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

CFMI-FM re offensive humour (Drug Tester)

(CBSC Decision 00/01-0811)

Decided January 23, 2002

S. Warren (Chair), H. Mack (Vice-Chair), R. Cohen (*ad hoc*), G. Leighton, M. Loh

THE FACTS

On April 2, 2001, CFMI-FM (Rock 101, Vancouver) broadcast a recording of a prank telephone call (which had been obtained from a United States broadcaster) during the Brother Jake morning show. In the segment, which was 1 minute, 23 seconds long, a man, Michael, phoned a woman, Gail, identifying himself as a representative from the company for which she had done a drug test as part of a job application process. He informed her that her test results indicated very heavy drug use, which Gail vehemently denied. The relevant portions of the conversation are as follows (the entire transcript of the segment can be found in Appendix A):

Gail: Can I retake 'em or something? Because you're wrong! I'm not saying I have never touched drugs in my life, but it has been more than, than six months.

[...]

Michael: Now you see Gail, just by telling me that, you automatically fail the test.

[...]

Gail: I'll do anything. I need this job. I need this job. I have been unemployed for six months now. This is a really good job. I will retake it, I will pass! But if you deny me this I'm going to lose this job! I'll do, what do I need to do? I'll go down there. Do you want me to go down there in person?

[...]

Gail: Is there anything, *anything* I can do that you'll, you'll give me another test?

Michael: Like what, what are you referring to? What do you want? What do you mean 'anything I can do'?

Gail: Are, I don't know, um, are you married? I could take you out to lunch or something or, or, you know, or anything?

Michael: Or, or what 'anything'?

Gail: I'll do *anything* to get this retaken, anything. You know, if you, we could go out and, you know, maybe, maybe have a couple drinks or something? You know, I could, um, I'll do anything. I'll do anything. You want me to, to, you want, I'll sleep with you, I'll do anything you want.

Michael: Well, uh, Gail -

Gail: Do you want to meet me somewhere, we could get a motel?

Michael: Gail, Gail, what I'll tell ya is, uh, your mother called us this morning.

The segment concluded with the sound of a toilet flushing, and the CFMI-FM host whistling and saying "Oh, boy. Hi Mom. I'm your daughter."

The CBSC received the following complaint (the full text can be found in Appendix B) on the day of the broadcast:

On the April 2, 2001 Bro' Jake Show on local radio station CFMI, a sick and twisted prank phone call was aired during rush hour. In it, a young woman currently unemployed was subjected to mental torture by a so-called "tester". [...] It was evident from the frantic conversation that she was in significant distress, so much so that eventually she offered to sleep with the tester in order to have the test performed again.

I was upset at this kind of "prank" perpetrated on our airwaves and complained to CFMI [...] who sidestepped responsibility by saying "Thanks for your comments. The call was actually made by a radio station in the U.S., and set up by the girl's mother as a prank call. We replayed it. I do appreciate your thoughts on it."

[...] It doesn't make any difference whether it was produced by CFMI or not. CFMI chose to air that offensive material which meant they endorsed it as comic relief. I am offended that this material made the airwaves in the first place, but it is especially offensive that the organizations entrusted with the use of our airwaves have such a cavalier attitude when it comes to human dignity.

The broadcaster responded to the complainant's letter on May 9 as follows, in part (the full text can be found in Appendix B):

The prank call that you heard was produced by another radio station and was in fact instigated by the woman's mother. The intent of the radio announcer performing the gag is

to get a reaction. At the end, the radio announcer makes it very clear that the prank call was in actual fact set up by the caller's mother.

We agree that the content of the call may not appeal to some listeners' comedic tastes. Humour and taste are extremely subjective elements relative to the point of view of an individual. There is no question that the Brother Jake Show, like many other contemporary music, news and entertainment radio shows, can sometimes be controversial in nature and not for everyone's taste. We regret that the gag offended you for that was not our intent. As a member of the CBSC, we at ROCK 101 take all the steps to abide by their Codes. It is our belief that this phone prank does not breach the CBSC Codes.

The complainant sent an e-mail to the CBSC on May 9, which said, in part:

In my opinion, this is an indefensible argument as rebroadcasting something of this nature meant they endorsed this kind of "humour". [...]

I believe in free speech, but only in so far as it does not hurt or bring into disrepute society in general. This piece offended me and would have offended many others as it publicly endorsed sexual harassment. By rebroadcasting this material suggests that CFMI thinks sexual harassment is okay. I don't think that position taken by a broadcaster is okay.

THE DECISION

The British Columbia Regional Panel considered the complaint under Clause 6, paragraph 3 of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* and Article 4 of the *CAB Sex-Role Portrayal Code for Television and Radio Programming*. Those two provisions read as follows, in pertinent part:

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.

The Panel also examined the broadcaster's response in the light of one of the General Principles of membership in the CBSC, which states that broadcasters are responsible for all material aired:

Broadcasters are responsible for all material which they air, whether or not it has been produced by them or even, in the case of interactive programming, if it is contributed live by a caller or other third party.

The Adjudicators listened to the segment in question and reviewed all of the correspondence. The Panel does not find that the broadcaster was in violation of any of the foregoing broadcaster Codes, nor of its responsibilities of membership in the CBSC. The reasons for this decision are explained below.

A Preliminary Issue: The Broadcaster’s Responsibility For All Material Aired

In its response letter, CFMI-FM noted that the segment “was produced by another radio station and was in fact instigated by the woman’s mother.” While the Panel is unsure from the context of the letter whether the broadcaster was trying to provide *additional* information to the complainant or to “duck” its own responsibility for the material, it considers that a review of the applicable principles is appropriate.

The underlying responsibility of the broadcaster for every second of material that appears on its airwaves is undoubted. It finds its source both in the *Broadcasting Act* and the membership requirements of the CBSC. The principle has been echoed in *CIII-TV (Global) re an episode of Seinfeld* (CBSC Decision 96/97-0074, May 8, 1997), in which the Ontario Regional Panel considered that the broadcaster’s reply was “on the edge” of breaching the broadcaster’s obligation to provide a full and fair response to the issues raised by the complainant. The Panel noted:

The letter appeared to the Council to attempt to shift responsibility for the program from the broadcaster to the producers. There can be no doubt regarding the broadcaster’s responsibility for the programming which it airs, *wherever* it is produced. Nor is there anything improper with the provision of the address of the program’s producers.

[...]

In this case, however, the Council was uncertain, from the wording of the Global letter, whether the broadcaster was attempting to “pass the buck” or merely to provide *additional* information to the complainant. It would like to remind the broadcaster that the latter course is the appropriate one.

The origin, though, of the principle is in Section 3(1)(h) of the *Broadcasting Act*, which, when read with the definitions in Section 2 of the Act, provides that “all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast,” program meaning “sounds or visual images, or a combination of sounds and visual images, that are intended to inform, enlighten or entertain.” Although not relevant for the purposes of the matter at hand, it should also be noted that Section 10(1)(e) of the Act makes it clear that “programs” includes “advertisements or announcements”.

In the present matter, on the basis of the correspondence, the B.C. Regional Panel is not prepared to find, on the basis of that single reference, that the broadcaster failed to live up to its responsibilities of membership.

The Issue of Sexual Harassment

In one of the first cases in which a CBSC Adjudicating Panel was called upon to assess a complaint about sexual harassment or exploitation in a radio broadcast, namely, *CHTZ-FM re the Morning Show* (CBSC Decision 92/93-0148, October 26, 1993), the announcer, on Secretary's Day, made the statement, "Listen, gentlemen, if you are trying to impress that secretary at work, today is Secretary's Day, just make sure you are a gentleman when you ask her to take *dictation*, you understand. [on-air host's emphasis]." A listener felt the comment made light of the real problem of sexual harassment in the workplace. The Ontario Regional Panel concluded that the comment was not exploitative, negative or degrading to women, but that it was in extremely poor taste.

The Ontario and Quebec Regional Panels dealt with much harsher comments against women in *CHOM-FM and CILQ-FM re The Howard Stern Show* (97/98-0001+, October 17-18, 1997). The host of that show unrelentingly used terms such as "pieces of ass", "dumb broads", "fat cow" and "sluts" in reference to female callers and guests. The Panels jointly concluded that such remarks were in breach of the *CAB Sex-Role Portrayal Code* because Stern

frequently deals with female guests on the basis of their physical attributes and sexual practices rather than, or occasionally in addition to, the skills or talents which are the reason for their common recognition. In the case of callers, he regularly avoids the subject with respect to which they have called in order to seek details of their bust size and weight as well as their sexual practices, despite the fact that this information is *utterly* irrelevant to the subject of interest.

The Panel considered that such behaviour towards females on the show constituted harassment and exploitation:

Stern *consistently* uses degrading and irrelevant commentary in dealing either with guests or callers. The CBSC understands, by his demeanour and laughter, that *he* and, presumably, Quivers and others on his show find such comments amusing. It may well be the case that many in his audience find such comments entertaining. This sort of adolescent humour may work for some in private venues but it is thoroughly in breach of Canadian codified broadcast standards. Women in this country are entitled to the respect which their intellectual, emotional, personal and artistic qualities merit. No more than men. No less than men. But every bit as much as men.

The Prairie Regional Panel also addressed the issue of exploitation in *CJKR-FM re a radio contest (Nude Bicycle Riding)* (CBSC Decision 98/99-0476, November 18, 1999). The radio station offered a cash prize to anyone who was willing to ride a bicycle naked down a main Winnipeg street. The contest was open to both males and females, the winning contestant ultimately, as it happened, being a woman. The Panel found the broadcaster in breach of the *CAB Sex-Role Portrayal Code*, among other things, for the remarks made by

the on-air hosts during the woman's ride. The two hosts discussed "doing her" and how they wanted her to "sit straight up on that saddle" in order to "show her wares". The Panel decided that these comments were negative and degrading.

The B.C. Regional Panel does not reach the same conclusion here with respect to the prank telephone call. At no time during the course of the conversation are such negative or sexually degrading comments made about Gail as those found in either the *Howard Stern Show* or *Nude Bicycle Riding radio contest* decisions. It was perhaps unfair to subject Gail to this practical joke, since she was obviously quite distressed about the suggestion that her test results indicated she was a heavy drug user; however, the "tester", Michael, never directly insulted Gail, nor even made sexually suggestive remarks to her. Indeed it was Gail herself who offered to sleep with the "tester" in order to be allowed to re-take the tests. When she declared that she would do "anything" to be granted the opportunity to re-do the test, the "tester" merely said "What are you referring to?" and "What do you mean 'anything I can do'?" Had the "tester" been the one to suggest sexual activity, the dialogue might have unfolded differently and the Panel might have reached a different conclusion. This was not, however, the case and Michael in fact revealed the practical joke right after Gail has upped the offer to sexual favours. While the Panel concludes that the segment was in very poor taste, it was not exploitative of *either* sex in breach of any broadcaster Codes.

The CBSC has explained on numerous previous occasions that the broadcaster's programming responsibility does not extend to questions of good taste. In one such decision, *CHOM-FM and CILQ-FM re The Howard Stern Show* (CBSC Decision 97/98-0001+, October 17-18, 1997) where *some* of the host's comments were not in breach, the CBSC expressed its position on the issue of taste in the following terms:

[M]atters of taste must be left to be regulated by the marketplace. Such choices remain those of the listener. This is the time when the on/off switch is the listener's coping mechanism. Unless comments made by a broadcaster are of a nature to breach provisions of one or more of the Codes, the CBSC will not judge them one way or the other.

The Comedic Defence

In its response, the broadcaster explained that the prank was meant to be funny and that "the content of the call may not appeal to some listeners' comedic tastes." This is far from the first time that a broadcaster has used the "comedic defence" to justify its actions but, as a general rule, CBSC Panels do not consider the comedic defence to be an answer to matters otherwise in breach of one of the Codes. For example, in *CILQ-FM re The Howard Stern Show* (CBSC Decision 97/98-0487, 0504 and 0535, February 20, 1998), the Ontario Regional Panel explained this issue in the following terms:

The Ontario Regional Council acknowledges that the show *purports* to be comedy. It also acknowledges that there are listeners who view what Stern says as funny, if not hilarious. That, however, is not the point. There are comments which, whether *intended* or not to be

funny, are in breach of the broadcasters' own Codes of conduct. What can be said in one's living room or in the locker room does not automatically become eligible for over-the-air consumption. Sexist, abusive and racist comments, and commentary advocating violence against identifiable groups may well be amusing to some people but, in violating the CAB Codes or the *Radio Regulations, 1986*, they do not pass the test of broadcast acceptability.

The difficulty with the position of those who would excuse comments on the basis of comedic intent is that the extension of the principle to its logical extreme would lead to a conclusion which the Council finds untenable. It would ultimately justify *any* comment which a host or broadcaster said was intended to be humorous. This could not possibly have been the intention of the creators of the broadcast Codes. Had it been, they would have included an explicit exemption for comedy or humour. They did not.

While in this case, the Panel has not found a breach of the Codes, the Panel did not reach this conclusion as a result of the humorous intent of the segment. The Panel's determination was based on what was actually said during the telephone conversation and how the exchange unfolded. Humour was not the issue.

Broadcaster Responsiveness

Broadcaster responsiveness is a key requirement of membership in the CBSC. In fact, the broadcaster's response to the complainant is examined by the CBSC Adjudicating Panels in every decision. The CBSC recognizes that the complainant and broadcaster often do not agree on the issue, but it nonetheless expects the broadcaster to provide a thoughtful reply that adequately addresses the complainant's concerns. The B.C. Regional Panel finds that CFMI-FM has met this requirement in this instance. Nothing more is required.

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

CBSC File 00/01-0811
CFMI-FM re offensive humour (Drug Tester)

The following prank telephone call was broadcast on CFMI-FM on April 2, 2001 during the Brother Jake Morning Show:

Gail: Hello.

Michael: Good morning, is Gail [last name] there please.

Gail: This is Gail.

Michael: Hi Gail, how are ya? I'm calling, this is, uh, Michael Rogers calling from the, uh, [company name].

Gail: Oh, hi.

Michael: And I'm calling, um, in reference to the, uh, the testing you, uh, you came in this week earlier on this month.

Gail: Right, right for the job.

Michael: Yea. Gail, I'm very disturbed by the results here.

Gail: What, what do you mean?

Michael: And I'll be forwarding these in to, uh, to the company.

Gail: What, what's wrong with the results?

Michael: Well, the results that we've, uh, we've come up with indicate, uh, very, very high drug use.

Gail: What?! You completely got my test results mixed up with someone else's. I don't do drugs. I don't do drugs. There's been a mistake.

Michael: Gail, Gail, we've, you know, you can sing the same old sob story that we've, that I've heard from a number of other people.

Gail: It's not a sob story! I don't do drugs! There's been a mistake!

Michael: They're one hundred percent accurate and we will be forwarding this to the company.

Gail: You don't understand, you have to have the wrong result. I don't do drugs. I'm completely clean.

Michael: But, by law Gail I have to, uh, call you to inform you this, but that's basically the only thing I can --

Gail: Can I retake 'em or something? Because you're wrong! I'm not saying I have never touched drugs in my life, but it has been more than, than six months.

Michael: Oh really?

Gail: Yes.

Michael: Now you see Gail, just by telling me that, you automatically fail the test.

Gail: No! No, I mean, you know, every kid experiments, but that was a long time ago. You can't, you can't blame me for something that happened a long time ago! You have to have the wrong results!

Michael: Ma'am.

Gail: Or let me retake them! I'll retake them!

Michael: No, you cannot retake them. The company only hires us for the one test. It does this. The company's –

Gail: I'll do anything. I need this job. I need this job. I have been unemployed for six months now. This is a really good job. I will retake it, I will pass! But if you deny me this I'm going to lose this job! I'll do, what do I need to do? I'll go down there. Do you want me to go down there in person?

Michael: Well, you see Gail, it doesn't really matter because they employ us to do one test and we've got the results and we just hand those over to the company.

Gail: But, but you could do another test! You could do this for me.

Michael: Now Gail --

Gail: Is there anything, *anything* I can do that you'll, you'll give me another test.

Michael: Like what, what are you referring to? What do you want? What do you mean 'anything I can do'?

Gail: Are, I don't know, um, are you married? I could take you out to lunch or something or, or, you know, or anything?

Michael: Or, or what anything?

Gail: I'll do *anything* to get this retaken, anything. You know, if you, we could go out and, you know, maybe, maybe have a couple drinks or something? You know, I could, um, I'll do anything. I'll do anything. You want me to, to, you want, I'll sleep with you, I'll do anything you want.

Michael: Well, uh, Gail –

Gail: Do you want to meet me somewhere, we could get a motel?

Michael: Gail, Gail, what I'll tell ya is, uh, your mother called us this morning.

CFMI-FM then included the sound of a toilet flushing, and the CFMI-FM DJ whistles and says “Oh boy. Hi Mom. I’m your daughter.”

APPENDIX B

CBSC File 00/01-0811 CFMI-FM re offensive humour (Drug Tester)

I. The Complaint

The following complaint dated April 2, 2001 was received by the CBSC via the website complaint form:

On the April 2, 2001 Bro Jake Show on local radio station CFMI, a sick and twisted prank phone call was aired during rush hour. In it, a young woman currently unemployed was subjected to mental torture by a so called "tester". This "tester" was calling the young woman to advise her that the drug test she had submitted to showed she was a recent drug user and was therefore not going to be considered for the job she had applied for. It was evident from the frantic conversation that she was in significant distress, so much so that eventually she offered to sleep with the tester in order to have the test performed again.

I was upset at this kind of "prank" perpetrated on our airwaves and complained to [the] CFMI program director [...] who sidestepped responsibility by saying "Thanks for your comments. The call was actually made by a radio station in the U.S., and set up by the girl's mother as a prank call. We replayed it. I do appreciate your thoughts on it."

CFMI [and the program director] missed the point entirely. It doesn't make any difference whether it was produced by CFMI or not. CFMI chose to air that offensive material which meant they endorsed it as comic relief. I am offended that this material made the airwaves in the first place, but it is especially offensive that the organizations entrusted with the use of our airwaves have such a cavalier attitude when it comes to human dignity.

II. Broadcaster Response

The broadcaster responded to the complainant's letter on May 9, 2001 with the following:

The Canadian Broadcast Standards Council ("CBSC") has asked us to respond to your letter of April 2, 2001. In your letter, you raised concerns regarding a call that aired on April 2, 2001 during the Brother Jake Show (the "Program").

In particular, your letter sets out your concerns with a prank call that was aired on the Program. The prank call that you heard was produced by another radio station and was in fact instigated by the woman's mother. The intent of the radio announcer performing the gag is to get a reaction. At the end, the radio announcer makes it very clear that the prank call was in actual fact set up by the caller's mother.

We agree that the content of the call may not appeal to some listeners' comedic tastes. Humour and taste are extremely subjective elements relative to the point of view of an individual. There is no question that the Brother Jake Show, like many other contemporary music, news and entertainment radio shows, can sometimes be controversial in nature and not for everyone's taste. We regret that the gag offended you for that was not our intent. As a member of the CBSC, we at ROCK 101 take all the steps

to abide by their Codes. It is our belief that this phone prank does not breach the CBSC Codes.

We trust that the foregoing responds to the concerns raised in your e-mail and hope that you will continue to enjoy the vast array of programming that we offer on ROCK 101.

III. Additional Correspondence

Before the complainant had received the broadcaster's response, he sent the following e-mail on May 9, 2001 in response to the CBSC's initial e-mail:

If you had read my email, you would have noted that I did indeed contact CFMI almost immediately after the alleged offence. [The] Program Director [...] defended the content by saying that the broadcast did not originate at CFMI, but was in fact a rebroadcast of something that occurred in the US. In my opinion, this is an indefensible argument as rebroadcasting something of this nature meant they endorsed this kind of "humour". [...]

I believe in free speech, but only in so far [*sic*] as it does not hurt or bring into disrepute society in general. This piece offended me and would have offended many others as it publicly endorsed sexual harassment. By rebroadcasting this material suggests that CFMI thinks sexual harassment is okay. I don't think that position taken by a broadcaster is okay.