
CANADIAN BROADCAST STANDARDS COUNCIL

ONTARIO REGIONAL PANEL

CFRB-AM re *Friendly Fire*

(CBSC Decision 10/11-0621)

Decided April 5, 2011

H. Hassan (Vice-Chair), J. David, M. Harris, M. Oldfield

THE FACTS

Friendly Fire is a radio talk show hosted by Ryan Doyle and Tarek Fatah on CFRB-AM (Newstalk 1010, Toronto) that airs weekdays from 7:00 to 10:00 pm. The hosts regularly critique municipal and provincial politics and frequently entice listeners to join the daily debates. Doyle and Fatah often disagree on the appropriate course of action when it comes to the implementation of new policies. In addition to discussions and interviews, the local news, traffic and weather are announced every 15 minutes.

During the December 29 episode, which had been previously broadcast (the date of the original broadcast is not known to the Panel), the topics discussed included new drinking and driving legislation, a new law pertaining to those who default on their child support payments, immigration, voting in the city of Toronto (more specifically the policy related to whether wearing a religious face-covering should be acceptable when a person is voting), a by-law regarding Chinese superstition, and other matters. The hosts took calls and interviewed guests, addressing the foregoing topics. The three-hour program was separated into six thirty-minute blocks. Every half hour or so, listeners were encouraged to call in and interact either by the hosts or via pre-recorded voice-overs. In addition, throughout the show, the hosts took several calls and referenced text messages they had received; all instances appearing to be live interactions. The following is a transcript of the relevant parts of the episode of *Friendly*

Fire that aired on December 29, 2010, that is to say, each of the occasions on which listeners were encouraged to call the station:

Voice-over: This is *Friendly Fire* with Ryan and Tarek on the Astral talk network.

Ryan Doyle: Sit back and relax because we have another fantastic show. Set to go and ready to rock and roll for you this evening. Of course, we remain interactive on the program all the time right throughout, up until about ten o'clock. You can text us at 7-10-10 or you can give us a call at 1-877-518-5151.

The first topic related to new Ontario driving legislation. The hosts began with a discussion of the new law pertaining to those who do not fulfill their family support payments, which would result in suspending the licence and impounding the vehicle of those evading such support obligations. Doyle and Fatah welcomed one caller and Doyle said:

A lot of people want to interact. We will give you an opportunity to do so. You can text us at 7-10-10 or you can give us a call at 1-877-518-5151.

After the local news, traffic and weather, the discussion continued, with several callers expressing their views on the subject of suspending licences and impounding the vehicles of those who do not make their family support payments. Toward the end of that segment, a voice-over stated:

Man's voice: Let your voice be heard.

Different man's voice: Text NEWSTALK 1010, 7-10-10.

Woman's voice: \$0.25 will be charged to your wireless carrier.

In the next segment, Ryan Doyle discussed potential changes to the current laws on drinking and driving, which would introduce "random breath tests". About a third of the way into that segment, Doyle said:

Let me just address a text message, Tarek, that I received, 'cause this drives me around the bend. It says "Ryan, what about when cops break those same rules and walk? I don't hear you saying anything but you're a-, able to come after the public like this."

A bit after that, the hosts welcomed the General Counsel for the Canadian Civil Liberties Association, to discuss the suggested changes to the drinking and driving laws in Ontario. Following a musical introduction, listeners heard:

Woman's voice: So, what do you think?

Man' voice: Text NEWSTALK 1010, 7-10-10

Woman's voice: \$0.25 will be charged to your wireless carrier.

Roughly thirty minutes later, Ryan Doyle said:

And of course you can interact with us by texting us at 7-10-10 or giving us a call at 1-877-518-5151.

Then listeners heard the following:

Woman's voice: Don't just sit there, text us!

Man's voice: 7-10-10

Following the next topic, which related to assisted suicide, a local weather and traffic report, a discussion about immigration, and the local Toronto news, the topic of Chinese superstition and its relation to the number "four" in real estate was introduced. Host Ryan Doyle said, "I want to hear from people on this." Not long after that comment, host Tarek Fatah said, "Well, let someone call us," and Doyle replied, "I am going to put this out to the people". Moments later, Doyle said:

But if you want to interact with us, you can text us at 7-10-10. You can give us a call at 1-877-518-5151. My co-host seems to be around the bend. We'll see what you guys think as *Friendly Fire* continues here on the Astral talk radio network.

Twenty minutes into the last segment, listeners heard the final voice-over of the evening:

Woman's voice: Let your thumbs do the talking.

Man's voice: Tell us ["Tell us" is echoed] what is on your mind. Text 7-10-10 [7-10-10 is echoed]. \$0.25 will be charged to your wireless carrier.

On the day of the broadcast, a listener sent the following complaint to the CBSC:

I am writing to complain about a specific practice that this radio station is employing. It is running repeat broadcasts without notifying the listener that the show that they are listening to is a repeat. They are encouraging people to text messages or call them during these repeat broadcasts. Thursday Dec. 29 7-10 pm show is a perfect example. I find this practice by Newstalk 1010 misleading as well as costing listeners unnecessary text costs that they end up paying to their cell phone companies. I would like this practice stopped immediately.

The broadcaster's Brand Director sent the station's response on January 21. He wrote in principal part as follows (the full text of all the correspondence can be found in the Appendix):

In your complaint, you expressed concerns about the Program misleading listeners by encouraging people to text message or call shows during repeat broadcasts. Let me assure you that it was never our intention to mislead our listeners, and that we were unaware of the potential inconvenience that repeat broadcasts could cause our listeners.

In light of our complaint, we will be investigating this process and, even though we do not believe that the Program was in violation of any codes administered by the CBSC, we will take proper steps to ensure listeners do not send text messages during repeat or pre-

taped programming. For example, we will be running pre-recorded messages to make listeners aware of any programming that is not live.

We take our responsibilities as a broadcaster very seriously and strive to ensure that all our programming complies with the standards expected of us as a member of the CBSC. We are confident that the changes we are implementing in light of your complaint will resolve this issue, and will continue to exercise great diligence on such matters in the future order to demonstrate sensitivity to our listeners.

Dissatisfied with the broadcaster's response, the complainant filed his Ruling Request on February 7:

They are running a radio program this evening, 7-10 that is a repeat from last week. [The Brand Director] told me that they were going make changes to their repeat programming. In my opinion, no changes have been made to notify listeners that they are listening to a repeat program.

THE DECISION

The Ontario Regional Panel examined the complaint under the following clauses of the Canadian Association of Broadcasters (CAB) *Code of 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.

CAB Code of Ethics, Clause 12 – Contests and Promotions

All on-air contests and promotions shall be conceived and conducted fairly and legitimately and particular care shall be taken to ensure that they are not misleading, potentially dangerous or likely to give rise to a public inconvenience or disturbance and that any prizes offered or promises made are what they are represented to be.

The Panel Adjudicators read all of the correspondence and listened to the broadcast in question. The Panel concludes that the station breached the foregoing standards.

Full Disclosure

It is clear that there is no specific codified standard that deals with repeated programs or episodes. There are, however, principles that can be applied. Clause 6 of the *CAB*

Code of Ethics, for example, calls for “full, fair and proper” presentation and Clause 12 refers to “fair and legitimate” conception and conducting of contests and promotions. It adds that “promises made are [i.e. must be] what they are represented to be.” As the British Columbia Regional Panel said in *CFOX-FM re Larry & Willy Show (Bryan Adams Contest)* (CBSC Decision 97/98-0534, May 20, 1998), the wording of the contest provision “suggest[s] that a notion of ‘fair play’ should also be at stake in such contests or promotions.”

In *CILQ-FM re the broadcast of a Rolling Stones concert* (CBSC Decision 04/05-1911 & -1915, December 15, 2005), the Toronto rock station advertised that it would be airing a concert by the Rolling Stones. At the same time that evening, the Rolling Stones were in fact scheduled to play a *live* concert at the Phoenix Concert Theatre in Toronto. With the sounds of a crowd cheering and instruments being tuned in the background, the host introduced the broadcast by talking about the Phoenix show and then stating, “the Stones live in Toronto.” Throughout the broadcast, the host and the promotions coming out of commercial breaks continually referred to the Phoenix Show and the “live” Rolling Stones broadcast. It was later learned that the concert *broadcast* by Q107 was actually a pre-recorded performance which had actually occurred *three years earlier*. A listener complained to the CBSC. On the contest / promotions issue, this Panel concluded:

What is material is that the broadcasts reviewed would have led an ordinary reasonable listener to conclude that the broadcast was that of the live concert at the Phoenix Theatre when it was not. Consequently, the Ontario Regional Panel considers that the promos were misleading and in breach of Clause 12 of the *CAB Code of Ethics*.

On the issue of full, fair and proper presentation, this Panel stated:

The point surely is that it would have been entirely reasonable, indeed responsible, for the host to disclose that the broadcast was in fact a *recording* of a live Rolling Stones performance *from three years earlier*. In this case, the accumulation of the promotional spots and the host’s remarks during the broadcast also constituted an unfair and improper broadcast contrary to Clause 6 of the *CAB Code of Ethics*.

In the case of a complaint dealt with by this Panel in an analogous decision, namely, *CILQ-FM re “Two Minutes Away” promos* (CBSC Decision 06/07-1122, April 14, 2008), rock radio station Q107 was airing the following promotional line for the station: “You’re never more than two minutes away from great classic rock.” In fact, this Panel found that, in the first half hour of the challenged May 18 time period, there was no song before the lapse of 21 minutes. And then another 12+ minutes before the next song (in the second half hour). Then just under 12 minutes until the next. Then 13 minutes (into the third half hour) for the fourth song. The Panel concluded “that [Q107] was purposefully luring listeners by the promise of frequent music. In so doing, the Panel conclude[d] that Q107 did not, as the Clause requires: deliver its promotions ‘fairly and legitimately’; take ‘particular care [...] to ensure that they [we]re not misleading’; and

make certain that the ‘promises made [we]re what they [we]re represented to be.’” The result was that this Panel found the station in breach of Clause 12.

In another decision of analogous application, namely, *CFRB-AM re an episode of the Health Show* (CBSC Decision 04/05-1171, December 15, 2005), this Panel formulated principles related to the broadcast of sponsorship programming. The issue for the Panel on the present occasion is not those rules; it is rather the principle behind them. The concern then, and now, is “potential confusion on the part of the listener”. As this Panel explained in the *Health Show* decision,

Just as text-heavy, story-styled full pages in newspapers are headed “[advertisement]” when they are thought to be at risk of inducing readers into believing that they are the objective news items or features prepared by the publication’s staff, broadcast equivalents that could be potentially confusing to radio or television audiences merit their own style of confusion avoidance.

In arriving at its conclusion, this Panel referred to Canadian, British and American exemplars established in order to avoid audience confusion in the sponsorship area. This Panel elaborated on the relationship between the issues of transparency and the avoidance of confusion.

In other words, the issue in the foregoing related areas is transparency and the avoidance of confusion. As all of the foregoing analogous Canadian, British and American rules anticipate, there must be disclosure of the fact that there is a link between some sponsor and the services or goods being promoted during the program. The Panel wishes to emphasize that there is nothing inherently wrong or problematic in providing expertise to audiences. Such information may indeed be extremely helpful and informative. The problem results only from the potentially incorrect audience expectation that an expert on a subject who is presented by a broadcaster has been chosen *by* the broadcaster on the basis of his or her expertise and not on the basis of having *paid* for the opportunity to access audience members listening in good faith and innocence.

In the matter at hand, the Panel finds the words “potentially incorrect audience expectation” particularly germane. At the very least, it would be courteous to the audience’s sensibilities to advise them that a program or an episode of a program is being repeated. After all, there may be those who have previously listened to it and may not wish to do so again. Equally, there may be those who had wished to hear the full discussion and, having missed all or some of it, are now glad to have the opportunity to hear the entire interchange. Some who may have heard the entire segment may want to enjoy it once more. The point is that, at the very least, the broadcaster ought to advise listeners that the show is being repeated. Where, however, it is a part of the original broadcast that persons were *invited* to contact the station, as in any call-in show, the lack of courtesy in failing to advise listeners not to call becomes an inconvenience if not an annoyance. Where, as in the matter at hand, listeners are invited, not just to call, but also to *text* the station, as occurred on no less than eight occasions during the December 29 episode of *Friendly Fire*, the inconvenience turns to expense. Moreover, the utility of phoning the station (which likely involves no listener

expense) or texting the station (which would involve an expense of \$0.25 per text message) would be nil since the discussion of the issues had already taken place and neither phoning nor texting would result in any listener input on the issues. The Panel considers that the failure to advise the audience of the value-less nature of that effort constitutes a breach of Clauses 6 and 12 of the *CAB Code of Ethics*. [See also the following television decisions in which viewers were called upon to pay a modest amount for each telephone call or text message in order to enter the contests: *TQS re Call TV* (CBSC Decision 08/09-1834 & -1856, August 11, 2009), *TQS re Call TV (version 1, round 2)* (CBSC Decision 08/09-1827+ & 09/10-0025+, August 24, 2010), *V re Call TV (version 2)* (CBSC Decision 09/10-1563 and -1735, January 25, 2011) and *CIII-TV (Global Ontario) re Play TV Canada* (CBSC Decision 09/10-0201+, April 1, 2010).]

The Panel also notes the complainant's concern that the practice about which he complained, and which the broadcaster said it would be taking proper steps to ensure would not recur (namely, that listeners would not be induced to send text messages during repeat or pre-taped programming), allegedly did recur. The Panel has not of course been able to verify that assertion. Nor does the Panel conclude that the complainant was correct in his assessment about a repeat program on February 7. The Panel only expresses the hope that CFRB-AM and other broadcasters reviewing this decision do put proper and effective procedures in place to avoid audience confusion and cost when programs or episodes are repeated.

Broadcaster Responsiveness

In all CBSC decisions, the Council's Panels assess the broadcaster's responsiveness to the complainant. In the present instance, the Panel notes that the broadcaster's Brand Director acknowledged the complainant's precise concern and indicated that the station would be taking steps to ensure that listeners would not send text messages during repeat or pre-taped programming. He also indicated that the station will be running pre-recorded messages to make listeners aware of any programming that is not live. There is little more by way of a commitment that a broadcaster could provide (although ensuring that the station fulfils its commitment would be a separate matter). In any event, the Panel considers that the broadcaster's response complied fully with the Council's requirements of membership. Consequently, the Panel considers that CFRB-AM has fully met that membership obligation in this instance.

ANNOUNCEMENT OF THE DECISION

CFRB-AM is required to: 1) announce the decision, in the following terms, once during peak listening hours within three days following the release of this decision and once more within seven days following the release of this decision during the time period in which *Friendly Fire* was broadcast, but not on the same day as the first mandated announcement; 2) within the fourteen days following the broadcasts of the announcements, to provide written confirmation of the airing of the statement to the complainant who filed the Ruling Request; and 3) at that time, to provide the CBSC with a copy of that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by CFRB-AM.

The Canadian Broadcast Standards Council has found that CFRB-AM breached provisions of the Canadian Association of Broadcasters' *Code of Ethics* in its broadcast of an episode of *Friendly Fire* on December 29, 2010. That episode of the program was a repeated episode but CFRB did not indicate that. In re-broadcasting that episode as it had originally run, CFRB left in the numerous encouragements for listeners to send text messages to the station despite the fact that those messages could have no effect on the content of the repeated episode. By sending such text messages, listeners would also have incurred personal costs. By failing to advise listeners that the program was a repeated episode, CFRB did not fully and fairly disclose to the audience material information, contrary to the requirements of Clauses 6 and 12 of the *CAB Code of Ethics*.

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

APPENDIX

CBSC Decision 10/11-0621

CFRB-AM re *Friendly Fire*

The Complaint

The CBSC received the following complaint dated December 29, 2010:

I am writing to complain about a specific practice that this radio station is employing. It is running repeat broadcasts without notifying the listener that the show that they are listening to is a repeat. They are encouraging people to text messages [*sic*] or call them during these repeat broadcasts. Thursday Dec. 29 7-10 pm show is a perfect example. I find this practice by Newstalk 1010 misleading as well as costing listeners unnecessary text costs that they end up paying to their cell phone companies. I would like this practice stopped immediately.

Broadcaster Response

The broadcaster responded to the complainant on January 21:

We are in receipt of your complaint from the Canadian Broadcast Standards Council (the "CBSC") CBSC File C10/11-0621 concerning repeat broadcasts on NEWSTALK 1010 CFRB, Toronto, (the "Station") specifically on December 29th, 2010 (the "Program").

In your complaint, you expressed concerns about the Program misleading listeners by encouraging people to text message or call shows during repeat broadcasts. Let me assure you that it was never our intention to mislead our listeners, and that we were unaware of the potential inconvenience that repeat broadcasts could cause our listeners.

In light of our complaint, we will be investigating this process and, even though we do not believe that the Program was in violation of any codes administered by the CBSC, we will take proper steps to ensure listeners do not send text messages during repeat or pre-taped programming. For example, we will be running pre-recorded messages to make listeners aware of any programming that is not live.

We take our responsibilities as a broadcaster very seriously and strive to ensure that all our programming complies with the standards expected of us as a member of the CBSC. We are confident that the changes we are implementing in light of your complaint will resolve this issue, and will continue to exercise great diligence on such matters in the future order to demonstrate sensitivity to our listeners.

We would like to thank you for taking the time to share your concerns with us and for giving us the opportunity to improve our programming.

Additional Correspondence

The complainant filed his Ruling Request on February 7:

They are running a radio program this evening, 7-10 that is a repeat from last week. [The Brand Director] told me that they were going make changes to their repeat programming. In my opinion, no changes have been made to notify listeners that they are listening to a repeat program.