



## Broadcasting Decision CRTC 2007-423

Ottawa, 12 December 2007

### **Complaints relating to the broadcast by the Canadian Broadcasting Corporation of the programs *Pourquoi pas dimanche* and *Samedi et rien d'autre***

*In this decision, the Commission addresses complaints regarding the broadcast of various instances of alleged abusive comment by the French-language network of the Canadian Broadcasting Corporation (CBC) on the programs *Pourquoi pas dimanche* and *Samedi et rien d'autre*. After reviewing the program segments in question, the Commission finds that the CBC did not contravene the prohibition of abusive comment contained in the Radio Regulations, 1986, but, in regard to the broadcast of certain comments, failed to meet the Commission's high standard requirement set out in the Broadcasting Act.*

#### **Introduction**

1. In letters dated 5 October and 31 October 2006, the Commission received complaints by the same individual (the complainant) regarding the broadcast by the French-language network of the Canadian Broadcasting Corporation (CBC) of the programs *Pourquoi pas dimanche* and *Samedi et rien d'autre*. The complainant requested that the Commission investigate various instances of alleged abusive comment made by the radio host Mr. Joël Le Bigot during eight broadcasts of the two above-mentioned weekend variety and talk radio shows, over the period from 4 December 2005 to 28 October 2006. The complainant stated that the comments, which referred to Jews and Muslims, were deeply offensive to him and to the Jewish community. In a further letter dated 12 December 2006, the complainant requested that the Commission, in making its determination, be mindful of section 3(1)(d)(iii) of the *Broadcasting Act* (the Act) and section 27 of the *Canadian Charter of Rights and Freedoms* (the Charter).
2. Below, the Commission first sets out the regulatory framework for the present decision as it pertains to abusive comment and programming of high standard. The Commission then sets out its analysis and determinations in regard to the complaints filed.

#### **Regulatory framework**

##### **Abusive comment**

3. Section 3(b) of the *Radio Regulations, 1986* (the Regulations) prohibits a licensee from broadcasting programming that contains:

any abusive comment that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability.

4. As the Commission has stated in a number of decisions,<sup>1</sup> the regulation prohibiting abusive comment is intended to prevent the very real harms that such comments cause, harms that undermine Canadian broadcasting policy objectives. Comments that tend to or are likely to expose a group to hatred or contempt cause emotional damage that may be of grave psychological and social consequence to members of the target group. The derision, hostility and abuse encouraged by such comments can have a severe negative impact on the targeted group's sense of self-worth, human dignity and acceptance within society. This harm undermines the equality rights of those targeted, rights which the programming of the Canadian broadcasting system should respect and reflect, according to Canadian broadcasting policy. In addition to preventing the harm to those targeted by the comments, the regulation prohibiting abusive comment is required to ensure that Canadian values are reflected and respected for all Canadians. The broadcast of comments provoking hatred and contempt also undermines the cultural and social fabric of Canada, which the Canadian broadcasting system should safeguard, enrich and strengthen.
5. Section 3(b) of the Regulations reflects a fair balance between freedom of expression on the one hand and, on the other hand, the values of equality and multiculturalism that are entrenched in the Act and in the Charter. Section 3(b) of the Regulations provides extensive protection to freedom of expression, while guarding against the broadcast of discriminatory comments that may have a severe adverse impact on the values of equality and multiculturalism.
6. On-air comments contravene section 3(b) of the Regulations where all three of the following criteria are met:
  - the comments are abusive;
  - the abusive comments, taken in context, tend or are likely to expose an individual or group or class of individuals to either hatred or contempt; and
  - the abusive comments are on the basis of an individual's or a group's race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability.
7. The Commission considers that, in any analysis of allegations of abusive comment, the context of the broadcast of the material in question is a crucial component. Most often, the wider context in which programming content is depicted or comments are expressed has a key influence on how a reasonable listener would perceive this content, particularly when the material and/or comments might be considered controversial, inappropriate or offensive in and of themselves.

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<sup>1</sup> Most recently, Broadcasting Decision 2007-135

### **High standard requirement**

8. Section 3(1)(g) of the Act states that the programming originated by broadcasting undertakings should be of high standard. In Broadcasting Decision 2006-293, the Commission expressed the view that “the criteria of high standard, like the Regulations, must be evaluated within the context of the broadcast and according to the impact that the programs in question may have had on a reasonable television viewer”; in the present case, this impact applies to a reasonable radio listener. The Commission further stated that “the underlying intent of the high standard criterion is not to prevent controversy regarding matters of public concern.”

### **Commission’s analysis and determinations**

9. The Commission considers that the complaints filed relate to four distinct topics: Jewish schools in Montréal; kosher and halal methods of animal slaughter; a Jewish player on the Québec Remparts hockey team; and the wearing of the veil by Muslim women. Below, the Commission first sets out the information relating to the complaints filed, the CBC’s replies, and the Commission’s determinations in regard to the allegations of abusive comment. Then, the Commission sets out its determinations on the comments broadcast in regard to the Act’s high standard requirement.

#### **Abusive comment**

##### *Jewish schools in Montréal*

10. In the letter dated 5 October 2006, the complainant alleged that comments made by Mr. Le Bigot regarding Jewish schools in Montréal contravened the abusive comment regulation. Specifically, the complainant alleged that:
  - on 4 December 2005, the radio host suggested that Jewish schools teach that the world is flat;
  - on 9 September 2006, the radio host stated that Jewish schools teach that the sun rotates around the Earth, ridiculed (along with a guest journalist) a Jewish orthodox school in Montréal that had been firebombed the week prior, and stated that Jewish parents who send their children to the Yeshiva program at Jewish orthodox schools in Montréal are “twisting their minds” and are acting illegally; and
  - on 17 September 2006, the radio host repeated the above-mentioned statements that, in Jewish schools, children are being taught that the world is flat and that the sun rotates around the Earth.
11. In its reply regarding the comment made on 4 December 2005, the CBC stated that the radio host was reporting facts related to current events, and noted that reports have shown that some private and religious Jewish schools do teach that the Earth is flat because that is what the sacred texts assert. According to the CBC, the radio host’s words, when taken in context, did not constitute abusive comment.

12. In the Commission's view, the radio host was referring to factual information, directly related to current events, about the teachings of some private and religious Jewish schools. In addition, the Commission notes that Mr. Le Bigot's comment was very brief and made during a segment of a broadcast where he and his guest were commenting on various matters that were being discussed at the conference of the Fédération professionnelle des journalistes du Québec. It could be argued that, as a result of this conversation, some listeners may have concluded that all Jewish schools teach that the Earth is flat; as a consequence, some listeners may have characterized Mr. Le Bigot's comment as an over-generalization. However, the Commission finds no evidence that the radio host's critique, when taken in the context of the discussion, would have exposed the Jewish community to hatred or contempt. As such, the Commission considers that the comment was not abusive within the meaning set out in section 3(b) of the Regulations.
13. In its reply regarding the comments made on 9 September 2006, the CBC again stated that the radio host was reporting facts related to current events, and that the institutions referred to have a very strict religious curriculum under which children are taught, for instance, that the Earth is flat and lies at the centre of the universe. The CBC also noted that the comment on the firebombing of the Jewish orthodox school was not meant to ridicule, but was the expression of a personal opinion on how certain Jewish lobbies reacted to this unfortunate incident. Finally, in regard to the comment on the Yeshiva program at Jewish orthodox schools in Montréal, the CBC stated that it related to geocentrism, a traditional Hassidic religious teaching that conflicts with modern astronomy notions, which are based on heliocentrism and which form part of the science curriculum of Quebec's Ministère de l'Éducation, du Loisir et du Sport. The CBC argued that this topic was raised in the context of a broader and equally newsworthy debate: the public funding of private schools, including private denominational schools. The CBC maintained that the above comments, when taken in context, did not constitute abusive comment.
14. In the Commission's view, these comments were made within the context of one of the important issues regarding current events at that time, namely, the issue of Hassidic institutions belonging to the parallel network of yeshivas that operate on the outer limits of the *Education Act* and where only religious instruction is offered, without any of the material on the curriculum of the Ministère de l'Éducation, du Loisir et du Sport. The Commission notes that the comments made by Mr. Le Bigot were not directed at the Yeshiva program in particular, but at private and religious schools in general. The Commission considers that the comments by the guest constituted the expression of a legitimate opinion on an issue of public interest and, while certainly judgmental and potentially offensive to parents who make that choice for their children, were done in a manner that was without hatred or contempt as set out in the Regulations. As such, the Commission considers that the comments made by the radio host and his guests were not abusive within the meaning set out in section 3(b) of the Regulations and, when taken in context, did not expose the Jewish community to hatred or contempt.

15. Finally, in its reply regarding the comment made on 17 September 2006, the CBC stated that the host was alluding to beliefs that may be shared by some Christian groups and some other religious groups, without naming any group in particular. It also noted that although people may disagree on these issues, a person does not break the law by expressing his or her views on such matters.
16. The Commission notes that this comment was brief and was made during a discussion on a matter of public interest, namely, religious groups and their beliefs and positions on the environment. Further, the Commission notes that the host did not name the group to which he was referring. In the Commission's view, the comment was not abusive within the meaning set out in section 3(b) of the Regulations and, when taken in context, did not expose the Jewish community, or any other group, to hatred or contempt.

*Kosher and halal methods of animal slaughter*

17. In the letter dated 5 October 2006, the complainant alleged that, on 7 January 2006, the abusive comment regulation was contravened when comments were made regarding the kosher and halal methods of animal slaughter. According to the complainant, the comments suggested that Jews and Muslims, because of their superstitions, are inhumane to animals by their methods of slaughter, that they have not evolved, and that they are acting illegally and in an uncivilized manner.
18. In its reply, the CBC argued that Mr. Le Bigot was not condemning the throat cutting of an animal as a method of slaughter, but instead was raising questions about an act that seemed to him objectively violent, as well as questions about the suffering or lack of suffering caused to an animal whose throat is cut. The CBC also asserted that the question raised by the radio host was a legitimate one: Could one evade the law for religious reasons?
19. In the Commission's view, the broadcast contained no evidence to suggest that the comments made by the radio host and his guest condemned or ridiculed any particular group. Nor did the parties suggest that Jews and Muslims had not evolved or were acting illegally. Instead, the Commission considers that the radio host and his guest were questioning and discussing a practice that, as noted by Mr. Le Bigot's guest, is still in use today, notably under the religious rituals for slaughter prescribed by the Jewish and Muslim faiths so that the meat will be, respectively, kosher or halal. As such, the Commission considers that the discussion between the two parties did not contain any abusive comment and therefore did not meet the first criterion of section 3(b) of the Regulations. Moreover, the Commission considers that the comments, when taken in context, did not expose the Jewish or Muslim community to hatred or contempt.

*Jewish player on the Québec Remparts hockey team*

20. In the letter dated 5 October 2006, the complainant alleged that comments made regarding a Jewish hockey player on the Québec Remparts hockey team contravened the abusive comment regulation. Specifically, the complainant alleged that:
  - on 9 September 2006, the radio host ridiculed the presence of an orthodox Jewish player on the Québec Remparts hockey team;
  - on 23 September 2006, the radio host ridiculed this same hockey player for not playing the previous evening; and
  - on 30 September 2006, the radio host stated that sports teams should not hire or recruit observant Jews who will not play on the Sabbath.
21. In its reply regarding the comment broadcast on 9 September 2006, the CBC noted that the decision of the team's management to allow the player to reconcile his religious convictions with high-level sports was one over which much ink was spilled and that was sufficiently noteworthy for discussion in the media. In the CBC's view, the brief exchange on that matter did not constitute a violation of section 3(b) of the Regulations.
22. The Commission notes that the comments were made during a brief exchange between the radio host and his guest, during which the radio host, upon learning that there had been no hockey game the day before, asked whether this was because there was a player who did not play on Friday nights for religious reasons. The Commission agrees with the CBC that the decision of the hockey team to allow a player to reconcile his religious convictions was a well-known subject that had been reported by the media at the time and was sufficiently noteworthy for discussion. Further, the Commission can find no evidence in the broadcast that the Jewish hockey player was ridiculed. As such, the Commission considers that the exchange cited by the complainant did not contain any abusive comment and, when taken in context, did not expose the Jewish community to hatred or contempt.
23. In its reply regarding the comment of 23 September 2006, the CBC also argued that broaching the topic of the player not having played the night of 22 September 2006 was justifiable in view of the hockey team's defeat in the game played that night, and that the exchange between the host and his guests did not contravene section 3(b) of the Regulations. The CBC also noted in its reply that the radio host used the term "votre hassidique" (your hassidic) in reference to the hockey player, and acknowledged that the use of the expression was unfortunate and that the radio host's choice of words was "not in the best of taste."
24. The Commission is of the view that the comments broadcast on 23 September 2006 were not abusive within the meaning set out in section 3(b) of the Regulations. In regard to Mr. Le Bigot's use of the term "votre hassidique," the Commission notes that the comment was very brief and was not made in a serious or condescending tone. It is the Commission's view that the comment, when taken in context, did not expose the Jewish community to hatred or contempt.

25. Finally, in its reply regarding the comment of 30 September 2006 that sports teams should not hire or recruit observant Jews who will not play on the Sabbath, the CBC stated that this was said following the radio host learning that Radio-Canada would be broadcasting soccer games primarily on Friday nights and that he hoped the team was not mainly comprised of Jewish players, as it would not be able to play. In this case, the CBC concluded it did not contravene section 3(b) of the Regulations, but nevertheless expressed its regrets if the radio host's remarks caused any disquiet.
26. The Commission notes that the remarks were made while Mr. Le Bigot was commenting on sports headlines with his guest, which was then followed by a reading of media clippings with another guest. The Commission considers that the remarks were brief and were not made in a serious or condescending tone. In the Commission's view, these comments were not abusive within the meaning set out in section 3(b) of the Regulations and, when taken in context, did not expose the Jewish community to hatred or contempt.
27. In the letter dated 31 October 2006, the complainant alleged that further comments made in regard to this same hockey player contravened the abusive comment regulation. Specifically, the complainant alleged that:
- on 21 October 2006, the radio host referred to the hockey player as "notre ami, le Hassidic" (our friend, the Hassidic) and, after a comment from the invited guest that this same player had entered the record books by receiving two penalties, questioned whether the hockey player had entered the record books by cutting off his forelocks in front of everyone;
  - also on 21 October 2006, the radio host suggested that people on Hutchinson Street in Montréal (an area where many Hassidim reside) should be consulted on the player's receiving penalties, as this may not be in keeping with the Torah and may not be kosher; and
  - on 28 October 2006, the radio host questioned whether the Québec Rempart's game had been "kosher," that is, whether the hockey player in question (referred to by the radio host this time as "Monsieur") had not played on the preceding Friday night, the Sabbath.
28. In its reply regarding the comments of 21 October 2006, the CBC conceded that the radio host's comments, including the use of the expression "notre ami, le Hassidique," were in very poor taste, ill-considered and uncalled for. The CBC expressed its regrets for the comments and discussed this very matter with its host so as to ensure that he clearly understood that even if there was no ill intent on his part, such remarks have no place on public radio.

29. In the Commission's view, these comments – made by the radio host while he was discussing sports results with his guest – were made during a conversation that cannot be qualified as serious. The Commission considers that a reasonable listener to the conversation between the two parties may have found the remarks to be inappropriate, but would not have found, within the context, that the remarks were abusive or promoted hatred or contempt.
30. In its reply regarding the comment of 28 October 2006, the CBC stated that the word “cachère” was used in the same familiar way the word “kosher” is used in English, namely, to indicate that something is “okay” or “in order.” As such, the radio host, in asking this question, was inquiring as to whether everything went according to the agreement between the Québec Remparts and the player in question. The CBC argued that one should not overly take offence to words that were basically innocuous.
31. The Commission is of the view that this brief discussion between the radio host and his guest was carried out in a humorous tone, in a context that cannot be qualified as serious. As such, the Commission considers that the comment was not abusive within the meaning set out in section 3(b) of the Regulations and, when taken in context, did not expose the Jewish community, or any other group, to hatred or contempt.

*Wearing of the veil by Muslim women*

32. In the letter dated 5 October 2006, the complainant alleged that comments made regarding the wearing of burkas<sup>2</sup> by Muslim women contravened the abusive comment regulation. Specifically, the complainant alleged that on 23 September 2006, the radio host suggested that Muslim women wearing burkas may be hiding explosives underneath the garment.
33. In its reply, the CBC submitted that, on that day, this specific topic had been given a prominent place in current events, and that the radio host should not be blamed for choosing to raise the issue on that day. The CBC acknowledged, however, that the radio host's comments with respect to the danger of suicide attacks, “thanks to the camouflage afforded by the burka,” were regrettable, and indicated that the matter had been discussed with the radio host.
34. The Commission reviewed the programming segment in question and notes that the comment was made in a context where the host and his guests were reviewing the media clippings of the day and discussing an article entitled “Le voile dans tous ses états,”<sup>3</sup> which mentioned that the veil had started appearing in schools in the Montréal region. After noting that a teacher in a school in Ville St-Laurent wore the veil in front of her children, the radio host questioned whether the person wearing the veil was really a woman or could have been a person carrying dynamite underneath.

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<sup>2</sup> The Commission notes that both the complainant and the CBC in its reply to the complainant used the term “burka” to refer to the garment in question. However, both the radio host and his guest used the term “veil” (voile) in the relevant programming segments.

<sup>3</sup> By Michèle Ouimet, published in *La Presse*, 23 September 2006



35. The Commission acknowledges that this topic was raised by the radio host in a context where the subject matter was given a prominent place in the media. Although the remarks made by the host were in and of themselves inappropriate, insulting to the Muslim community and abusive, the Commission considers that, for the following reasons, it is unlikely that the radio host's comments, when taken in context, exposed Muslims to hatred or contempt within the meaning set out in section 3(b) of the Regulations.

36. In Broadcasting Decision 2005-348, the Commission found that the use of the term "nigger gangs" was abusive in that it is an expression historically used in a discriminatory, demeaning and abusive manner, targeting Blacks. In regard to that decision, the Commission considered the following:

[...] this context (the professional content of the report and the isolated use of the term "nigger gang") may mitigate the expression's impact on the audience. In other words, the audience was able to determine that the host's use of this comment as part of his investigation was a lapse, albeit an inappropriate one, and an isolated incident. In this context, the word 'nigger' was probably seen as a poor choice, but not as contemptuous or hateful.

37. The Commission is of the view that the same rationale applies to the comment made by the radio host in the present case; that is, his remarks could be qualified as incidental in an otherwise appropriate exchange. Accordingly, the Commission considers that the comment did not constitute abusive comment within the meaning set out in section 3(b) of the Regulations and, when taken in context, did not expose Muslims to hatred or contempt.

#### **High standard requirement**

38. Although the Commission finds that the CBC, in broadcasting the above-mentioned comments by the radio host, did not contravene section 3(b) of the Regulations, pertaining to the broadcast of abusive comment, it does consider that, in broadcasting certain remarks made by Mr. Le Bigot, the CBC failed to meet the Act's high standard requirement.

39. In the Commission's view, the CBC, in broadcasting the numerous remarks made by the radio host in regard to the Jewish hockey player, failed to meet the Act's high standard requirement. Although, as noted by the CBC, the topic of a hockey team allowing a player to miss Friday night games because of his religious convictions was noteworthy for discussion in the media, and although the comments were made in what can be qualified as a humorous tone, the Commission considers that the comments made on 23 September, 30 September and 21 October 2006 were gratuitous and repetitive, and that the manner in which the radio host chose to comment on the topic, including his choice of words, was inappropriate and uncalled for. The Commission also questions the need for Mr. Le Bigot to have commented on this topic over the course of the five segments broadcast between 9 September 2006 and 28 October 2006.

40. Furthermore, the Commission is of the view that the CBC, in broadcasting the comments regarding the wearing of the veil by Muslim women, failed to meet the Act's high standard requirement because the remarks imply that Muslims, simply by adhering to cultural or religious norms of wearing a veil, are likely to be or are automatically capable of being terrorists. Although it found that the 23 September 2006 broadcast of these comments did not contravene section 3(b) of the Regulations, the Commission considers that these comments were gratuitous, uncalled for and insulting to the Muslim community. The Commission also notes the CBC itself admitted that these comments were regrettable.

## Conclusion

41. In light of the above, the Commission finds that the Canadian Broadcasting Corporation did not contravene section 3(b) of the Regulations, pertaining to its prohibition of the broadcast of abusive comment, by broadcasting comments made by the radio host Mr. Joël Le Bigot during the programs *Pourquoi pas dimanche* and *Samedi et rien d'autre* during the eight reported broadcasts over the period from 4 December 2005 to 28 October 2006. However, the Commission finds that the CBC, in broadcasting the comments relating to the Jewish hockey player on the Québec Remparts hockey team and to the wearing of the veil by Muslim women, failed to meet the objective of the Act requiring programming to be of a high standard. The Commission is of the view that the CBC must be more vigilant with respect to this objective of the Act, in light of this and other recent Commission decisions concerning the CBC's failure to meet it.<sup>4</sup> As a result, the Commission intends to discuss this matter with the CBC at the time of its next licence renewal.

Secretary general

## Related documents

- *Review of a Commission staff determination on a complaint relating to the airing of a song on CKUT-FM Montréal during the programming segment Space Bop*, Broadcasting Decision CRTC 2007-135, 14 May 2007
- *Complaint regarding the broadcast of the program "Fric show" by the French-language network of the Canadian Broadcasting Corporation prior to the watershed hour*, Broadcasting Decision CRTC 2007-388, 23 October 2007
- *Complaints relating to the broadcast on CBC Radio One of A Literary Atlas of Canada, episodes entitled Whiskeyjack Blues and Room Available*, Broadcasting Decision CRTC 2007-87, 16 March 2007

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<sup>4</sup> See Broadcasting Decisions 2007-388, 2007-87, 2006-668 and 2006-565.

- *Complaints regarding the broadcast by the Canadian Broadcasting Corporation of Sex Traffic and Old School prior to the watershed hour*, Broadcasting Decision CRTC 2006-668, 11 December 2006
- *Complaints concerning abusive comments broadcast by Société Radio-Canada on the 25 September 2005 episode of the program Tout le monde en parle*, Broadcasting Decision CRTC 2006-565, 28 September 2006
- *Complaints about the broadcast of episodes of the program Les Francs-tireurs by Télé-Québec*, Broadcasting Decision CRTC 2006-293, 14 July 2006

*This decision is to be appended to the licence. It is available in alternative format upon request and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*