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

CFMI-FM re *Brother Jake Morning Show* (St. Patrick's Day)

(CBSC Decision 02/03-0904)

Decided December 23, 2003

M. Loh (*ad hoc* Chair), R. Cohen (*ad hoc*), P. Gill, G. Leighton, and J. Rysavy

THE FACTS

On March 17, 2003, St. Patrick's Day, CFMI-FM (Vancouver) broadcast an episode of the *Brother Jake Show* during which some of the content (in the 7:00-8:00 am segment) offended a listener. It involved a song performed by a group known as the Sons of Indecency, who were in the studio; the banter and the song went as follows:

Son #1: Faith and begorrah. That was awful nice of the two of ya' to say that.

Voice: You guys are nice.

Son #1: Oh! All right. I forgot I was seeing double, and speaking of seeing double, here's a little tune about a couple of Irishmen, although I use the term loosely.

Voice (distant): I know what's coming up.

Son #1: (Song) Oh, there is a couple of guys and (?)
Who lived down by the glen
And every night they go to pubs
That only let in men.
Well, these two lads, they are happy, in fact they're downright
gay;
And when the D.J. plays Madonna
They dance the night away.
And after last call's over
They'd go back from where they came
To their immaculate apartment
Where they live up to their name.
Oh, Michael Fitzpatrick and Patrick Fitzmichael
Two better friends, you know there's never been

Michael Fitzpatrick and Patrick Fitzmichael
When they go home they fill each other in.
Oh, Michael Fitzpatrick and Patrick Fitzmichael
You've never seen two closer guys.
Michael Fitzpatrick and Patrick Fitzmichael
Between them they've got just one pair of brown eyes.

On March 18, a complainant wrote to the CBSC, saying, among other things (the full text of all the correspondence can be found in Appendix A):

During a skit that was done to music, about two Irish men named Patrick Fitzmichael and Michael Fitzpatrick and the connotation that they were in search of young men or boys for sexual purposes, and that these men were, if not priests, than [*sic*] were associated with the Roman Catholic Church. As I was walking through the park while listening to the program, I could not make proper note of all the lyrics involved, but it was enough to make me believe that it was a deliberate attack on the Catholic faith, given those that I was able to remember, which included the mention of "Madonna" and "immaculate" and several others. There was also such crude things [*sic*] as the fact that these two men lived in the same house where they "filled each other in" and the suggestion that they shared "one pair of brown eyes" which was obviously reference to an anal preoccupation. For several hours thereafter there were made jokes about the alcoholic nature of Irishmen, referring to "puke on their shoes" etc., and many, many references to masturbation fantasies, etc., which is a bit puerile, I would suggest, to a program that attracts teenaged males, and immature adults, as their major audience.

The Program Director responded to the original communication on April 10. In that letter, he said, among other things:

The parody was about two Irish men celebrating St. Patrick's Day, who visit a pub and dance to the music of Madonna played by the DJ. The reference to "immaculate" was in relation to the description of their apartment, and not in a religious context, as noted by you. In a previous decision, the Canadian Association of Broadcasters Code of Ethics (the "Codes"), administered by the CBSC have 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.

[...]

We deeply regret that the Program offended you for that was not our intent. We have taken the time to thoroughly review the tapes of the Program in an effort to properly respond to your complaint and are of the view that while you may not regard some of the comments made in the parody to have been in good taste, in the comedic context that it was presented, we do not believe that it was not an abusive comment that was discriminatory. Accordingly, we believe that the Program did not fall afoul of the Codes and was not trying to insult anyone's beliefs. Please be assured that we do not condone discrimination of any sort on ROCK 101.

We have however, reviewed your concerns internally and have had discussions with our on-air staff about appropriate on-air content and we will continue to

exercise greater diligence on such matters. Please be assured that we take our responsibilities as a broadcaster very seriously. At ROCK 101, we work to ensure all our programming complies with the Broadcasting Act, the Radio Regulations and the Codes and standards required of us as a member of the CBSC.

The complainant was not satisfied by the response. He sent in his Ruling Request and wrote again on April 15, saying in part,

Then, (for reasons obvious to me) you proceed to defend the use of same in a religious sense, despite the bad-taste that might suggest, by listing, through precedent, previous council decisions. However, as I recall, these two words, and others with Catholic connotations, that I don't recall, were heavily stressed so as to remove any doubt as to your intention I begin to wonder whether you think me a total fool, or whether it is the Council's competence that you doubt. Anyone hearing the tape of this foul ditty could not fail to grasp the inherent anti-Catholic bias in it.

[...]

So now, can you explain to me why it is ok to ridicule Christians, and specifically Catholics? Is militant anti-Catholic sentiment, the only form of prejudice that remains acceptable? Are priests not human, are they not vascular, do they not bleed when cut? Do they not feel the sting and the shame, when one of their own causes scandal? Is there anything humorous, whatsoever, about the sexual abuse of children? Is it merely "jeering, silly, unpleasant, blasphemous, mocking, or irreverent" to continue depicting Catholic clergy in this light, or is it in fact, hateful? This is what the Canadian Broadcast Standards Council must decide if and when it meets to adjudicate this complaint. The answer for me, and I think any reasonable person who loves justice, is that this was indeed, abusively discriminatory.

THE DECISION

The CBSC British Columbia Regional Panel examined the complaint under clauses 2 and 9 of the *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 9 – Radio Broadcasting

Recognizing that radio is a local medium and, consequently, reflective of local community standards, programming broadcast on a local radio station shall take into consideration the generally recognized access to programming content available in the market, the demographic composition of the station's audience,

and the station's format. Within this context, particular care shall be taken by radio broadcasters to ensure that programming on their stations does not contain:

- (a) Gratuitous violence in any form, or otherwise sanction, promote or glamorize violence;
- (b) Unduly sexually explicit material; and/or
- (c) Unduly coarse and offensive language.

The Panel listened to a recording of the broadcast and reviewed all of the correspondence. The B.C. Regional Panel concludes that the broadcast does not violate either of the foregoing Code provisions.

The Content of the Episode and Human Rights

As CBSC Panels have pointed out in the past, they are in the best of positions to comment on the content that was actually aired. They receive tapes of the programs after the fact and can play potentially offending material again and again, in order to hear precisely what was said. Complainants, on the other hand, are frequently not prepared for any offending material and must pick up the words and their import as they pass by, spoken or sung at a normal pace. It is not, needless to say, a question of fault, but rather a question of disadvantage.

The present complaint reflects the difficulty faced by a complainant in such circumstances. First, he alleged in his letter that there was, in the song, "the connotation that they [Fitzpatrick and Fitzmichael] were in search of young men or boys for sexual purposes." Second, there was the implication there "that these men were, if not priests, than [*sic*] were associated with the Roman Catholic Church." He did admit, though, that he "could not make proper note of all the lyrics involved, but," he concluded, "it was enough to make me believe that it was a deliberate attack on the Catholic faith, given those that I was able to remember, which included the mention of 'Madonna' and 'immaculate' and several others." In his follow-up correspondence, he summarized his concerns as a human rights issue. He also asked (as quoted above in greater detail), "So now, can you explain to me why it is ok to ridicule Christians, and specifically Catholics?"

A review of the actual wording of the song, however, reveals no language reflecting any of the concerns which were the underpinning of his two letters. There simply is not *any* religious issue in the song. It refers to two guys who are *themselves* gay. They are not looking for anyone else, young or otherwise, since they live together in an apartment. The word "Madonna" clearly refers to the singer and not, by *any* stretch of the imagination, to the Virgin Mary. Nor is that word connected to the use of the word "immaculate", which describes, to all appearances, the condition of their apartment. In fact, there is not a single reference, either explicit or implied, to priests or religion anywhere in the song.

It follows from the unequivocal wording of the song that there is not even an

issue to treat under Clause 2 of the *CAB Code of Ethics*.

Sexual References

There is an undeniable reference to sexual matters in the song. While it is not the major burden of the complainant's letter, it was mentioned there. The issue then for the B.C. Regional Panel to consider is whether it was sufficiently explicit to fall afoul of the provisions of Clause 9(b) of the *CAB Code of Ethics*. The Panel considers that the two comments are quite subtle and far from explicit. They might, in the view of the Panel, even be sufficiently obscure to pass under the radar of many persons. In any case, the Panel does not consider that they constitute a description of overt sexual acts of such a nature as to be in breach of Clause 9(b) of the Code.

Broadcaster Responsiveness

The requirement that a broadcaster be responsive to the letter of complaint sent by a member of the public is considered by the Adjudicating Panels to be a significant part of the membership requirements of the CBSC. Such responsiveness is an essential part of the dialogue by which the CBSC considers that matters that trouble members of the public sufficiently to compel them to write are often successfully resolved. When accomplished in thorough and sensitive ways, such correspondence is also a way of letting the public know that broadcasters care about their audience's concerns. The Program Director's letter fulfilled the broadcaster's obligations in this regard 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
to
CFMI-FM re Brother Jake Morning Show (St. Patrick's Day)
(CBSC Decision 02/03-0904, December 23, 2003)

I. The Complaint

On March 18, 2003, the CBSC received the following complaint:

Please be advised of my intent to have a complaint adjudicated by the Canadian Broadcast Standards Council for a radio program that aired on Classic Rock 101 in Vancouver on March 17, St. Patrick's Day at or about 0705 hours, on a show hosted by a D.J. who goes by the name of Jake Edwards.

During a skit that was done to music, about two Irish men named Patrick Fitzmichael and Michael Fitzpatrick and the connotation that they were in search of young men or boys for sexual purposes, and that these men were, if not priests, than were associated with the Roman Catholic Church. As I was walking through the park while listening to the program, I could not make proper note of all the lyrics involved, but it was enough to make me believe that it was a deliberate attack on the Catholic faith, given those that I was able to remember, which included the mention of "Madonna" and "immaculate" and several others. There was also such crude things as the fact that these two men lived in the same house where they "filled each other in" and the suggestion that they shared "one pair of brown eyes" which was obviously reference to an anal preoccupation. For several hours thereafter there were made jokes about the alcoholic nature of Irishmen, referring to "puke on their shoes" etc., and many, many references to masturbation fantasies, etc., which is a bit puerile, I would suggest, to a program that attracts teenaged males, and immature adults, as their major audience.

Some of the major advertisers were Canadian Tire and the B.C. Development Bank, and a Ford dealership, all of whom I intend to be in contact with, to ask them if they feel it proper to make fun of people who may be their customers. Not only is this an insult to Catholics, and specifically Irish Catholics, it is also disparaging of homosexuals in general.

I would request that should you get possession of tapes of the program, that I be given transcripts of same, so that I may properly relate to these sponsors, their lack of sensitivity.

II. Broadcaster Response

The broadcaster responded to the complainant on April 10 with the following:

Dear Mr. [...]:

The Canadian Broadcast Standards Council ("CBSC") has asked us to respond to your letter of March 18, 2003. In your letter, you raised concerns regarding comments made during the Bro Jake Show (the "Program") aired on CFMI-FM ("ROCK 101") on March 17, 2003.

As you may know, the Program, like many other contemporary music, news and entertainment radio shows can sometimes be controversial in nature. It attracts listeners, in particular adults in the 25 - 54 category from a wide variety of listener backgrounds including young professionals, blue and white collar workers, looking for entertainment in their drive to work in the morning. The Program uses a blend of sarcasm, humour and information and has been doing so for the past several years, with a steadily growing

audience. In fact, for the past three years, Bureau of Broadcast Measurement ratings have consistently rated the Brother Jake Show as No. 1 for the adult 25 - 54 category.

In your letter, you expressed concerns regarding a pre-produced parody that was aired on the Program. We regret that the parody offended you or that you felt that it was an attack on the Catholic faith. However, please be assured that the parody was just that - a parody, and did not seek to attack any faith.

The parody was about two Irish men celebrating St. Patrick's Day, who visit a pub and dance to the music of Madonna played by the DJ. The reference to "immaculate" was in relation to the description of their apartment, and not in a religious context, as noted by you. In a previous decision, the Canadian Association of Broadcasters Code of Ethics (the "Codes"), administered by the CBSC have 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."

In that decision, which addressed a comedy about "Sister Mary Immaculate" jokes about religion and homosexuality, the CBSC explained that even where "the humour in question may at times be in poor taste (a matter not addressed in any of the Codes under CBSC administration), it is not necessarily on that account abusive or discriminatory to any particular group." In a subsequent decision, the CBSC noted that the measure of abusive or discriminatory "must be made in the overall societal context, not in the narrow context of the sensibilities of individuals." In another decision relating to a "Newfie" joke, the CBSC noted that some ethnic jokes are sanctionable and others are not and stated: "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." The CBSC has also clarified that even blasphemy alone would not be sufficient to constitute a violation of the CAB Code of Ethics. It would need to be hateful, not merely irreverent, comment, abusively discriminatory, not merely impious or irreligious. At this point in the 20th century, the CBSC expects that comedians are entitled to question tradition and to tickle formal and possibly outdated values without finding themselves, for that reason alone, exceeding Canadian broadcast standards."

In a more recent decision, the CBSC noted, "to exceed that norm, there will need to be evidence of harsh language or imagery, nastiness (even if thoughtless or inadvertent), utter insensitivity or the like." In that decision, the CBSC stated that although the comments were "mocking and jeering but silly" and "unpleasant (and) desensitising", they were not "hateful, demeaning or degrading as to be considered to be abusive or unduly discriminatory." Accordingly, they were found to be not to be in breach 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." In addition, the CBSC has noted 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. 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."

We appreciate that the content of the parody may not appeal to all our listeners' comedic tastes. Humour and taste are extremely subjective elements relative to the point of view of an individual. The Codes clarify that "the broadcaster's programming responsibility does not extend to questions of good taste."

The CBSC applies current social norms in its interpretation of the Codes and has noted that that where the programming is directed to an adult audience, "there is no overriding societal interest in curtailing the broadcaster's right to freedom of expression" and that in those circumstances, "crude and vulgar language" should be "regulated" in the same way as other matters of taste, i.e. via the on/off or dial button." In this instance, you will appreciate that this Program is directed to an adult audience.

We deeply regret that the Program offended you for that was not our intent. We have taken the time to thoroughly review the tapes of the Program in an effort to properly respond to your complaint and are of the view that while you may not regard some of the comments made in the parody to have been in good taste, in the comedic context that it was presented, we do not believe that it was not an abusive comment that was discriminatory. Accordingly, we believe that the Program did not fall afoul of the Codes and was not trying to insult anyone's beliefs. Please be assured that we do not condone discrimination of any sort on ROCK 101.

We have however, reviewed your concerns internally and have had discussions with our on-air staff about appropriate on-air content and we will continue to exercise greater diligence on such matters. Please be assured that we take our responsibilities as a broadcaster very seriously. At ROCK 101, we work to ensure all our programming complies with the Broadcasting Act, the Radio Regulations and the Codes and standards required of us as a member of the CBSC.

We trust the foregoing responds to the concerns you raised in your letter regarding the Program. At ROCK 101, we recognize the importance of listener feedback and appreciate all comments. We thank you for taking the time and initiative to share your concerns with us.

III. Additional Correspondence

Prior to receiving the broadcaster's response, the complainant wrote back to the CBSC on April 4 in regards to the broadcaster's responsiveness:

Dear [...],

I am writing concerning CBSC file number C02/03-904. You said in your letter to me, dated March 20, 2003, that I should soon be receiving a response from CFMI in response to my concerns. As of this date, I have yet to receive said response, and it leads me to believe that it may be their intention to drag this out as late as possible, considering the time limitations you stated of 28 days. I am also concerned that there might be some tampering with the taped show in question. After all, there have been cases of such technical tampering in far more august cases than this one. I hope you have ways of checking for anything of this sort.

If I have not received a reply within the 21 days allotted them, where do we go from there? I may be over-anxious about this, but it is only natural when you have a system whereby the station is judged by the same profession who have a stake in the outcome.

On April 11, the complainant wrote again in regards to the broadcaster's responsiveness:

Dear [...],

In furtherance to our discussion, and your reply to my concerns re: case file # C02/03-904. I am writing this letter at 2035 hours, long past the final post for the day, and I have yet to receive a reply to my concerns from radio station CFMI-FM. I would suggest, as per your fax of April 07, they are either not responsive to the concerns of the public, or that they do not care that the CBSC assesses their responsiveness in their decision, or that they quite possibly have something to hide, and have no intention of submitting the tapes to your panel.

Of course it could have more to do with the nature of the postal services in Canada. That said, the tardiness of their reply, were they part of the B.C. Tenancy Act Provisions, they would be held at fault and would lose their case. How unfortunate that the CBSC is not ruled by such stringent provisions. How long must I be made to wait? Judging from previous cases, it seems it could take almost a year to resolve something that should take no more than a couple of months, tops.

The complainant wrote the following letter in response to the broadcaster's explanation:

Dear Mr. [...],

Some time in middle March, an employee of the building where I work presented me with something someone had down-loaded from the Internet, from a site identified by two names; Colledgehumor.com, and Rock 103.com, or some such name, similar. It showed an actual stained-glass window, said to belong to a church somewhere in Ireland. It depicted a young boy, kneeling before a bishop, whose hands were on the boy's head, as per the rubrics for performing the sacrament of Confirmation in the Roman Catholic Church. The question was asked: What's wrong with this picture?

In an attempt to identify the Rock 103 mentioned, I was listening to my radio while walking to work, then I heard the offending program/skit, which later identified itself as Rock 101.

You initiate your explanation of the parody by stating that the words, "Madonna" (proper noun) and "immaculate" were in reference to the entertainer of the same name, and the second pertained to an adjective, descriptive of their apartment, and that they had no religious connotation.

Then, (for reasons obvious to me) you proceed to defend the use of same in a religious sense, despite the bad-taste that might suggest, by listing, through precedent, previous council decisions. However, as I recall, these two words, and others with Catholic connotations, that I don't recall, were heavily stressed so as to remove any doubt as to your intention I begin to wonder whether you think me a total fool, or whether it is the Council's competence that you doubt. Anyone hearing the tape of this foul ditty could not fail to grasp the inherent anti-Catholic bias in it.

In the Pentateuch, or Torah, of the Jewish religion, the Decalogue forbids that the People of God should covet their neighbour's goods. Recently we have watched, dumbfounded, as various CEOs and stock-promoters have been led away in handcuffs for the theft of millions, nay billions of dollars. Almost to a man, these have been people of the Jewish persuasion (though one hopes of a secular nature). Would they be open game to the satire of Bro' Jake and others in the media? We're all aware of the answer to that. I feel sure that in the Koran, the Prophet forbids his followers from all forms of theft and vengeance, yet recent images flickering over our screen through CNN would seem to suggest that theft is a part of the Arab life-style. Will there be, anytime soon, jokes and parodies about the honesty or lack thereof, of Semites?

So now, can you explain to me why it is ok to ridicule Christians, and specifically Catholics? Is militant anti-Catholic sentiment, the only form of prejudice that remains acceptable? Are priests not human, are they not vascular, do they not bleed when cut? Do they not feel the sting and the shame, when one of their own causes scandal? Is there anything humorous, whatsoever, about the sexual abuse of children? Is it merely "jeering, silly, unpleasant, blasphemous, mocking, or irreverent" to continue depicting Catholic clergy in this light, or is it in fact, hateful? This is what the Canadian Broadcast

Standards Council must decide if and when it meets to adjudicate this complaint. The answer for me, and I think any reasonable person who loves justice, is that this was indeed, abusively discriminatory.

I cannot therefore, accept your definition of this program as being merely “a question of good taste” and I must say that I doubt the sincerity of your concern for the listening public’s input. That said, you may be correct in assuming that the Council will find nothing terribly wrong with your programming, but the council, I suspect was formed in order to placate the public, so that they would not turn to sponsor boycotts and other more serious forms of protest. Remember please, that there are a lot of Catholic consumers out here, a percentage of whom are beginning to feel totally ineffectual. Shall we wake the sleeping giant?