
**CANADIAN BROADCAST STANDARDS COUNCIL
QUEBEC REGIONAL PANEL**

CHOI-FM re *Le monde parallèle de Jeff Fillion* (Sexual comments)

(CBSC Decision 03/04-0018)

Decided April 22, 2004

G. Bachand (Chair), T. Rajan (Vice-Chair), R. Cohen (*ad hoc*) and R. Parent

THE FACTS

During its morning show on September 3, 2003, between the hours of 9 and 10 am, CHOI-FM broadcast a discussion among the show host, Jeff Fillion, and his colleagues concerning the content of certain popular women's magazines. The host sought to make the point that magazines such as *Clin d'œil* and *Elle* (both of which were pointedly mentioned by him on air) always have a "big sex teaser" ("un gros sex-choc"), which does not generally follow through on its promise.

In support of this point, Fillion provided his audience with pseudo headlines such as "How to set yourself up on the living room carpet with your boyfriend in your vagina and your lover in your ass" ("Comment s'installer sur le tapis du salon avec son chum dans le vagin et son amant dans le derrière") and presented made-up articles such as the following (a more complete transcript is available in Appendix A to this decision, in French only):

[Pretending to read a magazine article] [translation] I know someone named Audrey who is a marketing director of a Montreal communications firm and who has many lovers and who likes to invite two of her lovers to her place. She has a glass table in her living room and likes to position herself so that her one lover, aged 42, father of two children and happily married, gets behind her in her anus, while her other lover, 64 years old, homosexual by profession, but who occasionally likes to dabble in warm, juicy places, sets himself up as well. The director from the communications firm is very happy, enjoys life to the fullest ...

He states that these are all articles about [translation] "Made-up people. They always have great jobs, are always wild, wild, wild, always have four, five boyfriends. Oh yeah, you know, one in the mouth, the other in the ear, one in the ass. Hey, if it works, it works."

A listener sent a complaint to the station with a copy to the CBSC stating that "the discussion was [translation "auditory pornography". The complainant also took issue with

the host's "criticism" of the magazines in question. His letter stated in part (the full text of all correspondence from the parties related to this matter may be found in Appendix B to this decision, in French only):

[translation]

I understand full well the importance of audience ratings for the viability of an organization such as yours; however, there are limits to influencing a population by letting individuals vomit constantly on everything that moves, by letting individuals like Fillion blithely swear, insult whomever he likes, ridicule everyone from politicians and business-people to artists and even competitor hosts.

Among other broadcasts, the one of September 3 between 9:00 and 10:00 am allowed this team, particularly Fillion, to criticize artistic magazines by blithely making fun and "bitching" as much as he liked, going so far as to make up pseudo magazine stories that would have made the Marquis de Sade turn over in his grave. This segment was not eroticism, but pure and simple auditory pornography. These people who strongly decried the scandal involving pedophilia in Quebec City are they themselves stooping to unequal lows.

Your directors of this station should be conscious of the influence that you have on society. You cannot, in the guise of showmanship, comedy or humour, say whatever or allow to be said whatever on the pretext that it is a radio show that is trying to be provocative, without having real facts to refer to. Your listeners do not all have the capacity to discern comedy from reality and, unfortunately, every such individual suffers significant harm.

[...]

You have a responsibility as a broadcaster. You operate a business that sells a service in pursuing revenues, and you have a moral obligation to avoid content that sullies the reputations of either individuals or the collective.

CHOI-FM's Legal Counsel replied to the complainant on September 29. His response stated in part:

[translation]

The excerpt which you have brought to our attention presented a critique of current affairs and, more specifically, of "showbiz". This critique was done in a light-hearted and humorous manner. We have re-listened to the excerpt in question and have come to the undeniable conclusion that it was clearly humour. Mr. Fillion parodied a typical article in a women's magazine such as *Clin d'œil* or *Elle*, a parody being, by definition, a humorous exaggeration of what is done in reality.

[...]

Contrary to what you allege, please be assured that the CRTC, the CBSC and the licensee of CHOI-FM treat listener concerns seriously. We would also like to draw your attention to the fact that the licensee has invested considerable effort to better supervise its hosts to ensure we are meeting our legal and regulatory obligations. This extra supervision does not mean that the formats of the programs presented on our station are completely different, but just that they are compliant. In that sense, the fact that our hosts treat current events and the Quebec artistic community, including print publications, with a critical eye is clearly part of

their mandate. That criticism can be marked with humour, irony and, on occasion, exaggerations and caricatures.

Is that a justification for making comments with a sexual connotation? With all due respect for your contrary opinion, we believe the answer is yes. Many television and radio stations air programs entirely devoted to sexuality during prime time and, in the guise of humour, discuss only sex in a questionable manner for a long period of time. These programs go much farther than what was broadcast on CHOI-FM in this case. Indeed, two examples, in the form of parodies, of what one can find as headlines of speciality magazines were given by the host. It was not a program dedicated to the subject and, if sexuality was mentioned, it was only in the context of this parody because that subject is constantly treated in this type of magazine which sold freely.

Our analysis leads us to the following conclusions. There was nothing in the comments that was extremely vulgar or surpassed the limits allowed by freedom of expression and the high quality standards outlined in the *Broadcasting Act*. Sexuality is not a prohibited topic on radio, especially if it is clearly in a comedic context. Humour is particularly important in that the subjective perception of whoever is watching or listening can mean what is funny to one person is not to another. We understand and note that you did not appreciate this type of humour. We did not identify any repeated swearing in the segment in question. Consequently, the segment in question violated neither the *Broadcasting Act* and its related regulations, nor CHOI-FM's Code of Ethics and, given the context, did not violate the provisions of the *Sex-Role Portrayal Code* or Clause 9 of the *CAB Code of Ethics*. The other CAB codes are not relevant.

Moreover, with all due respect for your assertions, in the licensee's view, a reasonable listener would have been able to form his own opinions and would know how to make the appropriate distinctions, notably when it comes to parody and caricature. You yourself did so since you indicated in your complaint that these were "pseudo magazine stories that would have made the Marquis de Sade turn over in his grave" (emphasis added).

The complainant was dissatisfied with the broadcaster's response and stated (in part) in an e-mail to the CBSC on October 1:

[translation]

This response is deceiving in the sense that the lawyer says he analyzed the program during the referenced time period and did not judge it advisable that the host modify his behaviour, considering that "it was humour"!

There is an obvious admission that there was vulgar language when, among other things, the lawyer says: "There was nothing in the comments that was extremely vulgar ..." Can we conclude that even if it was not "extremely" vulgar that it was at least vulgar? Then the lawyer says: "We did not identify any repeated swearing in the segment in question". Evidently repetition within the span of one hour cannot represent the overall behaviour of the host, who, very frequently, swears. How many must we count in a month or a year for it to be considered inappropriate?

THE DECISION

The CBSC's Quebec Regional Panel considered the complaint under the Canadian Association of Broadcasters' (CAB) *Code of Ethics*, the relevant provisions of which read as follows:

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 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 the radio broadcasters to ensure that programming on their stations does not contain:

[...]

(b) Unduly sexually explicit material;

The Quebec Regional Panel reviewed all of the correspondence and listened to a tape of the program. It considers that the discussion was unduly sexually explicit for broadcast as part of CHOI-FM's morning show.

Sexually Explicit Humour

The complainant states that the segment in question was [translation] "auditory pornography [...] that would have made the Marquis de Sade turn over in his grave." While the Panel makes no determination with respect to pornography, which is a criminal matter, and does not adopt the complainant's colourful description, it does agree that the concocted headlines and articles presented by Fillion on the morning of September 3 were unduly sexually explicit. There was nothing equivocal about the broadcast; there was neither the innuendo nor the *double-entendre* such as were present in the cases of *CFMI-FM re Brother Jake Morning Show (Wake Up Contests)* (CBSC Decision 01/02-0875, January 14, 2004), *CFRQ-FM re Morning Show ("Faking It" Contest)* (CBSC Decision 01/02-1137, March 7, 2003) or *CIGL-FM re a song entitled "The Bad Touch"* (CBSC Decision 99/00-0654, October 12, 2000). Nor could it be said that the comments were understated or subtle in any way. They were plainly and simply explicit, and unduly so. Indeed, the made-up material was at least as explicit as the content which was found in breach of applicable standards relating to unduly sexually content on radio by the B.C. Regional Panel in *CFMI-FM re Brother Jake Morning Show* (CBSC Decision 00/01-0688, January 23, 2002). In that case, the B.C. Panel agreed with the complainant that the dialogue where the host explained how he was "givin' it to her" on a workbench and "she's goin' nuts grabbin' my nuts" and the audio comedic sketch of a woman crying out in the throes of passion "Oh, the tongue!" and "Oh, the finger!" were unduly sexually explicit for radio. This case warrants a similar finding.

The broadcaster contends that a critique using the rhetorical tools of humour, irony, exaggeration and caricature justifies the broadcast of the sexual content in this case. The Panel disagrees. The position put forth by the broadcaster in this case is a variation of the so-called "Comedic Defence", which was first dealt with and rejected in *CHOM-FM and CILQ-FM re Howard Stern Show* (CBSC Decision 97/98-0001+, October 17-18, 1997).

That defence is usually proposed by a broadcaster in an attempt to justify some form of commentary, frequently discriminatory matter, which would not, but for its intended humorous nature, be at all justifiable. The comedic defence appears to have grown out of the CBSC's decision in *CHUM-FM re Sunday Funnies* (CBSC Decision 95/96-0064, March 26, 1996), where the Ontario Regional Panel stated:

The Council 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.

That a comedic environment may create a different atmosphere where comments may, exceptionally, be acceptable is the first level of principle. At a secondary level, there will be an assessment of the nature and extent of those comments. The Panel will assess whether they are likelier to "tickle" than be "nasty", to "poke fun" rather than to "bludgeon" (*CHFI-FM re The Don Daynard Show* (CBSC Decision 94/95-0145, March 26, 1996)). In other words, the comedic intention of the broadcaster does not inevitably lead to the conclusion that "anything goes". As aptly stated in the decision of the Prairie Regional Panel in *CJAY-FM re Forbes and Friends (Multiple Choice "Quiz")* (CBSC Decision 02/03-0638, December 15, 2003), "Comedic intention is not [...] a defence to a broadcast that would otherwise breach the Human Rights Clause of the *CAB Code of Ethics*. Comedic intention does not, in other words, sanitize or rehabilitate material that is unduly discriminatory under that provision." Put in other terms, intention, whether to be comedic, satiric or analytical, does not change the characterization of what was *actually* broadcast. That a host, or a broadcaster, "intended" to be funny, or to be presenting a critique, is no justification. In the application of broadcast standards, purpose and intention do not outweigh execution. It was on that rock that the broadcaster foundered in *CFRA-AM re The Lowell Green Show (Somalia Commission Report)* (CBSC Decision 96/97-0238, February 20, 1998). In that case, the Ontario Regional Panel stated that it

understands perfectly well that Lowell Green was trying to ridicule the decision of the Federal Government to disband the Somalia Inquiry. It is apparent that he was trying to achieve this result by being sarcastic and facetious. The Council does not consider that his attempt to achieve his goal was poorly conceived but it does consider that it was poorly executed. Careful thought before the fact would have led the host to understand that his comments would likely offend not only the brunt of his barbs, namely, the Federal Government, but also persons of Somali origin, as well as those right-minded Canadians who are sensitive to racial slurs about *any* identifiable group. It is hardly necessary to say that the Council has no quarrel with the offence that might have been taken on the political side of the issue but it *does* consider that Lowell Green's failure to defuse at any point the racially offensive component of his remarks put him in the same situation as Brian Henderson in the *CHUM-AM* case.

The effect of his rhetorical attempt to skewer the political decision-makers was not, as it could have been, moderated so as *not* to skewer the compatriots of the slain teen-agers. He thus undermined the legitimacy of his own argument in that aspect of it which offended Clause 2 of the *CAB Code of Ethics*. This was made the more so true by his *repetition* of the offensive statements without, at any time in the show, offering *any mitigation* which would have left the sarcastic element operational *vis-à-vis* the actual target but not *vis-à-vis* the unintended target. Moreover, he had the perfect opportunity to offer that mitigation or at least some moderation of his position in his response to the caller Ashouk, who, after all, had missed the irony and could have been assumed not to be the only such listener in that position.

Nor is the subjectivity of humour the issue, as the broadcaster contends in its response. That one person might be amused when the complainant is not is scarcely the issue. The CBSC administers *standards* and these are not subjective. Indeed, in the case at hand, Fillion could, in fact *ought* to, have made his point without going so far as to include the unduly sexually explicit content. Contrary to what is argued by the broadcaster's Legal Counsel in this case, it is the view of the Panel that the context of Fillion's remarks exacerbates rather than justifies the inappropriateness of the sexually explicit descriptions.

Disparaging the Reputation of the Magazines in Question

The complainant makes general allegations that the host has ridiculed politicians, merchants and artists. His only support for this position, however, is the reference to the discussion of the magazines indicated above. The Panel understands the complainant's comments to be related to the broader reputation of the host as the on-air source of nasty and mean personal attacks of both public and private figures [see for example the Quebec Regional Panel's decision in *CHOI-FM re Le monde parallèle de Jeff Fillion* (CBSC Decision 02/03-115, July 17, 2003)]. It is not, however, of the view that the comments were out of order in this respect on this occasion.

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 component 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 this case, while the lengthy letter from the broadcaster's Legal Counsel did not satisfy the complainant, it did address all the issues and provided the broadcaster's perspective on the matter. It amply fulfilled the requirement of responsiveness. Nothing further is required in this regard.

CONTENT OF THE ANNOUNCEMENT OF THE DECISION

CHOI-FM is required to: 1) announce this decision, in the following terms, once during prime time 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 *Le monde parallèle de Jeff Fillion* is broadcast; 2) within fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the announcements 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 CHOI-FM.

The Canadian Broadcast Standards Council has found that CHOI-FM has breached the provision of the Canadian Association of Broadcasters' *Code of Ethics* which prohibits unduly sexually explicit content on the radio. During the episode of *Le monde parallèle de Jeff Fillion* of September 3, 2003, CHOI-FM broadcast a satirical discussion which contained graphic sexual descriptions, which were unduly explicit. Consequently, the broadcast was in violation of Clause 9 of the *Code of Ethics*, which requires that particular care shall be taken by radio broadcasters to ensure that programming on their stations does not contain unduly sexually explicit material.

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