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

CHNL-AM re a Sports Commentary

(CBSC Decision 02/03-0054)

Decided January 14, 2003

S. Warren (Chair), H. Mack (Vice-Chair), R. Cohen (*ad hoc*), G. Leighton,
D. Millette and J. Rysavy

THE FACTS

During a sports report aired on CHNL-AM (Radio NL, Kamloops, B.C.) on September 19, 2002 at approximately 7:55 am, announcer Neil Macrae made the following comments:

Now that the Sopranos are back whacking people, Tony should send his boys after Bobby Clarke. What a weirdo Clarke is. Clarke's refusing to go to the Team Canada 30-year reunion because they wouldn't invite his sleazy pal Al. Now Clarke's tearing into Paul Henderson. Henderson was asked about the series and said the low point was when Clarke slashed and broke Kharlamov's ankle; said Clarke was probably the only guy that would take someone out like that. Clarke is now shooting back saying Henderson doesn't show any courage; said why rip someone 30 years later; he's a hypocrite; that Henderson has got this huge ego because he scored three goals and now he thinks he's the only guy that played on the team; he's made a whole career out of one goal, a whole life out of it. If you've ever met Paul Henderson, you'll know he doesn't have a huge ego. One of the more charitable guys out there; works very closely with the church and he talked about Clarke's cheap shot because he was asked point blank 'what didn't you like about the series?'

A few weeks ago Clarke went on a major tirade against the media, claiming they have no right to criticize how he operates because no one in the media could do his job. Clarke comes across as some freaked-out paranoid schizophrenic. How he's kept his job in Philly I have no idea other than the possibility that some explicit photos of owner Ed Snider doing who knows what to whatever must be in his safety deposit box. Clarke and Eagleson should have their own dinner

together. Trouble is, his buddy would probably do a dine and dash and silverware would be missing. Neil Macrae for B.C. Hydro.

On September 19, a listener sent a complaint to the CRTC, which forwarded it to the CBSC in due course (the full text of all correspondence can be found in the Appendix to this decision). The complainant's concerns were as follows:

At the best of times, Mr. Macrae is a highly-opinionated and abrasive commentator, but it is beyond the limits of Canadian broadcasting standards for him to be openly abusive of those members of society who are afflicted with a medical condition.

If I heard Mr. Macrae correctly, he used the phrase "wild-eyed paranoid schizophrenic" to insult someone in the world of sports. Schizophrenia is not a term of contempt to be snarled at people whose actions we disagree with; it is a disease, and is recognized as such by medical practitioners and by the BC Schizophrenia Society. It is extremely distressing to hear Mr. Macrae refer to anyone as a schizophrenic in a manner which was clearly intended to be derogatory.

As difficult as it might be for me to believe that anyone would want to emulate Mr. Macrae, his kind of commentary invites children and unthinking adults to misuse this word, and suggests to anyone listening to this radio broadcast that schizophrenia is a condition of which one ought to be ashamed.

After receiving the CBSC's initial response, the complainant wrote back on October 17, indicating that he had already both spoken on the telephone with a member of management at CHNL and received an e-mail from the station. According to the complainant, the Manager had indicated that he would not censor Macrae's commentary. The complainant did not find this to be an adequate response to his complaint and went on to state that

The Canadian Charter of Rights and Freedoms assures the mentally ill that they will be protected against discrimination based on their illness. Surely the standards of broadcasting must reflect and be accountable to all the laws of the land, not just the one that assures freedom of the press.

The complainant also included a copy of the e-mail from CHNL which had been sent to him on September 19 before the CBSC was involved in the matter. The CBSC offered CHNL a second opportunity to respond to the complainant now that the Council was treating the complaint. A telephone conversation with the Program Director revealed that CHNL would consider their September 19 e-mail to be their official response and would not be sending further correspondence to the complainant. The Program Director's e-mail of September 19 read in pertinent part:

In short, I share your feelings regarding Mr. Macrae's comments. It certainly is true that he has a caustic style, and at times doesn't think about the words he chooses to convey his message.

Our General Manager [...] has forwarded your letter to those at the Corus Radio Network/CKNW in Vancouver. It is our hope that Mr. Macrae is made aware of the ill-feelings that choice of words can create.

Dropping the commentary is not something I am prepared to do at this time. If I were to drop every piece of programming I didn't agree with I would be a censor, not a Program Director. I don't want to leave the impression that I believe what he said is alright, but I do want Neil to see the types of mail received when a commentator doesn't think through the presentation of his editorial content. It is not my belief that Neil intended to hurt the feelings of those affected, directly or indirectly, by the disease. But he should be made aware of the reaction to his choice of words.

The complainant informed the CBSC again on October 22 that he wished the CBSC to proceed with the examination of his complaint.

THE DECISION

The British Columbia Regional Panel considered the complaint under Clause 2 (Human Rights) of the Canadian Association of Broadcasters (CAB) *Code of Ethics*:

Recognizing that every person has a right to full and equal recognition and to enjoy certain fundamental rights and freedoms, broadcasters shall ensure that their programming contains no abusive or unduly discriminatory material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status or physical or mental disability.

The BC Regional Panel Adjudicators read all of the correspondence and listened to a tape of the sports commentary in question. The Panel concludes that there is no violation of the aforementioned Code provision.

CBSC Jurisprudence relating to Abusive or Unduly Discriminatory Comment on the Basis of Mental Disability

The CBSC has in fact been called upon to address similar complaints in the past, in particular relating to the use of the term "retard". In *CILQ-FM re The Howard Stern Show (Staff Insults)* (CBSC Decision 97/98-1223, February 3, 1999), a listener complained that the host's use of the words "retard" and "retarded" to insult a station employee about his lack of preparation for the day's program was demeaning and mocked people with mental developmental deficiencies. While the Ontario Regional Panel indicated that "the terms are generalizations which carry a negative connotation" and "[a]s such, they risk falling afoul of the *CAB Code of Ethics*," it concluded that the comment

was directed at an individual and does not attribute negative stereotypical characteristics to a defined minority group in such a manner as to amount to a breach of the human rights provision of the Code. Moreover, the references stand alone without any additional characterisation of the referenced group elsewhere in *that* show. The remarks did not mock or make fun of members of the handicapped group generically but rather attributed diminished mental capacity to an *unchallenged* individual. It thus misses *on this occasion* that abusively discriminatory nature which brands offending comments which are found to be in breach of the Code.

The Panel indicated, however, that it found itself “very much on the edge regarding the statements of the host” but it noted that

[a]s it has stated in past decisions, the CBSC takes great care to err on the side of freedom of speech, even in cases involving allegations of discriminatory comment. That being said, the Council wishes to underline that its conclusion does not support in any way such tasteless commentary. On this occasion, it is an issue of taste alone where, in the Council’s view, the sanction is that of the listener via the on/off switch. The Council does not intervene in such instances.

A similar conclusion was reached in *CILQ-FM re The Howard Stern Show (Lost Innocence)* (CBSC Decision 99/00-0216, July 6, 2000) which again dealt with the use of the term “retard” to apply to individuals who were not suffering from developmental disabilities. A guest on the program referred to her ex-boyfriend as a “retard” and then Stern stated that his audience consisted of “retards” and that he was “King of the Retards”. The Panel emphasized that, in order to find a breach of Clause 2, the abusively discriminatory comment must be used in such a way as to *target* or *convey* an enumerated group:

If anything, the usage of the word “retard” in this case is even further removed from a breach of the Code because it is not even conveying the meaning of mental deficiency. Its use in this case, by both the belly dancer and by Howard Stern refers to the street level colloquial meaning which the word now carries. The word is now sometimes used interchangeably with such other insults as “jerk”, “idiot”, and “creep”. In this case, when used by the belly dancer, it conveys her annoyance at and scorn for the man who had sex with her when she was only 15. There is no suggestion whatsoever that the “ex” had been a person of diminished mental capacity.

Finally, in finding that the issue in this case was one of taste, the Panel further noted that, although it

deplores the crude, offensive, infantile and irresponsible terminology used by the host and, on a general societal level, deplores the fact that a word such as “retard” has developed into such a “street term”, the Council must conclude that the only issue raised in this case is one of taste, something the Council has always held should be left for listeners to decide via the on/off switch. Had the host made fun *of* the protected group, the Council’s decision would almost certainly have been otherwise. That is not, however, the example with which the Council was presented on this occasion.

Making fun of the protected group was precisely where the same program faltered in *CILQ-FM re The Howard Stern Show (Group Homes)* (CBSC Decision 99/00-0722, August 11, 2000). In that case, Stern used the word “retarded” to apply to persons suffering from developmental disabilities when he suggested that a “retarded home” will diminish surrounding property values, that “retarded” persons do cruel things to animals, that “retarded” persons are more prone to commit rape and do socially unacceptable things in public and so on. The Ontario Panel found that broadcast in breach of the Human Rights Clause for its abusively discriminatory generalizations about a group on the basis of mental disability.

The Comments in the Matter at Hand

The Panel considers that Neil Macrae’s opinion piece was “on the edge”. There was no need for him to piggy-back his mean-spirited and acerbic comments aimed at Bobby Clarke on a part of society afflicted by disabilities. He labelled Clarke a weirdo. He accused him of “tearing into” a hockey hero with a reputation as a “charitable guy” without a huge ego. He implied that the only reasonable assumption regarding Clarke’s retention of his job related to the fact that he must have had something on his boss since he apparently had no other qualities that would entitle him to retain it. He also used terms like “freaked-out” and “paranoid” to describe Clarke. In the end, no listener could have misunderstood that he disapproved of Clarke’s comments about Paul Henderson, Clarke’s comments about the media and, indeed, Clarke himself. His commentary would no doubt have been just as forceful and effective without the addition of the one troubling word choice, “schizophrenic”.

The Panel takes no issue with the commentator’s entitlement to express an opinion on Bobby Clarke or any other subject. That is not the issue. If Macrae believes that either his own entertainment value or the conviction of his opinion is enhanced by the reference to schizophrenics, he and those who engage him are entitled to that view. That he finds insufficient scope for his acerbity without carelessly using words referring to a disabled group in society the Panel finds regrettable. This broadcaster, indeed, all broadcasters, ought to be as diligent as possible in avoiding such references when the articulate use of the English language in the hands of a skilled, thoughtful and sensitive practitioner can easily lead to a result achieving the commentator’s goal without the unnecessary pejorative barb afflicting collateral harm.

Notwithstanding the foregoing view of the Panel, it concludes that there is no breach of the Code. On the basis of the previous CBSC jurisprudence, the British Columbia Regional Panel concludes that the commentator attributed the characteristics of schizophrenia to an individual, Bobby Clarke, who was not known to suffer from that disability or any similar disorder. In other words, Macrae’s comments attributed no negative characteristics to the disabled group

such as those encountered in the “Group Homes” Stern decision. The sports commentator did not target the disabled group. He attributed to an individual *outside* that group some of the disabling characteristics *of* the group. Like the term “retard” used in the first two Stern decisions cited above, the word “schizophrenic” or “schizo” has unfortunately come to be used as a colloquial insult, carrying a meaning interchangeable with, as Macrae suggests in his commentary, “weirdo” and other derogatory nouns, adjectives and characterizations. He has, after all, used the term in circumstances in which his intention was to be derogatory and pejorative vis-à-vis his target. It concerns the Panel that this misuse of the term could contribute to the desensitization of the public with respect to the disease, on the one hand, and could bring discomfiture or possibly even a sense of shame to the afflicted, on the other hand. The Panel wishes that the broadcaster had avoided the use of the term. It hopes that sensitivity and taste will prevail so as to avoid its careless re-use in the future. It does not, however, find that its presence here amounts to a breach of the *CAB Code of Ethics*.

Broadcaster Responsiveness

Since one of the responsibilities of membership in the CBSC is to “co-operate fully with complainants by responding quickly and effectively to their concerns,” CBSC Panels always take the time, in the course of their deliberations, to review the broadcaster’s responsiveness to the complainant. Compliance with this undertaking is a matter required in all files under consideration by the CBSC’s Panels. Since CHNL-AM was under no obligation to take the second opportunity of response offered by the CBSC, the Panel considers that the initial correspondence of the Program Director was sufficient. That e-mail adequately outlined the station’s view of the matter which was the subject of the complaint. Nothing more is required in this respect in this instance.

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 File 02/03-0054 CHNL-AM re a Sports Commentary

The Complaint

The following complaint dated September 19, 2002 was sent to the CRTC and forwarded to the CBSC in due course:

I wish to express my disapproval of Neil Macrae's commentary, aired on Radio NL today (September 19, 2002) at about 7:55 a.m. Radio NL is operated by NL Broadcasting at 611 Lansdowne Street, Kamloops, B.C., V2C 1Y6. Their telephone number is: (250) 372-2292.

At the best of times, Mr. Macrae is a highly-opinionated and abrasive commentator, but it is beyond the limits of Canadian broadcasting standards for him to be openly abusive of those members of society who are afflicted with a medical condition.

If I heard Mr. Macrae correctly, he used the phrase "wild-eyed paranoid schizophrenic" to insult someone in the world of sports. Schizophrenia is not a term of contempt to be snarled at people whose actions we disagree with; it is a disease, and is recognized as such by medical practitioners and by the BC Schizophrenia Society. It is extremely distressing to hear Mr. Macrae refer to anyone as a schizophrenic in a manner which was clearly intended to be derogatory.

As difficult as it might be for me to believe that anyone would want to emulate Mr. Macrae, his kind of commentary invites children and unthinking adults to misuse this word, and suggests to anyone listening to this radio broadcast that schizophrenia is a condition of which one ought to be ashamed.

Mr. Macrae is the one who ought to be ashamed. I suggest to you that his kind of commentary is not in the best interests of society, and ought to be removed from the Radio NL broadcast schedule.

In response to the CBSC's initial response to him, on October 17, the complainant sent the CBSC the following e-mail:

I have already spoken with the station manager at CHNL and his reply was that he would not "censor" (his word) Mr. Macrae, but only bring my complaint to his attention. This does not seem to me to be an adequate response to my complaint.

The *Canadian Charter of Rights and Freedoms* assures the mentally ill that they will be protected against discrimination based on their illness. Surely the standards of broadcasting must reflect and be accountable to all the laws of the land, not just the one that assures freedom of the press.

I therefore wish to continue with the complaint process by proceeding to the panel stage as explained in the e-mail to which I am replying.

The complainant forwarded a copy of an e-mail he had received from CHNL-AM's Program Director (reproduced below).

Broadcaster Response

The CBSC offered the broadcaster the opportunity to respond a second time to the complainant. They chose instead to use the e-mail response they had sent to the complainant before the CBSC got involved as the official broadcaster response. That e-mail had been sent to the complainant on September 19:

Thanks for taking the time to E-Mail your comments regarding Neil Macrae's feature this morning on NL. I appreciate it.

In short, I share your feelings regarding Mr. Macrae's comments. It certainly is true that he has a caustic style, and at times doesn't think about the words he chooses to convey his message.

Our General Manager, [R.D.], has forwarded your letter to those at the Corus Radio Network/CKNW in Vancouver. It is our hope that Mr. Macrae is made aware of the ill-feelings that choice of words can create.

Dropping the commentary is not something I am prepared to do at this time. If I were to drop every piece of programming I didn't agree with I would be a censor, not a Program Director. I don't want to leave the impression that I believe what he said is alright, but I do want Neil to see the types of mail received when a commentator doesn't think through the presentation of his editorial content. It is not my belief that Neil intended to hurt the feelings of those affected, directly or indirectly, by the disease. But he should be made aware of the reaction to his choice of words.

Again, [G], thanks for taking the time to write. There are those who feel intimidated when they have a complaint ... but believe me, I take every comment, good and bad, to heart.

Additional Correspondence

The complainant sent an e-mail on October 22 to reiterate that he wished to have this complaint sent to a Panel for adjudication.