



Broadcasting Decision CRTC 2006-293

Ottawa, 14 July 2006

Société de télédiffusion du Québec

Montréal, Quebec

Complaints about the broadcast of episodes of the program *Les Francs-tireurs* by Télé-Québec

In this decision, the Commission addresses complaints about two episodes of the television program Les Francs-tireurs, broadcast by the Société de télédiffusion du Québec. After reviewing the program segments in question, the Commission finds that the licensee did not breach the provision of the Television Broadcasting Regulations, 1987 that prohibits the broadcast of abusive comment. The Commission also finds that the licensee has respected the objectives of the broadcasting policy for Canada established in the Broadcasting Act whereby programming must be of high standard and must serve to strengthen the cultural and social fabric and the multicultural and multiracial nature of Canadian society.

Background

1. The Commission received two complaints, from the Centre for Research-Action on Race Relations (CRARR), on 18 February and 31 March 2005 about comments made during two episodes of the program *Les Francs-tireurs* broadcast by the Société de télédiffusion du Québec (Télé-Québec). Since the licensee is not a member of the Canadian Broadcast Standards Council (CBSC), the Commission dealt with the complaints. Commission staff replied to the complainant, on 29 July 2005. CRARR was not satisfied with this response and, on 17 August 2005, requested that the Commission render a decision on its complaints.
2. The two complaints by CRARR concerned segments of approximately five minutes each. The Commission received other complaints (about 197) similar to the CRARR complaints concerning the episodes in question.

The complaints

3. CRARR submitted that the comments made by Benoit Dutrizac (the host) discriminated against the Muslim religion and had the effect of exposing Muslims to contempt, discrimination and hatred.
4. In its complaint of 18 February 2005, CRARR submitted that the host's comments during the 2 February program were "[Translation] hurtful and discriminating against the Muslim religion." CRARR added:

[Translation] Ms. R.B., a Muslim audience member and television viewer, stated that she was deeply insulted and humiliated by journalist Dutrizac's comments. During his interview with his guest, Ms. Irshad Manji, broadcast on 2 February 2005, Mr. Dutrizac apparently said that Islam was "a stupid religion."

5. In its complaint of 31 March 2005 concerning the program broadcast 16 March 2005, CRARR stated that:

[Translation] according to several Muslim audience members, Mr. Dutrizac's comments during the interview with his guest, Dr. Amir Khadir, could be termed discriminatory and described as having the effect of exposing Muslims to contempt, discrimination and hatred.

6. In this complaint, CRARR asked the Commission, among other things, to:
- hold a public hearing to determine whether the programs in question and the comments of the host regarding the Muslim community constituted a breach of the *Television Broadcasting Regulations, 1987* (the Regulations); and
 - determine whether the behaviour of the host makes the program *Les Francs-tireurs* incompatible with the licensee's mandate and conditions of licence.

Télé-Québec's reply

7. Télé-Québec responded to these complaints by first apologizing for any offence that the comments or the expressions used by the host may have caused the complainants or other members of the Muslim community.
8. Télé-Québec pointed out that the mandate of *Les Francs-tireurs* was to discuss various issues without avoiding controversy, so as to permit the discussion of differing views in the court of public opinion. The licensee was of the view that the host's comments,

[Translation] ... while perhaps appearing caustic and reprehensible to some people, nevertheless constitute a legitimate opinion in our free and democratic society. The purpose of the CRTC is not to prevent commentary, which would constitute an unacceptable limitation of freedom of speech and the public's right to information.

Mr. Dutrizac's comments criticizing the practice of fasting by Muslim children are surely not such as to elicit hatred or contempt for Muslim people, particularly since they were made within the context of an explanation by his Muslim guest that she was not herself obliged to engage in the practice of fasting by her own mother because she was not physically able to do so.

9. In response to the complaint regarding the program broadcast 16 March 2005, Télé-Québec pointed out that:

[Translation] ... the purpose of the 16 March interview with Dr. Amir Khadir was to provide a forum for a respected member of the Montréal Muslim community who did not necessarily share the views of the host or of his guest of 2 February 2005, author Irshad Manji.

... During the interview with Mr. Khadir, a number of topics were discussed including religious practices in lay society, notably Ramadan, prayer and the public washing of feet practised by some Muslims. The host, Benoit Dutrizac, then expressed his irritation at the demands being made by some groups, notably the demands of a number of students at the École de technologie supérieure. We agree with you that he used inappropriate language and that may have offended some television viewers, but we must reiterate that his comments were not directed at individuals but rather at the practices themselves. We do not believe that his comments were racist, discriminatory or hateful.

The program *Les Francs-tireurs*

10. At the time the episodes in question were broadcast, Télé-Québec described the program *Les Francs-tireurs* as a program of social criticism and public affairs. According to its Web site, the program focussed on emerging social phenomena, taboos, controversial subjects and political correctness, which the two hosts of the program took it upon themselves to “track, target and shoot down.” Under the format of the program, the two hosts at the time, Richard Martineau and Benoit Dutrizac, conducted interviews focussing on current events, trends or celebrities. Each week, people were invited to appear on the program to present their views on topical issues. More often than not, the tone of the program was very direct (frank), albeit sometimes coarse, and with satirical humour. The hosts or their guests regularly used expletives.
11. The program is broadcast by Télé-Québec on Wednesday evenings from 8:00 to 9:00 p.m. and repeated Saturday at 7:00 p.m., Sunday at 12:30 a.m. and Tuesday at 11:00 a.m.

Episode of 2 February 2005

12. On 2 February 2005, Benoit Dutrizac interviewed Irshad Manji, a Muslim author and speaker who specializes in denouncing forms of what she describes as tribalism within Islam. Ms. Manji is the author of a book entitled *The Trouble with Islam Today*, which is available in French translation under the title *Musulmande mais libre*.
13. The host and his guest discussed possible interpretations of the Koran and of the place occupied by women and children in Islam. At one point, the interviewer became indignant about the fact that children were required to fast during Ramadan. He voiced the comment, “This is a stupid religion. This is a stupid religion,” as Irshad Manji was explaining that a Muslim child starts fasting at an average age of nine.

Episode of 16 March 2005

14. On 16 March 2005, Benoit Dutrizac interviewed Amir Khadir, at that time a candidate for the *Union des forces progressistes* (UFP) party during Quebec's last general election. On the program's Web site, Télé-Québec posted the following summary of the episode:

[Translation] Benoit Dutrizac discusses certain religious practices with Amir Khadir, in reaction to Benoit's previous interview with Irshad Manji a few weeks ago. Amir Khadir wanted to express his views. In an animated discussion, the two men agree on some things and disagree on others. They argue about children fasting, the wearing of veils, Islamic courts, the right to pray in public places, religious repression, how the Muslim community is judged and the humiliation it suffers, etc.

15. During this conversation, the host commented: "[Translation] They piss us off with their prayers and [their] washing of feet in the washrooms." The host was expressing indignation about the recriminations of Muslim students at the *École de technologie supérieure* (ÉTS) in Montréal, who filed a million-dollar lawsuit against the school after the ÉTS refused to provide them with premises for prayer and other Muslim religious practices.

The Commission's analysis and determinations

Abusive comment

16. Section 5(1)(b) of the Regulations prohibits the licensee from broadcasting programming that contains:

any abusive comment or abusive pictorial representation 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.

17. As the Commission has already stated in a number of decisions, most recently Decision CRTC 2006-19,¹ 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

¹ *Complaints regarding comments made on the program Imus in the Morning on MSNBC Canada regarding Palestinians, Iraqis and Muslims*, Broadcasting Decision CRTC 2006-19, 27 January 2006.

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.

18. Section 5(1)(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 *Broadcasting Act* (the Act) and in the *Canadian Charter of Rights and Freedoms* (the Charter). Section 5(1)(b) provides extensive protection to freedom of expression, without by the same token allowing the broadcast of discriminatory comments that have a severe adverse impact on the values of equality and multiculturalism.
19. On-air comments contravene section 5(1)(b) of the Regulations when all three of the following criteria are met:
 1. the comments are abusive;
 2. 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
 3. 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.

3rd criterion: Are the comments based on race, national or ethnic origin, colour, religion, sex, sexual orientation, age or physical or mental disability?

20. With respect to the two episodes in question, the Commission will first examine the third criterion to determine whether the comments focussed on a specific group, within the meaning of the Regulations.
21. The Commission notes that the comments made during the first episode focussed on a religious practice, namely fasting by children, and not on any individual Muslims or groups. In the second episode, the comments that were the subject of the complaint were, among others, they piss us off with their prayers and [their] washing of feet in the washrooms! CRARR submitted that these comments were hurtful and discriminated against the Muslim religion.
22. In response to this aspect of the complaints, Télé-Québec stated that the comments in question were not directed at individuals but rather at practices. However, in its letter dated 17 August 2005, CRARR alleged that the assertion that the host's comments were not aimed at individuals but rather at certain practices of the Muslim religion were "[translation] not only arbitrary and false, but also contrary to Canadian case law in the area of discrimination and equality." According to CRARR, Mr. Dutrizac's comments were prejudicial to the identity and beliefs of a group of Muslims in Quebec.

23. The Commission notes that for the purposes of the third criterion of the provision in the Regulations prohibiting abusive comment, mention must be made of one of the target groups named in the Regulations. Even if one of these groups is not specifically mentioned, this criterion could be fulfilled in the case of a program that refers to a practice or characteristic which serves to identify or specifically refers to at least one of the target groups named in the Regulations. In this regard, the Commission considers that the practices of a religion sometimes cannot be dissociated from the individuals practising that religion. It would be wrong to apply this third criterion of the Regulations in such a manner that an attack on a religious practice (the religion) can never be equivalent to an attack on the individuals who practise that religion.
24. The Commission is of the view that the reference to fasting in the first broadcast is sufficiently recognizable as being associated with the Muslim religion and its practitioners to conclude that an offensive comment about this practice could be considered an offensive comment about its practitioners. The Commission is also of the view that the comments made during the second broadcast also refer to Muslims. Consequently, the Commission considers the third criterion of the Regulations has been met in both broadcasts.

1st criterion: Are the comments abusive?

25. When the Commission is asked to determine whether comments violate section 5(1)(b) of the Regulations, it must consider their content objectively, using the reasonable television viewer as a test.
26. The Commission has examined the comments to determine whether, taken separately and out of context, the comments were abusive, and agrees with the licensee that the words used were inappropriate. Some would say they were in poor taste, and the licensee admitted that viewers may have been hurt by them.
27. However, the Commission is of the view that calling a religion “stupid” or using the French-language expression “faire chier” [piss off] without further description or invective in reference to Muslim students is more in the nature of opinion or criticism than discrimination against the rights of the individuals toward whom the comments were directed. The Commission considers that, in a democratic society, citizens and broadcasters must be able to exercise their right to criticize religious groups or practices, sometimes using unpopular, unpleasant or confrontational expressions without having their opinions automatically judged to be abusive comment that tramples on fundamental rights.
28. In light of the above, the Commission considers that the comments in question in both episodes of the program were not “abusive” within the meaning of section 5(1)(b) of the Regulations.

2nd criterion: Do the comments, taken in context, tend to or are they likely to expose a group or class of individuals to hatred or contempt?

29. The context of the broadcast is fundamental to the examination of the content of the programming. More often than not, the manner in which on-air comments are expressed has a significant effect on the impact of the comments for the reasonable television viewer, particularly when the comments, taken separately, are inappropriate or offensive.
30. All elements of the broadcast in question should be taken into account in considering the context. The Commission is of the view that given the facts of this particular case, the following key elements should be taken into account in considering the context in which the comments by Benoit Dutrizac were made: the goal, format, duration and tone of the program, the duration of the comments in question and the balance of programming (the sufficient presence of an opposing view to nuance the comments made by the host). The Commission may also consider the fact that some of the comments were indirect. In short, to acquaint itself with the context of a program, the Commission must weigh several factors, as set out below.

The goal, format, duration and tone of the programs:

31. *Les Francs-tireurs*, a program of social criticism and public affairs that focusses on a variety of social phenomena, is a talk show revolving around opinions and freedom of thought, during which the tone is more often than not very direct and irreverent, and sometimes coarse. As mentioned earlier regarding the program, each of the two hosts interview their guest for thirty minutes on topical issues that are making headlines.
32. The Commission notes that the interviews with Irshad Manji and Amir Khadir sought to enhance Quebec television viewers' understanding of Islam and of Muslim realities in Quebec and elsewhere. Given that the program addresses emerging social phenomena and controversial subjects, it is not surprising that the discussions called into question some of the premises of that religion.
33. The comments made on 2 February and 16 March 2005 concerned perceptions of and prejudices towards the Muslim religion, and the tone and language used by the host may have shocked or insulted several Télé-Québec viewers, as the licensee has admitted. The comments in question lasted only a few seconds during the program episodes. They were not repeated and were not relentless. Controversy was not being avoided; on the contrary, controversy was being courted, this being one of the goals of the program.

34. The Commission is of the view that the context and tone of both episodes were serious, with the exception of a few salty expressions used by the host and by Irshad Manji. There is nothing to suggest that unwarranted personal attacks were made during the interview. The host's views were obvious from the start: he disagrees with the fact that Muslim children are required to fast all day and attend school during Ramadan. Within the context of a program critiquing social phenomena, the host's sometimes acerbic questioning of certain practices, such as fasting, should not be interpreted or perceived as hatred or contempt for Muslims.
35. Although the host used expletives on several occasions during his interviews, the behaviour of Mr. Dutrizac and his guests remained cordial and respectful, in short, entirely professional. This behaviour, in the Commission's view, may demonstrate that it is possible to disagree about certain topics within the context of an ongoing dialogue, while remaining open to questioning and conciliation.

Presence of balance and opposing views:

36. The Commission considers that the concept of balance constitutes an important component in considering the context and quality of programming, particularly in programs focussing on the discussion of public affairs. The Commission notes that a licensee is not required to show proof of balance in a single program, but rather in its programming as a whole.
37. The Commission considers that Télé-Québec's programming was balanced in several respects, i.e., it exposed viewers to a diversity of views on delicate and controversial issues of public interest. The programming was balanced:
- within the two interviews, as diverging opinions were expressed by the host and the interviewees; and
 - within each episode of *Franco-tireurs* by presenting different points of view in separate episodes a few weeks apart, namely the view expressed by Irshad Manji, (i.e., the need to reform Islam) and subsequently the view expressed by Amir Khadir (i.e., the need to be sensitive to the situation in which Muslims have been placed since 11 September 2001 and the danger of not making an effort to respect differences).
38. The Commission considers that the opposing views offered by the guests were sufficient to nuance the host's comments and balance the opinions expressed.
39. As an illustration, the Commission notes that during the interview with Amir Khadir, each of Mr. Dutrizac's comments was contradicted or called into question by the views expressed by Mr. Khadir. For example, whereas the host claimed that prayers should be banned from schools, Mr. Khadir pointed out that all of the schools he had been to in Quebec had campus ministries and that nobody objected to them. The Commission is of the view that Mr. Khadir's replies had the effect of balancing and even weakening the position and impact of Mr. Dutrizac's comments.

Indirect comments:

40. As stated above, the Commission is of the view that the fact that some comments were indirect with respect to religion, and were not aimed directly at the individuals practising that religion, could be considered an element of the context of the first episode.
41. In light of the above analysis of the programming content and elements of the context of the broadcasts, the Commission considers that the two episodes may have led to a better understanding among reasonable television viewers of various issues with which the Quebec public is not familiar, pertaining to Islamic practices: Ramadan, the wearing of the burka and veil, prayer, etc. The Commission is of the view that both episodes achieved their goal of better informing television viewers about the Muslim religion.
42. Accordingly, the Commission considers that the host's comments, although some people could consider them inappropriate, did not, taken in their context, incite violence, hatred or contempt within the meaning of the Regulations.

The objectives of the broadcasting policy for Canada

43. Section 5(1) of the Act charges the Commission with the responsibility of regulating and supervising all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in section 3(1) of the Act.
44. Below, the Commission will address whether or not the programs in question complied with the objective set out in section 3(1) of the Act, i.e., that programming should be of high standard. The Commission will also address CRARR's claim that Télé-Québec broadcast false information. This is another aspect of the high standard criterion set out in section 3(1) of the Act.

High standard

45. The Commission is of 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.
46. As Télé-Québec indicated in its reply, the Commission notes that the underlying intent of the high standard criterion is not to prevent controversy regarding matters of public concern. Guest Irshad Manji pointed out during her interview how happy she was to live in a country that permitted the free and open exchange of ideas.

47. The Commission considers that all of the elements of analysis pertaining to section 5(1)(b) of the Regulations are also applicable in the analysis of the programs in question from the standpoint of a high standard of programming. As explained above, both programs sought to enhance Quebec television viewers' understanding of Islam and the situation of Muslims. A reasonable television viewer, having watched both programs, is better informed about the Muslim religion. The Commission concludes that the programs in question met the obligation set out in section 3(1)(g) of the Act to broadcast programming of high standard.

Social objectives

48. The Commission is of the view that, within the context of both of these lengthy conversations, the discussions with Irshad Manji and Amir Khadir successfully served the social objectives set out in sections 3(1)(d)(i) and (iii) of the Act. The Commission considers that by means of a productive controversy and an exchange of differing views on a matter of public concern, the programs broadcast by Télé-Québec may have served to strengthen the cultural and social fabric of Canada and reflect the multicultural and multiracial nature of Canadian society, in compliance with sections 3(1)(d)(i) and (iii), as well as the differences in values and beliefs that stem from pluralism, rather than the contrary.

False information

49. CRARR disputed the information presented to the effect that age nine is the average age at which Muslim children start fasting for Ramadan. CRARR alleged that this information is factually incorrect, and stated that “[Translation] Under Islam, children begin fasting when they reach the age of puberty.”
50. The Commission notes that the broadcast of incorrect or knowingly false information could constitute failure to meet the obligation to broadcast programming of high standard. In this case, however, it is uncertain whether Ms. Manji's comments were incorrect or knowingly false. The Commission is of the view that the concept of puberty is individual and subject to interpretation, and that Ms. Manji was relating her own personal experience. She did point out the fact that she had the option of refusing to participate in fasting. It is quite possible that, within the interviewee's immediate circle, the rule of the Koran regarding the age at which a person should begin fasting had been interpreted to be nine years of age, given that some girls do attain puberty at nine years of age. Given the facts of this particular case, the Commission cannot conclude that Télé-Québec broadcast false information.

Conclusion

51. The Commission finds that Télé-Québec did not breach section 5(1)(b) of the *Television Broadcasting Regulations, 1987*, which prohibits abusive comment. The Commission also finds that Télé-Québec respected the objectives and values of the broadcasting policy for Canada established in sections 3(1)(d) and (g) of the *Broadcasting Act*, whereby programming must be of high standard and must serve to strengthen the cultural and social fabric of Canada and the multicultural and multiracial nature of Canadian society.

Secretary General

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