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

CHMJ-AM re a segment on *Loveline*

(CBSC Decision 02/03-0459)

Decided July 22, 2003

S. Warren (Chair), P. Gill, M. Loh, E. Petrie

THE FACTS

CHMJ-AM (MOJO Radio, Vancouver) broadcast an episode of the American-originating show *Loveline* between 10:00 pm and midnight on December 23, 2002. The hosts, “Dr. Drew” and Adam Carolla, took calls from listeners seeking advice about sex, relationships, drugs and also discussed current events and pop culture. The format of the program frequently included a celebrity guest in the studio. The late in the year episode that is the subject of this decision was a “Best of” show, featuring highlights from programs of the past year. The guest involved in the challenged segment of the show, which was aired at approximately 11:15 pm, was the well-known television and film actor Tom Arnold.

The following is an abbreviated version of the transcript of the segment (the full transcript can be found in Appendix A):

Adam: Is that Lorraine?

Lorraine: Yes it is.

Adam: Hi Lorraine. You're 20. What's up?

Lorraine: Hey. Well, I'm a phone actress. My problem is my callers are coming way too fast. And in order for me to make any kind of dough, I need to keep a seven minute minimum with each caller.

Adam: Oh my god.

Lorraine: So I need some advice, guys. What do you guys like to hear on the phone? How can I keep these guys –

Adam: Lemme, lemme get this straight. You do [he plays an audio clip of a woman seductively saying "Are you hot daddy?"] [Lorraine laughs] Oh, I thought you were doing like *Man of La Mancha* and stuff over the phone for, like, people that were bed-ridden or something like that and couldn't get to the theatre. But you're just, you're just doin' the sex talk, huh?

Lorraine: Right.

Adam: How do you describe yourself? Because I think they do a little too good a job sometimes and then it's like [he puts on a seductive voice] "I'm 5'9", I'm a 38 double D, I have –". Phltt [noise intended to represent ejaculating] [he laughs].

Lorraine: Oh no, I keep it real. I say I'm about 5'7", long dark hair, green eyes, 36C, 24-inch waist.

[...]

Adam: [...] So, Lorraine. You describe yourself, is that what you are?

Lorraine: Yes, I am.

Adam: Okay. And, and, uh, what, what do you do? Like is the talk, you're saying the talk is, like, extra naughty, extra good? Like, talk to Tom. See if you can, uh ...

[...]

Lorraine: Who's this?

Tom: Tom.

Lorraine: Hey Tom, I'm Sugar. How're you doin'?

Tom: Good, good, Sugar. What's goin' on?

Lorraine: Oh nothin' much, just relaxin' a bit on my bed.

[...]

Lorraine: Oh man. Well, I say my nipples are a bit hard and I'm wearin' a black thong and I'm touchin' myself.

Adam: Mm hm.

Tom: Yeah that.

Adam: That's sweet. Yeah, well listen. Why don't you, why don't you sort of work, like, you know what you oughta do?

Lorraine: What?

Adam: Here's what you oughta do. 'Cause you don't, you don't want to be too mundane and you want to be sexual, but maybe if she did

it in a sort of subliminal way, she could add a little time. Like, you go like, the guy will go “what’re you wearin’?”

Drew: [??] favourite sports team.

Adam: No no, she’ll go like “I’m wearin’ a lacy black teddy, Holocaust, with a long, Hitler, camisole [Tom & Drew laugh]. You know, cancer, and” [Adam laughs] just see, like, see if you could just slide in like “cancer”, “Holocaust”, “grandparents” and see what you could do.

Tom: That’s good.

Adam: And I bet it would add some time. The mind works, the mind is very interesting that way.

Drew: She’ll be a subliminal porn phone sex operator.

Adam: Right, right.

[...]

Adam: So here’s what you do. I ask you what you’re wearing and somewhere you work in “Vietnam” very quickly. Very quickly. All right?

Lorraine: Okay.

Adam: All right, here we go. And what are you wearin’, Sugar?

Lorraine: Ooh, I’m wearin’ a nice lace garter with a nice black lace bra.

Adam: Yeah, yeah.

Lorraine: Mmm. How’s that?

Adam: Yeah, but, you know. It was almost perfect.

Drew: Where’s the, where’s the “Vietnam” part?

Lorraine: Vietnam? [Tom, Drew & Adam laugh]

Adam: Okay so. It’s my fault for attempting to communicate with people that call the show.

Tom: You, I was amazed. I thought that you had pulled that off with her, that she was, like, right on it.

[...]

Adam: Yeah. Okay, lemme explain. I have this subliminal suggestion idea.

Drew: Don’t use that word. It’s too, too –

Adam: I have this quick word thing that’s gonna hurt the guys’ penises,

okay?

Lorraine: Okay.

Adam: Now, when you describe what you're wearing, I want you to very quickly work in the word "Holocaust".

Lorraine: "Holocaust"?

Adam: "Holocaust".

Lorraine: "Holocaust". Okay.

Drew: Give her an easier word: "cancer".

Adam: Do you know what the Holocaust is?

Lorraine: No, I don't.

Adam: Oh, okay. All right.

Drew: Oh boy. Oh boy.

Adam: All right, that's all right. Hey, by the way, L.A. unified schools district everybody. I'm a product. God bless you guys. You're really doin', you're really doin' a job over there. [Drew & Tom laugh]

Lorraine: I [??].

Adam: Subliminal Holocaust. Okay, okay. Work in "cancer". Work in "cancer".

Drew: Do you know what cancer is?

Lorraine: Okay, okay.

Adam: All right. Work in the word "cancer" when you're describing what you're wearing. All right?

Lorraine: Oh, most definitely.

Adam: All right, you ready? Ring ring.

Lorraine: Hi, how're you doin'?

Adam: All right. What's your name?

Lorraine: I'm Sugar. Who are you?

Adam: Sugar. I'm Ace.

Lorraine: Hey Ace.

Adam: Yeah. What're you wearin'?

- Lorraine: Mmm. Well I'm wearin' a nice black garter. Mmm just thinkin' about the Holocaust right now. [Adam, Tom & Drew laugh] Oh this is too much.
- Adam: [in mock aroused voice] Yeah, yeah, burn those Jews. Gas 'em in the shower, baby. Yeah, yeah.
- Lorraine: I'm sending you my bill.
- Adam: [continuing with mock aroused voice] Yeah, yeah, send 'em on the train to Krakow. Lorraine, we may need to tweak this just a little bit more. [...]

The complainant wrote to the CBSC on December 27. He said in part (the full text of his letter and all other correspondence can be found in Appendix B):

This letter is to represent a formal request for an investigation to be carried out immediately in connection with a broadcast on CJNW [*sic*] (MOJO radio 730 AM) in Vancouver, B.C. I believe that such an investigation may find violations of broadcasting standards and/or federal or provincial legislation. In my opinion the offending broadcast ridiculed the holocaust experience and was racist in its content.

The station's Program Director responded on January 31 as follows, in part:

Your email sets out your concerns regarding a comment made by a listener [...] that you felt was offensive, racist and that ridiculed the Holocaust experience. [...] On December 23, 2002, the Program, which airs on MOJO Radio, Sunday to Thursday, between 10:00 pm and midnight, did a taped program replaying some of the year's highlight moments. In this case, a female listener who works as a telephone sex operator, called the Program. Her "problem", as she put it, was that she was so good at her calling that men did not stay on the line long enough for her to make money. She was therefore in search for what she could do so as to make her callers stay on the phone longer. The hosts, with guest Tom Arnold, suggested she slip in subliminal messages as she did her work. Some examples suggested by the host were words such as "cancer", "grandparents" and "Holocaust", to name a few. They then asked her to practice this method on the air.

The "humour" surrounding the segment dealt with the woman's lack of understanding of what they were suggesting she do and had nothing to do with the Holocaust other than its representation as a word conjuring up horrible images.

We appreciate that you may find the comment to be in poor taste. However, the Canadian Association of Broadcasters codes (the "Codes"), administered by the CBSC have clarified that "the broadcaster's programming responsibility does not extend to questions of good taste."

The complainant was dissatisfied with the broadcaster's response and returned the CBSC's Ruling Request, which has the effect of triggering the adjudication process, on February 4. His Ruling Request was covered by an e-mail, in which he raised the following points:

Let me further state that I have repeatedly requested a copy of the tape and transcript of the radio broadcast in question, but to no avail. My requests have been made to both your office and the CRTC. I find it quite surprising that I am suppose [sic] to pursue this complaint, and respond to the broadcaster's response, while being prohibited from reviewing the offending comments on tape and transcript. Meanwhile the broadcaster has access to the tape in preparing his response. I must rely totally on my memory of the show while the broadcaster has access to study the tape in detail. I find this process totally unacceptable and unfair. I wish to again request that the tape and transcript of the few minutes that I am focusing on be made available to me.

Lastly let me state that the broadcaster's response states that my concerns were "regarding comment made by a listener..." Not so. My complaint relates in particular with the comments made by a number of people hosting or being present in the studio or online while receiving this call from a listener. From my memory there is great laughter heard throughout in the context of the holocaust. Only the tape will reveal the true nature of these comments.

THE DECISION

The CBSC's British Columbia Regional Panel examined the complaint under Clauses 2 and 6 of the Canadian Association of Broadcasters' (CAB) *Code of Ethics*, which read as follows:

CAB Code of Ethics, Clause 2 – Human Rights

Recognizing that every person has the 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.

CAB Code of Ethics, Clause 6 – Full, Fair and Proper Presentation

It is recognized that the full, fair and proper presentation of news, opinion, comment and editorial is the prime and fundamental responsibility of each broadcaster. This principle shall apply to all radio and television programming, whether it relates to news, public affairs, magazine, talk, call-in, interview or other broadcasting formats in which news, opinion, comment or editorial may be expressed by broadcaster employees, their invited guests or callers.

The Panel listened to a recording of the broadcast and reviewed all of the correspondence. The B.C. Regional Panel concludes that the broadcast of December 23 is in breach of Clause 6 of the *CAB Code of Ethics*; however, it does not consider that it contravenes Clause 2 of that Code.

A Preliminary Issue: The Furnishing of Tapes

The complainant has stressed the fact that the broadcaster refused to furnish him a tape of the program. In his view, this had the effect of disadvantaging him in terms of the preparation of his complaint and the advancing of further argument since, after all, the broadcaster alone had full access to the logger tape in order to facilitate the presentation of its response. The complainant considered this “totally unacceptable and unfair.”

The CBSC has previously been called upon to deal with this issue. In *CKVR-TV re News Item (Car Troubles)* (CBSC Decision 97/98-0235, July 28, 1998), the Ontario Regional Panel explained the question of tape access in the following terms:

The Panel considers it appropriate to note, however, with respect to the complainant's request for a copy of the broadcast tape in question, that broadcasters are not required, either by law, by any broadcast code or by virtue of their membership in the CBSC, to provide tapes of their programming to complainants or any other member of the public upon request. Each broadcaster's fundamental legal obligation (under the *Broadcasting Act*) and its CBSC membership obligation is to *retain* logger tapes of the programming broadcast on their station for a period of 28 days (some broadcasters choose to keep logger tapes for longer periods) and to provide copies of these logger tapes *to the CBSC*, if requested by it for the purposes of adjudicating a complaint. While it goes without saying that a broadcaster may at any time provide a logger tape copy to a complainant or other individual, broadcasters are under no obligation to do so. Moreover, once the CBSC complaint process is engaged, it is the moreso appropriate for the involved broadcaster to respond to any such request by saying that the matter is in the hands of the Council and will be dealt with there.

It is beyond dispute that complainants are almost invariably filing their complaints on the basis of having, without prior notice, “caught” something offensive on radio or television as it was being broadcast. They must then rush quickly to a pad or a computer to reconstruct the content as best they can before the offending content slips further from memory. It follows that the Panel has no disagreement with the complainant's contention that his accurate recollection of the program content was compromised by his inability to listen on a more careful planned basis, with the benefit of rewind and playback buttons, to the logger tape of the broadcast. Nonetheless, it is the position of the B.C. Regional Panel that the refusal of the broadcaster to supply a copy of the tape is fair and reasonable.

If, after all, every complainant had the *right* to obtain a tape from the broadcaster solely because an individual had lodged a complaint, this would constitute a considerable burden on the broadcaster. Nor, in an important sense, is the provision of tapes to the individual complainant even necessary, since the broadcaster does, as noted above, furnish the requisite tapes to the CBSC, which, at the end of the day, is responsible for adjudicating the complaint. In fact, the CBSC takes on the burden of raising the appropriate issues and

arguments on its own. It does not require, or even expect, that complainants have any burden to argue their case extensively; rather, the Council views the complaint more as a trigger of a process that is both adjudicative and investigative. Moreover, it is the practice of the CBSC to publish transcripts of all relevant portions of a challenged program which is the subject of an adjudication, in order to facilitate the understanding of the substance of the decisions rendered by its Panels. It should also not be forgotten that any insistent complainant can have access to the tape by contacting any of the commercial enterprises that make it their business to sell tapes or transcripts of programs.

In the matter under consideration, the broadcaster has, in full compliance with the CBSC's rules, preserved the logger tape for adjudication purposes. There has been no breach of CHMJ's membership obligations.

Racist Comments

The Panel has carefully considered the complainant's allegation that the program "was racist in its content." It disagrees with the complainant's view on this point. As will become clear in the following section, the Panel does have a problem with the segment but it is not on this basis. It does not find that any of the comments quoted above were advocating violence toward the Jewish population. It does not consider that any of those comments were directed *at* that identifiable group. It does not believe that there was *any* attempt to denigrate or insult Jews. In short, the Panel does not find a scintilla of racist commentary in the remarks of either the co-hosts or their celebrity guest. To the contrary, their collective suggestion regarding the use of the terms cancer, Vietnam and Holocaust is that these are reminders of significant unpleasantness and societal distress. Even the critical comment directed at the L.A. unified school system implies a failure on the *schools'* part in not teaching the relevance of the Holocaust to young students. There is no suggestion whatsoever of even a word or tone reflecting unfavourable comment directed at the Jewish community. There is no breach of Clause 2 of the *CAB Code of Ethics* on this account.

Improper Comments

The Panel draws a significant distinction between its conclusion in the previous section regarding the *nature* of the hosts' remarks about the Holocaust and their *use* of those references in their humorous dialogue. The issue in the previous section was racism. The Panel found none. The issue here is the employment of the apocalyptic historical event as a humorous crutch. The Panel readily understands the suggested dampening effect of such non-risible concepts as cancer, Vietnam (in reference, of course, to the 1960s war) and the Holocaust on Lorraine's yearning telephone clients. It equally understands the intended

humour in the ludicrous concept of the sexual purveyor “subliminally” mouthing such words in the midst of her erotic discourse. It also understands the mockable inanity of the intellectually hapless Lorraine. When, however, the hosts progressed to the level of “Yeah, yeah, burn those Jews. Gas ‘em in the shower, baby,” and so on, even in aid of their sarcastic view of the ignorant “telephone actress”, they exceeded any reasonable level of propriety. The laughter of the hosts directed at the notion of the concentration camp trains and lethal “showers”, which combined to exterminate six million Jewish persons, accentuated the inappropriateness.

The humorous constructs erected here on the base of great tragedy constitute improper comment. The broadcast of this segment of *Loveline* constitutes a breach of the standard requiring the “full, fair and proper presentation of news, opinion, comment and editorial.”

Broadcaster Responsiveness

In all CBSC decisions, Adjudicating Panels consider the broadcaster's responsiveness to the complainant. While it is understood that the broadcaster is under no obligation to 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 B.C. Regional Panel concludes that CHMJ-AM has met its responsibilities of membership in this regard on this occasion.

ANNOUNCEMENT OF THE DECISION

CHMJ-AM 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 *Loveline* was broadcast; 2) within the fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the statement 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 CHMJ-AM.

The Canadian Broadcast Standards Council has found that CHMJ-AM has breached the clause of the Canadian Association of Broadcasters' *Code of Ethics* which requires that broadcasters respect the standard requiring the “full, fair and proper presentation of news, opinion, comment and editorial.” By building a humorous segment dependent on details relating to a tragic historical event,

namely, the Holocaust, in its broadcast of December 23, 2002, MOJO Radio has breached the provisions of Clause 6 of the *CAB Code of Ethics*.

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

APPENDIX A

CBSC File 02/03-0459 CHMJ-AM re a segment on *Loveline*

The following is a transcript of the segment broadcast on *Loveline* on December 23, 2002 at approximately 11:15 pm:

Adam: Is that Lorraine?

Lorraine: Yes it is.

Adam: Hi Lorraine. You're 20. What's up?

Lorraine: Hey. Well, I'm a phone actress. My problem is my callers are coming way too fast. And in order for me to make any kind of dough, I need to keep a seven minute minimum with each caller.

Adam: Oh my god.

Lorraine: So I need some advice, guys. What do you guys like to hear on the phone? How can I keep these guys –

Adam: Lemme, lemme get this straight. You do [he plays an audio clip of a woman seductively saying "Are you hot daddy?"] [Lorraine laughs] Oh, I thought you were doing like *Man of La Mancha* and stuff over the phone for, like, people that were bed-ridden or something like that and couldn't get to the theatre. But you're just, you're just doin' the sex talk, huh?

Lorraine: Right.

Adam: How do you describe yourself? Because I think they do a little too good a job sometimes and then it's like [he puts on a seductive voice] "I'm 5'9", I'm a 38 double D, I have –". Phltt [noise intended to represent ejaculating] [he laughs].

Lorraine: Oh no, I keep it real. I say I'm about 5'7", long dark hair, green eyes, 36C, 24-inch waist.

Tom: Have you ever had a bachelor party and –

Adam: Phltt. [All laugh]. Oh well, we gotta go.

Tom: Have you ever had a bachelor party and then someone described themselves, like, I mean honestly, over the phone they said –

Adam: Oh yeah.

Tom: This woman is this way and they get to the door and you feel so bad for them.

Adam: Right.

Tom: Because they do weigh 220 pounds.

Adam: Listen. I was thinking about this the other day when I had a bunch of people waiting at an airport for me for a chartered plane that was, like, leaving, but not without me. And they said, they called me on my cell phone and they were like "Where are you?". And I'm like "I'm just getting off on Sherman Way. I'm on the 405." As I'm basically going down my driveway. [Drew & Tom laugh] And I'm thinking to myself "It's nice that you lie, but the fact that it takes you 25 minutes to get a block and a half from where you said you were, like, eventually, like the stripper who says how hot she is –

Tom: Right.

Adam: Isn't, isn't there gonna come a time when the truth is revealed?"

Tom: Yeah.

Adam: Yeah. And, and I, I, that's why you have to sort of, it's good to build it up a little bit, but don't, when you're still in your driveway, say you're down the street. Don't say you're comin' up. So Lorraine. You describe yourself, is that what you are?

Lorraine: Yes I am.

Adam: Okay. And, and, uh, what, what do you do? Like is the talk, you're saying the talk is, like, extra naughty, extra good? Like, talk to Tom. See if you can, uh ...

Tom: Yeah, hi, hi.

Lorraine: What do you mean? I'm sorry.

Tom: Hey, Tom here. Talk to me.

Lorraine: So what're –

Drew: Visa or Mastercard?

Lorraine: [laughs] I just wanna, like, keep these guys satisfied.

Drew: No Lorraine, Tom's your client.

Tom: I'm your client.

Lorraine: Okay, cool, cool.

Tom: Go ahead.

Lorraine: Hi.

Tom: Hi.

Lorraine: Who's this?

Tom: Tom.

Lorraine: Hey Tom, I'm Sugar. How're you doin'?

Tom: Good, good Sugar. What's goin' on?

Lorraine: Oh nothin' much, just relaxin' a bit on my bed.

Tom: Yeah?

Lorraine: Yeah.

Tom: Oh boy.

Lorraine: What're you doing?

Tom: Do you have the 500 count sheets? The thread count?

Adam: Yeah.

Tom: I bet. Silky?

Adam: What're you wearin'? This is Tom's friend Adam.

Tom: [laughs] Yeah exactly.

Adam: What're you wearin'?

Lorraine: Oh, I'm wearin' a tight little grey t-shirt.

Adam: Phlitt. Oh, I gotta go.

Lorraine: And my nipples are a little bit hard.

Adam: Hey Tom, can you move your car? It's blockin' mine in the driveway [Tom laughs].

Lorraine: Oh man. Well, I say my nipples are a bit hard and I'm wearin' a black thong and I'm touchin' myself.

Adam: Mm hm.

Tom: Yeah that.

Adam: That's sweet. Yeah, well listen. Why don't you, why don't you sort of work, like, you know what you oughta do?

Lorraine: What?

Adam: Here's what you oughta do. 'Cause you don't, you don't want to be too mundane and you want to be sexual, but maybe if she did it in a sort of subliminal way, she could add a little time. Like, you go like, the guy will go "what're you wearin'?"

Drew: [??] favourite sports team.

Adam: No no, she'll go like "I'm wearin' a lacy black teddy, Holocaust, with a long, Hitler, camisole [Tom & Drew laugh]. You know, cancer, and" [Adam laughs] just see, like, see if you could just slide in like "cancer", "Holocaust", "grandparents" and see what you could do.

Tom: That's good.

Adam: And I bet it would add some time. The mind works, the mind is very interesting that way.

Drew: She'll be a subliminal porn phone sex operator.

Adam: Right, right.

Drew: *SNL* oughta do that.

Adam: Right. Yeah, that's –

Tom: I think they did.

Adam: That way, yeah, they did do it, actually [laughs]. But I think that would work for her. All right. Let's try that. Let's see. Lorraine?

Lorraine: Yes?

Adam: Why don't you try that? So here's what you do. I ask you what you're wearing and somewhere you work in "Vietnam" very quickly. Very quickly. All right?

Lorraine: Okay.

Adam: All right, here we go. And what are you wearin' Sugar?

Lorraine: Ooh, I'm wearin' a nice lace garter with a nice black lace bra.

Adam: Yeah, yeah.

Lorraine: Mmm. How's that?

Adam: Yeah, but, you know. It was almost perfect.

Drew: Where's the, where's the "Vietnam" part?

Lorraine: Vietnam? [Tom, Drew & Adam laugh]

Adam: Okay so. It's my fault for attempting to communicate with people that call the show.

Tom: You, I was amazed. I thought that you had pulled that off with her, that she was, like, right on it.

Adam: Yeah, but –

Tom: That it was too good to be true.

Adam: I know.

Drew: Well maybe she actually worked it in and we just didn't notice it.

Adam: [laughs] Yeah.

Drew: I did notice my penis did take a little dip in the middle of her description.

Adam: You're, you're interesting. Drew!

Drew: I'm telling you.

Adam: All right. I gotta try it one more time with her. Lorraine?

Lorraine: Yeah?

Adam: Yeah. Okay, lemme explain. I have this subliminal suggestion idea.

Drew: Don't use that word. It's too, too –

Adam: I have this quick word thing that's gonna hurt the guys' penises, okay?

Lorraine: Okay.

Adam: Now, when you describe what you're wearing, I want you to very quickly work in the word "Holocaust".

Lorraine: "Holocaust"?

Adam: "Holocaust".

Lorraine: "Holocaust". Okay.

Drew: Give her an easier word: "cancer".

Adam: Do you know what the Holocaust is?

Lorraine: No I don't.

Adam: Oh, okay. All right.

Drew: Oh boy. Oh boy.

Adam: All right, that's all right. Hey, by the way, L.A. unified schools district everybody. I'm a product. God bless you guys. You're really doin', you're really doin' a job over there. [Drew & Tom laugh]

Lorraine: I [??].

Adam: Subliminal Holocaust. Okay, okay. Work in "cancer". Work in "cancer".

Drew: Do you know what cancer is?

Lorraine: Okay, okay.

Adam: All right. Work in the word "cancer" when you're describing what you're wearing. All right?

Lorraine: Oh, most definitely.

Adam: All right, you ready? Ring ring.

Lorraine: Hi, how're you doin'?

Adam: All right. What's your name?

Lorraine: I'm Sugar. Who are you?

Adam: Sugar. I'm Ace.

Lorraine: Hey Ace.

Adam: Yeah. What're you wearin'?

Lorraine: Mmm. Well I'm wearin' a nice black garter. Mmm just thinkin' about the Holocaust right now. [Adam, Tom & Drew laugh] Oh this is too much.

Adam: [in mock aroused voice] Yeah, yeah, burn those Jews. Gas 'em in the shower, baby. Yeah, yeah.

Lorraine: I'm sending you my bill.

Adam: [continuing with mock voice] Yeah,yeah, send 'em on the train to Krakow. Lorraine, we may need to tweak this just a little bit more. This is, uh.

Tom: That was good.

Adam: Right, right. No, you take direction as good as any actress I've worked with.

Tom: It really is good.

Adam: All right, Lorraine, that's your new angle.

Drew: Yeah.

Adam: There it is. There it is.

Tom: She should actually try that tonight. [Tom, Drew & Adam laugh]. "Thinking about the Holocaust" [laughter].

Drew: We, uh, I think we gotta take a break.

APPENDIX B

CBSC File 02/03-0459 CHMJ-AM re a segment on *Loveline*

Complaint

The following complaint dated December 27, 2002 was sent to the CBSC:

Dear Madame/Sir:

This letter is to represent a formal request for an investigation to be carried out immediately in connection with a broadcast on CJNW (MOJO radio 730 AM) in Vancouver, B.C. I believe that such an investigation may find violations of broadcasting standards and/or federal or provincial legislation. In my opinion the offending broadcast ridiculed the holocaust experience and was racist in its content.

The broadcast took place Monday, December 23rd 2002 at approximately 11:20 pm. I believe that the program may be known as the *Tom Leykis Show*. I would ask that your office take immediate steps to secure a copy of the tape of this programme for at least a 30 minute period and that you provide me with a copy of the tape upon receipt.

I have also lodged a complaint to the CRTC.

Please confirm receipt of this complaint, and inform me of developments as your office proceeds with the investigation.

Thank you for your cooperation.

The complainant sent a short note on January 2, 2003 in response to information from the CBSC that, according to the broadcaster, the *Tom Leykis Show* did not air in the time slot indicated.

Thank you for your reply to my complaint re: above. As for the information that the offending programme was not the *Tom Leykis Show*, the fact is that I was totally unaware what show I was listening to. The CRTC told me that at that time it was likely that show, but I was never able to verify that information. What I do know is that the offending comments were made at the time and date as alleged.

Broadcaster Response

The broadcaster responded to the complainant's letter on January 31, 2003 with the following:

The Canadian Broadcast Standards Council ("CBSC") has asked us to respond to your email of December 27, 2002. In your email, you raised concerns regarding comments made

during the program "Loveline" (the "Program") that aired on CHMJ-AM ("MOJO Radio") on December 23, 2002.

As you know, MOJO Radio is a talk radio station that directs its programming fare to a male audience between the ages of twenty-five to fifty-four years. Its programming format is diverse and covers topics that range from health and fitness, sex, sports, computers, career, business, law, money, gadgets, cars, and beer, all presented in a comedic style. Our daily programming consists of current pop-culture subjects, issues and current affairs phone-in shows. MOJO Radio is also the home of the Vancouver Giants hockey broadcasts.

We believe our programming is an intelligent yet, sometimes irreverent alternative to much of the mainstream talk shows available in this market, as they offer frank and open debate on diverse and often controversial issues, often presented in a comedic slant.

Your email sets out your concerns regarding a comment made by a listener on the *Tom Leykis Show* that you felt was offensive, racist and that ridiculed the Holocaust experience. A review of our broadcast log shows that the Program was not the *Tom Leykis Show*, but the *Loveline* show. On December 23, 2002, the Program, which airs on MOJO Radio, Sunday to Thursday, between 10:00 pm and midnight, did a taped program replaying some of the year's highlight moments. In this case, a female listener who works as a telephone sex operator, called the Program. Her "problem", as she put it, was that she was so good at her calling that men did not stay on the line long enough for her to make money. She was therefore in search for what she could do so as to make her callers stay on the phone longer. The hosts, with guest Tom Arnold, suggested she slip in subliminal messages as she did her work. Some examples suggested by the host were words such as "cancer", "grandparents" and "Holocaust", to name a few. They then asked her to practice this method on the air.

The "humour" surrounding the segment dealt with the woman's lack of understanding of what they were suggesting she do and had nothing to do with the Holocaust other than its representation as a word conjuring up horrible images.

We appreciate that you may find the comment to be in poor taste. However, the Canadian Association of Broadcasters codes (the "Codes"), administered by the CBSC have clarified 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. The CBSC has acknowledged that a program "will not be everyone's 'cup of tea' and it assumes that some members of society would be offended... That is not, however, the criterion by which the program must be judged."² In previous decisions, the CBSC has clarified that "it is not *any* reference to 'race, national or ethnic origin, religion, age, sex, marital status or physical or mental handicap' but rather those which contain "abusive or discriminatory material or comment" based on the foregoing which will be sanctioned."³

In a subsequent decision, the CBSC noted that "the question, of course, is to determine which 'ethnic' jokes or comments will be understood as crossing the boundary of acceptability. There are those, which are sanctionable, and those, which, even if tasteless or painful to some, are not. It would be unreasonable to expect that the airwaves be pure, antiseptic and flawless. Society is not. Nor are individuals in their dealings with one another ... What may constitute the limits of acceptability in each challenged case will need to be appreciated in its context."⁴

The CBSC "believes that it is essential to draw a distinction between a broadcast which is *intended* to be serious or at least leaves the impression that it intends to be serious and one which *clearly* does not. It is not that the *standard* to be applied to the potentially offending

statement will be different. It is rather the question of audience perception...The situation is different where the context is clearly comedic. After all, where the audience is given no reason to expect that the substance of the comments made is serious, their attitude could *reasonably* be expected to be different. A remark which might reasonably be assessed as abusive in a serious context and thus in breach of the *Code of Ethics* may not be so viewed in the comedic environment. Furthermore, humour is commonly based on national, ethnic, racial or gender traits, as often as not related to background matters best known to the comedian. Even stereotypes are not unknown in such a context. Such issues cannot *alone* be the cause of a broadcast sanction. They must be coupled with another defining criterion; namely, they must be abusive or discriminatory.”⁵

In this instance, we believe that while the comment in the Program may not have been in good taste, in the context that it was presented, it was not racist or discriminatory. Please be assured that we do not condone racism of any sort on MOJO Radio. As a member of the Canadian Association of Broadcasters, we 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. Nonetheless we are deeply sorry that the Program offended you.

We trust that the foregoing responds to the concerns raised in your letter. At MOJO Radio, we recognize the importance of listener feedback and appreciate and value all comments. We appreciate the time and effort you have taken to listen to our programming and to provide your comments and concerns.

¹ Clause 1 – CAB Code of Ethics Commentary

² CFJP-TV (TQS) re “Quand l’amour est gai” (CBSC Decision 94/95-0204, December 6, 1995)

³ CKVR-TV re *Just for Laughs* (CBSC Decision 94/95-0005, August 23, 1995)

⁴ CKTF-FM re *Voix d’Accès* (CBSC Decision 93/94-0213, December 6, 1995)

⁵ CHUM-FM re *Sunday Funnies* (CBSC Decision 95/96-0064, March 26, 1996)

Additional Correspondence

The complainant was unsatisfied with the broadcaster’s response and sent the following e-mail dated February 4 along with his Ruling Request form:

Thank you for your email of yesterday. And I am now in receipt of the radio station's response. I am not satisfied with the broadcaster's response and wish the CBSC to take this matter to investigation. More formally put:

[inserted Ruling Request form]

Let me further state that I have repeatedly requested a copy of the tape and transcript of the radio broadcast in question, but to no avail. My requests have been made to both your office and the CRTC. I find it quite surprising that I am suppose [*sic*] to pursue this complaint, and respond to the broadcaster's response, while being prohibited from reviewing the offending comments on tape and transcript. Meanwhile the broadcaster has access to the tape in preparing his response. I must rely totally on my memory of the show while the broadcaster has access to study the tape in detail. I find this process totally unacceptable and unfair. I wish to again request that the tape and transcript of the few minutes that I am focusing on be made available to me.

Lastly let me state that the broadcaster's response states that my concerns were "regarding comment made by a listener...." Not so. My complaint relates in particular with the comments made by a number of people hosting or being present in the studio or online while receiving this call from a listener. From my memory there is great laughter heard throughout in the context of the holocaust. Only the tape will reveal the true nature of these comments.

Please acknowledge that you have received this email notice that I am not satisfied with the broadcaster's response and wish further investigation by the CBSC.