to or turn off. As was stated by the Ontario Regional Council in its decision in *CHTZ-FM re the Morning Show* (CBSC Decision 92/93-0148, October 26, 1993):

On the questions of fact in this case, the Regional Council agreed that the tone of the host's statement was accurately recalled by the listener and that the host's statement was in extremely poor taste. At the same time, the Council was unanimous in its view that the bad taste did not amount to a breach of any of the Code provisions cited above. ... The sanctioning of bad taste, unpalatable as it may be, does not fall within the ambit of the CBSC's mandate under its Codes.

That being said, the Council applauds the recognition by recording studios and broadcasters to provide versions of songs which are acceptable to air and it encourages radio stations to continue their self-regulatory practice of dealing cautiously with songs which they believe may be offensive for their audiences, taking into consideration the interests and the sensibilities of their audience. In doing so, the Council also expects that radio stations will remain as vigilant as CIGL-FM in ensuring that their employees broadcast only the versions of songs that have been approved by the station.

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 fully responsive to the complainant's letter. By also taking measures against the broadcast of unauthorized versions of songs by its announcers and by advising the complainant openly of that internal measure, the broadcaster has taken a 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 A
TO CBSC DECISION 99/00-0654
CIGL-FM re a song entitled "The Bad Touch"

The following is a transcript of the lyrics for the song in question.

Well now, we call this the act of mating, but there are several other very important differences between human beings and animals that you should know about.

I'd appreciate your input (whispered)Sweat baby, sweat baby, sex is a Texas droughtMe and you do the kind of stuff that only Prince would sing aboutSo put your hands down my (edit) and I'll bet you'll feel (edit)Yes I'm Siskel, yes I'm Ebert, and you're getting two thumbs upYou've had enough of two-hand touch. You want it rough. You're out of boundsI want you smothered, want you covered, like my Waffle House hashbrownsCome quicker than FedEx, never reach an apex. Like Coca-Cola stock you are inclinedTo make me rise an hour early just like Daylight Savings TimeDo it nowYou and me baby ain't nothin' but mammalsSo let's do it like they do on the Discovery ChannelDo it again nowYou and me baby ain't nothin' but mammalsSo let's do it like they do on the Discovery ChannelGettin' horny nowLove, the kind you clean up with a mop and bucketLike the lost catacombs of Egypt. Only God knows where we stuck itHieroglyphics? Let me be Pacific, I wanna be down in your South SeasBut I got this notion that the motion of your ocean means "Small Craft Advisory"So if I capsize on your thighs high tide; B-5 you sunk my battleshipPlease turn me on, I'm Mister Coffee with an automatic dripSo show me yours, I'll show you mine; "Tool Time" you'll Lovett just like LyleAnd then we'll do it (edit) so we can both watch "X-Files"Do it nowYou and me baby ain't nothin' but mammalsSo let's do it like they do on the Discovery ChannelDo it again nowYou and me baby ain't nothin' but mammalsSo let's do it like they do on the Discovery ChannelDo it nowYou and me baby ain't nothin' but mammalsSo let's do it like they do on the Discovery ChannelDo it again nowYou and me baby ain't nothin' but mammalsSo let's do it like they do on the Discovery ChannelDo it nowYou and me baby ain't nothin' but mammalsSo let's do it like they do on the Discovery ChannelDo it again nowYou and me baby ain't nothin' but mammalsSo let's do it like they do on the Discovery ChannelGettin' horny now

APPENDIX B
TO CBSC DECISION 99/00-0654
CIGL-FM re a song entitled "The Bad Touch"

I. The Complaint

The following complaint dated June 6, 2000 was sent to the CRTC, and forwarded to the CBSC in due course:

Please find enclosed the copy of a letter sent to the Radio Station 97 and the answering letter. While they may be incapable of banning the song in question "Bad Touch", you can. I run a Girl Guide group and it's frustrating and worrisome to have to stop the 11 year old girls from teaching the younger girls all the words to the song and discussing how "horny" they feel when they hear it. Some know boys who are trying to imitate it. For the children's sake - ban it. I realize there may be other songs on the radio as bad. I hope you censor them too. But I am very aware of this particular song because of the incident above.

The next concern I had regarding the words "kick-ass" and "God Damn" being used was very "Pontius Pilate" of them (washing their hands of their responsibility). The adults could inform the kids auditioning for guest DJ to not use these words privately - before going on the air. Then there would be no advertising and therefore no encouragement of the use of these words. Surely they could have done that much.

The following letter, sent to the broadcaster on April 26, 2000, was attached to letter of complaint:

I have two concerns I wish to address.

Number One: Please consider this a formal complaint regarding the song currently being heard BAD TOUCH by THE BLOODHOUNDS. The lyrics are raw, crude and far too explicit. It refers to wanting to have sex like the mammals do on the Discovery Channel and saying he's "horny." It doesn't matter that you bleep this line out during the daytime until the request show in the evening because children are still up at this time and so am I. This is a formal request to not play the song at all. It is full of other graphic lines as well.

Number Two: This is a formal complaint against the format of the Top Six at Six program with Joey Martin at 6 p.m. on weekdays. Children calling in should not be allowed to say as guest DJ, "the best kick-ass radio station...." Or to say "the best G-O-D-D-A-M-N radio station..." I feel they are encouraged through lack of someone telling them they cannot say this. To stop this unacceptable talk by children, all Joey has to do is regularly say on the radio that they cannot say these things or they cannot be on the program or receive the prize. If no prize is given under these circumstances this kind of garbage talk will cease.

I am expecting results within three weeks. If these complaints are not acknowledged or dealt with properly, I will be sending a copy of this letter to the C.R.T.C. and a formal letter of complaint. I have already phoned them and these are the guidelines they gave me. They allow three weeks for responses of complaints sent to them.

II. The Broadcaster's Response

The President, CIGL-FM, responded to the complainant on May 8, 2000 with the following:

Thank you for your letter of April 26th regarding your concerns with MIX 97. We always appreciate feedback from our listeners.

In regards to your first concern with the song Bad Touch by the Bloodhounds it has been station policy to only play the edited version of this song. If the unedited version has been played then the announcer has brought in his or her own copy against company policy. As a result of your letter we have copied all announcers with a stern warning about bringing their own unauthorized recordings to the station. We play this song because it is doing very well on the charts and all stations with the same format as ours are playing it.

As for your second concern regarding the Top Six at 6 we have taken your request under advisement and have spoken with Joey regarding your complaint. It is our belief that by drawing attention to what the callers can and cannot say will only increase the frequency of such calls. This is based on previous experiences with similar matters.

Again, we appreciate your taking the time to write and hope that you are satisfied with this response.