



## Broadcasting Decision CRTC 2006-565

Ottawa, 28 September 2006

**Société Radio-Canada**  
Across Canada

### **Complaints concerning abusive comments broadcast by Société Radio-Canada on the 25 September 2005 episode of the program *Tout le monde en parle***

*In this decision, the Commission addresses complaints it received about comments made during the program *Tout le monde en parle* broadcast by Société Radio-Canada (SRC) on 25 September 2005. The Commission finds that the broadcast of certain comments during this program breached section 5(1)(b) of the Television Broadcasting Regulations, 1987, which prohibits the broadcast of abusive comment. A copy of this decision will be placed on the SRC's public file.*

#### **Introduction**

1. From 26 September 2005 to 7 November 2005, the Commission received approximately 50 complaints about an episode of the program *Tout le monde en parle* that was broadcast by Société Radio-Canada (SRC) on 25 September 2005. The complaints related to comments made by the psychiatrist Pierre Mailloux (better known as “Doc Mailloux”) and comments made by other participants in the program in response to Doc Mailloux’s comments.

#### **Description of the program and the program segment about which the complaints were made**

2. *Tout le monde en parle* is a weekly variety show shot before a live audience. During the program, host Guy A. Lepage has, as his guests, various celebrities from the arts community, politics, the sports world and other sectors, or even members of the general public whose particular experiences have made headlines. The host is accompanied on stage by Dany Turcotte, known on the program as the “*Fou du roi*” [the jester], whose role is essentially to make comments to or ask questions of the guests for the purpose of eliciting laughter or some other reaction from the other guests or the audience.
3. Under the format of the program, guests are invited in turn to sit at the table with the host and the *Fou du roi* to be interviewed. The host asks the guest a series of questions, and a discussion follows that is interspersed with comments made from time to time by the *Fou du roi* or by other guests who have accepted the host’s invitation to remain on stage following their own interviews.

4. All sorts of subjects are discussed with guests. Questions refer sometimes to guests' personal or professional experiences, sometimes to their controversial positions or statements, and sometimes to their opinions or to major issues or events that are currently in the news.
5. Each episode of *Tout le monde en parle* is recorded a few days prior to broadcast. The program lasts about two hours and consists of a number of selected excerpts from the interviews that have been edited together.
6. Doc Mailloux was one of the guests during the 25 September 2005 episode. When he was called up on stage, three other guests were already present at the table: Robert Charlebois, Mitsou Gélinas and Dan Bigras. The Doc Mailloux interview excerpt that was broadcast lasted less than 15 minutes.

### **The complaints**

7. The complaints pertain to a segment, approximately three minutes in length, of the interview with Doc Mailloux during which he was confronted by the host with previous statements he had made about the intellectual capacities of black people.<sup>1</sup>
8. The Commission received approximately 30 complaints about the comments made by or attributed to Doc Mailloux. They included complaints by the Centre for Research-Action on Race Relations (CRARR), the MP for Dauphin-Swan River-Marquette, Inky Mark (MP Mark), the Black Coalition of Quebec (the Coalition) and the Société Saint-Jean-Baptiste de Montréal (SSJBM), as well as Quebec Native Women Inc. (QNW) and the Assembly of First Nations of Quebec and Labrador (AFNQL). These complaints essentially alleged that the comments made by or attributed to Doc Mailloux were racist, abusive, discriminatory, insulting and hurtful. The SRC was also criticized for deliberately provoking a racial controversy that could have been avoided by editing the controversial segment out of the program before it went to air.
9. The Commission also received approximately 20 complaints that the comments made to Doc Mailloux by the other participants in the program, in particular by Mitsou Gélinas – “[translation] Did they conduct any studies on little, one-legged, bearded guys?” – were insulting, hurtful and contemptuous of disabled people.

### **Replies**

10. On 27 October 2005, the SRC sent its official replies to all of the complainants (with the exception of CRARR, MP Mark, the Coalition and SSJBM, and the QNW and AFNQL). The SRC stated that the presence of celebrity guests with controversial opinions is part of the basic concept of the program. The SRC stated that the questions put to Doc Mailloux by the host were derived from public statements made previously by Doc Mailloux and that the host was not indulging Doc Mailloux. The SRC argued that, because of the discussion generated by the program, the public is now better informed about the issues

---

<sup>1</sup> See the transcript of the segment in the appendix to this decision.

raised by Doc Mailloux's statements and about the broader issue of racism. The SRC admitted that, in general, the program might have shocked people and stated that it regretted that the complainants felt that some elements of the program were not appropriate.

11. After this reply was issued by the SRC, the Commission received comments from some of the complainants. They were of the view that the SRC's response was not satisfactory because it only dealt with the comments made by Doc Mailloux, whereas their complaints were in fact about the other participants in the program of 25 September 2005.
12. Accordingly, on 3 October 2005, the SRC issued an additional reply, in which it explained that Mitsou Gélinas' reaction stemmed from the fact that she felt that Doc Mailloux's comments were a personal attack on her.
13. On 2 December 2005, the SRC sent the Commission a copy of the reply that it issued on 28 November 2005 to the complaints filed by CRARR, MP Mark, the Coalition and SSJBM, and the QNW and AFNQL.
14. In that reply, the SRC emphasized that *Tout le monde en parle* is not a public affairs program and consequently is not subject to the same rules for the handling of information. According to the SRC, the viewing audience is well aware that the nature and basic premise of the program is to bring on guest celebrities who have controversial opinions.
15. The SRC reaffirmed that the host of the program and the corporation itself did not indulge Doc Mailloux. The SRC pointed out that the participants in the program strongly condemned Doc Mailloux's comments. In support of this position, the SRC quoted some of the comments made by other participants in the episode of 25 September 2005, as well as comments made by guests during the episode of 2 October 2005.<sup>2</sup>
16. The SRC argued that the program had aroused public debate, which has had consequences for Doc Mailloux. In this connection, it noted that the *Ordre des psychiatres du Québec* [Quebec order of psychiatrists] and TQS inc. have taken certain measures, as well as the many articles that have appeared in the print media.
17. The SRC argued that it is important to take the overall context into account and that the comments that are the focus of the complaints cannot be dissociated from that context. The SRC submitted that it is important to ensure that a variety of opinions are heard and that "[translation] the public debate and meeting of ideas that form part of the SRC's mandate cannot take place without exchanges, questioning and discussion arising out of

---

<sup>2</sup> One of the topics discussed with some of the guests during the 2 October 2005 episode of *Tout le Monde en parle* was the comments made by Doc Mailloux on the previous week's program.

the presentation of divergent views.” The SRC concluded by pointing out that clause 2b) of the *Canadian Charter of Rights and Freedoms* (the Charter) “allows for the expression of such opinions, as in this particular case, in a responsible manner and in a very specific context.”

### **Regulatory framework**

18. Under section 5(1) of the *Broadcasting Act* (the Act), the CRTC has a responsibility to regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in section 3(1) of the Act.
19. The policy stipulates, among other things, that programming should “serve the needs and interests and reflect the circumstances and aspirations of Canadian men, women and children, including equal rights ... the multicultural and multiracial nature of Canadian society and the special place of Aboriginal peoples within that society” (section 3(1)(d)(iii)) and “be of high standard” (section 3(1)(g)). As well, section 3(1)(h) stipulates that licensees “have a responsibility for the programs they broadcast.”
20. Pursuant to sections 10(1)(c) and (k) respectively of the Act, the Commission may make regulations respecting standards of programs for the purpose of giving effect to the broadcasting policy for Canada and respecting such other matters as it deems necessary for the furtherance of its objects. It is by virtue of these authorities that the Commission adopted section 5(1)(b) of the *Television Broadcasting Regulations, 1987* (the Television Broadcasting Regulations) which prohibits the broadcast of abusive comment, specifically:
  - 5.(1) A licensee shall not broadcast:
    - ...
    - (b) 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;
21. Within the context of its responsibility to regulate and supervise, and thus when it examines the verbal content of a particular program in light of the provisions of the Act and its regulations, the Commission must take into account section 2(3) of the Act, which states that “this Act shall be construed and applied in a manner that is consistent with the freedom of expression and journalistic, creative and programming independence enjoyed by broadcasting undertakings.” The Commission must also take into account clause 2b) of the Charter, which guarantees freedom of expression, thus protecting both the broadcaster’s right to self-expression and the audience’s right to receive material that includes expression.
22. In *CHOI-FM – Non-renewal of licence*, Broadcasting Decision CRTC 2004-271, 13 July 2004 (Decision 2004-271), the Commission determined that the freedom of expression of broadcasters must be counterbalanced by the right of listeners to programming that

complies with the Act and associated regulatory requirements. The Commission also determined that the broadcast of “remarks which are abusive and that risk exposing an individual or a group to contempt or hatred contravene the objects of the broadcasting policy for Canada set out in section 3(1) of the Act.”

23. In Decision 2004-271, the Commission also set out the purpose of section 3(b) of the *Radio Regulations, 1986* (the Radio Regulations) prohibiting abusive comment, which is virtually identical in wording to section 5(1)(b) of the Television Broadcasting Regulations:

... The purpose of section 3(b) is to prevent the real harms that such remarks can cause, harms that undermine the objectives of the broadcasting policy set out in the Act, and that have been recognized by the courts.

... This harm undermines the equality rights of those targeted, whereas the broadcasting policy for Canada states that those rights should be reflected in the programming offered by the Canadian broadcasting system.

The regulation prohibiting abusive comment that tends or is likely to expose a person or a group to hatred or contempt is necessary not only to avoid harm to the persons targeted, but also to ensure that Canadian values are respected for all Canadians. ...

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

24. In *Complaint concerning the broadcasting of abusive comments on Bonjour Montréal, a program on Montréal radio station CKAC Montréal*, Broadcasting Decision CRTC 2005-258, 23 June 2005 (Decision 2005-258), the Commission dealt with complaints about the broadcast of a program during which Doc Mailloux had commented inter alia on the intellectual capacities of American black people. The Commission determined that the comments by Doc Mailloux on this subject had been broadcast in breach of section 3(b) of the Radio Regulations, as follows:

The Commission finds that Doc Mailloux’s comments about the intelligence and characteristics of Black persons are disparaging, insulting and abusive within the meaning of section 3(b) of the Regulations.

25. In the present case, the SRC chose to air a segment with Doc Mailloux in which the central focus was the very comments that the Commission had found in Decision 2005-258 to be abusive and in violation of the prohibition in section 3(b) of the Radio Regulations.
26. Given that programming choice, it became incumbent on the SRC, if it wished to guard against committing a similar violation, to address the comments and the issues they raise in a responsible and sensitive manner, through informed discussion and challenge. This the SRC failed to do.

27. While neither the host nor the other guests on the program were in agreement with Doc Mailloux, the other participants in the program were not from the scientific or medical communities and were not participating in the discussion as experts or specialists in the matters in question. Indeed, the SRC made no effort to bring experts into the segment who might challenge Doc Mailloux's views and whatever "scientific studies" he purported to rely upon. Extensive media coverage that followed the airing of the program revealed a substantial amount of professional and scientific literature devoted to the issues raised.
28. The fact that Doc Mailloux conceded that what he was saying might be false did not constitute a sufficient challenge to the substance of his views or to the conclusions that one might draw from them. The other participants in the program certainly voiced their disagreement, but they did not have the necessary expertise or qualifications to contradict or even discuss Doc Mailloux's statements in an informed manner. The challenges to his views were therefore limited to superficial and emotional reactions.
29. It also appears clear, from the manner in which Doc Mailloux's views were presented, namely by confronting him with his previous controversial statements quoted verbatim, that the controversy was provoked intentionally by the program's host and/or producer. The interview had all the makings of a "set-up," the goal of which was clearly to get Doc Mailloux to reiterate or confirm the comments that were known to be abusive, with little regard for the potential consequences.
30. The Commission notes that it is broadcasting licensees who bear ultimate responsibility for the programming they air, whether or not they endorse the opinions, views and positions of the individuals expressing them, and whether or not the programming is produced by a third party, as was the case in this instance. Indeed in this case, the program was pre-recorded, and the SRC could easily have avoided broadcasting the abusive comments by requiring that they be removed from the final edit, which it did not do.
31. The entire discussion took place on a pre-recorded and edited variety program broadcast during prime time and targeted at a wide audience. In the absence of an informed and balanced discussion on a very sensitive subject, Doc Mailloux's comments and previous statements were likely to be perceived as suggesting that black people (and in this case Aboriginal people as well) are less intelligent and, by that fact alone, that they are less valuable to society. The broadcast of such comments made it likely that black people and Aboriginal people would be looked down on and exposed to contempt, based on their race.
32. In light of the above, the Commission considers that in broadcasting the segment in question and in particular the comments of Doc Mailloux in the manner that it did, the SRC breached section 5(1)(b) of the Television Regulations.

33. As far as the comment “(translation) Did they conduct any studies on little, one-legged, bearded guys?” is concerned, in light of the Commission’s finding that the SRC violated section 5(1)(b) of the Television Regulations by broadcasting the segment, it does not consider it necessary to pursue the matter further 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 2006-565

Excerpt from the transcript of the program *Tout le monde en parle*  
broadcast on 25 September 2005

[translation]

**Lepage** Doc Mailloux, you have said, and I quote: “The blacks living in America are the product of an artificial selection process and consequently are slightly disadvantaged intellectually.”

**Mailloux** Yes, that is true. Yes, yes.

**Lepage** Are you a racist?

**Mailloux** It’s the history of slavery.

**Lepage** Are you a racist?

**Mailloux** Not at all. I have black friends. And a black fellow who brought me some plums 10 days ago, and they are very good.

**Turcotte**  
*(laughter)*

**Mailloux** If you had tasted them, well...

**Turcotte** He eats plums given to him by blacks, so he is not a racist, come on!

**Charlebois** No. But I don’t understand the process. If slavery was a process of elimination, it would mean that the strongest survived, and so they should be the most intelligent.

**Mitsou** Exactly.

**Mailloux** No, no, no. They were physically the strongest. They were selected.

**Charlebois** Just because somebody is physically strong, it doesn’t mean that person is a pea brain.

**Mailloux** No, but that has nothing to do with it. Those who were bright, those who were a little too smart, a little too wise, were killed. That’s what the history of slavery was all about.

**Lepage** Yes, but to say they are at a slight disadvantage intellectually.

**Mailloux** But that is the consequence of the artificial selection process. They run faster, they are stronger, there is a whole series of... Certain genes were selected.

**Mitsou** Hey!

**Charlebois** Me, I can’t buy into that. I just don’t buy it.

**Mitsou** No. We can’t agree, can we? We vote no to that. We vote no.

**Mailloux** Listen...

**Lepage** In any case, if some black people brought you some plums, I hope some of them threw tomatoes at you.

**Mailloux**  
*(applause)*

**Charlebois** Or that they will give him a couple of lumps, so to speak.

**Turcotte** Let’s change the subject.

**Bigras** I was wondering why I never listened to him, now I know.



**Mailloux** I don't have a problem with that. It's because studies have been carried out as well, studies that have not been published.

**Bigras** What studies?

**Mailloux** Studies from the Université de Montréal.

**Bigras** What studies?

**Mailloux** Studies on...

**Bigras** What studies? By who? Which doctor?

**Mailloux** Well... I could bring them in. I don't know them by heart, but I have them.

**Bigras** OK, but you don't know who it was.

**Mailloux** I have them in my bag. They are American studies and they were done on groups of people, and they showed that black people and Amerindian people have an average IQ that is well below 100.

**Mitsou** Did they conduct any studies on little, one-legged, bearded guys?  
*(laughter and applause)*

**Mailloux** There aren't enough of them.

**Mitsou** Well, right now you are insulting my partner and you are insulting my daughter.

**Mailloux** I'm not trying to insult anybody. If what I am saying is true, we have to take it into account. If it's false, it's false.

**Bigras** You seem to be a member of a slightly superior race.

**Mailloux** I am what I am.