
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL PANEL**

CHWO-AM re an episode of *Durant's World*

(CBSC Decision 04/05-0447)

Decided May 24, 2005

B. Bodnarchuk, R. Cohen (*ad hoc*), H. Hassan, M. Maheu

THE FACTS

On October 6, 2004, during the 8:30 am news report, CHWO-AM (AM740, Oakville) news announcer Bob Durant reported the following:

The Supreme Court of Canada will hear arguments for both sides on the issue of same-sex marriage starting today. Twenty-eight briefs will be presented on the controversial issue over the next three days.

Each weekday, following the 8:30 am news, Bob Durant does a short opinion piece, called *Durant's World*, in which he provides his thoughts on one of the day's news stories. The October 6 *Durant's World* commentary was as follows:

It's time for *Durant's World*, a comment on the world today with Bob Durant. Heard weekday mornings at eight thirty-five and afternoons at five thirty-five. On AM740.

The Supreme Court of Canada is going to be up to its eyeballs in legal briefs over the next three days as the controversial issue of same-sex marriage is debated. The Federal Government says it will bring a same-sex marriage bill before Parliament the moment the high court gives it the go-ahead. Justice Minister Irwin Cotler says neither he nor his government have ever wavered in their desire to see same-sex marriage become law. Cotler denies reports that a secret plan has been hatched to delay the legislation until the fall of 2005. Twenty-seven interveners, religious groups, gay rights groups and provincial governments are scheduled to make legal arguments in the historic case before the highest court. Given the fact that Canada is predominantly a liberal country, with liberal laws, one would have to think that the Supreme Court will rule that the proposed legislation is constitutionally correct, given its strong record of supporting litigants using the *Charter of Rights Equality* clause to assert their

rights. There are times I do not agree with certain aspects of the *Charter*, especially when criminals invoke them, but this time there's no question: You've gotta support same-sex marriage. Why should gays and lesbians be called on to pay taxes and assume all other responsibilities of Canadian citizenship yet, when it comes to marriage, be treated as second-class citizens? It has never made sense to me and it never will. I've never said this on the radio before, but our daughter Keri is a lesbian and certainly this influences our thinking on the same-sex marriage issue. Of course it would. Kathryn and I feel so strongly about it, we have left the Catholic Church because that institution will not accept our daughter. Surely we can rely on our country to accept her, giving her equality under the law that she deserves. You're in *Durant's World* on AM740.

The CBSC received a complaint from a listener, dated October 8, about this CHWO segment. The listener explained his concerns in part as follows (the full text of all correspondence can be found in the Appendix):

Bob Durant has a daily spot following the news in which he expresses his opinion on a particular subject area each day. On Oct. 6/04, he was commenting on his approval of same-sex marriages. He said that he has a personal interest in this subject, since his daughter is a lesbian. His next remarks were entirely inappropriate. He stated that the Roman Catholic Church is against gays, and he, therefore, stopped attending the Catholic Church.

The Catholic Church welcomes gays, but they are not able to receive the sacraments. This is the same conditions [*sic*] that exist for a heterosexual couple who are involved outside of marriage. Mr. Durant had no more right of commenting on his personal vendetta against the Catholic Church than he has to make comments against any other religion on the air. What would have happened if he had made comments against the Jewish faith? He would have been called an anti-Semite, and action would have been taken. I feel that this open attack against the Catholic Church is just as serious. Many other groups and religions are against same-sex marriages, and for Mr. Durant to single out the Catholic Church is uncalled for.

I would appreciate you investigating this matter.

The complaint was forwarded to the CBSC by the CRTC on October 26. On November 2, as per its customary procedure, the CBSC forwarded the complaint to CHWO and asked them to respond to the complainant within 21 days. The CBSC also sent a letter to the complainant informing him that he would be receiving a response from the broadcaster shortly and that, if he was not satisfied with CHWO's reply, he could request that the CBSC investigate the matter.

On December 3, the CBSC received the following e-mail from the complainant stating that 32 days had elapsed and he had still not received a response from the radio station. On December 8, the CBSC sent a letter to CHWO requesting that they respond. That same day, CHWO replied to the CBSC. It explained that the complaint had been inadvertently misfiled and that they would be writing to the complainant as soon as possible.

Since the CBSC still had not received any broadcaster response during almost the full month of January 2005, it sent another written reminder to CHWO on January 26. When no response was forthcoming, the CBSC National Chair telephoned the President of CHWO on February 16 and again on March 31. On both occasions, CHWO apologized and assured the CBSC that it would be responding shortly. Since CHWO still had not replied by April 13, on that date the CBSC National Chair informed the President of CHWO that the matter would need to be adjudicated by the CBSC Ontario Regional Panel.

The President of CHWO sent tapes of the broadcast to the CBSC on April 29 with the following accompanying letter:

I realize that AM740 has taken an unacceptable length of time to answer the frequent requests from CBSC for the station to respond to [the complainant]'s complaint regarding this episode of *Durant's World*. I accept full, complete and personal responsibility for this and to the Council and [the complainant] I offer my heartfelt apologies. It is not the policy or practice of this station to let the expressed concerns of listeners about any of AM740's programs go unanswered and I deeply regret having let this particular complaint go on for so long unresolved on my part.

For your consideration, I am including with this package the script of Mr. Durant's commentary of October 6th, 2004, along with a few of the many emails we received from listeners in favour of and praising Bob's position on the subject. I would also like to point out that AM740 invites its listeners to respond and comment on any of our programming by emailing us. We air our listeners' questions, comments and reactions to our programs, be they good or bad, each Tuesday and Thursday morning at 8:20 am. Perhaps it should be noted that [the complainant] did not avail himself of this opportunity.

Nevertheless, that does not excuse AM740's failure to respond to [the complainant]'s concern and I will honour and respect whatever action the Standards Council deems necessary following its deliberations in this matter.

THE DECISION

The Ontario Regional Panel examined the complaint under the following provision of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* and the following sections of the *CBSC Manual* dealing with the responsibilities of membership and the complaints resolution process:

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.

CBSC Manual, Responsibilities of Membership

Broadcaster members which join the CBSC do so voluntarily and, by so doing, agree to:

[...]

g) co-operate fully with complainants by responding quickly and effectively to their concerns and informing them of their right to bring the matter directly to the CBSC if they are dissatisfied with that reply

CBSC Manual, Complaint Resolution Process

A copy of the complaint will [...] be forwarded to the broadcaster with the request that the member respond to the writer of the complaint within 21 days. The Secretariat expects that the complaint will be given that priority by the broadcaster; however, should there be extenuating circumstances, such as a deluge of complaints, application should be made to the Secretariat by the broadcaster for an extension of that deadline.

The Ontario Regional Panel finds no breach of the Human Rights clause of the *CAB Code of Ethics* but it does find that CHWO failed to meet its responsibilities of CBSC membership in its failure to respond to the complainant.

Abusive or Unduly Discriminatory Comment?

On the substantive aspect of the Bob Durant commentary relating to the Catholic Church, the Panel finds that the broadcaster did not breach Clause 2 of the *Code of Ethics*. The essence of the commentary related to the proposed Government legislation on same-sex marriage and, in that regard, Durant considered it important to disclose as a material aspect of his position on the subject that his daughter was a lesbian. He added, as an almost incidental matter, in order to emphasize the strength of his position, that he and his wife had had to give up something that was, it appeared, dear and important to them, namely, the Catholic Church, on account of the Church's unaccommodating stand on the sexual orientation of their daughter. He expressed this by the simple statement, "Kathryn and I feel so strongly about it, we have left the Catholic Church because that institution will not accept our daughter." In other words, he commented only on the Church's stance on sexual orientation. The complainant even acknowledged, in his letter, that the Catholic Church *does* treat gays and lesbians differently, in that "they are not able to receive the sacraments" but he seemed to accept that this is a difference in treatment without a distinction. The Panel does not share that view. The disenfranchisement of *some* members of the Church to receive the sacraments is reasonably material to the disenfranchised, of whom Durant's daughter would be one and this was material to *him*.

The logical conclusion of the assertion that, if the comment had been made about another religious group (persons of the Jewish faith are suggested), the

commentator would have been called, in such an instance, “an anti-Semite, and action would have been taken” would in effect deprive Bob Durant of his ability to take any position with respect to the Catholic Church (or any other religious body). The Panel strongly disagrees with the assertion. While it has no Jewish example in its jurisprudence, it does have examples of other religions whose positions on political matters were found to legitimately be the subject of critical language on the part of a broadcaster.

In the case of *CJXY-FM re the Scott and Lori Show* (CBSC Decision 96/97-0239, February 20, 1998), this Panel found that a religious organization was not entitled to be shielded from critical comment by reason of its acknowledged status as a religious organization since it had chosen to intervene in an area of political commentary. That case dealt with a complaint regarding a morning show host’s use of the word “Wackos” to describe the Southern Baptists who had voted at their recent convention to boycott Disney for its relationship with the television series *Ellen* on the grounds that the star of the show, both in real life and her on-air persona, was gay. The Panel did not find the broadcaster’s comment to be “anti-Christian”:

The decision in this matter ultimately turns on the Council’s understanding of the use by co-host Lori of the term “Wackos”. It is only if the epithet were directed at the Southern Baptists by reason of their *religion* that the Council could find that the broadcaster was in breach of the Code. If the epithet were, on the other hand, directed at the admittedly religious group by reason of something other than their religion (race, national or ethnic origin, colour, age, sex, sexual orientation, marital status or physical or mental handicap not being relevant to this matter), then the conclusion would likely be different. In the view of the Council, the epithet was not directed at the religious group by reason of anything other than the group’s stated boycott of Disney by reason of their association with the television series *Ellen*. That stance by the Baptists was, in the Regional Council’s view, an economic action regarding a political issue. There is, of course, no doubt whatsoever regarding the entitlement of the Southern Baptists to hold and to express its views on controversial matters of a political or publicly controversial nature. The point is only that, if they choose to do so, they render themselves fair game on the public playing field of political controversy. They cannot expect that they have the right to *publicly* express controversial political opinions and to be sheltered by reason of the fact that they are a *religious* group from the resulting fallout from the ideological seeds which they have sown.

In dealing with essentially the same political issue, in *CJBK-AM re Brian Henderson Commentary (“Southern Baptist Convention”)* (CBSC Decision 96/97-0253, February 26, 1998) this Panel stated the following with respect to a different commentary on the decision of the Southern Baptists to boycott everything Disney. The Panel concluded that “the commentary addresse[d] a socio-political issue (*i.e.* the place of religion in business and politics) and [was] not a comment, abusive or otherwise, about the religious right *qua religious group*.” The Panel’s decision was unequivocal on the issue of Brian Henderson’s entitlement to comment on the Southern Baptists’ decision to boycott Disney:

In reaching this conclusion, the Regional Council finds no fault with the Southern Baptists' position on the issue; their political stance is their business and their entitlement to publicize it their right. It is just to say that, in so doing, they place themselves in the public arena, justifiably open, in the purest democratic sense, to the criticism, even if exaggerated, of those who do not share their political/economic perspective.

In yet another decision involving religions other than Catholicism alone, the National Specialty Services Panel examined a complaint about a documentary, which included interviews with prominent feminists who provided their opinions on a variety of topics including pornography, marriage and divorce, cultural differences, religion and politics. In *W Network re My Feminism* (CBSC Decision 01/02-1120, February 28, 2003), that Panel noted that there were in fact comments, both positive and negative, made about Catholicism and other religions. Given the context of the comment and the overall balance of the documentary, the Panel found no Code breach:

The point is that there were at least five other religions than Catholicism discussed, commented on or criticized in *My Feminism* and the alleged uniqueness of the focus targeted by the complainant is simply not justified by the review of the documentary program. Moreover, the Panel is duty-bound to point out that there is no obligation for a filmmaker or his or her broadcaster to be uncritical of the subject treated. Criticism is not alone the equivalent of unduly discriminatory comment. It is unjustified, unsupportable criticism that fails the test. It is casual, gratuitous, foundation-less criticism that cannot stand the bright light of the private broadcasters' codified standards. There is none of that here. It is not the critical but thoughtful view of the single Irish Catholic speaker, which can fairly be considered in isolation, but the presentation of the entire documentary which must be assessed collectively. As to the religious issue, it is reasonably balanced, fair and credible. There is no breach of the Human Rights Clause of the *CAB Code of Ethics*.

The Ontario Regional Panel concludes similarly here. It finds that Bob Durant's comment was one on an issue of policy, one on which many religions have positions, it is true. His comments were, however, limited to the religion with which he and his wife were acutely familiar and from whose position they had personally suffered repercussions related to the very issue on which he (and *many* other Canadian commentators, in print and on the air) were expressing a perspective. The Panel considers that his comments were not at all discriminatory, much less unduly discriminatory. There is no Code breach on this account.

Broadcaster Responsiveness

Broadcaster responsiveness is always an issue considered in CBSC adjudications. The CBSC considers that the dialogue between broadcasters and complainants is an extremely positive component of the self-regulatory process, to the point that it is in fact a membership *responsibility* of all CBSC broadcaster members. On the issue of broadcaster responsiveness in this instance, the

Panel finds that CHWO has violated a fundamental condition of membership in the CBSC. It also does not understand why this has occurred, given that, on the basis of its past decisions, the substantive determination in the file is so clear. It has been a very long time since this Panel has rendered a decision against a broadcaster on the grounds of its failure to respond substantively to a complainant; however, that did occur almost 12 years ago in *CFTO-TV re News Report (Pollution Study)* (CBSC Decision 92/93-0178, October 26, 1993). In any event, the Panel faces the same situation today. For reasons of its own, the broadcaster failed, not without some regret, it appears, to respond at all to the complainant and it is, on that account, in breach of its responsibilities of CBSC membership.

ANNOUNCEMENT OF THE DECISION

CHWO-AM is required to: 1) announce the 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 this episode of *Durant's World* 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 CHWO-AM.

The Canadian Broadcast Standards Council has found that CHWO-AM violated one of its responsibilities of CBSC membership for its failure to respond to a listener who filed a complaint with the CBSC. CBSC broadcaster members are required to respond to complainants in a timely and thorough manner. Despite several requests by the CBSC, CHWO failed to respond at all to a listener who had expressed concerns about an October 6, 2004 broadcast. Although the CBSC found that the broadcast did not violate the Canadian Association of Broadcasters *Code of Ethics*, it has concluded that CHWO failed to meet its basic requirement of responsiveness to the complainant.

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

APPENDIX

CBSC Decision 04/05-0447 CHWO-AM re an episode of *Durant's World*

The Correspondence

The following complaint dated October 8, 2004 was sent to the CRTC and forwarded to the CBSC in due course:

Dear Sirs:

Re: Bob Durant of radio station 740 AM Toronto

I wish to lodge an official complaint pertaining to comments made by the captioned party on the above mentioned radio station.

Bob Durant has a daily spot following the news in which he expresses his opinion on a particular subject area each day. On Oct. 6/04, he was commenting on his approval of same-sex marriages. He said that he has a personal interest in this subject, since his daughter is a lesbian. His next remarks were entirely inappropriate. He stated that the Roman Catholic Church is against gays, and he, therefore, stopped attending the Catholic Church.

The Catholic Church welcomes gays, but they are not able to receive the sacraments. This is the same conditions [sic] that exist for a heterosexual couple who are involved outside of marriage. Mr. Durant had no more right of commenting on his personal vendetta against the Catholic Church than he has to make comments against any other religion on the air. What would have happened if he had made comments against the Jewish faith? He would have been called an anti-Semite, and action would have been taken. I feel that this open attack against the Catholic Church is just as serious. Many other groups and religions are against same-sex marriages, and for Mr. Durant to single out the Catholic Church is uncalled for.

I would appreciate you investigating this matter. Awaiting your reply,

On December 3, the CBSC received the following e-mail from the complainant:

Your letter was dated Nov 2/04, and it was indicated that the radio station, CHWO, had 21 days to respond. It is now 32 days, and I have not received a response.

On December 8, the CBSC sent an e-mail to CHWO requesting that they respond within 10 days. The President of CHWO responded to the CBSC on December 8 with the following information:

I am in receipt of your correspondence regarding a complaint lodged by [the complainant] (CBSC 04/05-447) about a commentary by CHWO AM740's Bob Durant that aired in early November.

I am afraid that [the complainant] is correct – he has not had a reply from us. I have looked into the reasons why not and can only apologize to CBSC and [the complainant] for the delay which has been caused by a silly mistake on my part.

You will recall that there was a mix up right from the beginning as CBSC had in error sent [the complainant]'s complaint to CFTO-TV and what we got was a complaint from a viewer about one of CFTO's television programs. You corrected the problem very quickly but what I had done after receiving your first correspondence was to open a file and label it "CFTO". When [the complainant]'s complaint eventually arrived, that's the file I put it in and, of course, didn't think to look there again.

So, again, I apologize for my misfiling of [the complainant]'s complaint. However, we still have the relevant material on hand and I will be writing to him as soon as possible. Thank you for your patience in this matter.

The CBSC still had not received any broadcaster response in January, so on January 26, 2005, the CBSC sent another reminder to CHWO to respond:

The CBSC has received a request for a ruling from the complainant [...] with respect to his complaint concerning *Bob Durant's World* broadcast on CHWO. In filing his request for a ruling, the complainant indicates that he has still not received a response from CHWO. In your last correspondence on December 8, 2004, you indicated that you will be responding shortly but we still have not received any response from you. The CBSC hereby requests that you respond directly to the complainant within the next 10 days with a copy to the CBSC. You should know that failure to respond to complaints from the viewing audience constitutes a breach of an important membership requirement in the CBSC.

The CBSC still did not receive a response from CHWO, so telephoned the station on February 16, March 31 and April 13. The recordings of the challenged broadcast arrived at the CBSC office on April 29 with the following letter:

As requested, please find enclosed eight copies of the commentary by Morning News Editor Bob Durant that aired on AM740 – CHWO on October 6th, 2004. The data CDs are recorded in Real Audio format; however, if there is any problem in replaying them, I invite you to contact our Production Manager [...] directly at ###-###-####.

I realize that AM740 has taken an unacceptable length of time to answer the frequent requests from CBSC for the station to respond to [the complainant]'s complaint regarding this episode of *Durant's World*. I accept full, complete and personal responsibility for this and to the Council and [the complainant] I offer my heartfelt apologies. It is not the policy or practice of this station to let the expressed concerns of listeners about any of AM740's programs go unanswered and I deeply regret having let this particular complaint go on for so long unresolved on my part.

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Nevertheless, that does not excuse AM740's failure to respond to [the complainant]'s concern and I will honour and respect whatever action the Standards Council deems necessary following its deliberations in this matter.