
**CANADIAN BROADCAST STANDARDS COUNCIL
QUEBEC REGIONAL PANEL**

CFDA-FM and CFGO-FM re on-air comments (logger tapes)

(CBSC Decision 06/07-1235 and -1236)

Decided August 23, 2007

T. Rajan (Vice-Chair), L. Baillargeon, B. Kenemy, D. Meloul

THE FACTS

On June 21, 2007, the following brief complaint regarding a June 7 broadcast on radio stations CFDA-FM and CFGO-FM in Victoriaville was sent to the CRTC, which forwarded it to the CBSC:

Defamatory comments made about me by a host, without any validation as to their source on Thursday, June 7, 2007 between 8 a.m. and 8:20 a.m.

On June 25, the CBSC Secretariat sent its customary e-mail to the General Manager of the two stations, requesting that she set aside and hold the logger tapes for both broadcasts. The CBSC heard nothing further in this regard and only realized on July 20 that no reply had been received from the General Manager to its June 25 request. The CBSC's Director of Policy then called the stations' General Manager, who advised that she had never received the June 25 e-mail, possibly (she speculated) because of a new Spam filter added to their computer system at that time. She agreed to check for the logger tapes but reported later that day by e-mail that they had been recycled. In any event, the CBSC advised her that the stations were obliged to reply to the complainant, which their Program Director did on July 31. He wrote (the full text of all correspondence is provided in the Appendix):

You recently sent a complaint to the Canadian Radio-television and Telecommunications Commission (CRTC), concerning comments made on the Passion-Rock 101.9 and O 97.3 radio stations. Your complaint was forwarded to the Canadian Broadcast Standards Council (CBSC) and it subsequently informed us of your concerns.

In reading your complaint, I believe I can surmise that you are the former Bloc Québécois MP who represented the Lotbinière riding from 1994 to 1997. You allege that defamatory comments were made about you on June 7, 2007 between 8 a.m. and 8:20 a.m. on O 97.3 and Passion-Rock 101.9.

Unfortunately, we no longer have the logger tapes for June 7th. It is therefore impossible for me to know the exact nature of the comments aired on our stations during that period. Given, however, that your complaint concerns two different stations during a time period that corresponds to some of our newscasts, I can conclude that this concerns comments that were aired within one of those newscasts.

Consequently, I would ask you to let us know what was said in the comments you heard on our stations, so that we can provide you with an adequate reply and, if necessary, apologise to you and/or give you the opportunity to rebut those comments.

On August 1, the complainant sent the following correspondence to the station :

I want to hear what was said.

Both the General Manager and the complainant telephoned the CBSC, the latter asking what he could do to continue the complaint process. He was advised that he could file a Ruling Request but that the CBSC would not be in a position to deal with the substance of the complaint due to the absence of the logger tapes and with no other clues available as to what was said on-air. Accordingly, the complainant sent the following e-mail to the CBSC on August 1.

I am dissatisfied with the reply given to me by 97.3 and am pursuing my complaint. I feel the law is not being adhered to in this case.

THE DECISION

The Quebec Regional Panel reviewed the complaint on the basis of the sections of the *CBSC Manual* dealing with the responsibilities of its broadcaster members and the procedures relating to dealing with complaints:

CBSC Manual, Responsibilities of Members:

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

[...]

h) co-operate fully with the CBSC by retaining the logger tape of a challenged program from the time of any request by the Secretariat until such time as the CBSC notifies the broadcaster that it is no longer necessary to hold the tape for purposes of resolution of the complaint.

CBSC Manual, Complaint Resolution

In the event that the direct approach to the broadcaster has not been successful, a complainant may always contact the CBSC. In order for such a two-step process to be effective, enabling the complainant to have a valid and useful “appeal” to the CBSC, the broadcaster must take all necessary steps to ensure that the timeliness of its reply is such that the complainant is able to access the CBSC’s process within the 28 day period for retention of logger tapes or that it has set aside the logger tape for the challenged program so that it will be preserved and available to ensure the security of the process.

[...]

Provision of Tapes

The Secretariat will, at the time of receipt of the complaint, and generally before even despatching the letter to the broadcaster, contact the broadcaster to ensure that the logger tape of the challenged broadcast be set aside by the broadcaster until such time as the CBSC notifies the broadcaster that it is no longer necessary to hold the tape for purposes of resolution of the complaint. It is a fundamental membership responsibility of the broadcaster to retain the logger tape securely so that it will be available if and when the Secretariat advises that the required number of dubbed copies be made available for purposes of evaluating, adjudicating or otherwise dealing with the file.

The Panel reviewed the correspondence but, due to the absence of logger tapes or any indication of the substance of the challenged program, it was unable to evaluate the content. Because of uncertainty in the correspondence process, the Panel did not conclude that the broadcasters’ failure to retain and provide the CBSC with logger tapes of the program in question amounted to a breach of their obligations as a member of the CBSC.

The Obligation to Retain Logger Tapes

Broadcasters have an obligation to both the regulator and the self-regulator to retain logger tapes when these are required. In *CJSB-AM re The Wendy Daniels Show* (CBSC Decision 92/93-0219, February 15, 1994), for example, although reserved, the logger tapes were not, for unexplained reasons, available for the use of the Ontario Regional Panel, which found the station in breach of its responsibilities as a CBSC member.

It is clear that the standard of the CBSC in this regard is in no more or less stringent than that to which the broadcaster must adhere as a part of his responsibility under the *Broadcasting Act* and *Regulations*. There was no justifiable explanation proffered by the broadcaster for the loss of the tapes, whose retention ought to have been viewed as a matter of considerable responsibility for it.

Even where the logger tape had been red-flagged and set aside in accordance with station practice, and the red flag was inadvertently removed, with the

consequence that the tape was accidentally recycled, the broadcaster was found in breach, in *CHAN-TV re a news item concerning a fatal accident (logger tapes)* (CBSC Decision 00/01-0839, January 23, 2002). And in *CKNW-AM re the Peter Warren Show (Logger Tapes)* (CBSC Decision 98/99-0643, May 9, 2000), where the broadcaster explained that “the employee with the responsibility of preserving the tapes in April of last year has since moved to Australia and, after much effort, we have been unable to locate the secured tapes,” the B.C. Regional Panel found against the broadcaster. It stated that

its expectation is one of *result*, not of best efforts. Barring a natural catastrophe of the nature of a fire, broadcasters *must* retain and provide the tapes which are the essence of the self-regulatory, and regulatory, investigations. The failure to comply constitutes a breach of one of the broadcaster’s fundamental obligations as a member of the CBSC.

Similar principles apply in the case of the CRTC, where failures of this nature generally result in the addition of a condition regarding tape retention to the offending broadcasters’ licenses. The conclusion is clear; broadcasters *must* retain logger tapes requested by the CBSC *securely* until their delivery is asked for, when they *must* ensure their remittance to the CBSC. Broadcasters are only relieved of this obligation once that delivery has been made or the CBSC advises them that the file has been closed.

Application of these Principles to the Present Case

It might seem, therefore, that CFDA-FM and CFGO-FM have breached the broadcaster’s membership obligations in the present instance, but the Quebec Regional Panel finds an important wrinkle here that it has not previously encountered. The broadcasters’ General Manager and their Program Director advised that they never received the CBSC’s customary e-mailed direction to retain the logger tapes of the challenged program. Since the CBSC Secretariat never received a bounce-back indication of unsuccessful delivery, it *appears* as though the e-mail was received. That being said, it may well have been routed into a spam filtering system. Were that the case, the full responsibility to retain the logger tapes would remain with the broadcaster. Because the CBSC cannot be aware of what actually occurred and because the CBSC Secretariat did not follow up in its customary assiduous manner, due to personnel changes at the Council, the Panel can only conclude that, on *this* occasion, the broadcasters will not be found in breach of their membership obligation to retain and deliver logger tapes. They are, however, advised to ensure that appropriate priority be attributed to the receipt of requests of this nature in future.

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.

ANNEXE

Dossier du CCNR 06/07-1235 et 1236 **CFDA-FM et CFJO-FM concernant commentaires faits en ondes (bandes-témoins)**

La plainte

Le CRTC a acheminé la plainte suivante en date du 21 juin 2007 au CCNR:

Il s'agit de la station de radio O 97,3 et Passion-Rock 101,9 situé au 55 St-Jean-Baptiste à Victoriaville appartenant à la Directrice générale]] dont le no. de téléphone est [###-###-####], poste [###].

Propos diffamatoires tenus à mon égard sans aucune validation de sa source par un animateur le jeudi 07 juin 2007 entre 08h00 et 08h20.

La réponse du radiodiffuseur

Le 25 juin, le Secrétariat du CCNR a envoyé un courriel à la Directrice générale lui demandant de garder les bandes-témoins pour les radiodiffusions des deux stations. Le CCNR n'a rien entendu et, à cause des changements de personnel, n'a pas suivi ce dossier d'assez près.

Le 20 juillet, le Secrétariat s'est rendu compte qu'il n'avait jamais reçu une réponse de la part de CFDA-FM et CFJO-FM. La Directrice des politiques du CCNR a téléphoné à la Directrice générale qui a dit qu'elle n'avait jamais reçu le courriel du 25 juin (peut-être à cause du nouveau filtre de pourriel) et qu'elle chercherait les bandes-témoins. Dans un courriel de même journée, la Directrice générale a indiqué qu'elle n'a plus les bandes-témoins. Le CCNR lui a dit qu'elle doit quand même répondre au plaignant, ce que la station a fait le 31 juillet :

Vous avez récemment porté plainte au Conseil de la Radiodiffusion et des Télécommunications Canadiennes (le CRTC), concernant des propos tenus sur les ondes des stations de radio Passion-Rock 101,9 et O 97,3. Cette plainte a été acheminée au Conseil Canadien des Normes de la Radiodiffusion (le CCNR) qui, par la suite, nous a fait part de vos préoccupations.

À la lecture de votre plainte, je crois deviner que vous êtes l'ex-député de la circonscription de Lotbinière de 1994 à 1997 sous les couleurs du Bloc Québécois. Donc, vous prétendez que le 7 juin 2007 entre 8 h 00 et 8 h 20, des propos diffamatoires à votre endroit auraient été tenus sur les ondes de O 97,3 et de Passion-Rock 101,9.

Malheureusement, nous n'avons plus les bandes-témoins de ce 7 juin. Par conséquent, il m'est donc impossible de connaître la teneur exacte des propos diffusés à nos antennes

pour cette période. Par contre, puisque cette plainte porte sur deux stations différentes et au cours d'un laps de temps correspondant à des bulletins de nouvelles, je peux déduire qu'il s'agit de propos qui ont été diffusés à l'intérieur de l'un de ces bulletins.

J'aimerais donc que vous me communiquiez la teneur des propos que vous avez entendus sur nos ondes afin de pouvoir vous répondre adéquatement, et, s'il a lieu, vous présenter nos excuses et/ou vous accorder un droit de réplique.

Correspondance supplémentaire

Le 1^{er} août, le plaignant a écrit à la station :

Je veux entendre ce qui a été dit.

La Directrice générale a téléphoné au CCNR pour expliquer de nouveau que les bandes étaient recyclées et qu'il n'y a pas moyen d'entendre les commentaires. Le plaignant a également téléphone au CCNR pour demander ce qu'il peut faire pour continuer sa plainte. La Directrice des politiques lui a expliqué qu'il peut remettre sa Demande de décision et le CCNR peut examiner la question des bandes-témoins, mais, puisque les bandes étaient recyclées, le CCNR ne peut pas commenter sur les propos tenus en ondes. Le plaignant a donc envoyé le courriel suivant :

Je ne suis pas satisfait de la réponse de la station 97,3 et je continue ma plainte. J'ai l'impression que la loi n'est pas respectée.