



Broadcasting Decision CRTC 2005-101

Ottawa, 9 March 2005

Corus Radio Company
Vancouver, British Columbia

Complaint regarding the broadcast of an episode of *Loveline* on CHMJ, Vancouver

*In this decision, the Commission addresses a complaint regarding an episode of a U.S. syndicated radio program entitled *Loveline* that was broadcast by CHMJ, an AM radio station in Vancouver. Based on its review of the segment of the episode of *Loveline* at issue, the Commission finds that, by broadcasting the episode, Corus Radio Company, the licensee of CHMJ, failed to meet a number of Canadian broadcasting policy objectives set out in the Broadcasting Act, including the provision that provides that programming should be of high standard. The Commission finds, however, that the licensee did not breach the provision contained in the Radio Regulations, 1986 that prohibits the broadcast of any abusive comment.*

Background

1. On 27 December 2002, the Commission received a complaint related to comments made during a segment that was included in a U.S. syndicated radio phone-in program entitled *Loveline* (the program) that was broadcast by CHMJ, an AM radio station in Vancouver, between 10:00 p.m. and midnight on 23 December 2002. The licensee of CHMJ is Corus Radio Company (Corus), which is indirectly owned and controlled by Corus Entertainment Inc. At the time of the complaint, CHMJ was identified on-air as “Mojo Radio.”
2. Consistent with its usual practice, the Commission referred the complaint to the Canadian Broadcast Standards Council (CBSC) for resolution, since CHMJ is a CBSC member. The CBSC issued its determination on the complaint in Decision 02/03-0459, 22 July 2003 (the CBSC Decision).
3. On 22 September 2003, the complainant requested that the Commission review the CBSC decision.

The complaint

4. The complainant alleged, both in the original complaint of 27 December 2002 and again in his request for the Commission to review the CBSC Decision, that the program had ridiculed the Holocaust experience and was racist. The complainant

further submitted, in his request for a review of the CBSC Decision, that the following remarks breached section 3(b) of the *Radio Regulations, 1986* (the Regulations), which prohibits the broadcast of abusive comment:

“Yeah, yeah, burn those Jews. ... Gas’ em in the shower, baby. Yeah, yeah. ... Yeah, yeah, send them on the train to Krakow.”

Corus’ response

5. Corus filed a response to the complaint with the CBSC but did not file anything further in response to the request by the complainant for the Commission to review the CBSC Decision.
6. In its response, Corus stated it was sorry that the program had offended the complainant, but submitted that, while the comments may not have been in good taste, they were not racist or discriminatory in the context that they were presented. Corus added that the Canadian Association of Broadcasters’ (CAB) codes make it clear that a broadcaster’s responsibility for programming does not extend to questions of good taste. Referring to a previous CBSC decision,¹ Corus stated:

The CBSC has acknowledged that a program “will not be everyone’s ‘cup of tea’ and it assumes that some members of society would be offended. ... *That* is not, however, the criterion by which the program must be judged.” (original emphasis)

7. Corus also referred to another CBSC decision,² stating:

The CBSC “believes that it is essential to draw a distinction between a broadcast which is *intended* to be serious or at least leaves the impression that it intends to be serious and one which *clearly* does not. It is not that the *standard* to be applied to the potentially offending statement will be different. It is rather the question of audience perception. ... The situation is different where the context is clearly comedic. ... A remark which might reasonably be assessed as abusive in a serious context and thus in breach of the *Code of Ethics* may not be so viewed in the comedic environment. ... Such issues cannot *alone* be the cause of a broadcast sanction. They must be *coupled* with another defining criterion; namely, they must be abusive or discriminatory.” (original emphasis)

8. Corus submitted that the “humour” surrounding the segment related to the caller’s lack of understanding of what the hosts were suggesting that she do, and that its only relation to the Holocaust was that it conjured up horrible images.

¹ CFJP-TV (TQS) re “*Quand l’amour est gai*,” CBSC Decision 94/95-0204, 6 December 1995

² CHUM-FM re *Sunday Funnies*, CBSC Decision 95/96-0064, 26 March 1996

The program

9. *Loveline*'s format consists of two hosts, often with a celebrity guest, taking calls from listeners seeking advice about such topics as sex, relationships and drugs. Current events and pop culture are also discussed, and the shows are often done in a humorous fashion. The episode at issue consisted of a replay of highlights of programs broadcast during the past year.
10. The segment of the episode that led to the complaint featured a caller who claimed to be a telephone sex operator. She said that her "problem" was that the men who called her did not stay on the line long enough for her to make money. She therefore requested advice on how to make her clients stay on the telephone longer.
11. During the exchange between the caller and the hosts, which lasted approximately four minutes, the caller was asked to give examples of what she said on the telephone during the calls that she received. The hosts then suggested that she insert subliminal messages during telephone conversations as she did her work to decrease her caller's level of arousal. Specifically, the hosts suggested that she slip in words such as "cancer," "Vietnam," "grandparents" and "Holocaust." The hosts asked her to practice this "technique" on the air with them.
12. It was during this exchange with the caller that the hosts made the comments at issue, namely "Yeah, yeah, burn those Jews. ... Gas' em in the shower, baby. Yeah, yeah. ... Yeah, yeah, send them on the train to Krakow." The relevant portions of the episode are reproduced in the appendix to this decision.
13. The Commission notes that CHMJ does not currently broadcast *Loveline*.

The CBSC Decision

14. The CBSC's British Columbia Regional Panel (the Panel) examined the complaint in light of Clauses 2 and 6 of the CAB *Code of Ethics* and concluded that, while the program did not contravene Clause 2 of the CAB *Code of Ethics*, it did contravene Clause 6. These clauses read as follows:

Clause 2 – Human Rights

Recognizing that every person has the right to full and equal recognition and to enjoy certain fundamental rights and freedoms, broadcasters shall ensure that their programming contains no abusive or unduly discriminatory material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status or physical or mental disability.

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.

15. The Panel disagreed with the complainant that the program was racist and did not find that any of the comments at issue in the episode advocated violence towards the Jewish population. The Panel did not consider that any of these comments were directed at that identifiable group. The Panel was further of the view that there was no attempt to denigrate or insult Jews in the program and did not find a “scintilla” of racist commentary in the remarks of the hosts or their guest. To the contrary, the Panel found that the suggestions regarding the use of the terms cancer, Vietnam and Holocaust were reminders of “significant unpleasantness and societal distress.” Accordingly, the Panel concluded that the program did not violate Clause 2 of the *CAB Code of Ethics*.
16. The Panel, however, drew a distinction between its conclusion regarding the nature of the hosts’ comments about the Holocaust and the use of those comments in the hosts’ attempt at humorous dialogue. While the Panel’s analysis conducted under Clause 2 focussed on the complainant’s allegation that the programming was “racist in content,” the analysis conducted under Clause 6 related to the use of the Holocaust as a humorous crutch. In this regard, the Panel indicated that it understood the suggested dampening effect of the terms “cancer,” “Vietnam,” and “Holocaust” on the caller’s clients and the intended humour of the hosts. However, the Panel considered that the hosts exceeded any reasonable level of propriety when they progressed to the level of “Yeah, yeah, burn those Jews. ... Gas’ em in the shower, baby...” The Panel added that the laughter of the hosts at the notion of the concentration camp trains and lethal “showers” accentuated the inappropriateness. Accordingly, the Panel concluded that “the humourous constructs erected here on the base of great tragedy constitute improper comment,” and that the broadcast of the segment in question breached Clause 6 of the *CAB Code of Ethics*, which requires “full, fair and proper presentation of news, opinion, comment and editorial.”
17. The CBSC decision directed the broadcaster to announce the Panel’s decision on CHMJ at specific times and to confirm its compliance with that direction.

The Commission's analysis and determination

18. The Commission is required, pursuant to section 5(1) of the *Broadcasting Act* (the Act), to regulate and supervise the Canadian broadcasting system with a view to implementing the broadcasting policy set out in section 3(1) of the Act. Section 3(1) sets out an extensive declaration of the broadcasting policy for Canada, listing a number of policy objectives. Section 3(1)(d)(i) declares that the Canadian broadcasting system should “serve to safeguard, enrich and strengthen the cultural [and] social ... fabric of Canada.” Section 3(1)(d)(ii) states that the Canadian broadcasting system should “encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas [and] values...” Section 3(1)(d)(iii) states that the Canadian broadcasting system, through its programming, should “...serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights.” Section 3(1)(g) states that “the programming originated by broadcasting undertakings should be of high standard.”
19. Section 3(b) of the Regulations was enacted with a view to implementing the Canadian broadcasting policy objectives of the Act set out above. It specifies that a licensee shall not broadcast:

... 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.
20. The Commission's examination took into account the concerns raised by the complainant, the licensee's reply, and the Commission's own review of the program. This examination was conducted against the background of the prohibition against the broadcast of any abusive comment contained in section 3(b) of the Regulations, and the Canadian broadcasting policy objectives of the Act, including the high standard provision set out in section 3(1)(g) of the Act.

Abusive comment

21. 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 severely 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 comment provoking hatred or contempt also undermines the cultural and social fabric of Canada, which the Canadian broadcasting system should safeguard, enrich and strengthen.

22. 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 a class of individuals to 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 physical or mental disability.
23. The Commission considers that the comments were abusive in that, on their own, they are offensive and could be interpreted as calling for violence towards Jews.
24. The Commission, however, is of the view that the abusive comments, taken in context, do not tend or are not likely to expose Jewish people to hatred or contempt on the basis of their origin or religion.
25. The Commission considers that the context in which the comments were made trivialized the Holocaust and were thus highly inappropriate. The Commission, however, is of the view that there is no indication that the comments, when taken in context, would tend or would be likely to expose Jewish people to hatred or contempt. Further, by choosing the Holocaust as a word conjuring up horrible images, the implication is that the hosts acknowledged the Holocaust as a grave tragedy, as indicated by the broadcaster in its response to the CBSC.
26. The Commission notes that the comments were made during a call-in program in which people called to receive advice on sexual and other matters. The Holocaust and Jewish people were not the focus of the discussion; it was, broadly speaking, sexuality. It is in that context that the comments were made and the hosts were attempting to deal with a caller's issue in a humorous fashion. Specifically, the comments were made during the hosts' attempts at suggesting solutions to the caller's "problem" with the apparent intent of using these terms to conjure up images of horrible events that the caller could use to decrease the arousal level of her clients. Indeed, the CBSC, in finding that the comments were not racist pursuant to Clause 2 of the *CAB Code of Ethics*, which is similar to section 3(b) of the Regulations, stated:

... It (the Panel) does not find that any of the comments quoted above were advocating violence toward the Jewish population. It does not consider that any of those comments were directed *at* that identifiable group. It does not believe that there was *any* attempt to denigrate or insult Jews. In short, the Panel does not find a scintilla of racist commentary in the remarks of either the co-hosts or their celebrity guest. To the contrary, their collective suggestion regarding the use of the terms cancer, Vietnam and Holocaust is that these are reminders of significant unpleasantness and societal distress. (original emphasis)

27. The Commission agrees with the view taken by the Panel. In the Commission's view, the hosts clearly did not make these comments in any context that could be perceived to be serious or credible, such as a current affairs discussion. It was, however, a failed attempt at humour.
28. For these reasons, the Commission considers that the comments at issue, in the context in which they were made, would not tend or be likely to foster hatred or contempt towards Jewish people, on the basis of their origin or religion. Accordingly, the Commission considers that the comments, although totally inappropriate and offensive, do not constitute abusive comment within the meaning of section 3(b) of the Regulations.

Canadian broadcasting policy objectives

29. The Commission considers this broadcast to be contrary to the objectives and values embodied in section 3(d) and (g) of the Act, described in paragraph 18 of this decision. The Commission is of the view that the hosts used references to the Holocaust in a gratuitous and unnecessary manner, namely, as suggested images to delay sexual arousal. Moreover, the Commission is disturbed by the fact that the segment at issue was a replay of the year's highlights.
30. The Commission is of the view that the use of humour should not excuse insensitivity and disregard for human tragedies. The use of the Holocaust experience in that context failed to recognize, and was insensitive to, the significance of that tragedy to people in general and to Jews in particular. The context adds to the gratuitous nature of the comments. It amounts to a clear lack of respect for human dignity and is thus inconsistent with the set of values and objectives embodied in section 3 of the Act.
31. Accordingly, the Commission finds that the licensee, by airing the segment at issue of the episode *Loveline* on 23 December 2002, acted contrary to the values and policy objectives set out in section 3(d) and 3(g) of the Act described in paragraph 18 of this decision.

Other matters

32. In the request for a review of the CBSC Decision, the complainant took exception to the fact that the complaint had been first referred to the CBSC for resolution, and asked that the Commission review its policy regarding that matter.
33. The Commission endorsed the establishment of the CBSC in *Canadian Broadcast Standards Council*, Public Notice CRTC 1991-90, 30 August 1991. The Commission strongly supports the self-regulatory process and, over the years, has found the CBSC's complaints resolution process to be a valuable and productive forum for maintaining an on-going dialogue between broadcasters and their audiences. The establishment of the CBSC was preceded by extensive consultation with the industry and the public, and was consistent with the Commission's goal of streamlining the regulatory process and increasing reliance on self-regulation. The Commission notes that the CBSC has established measures to ensure that its panels treat complaints from the public in an impartial manner, for example, by ensuring that panels are comprised of an equal number of public and industry representatives and by providing detailed reasons in decisions so that all parties can understand them. Further, as in the case at hand, any complainant who is not satisfied with a CBSC determination may always submit a request for a Commission consideration of the complaint. Finally, the Commission reviews annual reports of the CBSC and remains apprised of its activities.
34. In light of the above, the Commission is satisfied that the role of the CBSC is effective and appropriate and therefore does not consider that it is necessary to review its policy in this regard at this time.

Secretary General

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>

Appendix to Broadcasting Decision CRTC 2005-101

Adam: Is that Lorraine?

Lorraine: Yes it is.

Adam: Hi Lorraine. You're 20. What's up?

Lorraine: Hey. Well, I'm a phone actress. My problem is my callers are coming way too fast. And in order for me to make any kind of dough, I need to keep a seven minute minimum with each caller.

Adam: Oh my god.

Lorraine: So I need some advice, guys. What do you guys like to hear on the phone? How can I keep these guys –

Adam: Lemme, lemme get this straight. You do ... (He plays an audio clip of a woman seductively saying "Are you hot daddy?") (Lorraine laughs) Oh, I thought you were doing like *Man of La Mancha* and stuff over the phone for, like, people that were bed-ridden or something like that and couldn't get to the theatre. But you're just, you're just doin' the sex talk, huh?

Lorraine: Right.

Adam: How do you describe yourself? Because I think they do a little too good a job sometimes and then it's like (he puts on a seductive voice) "I'm 5'9", I'm a 38 double D, I have – Phitt." (Noise intended to represent ejaculating) (He laughs).

Lorraine: Oh no, I keep it real. I say I'm about 5'7", long dark hair, green eyes, 36C, 24-inch waist.

(...)

Adam: ... So Lorraine. You describe yourself, is that what you are?

Lorraine: Yes, I am.

Adam: Okay. And, and, uh, what, what do you do? Like is the talk, you're saying the talk is, like, extra naughty, extra good? Like talk to Tom. See if you can, uh...

(...)

Lorraine: Who's this?

Tom: Tom.

Lorraine: Hey Tom, I'm Sugar. How're you doin'?

(...)

Tom: Good, good, Sugar. What's goin' on?

Lorraine: Oh nothing, much, just relaxin' a bit on my bed.

(...)

Lorraine: Oh man. Well, I say my nipples are a bit hard and I'm wearin' a black thong and I'm touchin' myself.

Adam: Mm hm.

Tom: Yeah that.

Adam: That's sweet. Yeah, well listen. Why don't you, why don't you sort of work like, you know what you oughta do?

Lorraine: What?

Adam: Here's what you oughta do. 'Cause you don't, you don't want to be too mundane and you want to be sexual, but maybe if she did in a sort of subliminal way, she could add a little time. Like you go like, the guy will go "What're you wearin'?"

Drew: (??) favourite sports team.

Adam: No no, she'll go like "I'm wearin' a lacy black teddy, Holocaust, with a long, Hitler, camisole (Tom and Drew laugh). You know, cancer, and (Adam laughs) just see, like, see if you could just slide in like "cancer," "Holocaust," "grandparents" and see what you could do.

Tom: That's good.

Adam: Right, right.

(...)

Adam: So here's what you do. I ask you what you're wearing and somewhere you work in "Vietnam" very quickly. Very quickly. All right?

Lorraine: Okay.

Adam: All right, here we go. And what are you wearin', Sugar?

Lorraine: Ooh, I'm wearin' a nice lace garter with a nice black lace bra.

Adam: Yeah, yeah.

Lorraine: Mmm. How's that?

Adam: Yeah, but, you know. It was almost perfect?

Drew: Where's the, where's the "Vietnam" part?

Lorraine: Vietnam? (The hosts laugh)

Adam: Okay so. It's my fault for attempting to communicate with people that call the show.

Tom: You, I was amazed. I thought that you had pulled that off with her, that she was, right on it.

(...)

Adam: Yeah. Okay, lemme explain. I have this subliminal suggestion idea.

Drew: Don't use that word. It's too, too –

Adam: I have this quick word thing that's gonna hurt the guys' penises, okay?

Lorraine: Okay.

Adam: Now, when you describe what you're wearing, I want you to very quickly work in the word "Holocaust."

Lorraine: Holocaust?

Adam: Holocaust.

Lorraine: Holocaust. Okay.

Drew: Give her an easier word: “cancer.”

Adam: Do you know what the Holocaust is?

Lorraine: No, I don’t.

Adam: Oh, okay. All right.

Drew: Oh boy. Oh boy.

Adam: All right, that’s all right. Hey, by the way, L.A. Unified Schools District everybody. I’m a product. God bless you guys. You’re really doin’, you’re really doin’ a job over there. (Drew and Tom laugh)

Lorraine: I (??).

Adam: Subliminal Holocaust. Okay, okay. Work in “cancer.” Work in “cancer.”

Drew: Do you know what cancer is?

Lorraine: Okay, okay.

Adam: All right. Work in the word “cancer” when you’re describing what you’re wearing. All right?

Lorraine: Oh, most definitely.

Adam: All right, you ready? Ring ring.

Lorraine: Hi, how’re you doin’?

Adam: All right. What’s your name?

Lorraine: I’m Sugar. Who are you?

Adam: Sugar. I’m Ace.

Lorraine: Hey Ace.

Adam: Yeah. What're you wearin'?

Lorraine: Mmm. Well I'm wearin' a nice black garter. Mmm just thinkin' about the Holocaust right now. (The hosts laugh). Oh this is too much.

Adam: (In mock aroused voice) Yeah, yeah, burn those Jews. Gas 'em in the shower, baby. Yeah, yeah.

Lorraine: I'm sending you my bill.

Adam: (Continuing with mock aroused voice) Yeah, yeah, send 'em on the train to Krakow. Lorraine, we may need to tweak this just a little bit more ...