



Broadcasting Decision CRTC 2005-258

Ottawa, 23 June 2005

591991 B.C. Ltd.

Montréal, Quebec

Complaint concerning the broadcasting of abusive comments on *Bonjour Montréal*, a program on Montréal radio station CKAC

*In this decision, the Commission deals with complaints about two broadcasts of the program *Bonjour Montréal* on CKAC, an AM radio station in Montréal owned by Astral Media Radio inc. (Astral) at the time of the broadcasts and currently owned by 591991 B.C. Ltd., a subsidiary of Corus Entertainment Inc. Having reviewed the segments of the two broadcasts at issue, the Commission finds that the comments made during these two broadcasts infringe the Radio Regulations, 1986, which prohibit the broadcasting of abusive comments. The Commission also finds that the broadcasts by Astral, the then owner of CKAC, contravene the objectives of the Broadcasting Policy for Canada articulated in the Broadcasting Act, including stipulations that the programming should be of high standard.*

Background

1. On 28 October 2003, the Centre for Research-Action on Race Relations (CRARR) filed a complaint with the Commission concerning the 30 September 2003 broadcast of the morning program *Bonjour Montréal*, hosted by Paul Arcand, on radio station CKAC Montréal, which at the time of the broadcast was owned by Astral Media Radio inc. and is now owned by 591991 B.C. Ltd., a subsidiary of Corus Entertainment Inc.¹ (Corus). CRARR alleged that during the broadcast a guest on the show, psychiatrist Pierre Mailloux (better known as “Doc Mailloux”), made racist comments about Black people.
2. Following the usual procedure, the Commission forwarded the complaint for resolution to the Canadian Broadcast Standards Council (CBSC), of which CKAC is a member. However, on 10 December 2003, after receiving the broadcaster’s reply but before the CBSC had made a ruling, CRARR asked to have the Commission rather than the CBSC deal with the complaint. The CBSC therefore referred the complaint back to the Commission.

¹ Exchange of radio assets in Quebec between Astral Media Radio inc. and Corus Entertainment Inc., Broadcasting Decision CRTC 2005-15, 21 January 2005.

3. On 10 February 2004, CRARR filed a second complaint with the Commission relating to comments made during the 3 February 2004 broadcast of *Bonjour Montréal* by Doc Mailloux, who had been asked to appear on the program hosted by Mr. Arcand. According to CRARR, Doc Mailloux again made discriminatory, racist comments about Black people. CRARR also asked to have this complaint dealt with by the Commission rather than the CBSC.

The complaints

30 September 2003 broadcast

4. In its complaint concerning the 30 September 2003 broadcast, CRARR alleged that the discriminatory comments against Blacks uttered by Doc Mailloux on *Bonjour Montréal* were deliberate, malicious and abusive. CRARR maintained that these comments contravene section 3(b) of the *Radio Regulations, 1986* (the Regulations) prohibiting abusive comments, and that they infringe on the rights of Black persons to equality and dignity.
5. In its complaint, CRARR referred to comments allegedly uttered by Doc Mailloux, that [translation]: “Blacks were born less intelligent than Whites, and that accounts for their poverty and high unemployment rate.” CRARR further noted that Doc Mailloux did not cite any sociological or other studies to support his statements.
6. The licensee submitted its reply on 26 November 2003, the date on which the complaint was forwarded to the CBSC, without responding to CRARR’s request to have the matter referred back to the Commission.
7. In its reply, the licensee acknowledged that Doc Mailloux’s remarks were not unbiased but submitted that, taken in context, they do not constitute abusive comments in contravention of section 3 of the Regulations and are not racist, in the licensee’s opinion. The licensee further observed that CRARR’s allegations did not faithfully reflect Doc Mailloux and Mr. Arcand’s conversation, and provided a transcript of that conversation.
8. The licensee indicated that, knowing that the subject was a sensitive one, the program’s host, Mr. Arcand, expressed scepticism and asked questions, and Doc Mailloux qualified his assertions. The licensee noted that [translation]: “he [Doc Mailloux] never said that he was talking about the entire Black community; in fact, he said that when you perform statistical analysis on large groups, there will be some individuals who do not match the profile he described.” The licensee added that [translation]: “rather than calling attention to prejudice, this shows listeners how realities that are difficult to accept can lead to prejudice.”
9. The licensee acknowledged that although Doc Mailloux claimed that there are studies that corroborate his statements, he mentioned none of these to the audience. The licensee stated that it would have been desirable for Doc Mailloux to mention these studies and that it had reminded him to be sure to give the audience complete information.

3 February 2004 broadcast

10. In its complaint about the 3 February 2004 broadcast, CRARR referred to comments made by Doc Mailloux about the incident involving the Afro-American singer Janet Jackson, where one of her breasts was exposed during the intermission show at the 2004 Super Bowl. CRARR alleged that, according to the comments reported to it by a Black listener, Doc Mailloux said that [translation]: “Miss Jackson, like her brother Michael, exhibits unacceptable conduct, and this is typical of African or Black people, who do not know how to behave even though they left Africa many years ago.” According to the listener, Doc Mailloux also said [translation]: “these people should be sent back to Africa for carrying on that way.”
11. CRARR alleged that the racist remarks against Blacks made on the program *Bonjour Montréal* were deliberate, malicious and abusive. CRARR maintained that these comments contravene section 3(b) of the Regulations prohibiting abusive comments, and that they infringe on the rights of Black persons to equality and dignity.
12. The licensee replied on 22 March 2004. It indicated that Doc Mailloux’s comments, while disconcerting, refer rather to the lack of education and the manipulative nature of certain members of the Jackson family. The licensee pointed to one remark by Doc Mailloux to the effect that these people often find themselves suddenly in the limelight without much preparation and their antics are crass attempts at manipulating the fans.
13. The licensee acknowledged, however, that the issue is a sensitive one and that using Black people as examples when discussing it may have discriminating and humiliating connotations. The licensee recognized that the comments were decidedly racist, and apologized. The licensee also informed the Commission that it has decided to drop Doc Mailloux’s discussions with Mr. Arcand from the program *Bonjour Montréal*.
14. CRARR responded to the licensee’s reply on 9 April 2004, reiterating its complaint but noting the licensee’s apology and the fact that the licensee recognized that these were racist comments.

Commission’s analysis and determination

15. Under section 5(1) of the *Broadcasting Act* (the Act), the Commission regulates and supervises all aspects of the Canadian broadcasting system with a view to implementing the Broadcasting Policy for Canada. This policy, and a number of its objectives, are described in detail in section 3(1) of the Act, which stipulates, among other things, that the Canadian broadcasting system should “serve to safeguard, enrich and strengthen the cultural [and] social ... fabric of Canada” (section 3(1)(d)(i)); and through its programming, “serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights...” (section 3(1)(d)(iii)). In addition, section 3(1)(g) states that “the programming originated by broadcasting undertakings should be of high standard.”

16. Section 3(b) of the Regulations was adopted to give effect to the objectives of the Broadcasting Policy for Canada established in the Act and referred to above. The section stipulates that a licensee shall not broadcast “any abusive comment that, when taken in context, tends 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. The purpose of section 3(b) of the Regulations on abusive comments is to prevent the very real harm that may be caused by prejudicial comments that are contrary to the objectives of the Broadcasting Policy for Canada and that are likely to expose a group to hatred or contempt, potentially causing serious psychological and social problems for the members of the group against which they are directed. The derision, hostility and violence encouraged by such comments may severely affect the self-esteem, human dignity and social acceptance of the members of the group. This prejudice undermines the equal rights of the affected members—rights that the programming of the Canadian broadcasting system should respect and reflect in accordance with the Broadcasting Policy for Canada. As well as preventing prejudice against the persons referred to in such comments, the provision of the Regulations that prohibits abusive comments is intended to guarantee that all Canadians see themselves reflected in, and respected by, Canadian attitudes and values. The dissemination of comments that incite hatred and contempt also undermines the social and cultural fabric of Canada, which the Canadian broadcasting system must safeguard, enrich and strengthen.
18. The comments that were broadcast contravene section 3(b) of the Regulations if they meet the following three criteria:
 - the comments are abusive;
 - the abusive comments, when taken in context, tend or are likely to expose an individual or a group or class of individuals to hatred or contempt; and
 - the abusive comments are based on race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability.
19. In its review, the Commission considered the concerns expressed by CRARR, the licensee’s replies, and its own analysis of the broadcasts in question. The review took into consideration both the prohibition stated in section 3(b) of the Regulations against broadcasting abusive comments and the objectives of the Broadcasting Policy for Canada set out in the Act.

30 September 2003 broadcast

20. The discussion starts with a statement by the host, Mr. Arcand, that they are going to talk about racism. Doc Mailloux’s comments may be summarized as follows (a transcript of the discussion is attached as Appendix A to this decision). He expresses the view that Blacks are the product of an artificial selection, that the strongest were chosen to work on

plantations and the brightest did not procreate or were killed. According to Doc Mailloux, this resulted in a physical superiority that we can easily notice in sports, and a slight intellectual disadvantage that adversely affects employment. He notes that this does not mean that there are no bright people amongst Blacks, but as a group, they are disadvantaged in that regard, in comparison to Whites and Asians. He mentions studies (which he does not identify) to support his comments. He also refers to U.S. crime statistics, according to which 50% of criminals are Blacks, whereas only 12% of the population of the United States is Black (he does not say where these statistics come from). He continues, saying that there is a group problem amongst Blacks: Black men are a lot less valiant than other groups. He tries to qualify this comment by saying: [translation] “I’m not saying that all Blacks are lazy – that’s not what I’m saying. But there is a laziness problem among Black men. Black women are a lot more valiant.” He says that these are realities, not prejudices.

21. In responding, Mr. Arcand tries to qualify Doc Mailloux’s remarks with such interjections as: [translation] “but things have changed since” and “Doc, it’s because it also comes from poverty. When you live in poor surroundings, you may be more tempted to go towards a form of criminality.”
22. 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.
23. The context in which the comments were uttered makes the matter all the more serious because the program in question was a morning public affairs program, on which a reasonable listener can expect that the topics of discussion will be serious. For that reason, a listener might take exchanges of this kind quite seriously and give them more credibility than he or she would if they took place in a different context. Moreover, Doc Mailloux says that his comments are based on reality and studies, even though no scientific basis justifies such statements. These comments encourage racism by trying to justify stereotypes that are unflattering, belittling and harmful. They are the kind of comments that are likely to expose Black persons to contempt.
24. For these reasons, the Commission finds that the comments about Blacks made by Doc Mailloux during the 30 September 2003 broadcast constitute abusive comments that, when taken in context, tend or are likely to expose Black persons to contempt on the basis of race or ethnic origin. Consequently, the Commission finds that these comments contravene section 3(b) of the Regulations.

3 February 2004 broadcast

25. The discussion starts with an allusion to “Janet’s breast” and a comment by Doc Mailloux that the Jacksons are manipulative and ready to do anything to sell CDs. Doc Mailloux’s comments may be summarized as follows (a transcript of the discussion is attached as Appendix B to this decision). Doc Mailloux says that the Jacksons are [translation] “not well educated” and “still believe they are in a tribe in Africa.” He thinks that someone should tell them, [translation] “listen, you are in America, learn how

to live a little.” He also says, among other things, [translation] “they don’t know how to live! They live like an African tribe. You know, in Africa, when you want to shake your crotch, you do it.” The host, Mr. Arcand, tries to temper these statements by saying that he thinks this behaviour is part of show business, and it is not about Africa. Doc Mailloux reacts by asking, [translation] “Would a civilized White do that?” When Mr. Arcand gives the example of Madonna and Britney Spears kissing during a program, Doc Mailloux replies that the singers kissed to demonstrate their affection.

26. The Commission considers Doc Mailloux’s comments to be disparaging and insulting to Blacks. While Doc Mailloux spent the majority of the show talking about the behaviour of show business personalities like the Jacksons, Madonna and Britney Spears, he focused on the Jacksons and made comments about their conduct that he then generalized to include all Blacks. The comments about White pop stars Britney Spears and Madonna, in contrast, were not based on racial characteristics.
27. As with the other broadcast analyzed in this decision, the context in which the comments were uttered makes the matter all the more serious because the program in question was a public affairs show, on which a reasonable listener can expect that the topics of discussion will be serious. Moreover, the comments were central to the discussion, not an incidental remark in an otherwise appropriate exchange. The Commission also notes that the licensee has acknowledged that the comments were racist.
28. For these reasons, the Commission finds that the comments made by Doc Mailloux during the 3 February 2004 broadcast, which were generalized to include all Blacks, constitute abusive comments that, when taken in context, tend or are likely to expose Black persons to contempt on the basis of race or ethnic origin. Consequently, the Commission finds that these comments contravene section 3(b) of the Regulations.

Objectives of the Broadcasting Policy for Canada

29. The Commission finds that the two broadcasts in question are contrary to the objectives and values established in sections 3(d) and 3(g) of the Act, set out in paragraph 15 of this decision. The Commission is of the view that the comments are abusive, contemptuous and disparaging of Black persons and for these reasons they do not constitute programming that serves to safeguard, enrich and strengthen the cultural and social fabric of Canada, as section 3(1)(d)(i) of the Act requires. The Commission further finds that comments of this kind undermine the equal rights of Black persons and the multicultural and multiracial nature of Canadian society, as stipulated in section 3(1)(d)(iii) of the Act. Lastly, and for the reasons given in this decision as the basis for a finding of a contravention of section 3(b) of the Regulations, the Commission is of the view that in neither of the broadcasts in question is the programming of high standard, as section 3(1)(g) of the Act requires it to be.

30. The Commission notes that following *Exchange of radio assets in Quebec between Astral Media Radio inc. and Corus Entertainment Inc.*, Broadcasting Decision CRTC 2005-15, 21 January 2005, the CKAC station has become the property of Corus. The Commission expects CKAC to adhere to the guidelines for radio developed by Corus in 2001.
31. This decision will be placed on the licensee's public record. The Commission might wish to discuss this subject with the licensee when CKAC's licence is next due for renewal.

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 A to Broadcasting Decision CRTC 2005-258

Excerpts from the program *Bonjour Montréal*, dated 30 September 2003, broadcast on CKAC Montréal

[translation]

Arcand: Good morning, Dr. Mailloux, we are going to talk about racism this morning.

Mailloux: You want my death this morning, eh?

Arcand: Why?

Mailloux: You want me expelled from the air? ... Because what I'm going to say is not pretty.

Arcand: I don't know, what are you going to say?

Mailloux: When we talk about racism, especially against Blacks, we have to remember that American Blacks are the product of an artificial selection, do we agree so far?

Arcand: An artificial selection?

Mailloux: Yes, yes, it is that the strongest have been chosen to work on plantations and the brightest did not procreate or were killed. Therefore, what was the result? Well it resulted in a physical superiority that we can easily notice in sports in America. Blacks have almost everything ... regarding performance in many sports, and a slight intellectual disadvantage that adversely affects employment. It's not me that is saying this, and I'm not saying this in contempt either. Studies have been conducted on large groups. That doesn't mean that there are no bright people amongst Blacks. But as a group, they are disadvantaged in that regard.

Arcand: Well, if they were maintained in a state of slavery for long periods ... but things have changed since.

Mailloux: Things don't change fast, in comparison to ...

Arcand: But they have access to schools more than before. If we take American society, they still have – I'm not saying it's perfect – but they are still in a better overall position than before.

- Mailloux:** Yes, it has clearly improved, but they have a slight intellectual disadvantage, Paul, not regarding education. As a group, they are a bit ... if you take, for example, 1000 Blacks, 1000 Whites and 1000 Asian people, the Asians have an above-average IQ. Us, Canadians, it is about 100. And the Blacks are a little below 100, in terms of the average IQ of a large group. That is a slight disadvantage. This is not prejudice, it's a fact.
- Arcand:** Ok, but to go back to prejudice, because racism is prejudice.
- Mailloux:** Yes, but when it comes to ... if you do stats on large groups, surely, they will be disadvantaged in terms of jobs, particularly in certain types of jobs.
- Arcand:** No, but it's not just jobs. If I take an example in the United States, I'm giving the case that I saw of a large store chain that is being sued because it only hired blonds with blue eyes to be on the floor and the Blacks were confined in the warehouse. This is not an issue of intelligence.
- Mailloux:** Yes, but what's happening is that we have less confidence in them than in other groups; and, in certain parts - I don't think this is the case in Canada - but in certain parts of the U.S., because of Black crime. You know, we have to remember that in the U.S., one out of two criminals, 50% of criminals, are Blacks; whereas only 12% of the population is Black. Crime is much higher among American Blacks than other groups.
- Arcand:** Doc, it's because it also comes from poverty. When you live in poor surroundings, you may be more tempted to go towards a form of criminality.
- Mailloux:** No. It's because there is a group problem amongst Blacks. Black men are a lot less valiant than other groups. So it would be an advantage - I'm not saying that all Blacks are lazy - that's not what I'm saying. But there is a laziness problem among Black men. Black women are a lot more valiant.
- Arcand:** Thanks, Doc.
- Mailloux:** These are realities, not prejudices. It would therefore be in their interest to improve certain aspects and then there will be less racism.
- Arcand:** Thanks, Doctor.
- Mailloux:** Bye.

Appendix B to Broadcasting Decision CRTC 2005-258

Excerpts from the program *Bonjour Montréal*, dated 3 February 2004, broadcast on CKAC Montréal

[translation]

Arcand: Doctor Mailloux, how are you this morning?

Mailloux: Good morning, Paul.

(They both laugh.)

Arcand: Janet's breast.

Mailloux: Yes. Well, Paul ...

Arcand: First, explain to me what a puritan is.

(Arcand laughs.)

Mailloux: Well, Paul, I find this story so insignificant. I think that the Jacksons ... I'll focus on two things, Michael, her brother ... this Jackson family, they are very nasty manipulators. They are ready to do anything to ...

Arcand: To get attention.

Mailloux: ... sell discs. Yes, to get attention, on one hand; on the other, I have the impression that they are not well educated. I think they still believe they are in a tribe in Africa. Someone should tell them "listen, you are in America, learn how to live a little." That's not educated! You know, they are ready to do anything! The other, Michael Jackson, he sings and he grabs his crotch, you know?

(Mailloux laughs.)

Mailloux: And the other, she has things pulled ... she stuffs herself and has that pulled off on stage. And, you know, we are not ... someone should tell them "listen, you've landed in America ...

Arcand: Yes, but ...

Mailloux: ... hey, Blacks, we're not in Africa, here!"

Arcand: No, it is not an issue of being Black in Africa.

Mailloux: Yes, Paul!

Arcand: Well, come on!

Mailloux: They don't know how to live! They live like an African tribe. You know, in Africa, when you want to shake your crotch, you do it.

(Arcand laughs.)

Mailloux: And they walk bare-breasted in Africa. Someone should tell them "Listen, you are no longer in Africa!" No?

Arcand: Well, I don't think it is Africa. I think it's part of show business and trying to get attention.

Mailloux: No, do others do that? Would a civilized White do that?

Arcand: Yes, Britney Spears and Madonna.

Mailloux: Oh yeah, they gave each other a little kiss in passing, come on Paul!

Arcand: Well, that was more than a little kiss. But why do you think they did that?

Mailloux: But ... because they like each other!

Arcand: Come on, it is to provoke! Madonna ...

Mailloux: ... in Loft Story, they were kissing because it was a way to demonstrate their affection, they said.... Well, Paul, you have to understand women, they need affection. On occasion they express it to one another.

Arcand: That I understand, but Britney Spears, you're talking about Michael who has loose hips, Britney Spears is not too bad either when you look at that type.

Mailloux: But no, but Britney Spears, she shakes in a civilized manner.

Arcand: Come on, Doc.

Mailloux: You understand?

Arcand: Honestly, no.

(They both laugh.)

Arcand: Push, but push evenly.

Mailloux: This guy rubs his crotch in front of people. Someone should say “Listen, we teach children here in America not to rub their crotch too much ...

Arcand: Yes, but ...

Mailloux: ... in front of everybody!”

Arcand: No, no, but the list of artists who, like you say, “rub their crotches quite a lot” is quite long.

(Mailloux laughs and then Arcand laughs.)

Arcand: I can’t tell you that it’s not only Michael Jackson ...

Mailloux: Yes, yes, it is a way to caricature it ...

Arcand: Yes, I know.

Mailloux: ... It’s a lack of education. You know, a lack of elementary education. They have the right to do that, it is not an issue....

Arcand: But how do you find the reaction of Americans who find this scandalous and appalling and now they want to sue, and they want ...

Mailloux: Yeah, but it is time that the Americans tell the Jacksons “Listen, you are manipulative people who do not know how to live.” You know, Michael Jackson is so manipulative that he is literally destroying his image. He uses ... he never stops manipulating with his image. He’s done almost everything. The next step is that he will have to pull his pants down as well, now that his sister is starting to expose herself.

(Arcand laughs softly.)

Mailloux: You know, there is a lack ... I have the impression that it is a family of extremely modest origins and low class. And then they are thrown in the spotlight, these crazy people. You know, we shouldn’t be surprised. When you take someone with no education, who is traumatized, who was raised by being kicked in the butt, and you put them in the spotlight, well don’t be surprised with the result, Paul! Those crazy people would do anything!

(Arcand laughs softly.)

Mailloux: And then we are scandalized. Start by educating the children the right way and then we’ll be proud of their behaviour!

Arcand: Murders on TV are no big deal, but a breast disturbs ...

Mailloux: Pardon me?

Arcand: I said to show murders repetitively on TV is not a big deal ...

(Both laugh.)

Arcand: But to see a breast for three seconds, it becomes a national debate. Is that it?

Mailloux: Well listen ...

Arcand: That's about it.

Mailloux: It reflects where we're at. You're right.

Arcand: Thank you, Doc!

Mailloux: Bye.