
**CANADIAN BROADCAST STANDARDS COUNCIL
PRAIRIE REGIONAL PANEL**

CJAY-FM re Forbes and Friends (*Tourette's Syndrome*)

(CBSC Decision 02/03-1415)

Decided April 16, 2004

D. Ish (Chair), V. Cownden, D. Dobbie, V. Dubois, J. Fong and R. Gallagher

THE FACTS

The following pre-recorded segment aired on the morning show *Forbes and Friends* on CJAY-FM (Calgary) on May 17, 2003 between 8:00 and 9:00 am:

- Announcer: This Sunday morning at 4, it's a special edition of the "Really Stupid People"'s talk show. This week, it's the "Really Stupid People with Tourette Syndrome" talk show. Tourette Syndrome, which causes its victims to unknowingly shout obscene words and phrases at random moments, is truly a disabling condition.
- Dr. Fagen: "Really Stupid People with Tourette Syndrome" talk show, this is Dr. Fagen.
- Caller 1: Dr. Fagen?
- Dr. Fagen: Yes, this is Dr. Fagen.
- Caller 1: (Bleeped words - twice) Dr. Fagen, I'm a salesman but, during my sales pitch, my clients get this horrified look on their faces. Eat my (bleeped word) and then they leave.
- Dr. Fagen: I see.
- Caller 1: You know what? I bet it's my green thigh. Thanks a lot Dr. Fagen (bleeped words).
- Dr. Fagen: Uh huh, uh huh, next call. This is Dr. Fagen.
- Caller 2: Dr. Fagen?
- Dr. Fagen: Uh huh.
- Caller 2: Last Sunday in church, the choir leader let me sing a solo, you know, but half way through it, the congregation left and the pastor started crying. [bleeped words-twice]. I can't imagine what happened. Can you?

Dr. Fagen: I... I... I might have an idea, yeah.

Announcer: The "Really Stupid People with Tourette Syndrome" talk show. Sunday mornings at 4.

A complainant sent the following e-mail on June 7 (the full text of all the correspondence can be found in Appendix):

Concern: The station played a short skit entitled something like "Dumb people with Tourette's Syndrome". It was a radio phone show parody making fun of those suffering from Tourette's. I have no personal connection with this condition, but I was shocked and saddened that a major radio station felt free to broadcast such cruel and discriminatory material at the expense of any group.

The Vice-President and General Manager of CJAY-FM replied on June 27. He said in part:

The specific material in question is a Game Show parody taken from one of the American comedy services subscribed to by our radio stations. I completely agree that this particular parody was in poor taste and have addressed that with the program staff. However, it was intended as comedy only and was by no means meant to discriminate against persons with Tourette Syndrome.

CJAY 92 is a Rock radio station targeting an adult audience between the age of 18 to 49 years of age. You will find that from time to time some of our humor may tend to be somewhat adventurous, but never intended to offend. Just like some of the mainstream television programming available weekly on our local networks, such as Saturday Night Live, The Simpsons or the Just For Laughs Comedy Show, we too offer similar humor and innuendos to our audience. We understand that comedy of any kind is very subjective and what one person finds funny another will not. I apologize if we have offended you and I thank you for your letter. It is listeners like yourself that help us to be a better radio station.

The complainant was not satisfied by the response. She returned her Ruling Request and the following covering e-mail:

I am of the opinion that the broadcast was abusive toward individuals suffering a mental or physical disability, namely Tourette's Syndrome. I am not satisfied with the reply of Mr. Peacock of CJAY-FM because, while admitting the parody was in "poor taste", Mr. Peacock goes on to justify it as "adventurous humour". His statement that "comedy of any kind is very subjective and what one person finds funny another will not" completely misses the point of the Human Rights clause of the CAB Code of Ethics. It is abusive when humour is based on behaviour manifested by a physical or mental disability.

THE DECISION

The CBSC's Prairie Regional Panel considered the complaint under the Canadian Association of Broadcasters' (CAB) *Code of Ethics*. The relevant provision of this Code reads 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.

The Prairie Regional Panel Adjudicators reviewed all of the correspondence as well as a recording of the challenged broadcast. The Panel finds that, although the parody in question was on the edge, the CJAY-FM broadcast in question did not breach the foregoing Code provision.

CBSC Decisions regarding Physical Disability

Although the CBSC has ruled regularly on matters arising under the Human Rights Clause of the *CAB Code of Ethics*, the CBSC has not often dealt with the issue of discriminatory comment based on mental or physical disability. In the few cases where it has considered this area of discrimination, the terms relating to mental disability are sometimes used “colloquially” as an insult to people who are *not* afflicted by the disability and, in those cases, Panels have ruled the usages not to be in conflict with the Code but rather a question of taste, a matter relegated to the on-off switch or the station-switching device. [See, e.g. *CILQ-FM re the Howard Stern Show (Staff Insults)* (CBSC Decision 97/98-1223, February 3, 1999), *CILQ-FM re the Howard Stern Show (Lost Innocence)* (CBSC Decision 99/00-0216, July 6, 2000), and *CHNL-AM re a Sports Commentary* (CBSC Decision 02/03-0054, January 14, 2003).] In the case of references to physical disabilities, Panels have generally found a breach in those cases where the broadcast mocks the disabled group itself or attributes negative stereotypical characteristics to the group. (See, e.g. *CILQ-FM re the Howard Stern Show (Group Homes)* (CBSC Decision 99/00- 0722, August 11, 2000).)

It should also be noted here that, even where discriminatory comments have been found in certain past decisions, Panels have drawn upon the Ontario Panel decision in *CHFI-FM re the Don Daynard Show* (CBSC Decision 94/95-0145, March 26, 1996) and made the point that some discriminatory comments may not overstep the threshold. In that matter the Ontario Panel

Consider[ed] that the Jewish mothers light bulb joke, while ethnically pointed, was neither demeaning nor abusive. It was told in the context of a series of light bulb jokes aimed at feminists, Marxists, surrealists, accountants, etc. It poked fun but did not bludgeon. It tickled but was not nasty. It touched on what some might view as stereotypical characteristics as did the Polish humour in the *CHUM-FM* case and perhaps the Irish humour in the *CFOX-FM* case but was not ugly as in the “Newfie” humour in the *CKTF-FM* case. The CBSC does not expect that the airwaves will be pure, antiseptic and flawless when society is not.

In the matter at hand, the Panel acknowledges that the “humour” arguably focussed on persons afflicted with Tourette’s Syndrome, although not necessarily solely there, in the sense that some of the commentary was simply targeted at so-called “stupid” people. In

addition, the Panel understood that what focussing there was on Tourette's stayed away from the symptoms of motor tics and movement disorders, limiting itself to an aspect of the Syndrome, namely, coprolalia, that is reflected in a small percentage only of persons with the condition. Moreover, coprolalia, or the tendency of persons to blurt out socially inappropriate or taboo expressions, is not a requirement of a Tourette's Syndrome diagnosis. Notwithstanding the foregoing, the Panel does view the skit as a regrettable example of the use of the microphone to have fun at the expense of individuals with a mental affliction. It is a cheap and unnecessary shot, which, however, the Panel considers does not bludgeon, to import the CHFI terminology. Consequently, it views the broadcast as a matter of bad taste, extremely close to the line, but not over it. The Panel finds no breach of Clause 2 in this instance.

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. That 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 Panel finds that the response of the broadcaster's Vice President and General Manager was sufficient and conforms fully to the broadcaster's membership obligations in the Canadian Broadcast Standards Council on this occasion.

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
CJAY-FM re Forbes and Friends (Tourette's Syndrome) (CBSC Decision 02/03-1415, April 16, 2004)

I. The Complaint

The following complaint dated June 7, 2003 was sent to the CBSC:

Concern: The station played a short skit entitled something like "Dumb people with Tourette's Syndrome". It was a radio phone show parody making fun of those suffering from Tourette's. I have no personal connection with this condition, but I was shocked and saddened that a major radio station felt free to broadcast such cruel and discriminatory material at the expense of any group.

II. Broadcaster Response

The broadcaster responded to the complainant on June 27, 2003 with the following:

Dear Ms [...]

The purpose of this letter is to respond to your correspondence to the CBSC dated June 7, 2003 concerning material broadcast on CJAY FM on May 17, 2003.

The specific material in question is a Game Show parody taken from one of the American comedy services subscribed to by our radio stations. I completely agree that this particular parody was in poor taste and have addressed that with the program staff. However, it was intended as comedy only and was by no means meant to discriminate against persons with Tourette Syndrome.

CJAY 92 is a Rock radio station targeting an adult audience between the age of 18 to 49 years of age. You will find that from time to time some of our humor may tend to be somewhat adventurous, but never intended to offend. Just like some of the mainstream television programming available weekly on our local networks, such as Saturday Night Live, The Simpsons or the Just For Laughs Comedy Show, we too offer similar humor and innuendos to our audience. We understand that comedy of any kind is very subjective and what one person finds funny another will not. I apologize if we have offended you and I thank you for your letter. It is listeners like yourself that help us to be a better radio station.

Should you wish to discuss this matter further, please feel free to contact me directly at [...]

Sincerely
signed
CJAY 92/VIBE 98.5/AM1060

III. Additional Correspondence

The complainant was unsatisfied with the broadcaster's response and sent the following e-mail, along with a Ruling Request Form dated July 9, 2003.

I am of the opinion that the broadcast was abusive toward individuals suffering a mental or physical disability, namely Tourette's Syndrome. I am not satisfied with the reply of [...] of CJAY-FM because, while admitting the parody was in "poor taste", Mr. [...] goes on to justify it as "adventurous humour". His statement that "comedy of any kind is very subjective and what one person finds funny another will not" completely misses the point of the Human Rights clause of the CAB Code of Ethics. It is abusive when humour is based on behaviour manifested by a physical or mental disability.