CANADIAN BROADCAST STANDARDS COUNCIL QUEBEC REGIONAL PANEL

CKOI-FM re comments made on Y'é trop d'bonne heure

(CBSC Decision 04/05-0891)

Decided September 9, 2005

B. Guérin (Acting Chair), L. Baillargeon, R. Cohen (ad hoc), M.-A. Murat

THE FACTS

Y'é trop d'bonne heure is broadcast weekday mornings from 6:00 am to 9:00 am on CKOI-FM (Montreal). The program contains typical morning show fare, such as news and weather reports, songs and banter among the hosts. The CBSC received a complaint dated January 24, 2005 about comments that were made on an episode of Y'é trop d'bonne heure. The complaint read as follows:

I was extremely upset to hear the comments made by Mr. Claude Poirier and the team of *Y'é trop d'bonne heure* headed by host Normand Brathwaite during the January 18, 2005 broadcast of this program between 6 and 9 am on Montréal radio station CKOI FM 96.9.

A comic imitated Jeff Fillion in vulgar terms, many of which were blasphemous. For example:

- "Piss off, goddammit!"
- "Well, he's a damned piece of garbage, he is!"

Mr. Poirier also suggested that radio host Fillion is a fan of x-rated movies:

The following was also heard:

- "I could see you in a T & A movie Poirier, you bugger. I'd give it to you in every damn hole, you unholy shit!"

- I'll do a T & A movie with Poirier, goddammit!"
- "I'm gonna shove it into your brain, dammit!"

On the subject of Annie Brocoli, the singer of children's songs, the following was said:

- "Hey, you could fuck her on the hood of a car!"

This type of dialogue continued for some time.

In addition, as I am originally from the Québec City area, I was upset by the hateful comments that Mr. Claude Poirier made when he compared the Québec City area to a "cow pasture" and its inhabitants to pigs and whores.

In fact, he said the following:

- "You can very well work in cow pastures, eh? You work in cow pastures and would never come to work in Montréal; you don't have enough class!"
- "Go on working with pigs!"
- "You, Jeff, you can go back to your cow pasture; you're about ready for that. There's no room here in Montréal for you!"
- "I'm not a whore like you people in the Québec City area."

I find these comments upsetting and hurtful, and I also find that they encourage Montréalers to hate people from Québec City.

These types of comments have no place on the airwaves of a radio station and I therefore demand that this station's licence be revoked. [Translation]

The station responded on February 22 with the following explanation:

The Canadian Broadcast Standards Council (CBSC) has asked us to respond to your e-mail received on February 4, 2005. In your letter, you raised concerns regarding comments made during the program *Y'é trop d'bonne heure* aired on CKOI on January 18, 2005.

As you know, CKOI-FM broadcasts music and comedy programming as well as commentaries and discussions on various issues, some of which can be considered controversial. The program *Y'é trop d'bonne heure*, like many other radio programs, can be controversial in nature and not for everyone's tastes. Your letter raises concerns concerning a caricature that was aired in the form of an imitation of a Québec City radio host. We regret that you were offended by these comments. Be assured, however, that the host used this language in a caricatured fashion without any connotation of real hate, racism or hostility.

We appreciate that the host's comments may not appeal to some listeners' tastes. Taste is an extremely subjective element and relative to the point of view of an individual. The Canadian Association of Broadcasters' *Code of Ethics* ("The Code") administered by the Canadian Broadcast Standards Council ("CBSC") clarifies 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. 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 previous decisions, the CBSC has 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 that contain 'abusive or discriminatory material or comment' based on the foregoing which will be sanctioned." The CBSC has 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 a subsequent decision, the CBSC noted that it must be determined which comments "will be understood as crossing the boundary of acceptability. There are those which are sanctionable and those which, even if tasteless or painful to some, are not. 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. What may constitute the limits of acceptability in each challenged case will need to be appreciated in its context."5

I want to assure you that in this caricature, it was not the intention of the person imitating the character to discriminate against an individual or a group. In fact, we do not tolerate discrimination of any kind on our airwaves.

We have reviewed your concerns internally and have had discussions with our on-air staff about appropriate content and we will continue to exercise greater diligence on such matters. Please be assured that we take our responsibilities as a broadcaster seriously. At CKOI-FM, we work to ensure that 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 regret that you were offended by an aspect of our programming, for that was certainly not our intention.

We trust the foregoing responds to the concerns outlined in your letter regarding our programming. At CKOI-FM, we recognize the importance of listener feedback and appreciate all comments. We thank you for taking the time to share your concerns with us. [Translation]

- ¹ Clause 1 *CAB Code of Ethics*, Commentary
- ² CFJP-TV (TQS) re Quand l'amour est gai (CBSC Decision 94/95-0204, December 6, 1995)
- ³ CKVR-TV re Just for Laughs (CBSC Decision 94/95-0005, August 23, 1995)
- ⁴ CFYI-AM re Scruff Connors and John Derringer Morning Show (CBSC Decision 01/02-0279, June 7, 2002)
- ⁵ CKTF-FM re Voix d'accès (CBSC Decision 93/94-0213, December 6, 1995)

Dissatisfied with this response by the broadcaster, the complainant returned his Ruling Request on March 5, accompanied by the following letter:

I was very disappointed by the broadcaster's response to my complaint.

The broadcaster said in fact that he regretted that I had been offended by the comments made on the air, but not that he regretted the nature of those comments. According to the broadcaster, these comments are acceptable because they were made under the cover of a caricature and humour.

I contend, for my part, that caricature and humour are not a form of safe conduct for making hateful and discriminatory comments.

The vulgar and blasphemous terms used in this program targeted the entirety of the several hundred thousand people who make up the population of the Québec City area. These comments are unacceptable in the same way that it would be unacceptable to use hateful and discriminatory language concerning visible groups.

This is a patently serious act.

I therefore maintain my complaint and request that the CBSC render a decision. [Translation]

The CBSC requested logger tape dubs of the January 18 broadcast in question from CKOI-FM. The segment described by the complainant did not appear on the tapes supplied by the broadcaster.

THE DECISION

The Quebec Regional Panel examined the complaint under the following provisions of the *CBSC Manual* and the Canadian Association of Broadcasters' (CAB) *Code of Ethics*:

CBSC Manual, Responsibilities of Membership

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

[...]

g) co-operate fully with complainants by responding quickly and effectively to their concerns [...].

CBSC Manual, Complaint Resolution

[T]he broadcaster must take all necessary steps to ensure that the timeliness of its reply is such that the complainant is able to access the CBSC's process within the 28 day period for retention of logger tapes or that it has set aside the logger tape for the challenged program so that it will be preserved and available to ensure the security of the process.

CAB Code of Ethics, Clause 6 - Full, Fair and Proper Presentation

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:

- [...]
- (b) Unduly sexually explicit material; and/or
- (c) Unduly coarse and offensive language.

For the reasons indicated above, the Adjudicators did not have the opportunity to listen to a recording of the challenged segment. They did, however, review all of the correspondence. For the reasons provided below and, on the basis of the written material, the Quebec Regional Panel concludes that CKOI-FM breached provisions of Clauses 6 and 9 of the *CAB Code of Ethics*, as well as certain of its obligations of membership in the CBSC.

Broadcaster Responsiveness

The issue of broadcaster responsiveness is customarily dealt with as a final matter in each CBSC adjudication. Given the particular course of events and the central importance of the broadcaster's conduct in the present file, it becomes a preliminary issue rather than a matter in the nature of an epilogue.

The responsibilities of broadcasters in dealing with members of the public who have taken the trouble to express themselves in writing about some content they have seen on television or heard on radio should be seen as a continuum. They begin with the degree of co-operation they promise as a part of their participation in the self-regulatory process, which is reflected in their membership in the CBSC. This can be traced back to the regulatory document authorizing a self-regulatory process in the first place. In *Canadian Broadcast Standards Council*, Public Notice CRTC 1991-90, the Canadian Radio-television and Telecommunications Commission (CRTC) stated:

The Commission is satisfied that the complaints process that has been established is a useful mechanism for resolving public concerns about the programming broadcast by private Canadian radio and television stations. As a means of demonstrating its confidence in the Council, the CRTC hereby advises that it intends to refer complaints from members of the public about programming matters that are within the Council's mandate to the CBSC for its consideration and resolution. The Council is committed to make every effort to resolve complaints at the level of the local broadcaster. [Emphasis added]

Consequently, one of the fundamental responsibilities of CBSC member broadcasters, as established in the *CBSC Manual* (and cited above), is put in the following terms:

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 ...

The broadcaster's responsibilities begin with setting aside the logger tape of the challenged programming (when advised by the CBSC of the complaint) and responding to the complainant within 21 days of receipt of the complaint. In addition to the timeliness of the response, broadcasters are expected to "respond [...] *effectively* to their concerns [Emphasis added]." The Panel understands this language to mean that the response must reflect attention to the specific concerns of the complainant. As the Ontario Panel said in *CJRQ-FM* re *Opinion Poll* (CBSC Decision 94/95-0135, March 26, 1996),

The response of the broadcaster in this case is not unlike that in *CKVR-TV re Just for Laughs* (CBSC Decision 94/95-0005, August 23, 1995). In that case, the brief (114-word) reply was considered by the Ontario Regional Council to be "apologetic, and thus not totally *un*responsive to the viewer." In that case the Council decided that the response did not at all address "the substance of the viewer's complaint." In this matter, the station's reply was shorter (only 32 words), not at all apologetic and did not respond to *any* of the concerns of the viewer. In the circumstances, the Ontario Regional Council considers that CJRQ-FM did not adhere to the standard of responsiveness expected of all CBSC members.

And in *CIII-TV* (*Global Television*) re an episode of Seinfeld (CBSC Decision 96/97-0074, May 8, 1997), the Ontario Panel spoke of the broadcaster responsibility to

treat the complaint with respect. Ideally, the station's reply should reflect its own review of the challenged program in light of the concerns of the complainant and explain in a clear and direct fashion why the program does not violate any of the industry Codes and standards to which the station has agreed to adhere. At the very least, it ought to be responsive to the concerns of the complainant. The CBSC does understand that, from time to time, large numbers of complaints make it difficult to provide individually composed letters to *each* complainant but it has been the experience of the Council that, in such cases, few though they have been, the broadcasters have gone out of their way to try to encompass the issues raised collectively by the complainants.

Finally, in *CTV re Poltergeist - The Legacy* (CBSC Decisions 96/97-0017 and 96/97-0030, May 8, 1997), that Panel concluded that

the broadcasters' responses were inadequate for the following reasons. First, it considers that both the network's response, as well as that of the local affiliate, was very much in the nature of a boiler plate letter with respect to the upcoming

Poltergeist series. Second, both responses referred to the scheduling of the program at 10~pm, whereas these particular complaints concerned the program pilot which started at 9~pm. Third, neither response took into account the specific concerns expressed by the complainants. In this regard, the broadcasters did not fully meet their responsibilities.

In order to deliver the required response, it seems fundamental to the Panel that the individual or individuals who prepare the broadcaster's response must have reviewed the program to know what to say. Whether they agree or disagree with the complainant's assertions, unless they have heard the words, and possibly the tone, of the on-air hosts, it is difficult to imagine how what they say will be *responsive* to the complainant.

While it is difficult to *know* as a certainty that this is always accomplished by broadcasters before their representatives reply, in the matter at hand, the fact that the tapes supplied do *not* include the challenged segment, coupled with the generality and non-pertinent nature of the broadcaster's reply, imply that Corus Radio's representative(s) did not review the program before sending the letter of February 22. It is, of course, equally plausible that the complainant did not recall the correct program date and that the challenged episode of *Y'é trop d'bonne heure* was January 17 or 19. This happens from time to time; however, it is a problem generally resolved by a timely review of the logger tape recording by the broadcaster in order to ensure that it has retained the correct tape in the first place. It is in part for this purpose that the *CBSC Manual* obligates the broadcaster to "take all necessary steps to ensure that the timeliness of its reply is such that the complainant is able to access the CBSC's process within the 28 day period for retention of logger tapes or that it has set aside the logger tape for the challenged program."

Consequently, whether by not retaining and supplying the correct tape or by not replying fully and effectively to the complainant's concerns, CKOI-FM has breached certain of its obligations as a member of the CBSC.

Evidence of the Content of the Broadcast

One of the reasons for which the retention of logger tapes by broadcasters is a legal requirement (established by the CRTC) and a membership requirement (established by the CBSC) is that those recordings are essential to the adjudication process, whether at the regulatory, or the self-regulatory, level. In the present file, despite the absence of a recording of the actual broadcast, the Panel does consider that it has sufficient material to enable it to adjudicate the complaint. In the first place, the complainant has been unusually specific, even providing his own quoted recollection of dialogue. Second, the broadcaster appears, in its letter of February 22, to acknowledge the content, as described by the complainant. At the very least, the Corus Radio representative has not denied the quoted content and has responded to the material on the basis

presented by the complainant, referring specifically to "a caricature that was aired in the form of an imitation of a Québec City radio host", the host's use of "this language in a caricatured fashion without any connotation of real hate, racism or hostility", and drawing the conclusion that "in this caricature, it was not the intention of the person imitating the character to discriminate against an individual or a group."

The Panel acknowledges that the circumstances that permit it to use non-broadcast evidence of what was said on air are unusual. It has rarely happened in the experience of the CBSC that a Panel has adjudicated a broadcast complaint without recordings of the program in hand. In the file most similar to the matter at hand, namely, *CKX-FM re Announcer Comments* (CBSC Decision 00/01-0423, August 20, 2001), the Prairie Regional Panel was faced with a case of lost logger tapes. In order to assist the CBSC process, the broadcaster provided the Council with a "Bull Sheet", a preparatory document providing an outline of humorous material on which the program banter was based. On the basis of that document alone, the Prairie Panel was prepared to, and did, adjudicate the complaint. In circumstances which are substantively similar to those faced by the Quebec Panel on this occasion, the Prairie Panel said:

In the circumstances, namely, the absence of that essential evidence of what was broadcast, the Panel finds itself in a situation in which it appears unfair to the complainant to simply decide that it can make *no* decision. If, on the face of the complaint, it does appear that the complainant's concerns could reasonably result in a finding of breach on the substantive issue, in addition to the obvious breach of broadcaster standards by reason of the failure to retain the tapes themselves, the Panel will find against the broadcaster on these grounds as well. While not on all levels a satisfactory resolution of the problem of lost logger tapes, it seems unreasonable to deny the complainant's allegations by the unilateral mishandling of the material which the broadcaster is *obliged* to retain and which, ironically, might work to its own advantage in defending its broadcasting choices.

In the present matter, therefore, the Prairie Regional Panel considers that the comments of the host regarding persons of diminished mental abilities may, as the complainant has alleged, have been such as to constitute abusively or unduly discriminatory comment on the basis of mental disability.

In the file under consideration, the Quebec Panel considers that the complainant has filed sufficient information, which is, moreover, acknowledged by the broadcaster, to enable it to proceed with its adjudication.

The Content Issues: Coarse Language

In its decision in *CHOI-FM* re Le monde parallèle de Jeff Fillion (CBSC Decision 02/03-0115, July 17, 2003), this Panel dealt with a series of epithets hurled by a radio host against a competitor in the Quebec City market. He had, among other things, referred to the verbal victim as a "conceited asshole", "that worthless

piece of trash", a "loser", a "piece of vomit", a "shit disturber" and a "tree with rotten roots". This Panel concluded that "all [of those epithets] fall clearly within the ambit of either coarse or offensive language and that the broadcast of these terms by CHOI-FM [in that instance] constitutes a breach of Clause 9(c) of the CAB Code of Ethics." Similarly, in CJRC-AM re an interview by Daniel Séguin on L'Outaouais ce matin (CBSC Decisions 03/04-2082 and 04/05-0023, April 4, 2005), this Panel was called upon to evaluate an interview in which the host told the proprietor of CHOI-FM, then very much in the news, to "fuck off" ("de vous envoyer chier littéralement") on three separate occasions during the dialogue.

The Panel considers that the use of the [...] foregoing expressions was overkill and, in terms of the broadcaster's ethical obligations, unduly coarse and offensive [...]. The Panel recognizes fully that Daniel Séguin wished to give Patrice Demers some of his station's own medicine but this Panel did not find similar language acceptable in *CHOI-FM* re Le monde parallèle de Jeff Fillion (CBSC Decision 02/03-0115, July 17, 2003) and it does not find it acceptable in the present case. It considers the use of the coarse and offensive language cited in this paragraph in breach of Clause 9 of the *CAB Code of Ethics*.

In the case of the CKOI-FM broadcast, on which some of the quoted phrases were the subject of previous decisions and almost all were launched, even if in an imitative context, as insults directed at individuals, the Panel concludes that the language was coarse and offensive and in violation of Clause 9(c) of the CAB Code of Ethics.

The Content Issues: Explicit Sexuality

The CBSC Panels have dealt with numerous examples of unduly sexually explicit In the case of CFMI-FM re Brother Jake Morning Show (CBSC Decision 00/01-0688, January 23, 2002), for example, 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. In CHOI-FM re Le monde parallèle de Jeff Fillion (Sexual Comments) (CBSC Decision 03/04-0018, April 22, 2004), such explicit descriptions as were found in pseudo headlines such as "Comment s'installer sur le carpet du salon avec son chum dans le vagin et son amant dans le derrière" ("How to place yourself on the living room carpet with your boyfriend in your vagina and your lover in your butt") were judged by this Panel as unduly sexually explicit. The Panel concludes similarly in the present matter. The comments by the CKOI-FM morning team were blatant, crass and unduly sexually explicit. Saying that, as the complainant alleged, "you could fuck her [Annie Brocoli] on the hood of a car!", that "I'd give it to you in every damn hole", and "I'm gonna shove it into your brain" are the equivalent of the CHOI-FM comments and equally in violation of Clause 9(b) of the CAB Code of Ethics.

The Content Issues: Montrealers Insult Quebec City Residents

It is a general principle of the CBSC that its Panels will not decide matters that amount only to questions of taste but do not otherwise breach any Code provision. In the case of the CKOI-FM broadcast, however, the Adjudicators find that the hosts' comments did exceed the threshold of matters of taste. While those comments comparing Quebec City to a cow pasture and its inhabitants as being of a lesser class than Montrealers sound a lot like rival yells at a football or hockey game, those that label Quebec City residents "pigs and whores" go too far. They constitute unfair and improper presentation of comment or editorial in violation of Clause 6 of the *CAB Code of Ethics*.

ANNOUNCEMENT OF THE DECISION

CKOI-FM 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 *Y'é trop d'bonne heure* 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 CKOI-FM.

The Canadian Broadcast Standards Council has found that CKOI-FM has breached provisions of the Canadian Association of Broadcasters *Code of Ethics* as well as certain conditions of membership in the CBSC in its broadcast of *Y'é trop d'bonne heure* in January 2005. By responding to the complainant's letter without adequately reviewing a tape of the broadcast, CKOI-FM has breached certain of its obligations of membership in the Canadian Broadcast Standards Council. Based on the information in that complaint, the broadcast by CKOI-FM of coarse and offensive language directed at individuals and graphic sexual descriptions has breached the provisions of Clause 9(c) and 9(b) of the *Code of Ethics*. By including particularly nasty and insulting comments about residents of Quebec City, CKOI-FM has also breached Clause 6 of the *Code of Ethics*.

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