



Broadcasting Decision CRTC 2009-548

Ottawa, 31 August 2009

Canadian Broadcasting Corporation
Across Canada

Complaints about the broadcast by the Canadian Broadcasting Corporation of the program *Bye Bye 2008*

*In this decision, the Commission addresses complaints about the broadcast of the program *Bye Bye 2008* by the French-language network of the Canadian Broadcasting Corporation (CBC) on 31 December 2008 at 11:00 p.m. and rebroadcast on 1 January 2009 at 8:00 p.m. After reviewing the program in question, the Commission concludes that the broadcast of certain segments of this program violated section 5(1)(b) of the Television Broadcasting Regulations, 1987, which prohibits the broadcast of abusive comment, and failed to meet the high standard requirement set out in the Broadcasting Act. As broadcasters are responsible for the content they broadcast, the Commission expects the CBC should apologize to its viewers. In addition, the Commission expects the CBC to implement immediately mechanisms it will use to ensure that it satisfies its regulatory obligations and conditions of licence in the future, and to report on these mechanisms in its next licence renewal application.*

Introduction

1. The Commission received approximately 250 complaints as well as a petition containing some 2,000 signatories about the program *Bye Bye 2008*, which was broadcast by the French-language network of the Canadian Broadcasting Corporation (CBC) on 31 December 2008 at 11:00 p.m. The CBC re-broadcast the program on 1 January 2009 at 8:00 p.m., that is, before the watershed hour of 9:00 p.m.

The program

2. The CBC has broadcast a *Bye Bye* program most years since 1968; each *Bye Bye* program has generally been broadcast on New Year's Eve and has included a count down to the new year. *Bye Bye 2008* was a 90-minute satire-oriented variety television program. It addressed a number of news events of 2008 and included various comedy sketches and musical performances. Both broadcasts of the program contained identical content. Neither broadcast included viewer advisories.

The complaints

3. The Commission received complaints¹ about the following aspects of the program:

¹ The complaints can be found in Appendix C to [Canadian Broadcast Standards Council, Quebec Regional Panel, CBC re *Bye Bye 2008*](#), 17 March 2009 (the CBSC report)

- the portrayal of Black people, including the use of the term “nègre,” in several comedy sketches and in the program as a whole;
- the portrayal of Nathalie Simard, other public figures (e.g. Prime Minister Stephen Harper) and persons and groups (e.g. Anglophones, the poor, immigrants and women) in several comedy sketches;
- the depiction of violence against women in a comedy sketch about the Patrick Roy family; and
- the broadcast of content intended for adult audiences before the watershed hour of 9:00 p.m. and without viewer advisories during the 1 January 2009 re-broadcast.

CBC’s response

4. In February 2009, the CBC responded to complainants with a letter² in which it noted “the public’s vehement reaction to the broadcast and the large volume of comments [CBC] received in its wake.” The CBC submitted the following:

Airing a humorous, satire oriented program open to many levels of interpretation is always risky business ... The humour in the 2008 edition of the show was intended to condemn evils like racism, intolerance and violence through the use of irony. We acknowledge that some of the show’s twenty-odd skits and tributes to 2008 shocked or offended certain viewers. But those skits were intended simply to caricature – and in some cases even ridicule – a number of celebrities who were in the news that year.

Writing a *Bye Bye* means giving up the notion of pleasing everyone, so it is hardly surprising that some people enjoy the show more than others. However, it would be quite wrong to claim the show included racist content. We deny that very strongly. Every racist allusion in the show was there to highlight the inadequacies of the characters involved in the skit. We sincerely regret the fact that some words may have shocked viewers, but fully stand by the intent behind their use.

... I beg you to accept our most sincere apologies for any discomfort or inconvenience the broadcast may have caused. We maintain, however, that *Bye Bye 2008* was not in breach of any applicable standards and policies governing violence and explicit sexuality on television.

² Appendix D to the CBSC report contains a copy of the CBC response.

Canadian Broadcast Standards Council's report

5. In light of the Canadian Broadcast Standards Council's (CBSC) considerable experience in addressing complaints about broadcast content, the Commission requested that the CBSC examine the above-mentioned complaints against the CBC and file a report on the matter with the Commission.³ The Commission stated that it would take the report into consideration in reaching its conclusions on the complaints.
6. In April 2009, the CBSC filed its report entitled, *Canadian Broadcast Standards Council, Quebec Regional Panel, CBC re Bye Bye 2008, 17 March 2009* (CBSC Decision 08/09-0620+), with the Commission. The report and its annexes are available on the Commission's website.
7. In its report, the CBSC noted that the CBC, as a public broadcaster, is not a member of the CBSC. As a result and as requested by the Commission, the CBSC examined the complaints in light of the *Broadcasting Act* (the Act), the *Television Broadcasting Regulations, 1987* (the Television Regulations) as well as the CBC's conditions of licence, which require that it adhere to the Canadian Association of Broadcasters' (CAB) *Equitable Portrayal Code* and the *CAB Violence Code*. The CBSC also took into consideration the CAB's *Code of Ethics*. As indicated in previous decisions, the Commission, in determining what constitutes programming of high standard within the meaning of the Act, considers, among other things, the standards in effect in the broadcasting community including the latter Code.⁴
8. Based on the rationale set out in its report, the CBSC made the following findings:
 - neither the portrayal of Nathalie Simard, other persons (e.g. Prime Minister Stephen Harper) and groups (e.g. Anglophones, the poor, immigrants, women), nor the use of the term "nègre" violated any regulations or breached any conditions of licence applicable to the CBC;
 - the portrayal of Black people in various comedy sketches breached clauses 2, 3, 4 and 7 of the CAB's *Equitable Portrayal Code* and violated section 5(1)(b) of the Television Regulations;
 - the depiction of violence against women in the comedy sketch about the Patrick Roy family breached clauses 7.1 and 7.2 of the *CAB Violence Code*;
 - the second broadcast, which included material for adult audiences and which was broadcast before the watershed hour of 9:00 p.m. and without viewer advisories, failed to meet the high standard provision set out in section 3(1)(g) the Act.
9. In light of the above, the CBSC concluded that, in broadcasting *Bye Bye 2008*, the CBC violated certain regulations, breached certain of its conditions of licence, and failed to meet the high standard requirement set out in the Act.

³ See Commission letter of 3 February 2009, Appendix A to the CBSC report.

⁴ See, for example, Broadcasting Decisions 2006-668 and 2007-388.

CBC's response to the CBSC's report

10. The Commission allowed for comments on the conclusions of the CBSC's report. The CBC, the Centre for Research-Action on Race Relations (CRARR) and one individual commented.
11. The CBC maintained that the program did not violate any regulatory obligations. The CBC submitted that, in finding breaches of the Television Regulations and the CAB's *Equitable Portrayal Code*, the CBSC did not take into account the humorous and satirical context of the skits, that the CBSC applied the incorrect test in making its findings and that the CBSC did not take into account how the courts have interpreted the words hatred or contempt. The CBC acknowledged that it did not broadcast viewer advisories on 1 January 2009, although it should have done so.
12. The CRARR supported the CBSC's finding that the portrayal of Black people violated the Television Regulations and breached certain conditions of licence. However, the CRARR disagreed with the CBSC's finding that the use of the term "nègre" did not violate any applicable provisions. The CRARR was of the view that the use of that term in the context of *Bye Bye 2008* amounted to a violation of the CAB's *Equitable Portrayal Code*.

Commission's analysis and determinations

13. In reaching the following conclusions, the Commission has taken into consideration the program as a whole, the various comedy sketches in question, the complaints, the CBSC's report, and the comments filed by parties.
14. Overall, the Commission finds the approach, findings, and conclusions of the CBSC to be appropriate. Like the CBSC, and for similar reasons, the Commission determines the following:
 - as acknowledged by the CBC, the 1 January 2009 broadcast included material for adult audiences, was broadcast before the watershed hour and did not contain viewer advisories; as such, the rebroadcast failed to meet the high standard provision set out in section 3(1)(g) of the Act;
 - the portrayal of Nathalie Simard, other public figures, people, and groups did not violate any applicable regulations or breach any conditions of licence; and
 - the portrayal of Black people in various sketches breached clauses 2, 3, 4 and 7 of the CAB's *Equitable Portrayal Code* and violated section 5(1)(b) of the Television Regulations.

15. With regard to the portrayal of Black people, the Commission notes that section 5(1)(b) of the Television Regulations prohibits the broadcast of 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. In previous decisions, the Commission has stated that the test to determine whether a violation of this section of the regulation has occurred is to be found in the language of the provision itself; i.e. a violation occurs when all three of the following criteria are met: (1) the comments and/or portrayals in question are abusive; (2) when taken in context, these are likely to expose an individual or group of individuals to hatred or contempt; (3) these are based on one of the enumerated grounds, such as colour or race.⁵
16. In examining *Bye Bye 2008* with respect to the above, the Commission is of the following views:
- first, numerous comedy sketches in the program, including the Obama skit, contained negative comments about, and negative representations of, Black people (e.g. in several sketches, Black people are depicted as thieves and/or lower class workers). The Commission finds that these comments and representations went against community standards and were abusive in the context of the program;
 - second, the Commission acknowledges the CBC's statement that the intent of the producers was to create satire and humour; however, the Commission considers that, regardless, the overall effect was to reinforce existing prejudices and express disdain, having the effect of looking down upon and fostering a lack of respect toward Black people, thereby exposing this group to contempt; and
 - third, the comments and portrayals were based on colour/race.
17. The Commission notes that the abusive comment test set out in the Television Regulations is more stringent than the tests set out in clauses 2, 3, 4 and 7 of the CAB's *Equitable Portrayal Code*. As such, a violation of the Television Regulations indicates that there is also a breach of these sections of the *Equitable Portrayal Code*, adherence to which has been imposed on the CBC as a condition of licence.
18. With respect to the use of the term "nègre," the Commission notes that *Bye Bye 2008* contained the following statement: [Translation] "It would be good to have a "nègre" [U.S. President Obama] in the White House. It will be practical. Black on white. It will be easier to shoot him."

⁵ See, for example, Broadcasting Decisions 2005-258, 2005-348, 2006-19 and 2006-293. The Commission has also explained in such decisions how the terms hatred and contempt are to be interpreted.

19. The Commission has, in a previous decision,⁶ determined that the use of the term “nègre” can, in certain instances and contexts, constitute a failure to meet the high standard requirement. The Commission notes the high volume of complaints it received on the use of that term in the context of *Bye Bye 2008*. In view of the historical significance of the term within Canada and Quebec, the Commission considers that it has a high emotional impact; consequently, community standards demand very prudent use of the term. The Commission considers that the CBC exercised insufficient prudence in allowing that term to be used in the context cited above. In this regard, the Commission reminds the CBC that the use of public airwaves confers a responsibility on licensees to broadcast programming that is acceptable at all times under existing community standards.
20. With respect to the depiction of violence in the comedy sketch about the Patrick Roy family, the Commission considers that the violence depicted was obviously simulated and comically exaggerated; the primary focus of the comedy sketch was violence in general, not violence against women; and, although the sketch contained a comedic, exaggerated depiction of a violent act against one female character, the perpetrators of the violence were not depicted as laudable characters. As a result, the sketch did not, in fact, sanction, promote, or glamorize violence against women. Furthermore, as the Commission has noted in previous decisions,⁷ it is only prepared to conclude that the limits to freedom of expression have been exceeded in cases of the most flagrant excess; where it is not obvious that regulatory requirements have been breached, the Commission will rule in favour of freedom of expression.

Conclusion

21. The Commission recognizes the important role that the CBSC plays for its members in addressing complaints about programming content. The Commission notes that both it and the CBSC reached the same general conclusions: in broadcasting *Bye Bye 2008*, the CBC violated the abusive comment provision of the Television Regulations, breached the CAB’s *Equitable Portrayal Code*, adherence to which is a condition of its licence, and failed to meet the high standard requirement as set out in the Act. With this in mind, the Commission endorses the CBSC’s conclusions in this matter.
22. The Commission notes that any apologies or expressions of regret by the CBC for the broadcast of *Bye Bye 2008* were qualified by accompanying denials of any violations or breaches of regulatory requirements. The Commission considers that the public is owed a full and unqualified apology for the broadcast of abusive comment and material not complying with the *Equitable Portrayal Code* on *Bye Bye 2008* as well as for the broadcast of adult material in this program before the watershed hour and without viewer advisories, which failed to meet the high standard requirement set out in the Act. The Commission expects the CBC to issue such an apology in a timely manner.

⁶ Broadcasting Decision 2005-348

⁷ For example, Decision 90-772

23. The Commission reminds the CBC that, as set out section 3(1)(h) of the Act, it is broadcasting licensees who bear responsibility for the programming they air. This is the case whether or not the licensee endorses 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. Thus, it is the management of the licensee that must ensure that sufficient controls are in place to ensure compliance with the Act, the applicable regulations, and conditions of licence. The script for a program such as *Bye Bye*, although aired live, is written long before going to air, and in that context, management of the licensee must ensure that what will be broadcast will comply with all applicable regulatory requirements.
24. The Commission notes that it has recently reminded the CBC of its requirement to meet its regulatory obligations, in particular with respect to the Canadian broadcasting policy objective set out in the Act that programming should be of high standard.⁸ As a result, the Commission expects CBC management to implement immediately specific mechanisms to ensure adherence with its regulatory obligations and conditions of licence. These mechanisms must ensure that all content aired is carefully reviewed prior to broadcast to ensure compliance with regulatory requirements and conditions of licence. The Commission expects the CBC to report on such mechanisms in its next licence renewal application.

Secretary General

Related documents

- *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 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 about the broadcast of episodes of the program Les Francs-tireurs by Télé-Québec*, Broadcasting Decision CRTC 2006-293, 14 July 2006
- *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
- *Complaint concerning the broadcast of an episode of Les Francs-tireurs by Télé-Québec*, Broadcasting Decision CRTC 2005-348, 28 July 2005

⁸ See Broadcasting Decision 2007-388.

- *Complaint concerning the broadcasting of abusive comments on Bonjour Montréal, a program on Montréal radio station CKAC, Broadcasting Decision CRTC 2005-258, 23 June 2005*
- Decision CRTC 90-772, 20 August 1990

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>.