
CANADIAN BROADCAST STANDARDS COUNCIL

ONTARIO REGIONAL PANEL

CIGL-FM re a segment on the morning show (Jack Miller)

(CBSC Decision 07/08-0473)

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*)

THE FACTS

CIGL-FM (Mix 97, Belleville, Ontario) broadcasts its morning show daily from Monday to Friday. The program is hosted by Sean Kelly, Ingrid Moore, Todd Smith and Jack Miller. Jack Miller began working at Quinte Broadcasting (CIGL-FM's parent company) in the 1970s and became Sports Director in 1979. He provides the on-air sports scores during the morning show on Quinte Broadcasting's three radio stations. He was elected to Belleville City Council in December 2006 and continues to participate in Mix 97's morning show.

As is customary with local radio morning shows, the hosts frequently discuss matters relating to municipal politics and City Council activities. On October 3, they talked about the previous night's Council meeting:

Smith: [...] Council meeting last night. Yesterday afternoon.

Moore: Five –

Smith: Extended into last night.

Moore: Five million dollars. You guys are writing a cheque for five million dollars. Joining us is Councillor Jack Miller.

Miller: Well, that's cheap at twice the price, I think, when it gets right down to it [all chuckle].

Moore: I like your kind of creative banking. I like that.

Miller: Well, there you go. Actually we don't take it lightly, but the City of Belleville needed to get control of its waterfront, as opposed to allowing it to remain in the control of the Federal Government and then who knows where it would go from there. And could be private development. I'm not saying it's a bad thing, I'm just saying, City needs to control its own waterfront and City Council agreed with that yesterday. And, so, we'll write the five million dollar cheque. The Federal Government will write a ten million dollar cheque and all of that goes into cleaning up the land.

Smith: And, and we've seen what happened with private development in some other areas along Belleville's waterfront, so probably a good idea would, did that maybe, um,

Moore: Weigh a little bit.

Smith: Weigh a little bit in the decision for Council?

Moore: And you look down the waterfront at the boarded-up old building.

Miller: Well, let's put it like this, it, it didn't hurt –

Smith: Yeah.

Miller: – having that situation. But you know what? It still comes down, it's the jewel of the community. And it's available to the community. And as much as it's being used by everybody now, we still don't own it. The Federal Government owns it and can do whatever they want with it. And, so, staff has worked very hard and Council has agreed that it's imperative that, that the City have control of the lands. There are the contamination issues and, and very real issues. And they were brought forward by Bob Dolan as far as, uh, the waterlot, things like that. And, believe me, they weren't taken lightly by any stretch of the imagination. We're going to do everything we can to clean it all up. The land issue will be dealt with and that's where the fifteen million goes. Uh, we've been told, at least I talked to somebody with the Ministry of the Environment yesterday, they said leave that other issue alone because you can create more troubles trying to stir up silt.

Smith: Here, here's the five million dollar question, okay?

Miller: All right.

Smith: The five million dollar question: Will Belleville's waterfront be getting a Jimmy Buffet's Margaritaville?

Miller: Well, I, I think –

Smith: Wouldn't that be cool!? [Moore laughs]

Miller: – that would be an amazing idea.

Smith: Huh? We need some more bars on the waterfront.

Moore: Smitty, you be the entrepreneur and you come up with that.

Miller: And I'm not shocked that you'd want it.

Moore: Yes. [Smith laughs]

Smith: Actually –

Moore: Uh, skateboard parks came up for discussion last night as well?

Miller: Skateboard park, it's moved to the tender process now and there will be a clearing of the land and by next year the kids'll have their skateboard park. And something else that Council's really delighted with yesterday, another two hundred thousand dollars of Aridian profit money which comes to the City is going to be used into the doctor recruitment program because it has gone over so well. City of Belleville Council has signed five doctors so far and many more are calling Mayor Ellis, almost daily, interested in the program. We need the doctors and, so, Council has said "We'll find the money". And I don't think anybody will complain too much when suddenly we've got five more shingles going up in the very near future to take patients who need doctors.

Smith: Ingrid, uh, Ingrid found out that first hand yesterday.

Moore: I was say –

Smith: I don't know if you want to relay the whole story, but?

Moore: Sure, I can say that I said I have discovered the worst job in the world and that would be the nurse-secretary who has to deal with people of a closing doctor because I went in to Doctor Sheena Smith's yesterday and I felt for the woman on the front line because people are nasty. You know, there's nothing she can do about it, but I think –

Smith: People are desperate.

Miller: Yes.

Smith: People are desperate.

Moore: I thought, now that is the worst job in the world right now, is telling people "I'm sorry, here's your files. There's no new doctor for you."

Miller: And the thing is, even if we get ten new doctors on board coming in over the next year to two years to four years, whatever it may be, there's gonna be doctors retiring, so it's not going to be a net gain of ten. Uh, we're going to need some just to replace those that are retiring and then the others to make up for the deficiency right now. So, we're well on our way.

Smith: All right. Well, Belleville Councillor Jack Miller.

Moore: Weighing in on the weighty issues last night from Belleville Council.

Miller: It was a good meeting.

The CBSC received a complaint about Miller's role on the morning show of October 3. The complainant outlined his concerns as follows and mentioned the above-quoted segment as an example of what he considered to be Miller's inappropriate use of the airwaves:

Jack Miller is a local Belleville Councillor who continually uses his position as an on-air radio personality to push his views on council business and issues. This happens on a weekly basis. As a person who is contemplating running in the next municipal election, I find this gratuitous use of the airwaves for self-promotion to be offensive to say the least.

The station responded to the complainant's concerns on October 18 (the full text of all correspondence can be found in the Appendix):

It has been the nature of the radio station (CIGL-FM) to regularly solicit comments regarding local issues from local Council members and Mayors throughout our listening area and this practice is certainly nothing new. In fact, we feel it's our duty to do so as these issues affect all members of the community. We would also suggest that we solicit Mr. Miller less than we do other members of Council even though he is right in our building.

When Mr. Miller was elected to Council we took steps to ensure that his position with the radio stations would not be viewed as a conflict of interest and to date your complaint would be the first we have received since Jack won his seat on Council.

Since Jack's election to Council, he has refrained from reading newscasts except on very rare occasions. In the past, Jack read between six and ten newscasts per day. On the rare occasion when Jack does read newscasts he is not permitted to read them following Council meetings or other committee meetings that have an effect on the public. As suggested, from time to time, Jack, like other members of Council has been asked to comment on air about decisions made by Council after the fact and rarely does he offer a personal opinion. Instead, he reflects the discussions by Council, both for and against an issue as expressed around the table. He does not put his own spin on issues.

As suggested, interviewing Jack is consistent with our interviews of other members of local Councils including the Mayors.

At this point, we will continue to interview Council members, Mayors, MP's, MPP's, etc., while at the same time continuing to ensure that in doing so we do not break any rules under the *Broadcasting Act* nor act in any way which may jeopardize the trust we have spent more than 60 years earning from the Community.

The complainant wrote back to the broadcaster on October 18:

Unfortunately it does not address my concerns. The news about council meetings should be done during newscasts. There is a reporter present, usually Mary Thomas, who can give her opinion on council business. In fact, Jack has on numerous occasions been the only one councillor to give his opinion on the meeting of the night before. Thus if your response that you gave is your final one, I will be proceeding to the next level of the procedure. I believe Jack is being given an open mic to put forward his opinions on council business, thus we receive a rather one-sided opinion on how things transpired.

He then filed his Ruling Request with the CBSC on October 23 and further outlined his concerns:

The response that they solicit comments from Mr. Miller less than other members of council is factually incorrect. On almost every Tuesday after a council meeting Mr. Miller gives a monologue about the council meeting of the night before. Mr. Miller is not the voice of Belleville City Council but one of its voting members. I suggested doing council issues on the news only by the correspondent from Mix 97 that had attended the meeting. The response in the email, which I can forward to you, was that there was not enough time. The airtime is being used after the news anyway, thus I find this argument very shallow. Also in another email the response "Regardless of which councillor or mayor is on the air it, in our opinion, makes no difference as long as the content of the discussion is not going to sway any votes". I believe they have missed the point of my complaint that equal airtime should be given to all councillors not just Jack Miller. Jack is a sports announcer and thus should confine his comments to his field of expertise and even then should not be commenting on budget deliberations concerning sports facilities or funding. I believe that the least that should be done is that equal time and opportunity should be given to all councillors.

THE DECISION

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

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.

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.

The Panel Adjudicators read all of the correspondence and reviewed a recording of the October 3 segment. The Panel concludes that there is no breach of either of the aforementioned Code provisions.

Political Officeholders and Conflicts of Interest

In a decision of even date, this Panel dealt with the issue of political officeholders in on-air positions in *CHML-AM re the Bob Bratina Morning Show* (CBSC Decision 06/07-0908, April 14, 2008). In the circumstances, it does not seem worthwhile to the Ontario Regional Panel to re-plough the same furrow. In that decision, this Panel did review the British and American rules on the subject. Suffice it to say for present purposes that, in the apposite (and interesting) American example, outside of political campaign equal time requirements, there is no restriction at all upon a political officeholder's access to the airwaves as an on-air host. This Panel then commented on Canadian practices and rules in the following words:

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.

This Panel concluded that there was no inherent reason why City Councillor Bob Bratina could not carry on as both a municipal politician and an on-air host on CHML in Hamilton. It did allow that

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 when the facts require such an assessment.

The present complainant has focussed on slightly different aspects of the role of the politician-host. On the one hand, he observed that Jack Miller was "a sports announcer and thus should confine his comments to his field of expertise." He should not, in other words, have commented on municipal affairs that had no connection with sports. Even then, he observed, he "should not be commenting on *budget deliberations* concerning sports facilities or funding. [Emphasis added.]" His second point was that "equal airtime should be given to all councillors not just Jack Miller." In other words, Councillor Miller should not be the only Councillor having the opportunity to comment on municipal council meetings; other views should be sought. Moreover, he added, *news* of council meetings should be given during newscasts, not during a period of back-and-forth commentary among the co-hosts.

On the first point, the Panel disagrees. While Miller was a sports announcer on the program, he, like any other broadcaster, has no inherent limitation on the subjects that he can discuss. The Panel is unclear what the complainant's source of justification of any such restriction would be. There is none. There is no reason for which his choice of subjects discussed on-air should have been restricted on the basis of the sportscaster role he was understood to play. Moreover, Miller had a clear expertise on

municipal matters. He was as entitled to speak of that subject as he would have been to deal with stamp collecting, had that been an expertise of his.

The issue for the Panel is the *entitlement* of Miller to comment on municipal affairs as a sitting politician, not whether he is *able* to do so from a knowledge perspective. As to the legitimacy of such commentary, the Panel relies on two considerations: first, its conclusion in the CHML decision that there is no inherent “incompatibility between an individual’s holding political office and having a regular on-air role”; and, second, the fact that Miller’s comments related to “the *consequences* of Council deliberations after the fact.” There is neither suggestion nor evidence from the challenged broadcast that the Councillor was “aggressively pushing his [...] own agenda,” to again cite the CHML decision. He was participating in the informing of the public of matters material to them, thus providing audiences with “the opportunity to benefit from the knowledge and experience of an individual in office [and to thereby] secure an information advantage.”

Finally, in this regard, the broadcaster has indicated that Councillor Miller, “*like other members of Council* has been asked to comment on air about decisions made by Council after the fact [italicized emphasis added; underlined emphasis original].” That, on occasion, Miller has alone commented is not material. In the American context, for example, the issue of equal opportunities is an election-campaign time matter, as it would be in Canada. In the Canadian Radio-television and Telecommunication Commission’s (CRTC) information sheet on “Election Campaigns and Political Advertising”, it is provided 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’.” Since “equal time” is not even the case *during* an election campaign, there can be no expectation that, in this non-electoral period, the inequality of access can lead to any conclusion of disrespect for the foregoing principles. The Panel finds no breach of Article 6 of the *RTNDA Code of (Journalistic) Ethics* on the grounds of conflict of interest. Nor does it find any breach of the “full, fair and proper” provision in Clause 6 of the *CAB Code of Ethics* on the grounds of an improper allocation of time.

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 Quinte Broadcasting’s President, in this regard, thoughtful and responsive. 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 CIGL has fully met its CBSC membership responsiveness responsibilities.

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.

APPENDIX

CBSC Decision 07/08-0473 CIGL-FM re a segment on the morning show (Jack Miller)

The Complaint

The CBSC received the following complaint via its web form on October 3, 2007:

station: Mix 97

program: Jack Miller

date: October 3/07

time: 07:55 am

concern: Jack Miller is a local Belleville Councillor who continually uses his position as a on-air radio personality to push his views on council business and issues. This happens on a weekly basis. As a person who is contemplating running in the next municipal election, I find this gratuitous use of the airwaves for self-promotion to be offensive to say the least.

Broadcaster Response

The station forwarded the CBSC a copy of its response to the complainant on October 18:

We are in receipt of your complaint to the CBSC regarding concerns you have with comments made by Jack Miller on our radio stations and in particular those made on CIGL-FM on October 3, 2007.

It has been the nature of the radio station (CIGL-FM) to regularly solicit comments regarding local issues from local Council members and Mayors throughout our listening area and this practice is certainly nothing new. In fact, we feel it's our duty to do so as these issues affect all members of the community. We would also suggest that we solicit Mr. Miller less than we do other members of Council even though he is right in our building.

When Mr. Miller was elected to Council we took steps to ensure that his position with the radio stations would not be viewed as a conflict of interest and to date your complaint would be the first we have received since Jack won his seat on Council.

Since Jack's election to Council, he has refrained from reading newscasts except on very rare occasions. In the past, Jack read between six and ten newscasts per day. On the rare occasion when Jack does read newscasts he is not permitted to read them following Council meetings or other committee meetings that have an effect on the public. As suggested, from time to time, Jack, like other members of Council has been asked to comment on air about decisions made by Council after the fact and rarely does he offer a personal opinion.

Instead, he reflects the discussions by Council, both for and against an issue as expressed around the table. He does not put his own spin on issues.

As suggested, interviewing Jack is consistent with our interviews of other members of local Councils including the Mayors.

At this point, we will continue to interview Council members, Mayors, MP's, MPP's, etc., while at the same time continuing to ensure that in doing so we do not break any rules under the *Broadcasting Act* nor act in any way which may jeopardize the trust we have spent more than 60 years earning from the Community.

We hope that this letter has addressed the concerns voiced by you to the CBSC.

Should you wish to discuss this issue further then please feel free to contact me at your convenience.

Additional Correspondence

The complainant wrote back to the station on October 18:

Unfortunately it does not address my concerns. The news about council meetings should be done during newscasts. There is a reporter present, usually Mary Thomas, who can give her opinion on council business. In fact, Jack has on numerous occasions been the only one councillor to give his opinion on the meeting of the night before. Thus if your response that you gave is your final one, I will be proceeding to the next level of the procedure. I believe Jack is being given an open mic to put forward his opinions on council business, thus we receive a rather one-sided opinion on how things transpired.

The complainant filed his Ruling Request on October 23 with the following note:

The response that they solicit comments from Mr. Miller less than other members of council is factually incorrect. On almost every Tuesday after a council meeting Mr. Miller gives a monologue about the council meeting of the night before. Mr. Miller is not the voice of Belleville City Council but one of its voting members. I suggested doing council issues on the news only by the correspondent from Mix 97 that had attended the meeting. The response in the email, which I can forward to you, was that there was not enough time. The airtime is being used after the news anyway, thus I find this argument very shallow. Also in another email the response "Regardless of which councillor or mayor is on the air it, in our opinion, makes no difference as long as the content of the discussion is not going to sway any votes". I believe they have missed the point of my complaint that equal airtime should be given to all councillors not just Jack Miller. Jack is a sports announcer and thus should confine his comments to his field of expertise and even then should not be commenting on budget deliberations concerning sports facilities or funding. I believe that the least that should be done is that equal time and opportunity should be given to all councillors.

The complainant concluded that letter with some information about his personal dealings with Mr. Miller. The broadcaster also commented on that business relationship between the complainant and Mr. Miller in a letter to the CBSC dated January 16. That information was immaterial to the CBSC's determination and so has been excluded from this Appendix.