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## CANADIAN BROADCAST STANDARDS COUNCIL

### ONTARIO REGIONAL PANEL

#### CHML-AM re the *Bob Bratina Morning Show*

(CBSC Decision 06/07-0908)

Decided April 14, 2008

R. Stanbury (Chair), M. Ziniak (Vice-Chair), D. Braun (*ad hoc*), R. Cohen (*ad hoc*),

K. King and H. Pawley (*ad hoc*)

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### THE FACTS

CHML-AM (AM900, Hamilton) broadcasts the *Bob Bratina Morning Show* daily from 6:00 to 9:00 am. The host, Bob Bratina, had worked in broadcasting since 1965 and had been hosting this program on CHML since 1989. In 2004, he ran in the Hamilton municipal elections and was elected as city councillor for Ward 2; he was re-elected in November 2006. Bratina recused himself from his on-air duties during both the 2004 and 2006 election campaign periods as required by Canadian Radio-Television and Telecommunications Commission (CRTC) rules (which are discussed below), but he returned to hosting the program once those campaigns were over.

Each episode of the program features a number of different segments in which the host and guests or other AM900 hosts discussed a range of current issues. On March 19, 2007, at 7:02 am, Bratina talked about an article that had appeared in the local daily newspaper, the *Hamilton Spectator*, commenting on his position relating to the possible establishment of a “red light” district in the City of Hamilton. His monologue was as follows:

I've got to weigh in on a story that appeared with my name on it regarding red light districts. And the story says, uh, “Give City Red Light District, Bratina Says”. That's the headline. Bratina didn't say that. And it's quite interesting because what I did say was that we do have encroaching in our neighbourhoods, uh, in the north end, in, uh, Court Town, in other neighbourhoods throughout, beyond Ward 2 and all over the place these

so-called, uh, aromatherapies and bath-houses and whatever, which are, in fact, uh, places, adult entertainment parlours, where females are touching males. I'm not against that. You know, that's part of life. What I am against is that they're in, right beside, in one case, right beside a family with children who see customers arriving at all hours of the night and other problems associated with it.

So, I shared with my, uh, colleagues at City Hall and staff, uh, a draft by-law from the City of Ottawa. And, and what I said was that the way it is now, we, we can't seem to control where these places are located and I said even a red light district would be better than this. But I'm not proposing a red light district. "Give City Red Light District, Bratina Says." Didn't say that. Not only that, I told the reporter about three times that that was not what I was about. It was about working, drafting a by-law, doing whatever we can to prevent what I said. And then the reporter goes on about "Well, what ward would it be if was ... ?" I said this isn't about wards. There could be, as there is now, one here, one there, but they need to be in industrial areas or commercial areas and areas where they're not in, in this case I was referring to, a family living next door, park across the street, school a block away. Don't put it there.

So the whole thing starts. And one of the councillors, "Well, not in my neighbourhood". And people write blogs that say "Why doesn't he put it on his street?" It *is* on my street! I'm trying to get it off my street! But it's just silly, you know, like.

And the most disturbing thing is the e-mail from which this was drawn was an internal e-mail and somebody shared it with the news reporter. So would you please not bother sending me any arguments? And I'm not even saying a red light district is wrong or right and I don't want a public debate on a red light district. All I want to do is find ways so that these facilities are not located in family-oriented neighbourhoods. That's all. Thank you.

Later in the program, at 8:10 am, Bratina discussed the issue again in a conversation with fellow AM900 host Roy Green. The relevant portion of that exchange was as follows (a full transcript can be found in Appendix A):

Green: Hey, Bob. I, um, I wanted to talk to you about the issue of a, you know, red light district in Hamilton.

Bratina: Sure.

Green: Because, uh, there's something that I've long believed that we need to have in our major urban centres to, to control the activity and to control where the, uh, the stroll, as it's euphemistically called, is located.

Bratina: Well, okay. Now I have to remind you, because we had this quick chat.

Green: Yeah.

Bratina: That I was not, in my discussions with staff and committee, discussing a red light district. I said what we have now, a red light district would be better. But what I was aiming at was, was wording our by-law so that we could control the body rubs.

The CBSC received a complaint from a listener who was concerned in general that Bratina used his position as a radio host to promote his views of municipal issues. She mentioned the March 19 segment about the red light district as one example. She also suggested that he had unfairly insulted the newspaper and its reporters for misquoting

him. Her complaint, addressed to the station, was in part as follows (the full text of all correspondence can be found in Appendix B):

I am writing to express my concern about the use of the CHML morning program as a political forum for, and by, Bob Bratina. I have been on the verge of writing this letter for quite a while now but today's comments by Mr. Bratina, while on air as your morning radio announcer, were so appalling that I am actually taking the time to write to you to make a formal complaint. My complaint is regarding the very ambiguous roles as radio announcer/Ward 2 councillor that Mr. Bratina continues to play on the CHML morning program. If Mr. Bratina wants to be the CHML morning announcer, that's fine. However, if he wants to be the Ward 2 Councillor, then he should not be doing it on the air while employed by CHML as their radio morning announcer.

[...] Whether one agrees or disagrees with him, using the morning show to showcase his political activities and viewpoint is not only irritating and annoying. It is also downright inappropriate to use his time slot on air as a personal forum and this seems to be something that he doesn't understand at all. And, in fact, I am surprised that this mixture of morning man/politician is something that your corporation allows and supports.

[...]

This morning's show demonstrated, yet again, that Mr. Bratina cannot make the distinction between his role as radio morning man and Ward 2 Councillor. [...]

Mr. Bratina then went on to castigate the reporter who had interviewed him over the issue of a "red light district" concept because she hadn't written the story the way he wanted it. Since the front page article identifies the reporter's byline, this was a direct attack upon a *Spectator* reporter's competency and veracity. Why such an attack? Well, according to Mr. Bratina, she did not report his words and comments as Councillor "accurately". Again, Councillor Bratina on the air and, I might add, the only with air time on this issue!

Since CHML is not putting the morning show on as a "paid political announcement", why is this kind of behaviour tolerated by CHML? I know that I am not alone in wondering why CHML morning show has allowed their morning show to become so one-sided and so politicized. I hope that this letter will, at the very least, cause you to consider your policies/broadcasting code regarding what is acceptable in terms of a radio announcer's role while hosting a public program. I hope that your station can enforce a policy that will ensure that your listeners are not subjected to personal political sermons and unacceptable attacks upon other people and groups.

She later sent the CBSC a copy of an article that had appeared in the *Hamilton Spectator* entitled "Bratina blurs line between city hall, radio guy" which was critical of Bratina for having addressed the red light district matter on air during his program.

CHML's General Manager responded with the following note:

Your email regarding our AM900 CHML morning host, Bob Bratina, was forwarded to me by our communications department. While we certainly acknowledge your concerns, we would like to assure you that AM900 CHML does abide by the regulatory guidelines and broadcast codes that govern our industry in Canada and endeavour to act accordingly. We are a responsible broadcaster, committed to providing a balanced presentation in news, opinion, comment and editorial when reporting on issues to our listeners in the greater Hamilton area. We will, however, address your issues and concerns with Bob Bratina.

The complainant replied to that note, indicating that she was not satisfied with the station's approach. She then filed her Ruling Request with the CBSC on April 10 with the following additional comments:

I [...] feel that [the General Manager's] response does not acknowledge the validity of my complaint and the issues that I raised in the letter regarding Mr. Bratina's use of the air waves for his own particular political purposes and views.

To state that CHML is a "responsible station etc., etc., etc." is not my issue nor the focus of my concern. My complaint is with regard to Mr. Bratina and I have outlined this fully in my original letter to you.

I had hoped that the General Manager would actually address the issues in her response but she does not. To state that "We will, however, address your issues and concerns with Bob Bratina" is a meaningless statement. How will these "issues and concerns" be "addressed"? Is there any acknowledgement of the totally inappropriate behaviour by Mr. Bratina and will there be? Since it was a public violation, will there be a public acknowledgement and apology? All of these questions are left unclear in [the General Manager's] disappointing "form letter" response.

Needless to say, I do not feel that my complaint(s) regarding Mr. Bratina have even been acknowledged, let alone appropriately addressed, by the General Manager. It is for this reason that I am, therefore, requesting a Ruling on this complaint.

The station sent a second, lengthier response on April 24:

In your email you take issue with comments made by the Program host, Bob Bratina, suggesting that because Mr. Bratina is both a radio announcer and a city councillor, his comments that morning (and on other mornings, you argue), are inappropriate insofar as they constitute a conflict of interest. [...]

We have listened to the tape of the Program, and confirm that Mr. Bratina did make comments pertaining directly to this position as city councillor. As a news talk station, we adhere to various rules, regulations and industry codes governing the programming we air, including the Radio Television News Directors Association of Canada's *Code of Journalistic Ethics* (the "Code"), which are administered by the CBSC. Our review of the broadcast you refer to reveals that on this occasion, Mr. Bratina failed to adhere to Article 6 of the Code, which states that broadcast journalists must "govern themselves on and off the job in such a way as to avoid conflict of interest, real or apparent".

Since receiving your email, we have had discussions with the Program host about what constitutes appropriate on-air content. More specifically, we have reviewed the applicable codes and standards with Mr. Bratina, emphasizing the importance of impartiality in the reporting of the news, particularly in light of the dual-role he plays. We strive to ensure that our programming is objective and balanced, and will continue to monitor the Program with vigilance in order to maintain these standards. We regret that you were troubled by our programming, and trust that this letter addresses your concerns. We at the Station recognize the importance of listener feedback and appreciate all comments.

The complainant responded the same day, stating that, while she appreciated the additional response, she continued to believe that "public violations of the code require a public acknowledgement and an apology from Mr. Bratina to his listeners." She also

noted that the broadcaster's letter failed to address the issue of the "personal attacks launched by Mr. Bratina against the *Spectator* and, in particular, two reporters who work for the *Spectator*." On May 3, she wrote again to the CBSC reaffirming her desire for the Council to proceed with its review of her complaint.

The station's parent company, Corus Entertainment, then sent a letter to the CBSC explaining some of the background to the situation:

We understand that the CBSC will be deciding whether Mr. Bratina and the station have breached certain Canadian broadcasting standards, as administered by the CBSC, and we ask that you take the following into consideration when reflecting on the matter.

In her original complaint dated March 19, 2007, [the complainant] stated that Mr. Bratina, co-host of the Morning Show, as well as Hamilton city councillor for Ward 2, had been using the Morning Show to "showcase his political activities and viewpoint", which she claimed was "downright inappropriate". [The complainant] suggested further that Mr. Bratina had, on certain occasions, used his position on the Morning Show as his personal "soap-box", and that he was therefore confusing his two roles: on the one hand, his role as Morning Show co-host, and on the other, as councillor of Ward 2.

Mr. Bratina has been a broadcaster since 1965, and has been co-hosting the Program since 1989. In 2004, Mr. Bratina decided to run for a position on Hamilton's city council, and was elected councillor for Ward 2 on October 1, 2004. Mr. Bratina was re-elected councillor for Ward 2 on November 14, 2006. Mr. Bratina had informed Corus management of his decision to run for office as well as for re-election, and as required by CRTC policy regarding Election Campaigns and Political Advertising, Mr. Bratina recused himself from his on-air duties during the respective campaign periods.

In our letter to [the complainant] dated April 24, 2007, we acknowledged that Mr. Bratina may have, on the occasion cited by the complainant, breached Article 6 of the Radio and Television News Directors Association's *Code of Ethics* (the "RTNDA Code"). This said, the question remains as to whether the RTNDA Code in fact applies in this case. As discussed in greater detail below, the Morning Show is a public affairs program, not a newscast, and as such, we do not believe that it is subject to the RTNDA Code. As the CBSC has noted, a public affairs show is not constrained by the same need for objectivity as a newscast, and its hosts are entitled to take a point of view on subjects that are controversial, as long as their presentation is fair and balanced. We believe that the Morning Show has, and continues to meet, this objective.

During his 42 years in broadcasting, Mr. Bratina has prided himself on providing high quality programming to his listeners. As co-host of the CHML-AM Morning Show, Mr. Bratina has consistently provided programming that is both entertaining and informative to Hamilton-area residents. Since the Morning Show is more focussed on public affairs than on news, Mr. Bratina routinely comments on topics of local and public interest. While Mr. Bratina has not shied away from expressing his opinion on a number of local matters, including whether the City of Hamilton should build a fountain in the downtown core or establish a "red light" district, the Morning Show routinely offers points of view from across the political spectrum on a variety of issues. In the past six months alone, Mr. Bratina and Ms. Thompson have interviewed a number of municipal and provincial politicians, including Marie Bountrogianni, Liberal MPP for Hamilton Mountain, Andrea Horwath, MPP for Hamilton East, and Ontario PC Party Leader, John Tory. Both Fred Eisenberger and Cam Jackson, mayors of Hamilton and Burlington, respectively, have been guests on the Morning Show on two occasions. Mr. Bratina and Ms. Thompson

have also hosted a Morning Show featuring Terry Whitehead, City of Hamilton councillor for Ward 8.

There is little doubt that the potential for conflict of interest exists in a situation where a broadcaster also holds a political office. For that reason, the CRTC enacted a policy regarding Election Campaigns and Political Advertising, to which we have wholly complied. The question here is whether the RTNDA Code should also apply in this kind of situation to mitigate against potential conflict of interest. Given the nature and format of the Morning Show, we submit that it should not, and therefore, that [the complainant]'s complaint does not raise any issue for the CBSC.

## THE DECISION

The CBSC Ontario Regional Panel examined the complaint under the following provisions of the Radio Television News Directors – The Association of Electronic Journalists' (RTNDA) *Code of (Journalistic) Ethics* and the Canadian Association of Broadcasters' (CAB) *Code of Ethics*.

### *RTNDA Code of (Journalistic) Ethics*, Article 6 – Conflict of Interest

Broadcast journalists will govern themselves on and off the job in such a way as to avoid conflict of interest, real or apparent.

### *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.

The Panel Adjudicators read all of the correspondence and reviewed a recording of the March 19 broadcast. The Panel concludes that the station did not violate the aforementioned Code provisions.

### **A Preliminary Matter: The Nature of the *Bob Bratina Morning Show***

The nature of the *Bob Bratina Morning Show* is material to Corus Entertainment's assessment of the applicability of the *RTNDA Code of (Journalistic) Ethics*. The Vice President and General Counsel of Corus stated in his letter of October 3 that the *Morning Show* is a public affairs program. Were that the case, the program would fall four-square within the ambit of the RTNDA Code. While the wording of the preamble to that Code was revised in 2000 to reflect new goals of the Association, it should not be forgotten that the preamble to the 1986 version used that very language: "Recognizing

the importance to a democracy of an informed public, the members of the RTNDA of Canada believe the broadcasting of factual, accurately-reported and timely *news and public affairs* is vital. [Emphasis added.]” The phrase was also, and is currently, used in other articles of the 1986 and 2000 versions of the Code (see, e.g., Article 2 of the 1986 Code and Article 3 of the 2000 Code). *News and public affairs* have been and remain, without doubt, the focus of the RTNDA Code.

That being said, the CBSC has not applied the characterization “public affairs” to morning shows or talk radio programs. It has tended to apply the term to newsmagazine-format programming such as *W-Five*, *J.E.* or even the more populist *Hard Copy*. The Panel considers that, while talk radio may frequently be oriented towards current issues of public concern, it would not, as a genre, fall into the category of public affairs programming for purposes of the *RTNDA Code of (Journalistic) Ethics*. For greater certainty, the Panel generally understands talk radio to be characterized by one or more of the following points of identity: the presence of a host or hosts, who are not merely the introducers of segments, but who take an active role in the discussions of the program; a focus on very current events, whether at a local, provincial, federal or international level; the presence of invited guests with expertise in the area of the topical focus; the occasional or frequent opening of access lines so that audience members can participate in the dialogue. There are varieties of talk radio, including sports talk and “shock jock” talk. And the Panel includes the *Bob Bratina Morning Show* in the category of talk radio for purposes of the present adjudication.

In any event, the Panel does not read the argument in the Corus letter as a wish to exclude the *Bob Bratina Morning Show* on grounds of its being a “public affairs” program. It rather understands the letter to be making the point that such programs as Bratina’s are “not constrained by the same need for objectivity as a newscast” and that they are not, *for that reason*, inexorably bound to the dictates of the RTNDA Code. The Panel will deal in the next section with the applicability of the Code to such programming.

### **The Applicability of the RTNDA Code to a Non-Journalistic Program**

On its face, the RTNDA Code applies to broadcast journalism. There is no content in the Code itself that would appear to extend its ambit to other non-journalistic programming. That this issue arises at all is due to the correspondence in the matter at hand. The point flows from the broadcaster’s correspondence sent to the complainant, in the first case, and to the CBSC, in the second.

In the station’s initial letter, the General Manager acknowledged that Mr. Bratina “failed to adhere to the [Conflict of Interest] Article [of the *RTNDA Code of (Journalistic) Ethics*].” In the second letter, the representative of CHML’s parent company, Corus

Entertainment, softened the language relating to the “failure” to adhere, saying “*may* have breached [emphasis added]” Article 6, but adding that they did not believe that the program in question, not being in the strictest sense a news program, was even “subject to the RTNDA Code.”

As to the issue of whether CHML did or did not breach the conflict of interest codified standard, the Panel will have more to say below. It does wish, though, at this point, to observe that that determination is the Panel’s to make. While it fully appreciates the genuineness and the collaborative nature of CHML’s acknowledgment, it is at the end of the day the Panel’s responsibility to ensure the consistency of the CBSC’s jurisprudence and, in that sense, the strict determination of whether there has been a breach of Article 6 will be decided by the Panel.

Further to the point made by Corus regarding the applicability of the *RTNDA Code of (Journalistic) Ethics* to a program such as the *Bob Bratina Morning Show*, the Panel wishes to clarify the issue of the application of its codes to occasional unanticipated circumstances. Put in other words, even when it is technically the case that a given Code, in terms, refers only to a specified category of programming, the CBSC generally considers that the codified standards it administers ought to be of analogous, hence broader, application.

Thus, when the Quebec Regional Panel was faced years ago, in *TQS re the movie L’inconnu* (CBSC Decision 98/99-0176, June 23, 1999), with the applicability of the television Watershed established in the *CAB Violence Code* to mature programming that was not of a *violent* nature, it adopted the position that it was appropriate, correct and beneficial to both broadcasters and the public that that principle be understood as extending to television programming including sexual, that is *non-violent*, content. Indeed, since that time, the various CBSC Panels have adopted the principle that the Watershed provision of the *CAB Violence Code* covers all television content intended exclusively for adults. (Several years later, that principle was enshrined in the *CAB Code of Ethics* when it was amended in 2002.)

Similarly, when, on another occasion, in *CIOX-FM re a song entitled “Boyz in the Hood”* (CBSC Decision 00/99-0619, October 12, 2000), there was a question of whether the provisions prohibiting inappropriate violent content directed against women on television could be extended to the prohibition of such content *on radio*, this Panel considered it appropriate to do so. It explained:

While it is clear that the prohibition against sanctioning, promoting or glamorizing any aspect of violence against women is found in the Code dealing with violence *on television*, the Council does not assume that Canada’s private broadcasters had intended their strong and unequivocal prohibition of such aggressively anti-woman behaviour to extend no further than the television screen. The Council considers that, while the *Violence Code* was created to deal with a series of content issues far likelier to be

present in that medium than in the different style of programming in the radio sphere, the broadcasters did not believe that the prohibitory principle ought not to benefit women across the broadcast spectrum.

In a matter closer to that under consideration here, namely, *CFTM-TV (TVA) re Tôt ou tard* (CBSC Decision 00/01-1080, April 5, 2002), the Quebec Regional Panel was faced with a comedic sketch in which an “intrepid reporter” was interviewing couples in their cars at a movie drive-in. A willing couple had had a change of heart concerning their role in the sketch, and took steps to ensure that their interview would not appear. It did. The Quebec Panel decided against the broadcaster under Clause 6(3) of the *CAB Code of Ethics* (now Clause 6 under the revised Code), but with the full application of the privacy provision of the RTNDA Code. The Panel said that the broadcaster’s

failure to respect the complainants’ privacy constitutes a breach of the privacy principle exemplified in the *RTNDA Code of (Journalistic) Ethics* and constitutes an unfair and improper comment under the *CAB Code of Ethics*.

See also, on this point, *CIQC-AM re Galganov in the Morning (Invasion of Privacy)* (CBSC Decision 97/98-0509, August 14, 1998), *TQS re Gilles Proulx comments on Journal du midi (transportation strike)* (CBSC Decision 03/04-0334, April 22, 2004), and *CJMS-AM re comments on two episodes of Le p’tit monde à Frenchie* (CBSC Decision 04/05-0939, October 24, 2005).

Applying the foregoing principles to the matter at hand, the Panel recognizes that the format of the *Bob Bratina Morning Show* is not, strictly speaking, anticipated by the *RTNDA Code*. Nonetheless, the Panel considers that some provisions of that journalistic Code might, in principle, be extended to apply to a talk show by analogy. It appears to the Panel that, in addition to the principle contained in Article 4 (as noted in the preceding paragraph), those established in Article 6, as well as Articles 3, 9 and 10 (as examples), could be applied more broadly than in a strict news and public affairs environment.

It is the view of the Panel that the point raised in the Corus letter to the effect that Article 6 could not apply to a program of this nature is incorrect, although the Panel does agree that a talk show is not expected to be objective. The consequence of this conclusion is that the subjective position taken by host Bob Bratina is not, on account of its non-objectivity, in breach of Clause 6 of the *CAB Code of Ethics*. The question of whether it is in breach of Article 6 of the *RTNDA Code of (Journalistic) Ethics* will be treated in the following section.

### **Is a Political Officeholder Necessarily in a Conflict of Interest?**

The complainant had clearly been troubled by what she described as the “very ambiguous roles” of the radio host as a broadcaster and a politician. On the morning in question, she was riled by what she described as the “appalling” comments cited above. She elaborated on her position in part by saying, “Whether one agrees or disagrees with him, using the morning show to showcase his political activities and viewpoint is not only irritating and annoying. It is also downright inappropriate to use his time slot on air as a personal forum.” She added in the letter to the broadcaster that she was “surprised that this mixture of morning man/politician is something that your corporation allows and supports.”

The Panel understands the complainant’s perspective and appreciates that some broadcasters might not permit the mixture of the two roles. Others would. Unless there is a codified (or legislated) standard that would prohibit such a mixing of roles, that would be a policy choice that all broadcasters would be free to make. The issue for the Ontario Regional Panel is to determine whether such a standard exists.

To a considerable extent, the underlying principles are those found in the CRTC’s information sheet on “Election Campaigns and Political Advertising”, which begins with the principle that “[d]uring an election campaign, the public has a right to know about all the issues involved so that it has sufficient knowledge to make an informed choice from among the various political parties and candidates.” The goal is knowledge-centred information. That principle is extended by requiring that, during a campaign, broadcasters “must provide equitable treatment of issues, candidates and parties.” “Equitable” is then defined by the CRTC as meaning “that all candidates and parties are entitled to some coverage that will give them the opportunity to expose their ideas to the public. Although treatment must be fair and just, ‘equitable’ does not necessarily mean ‘equal’.” The CRTC’s information sheet, under the heading “News Coverage and Public Affairs”, more precisely provides that, during election campaigns, broadcasters must “ensure that audiences are informed of the main issues and positions of all candidates and registered parties on those issues.”

The point of the foregoing references is that the Commission’s primordial goal appears to be the assurance that, during election campaigns, audiences will be *informed*. The CRTC expects that, on the basis of coverage, audiences will be in a better position to make *informed choices* on the issues, candidates and parties. And the treatment of these must be *equitable*, without necessarily being *equal*. Moreover, this compendium of principles is intended to ensure that, *during election campaigns*, the elaborated principles will be implemented and observed. The implication of the timing of the group of principles is that, when no election campaigns are before the populace, the flexibility of the rules is even greater. This is not to suggest that there are *no* rules, but only that

the customary principles of balance in overall programming and respect for the full, fair and proper presentation of news, opinion, comment and editorial apply.

All of the general principles discussed above are supplemented by the CRTC's anticipation of the problem facing the Panel in the present instance. What further restrictions may be seen to exist when a candidate is an on-air personality or, presumably, vice versa? The information sheet on "Election Campaigns and Political Advertising" deals with that point in the following terms:

**On-Air Personalities as Candidates**

- This refers to on-air personalities, whether they are employed on radio, television or community programming channels, even if their exposure is solely in the role of commercial announcer.
- Broadcasters must ensure that such candidates are removed from their on-air duties during the election campaign or from the date their candidacies are announced, whichever is later.
- Offering similar on-air opportunity to an on-air candidate's opponents is not an option.

It seems clear to the Panel that candidates must cease their on-air exposure during any election campaign or from the date of announcement of their candidacy, *whichever is later*. The underlying implication is evidently that no *fundamental* conflict exists between being a candidate and being on the airwaves, even when the announcement of one's candidacy occurs, say, two months before an election is called. In other words, the issue appears to relate to the unfair advantage that may accrue to an on-air individual *in the midst of* an election contest. Provided one is outside that period, no necessary incompatibility is seen to ensue.

This does not mean that the Panel considers that absolutely anything could be said at any time by a candidate or an office-holder. It only means that the Panel does not consider that there is anything *inherently* incompatible between the holding or seeking of office by an individual, on the one hand, and being on air, on the other.

As a point of comparative interest, there is a similar provision found in the (British) *Ofcom Broadcasting Code* in Section 6.6, which reads

Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period.

There is only one other provision in the British Code that refers to any broadcasting restrictions placed upon politicians. Section 5.3 of that Code reads:

No politician may be used as a newsreader, interviewer or reporter in any news programmes unless, exceptionally, it is editorially justified. In that case, the political allegiance of that person must be made clear to the audience.

In the United States, there is no comparable restriction under the Federal Communications Commission (FCC) rules, except during election campaigns, and then the issue relates to the furnishing of equal time or equal opportunities for other candidates seeking the same position. There is otherwise no restriction upon a political officeholder's access to the airwaves as an on-air host.

The Ontario Panel appreciates that some Canadian broadcasters will prefer not to confer such an access advantage on an individual at any time, even when there is no political campaign in contemplation. That, needless to say, is their choice. The bottom line for the Ontario Regional Panel is that, in Canada, provided one is outside the period of an electoral contest, there is no necessary incompatibility between an individual's holding political office and having a regular on-air role.

### **Bob Bratina's Comments: Unfair or Conflicted?**

The Panel is only in a position to assess the comments made by Bob Bratina during the broadcast of March 19. Consequently, it cannot determine whether the host *regularly* "us[es] the morning show to showcase his political activities and viewpoint," as the complainant alleges. It can, however, conclude that, to the extent that the episode of March 19 is the worst that the complainant can identify, there is no Code-related problem with the program. The Panel does not agree that a talk show host cannot use his or her program to showcase his or her viewpoint or, as the complainant added, "to use his [or, generically, her] time slot on the air as a personal forum." That is the essence of commercial talk radio. In *CKTB-AM re the John Michael Show (Middle East Commentary)* (CBSC Decision 01/02-0651, June 7, 2002), for example, this Panel explained that there are generally two types of talk shows: those where the host is an active participant and those where the host acts as more of a moderator in the discussion. The distinction was drawn in the following terms:

Public radio may be said to aim more at the provision of information while private radio's talk shows are intended to be livelier and more provocative. To accomplish this goal, the latter are not likely to feature a host without a point of view. The constant central figure does not simply play the role of referee, gingerly guiding the callers around the electronic forum into which they have stepped. The verb which is the root of the French word for host, "animer", gives a far better sense of the role of such a talk radio host. It is to breathe life into, to communicate ardour, energy, enthusiasm, excitement, passion, to lead, to inspire.

In other words, private talk radio hosts are expected to have a *viewpoint* and to, in that sense, use their shows as something of "a personal forum". The Panel finds nothing in the host's commentary in response to the *Hamilton Spectator* article to be problematic or over-the-top, although it unquestionably has a perspective (more of this in the

following section). There is no breach of Clause 6 of the *CAB Code of Ethics* on this account.

To be entirely fair to the complainant, it appears that her greater concern was the mixing of the political and broadcast roles. Here, too, the Panel finds no difficulty. There is nothing overtly political in the commentary, as in a “Vote for me” exhortation. There is, as noted in the preceding paragraph, a host point of view on the issue of adult entertainment parlours. It may even be said to reflect a perspective that flows from the elected responsibility that the host exercises. Perhaps there is even a subtle reach in *any* of the host’s comments, on this date or any other, to support him in due course, if you agree with his policies. To the extent that the host practises his on-air profession *away from election campaign periods*, however, there is no inherent difficulty or conflict of interest resulting from his municipal position. It should be borne in mind that this decision is rendered on the basis of the challenged broadcast; it does not necessarily respond to absolutely *any* comment that may be made by an on-air politician. Whether, for example, there might be a difference between the advocacy of an issue *about to come* before City Council and one describing the *consequences* of Council deliberations after the fact has neither been raised nor considered in the present decision. There may not be a material distinction to be drawn between two such situations. That will, however, be left to another Panel to determine should the facts require such an assessment.

Fundamentally, this Panel is determining that the access, even the advantage, that the politician-host undeniably has is not *inherently* undue (during a non-campaign period). Moreover, where the political status of the speaker is known to the audience, the listeners are not in any way deceived. Indeed, it is arguable that audiences having the opportunity to benefit from the knowledge and experience of an individual in office secure an information advantage. As noted immediately above, there *may* be a distinction to be drawn between a politician-host who is aggressively pushing his or her own agenda and one who is helpfully informing an audience. The CBSC response to the former situation must await a more relevant set of challenged facts.

The bottom line in the matter at hand is that, given the partisan ardour that CBSC Panels regularly encounter in talk show hosts who have no elected seat, the relatively downplayed perspective of Bob Bratina in the challenged program presents this Panel with no difficulty. It finds no breach of Article 6 of the RTNDA Code.

### **The Criticism of the Newspaper**

The Panel has little to say about the complainant’s strongly worded characterization of Bratina’s “attack” on the local newspaper story, “because she [the reporter] hadn’t written the story the way he wanted it.” The *Hamilton Spectator* had, after all, edited,

titled and published the story, which they had every right to do, and, in the best free speech tradition, the subject of the story responded, which he had every corresponding right to do. The Panel has no way of, or interest in, assessing which point of view, if either, may have been correct. The Bob Bratina reaction was, simply, a reasonable, temperate, fair reaction to the reporter's story, a case where he felt entitled to explain how his view on the red light district had been misrepresented. It was not an *attack*. It expressed a disagreement. It did not contain a smidgeon of an insult, much less a wisp of an unfair or improper comment or opinion. All fair game. Moreover, the host did not even name the newspaper, let alone the reporter; it is difficult for the Panel to conceive that the host's comments were other than fair and proper.

### **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 two responses of CHML's General Manager were, in this regard, thoughtful and responsive. While the first response was brief, the second focussed on the precise elements of the complaint and dealt with them in a helpful manner. Although it was not a satisfactory reply from the complainant's perspective, the broadcaster is never under any obligation to agree with the complainant. Not only is there no fault in the difference of perspectives, it is the case that every matter that goes to a Panel for adjudication begins with just such a disagreement between the complainant and the broadcaster. The Panel considers that CHML has fully met its CBSC membership responsiveness responsibilities. The Panel also wishes to note the additional letter from Corus Entertainment's Vice President and General Counsel. Although it only represented additional clarifications related to the challenged programming sent to the CBSC and not to the complainant, it is a part of the correspondence and reflective of the broadcaster's parent company's concerns.

*This decision is a public document upon its release by the Canadian Broadcast Standards Council. It may be reported, announced or read by the station against which the complaint had originally been made; however, where, as in the present case, the decision is favourable, the station is under no obligation to announce the result.*

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## APPENDIX A

### CBSC Decision 06/07-0908 CHML-AM re the *Bob Bratina Morning Show*

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The *Bob Bratina Morning Show* airs on CHML-AM (AM900 Hamilton) from 6:00-9:00 am. The episode of March 19 featured a number of different segments, covering different topics.

At 7:02 am, Bratina made the following statement:

I've got to weigh in on a story that appeared with my name on it regarding red light districts. And the story says, uh, "Give City Red Light District, Bratina Says". That's the headline. Bratina didn't say that. And it's quite interesting because what I did say was that we do have encroaching in our neighbourhoods, uh, in the north end, in, uh, Court Town, in other neighbourhoods throughout, beyond Ward 2 and all over the place these so-called, uh, aromatherapies and bath-houses and whatever, which are, in fact, uh, places, adult entertainment parlours where females are touching males. I'm not against that. You know, that's part of life. What I am against is that they're in, right beside, in one case, right beside a family with children who see customers arriving at all hours of the night and other problems associated with it.

So, I shared with my, uh, colleagues at City Hall and staff, uh, a draft by-law from the City of Ottawa. And, and what I said was that the way it is now, we, we can't seem to control where these places are located and I said even a red light district would be better than this. But I'm not proposing a red light district. "Give City Red Light District, Bratina Says." Didn't say that. Not only that, I told the reporter about three times that that was not what I was about. It was about working, drafting a by-law, doing whatever we can to prevent what I said. And then the reporter goes on about "Well, what ward would it be if was ... ?" I said this isn't about wards. There could be, as there is now, one here, one there, but they need to be in industrial areas or commercial areas and areas where they're not in, in this case I was referring to, a family living next door, park across the street, school a block away. Don't put it there.

So the whole thing starts. And one of the councillors, "Well, not in my neighbourhood". And people write blogs that say "Why doesn't he put it on his street?" It *is* on my street! I'm trying to get it off my street! But it's just silly, you know, like.

And the most disturbing thing is the e-mail from which this was drawn was an internal e-mail and somebody shared it with the news reporter. So would you please not bother sending me any arguments. And I'm not even saying a red light district is wrong or right and I don't want a public debate on a red light district. All I want to do is find ways so that these facilities are not located in family-oriented neighbourhoods. That's all. Thank you.

Bratina talked about the issue again in a conversation with another CHML announcer, Roy Green, at 8:10 am.

Green: Hey, Bob. I, um, I wanted to talk to you about the issue of a, you know, red light

district in Hamilton.

Bratina: Sure.

Green: Because, uh, there's something that I've long believed that we need to have in our major urban centres to, to control the activity and to control where the, uh, the stroll, as it's euphemistically called, is located.

Bratina: Well, okay. Now I have to remind you, because we had this quick chat.

Green: Yeah.

Bratina: That I was not, in my discussions with staff and committee, discussing a red light district. I said what we have now, a red light district would be better. But what I was aiming at was, was wording our by-law so that we could control the body rubs.

Green: Yeah.

Bratina: Yeah.

Green: No, I, lookit, I. That's a very sensible point and, and it's one that should be discussed and, uh, one that should be implemented. Now, but, the, of course, I hit you with that little bit of news that I found out –

Bratina: Yeah, what was that?

Green: -- on the weekend. And that is in Germany, in, uh, certain parts of Germany, where, where there are red light districts, seniors are going to be getting a fifty per cent cut in, in the rate at, um, certain commercially, uh, run operations, so. [Bratina laughs] So I didn't know whether there was an ulterior motive in talking about this.

Bratina: No. [Bratina & Green laugh]

Green: You know what? I really enjoyed reading the story because the, the madam – I think it's a woman – who runs the place, or the places, said we're trying to broaden our demographic. [Bratina & Green laugh] So I'm reading this on the weekend and I thought okay, so I gotta bring this up on Monday morning and now – and I knew I would be – I'm really sorry that I did. [Bratina & Green laugh] So don't everybody run out and buy a Lufthansa ticket. Anyway. [laughs]

Bratina: But, I think it was kind of funny, though, that this question of red light came up. So what do you think the ques-, the poll question was on Friday?

Green: I don't know.

Bratina: "Should cross-walks in Hamilton have amber lights?" [Bratina & Green laugh] So now we've got an amber light district. [Bratina & Green laugh]

Notwithstanding the complainant's description of the broadcast, the CBSC Secretariat found no instance during the *Bob Bratina Morning Show* where he discussed the press's treatment of Barbara Amiel.

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**APPENDIX B**

**CBSC Decision 06/07-0908**  
**CHML-AM re the *Bob Bratina Morning Show***

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**The Complaint**

The complainant sent multiple complaints dated March 19, 2007 to the CRTC which were forwarded to the CBSC in due course:

Bob Bratina, the morning show host of CHML, uses his show to present his own political perspectives and criticize and attack others who don't share his views or support him as he would wish. He uses CHML as a political soapbox for his other job as Ward 2 Councillor.

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The use of the radio morning show as a political forum for the Ward 2 Councillor Bob Bratina who also works for CHML radio station. His unfair politicization, his unfair comments and his use of the show to showcase his political activities and viewpoints are inappropriate and distasteful.

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Dear Sir,

I am writing to express my concern about the use of the CHML morning program as a political forum for, and by, Bob Bratina. I have been on the verge of writing this letter for quite a while now but today's comments by Mr. Bratina, while on air as your morning radio announcer, were so appalling that I am actually taking the time to write to you to make a formal complaint. My complaint is regarding the very ambiguous roles as radio announcer/Ward 2 councillor that Mr. Bratina continues to play on the CHML morning program. If Mr. Bratina wants to be the CHML morning announcer, that's fine. However, if he wants to be the Ward 2 Councillor, then he should not be doing it on the air while employed by CHML as their radio morning announcer.

Using CHML as his own personal soapbox has been an on-going activity for Mr. Bratina for quite some time. It has greatly increased since his election to the position of Ward 2 Councillor. In fact, over the past several years, he has been quite blatant in constantly finding ways to remind listeners about his position and activities as the Ward 2 Councillor. He never seems to be able to resist presenting his own political positions and personal perspectives while on the air, ostensibly, as the radio morning announcer. This behaviour has increased over the past few years. This is, in addition, to regularly commenting unfavourably upon issues, ideas and/or policies that he does not politically support. Somehow, he doesn't seem to realize that not everyone shares his political views nor supports his particular agendas. Nor do most of us want to hear this stuff in the morning anyway! However, that is not the essential point. Whether one agrees or disagrees with him, using the morning show to showcase his political activities and viewpoint is not only irritating and annoying. It is also downright inappropriate to use his time slot on air as a

personal forum and this seems to be something that he doesn't understand at all. And, in fact, I am surprised that this mixture of morning man/politician is something that your corporation allows and supports.

Two weeks ago, Mr. Bratina launched into a rant against the "unfair coverage" of the *Hamilton Spectator* regarding his suggestion for a fountain in the harbour. He re-presented his own arguments from the Council meeting all the while railing at the *Hamilton Spectator's* "attack" on his ideas. He did not, at any time, present any other, alternative viewpoints about the issue. On this program in particular, Bratina spent quite some time attacking the specific coverage by a specific *Spectator* journalist ([A. D.]) who was quite easily identifiable by the comments Mr. Bratina made. Mr. Bratina lambasted the *Spectator* and [the journalist] for what he felt was their "unfair" and "distorted" coverage of the issues before Council. Unfair? Perhaps, because they did not portray things from the Bratina perspective!

Presenting and justifying his own particular policies and position as the Ward 2 Councillor on any issue is not, in my opinion, appropriate on CHML's morning show. The manner in which this was done: an attack on others and a reiteration of his own position and policies, is also not acceptable. Using the morning show is not the appropriate forum for the Ward 2 Councillor's work, rants or otherwise. This is not what I would have thought the CHML morning program was supposed to be about. Also, it is quite unfair to the *Spectator*, [the journalist] and other Council members who don't enjoy this access to the public nor have a chance to respond to the innuendoes and accusations.

After hearing Mr. Bratina, I was concerned and frustrated by that particular morning's comments and planned, as a result, to write to you to complain. Of course, several weeks went by and I decided to hold off. Maybe, I hoped, if he had been warned about that particular broadcast, there was the hope (faint though it was) that he might behave more appropriately in the future. Maybe Shiona could keep him under better control!

Unfortunately, this has not been the case, in fact, quite the reverse! This morning's show demonstrated, yet again, that Mr. Bratina cannot make the distinction between his role as radio morning man and Ward 2 Councillor. It was unfortunate that Shiona was absent today since she might have been able to rein Mr. Bratina in a bit while he was on the air.

Mr. Bratina started his commentary this morning by expressing regret over the treatment of Barbara Amiel by the press. He then made a number of snide comments about the press all the while allying his situation with that of Barbara Amiel. He went on to comment negatively on the "distortions" by the people in the press of himself and others in the public domain. He then commented on how the *Spectator*/reporters use their positions and power to convey "their" messages and how frustrating this was for a poor Councillor like himself. Talk about irony!

Mr. Bratina then went on to castigate the reporter who had interviewed him over the issue of a "red light district" concept because she hadn't written the story the way he wanted it. Since the front page article identifies the reporter's byline, this was a direct attack upon a *Spectator* reporter's competency and veracity. Why such an attack? Well, according to Mr. Bratina, she did not report his words and comments as Councillor "accurately". Again, Councillor Bratina on the air and, I might add, the only with air time on this issue!

Since CHML is not putting the morning show on as a "paid political announcement", why is this kind of behaviour tolerated by CHML? I know that I am not alone in wondering why CHML morning show has allowed their morning show to become so one-sided and so politicized. I hope that this letter will, at the very least, cause you to consider your policies/broadcasting code regarding what is acceptable in terms of a radio announcer's role

while hosting a public program. I hope that your station can enforce a policy that will ensure that your listeners are not subjected to personal political sermons and unacceptable attacks upon other people and groups.

### **Broadcaster's Response**

Since the complainant has originally written to the station directly, CHML responded to the complainant on March 22:

Your email regarding our AM900 CHML morning host, Bob Bratina, was forwarded to me by our communications department. While we certainly acknowledge your concerns, we would like to assure you that AM900 CHML does abide by the regulatory guidelines and broadcast codes that govern our industry in Canada and endeavour to act accordingly. We are a responsible broadcaster, committed to providing a balanced presentation in news, opinion, comment and editorial when reporting on issues to our listeners in the greater Hamilton area. We will, however, address your issues and concerns with Bob Bratina.

Thank you for your letter.

The station re-sent that e-mail on April 9 following the CBSC's notification that it had now received an official complaint.

### **Additional Correspondence**

The complainant sent additional information on April 6:

Dear Sir,

In my complaint, I was remiss in not sending you the *Hamilton Spectator* article which addressed the same issue. I have sent it as an attachment and printed it below.

Bratina blurs line between city hall, radio guy  
By Andrew Dreschel  
*The Hamilton Spectator*  
(Mar 21, 2007)

We all know that former city councillor Bill Kelly's dual role as elected official and CH TV host periodically drew flak from council colleagues, critics, and opponents on the campaign trail.

Now it's time to apply some of that same heat to CHML morning man and Ward 2 Councillor Bob Bratina.

The fact that Kelly was actively engaged in running the city while hosting a weekday public affairs program that sometimes addressed municipal issues struck many as an absurdly inappropriate conflict of interest. But to the best of my knowledge, Kelly never used his position as a broadcaster to defend, clarify or refute on-air a position attributed to him as a councillor.

I'm told Bratina usually operates in much the same zone. He may touch upon public policy issues on his radio chat show, but normally stays away from discussing his own role as a councillor. But Bratina crossed that line this week.

On Monday he challenged on-air a *Spectator* story saying he believes a red-light district would be better than having body-rub parlours operating in Hamilton neighbourhoods. In an interview yesterday, Bratina argued the story and headline were misleading and incorrect and he had no recourse but to say so.

*Spectator* Editor-in-Chief David Estok says the paper stands by the story. Estok says it accurately reflects that Bratina, in a leaked city hall e-mail, raised the possibility of a red-light district. Estok also notes Bratina hasn't asked for a correction or clarification. Whether one is warranted or not is another matter.

The issue at hand is whether Bratina abused his media access as a broadcaster to buttress his position as an elected politician. Mayor Fred Eisenberger says this is exactly the kind of situation that an integrity commissioner could tackle, and which needs to be covered in an enhanced code of conduct for councillors. Without commenting on the specifics of the incident, Eisenberger says the city has a part to play in defining the roles and responsibility of a councillor in this type of situation, just as there is a responsibility on the part of a broadcaster.

Let's be absolutely fair. We're talking about a grey area here. As was the case with Kelly and CH, Bratina and CHML are in complete compliance with Canadian Radio-television and Telecommunications Commission (CRTC) regulations. Outside of taking leaves of absence at election time, the only CRTC rules that govern a broadcaster like Bratina and CHML are the normal prohibitions against abusive language, profanity and hate mongering. In short, there are no rules preventing a broadcaster who is also an elected official from feathering his or her political nest on air. Nothing except the organization he or she works for and perhaps that person's own sense of honour.

For her part, CHML general manager Suzanne Carpenter says the station scrupulously maintains its journalistic and broadcast integrity, abiding by all regulatory guidelines and broadcast codes, including its own code of respect and behaviour that all employees have to follow. Carpenter acknowledges the station's code doesn't specifically address employees who may be elected officials, but they respond to any and all complaints against announcers. Carpenter also notes CHML hasn't received a single complaint against Bratina regarding his dual role.

As for Bratina, based on our interview, he seems to be curiously blind to the fact he appears to have crossed a line. "I don't use my program for my own political purposes," he angrily insisted. So how do you describe what you said on-air? I asked. "Defending myself against an erroneous newspaper report." Defending yourself as a politician? "As a broadcaster. Because my listeners, some of them, said 'I was surprised that you would do something like that.'" But aren't you defending yourself for a position that was ascribed to you as a politician, not a broadcaster? "No. No. People say, 'Bob Bratina, I'm surprised that you, of all people, would be in favour of something like this ...'"

Whether he's aware of it or not, Bratina, on this occasion at least, is clearly having a hard time separating his two jobs. Maybe this will help focus his thoughts: What would that same little bit of airtime cost another councillor who doesn't have the luxury of his or her own radio show?

Andrew Dreschel's commentary appears Monday, Wednesday and Friday.

In response to the station re-sending their response on April 9, the complainant wrote back to them:

Your email of April 9th (11:22 am), which I have copied below, is the FIRST time that I have heard from you. My computer is working just fine and your message seems to be the only one that I have not received. I repeat: I did NOT receive any response dated March 22nd as you stated in your email. Also, I am NOT satisfied that you will "address my issues and concerns with Bob Bratina". He has crossed the line over and over again - not just on the occasions that I cited in my letter. Just as there was a public violation of his role as broadcaster, there should also be a public acknowledgement of these violations. So, I am NOT satisfied and I will be pursuing this issue further with the CBSC.

The complainant then submitted her Ruling Request on April 10 with the following note and also re-sent the March 21 *Hamilton Spectator* article (see above):

The General Manager, [S. C.], sent me an email response to my complaint on April 9, 2007. Contrary to her comment that she "responded on March 19th" and was "resending" her answer, I have never before yesterday received any email from her or anyone at CHML. I am not sure why she would state this when it is simply not true.

I also feel that her response does not acknowledge the validity of my complaint and the issues that I raised in the letter regarding Mr. Bratina's use of the air waves for his own particular political purposes and views.

To state that CHML is a "responsible station etc., etc., etc." is not my issue nor the focus of my concern. My complaint is with regard to Mr. Bratina and I have outlined this fully in my original letter to you.

I had hoped that the General Manager would actually address the issues in her response but she does not. To state that "We will, however, address your issues and concerns with Bob Bratina" is a meaningless statement. How will these "issues and concerns" be "addressed"? Is there any acknowledgement of the totally inappropriate behaviour by Mr. Bratina and will there be? Since it was a public violation, will there be a public acknowledgement and apology? All of these questions are left unclear in [the General Manager]'s disappointing "form letter" response.

Needless to say, I do not feel that my complaint(s) regarding Mr. Bratina have even been acknowledged, let alone appropriately addressed, by the General Manager. It is for this reason that I am, therefore, requesting a Ruling on this complaint.

Thank you for your time and attention.

CHML sent a second response on April 24:

The Canadian Broadcast Standards Council (the "CBSC") has asked us to respond to your email of April 4, 2007 in which you raised concerns regarding comments made during the

Morning Show (the "Program") that was aired on CHML-AM (the "Station") on March 19, 2007.

In your email you take issue with comments made by the Program host, Bob Bratina, suggesting that because Mr. Bratina is both a radio announcer and a city councillor, his comments that morning (and on other mornings, you argue), are inappropriate in so far as they constitute a conflict of interest. More specifically, you state that Mr. Bratina went on a 'rant' regarding what he thought was an unfair depiction by the *Hamilton Spectator* of his position on putting a fountain in at the Hamilton harbour.

We have listened to the tape of the Program, and confirm that Mr. Bratina did make comments pertaining directly to this position as city councillor. As a news talk station, we adhere to various rules, regulations and industry codes governing the programming we air, including the Radio Television News Directors Association of Canada's *Code of Journalistic Ethics* (the "Code"), which are administered by the CBSC. Our review of the broadcast you refer to reveals that on this occasion, Mr. Bratina failed to adhere to Article 6 of the Code, which states that broadcast journalists must "govern themselves on and off the job in such a way as to avoid conflict of interest, real or apparent".

Since receiving your email, we have had discussions with the Program host about what constitutes appropriate on-air content. More specifically, we have reviewed the applicable codes and standards with Mr. Bratina, emphasizing the importance of impartiality in the reporting of the news, particularly in light of the dual-role he plays. We strive to ensure that our programming is objective and balanced, and will continue to monitor the Program with vigilance in order to maintain these standards. We regret that you were troubled by our programming, and trust that this letter addresses your concerns. We at the Station recognize the importance of listener feedback and appreciate all comments.

The complainant responded to that letter on April 24:

I do appreciate your personal acknowledgement of my letter of concern and your attachment and this will go a long way in forgiving your previous patronizing form letter. I do thank you for the update re: the CBSC ruling process. I had already heard from them saying that there would be a ruling process. Your attachment, regarding the acknowledgement of some of the violations that I referenced in my letter, is appreciated. However, I do feel that public violations of the code require a public acknowledgement and an apology from Mr. Bratina to his listeners. Again, I reiterate, this is one of many, many occasions where Mr. Bratina has violated his role as a radio broadcaster and, as Station Manager, I am sure that you are very aware of this.

I await the ruling's conclusions on this issue.

The complainant sent another letter to the station on April 24:

Upon reflection, your answer did not address the personal attacks launched by Mr. Bratina against the *Spectator* and, in particular, two reporters who work for the *Spectator*. I do think that these issues amongst others that I raised in my letter also need to be addressed by your station and, particularly, by Mr. Bratina.

The complainant wrote again to the station on April 26:

I want to apologize for my sharp tone in my response to the first correspondence that I received from you. Given my anger at Mr. Bratina's abuse of the air-waves, I was not happy to have my concerns dismissed with comments about CHML being a "responsible station" and that you would "talk to Mr. Bratina." I do know that CHML is a responsible station but that isn't and has never been the issue. Regardless, I should not have taken my annoyance out on you in my response to your email of April 24, 2007.

I do appreciate from your comments that the the "station" has taken the issue very seriously. However, I have no idea as to whether Mr. Bratina fully appreciates the concerns (about far more than just his "geyser comments" by the way) that I expressed in my letter of concern. Nor do I know if he actually understands why his actions were/are an issue. His "voice" has been in none of the correspondence. Perhaps, a public statement from Mr. Bratina to me and/or to the *Hamilton Spectator* would help resolve this issue. This issue needs to be resolved and I hope that, perhaps, you will consider my suggestions.

The complainant wrote to the CBSC again on May 3:

Although there has been a further exchange of correspondence between CHML ([the General Manager]) and myself, my concerns and issues have still not been fully acknowledged nor fully addressed and, in fact, my last correspondence trying to resolve the issue was not answered by CHML's General Manager. Regardless, I do NOT consider that my concerns have been sufficiently addressed and, so, please be advised that I wish that the formal process be continued. I would hope that all of my concerns and issues regarding Mr. Bratina will be addressed.

The program host, Bob Bratina, then wrote to the CBSC National Chair on May 10:

By way of this message I'm requesting the opportunity to speak to the panel dealing with the complaint from Ms. [K. C.], CBSC Ref. C06/07-0908.

I have been in broadcasting for 42 years, and on October 1, 2004 I was first elected to Hamilton City Council, since then performing both jobs. In that time, I have been the subject of only 1 formal complaint. There are other implications that extend beyond review of the commentary in question which I feel have to be taken into account and I am in a unique position to assist in this process.

The CBSC National Chair responded on the same day:

Thank you for your e-mail.

It is not the practice of the CBSC to have any witnesses or *viva voce* participation in its adjudications, whether on the part of the complainant or the broadcaster. This would, of course, mean that no live intervention on your part would be possible. We operate on the basis of the recordings of the challenged programs (which are the best evidence of what was actually said), the full written correspondence from the parties, and our codes and jurisprudence.

That being said, I cannot see a reason why you would not be entitled to send a letter to the CBSC, which could be considered with the other written communications.

I hope this is of help.

Mr. Bratina responded on the same day:

Thanks very much for your reply. I am confident your review of the matter will result in an equitable decision or commentary. I will send a letter as you suggest.

Despite this indication, Mr. Bratina never sent any further correspondence to the CBSC.

The station's parent company, however, sent the CBSC a letter dated October 3:

We are writing in respect of the complaint by Ms. [K. C.] of the *Hamilton Spectator* regarding a broadcast of the Morning Show on CHML-AM hosted by Bob Bratina and Shiona Thompson. We understand that the CBSC will be deciding whether Mr. Bratina and the station have breached certain Canadian broadcasting standards, as administered by the CBSC, and we ask that you take the following into consideration when reflecting on the matter.

In her original complaint dated March 19, 2007, [the complainant] stated that Mr. Bratina, co-host of the Morning Show, as well as Hamilton city councillor for Ward 2, had been using the Morning Show to "showcase his political activities and viewpoint", which she claimed was "downright inappropriate". [The complainant] suggested further that Mr. Bratina had, on certain occasions, used his position on the Morning Show as his personal "soap-box", and that he was therefore confusing his two roles: on the one hand, his role as Morning Show co-host, and on the other, as councillor of Ward 2.

Mr. Bratina has been a broadcaster since 1965, and has been co-hosting the Program since 1989. In 2004, Mr. Bratina decided to run for a position on Hamilton's city council, and was elected councillor for Ward 2 on October 1, 2004. Mr. Bratina was re-elected councillor for Ward 2 on November 14, 2006. Mr. Bratina had informed Corus management of his decision to run for office as well as for re-election, and as required by CRTC policy regarding Election Campaigns and Political Advertising, Mr. Bratina recused himself from his on-air duties during the respective campaign periods.

In our letter to [the complainant] dated April 24, 2007, we acknowledged that Mr. Bratina may have, on the occasion cited by the complainant, breached Article 6 of the Radio and Television News Directors Association's *Code of Ethics* (the "RTNDA Code"). This said, the question remains as to whether the RTNDA Code in fact applies in this case. As discussed in greater detail below, the Morning Show is a public affairs program, not a newscast, and as such, we do not believe that it is subject to the RTNDA Code. As the CBSC has noted, a public affairs show is not constrained by the same need for objectivity as a newscast, and its hosts are entitled to take a point of view on subjects that are controversial, as long as their presentation is fair and balanced.<sup>1</sup> We believe that the Morning Show has, and continues to meet, this objective.

During his 42 years in broadcasting, Mr. Bratina has prided himself on providing high quality programming to his listeners. As co-host of the CHML-AM Morning Show, Mr. Bratina has consistently provided programming that is both entertaining and informative to Hamilton-area residents. Since the Morning Show is more focussed on public affairs than on news, Mr. Bratina routinely comments on topics of local and public interest. While Mr. Bratina has not shied away from expressing his opinion on a number of local matters, including whether the City of Hamilton should build a fountain in the downtown core or establish a “red light” district, the Morning Show routinely offers points of view from across the political spectrum on a variety of issues. In the past six months alone, Mr. Bratina and Ms. Thompson have interviewed a number of municipal and provincial politicians, including Marie Bountrogianni, Liberal MPP for Hamilton Mountain, Andrea Horwath, MPP for Hamilton East, and Ontario PC Party Leader, John Tory. Both Fred Eisenberger and Cam Jackson, mayors of Hamilton and Burlington, respectively, have been guests on the Morning Show on two occasions. Mr. Bratina and Ms. Thompson have also hosted a Morning Show featuring Terry Whitehead, City of Hamilton councillor for Ward 8.

There is little doubt that the potential for conflict of interest exists in a situation where a broadcaster also holds a political office. For that reason, the CRTC enacted a policy regarding Election Campaigns and Political Advertising, to which we have wholly complied. The question here is whether the RTNDA Code should also apply in this kind of situation to mitigate against potential conflict of interest. Given the nature and format of the Morning Show, we submit that it should not, and therefore, that [the complainant]’s complaint does not raise any issue for the CBSC.

The complainant requested updates on the status of her file on July 10, October 11, October 14 and December 6, 2008 as well as March 30 and April 20, 2008. The CBSC also received an inquiry from a reporter at the *Hamilton Spectator* on August 16, asking when this decision would be released.