
**CANADIAN BROADCAST STANDARDS COUNCIL
NATIONAL SPECIALTY SERVICES PANEL**

TSN re 2007 World Junior Hockey Championships (Interview)

(CBSC Decision 06/07-0515)

Decided May 1, 2007

R. Cohen (Chair), R. Deverell (*ad hoc*), M. Harris, M. Hogarth, P. O'Neill,
H. Pawley, M. Ziniak (*ad hoc*)

THE FACTS

On January 5, 2007, TSN broadcast the final game of the 2007 International Ice Hockey Federation (IIHF) World Junior Hockey Championships live from Sweden. The broadcast, which began at 2:00 pm Atlantic Time (1:00 pm Eastern), concluded with the Canadian team winning the gold medal for the third consecutive year by a score of 4-2 against Russia. Immediately following the game, at 4:52 pm Atlantic Time (3:52 pm Eastern), TSN reporter James Cybulski interviewed Canadian forward Jonathan Toews on the ice as the team was celebrating.

Cybulski: Jonathan, your second gold medal. How does this compare to last year?

Toews: Oh, it's unbelievable. It's a great feeling. You know, we've come, uh, overcome so much and, uh, you know, tonight was a battle from start to finish and we did a fucking great job.

Cybulski: You guys seem to do, initiate on the forecheck as strong as you guys ever have in this tournament.

Toews: Yeah, you know, it's, uh, the Russians were a great team and we expected them to skate the puck. And, uh, you know, they were a great team tonight, but, uh, you know, we came out hard and we finished off hard too.

Cybulski: Did the coaching staff challenge you as a group of forwards before this one?

Toews: Yeah, you know, it's, there's some of are, some of us that had to produce and, and, uh, you know, we came through in the crunch tonight.

Cybulski: Congratulations, Jonathan.

Toews: Thank you.

When the hockey game was rebroadcast that evening, the interview with Jonathan Toews was excised from the package.

A viewer in Nova Scotia filed a complaint shortly after the initial broadcast, which read, in part, as follows (the full text of all correspondence can be found in the Appendix):

TSN [...] just before 5PM ADST, was broadcasting the IIHF World Junior Hockey Championship. Immediately following the game, TSN began an interview with Canadian player Jonathan Toews, during which TSN broadcast Jonathan Toews using the "f" word. I was shocked and offended as I listened to this with my nine-yr. old. I listened and looked for an apology from TSN, but have seen no acknowledgement. If you view the tape, you will see it is clearly there. Toews' interview is the very first one following the game.

TSN's President replied to the complainant on January 18 in the following terms:

I understand your concerns regarding a comment by Team Canada player Jonathan Toews during TSN's coverage of the 2007 IIHF World Junior Championship – Gold Medal Game: Russia vs. Canada on January 5, 2007 [...].

In no way does TSN condone this type of language. However, the broadcast was airing live from Sweden, with no tape-delay, and as such, it was impossible to anticipate or edit the content of the Mr. Toews' comments. When TSN re-aired the game at 7:30 p.m. ET later that night, the broadcast was edited and did not include Mr. Toews' interview.

While there are no excuses for Mr. Toews' use of language, it is important to remember that Mr. Toews is an 18-year-old, who having just won a gold medal for his country, got caught up in the excitement of the moment.

TSN is sensitive to these types of situations and had no intention of insulting our viewers. We regret that you and your nine-year-old child were offended. Please accept my apology on behalf of the network. We hope this letter clarifies the situation and conveys how seriously we take our programming and broadcast responsibilities.

The complainant filed his Ruling Request on January 18 with the following note:

Given that this is not the first time a hockey player has used inappropriate language in an interview, I am of the conviction that it is incumbent upon broadcasters to anticipate this possibility and take necessary measures to insure they do not broadcast such language. I further believe that TSN's reasoning is weak: "an 18-year-old ... caught up in the excitement of the moment." I am of the conviction that someone at TSN must be tasked with the responsibility to make sure that when an "18-year-old" uses inappropriate language, the

comments do not air. I would like to have assurances that TSN is taking measures to insure this does not happen again.

THE DECISION

The National Specialty Services Panel examined the complaint under the following provision of the Canadian Association of Broadcasters' (CAB) *Code of Ethics*.

Clause 10 - Television Broadcasting (Scheduling)

- a) Programming which contains sexually explicit material or coarse or offensive language intended for adult audiences shall not be telecast before the late viewing period, defined as 9 pm to 6 am. Broadcasters shall refer to the *Voluntary Code Regarding Violence in Television Programming* for provisions relating to the scheduling of programming containing depictions of violence.

The Panel Adjudicators read all of the correspondence and reviewed a tape of the 2007 IIHF World Junior Hockey Championships. The majority of the Panel (M. Harris and P. O'Neill dissenting) concludes that TSN violated the aforementioned Code provision.

The CBSC's Coarse Language Rules

CBSC decisions occasionally begin with the statement that "there is no mathematical formula that can be applied to determine whether" the broadcast content complained of is in breach of a particular standard. That being said, the airing of coarse language, in particular the f-word and its family of derivatives, comes closer to a mathematically predictable determination than almost any other content issue. The set of principles that applies to that issue is as follows.

While it is a tenet of the *Broadcasting Act* "programming provided by the Canadian broadcasting system should [...] be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes," the CBSC understands that this does not mean that *all* types of program content should be available at *all* times of day. Believing that many Canadian families wish a safe broadcast haven that will be free of the coarsest of language (and other kinds of adult fare), Canada's private broadcasters have established the Watershed period (from 9:00 pm to 6:00 am). Extremely coarse language, which has been defined as including the f-word and its derivatives, must be limited to that time period. Families' safe haven, therefore, runs from 6:00 am to 9:00 pm. Outside of that time period, the CBSC's standards relating to the use of such coarse language have been extremely flexible, reflecting a rather untrammelled freedom of expression. [See, on the issue of coarse language, *inter alia*, *Showcase*

Television re the movie Destiny to Order (CBSC Decision 00/01-0715, January 16, 2002), *WTN re the movie Wildcats* (CBSC Decision 00/01-0964, January 16, 2002), *Showcase Television re the movie Muriel's Wedding* (CBSC Decision 02/03-0882, January 30, 2004), *Bravo! re the movie Kitchen Party* (CBSC Decision 03/04-0928, December 15, 2004), and *Bravo! re the film RKO 281* (CBSC Decision 04/05-0584, July 20, 2005). On the issue of safe havens, see *Global re ReGenesis ("Baby Bomb")* (CBSC Decision 04/05-1996, January 20, 2006).]

The foregoing principles have been consistently applied (with the exception of a single circumstance). It should also be noted that the principles have been independent of the non-gratuitous nature of the usage. Indeed, the Panel cannot do better than to refer to a recent decision of the CRTC in which relevant illustrative language makes this very point. In *Complaints relating to the broadcast on CBC Radio One of A Literary Atlas of Canada, episodes entitled Whiskeyjack Blues and Room Available*, Broadcasting Decision CRTC 2007-87 (16 March 2007), the Commission, in finding a breach of their applicable standard, made the following point:

While the readings [during the Sunday morning radio program in question] were often illustrative and explicit, the words used were not gratuitous in the sense that they were integral to the writings being broadcast, as explained in the discussions with the authors. Nor was the language used in a manner that was intended to be negative or rude, or to purposefully shock or outrage the listener. Rather, as the host and interviewers attempted to explain during the program, the language and content of the readings were meant to convey an authentic experience.

The issue, after all, is not whether there was intellectual justification or serious intention to the usage of such language; it is, as explained above, the reaction or concern of the *audience* that is at issue for the CBSC. The matter is not driven by notions of morality or purity. It is that there are viewers (and listeners) who are genuinely disturbed or offended by such language on the airwaves. Nor is the fact that the f-word and its derivatives may be known to, and used by, segments of the population a satisfactory defence to the usage. After all, the broadcasting environment can and must be shared by its users. Thus, for the CBSC, there is a pre-Watershed safe haven and post-Watershed freedom of even coarse expression.

The foregoing being said, the CBSC is conscious of the fact that the public's standards relating to content issues are constantly evolving and that such evolution is likely to affect the coarse language area as much, if not more, than any other. In *CHOM-FM re the song "Locked in the Trunk of a Car" by the Tragically Hip* (CBSC Decision 04/05-0324, April 4, 2005), for example, the Quebec Regional Panel anticipated such evolution in the following language:

The CBSC has consistently ruled that broadcast of the f-word on radio during daytime and early evening hours constitutes a breach of the *CAB Code of Ethics*.

The Quebec Panel is aware of the fact that language usage is constantly in a state of evolution, both on the French and English sides of Canada's heritage. Formerly unacceptable language gradually but invariably insinuates itself into more common usage and a review of the old and new practice is merited from time to time. That is likely the case with respect to the f-word and its derivatives, which, after all, appear in noun, verb, adjective, adverb and interjection forms in English.

Until such time, though, as that evolution is deemed by thoughtful, reflective CBSC Panels to be nigh, there is that above-described fairly predictable set of rules pursuant to which the coarse language spectral environment can be shared.

Live Coarse Language

There is an understandable dilemma posed in the application of the "fairly predictable set of rules" in the case of *live* broadcasts. In *CTV re a segment featuring Eminem at the Junos* (CBSC Decision 02/03-1130, January 30, 2004), the National Conventional Television Panel dealt with a live broadcast of the Canadian music awards, familiarly known as the Junos, which began at 8:00 pm. The problematic segment of the awards show, however, was in the form of a *pre-recorded* message from American rap artist Eminem, who had been recognized by the Canadian music industry with the "International Album of the Year" award. Since CTV had known that Eminem would not be present at the gala to accept the industry award, the broadcaster had arranged that a message from him to the audience would be videotaped and played. In his message, the artist used a derivative of the f-word. Although the show was live, the fact that the Eminem bit was not sealed the fate of the broadcast. Clearly controllable, the offending matter had been left in the broadcast by the broadcaster's choice. Consequently, the broadcaster was found in breach of Clause 10 of the *CAB Code of Ethics*.

In a true live performance situation, namely, *CFNY-FM re the Show with Dean Blundell (David Carradine Appearance)* (CBSC Decision 03/04-1305, October 22, 2004), the actor David Carradine, who was a guest on the Dean Blundell show, used the f-word. There was no discussion of the live versus taped issue and the broadcaster was found in breach of Clause 9 of the *CAB Code of Ethics* (the radio equivalent of Clause 10). The Panel only observed:

The use of the f-word by the guest David Carradine was gratuitous. The broadcaster was responsible for avoiding such an occurrence, whether by tape delay or otherwise. The failure to do so constitutes a breach of Clause 9 of the *CAB Code of Ethics*.

Similarly, in *CFGQ-FM (CKIK-FM) re a live Tragically Hip concert and interview* (CBSC Decision 03/04-1850, November 1, 2004), an interview (in this case with Gord Downie of the Tragically Hip) included the use of the f-word in non-gratuitous circumstances (a discussion of the lyrics of one of the group's well-

known songs). The Prairie Panel concluded that there had been a Code breach in similar language.

While the use of the f-word appears not to have been gratuitous, the broadcaster ought to have had a delay (or other) system in place to prevent such an on-air occurrence. In any event, its obligation was to avoid the broadcast of unduly coarse or offensive language. By failing to do avoid that language, CFGQ-FM has breached Clause 9(c) of the *CAB Code of Ethics*.

In yet another live performance situation (on television), namely, *CTV re the Green Day performance during Live 8* (CBSC Decision 04/05-1753, January 20, 2006), CTV provided coverage of an international concert, which featured musical artists performing at venues around the world. During the performance by American pop-punk band Green Day, the lead singer told the crowd to “sing so loud that everybody hears you all over the fuckin’ world” and the song they played contained once instance of the phrase “mind fuck”. Viewers in New Brunswick, who had seen the performance at 12:18 pm, complained that CTV should have edited out the coarse language. CTV explained that it had had little time to prepare for the live event and to put the necessary technical measures in place to avoid such an occurrence. Acknowledging that a live broadcast presents different circumstances for broadcasters, the National Conventional Television Panel nonetheless found a breach for airing the f-word before 9:00 pm.

The broadcaster was participating in an event with a large number of rock bands, punk bands, rap artists and other musical acts from around the world. The Panel considers that it would have been disingenuous on the part of CTV *not* to anticipate that there might be coarse language by one or another of the divergent mix of performing artists. Even Seamus O’Regan, CTV’s own host, anticipated on-the-edge, if not over the edge, possibilities [when he said at the beginning of the broadcast]: “What’s going to happen? Who knows. Throw out the rule book. We have.”

CTV’s responsibility was not to throw out the rule book. It was to plan for the avoidance of the occurrences already anticipated. It could have done so. It chose not to. The eventuality became a reality. The broadcast of the coarse language intended for adult audiences in the early afternoon constituted a breach of Clause 10(a) of the *CAB Code of Ethics*.

The Matter at Hand

On the one hand, the reaction of Canadian junior hockey star Jonathan Toews was likely genuine, spontaneous and unpremeditated (as opposed to the other examples cited immediately above). On the other hand, the f-word is hardly unknown in the sport of hockey. Indeed, it is frequently seen but not heard, in the sense that it may be yelled by a player on the ice or on the bench and thus “seen” by lip-reading viewers. In the mouth of an excited junior player, inexperienced in dealing with the media, the unintentional use of a coarse word in an interview may be likelier than such a usage on the part of a veteran

professional. In any event, at the end of the day, young gold medallists are role models for their younger viewing audiences and broadcasters must simply find a way to avoid the use of such coarse language during audiences' safe haven. While a tape delay is one solution, broadcasters may also help by reminding inexperienced interviewees (before they go to air) not to use such language. There is no reason to imagine that they would not comply with the practice. The solution is, of course, for the broadcaster to find. The failure to adopt it, especially in circumstances where the use of coarse language, advertent or inadvertent, can be anticipated, will result in a breach of Clause 10 of the *CAB Code of Ethics*.

The Minority Perspective (M. Harris, P. O'Neill dissenting)

The minority Adjudicators attach far more importance to the *live* nature of this sports broadcast than do their colleagues. The f-word was, after all, uttered but *once* and this in a moment of high excitement by a young hockey player who could not be expected to have the media savvy of older professional players. It was clearly an inadvertence, an enthusiastic slip-of-the-tongue at a moment of high-energy victory, an utterance by one of the stars of the entire World Championship. The game was aired live and without a tape delay, and, in disagreement with the majority, the minority considers that TSN was under no obligation to plan any such technical safety net. While the dissenting Adjudicators understand the general need to avoid coarse language at the hour of the challenged broadcast, they believe that this means that all *reasonable* steps should be taken to achieve this goal. They do not consider that the obligation is one of *result* rather than one of means or best *efforts*. Moreover, they believe that one must weigh what they view as the *slight* cost of a *single* fleeting expletive against the benefit of natural, spontaneous, unconstrained sports or news broadcasting. They fear that the constraints that will result from the position of the majority in the matter at hand will impose a chill on live broadcasting, not only in the sports area, but also, potentially, in news coverage. The minority Adjudicators would conclude that the broadcaster was not, in the circumstances of this broadcast, in breach of Clause 10 of the *CAB Code of Ethics*.

Broadcaster Responsiveness

In all CBSC decisions, the Council's Panels assess the broadcaster's responsiveness to the complainant. In the present instance, the Panel finds that the response of TSN's President was honest and forthright. It pointed out the additional editing step that was taken for the rebroadcast of the hockey game, with the interview edited. The Panel considers that TSN has fully met its CBSC membership responsiveness responsibilities.

ANNOUNCEMENT OF THE DECISION

TSN is required to: 1) announce the 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 the interview with the Team Canada player was broadcast; 2) within the fourteen days following the broadcasts 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 a copy of that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by TSN.

The Canadian Broadcast Standards Council has found that TSN violated provisions of the Canadian Association of Broadcasters' *Code of Ethics* in its broadcast of the 2007 IIHF World Junior Hockey Championship final game. During a live post-game interview with a player in the afternoon broadcast, TSN aired coarse language contrary to requirements of Clause 10 of the *CAB Code of Ethics*.

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

APPENDIX

CBSC Decision 06/07-0515 TSN re 2007 World Junior Hockey Championships (Interview)

The Complaint

The CBSC received the following complaint via the CRTC in January 2007:

Hi,

On Friday, Jan. 6, 2007 TSN (The Sports Network, channel 400 on Starchoice) just before 5PM ADST, was broadcasting the IIHF World Junior Hockey Championship. Immediately following the game, TSN began an interview with Canadian player Jonathan Toews, during which TSN broadcast Jonathan Toews using the "f" word. I was shocked and offended as I listened to this with my nine-yr. old. I listened and looked for an apology from TSN, but have seen no acknowledgement. If you view the tape, you will see it is clearly there. Toews' interview is the very first one following the game.

Broadcaster's Response

TSN replied on January 18 with the following:

Thank you for your letter, which we received through the Canadian Broadcast Standards Council on January 12, 2007.

I understand your concerns regarding a comment by Team Canada player Jonathan Toews during TSN's coverage of the 2007 IIHF World Junior Championship – Gold Medal Game: Russia vs. Canada on January 5, 2007 (note: the game aired on Jan. 5, not Jan. 6 as your letter stated).

In no way does TSN condone this type of language. However, the broadcast was airing live from Sweden, with no tape-delay, and as such, it was impossible to anticipate or edit the content of the Mr. Toews' comments. When TSN re-aired the game at 7:30 p.m. ET later that night, the broadcast was edited and did not include Mr. Toews' interview.

While there are no excuses for Mr. Toews' use of language, it is important to remember that Mr. Toews is an 18-year-old, who having just won a gold medal for his country, got caught up in the excitement of the moment.

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Additional Correspondence

The complainant filed his Ruling Request on January 18 with the following note:

Given that this is not the first time a hockey player has used inappropriate language in an interview, I am of the conviction that it is incumbent upon broadcasters to anticipate this possibility and take necessary measures to insure they do not broadcast such language. I further believe that TSN's reasoning is weak: "an 18-year-old ... caught up in the excitement of the moment." I am of the conviction that someone at TSN must be tasked with the responsibility to make sure that when an "18-year-old" uses inappropriate language, the comments do not air. I would like to have assurances that TSN is taking measures to insure this does not happen again.