
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL PANEL**

CFNY-FM re the song "Cubically Contained" by the Headstones

(CBSC Decision 01/02-0456)

Decided June 7, 2002

M. Ziniak (Vice-Chair), R. Cohen (*ad hoc*), M. Oldfield, J. Pungente and C. Reyes

THE FACTS

At approximately 8:10 pm on January 2, 2002, CFNY-FM (Edge 102, Toronto) broadcast the song "Cubically Contained" by the rock band the Headstones. One verse of the song contained coarse language. That verse is as follows (the full lyrics can be found in Appendix A):

I've set a dozen 12 step traps
But they've slid by everyone
I never catch the little bastards
I really do wish that they'd own up
Those paranoid little fuckers
Take their paranoid little time
And when the mood rolls in
They're bank robbin'
And I'm a hostage who will drive

The following day a listener sent the following e-mail to the CRTC which was forwarded to the CBSC in due course:

On Wednesday January 2, 2002, I was listening to CFNY 102.1 FM in Toronto. At approximately 8:10 PM, the station aired a song containing very clear and audible obscene language. My four-year-old son was in the room and heard it clearly.

After learning that the CBSC was forwarding his complaint to the broadcaster, the complainant sent the following e-mail on January 31:

I fear that this is becoming a ceaseless treadmill of bureaucratic nonsense. I complained to the CRTC/CBSC this time because I have complained directly to CFNY in the past and got

no response. And now I find out that when I complain to the CRTC/CBSC I get sent all the way back to a direct complaint with CFNY.

All I want is to be able to hang out with my son, listen to the radio and not have to hear words like “fuck” and “shit” BEFORE 9:00PM.

And how is your process supposed to achieve this? I thought that my one complaint would make some sort of difference. Next time I will organize a petition – in other words, I will do something useful.

The broadcaster responded to the complainant's letter on February 20 in part as follows (the full text of all correspondence can be found Appendix B):

We appreciate that you may have found the Song lyrics to be in poor taste. However, the programming codes developed by the Canadian Association of Broadcasters codes [*sic*] (the “Codes”), administered by the CBSC clarify that “the broadcaster’s programming responsibility does not extend to questions of good taste.”¹ The CBSC applies current social norms in its interpretation of the Codes. In previous decisions, the CBSC has noted, “some language which may at another time have been broadly considered obscene or profane had now slipped into common and marginally accepted usage.”² The CBSC has acknowledged that crude or vulgar language is not necessarily obscene or profane and therefore not in violation of the Codes.³ Moreover, the CBSC has noted that “under the present Codes, matters 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.”⁴

As relayed to you during our telephone conversation, an edited version of the Song is not available for airplay. However, in view of the CBSC’s previous decisions, we believe that the broadcast of the original Song on the Station did not contravene the Codes. We regret that the Song offended you for that was not our intent. Please be assured that we take our responsibilities as a broadcaster very seriously and to that end work to ensure all our programming complies with the Broadcasting Act, the Radio Regulations and the Codes and standards expected of us as a member of the CBSC.

We trust that the foregoing responds to the concerns raised in your letter regarding the Program. At CFNY, we recognize the importance of listener feedback and appreciate all comments. We thank you for listening to the Station and for taking the time to share your concerns with us. I also want to thank you for taking the time to speak with me on the phone and clarifying your concerns.

¹Clause 1 B CAB Code of Ethics Commentary

²*CFRA-AM re Steve Madely* (CBSC Decision 93/94-0295, November 15, 1994)

³Clause 1 B CAB Code of Ethics Commentary

⁴*CHOM-FM and CILQ-FM re Howard Stern Show* (CBSC Decision 97/98-0001+, October 17-18, 1997)

The complainant was unsatisfied with the broadcaster’s response and sent the following e-mail dated February 26:

Well, I received a letter from CFNY yesterday indicating that this complaint process has come to an end. The solution to the problem of profanity on the radio during prime listening hours – I can just switch off my radio.

Wow, that is a great suggestion.

So, instead of being able to have the radio playing in my home while my two kids are awake, I can just turn it off and live in silence.

Just to satisfy my curiosity, I would love to know exactly what are the limits in terms of appropriate language on the radio. I mean, can a station play any unedited song at any time? It appears that they can. And, why not since there are no real consequences for doing so. If anyone complains, you simply pass them from impotent agency to impotent agency until they give up and go away.

Well, I'm afraid that is NOT good enough and I will not simply go away.

Thanks again for nothing.

THE DECISION

As it has always done in matters dealing with coarse language in the past, the Ontario Regional Panel examined the broadcasts under the following provision of the Canadian Association of Broadcasters' (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.

The Panel listened to a tape of the song. It finds that its broadcast at 8:15 pm constituted a breach of the foregoing provision of the *CAB Code of Ethics*.

Previous CBSC Decisions Concerning Song Lyrics

A constant line of CBSC decisions has established that songs are as subject to the broadcaster Codes as any other form of programming. In its first such decision, namely, *CIGL-FM re a song entitled "The Bad Touch"* (CBSC Decision 99/00-0654, October 12, 2000) (although in that case the issue was sexual innuendo rather than coarse language), the Ontario Regional Panel explained this position in the following terms:

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.

The Panel then pointed out that record companies are frequently aware of the song lyrics content problem; their solution to the dilemma is often to provide (as film production

companies do) an alternative version that can be more readily played on conventional media:

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.

In the case of the next song lyrics complaint, *CIOX-FM re a song entitled "Boyz in the Hood"* (CBSC Decision 99/00-0619, October 12, 2000), the issue was coarse lyrics. The song contained the words "bitch", "shit", "ass" and others. In its assessment of the broadcast, the Ontario Regional Panel applied the "broad social norms test" for offensive language which had been established in a 1994 decision concerning a talk radio program, namely, *CFRA-AM re Steve Madely* (CBSC Decision 93/94-0295, November 15, 1994). The test acknowledges that "some language which may at another time have been broadly considered obscene or profane had now slipped into common and marginally acceptable usage" and that "there may be words which ought not to be used in the medium but whose use could not be raised to the level of profanity or obscenity." In the case of CIOX-FM's broadcast of the song "Boyz in the Hood", the Ontario Panel did not find that the language used in the song was in breach of Clause 6, paragraph 3 of the *CAB Code of Ethics*, in part because it had no information regarding the time at which the song was played. The Panel explained that

regrettably for some listeners, the safeguards available to television viewers, such as the classification system, viewer advisories and rating icons, cannot reasonably be present in the context of radio programming.

While, in [*CIQC-AM re Galganov in the Morning* (CBSC Decision 97/98-0473, August 14, 1998)], the Quebec Regional Council held that the language used by the host was not in breach of the Code but *might have been* had "the target audience been more youth-oriented", in the present case, the Council has no information regarding the time of broadcast which might enable it to evaluate the extent to which the target audience was young enough to push its assessment into another place. While logic would suggest that the audience was younger rather than older, the Council is in no position to assume that it was *problematically* younger. Consequently, it cannot find a Code breach on this basis.

In *CIOX-FM re the songs "Livin' It Up" by Limp Bizkit and "Outside" by Aaron Lewis and Fred Durst* (CBSC Decision 00/01-0670, June 28, 2001), the songs contained the words "motherfucker", "fuck" and variations thereof. The same Panel did have information in this case about the time of day the two challenged songs were played, namely, at 11:31 am, 4:00 pm and 8:31 pm. In arriving at its decision, the Panel noted that research conducted in Great Britain and New Zealand found that those two words are rated among the most

offensive by the general public. Commenting that regulatory bodies in other English-speaking countries have addressed offensive song lyrics in the same way, the Ontario Panel found that the songs containing coarse or offensive language, in their unedited versions, were inappropriate for broadcast at times of day when children could reasonably be expected to be listening:

In the case of the song lyrics in “Livin’ It Up”, the Panel finds that the *repeated* use of the coarse and offensive language “fucker”, “fuck” and “motherfucker” constitutes a breach of the *CAB Code of Ethics* when broadcast at hours when children could reasonably be expected to be listening. In the event that an edited version of the song was unavailable, CIOX-FM had the choice of delaying the airplay until a later hour or not playing the unedited song at all. The choice made constitutes a breach of Clause 6, Paragraph 3, of the *CAB Code of Ethics*.

While, in the song “Outside”, the inappropriate word, “motherfuckin’”, was used only once, as a live interjection by the singer at the time of the Biloxi concert, the Panel considers that its use was utterly gratuitous and broadcast at an hour when children could reasonably have been expected to be listening. Moreover, given its placement in the song, it could very easily have been excised without effect by the broadcaster. The broadcast of the song without editing when children could be expected to be listening constitutes a breach of Clause 6, Paragraph 3, of the *CAB Code of Ethics*.

The Prairie Regional Panel ruled similarly in *CJKR-FM re the song “Highway Girl (Live)” by The Tragically Hip* (CBSC Decision 00/01-0832, January 14, 2002). In this live version of the song, played at 11:02 am on the challenged occasion, the lead singer performs one of his signature “rants”; that is, he tells a story or recites a poem in a stream-of-consciousness style in the middle of the song. This particular “rant” told the story of a couple’s suicide attempt and included the words “fucking” and “shit”. The Panel ruled that the coarse language, violent theme and “veritable ‘how-to’ section” on committing suicide were unsuitable for broadcast at times of the day when children could reasonably be expected to be listening.

The Broadcaster’s Choice

In its letter, the broadcaster explained that “an edited version of the song [was] not available for airplay.” Although, as noted above, the Ontario Panel explained in *CIGL-FM re a song entitled “The Bad Touch”* that record companies usually make more than one version of a song available, the Panel understands from the broadcaster that an alternate version was not available in the case of “Cubically Contained”. As the matter was put in the “*Bad Touch*” decision: “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.” In this case, the broadcaster chose to play the song at a time when children might be expected to be listening. In so doing, it breached the Council’s well-established standard regarding the presence of offensive material in song lyrics. Accordingly, the Ontario Regional Panel concludes that the broadcaster is in breach of Clause 6, paragraph 3 of the *CAB Code of Ethics*.

Broadcaster Responsiveness

In all CBSC decisions, the Adjudicating Panels assess the broadcaster's responsiveness to the complainant. Although the broadcaster need not agree with the complainant, it is expected that its representatives charged with replying to complaints will address the complainant's concerns in a thorough and respectful manner. In this case, the Panel finds that the broadcaster's response was, in this regard, entirely appropriate in that it addressed the specific points brought up by the complainant. The Panel readily appreciates that the complainant was not satisfied by the broadcaster's explanation and felt that he was running around in a valueless circle. Nonetheless, all complaints that reach the Council's adjudication stage are, by definition, afflicted by complainant dissatisfaction with the broadcaster's response. The Panel has had the benefit of seeing hundreds, indeed thousands, of broadcaster responses over time and it has no hesitation in concluding that CFNY-FM has met its responsiveness responsibilities of CBSC membership.

ANNOUNCEMENT OF THE DECISION

CFNY-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 in the time period in which the song "Cubically Contained" by the Headstones 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) at that time, 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 CFNY-FM.

The Canadian Broadcast Standards Council has found that CFNY-FM has breached provisions of the Canadian Association of Broadcasters' *Code of Ethics* in its broadcast of the song "Cubically Contained" in January 2002. By broadcasting the song, which contained coarse and offensive language, CFNY-FM violated Clause 6, paragraph 3, the provision of the *CAB Code of Ethics* which prohibits the use of improper comment, particularly during hours of the day when children could reasonably be expected to be listening.

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

APPENDIX A

CBSC File 01/02-0456
CFNY-FM re the song "Cubically Contained" by the Headstones

The lyrics to the song "Cubically Contained" are as follows:

Good for me for a time
All hell's cubically contained
Staunched and bottled
Pressed and altered
And at the ready for the reigns
The first tiny little shadows
Of my creepy little thoughts
Inhabit all that matters
And I lose by default

And I'll never promise anything again
I'll never promise anything again
I'll never promise
Anything again

I've set a dozen 12 step traps
But they've slid by everyone
I never catch the little bastards
I really do wish that they'd own up
Those paranoid little fuckers
Take their paranoid little time
And when the mood rolls in
They're bank robbin'
And I'm a hostage who will drive

And I'll never promise anything again
I'll never promise anything again
I'll never promise
Anything again

Now I can only do so much
And I will never deviate
I hear myself take a deep breath
And think I must have wanted it this way
I remember all those little traps
I could not keep them in place
They were never stationed anywhere
They were terrorized and maimed

So tonight I've set a vigil
And my shadow's all that's cast
And the iron that's encased it
Is doing all that one could ask

And I'll never promise anything again
I'll never promise anything again
I'll never promise
Anything again

APPENDIX B

CBSC File 01/02-0456 CFNY-FM re the song "Cubically Contained" by the Headstones

I. The Complaint

The following complaint dated January 3, 2002 was sent to the CRTC and forwarded to the CBSC in due course:

On Wednesday January 2, 2002, I was listening to CFNY 102.1 FM in Toronto. At approximately 8:10 PM, the station aired a song containing very clear and audible obscene language. My four-year-old son was in the room and heard it clearly.

After learning that the CBSC was forwarding his complaint to the broadcaster, the complainant sent the following e-mail on January 31:

I fear that this is becoming a ceaseless treadmill of bureaucratic nonsense. I complained to the CRTC/CBSC this time because I have complained directly to CFNY in the past and got no response. And now I find out that when I complain to the CRTC/CBSC I get sent all the way back to a direct complaint with CFNY.

All I want is to be able to hang out with my son, listen to the radio and not have to hear words like 'fuck' and 'shit' BEFORE 9:00PM.

And how is your process supposed to achieve this? I thought that my one complaint would make some sort of difference. Next time I will organize a petition - in other words, I will do something useful.

II. Broadcaster Response

The broadcaster responded to the complainant's letter on February 20 with the following:

The Canadian Broadcast Standards Council ("CBSC") has asked us to respond to your e-mail to the CBSC dated January 3, 2002. In your e-mail, you raised concerns regarding a song aired on Edge 102 CFNY (the "Station") at approximately 8:10pm on January 2, 2001 [*sic*].

As we discussed during our telephone conversation a few weeks ago, we believe the song you refer to is called "*Smile and Wave*" by a Toronto band called *Headstones* (the "Song").

We appreciate that you may have found the Song lyrics to be in poor taste. However, the programming codes developed by the Canadian Association of Broadcasters codes [*sic*] (the "Codes"), administered by the CBSC clarify that "the broadcaster's programming responsibility does not extend to questions of good taste."¹ The CBSC applies current social norms in its interpretation of the Codes. In previous decisions, the CBSC has noted, "some language which may at another time have been broadly considered obscene or profane had now slipped into common and marginally accepted usage."² The CBSC has acknowledged that crude or vulgar language is not necessarily obscene or profane and therefore not in violation of the Codes.³ Moreover, the CBSC has noted that "under the present Codes, matters 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."⁴

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We trust that the foregoing responds to the concerns raised in your letter regarding the Program. At CFNY, we recognize the importance of listener feedback and appreciate all comments. We thank you for listening to the Station and for taking the time to share your concerns with us. I also want to thank you for taking the time to speak with me on the phone and clarifying your concerns.

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²*CFRA-AM re Steve Madely* (CBSC Decision 93/94-0295, November 15, 1994)

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⁴*CHOM-FM and CILQ-FM re Howard Stern Show* (CBSC Decision 97/98-0001+, October 17-18, 1997)

(Note: The broadcaster's letter incorrectly identified the song title.)

III. Additional Correspondence

The complainant was unsatisfied with the broadcaster's response and sent the following e-mail dated February 26:

Well, I received a letter from CFNY yesterday indicating that this complaint process has come to an end. The solution to the problem of profanity on the radio during prime listening hours - I can just switch off my radio.

Wow, that is a great suggestion.

So, instead of being able to have the radio playing in my home while my two kids are awake, I can just turn it off and live in silence.

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