
**CANADIAN BROADCAST STANDARDS COUNCIL
PRAIRIE REGIONAL PANEL**

CHRK-FM re radio contest ("Dance Naked")

(CBSC Decision 00/01-1091)

Decided February 6, 2002

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

THE FACTS

In August 2001, CHRK-FM (Calgary) held a contest pursuant to which listeners could win tickets to a John Mellencamp concert. In order to win, the selected participant, chosen at random from a number of faxed entries, had to dance naked on a major thoroughfare bridge in Calgary during morning rush hour (between 6:30-7:30 am). The winner of these tickets, a man (although women were equally eligible), apparently painted his body for the occasion and made modest attempts at modesty by the (reportedly) strategic positioning of two Frisbees which he held over his private parts while dancing.

A listener sent the following letter of complaint to the CRTC, which was forwarded to the CBSC on August 31, 2001 (the full text of the letter can be found in the Appendix):

Both motorists and pedestrian traffic over the bridge were subjected to the sight of this nude male cavorting around. At that time of day there is a bumper to bumper stream of vehicular traffic and a heavy cyclist and foot passenger traffic. To expedite this activity the radio station furnished a "getaway" vehicle.

No one in this city should be exposed (no pun intended) to this abhorrent behaviour in a highly public place.

Calgary City Police responded to complaints and ticketed both the station and the idiot involved, but the radio station perverted justice by paying the ticket for the contest winner. There is no doubt that the IQ level of jocks on radio today is about that of a shrub but even for them this was more than a little over the top. It only proves that low lifes can be dredged up out of any sewer who want public attention badly enough, but I do not think our publicly licenced airways is [sic] the place for such trash. I hope that when this radio station's licence is up for renewal that this complaint will be part of the package when that licence is being

considered. I also hope that the CRTC will be letting Rock 97 know that future infractions of encouraging abhorrent behaviour will be dealt with. The Calgary City Police have better things to do with their time than running around putting the lid on radio station trash. For further verification of this event both Calgary dailies (*Calgary Sun*, *Calgary Herald*) carried this (one with a photo) on August 16th and August 17th.

The Program Director officially responded to the complainant on February 1, 2002, saying in part (the full letter is reproduced in the Appendix):

The winning qualifier was [Mr. A] who received no payment for his actions, and agreed to the terms of the contest of his own volition.

[...]

However after careful review of the situation, we found that Matt and Lari designed a contest related to a topical event taking place in the city that night, Wednesday, August 15th, 2001 which was the John Mellencamp concert. The listener and subsequent winning qualifier, [Mr. A], agreed to the terms of the contest in order to win those tickets. He did paint his body, as well held up a Frisbee to cover his front and back end, as seen in the article in the *Calgary Herald*, Thursday August 16, 2001.

Many of our listeners found the “stunt” amusing, including the ticket-issuing police officer who stated (in regards to stunting) *“You’ve had the best reason for (stunting) so far, and I can’t fault you for that”*. Even the newspaper article stated that the police officer *“did allow himself a chuckle after he had issued [Mr. A] his ticket”*.

Calling our listeners “low lifes” is an unfortunate description as we appeal to many listeners of all ages and both genders from varied religious, ethnic, sociological, and economical backgrounds. As you may have noted when listening to Rock 97 regarding this particular contest, that our contests are always open to those over the age of 18, with no discrimination.

Listeners who participate in our contests do so willingly, and are always made clear of [*sic*] any rules, regulations, or consequences of any of their actions. As a local radio station that attempts to entertain, amuse, and inform our listeners we will engage in some activities that may not appeal to everyone. This contest, as all our contests, are [*sic*] always conceived and executed in the spirit of having fun and not intended to put people’s lives in danger, intentionally break the law or expose anyone to “abhorrent behaviour”.

THE DECISION

The CBSC’s Prairie Regional Panel considered the complaint under the Canadian Association of Broadcasters (CAB) *Code of Ethics*, Clause 11(b) concerning radio station contests:

All station contests and promotions should be conceived and conducted in good taste, and particular care should be taken to ensure that they are not likely to give rise to a public inconvenience or disturbance.

Apparently as the result of either an administrative error or misunderstanding, for which the broadcaster bore no responsibility, the CBSC was unable to secure logger tapes for the broadcast in question. In the circumstances, though, this was of little consequence since

the issue for the Panel relates more to the sponsorship and promotion of the off-air contest by the broadcaster than to any specific words pronounced on-air. Moreover, the complainant and the broadcaster were in agreement as to the facts of the case. Accordingly, the CBSC is in a position to adjudicate the matter.

The Prairie Regional Panel reviewed all of the correspondence and concluded that CHRK-FM was in breach of Clause 11(b) of the *CAB Code of Ethics* for conducting a contest which was likely to cause a public inconvenience or disturbance.

Contests That Give Rise to a Public Inconvenience or Disturbance

The CBSC has only considered Clause 11(b), the contest provision of the *CAB Code of Ethics*, on a couple of occasions; however, previous Panels have considered the wording of the clause potentially confusing. In order to clarify the Council's understanding of the language, the B.C. Regional Panel stated, in *CFOX-FM re Larry & Willy Show (Bryan Adams Contest)* (CBSC Decision 97/98-0534, May 20, 1998):

While its wording is not as straightforward as it might ideally be, Clause 11 does, in the B.C. Regional Council's view, establish its general purpose in the opening words "whereas station contests and promotions are legitimate and useful methods of attracting audiences". The Council understands those words as a general framework for contests and promotions, and the remaining principles established in paragraphs (a) and (b) as examples of the legitimate methods of conducting such contests and promotions. These include the requirement that: i) "the cost of any such contest or promotion is not excessive"; ii) "all station contests and promotions should be conceived and conducted in good taste"; and iii) "particular care should be taken to ensure that they are not likely to give rise to a public inconvenience or disturbance." In other words, the Council considers that the legitimacy and usefulness of contests must be evaluated by reference to those three issues *among others*. The non-limitative nature of the list is, in the Council's view, reflected in the generality of the words chosen in the enumerated examples.

Then in *CJKR-FM re a radio contest (Nude Bicycle Riding)* (CBSC Decision 98/99-0476, November 18, 1999), the Prairie Regional Panel was called upon to apply these principles to a radio station contest in which the broadcaster conceived a contest in which a woman agreed to ride a bicycle nude down a main street in Winnipeg for a chance to win a cash prize. When Lady Godiva, with an analogous attention-getting goal, tried the same thing in Coventry's marketplace in 1040 A.D., traffic was not as heavy. In the more modern circumstances, the Prairie Panel found an unquestionable breach of Clause 11(b):

While the Council must reserve its right to evaluate the circumstances of every different factual pattern which might in future present itself, the Prairie Regional Council's principal concern with this contest has to do with *where* it was held. Nor, it should be added, has the Council inquired as to whether or not charges were laid or ought to have been laid. That is not the CBSC's issue here. It is perfectly obvious to the Council that a nude woman (or, the Council assumes, a nude man) cycling down the principal avenue of one of the nation's largest cities could *reasonably* be expected to constitute a distraction for *drivers*. This is

precisely what the codifiers must have had in mind when they drafted a provision which stated that

particular care should be taken to ensure that they [contests] are not likely to give rise to a public inconvenience or disturbance.

It does not require great imagination to understand that such a distraction on a major thoroughfare would in fact cause that very public inconvenience or disturbance which was envisaged by the codifiers. It would not, in the circumstances, even be unreasonable to be concerned about the prospect of an accident intervening. Accordingly, the decision to promote such a contest constitutes, in the view of the Council, a breach of Clause 11(b) of the *CAB Code of Ethics*.

In the present matter, as in the CJKR decision, the Panel will not comment on the legal issue of whether or not the radio station and participant should have been ticketed for the stunt. That is a public law issue and beyond the purview of the CBSC. Nor, for that matter, does the Panel consider it appropriate to comment on the complainant's allegation of the station's "perversion of justice" (in referring to CHRK's payment of the "dancer's" fine). This allegation was not commented on or responded to by the broadcaster and, in any event, bears no relevance to the CBSC's application of the Code.

In the CJKR decision, this Panel said:

That is not the CBSC's issue here. It is perfectly obvious to the Council that a nude woman (or, the Council assumes, a nude man) cycling down the principal avenue of one of the nation's largest cities could *reasonably* be expected to constitute a distraction for *drivers*.

Faced here with the corresponding situation, this Panel does not doubt that drivers could be expected to be distracted by a man dancing naked on a major thoroughfare. In such circumstances, the possibility of an accident would not be inconceivable. While the gender of the contestant was relevant to the Panel's finding of a breach of broadcaster standards because of the degrading comments made by the on-air hosts about the nude female contestant in the CJKR decision, it was not there, and is not here, relevant to the contest issue. Nor, in any event, is it the aspect of the contest about which the complainant has written. The Panel, therefore, limits its conclusions to the requirements of Clause 11(b). In this respect, it is clear that the broadcaster's orchestration of a contest encouraging a naked dancing man on a public thoroughfare in Calgary constitutes a public inconvenience or disturbance and is in breach of Clause 11(b) of the Code.

The broadcaster explained in its letter that the contest was conceived with a theme, the implication perhaps being that the decision was not either casual or thoughtless and, on such a basis, justifiable. The station stated that the requirement for the contestant to "Dance Naked" was in reference to the title of a 1994 John Mellencamp album. The broadcaster added that this stunt was amusing to many of its listeners and even to the police officer who issued the ticket. Even if true, this background information cannot have any bearing on the Panel's finding of a breach on the basis that this stunt was likely to cause a public disturbance or inconvenience.

The Panel acknowledges that radio contests can be a useful method of attracting and retaining listeners. They can be an amusing way for listeners to interact with a broadcast medium. None of this is, however, inconsistent with the notion that the purpose of the contest code provision is meant not to *prohibit* contests that may be amusing, novel or unusual; its purpose is only to ensure that contests are conducted fairly and do not jeopardize public safety.

Broadcaster Responsiveness

Broadcaster responsiveness is always an issue considered in CBSC adjudications. The CBSC considers that the dialogue between broadcasters and complainants is an extremely positive component of the self-regulatory process, to the point that it is in fact a membership responsibility of all CBSC broadcaster members. In this case, the broadcaster's response was thorough. While the background information about the contest did not influence the CBSC's decision, the broadcaster's letter constituted a full and fair reply. Nothing more is required in this respect.

CONTENT OF THE ANNOUNCEMENT OF THE DECISION

CHRK-FM is required to: 1) announce this decision, in the following terms, once during peak listening hours within three days following the release of this decision and once more within seven days following the release of this decision during the time period in which the final contest stunt was broadcast; 2) within fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the announcements to the complainant who filed the Ruling Request; and 3) to provide the CBSC with that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by CHRK-FM.

The Canadian Broadcast Standards Council has found that CHRK-FM has breached the contest provision of the Canadian Association of Broadcasters' *Code of Ethics*. By orchestrating and promoting a "Dance Naked" contest in which the winner would dance naked on a Calgary thoroughfare in morning rush hour in order to win tickets to a John Mellencamp concert, the broadcaster risked distracting drivers and causing an accident. By conducting such a contest, CHRK-FM gave rise to a public inconvenience or disturbance contrary to Clause 11(b) of the private broadcasters' *Code of Ethics*.

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

APPENDIX

Complaint File 00/01-1091 CHRK-FM re radio contest (Dance Naked)

I. The Complaint

The CRTC received this complaint and forwarded it to the CBSC in due course on August 31, 2001:

On 17th August 2001, Rock 97 Calgary held the final action of a contest on a major Calgary thoroughfare during the morning rush hour. The station had asked listeners to say what they would do to receive two tickets to a John Mellencamp concert. The so called "winner" offered to dance naked between 6:30 and 7:30 AM on the sidewalk along side a major bridge leading to Calgary's downtown during rush hour.

Both motorists and pedestrian traffic over the bridge were subjected to the sight of this nude male cavorting around. At that time of day there is a bumper to bumper stream of vehicular traffic and a heavy cyclist and foot passenger traffic. To expedite this activity the radio station furnished a "getaway" vehicle.

No one in this city should be exposed (no pun intended) to this abhorrent behaviour in a highly public place.

Calgary City Police responded to complaints and ticketed both the station and the idiot involved, but the radio station perverted justice by paying the ticket for the contest winner. There is no doubt that the IQ level of jocks on radio today is about that of a shrub but even for them this was more than a little over the top. It only proves that low lifes can be dredged up out of any sewer who want public attention badly enough, but I do not think our publicly licenced airways is [*sic*] the place for such trash. I hope that when this radio station's licence is up for renewal that this complaint will be part of the package when that licence is being considered. I also hope that the CRTC will be letting Rock 97 know that future infractions of encouraging abhorrent behaviour will be dealt with. The Calgary City Police have better things to do with their time than running around putting the lid on radio station trash. For further verification of this event both Calgary Dailies (Calgary Sun, Calgary Herald) carried this (one with a photo) on August 16th and August 17th.

II. The Broadcaster's Response

The Program Director of CHRK-FM officially responded to the complainant's e-mail on February 1, 2002 with the following:

CHRK is in receipt of a complaint received by the Canadian Broadcast Standards Council (CBSC) dated January 30th, 2002. The CBSC has asked us to respond directly to you, Mr. [M].

Rock 97 strives to offer high quality programming and entertainment within the context of our chosen radio format. Being a local radio broadcaster, we consider that our spoken word should reflect the views, issues and events that affect our listeners. At times, these issues will be contentious or controversial, and some listeners may not always agree with the views or actions expressed by our hosts, other listeners or the context in which those comments may have been made. However, Rock 97 does insist that our spoken word adhere to all laws and guidelines put forth by the governing bodies of our industry.

Your complaint, according to your letter, was in regard to a contest that Rock 97 Morning show hosts, Matt O'Neill and Lari Carter held on August 15th, 2001. It was opened to Calgarians, 18 years of age and older, to fax in their desire to win front row seats to a John Mellencamp concert. To claim such prize, the winner, who would be chosen at random, would need to "Dance Naked" in reference to John Mellencamp's 1994 top selling album of the same name. Approximately 30 faxes were received from listeners via the Rock 97 fax line willing to "Dance Naked", from which the random draw was made.

The winning qualifier was [Mr. A] who received no payment for his actions, and agreed to the terms of the contest of his own volition.

According to the Canadian Radio-Television and Telecommunications Commission, radio stations are required to maintain logger tapes of all programs aired 24 hours a day, 7 days a week for a period of 30 days. When Rock 97 received the complaint, it was past the 30 days; therefore the tapes of that morning had already been recorded over and not available for review. However after careful review of the situation, we found that Matt and Lari designed a contest related to a topical event taking place in the city that night, Wednesday, August 15th, 2001 which was the John Mellencamp concert. The listener and subsequent winning qualifier, [Mr. A], agreed to the terms of the contest in order to win those tickets. He did paint his body, as well held up a Frisbee to cover his front and back end, as seen in the article in the Calgary Herald, Thursday August 16, 2001.

Many of our listeners found the "stunt" amusing, including the ticket-issuing police officer who stated (in regards to stunting) *"You've had the best reason for (stunting) so far, and I can't fault you for that"*. Even the newspaper article stated that the police officer *"did allow himself a chuckle after he had issued [Mr.A] his ticket"*.

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We appreciate the feedback you have offered Mr. [M] and hope we have answered your complaint. Should you have any further questions regarding this matter, please call me directly at [###-####].