
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL PANEL**

CILQ-FM re John Derringer's "Tool of the Day"

(CBSC Decision 02/03-1465)

Decided February 10, 2004

R. Stanbury (Chair), M. Ziniak (Vice Chair), H. Hassan, M. Maheu,
M. Oldfield and J. Pungente

THE FACTS

CILQ-FM (Q107, Toronto) broadcasts the *John Derringer Show* from 5:30 to 9:00 am daily. The show has a regular segment, during which the host criticizes a specific person, whom he designates as "Derringer's Tool of the Day". On the May 29, 2003 episode, Derringer's target was a judge of the Ontario Court of Justice. The host based his choice on the allegedly lax sentence handed down by that judge in a case involving the possession of child pornography. The text of Derringer's comment (without the references to the name of the judge, which, given the nature and source of the complaint, would only exacerbate the complainant's concerns) was as follows:

Well, there is certainly no shortage of tools these days between Ernie Eves and the disappearing act he's done in our province during an obvious time of crisis to the Prime Minister, who continues to antagonize the government of the United States at a time, when, as we just discussed, I mean, the ignorance of American people concerning SARS and everything else, we need all the goodwill we can get, and what does Chrétien do but go take a shot at the American economic policy and just make them wonder about us a little more. We need some conciliation here with the United States, we don't need some more ... but, of course, with the Prime Minister, it's all personal.

Anyway, there is so much going on in town but this story I read this morning, and I've already got a couple of emails from people on it, because we did this a few months ago, and, look, I know it's a subject people don't wanna talk about, it's a subject people don't wanna hear about, but it's a subject that, I think, is very important to deal with at times like this. And I say "times like this" when we still have the killer of a 10 year old girl out there somewhere, killer or killers, I suppose. The justice system may not, but I can draw a clear line and a very

straight line between the death of a Holly Jones and the story I'm about to tell you.

Yesterday, a judge, supposed Justice named [Justice X], gave Yong Jun Kim a nine month conditional sentence for possession of some incredibly sick child pornography. Now, first of all, if there's any defence of [Justice X], the judge, and there is very little, it's that we don't have laws similar to those in Britain and the United States where, to the best of my knowledge, what this guy did would be an automatic ten-year sentence in the States or in England.

According to those involved with the Toronto Police, quoted in the story in the *Toronto Sun* this morning, Toronto is becoming one of the leaders in the world in child pornography, and it's not a distinction we want. Anyway, this guy had set up a system whereby he was trading files, 20 year old kid, trading files of vicious disgusting child pornography, including forced fellatio, intercourse, bondage, and some bestiality, featuring kids as young as infants. The judge gave him a nine month stay-at-home sentence.

Here is what I truly believe has to happen, and under normal circumstances I wouldn't wish this upon anybody, but there's gotta be some changes made here. What is gonna have to happen at some point in this province is that a Justice like [Justice X] is gonna have evidence brought into court in a case like that of Yong Jun Kim, and it's gonna be his kid being forced to perform fellatio on a man and sent around the world on the Internet. It's gonna be his grand-daughter forced to perform acts of bestiality. It's gonna be a friend of the family who is forced to do something disgusting and then see it shipped around the world via the Internet.

Here is what Justice [X] says is his reason for giving such a light sentence. He said it was the most meritorious case he's seen for a conditional sentence. It was warranted because Kim is young, it was his first offence, he had a previously good character, and he didn't profit from the enterprise. Well, you know what? One of these days Yong Kun [sic] Kim, in my belief, is gonna say "I'm getting tired of looking at all this child pornography. I think I'll go out and sodomize and kill a 5 year old." That, to me, is the natural progression, and if you wonder why that we have guys like the one out there or ones who killed Holly Jones, it's because we have a system that allows them to continue on throughout their adult life, to the point where looking at pornography is no longer enough.

[Justice X], you are disgrace to our justice system, you are disgrace to our society, and as much as I would like to see it, I can't bring myself to hope that, one day, it is your kid who is doing what was performed on the videos in Yong Jun Kim's possession. And make no mistake, we'll hear about Yong Jun again.

The complainant was the former spouse of the Justice and the mother of their three children. On June 19, she sent the CRTC the following complaint, which was forwarded to the CBSC in due course.

I would like to lodge a complaint against John Derringer of CILQ-FM for the station Q107 at 107.1 FM in Toronto for his "Tool of the Day" program on Thursday May 29, 2003 at approximately 8:20 a.m. in which he named my ex-husband the Tool of the Day for a judgment he gave to a child pornographer. Mr. Derringer, who was not in the court room and could not have heard any of the facts of the case or that the law as presented by the Crown suggested the sentence as given by my ex-husband (who was the Judge - [Justice X]), then went on to suggest that maybe Mr. [Justice X]'s children should be raped or

sexually assaulted so that he would know how it would feel. I live with our three children. We were then subjected to police surveillance, and were told not to leave the children alone, to pick them up and drive them to school, or to allow them to go home for lunch, or to see their friends, or to answer the phone, in case one of the listeners of Q107 was unstable and decided to act on Mr. Derringer's ill-advised idea and assault any or all of my children. In effect, he was inciting a criminal act against innocent children. We have suffered fear and anguish as a result of his broadcast, not to mention severe inconvenience and distress at the lack of freedom for me and my children this has caused.

On July 10, the General Manager of the station responded to the complainant in part as follows (the full text of all of the correspondence is included in the Appendix):

The Program, like many radio shows, can sometimes be controversial in nature and not for everyone's taste. However, many of Q107's core audience, which is mainly adults in the 25-54 year old age group, in particular, men, find the Program humorous [*sic*].

The Program regularly features Derringer's "Tool Of The Day" which includes observations of recent occurrences. On May 29, 2003, the Program host discussed the criminal sentence ordered by [Justice X] of the Ontario Court of Justice, in the case of the possession of child pornography by Yong Jun Kim. The Program host expressed his outrage at what, in his opinion, appeared to be a lenient sentence. The Program host called for tougher penalties and, in that context also said that, although he would not wish it on anyone, it would take a case where a judge's children were victimized in pornographic material before sentencing would change. Please be assured that the Program host was merely expressing his opinion on a controversial subject and did not intend to suggest anything improper. At Q107, we believe that no one should be a victim of childhood violence and no one should encourage it. We agree that the host should not have made statements that could be potentially misinterpreted as a call to commit violence against the judge's family.

We have reviewed your concerns internally and have had discussions with our on-air staff about appropriate on-air content. Please be assured that we take our responsibilities as a broadcaster seriously. Our producers and hosts are sensitive to the substance of the various topics presented on Q107 and we work to ensure all our programming complies with the *Broadcasting Act*, the *Radio Regulations* and the Code and standards required of us as a member of the CBSC. As you know, we offered to read an apology on-air regarding this matter but we were unable to agree to reach an agreement with your lawyer regarding the appropriate wording of such an apology.

On July 18, the complainant sent her Ruling Request to the CBSC.

In the meantime, on June 24, CILQ-FM broadcast the following statement, which was read by John Derringer. The words emphasized by him are italicized.

I wanna mention that, on the morning of May 29th, I voiced my opinion on the conditional sentence that was given by [Justice X] to Yong Jun Kim for possession of child pornography, and, although I remain *outraged* by the sentence that was given, I know that [Justice X] applied the governing law to the

circumstances as presented to him. I didn't mean to suggest anything improper at all and apologize for *any* statement suggesting otherwise.

THE DECISION

The Ontario Regional Panel considered the complaint under the following provisions of the Canadian Association of Broadcasters' (CAB) *Code of Ethics*:

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

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.

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;

The Ontario Regional Panel read all of the correspondence and listened to recordings of the John Derringer comment and the host's brief apology. The Panel finds that the comment was in breach of both of the foregoing provisions and that the effect of the comment was not mitigated by the subsequent brief statement of the host.

The Expression of Editorial Opinion

CBSC Panels have frequently been called upon to respond to complaints registered by listeners (or viewers) who have disagreed with the expression of an on-air editorial or opinion. Such complaints generally reflect either a differing view of a social or political philosophy or a concern with the method of presentation of an opinion. In the first category of complaint, Panels will generally respond by citing this Panel's long-standing and principle-defining decision in *CKTB-AM re the John Gilbert Show* (CBSC Decision 92/93-0179, October 26, 1993).

Nothing can be more fundamental to the principle of freedom of speech enshrined in the *Charter* than the entitlement of an individual to express a differing view on a matter of public concern, including government policy.

Similar statements of principle can be found in several other decisions. In *CHOM-FM and CILQ-FM re the Howard Stern Show* (CBSC Decision 97/98-0001+, October 17-18, 1997), for example, the Quebec and Ontario Regional Panels held that the host's political and historical observations differed in nature from other categories of unacceptable comments.

Those comments relating to the state of radio in Canada, the use of English in Quebec, the value of French culture, Canada as an appendage of the United States, the role of the vanquished French in Vichy France, the issues relating to separatism, and so on, are the host's *opinions* and, unless utterly and irresponsibly uninformed [...] they are his to espouse. [...] It is the view of the Regional Councils that these political and historical comments fall squarely within the bounds which freedom of expression is meant to protect.

In *CFTO-TV re "Tom Clark's Canada"* (CBSC Decision 97/98-0009, February 26, 1998), this Panel dealt with a segment of a newscast in which two commentators discussed Canada's immigration and refugee policies in the aftermath of a report aired on Czech television which promoted Canada as a safe haven for Roma gypsies. In response to a complaint that one of the commentators made "derogatory and demeaning comments [...] concerning immigrants and refugees", the Panel found that

Mr. Duffy's remarks did not focus on Roma gypsies. Rather, they targeted Canada's refugee policy and the passive response of the Minister of Immigration to the Czech report which made Canada "the flavour of the month". Such an expression of political views falls squarely within the ambit of freedom of expression.

Finally, for present purposes, the Ontario Regional Panel refers to a statement of the B.C. Regional Panel in *CFUN-AM re The John and JJ Show (Immigration Policy)* (CBSC Decision 97/98-0422, May 20, 1998).

The Council notes that, while freedom of expression has its limits in Canada, the freedom to criticize Government policies and practices is a core example of freedom of expression, in some senses the very *root* of that right in a democratic system. Unless, therefore, the exploiter of that right to challenge Government policies has overstepped another equally basic standard, such as, for example, the right of members of an identifiable group to be free from abuse, that right to challenge will be sustained.

As a general principle, this Panel underscores the common generic perspective of CBSC Panels that electronic editorializing, like that in the print media, has the potential of being of great benefit and importance to broadcasters and audiences alike. At its best, when properly presented, it can be stimulating, thought-provoking, reaction-generating (pro or con) and helpful to the generation of opinion in the general populace.

The Panel, however, accords great importance to the adverb “properly” for it is not just *any* expression of opinion that carries virtue in its words and ideas. The expression of opinion should be deft and measured. It should stimulate by the responsibility of its presentation. It need not rabble-rouse to be effective. It must not, for example, climb on the back of abusive or unduly discriminatory comment by way of cheap populist sentiment to win its audience or make its point.

In the matter at hand, the editorialist had a sharply defined perspective, which, he asserted, entitled *him* to say, “The justice system may not, *but I can*, draw a clear line and a very straight line between the death of a Holly Jones and the story I’m about to tell you [Emphasis added].” He then based his argument, or an important part of it, on the following line of reasoning:

One of these days Yong Kun [*sic*] Kim, in my belief, is gonna say “I’m getting tired of looking at all this child pornography. I think I’ll go out and sodomize and kill a 5 year old.” That, to me, is the natural progression, and if you wonder why that we have guys like the one out there or ones who killed Holly Jones, it’s because we have a system that allows them to continue on throughout their adult life, to the point where looking at pornography is no longer enough.

He had, in a sense, convicted the young man, not only of the offence he *had* committed but also of others he had not, on an *anticipatory* basis. The Panel does not consider Derringer’s position, his self-described “straight line” relationship between possession of child pornography and the *murder* of a child, justifiable. If anything, it was excessively and improperly dramatic. Moreover, it appears to the Panel that he did not do *any* research before making the assertion that

it’s that we don’t have laws similar to those in Britain and the United States where, to the best of my knowledge, what this guy did would be an automatic ten-year sentence in the States or in England.

By simply using the phrase “to the best of my knowledge”, he cannot duck responsibility for the bold assertion that “what this guy did would be an automatic ten-year sentence in the States or in England.” Despite his focussed statement, he did not look at Section 2252 (b)(2) of Title 18 of the (federal) *United States Code*. Had he done so, he would have learned that a person convicted under Section 2252(a)(4) “shall be fined under this title or imprisoned *not more* than 5 years, or both.” Had he verified the *Criminal Justice and Court Services Act, 2000* of the United Kingdom, he would have found that 5 years is also the *maximum* sentence in that jurisdiction. The same is true under the *Child Trafficking and Pornography Act, 1998* in Ireland, where, like Canada, there is the possibility of conviction either as an indictable offence or as the less punitive offence punishable on summary conviction. Now, the Ontario Regional Panel has no more sympathy for the criminal offender than the judge or Derringer had but the broadcaster’s approach was not reasoned; it was unduly exaggerated.

Before flailing his verbal arms, he owed it to his listeners to have presented his underlying legal facts with greater accuracy.

To his credit, although he did not appear to do this on a disinterested basis, Derringer provided the judge's rationale for the sentencing. He said

Here is what Justice [X] says is his reason for giving such a light sentence. He said it was the most meritorious case he's seen for a conditional sentence. It was warranted because Kim is young, it was his first offence, he had a previously good character, and he didn't profit from the enterprise.

In fact, though, he had set up the judge's reasons as a straw argument, to be criticized for what he alleged was an improper conditional sentence "for possession of some incredibly sick child pornography." On this issue, he was of course free to disagree with the sentencing conclusion reached by the judge. It is not with that point that the Panel is concerned. It is rather that the Panel regrets that he did not find a more thoughtful and careful way of reaching that position.

What was, however, far worse was the fact that the Derringer comment was not restrained by the intellectual or policy perspective. He was not satisfied by pummelling Justice X's judgment; he then proceeded to tear apart *the judge* on a personal level. Derringer's exaggerated statements included references [emphasis added in each instance] to "a judge, *supposed* Justice named [Justice X]," "if there is any defence of [Justice X], the judge, *and there is very little*", and "[Justice X], you are disgrace to our justice system, you are disgrace to our society." The Ontario Regional Panel finds the John Derringer commentary in breach of Clause 6 of the *CAB Code of Ethics*, first, because of the improper verification of fundamental factual information relating to the legal position of criminals successfully prosecuted for possession of child pornography, and, second, because of the *personal* attacks on the judge.

Incitement to Violence

What concerns the Ontario Panel is that not even the foregoing exaggerated comments sufficed. Derringer proceeded to extend the effect of his verbal criticism to the *family* of the judge. "What's gonna *have to happen* at some point in this province," he urged, "is that a Justice like [Justice X]"

is gonna have evidence brought into court in a case like that of Yong Jun Kim, and it's gonna be his kid being forced to perform fellatio on a man and sent around the world on the Internet. It's gonna be his grand-daughter forced to perform acts of bestiality. It's gonna be a friend of the family who is forced to do something disgusting and then see it shipped around the world via the Internet.

Have to happen? The assumption is unreasonable. Not only does the host assume that he is right (fair enough) but that the only way to *teach* the judge the

way to the light is to urge an unpardonable occurrence. He concluded that, “as much as I would like to see it, I can’t bring myself to hope that, one day, it is your kid who is doing what was performed on the videos in Yong Jun Kim’s possession.”

Another rhetorical device on his part. The Panel considers that his remarks would reasonably be understood by any fair-minded person as promoting or at least sanctioning violence, contrary to the provisions of Clause 9.

It has happened in the past that commentators have made unrealistic incitements to violent action, including, for example, in *CKAC re an episode of the Gilles Proulx Show* (CBSC Decision 98/99-1108, February 21, 2000), the suggestion that an atomic or neutron bomb be dropped on the home of a competitive radio host. That unreality is not the case here. The host used language that was apparently, in the view of authorities, sufficiently prone to promote or incite violence that the family of the judge required and received police protection.

The Ontario Regional Panel therefore also finds the John Derringer commentary in breach of Clause 9 of the *CAB Code of Ethics* because of the promotion or sanctioning of attacks on the judge’s family. Great harm *could* have come from all of this, quite apart from the injury caused by Derringer’s words. This is especially true when children, and families generally, are brought into such an equation.

The “Apology”

The Panel is left with the distinct sense that this “apology” expressed no regret. It does not have the appearance of being a genuine concession by its reader, John Derringer, who was unable to resist the urge to restate his point regarding the sentence, when the matter of the apology ought to have focussed to a considerable, if not overwhelming, extent on the *personal* outrage perpetrated on the judge *and* his family. It is no substitute for the explanation of the unfair and improper nature of the commentary, which will be required of the broadcaster as a part of this decision and for which the precise wording will be given at the end of this decision text.

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. In the matter at hand, the letter dealt quite pointedly with the concerns raised by the complainant and the Panel considers that the General Manager's letter fulfilled the broadcaster's obligations in this regard in this instance.

ANNOUNCEMENT OF THE DECISION

CILQ-FM is required to: 1) announce this decision, in the following terms, once during peak listening hours within three days following the release of this decision and once within seven days following the release of this decision during the time period in which John Derringer's "Tool of the Day" is broadcast; 2) within 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; 3) at that time, to provide the CBSC with that written confirmation and with air check copies of the broadcasts of the two announcements.

The Canadian Broadcast Standards Council has found that CILQ-FM breached two provisions of the Canadian Association of Broadcasters' *Code of Ethics*, in its broadcast of John Derringer's "Tool of the Day" on May 29, 2003. In criticizing a sentencing decision relating to a criminal convicted of the possession of child pornography, Derringer built an argument on a misleading assertion regarding the sentencing provisions associated with possession of such pornography in England and the United States. Derringer also made improper personal attacks on the judge. For these reasons, CILQ-FM is in violation of the terms of Clause 6 of the *CAB Code of Ethics*, which requires the "full, fair and proper presentation of news, opinion, comment and editorial." The Derringer commentary also sanctioned or promoted possible personal attacks on the children of the judge. By broadcasting those comments, CILQ-FM has also violated the provisions of Clause 9 of the *CAB Code of Ethics*.

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