
CANADIAN BROADCAST STANDARDS COUNCIL

QUEBEC REGIONAL PANEL

SRC re *Bye Bye 2008*

(CBSC Decision 08/09-0620+)

Decided March 17, 2009

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M. Ille, J. Pennefather (*ad hoc*)

THE FACTS

Société Radio-Canada (SRC) has broadcast the variety program entitled *Bye Bye* most New Year's Eves since 1968. This past year's episode, *Bye Bye 2008*, a 90-minute program, aired on December 31, 2008, beginning at 11:00 pm. The show was rebroadcast in identical form on the following day, January 1, 2009, at a considerably earlier hour, namely, 8:00 pm. As has been traditional, the program consisted of a mix of comedy sketches and musical numbers. The 2008 show was hosted by Véronique Cloutier, who also appeared in some of the sketches, along with Louis Morissette, Jean-François Mercier, Joël Legendre and other performers. It was the content of a number of the comedy sketches that concerned viewers. Before embarking on the substance of the show and the complaints, there are numerous preliminary issues to deal with.

An Unusual Request

This decision of the Quebec Regional Panel of the Canadian Broadcast Standards Council differs in material ways from other decisions rendered by this and other CBSC adjudicating Panels. In that sense, it may be said that, in some respects, this is a decision unlike all other CBSC decisions.

First, it has been rendered pursuant to a written request by the Canadian Radio-television and Telecommunications Commission (CRTC) made to the CBSC, asking the Council to examine complaints received by the CRTC about a non-CBSC member. This is the first such request. It was made in a letter of February 3, 2009 from the Chairman of the CRTC to the National Chair of the CBSC, the pertinent parts of which are as follows (that letter in its original English and French versions can be found in Appendix A).

Given the Canadian Broadcasting [sic] Standard Council's (CBSC) considerable experience with complaints about broadcast content, the Commission considers that it would be helpful for its consideration of this matter to have the benefit of the CBSC's examination of the complaints.

We would request that the CBSC, using its well-recognized panel process, examine the complaints in light of the *Broadcasting Act*, the *Television Broadcasting Regulations, 1987*, and applicable conditions of licence.

Second, the CRTC used unusual terminology (from the CBSC's perspective). The Commission clearly requested a "report" of the CBSC's conclusions, on the basis of which the CRTC would in due course make its own "decision on the complaints".

Third, the request from the CRTC was made with respect to the principal French-language *public* broadcaster. Hitherto, the CBSC's decisions have been limited to matters arising from broadcasts by its own members, Canada's *private* broadcasters. Since Société Radio-Canada (SRC) is not a CBSC member, complaints about dramatic and comedic program content on that network have been dealt with by the CRTC. It should, however, be noted that SRC has a structure in place to deal with complaints relating to compliance with journalistic policies; these are dealt with by the SRC's Office of the Ombudsman. As the SRC website explains:

The jurisdiction of the Office of the Ombudsman covers all information programs on Radio, Television and the Internet. These programs include News and all aspects of Public Affairs (political, economic and social) as well as journalistic activities in agriculture, arts, music, religion, science, sports and variety. Complaints involving entertainment programming are generally beyond the Ombudsman's mandate and should be addressed directly to the programs concerned.

Fourth, the CRTC requested that the CBSC examine the complaints, as noted above, "in light of the *Broadcasting Act*, the *Television Broadcasting Regulations, 1987*, and applicable conditions of licence."

Implications of the CRTC Request

Decision vs. report

From the CBSC's perspective, the CRTC emphasized that the Council should make its assessment of the challenged program "using its well-recognized panel process." That is the CBSC's customary adjudicative process, the result of which has always hitherto been a *decision*. That the Commission might characterize that CBSC document nominally as a *report* rather than a decision did not then, and does not now, seem material to the CBSC, in terms of how it assesses *Bye Bye 2008*.

Accordingly, the CBSC has presented *Bye Bye 2008* to its Quebec Regional Panel for adjudication just as it presented two other challenged programs aired by private broadcasters to the same Panel meeting. The substance of the complaints in all three files and the logger tapes of the three programs were, in fact, provided to the same six Adjudicators prior to the meeting, for their consideration, discussion and adjudication at that meeting. And, just as the decision in *Bye Bye 2008* is now released, each of the other decisions will be separately released when the written reasons have been finalized.

Thereafter, in keeping with the transparency of the customary CBSC process and the practice of the Council, all Panel decisions, including this decision, are released on the CBSC website. Although it is the announced intention of the CRTC to render its own decision in due course, the publication of the CBSC ruling in *Bye Bye 2008* does not in any way hamstring the Commission, whose own decision will agree in whole, in part or not at all with that of the CBSC's Quebec Regional Panel. Furthermore, this second-stage process partakes of the customary principle that any complainant (who is a member of the public) is free at any time to request a review by the CRTC of any CBSC decision (that same right is not available to broadcasters, even if they may be dissatisfied with a CBSC decision).

Public vs. private broadcaster

That the CBSC decision deals with complaints related to a public, rather than a private, broadcaster is immaterial, except in two respects, the discussion of which follows. The CBSC is, after all, only being asked to evaluate broadcast content. Which broadcaster has aired that content changes nothing with respect to the content itself, or the substantive appreciation of that content. What is relevant is the set of guidelines applicable to the content, on the one hand, and the consequences associated with the CBSC's findings, on the other.

The guidelines to apply

As to the set of guidelines, much turns on the broadcaster's affiliation and responsibilities. Private broadcaster members of the CBSC, for example, must adhere to the standards established in the codes administered by the Council, as a condition of their membership in the CBSC. Broadcasters with no CBSC affiliation have, in principle, no correlative *codified* responsibility. (That the CRTC has now imposed some equivalent responsibilities under the "high standard" requirement of the *Broadcasting Act* will be discussed below.)

That said, there are codes like the Canadian Association of Broadcasters' (CAB) *Violence Code* and the *CAB Equitable Portrayal Code* that are applicable to all public and private broadcasters, whether or not members of the CBSC, as conditions of their licences. There are others, though, like the *CAB Code of Ethics* and the Radio Television News Directors Association of Canada (RTNDA – The Association of Electronic Journalists) *Code of (Journalistic) Ethics*, that are only directly adhered to by the members of the CBSC.

It was therefore only reasonable that the CRTC made it clear in its letter of February 3 that the CBSC should review the complaints in light of those standards for which SRC has formal adherence obligations. These, of course, include the *Broadcasting Act* and the *Television Regulations, 1987*. They also include the *CAB Violence Code* and the *Equitable Portrayal Code*, because each is a Condition of Licence (COL) for SRC. Although responsibility for the administration of the *Broadcasting Act* and the *Television Regulations* does not fall within the mandate of the CBSC, the Panel well understands the principle that *all* television broadcasters are bound by them and that any broadcast can be expected to reflect the statutory and regulatory proscriptions found in those instruments. The CBSC has no difficulty applying the principles laid down in the Act and the Regulation in its evaluation of broadcast content. It has done so indirectly in the past and has no difficulty in doing so directly on this occasion.

As long ago as its decision in *CKTB-AM re The John Gilbert Show* (CBSC Decision 92/93-0179, October 26, 1993), the Ontario Regional Panel stated:

Insofar as the section of the *Radio Regulations* is concerned, it is not, of course, the CBSC which administers either the *Broadcasting Act* or the *Regulations* established thereunder by the CRTC. The body responsible for their administration is the CRTC. The CBSC does consider, where appropriate, that it may apply these in its decision-making to the extent that they elucidate or explain broadcasting standards which necessarily serve as the background to the Codes which it administers. These Codes have after all been adopted, albeit voluntarily, by the Association grouping the private broadcasters which are statutorily bound by the *Broadcasting Act* and *Regulations*.

Then, in *CKTB-AM re The John Michael Show* (CBSC Decision 92/93-0170, February 15, 1994), the Ontario Regional Panel re-affirmed the applicability of "the principles

established in the *Broadcasting Act* and the *Radio Regulations* as a part of the standards by which it expects that broadcasters govern their on-air activities.” Similarly, in *CJMR-AM re Voice of Croatia* (CBSC Decision 92/93-0205, February 15, 1994), the same Panel took notice of the rule in Section 3(e) of the *Radio Regulations* and, in so doing, stated:

The Panel is comfortable taking notice of a principle established in the *Radio Regulations*, since it is no more or less than a part of the standards by which it expects that broadcasters govern their daily on-air activities. While it is evident that the enforcement of the federal statute and regulations is the responsibility of the Commission, the CBSC has previously applied certain of the principles established in these public instruments in its decisions. [...] Surely, the entire premise of a self-regulatory code is that those who adhere to it will first obey the law which is the cornerstone of their activities.

In *CHAN-TV re Sportscast* (CBSC Decision 95/96-0108, December 18, 1996), the B.C. Regional Panel reiterated the principle that “the Council has [...] frequently felt it appropriate, in determining acceptable standards of broadcaster actions, to look for guidance to the CRTC’s *Radio Regulations, 1986* or *Television Broadcasting Regulations, 1987*.”

In *TVA re a report broadcast on J.E.* (CBSC Decision 00/01-0838, April 5, 2002), the Quebec Regional Panel dealt with a complaint from the Quebec Ministry of Employment and Social Assistance about the use of their Media Relations Officer’s voice in a report on a public affairs television program. Not only did this Panel agree with the use of public regulatory instruments in its decision, it went even farther, logically (perhaps also boldly) extending a principle found in the CRTC’s *Radio Regulations* to the television area, despite its absence from the *Television Regulations*, with the following explanation:

It is the view of the Quebec Panel that the essence of that section of the *Radio Regulations*, namely, that prior consent is required before broadcasting an undisclosed recording, would apply equally to a television taping where that taping takes place in similar circumstances. In the matter at hand, the recording took place at the other end of a telephone line, as it would in radio, and the interviewee had no way of knowing that the taping was occurring.

The Relevance of Private Broadcaster Standards to the Public Broadcaster

The CRTC has, over the last several years, made it clear that it considers that private broadcaster standards to which the public broadcasters are not bound by Conditions of Licence must nonetheless be respected by them. To achieve that result, the Commission has cited such “private” norms and incorporated them into public broadcaster responsibilities via the “high standard” policy objective set out in Section 3(1)(g) of the *Broadcasting Act*. In *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), for example, the Commission applied the *CAB Violence Code*, a COL for the CBC, to its determination regarding the first of the challenged programs, *Sex Traffic*, but it also applied the non-mandatory *CAB Code of Ethics*, to its determination regarding the other challenged program, *Old School*, since mature content other than violence was the complainant's problem in that instance. In so doing, the CRTC stated:

Clause 10 (Scheduling) of the CAB's *Code of Ethics* specifies that programming containing sexually explicit material or coarse or offensive language intended for adult audiences must not be broadcast before the late viewing period, defined as 9:00 p.m. to 6:00 a.m. This clause mirrors the watershed provision originally established in the Violence Code to ensure that programs containing scenes of violence intended for adult audiences are not broadcast at times when young children are most likely to be watching television. *While the CBC is not bound to adhere to the Code of Ethics by condition of licence, the Commission is of the view that, for the purposes of assessing high standard as set out in the Act, the watershed provision reflects a broad community standard for broadcast ethics that is equally applicable to Canada's private and public broadcasters.* [Emphasis added.]

It added, as a part of its conclusions:

The Commission expects the CBC to ensure that the scheduling of programs containing scenes of violence, sexually explicit material or other mature subject matter intended for adult audiences is *consistent with the broadcast industry standard* that such material must be scheduled after 9:00 p.m. [Emphasis added.]

In *Complaints relating to the broadcast on CBC Radio One of A Literary Atlas of Canada, episodes entitled Whiskeyjack Blues and Room Available*, Broadcasting Decision CRTC 2007-87 (16 March 2007), the Commission came to a similar conclusion with respect to the use of coarse language in a CBC radio broadcast, once again a matter for which no COL code existed.

The Commission and the Canadian Broadcast Standards Council (CBSC), which addresses such matters for private broadcasters, have found in past decisions that the word "fuck" and its derivatives in particular are not acceptable in broadcasts to which children could be listening. Specifically, CBSC panels have determined that the word in question should not be broadcast during daytime hours and that the broadcast of that word and its derivatives will be found in violation of the *CAB Code of Ethics* when aired at times of the day when children could be expected to be listening to the radio. [The CRTC footnote referred to the Canadian Broadcast Standards Council decisions of the Ontario Regional Panel, *CIOX-FM re the songs "Livin' It Up" by Limp Bizkit and "Outside" by Aaron Lewis and Fred Durst*, CBSC Decision 00/01-0670, decided 28 June 2001, and the Prairie Regional Panel, in *CIRK-FM re K-Rock Morning Show*, CBSC Decision 01/02-0713 & -1113, decided 5 February 2003.] The CBC is not bound to adhere to the *CAB Code of Ethics* by condition of licence. However, the Commission is of the view that *the prohibition set out in clause 9 of the CAB Code of Ethics against unduly coarse or offensive language in radio programming provides a useful guideline for assessing Canada's private and public broadcasters' compliance with the Act's high standard provision.* [Emphasis added.]

Finally, for present purposes, the Panel refers to the Commission decision in *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). In it, under the heading "Regulatory Framework", the Commission delved into the issue of the relationship between public broadcasters and private standards in greater structural detail.

8. Section 3(1)(g) of the *Broadcasting Act* (the Act) stipulates that "the programming originated by broadcasting undertakings should be of high standard."

9. In determining what constitutes programming of high standard within the meaning of the Act, the Commission considers, among other things, the standards in effect in the broadcasting community.

10. The Commission is of the view that industry codes, such as the Canadian Association of Broadcasters' (CAB) *Code of Ethics* (the Code), are generally effective benchmarks for determining current ethical standards used in broadcasting, including the high quality standard.

11. In determining whether the licensee has complied with section 3(1)(g) of the Act, specifically the high standard objective for programming, the Commission examined the content of the program "Fric show" against clauses 10 and 11 of the Code.

12. Clause 10 of the Code stipulates that programming that contains sexually explicit material or coarse or offensive language intended for adult audiences shall not be telecast before the late viewing period, defined as 9 p.m. to 6 a.m. This provision mirrors the [*Violence Code's*] "watershed hour" provision.

13. Clause 11 of the Code stipulates that to assist consumers in making their viewing choices, when programming includes mature subject matter or scenes with nudity, sexually explicit material, coarse or offensive language, or other material that may offend viewers, broadcasters shall provide a viewer advisory. These advisories are required for programming containing this type of content that is broadcast in late viewing hours and programming broadcast outside of late viewing hours which contains material not suitable for children.

14. *The Commission notes that the CBC is not subject to a condition of licence requiring it to comply with the Code. The Code is administered by the Canadian Broadcast Standards Council (CBSC) for private broadcasters who are members of the CBSC. As a public broadcaster, the CBC is not a member of the CBSC. Nevertheless, given its status as a public broadcaster and the objectives of the Act, the CBC is required to adhere to the same broadcast standards as the industry as a whole. Canadian viewers are entitled to expect that the public broadcaster, like private broadcasters, will adhere to current social accountability standards designed to protect the youngest viewers. [Emphasis added.]*

It is clear to the Panel that it is entitled to expect of SRC, compliance with standards beyond those strictly confined to the broadcaster's Conditions of Licence. Any such conclusions it draws, however, with respect to such non-COL standards will be carefully described and distinguished from those attributable to the *CAB Equitable Portrayal Code* and the *Violence Code*.

Although the following decision did not relate to the public broadcaster, it did confirm the principle that the Commission will look to non-COL codified standards to determine whether programming meets the high standard test in the *Broadcasting Act*. In *Complaints regarding the broadcast prior to the watershed hour by MuchMusic of Spring Break '08, a promotional spot for that program and an interview aired on Much on Demand*, Broadcasting Decision CRTC 2008-311 (14 November 2008), the CRTC said:

In determining what constitutes programming of high standard within the meaning of the Act, the Commission considers, among other things, the standards in effect in the broadcasting community. The Commission is of the view that industry codes, such as the Canadian Association of Broadcasters' (CAB) *Code of Ethics*, are generally effective benchmarks for determining current ethical standards used in broadcasting, including whether programming is of high standard.

[...]

The *Code of Ethics* is administered by the Canadian Broadcast Standards Council (CBSC) for private broadcasters who are members of the CBSC. Although MuchMusic is not a member of the CBSC, the Commission considers that, given the objectives of the Act, the licensee is required to adhere to the same broadcast standards as the industry as a whole. Canadian viewers are entitled to expect that all broadcasters adhere to current social accountability standards designed to protect the youngest viewers.

The Complaints

The CRTC received 210 complaints about the broadcast of *Bye Bye 2008* (two of which had originally been filed with the CBSC and remitted by the Council to the Commission, in accordance with its customary practice regarding complaints about the public broadcaster's programming). All of these will, as is customary, be available in the broadcaster's public file at the CRTC. Since transparency is important for the CBSC, it is also the practice of the Council to publish the text of the complaints giving rise to a Panel decision; consequently, all 210 complaints can also be found in Appendix B to this decision, in the language of their filing.

As noted above, *Bye Bye 2008* consisted of a mix of musical numbers and comedy sketches, a broad description of which was provided at the beginning of this decision. The issues raised in the complaints and details of the sketches are provided here, essentially in an order representing the number of complaints received by subject. (More complete transcripts and descriptions are available in Appendix C, available in French only.)

Comments and Sketches about Black People

The majority of the complaints were concerned with the representation of Blacks throughout the program. Of the number of comments and sketches targeting that racial group, the first was made during a segment in which Louis Morissette and Jean-François Mercier discussed some of the news stories that had made headlines in 2008. One particular exchange went as follows:

[translation]

Morissette: The United States made Barack Obama, a Black man, the forty-fourth president of the United States, and that had the Americans saying that ...

Mercier: We're not racists. It will be good to have a Negro in the White House. It will be practical. Black on white, it will be easier to shoot him.

Morissette then introduced a sketch that parodied Denis Lévesque, host of a public affairs and entertainment talk segment on LCN, who had been widely ridiculed in the media for an awkward interview he had conducted with singer Paul McCartney earlier in the year. In the skit, Morissette said, [translation] "So, after, after Paul McCartney, Denis Lévesque then embarrassed us again with Barack Obama." During the sketch, an actor playing Lévesque interviewed another playing the role of U.S. President Barack Obama. Lévesque spoke in a mixture of French and broken English, while the Obama character spoke only in English.

Lévesque began by "mistakenly" addressing Obama as Montreal singer Gregory Charles, who is also Black. When Obama corrected him, Lévesque responded with a linguistically confused, "Sorry, Big. It's the couleur that made me all mélangé. [translation] It's because the Blacks, you all look alike." Lévesque then suggested that viewers [translation] "hide their purses" because he was having a Black on the program. He followed that comment by saying he was just joking, but he then proceeded to tell viewers, [translations] "he can't rob you at home, he's on the TV, but he could take off with the TV anyway," and he called Obama "a really fun Black, a real Black pleasure". When Obama insisted he was there to talk about the economy, Lévesque said "Do you have a 'plan' for the économie? I espère it's not a 'plan d'nègre' par exemple." When the Obama character began to feign anger about Lévesque's ridiculous comments, the interviewer replied [translation] "You're in Montreal, my Black friend! Yeah. And here in Montreal, all the Blacks are in Black Montreal." Lévesque then asked if it was true that all Black men had a "big bizoune" and he gestured towards, leaving the impression he was reaching for, Obama's crotch. At that point, the Obama character walked off the set and the skit concluded.

The program also included a sketch that spoofed the reality program *Occupation Double*. In that skit, the participants were the leaders of the four major federal political parties. At one point, the host Joël Legendre stated, in reference to Stephen Harper, that [translation] "Stephen is off on a romantic interlude with the housekeeper [a play on the original French words 'gouvernante de la maison' and 'Gouverneure générale'],

Michaëlle Jean”. The sketch then cut to a scene of Prime Minister Stephen Harper, fully clothed in a suit, in a hot tub with Governor-General Michaëlle Jean, wearing a bikini. Jean asked what would happen if she agreed to prorogue Parliament, to which Harper responded that she could go on shopping excursions all over the world and that he [translation] “always preferred Blacks when they were in other countries.”

Another sketch mocked Céline Dion and her husband René Angélil. The Angélil-Dion family was shown playing a board game in which Céline pulled a card that read [translations] “You meet Nelson Mandela and mistake him for your gardener”, to which she commented in a dismissive manner, “That happens to me all the time.”

Complainants felt that all of these depictions of Blacks were racist, offensive and inappropriate. Many of them also mentioned the use of the word “nègre” in particular.

Sketches about Nathalie Simard

Another issue that generated numerous complaints was the parodying of Nathalie Simard, a former child star who had revealed publicly in 2005 that she had been sexually abused by her manager, Guy Cloutier. Cloutier had earlier pleaded guilty to the allegations (in 2004) and spent 42 months in jail in consequence. Guy Cloutier’s adult daughter, Véronique Cloutier, was the producer and host of *Bye Bye 2008*.

In 2008, Simard announced that she was moving to the Dominican Republic in order to avoid the media attention that had occurred since she came forward with her story of abuse. The media attention continued, however, as Simard gave numerous interviews explaining her decision to move. A couple of sketches parodied this situation. In the first, Véronique Cloutier played the role of Simard and sang a comedic song about how she was tired of all the interviews (listing all of the publications for which she had done interviews), and that her announcement about moving had itself become a profitable story.

A second reference to Simard was made during the discussion segment between Morissette and Mercier. Morissette commented that [translation] “Nathalie expressed the wish that her privacy be respected.” Mercier replied [translation] “At least, that’s what she revealed to Jean-Luc Mongrain in her interview entitled ‘Everything about my Hyper-Flatulence Problem’”. That remark was accompanied by an image of a mock magazine cover that showed a photograph of a woman pretending to be Nathalie Simard under that title.

The complaints centred on the fact that a victim of sexual abuse had been mocked and many were particularly concerned that the jokes had been written and performed by the daughter of Simard’s abuser. It must, however, be noted that there was not a single reference, serious or satirical, not even of a fleeting nature, in either of the Simard skits, to the issue of abuse.

Sketch about the Roy Family

Other complaints focussed on a sketch about the Roy hockey family. Patrick Roy was a goaltender for the NHL's Montreal Canadiens and Colorado Avalanche, and is currently the coach for the Quebec Remparts of the Quebec Major Junior Hockey League. One of Roy's sons, Jonathan, is the goaltender for that junior team. Jonathan made headlines in 2008 when he skated from his end of the rink to the other end in order to beat up an opposing team's goalie, following which he gave the finger to the crowd. There was some speculation that Patrick had made an encouraging gesture to his son that had signalled him to start the fight. The League and the police investigated that incident and both Patrick and Jonathan were suspended for a number of games. The incident gave rise to much public discussion about the role of fighting in hockey, in general, and more specifically about the aggressive nature of the Roy family, since Patrick had been involved in other violent altercations and had been arrested in connection with a domestic violence investigation (those charges were later dismissed).

The sketch in question was a parody of the sitcom *Grosse vie* and featured actors portraying the Roy family at home. It began with Patrick coming in the front door by knocking it down, rather than opening it. He approached his wife to give her a hug, but she flinched as soon as he raised his arm as if she anticipated being hit. Jonathan then entered the room, also by knocking down a door, and gave the finger. Patrick made a suggestive hand gesture and Jonathan, in full hockey gear, jumped on his mother, knocking her down and punching her. The mother got up from the floor with a black eye, but carried on in a cheerful manner, as though little out of the ordinary had occurred.

The family was then shown watching the weather report on television. Patrick again made a confirming gesture to his son and the mother quickly donned a hockey helmet, apparently to protect herself. This time, however, rather than target the mother, the viewer saw Jonathan beating up the weather forecaster. In another scene, the wife interrupted Patrick while he was talking on the telephone. In a fit of rage, Patrick got his hockey stick and destroyed the television set. In the final scene of the sketch, Patrick gestured to Jonathan to beat up the man who was doing the sound effects for the show because he was finding the canned laughter annoying.

Complainants expressed their concern that this sketch made light of violence against women.

Sketches about Other Public Personalities

As is typical of sketch comedy in general and *Bye Bye* in particular, the program also contained other skits that parodied celebrities, politicians and people who had been in the public eye during the year.

For example, it included a couple of segments about Céline Dion and her family. They made fun of Dion's exaggerated and emotional singing style, implied that the entertainer's manager-husband René Angélil was very controlling, and suggested that her seven-year-old son looked silly with very long hair, hair so long that none of his facial features was visible. One sketch also made fun of journalist Denise Bombardier, depicting her as a fawning interviewer, completely enamoured of Céline. It also referred to her uncharitably as [translation] "an old bag". That sketch had been inspired by a lengthy televised interview that Bombardier had conducted with the singer earlier in the year.

Another lengthy sketch dealt with the Bernier-Couillard affair. Maxime Bernier, who had been the federal Foreign Affairs Minister, stepped down after it was revealed that he had left confidential documents at his then-girlfriend's home. The incident generated all the more controversy because the girlfriend, Julie Couillard, had previously had connections to individuals involved in biker gangs and organized crime. Following the controversy, Couillard had written a tell-all book and granted interviews to the Quebec media. The sketch spoofed Bernier's negligence and Couillard's dismissive attitude toward him and the circumstances of their situation.

Other sketches poked fun at performer-producer Chantal Lacroix, as well as politicians such as Stephen Harper and the leaders of the other federal parties. Viewers complained that it was unfair and inappropriate to make fun of these public figures.

Comments about Other Individuals and Groups

As mentioned above, Louis Morissette and Jean-François Mercier performed segments in which they discussed news stories of 2008. Mercier, who is known as "le Gros Cave" ("the Big Idiot"), provided some biting criticisms on various issues, some of which targeted identifiable groups, like English Canadians and First Nations people, or less homogeneous groups, such as the poor and immigrants. For example, in discussing the housing crisis in the United States, which had reportedly been precipitated by granting inexpensive mortgages to low-income individuals, Mercier remarked

[translation]

You shouldn't give money to those who don't have any. If they don't have any, it's because they're too dense to know what to do with it. For a poor person, a mortgage is the building beside the roller skating rink [a play on words of the French words for "mortgage" and "roller skating rink", namely, "hypothèque" and "roulathèque"]. No, the system is made to enrich the rich, so that the poor contract STDs, not mortgages.

Later, when discussing the high price of gasoline, Mercier said that it was not expensive enough because [translation] "gas will be at a price that makes sense when the poor are all in their place on the bus and me, / can cross the Champlain Bridge at 120 without

slowing down. *Then* gas will be at a price that makes sense. Then the Indians will be sniffing coke and Tony Conte will be dealing gas.”

It was Mercier’s final monologue in the program, however, that generated concern on the part of a number of viewers. In that editorial segment, Mercier primarily targeted Prime Minister Stephen Harper, but mentioned other groups as well:

[translation]

For three years now, the same idiot has been re-hashing political ideas of the '60s. Hang in there, you bunch of English Canadian inbreds and continue to re-elect your walking lobotomy Stephen Harper, and in a couple of years, when your dried-up old prune of a wife no longer has the right to vote, and it's legal to kill your children because they smoked pot, you'll come knocking at Quebec's door saying "Hey, Harper voted in a law that screws all our immigrants, but now we have no more convenience stores. Can we come back to Quebec?" And we won't let you in! Even if you have oil sands coming out your ass! We're going to leave you on the other side of the Ottawa River with your Toronto, your Winnipeg and all your other goddamn lame cities where the bars close at four in the afternoon and where the girls won't sleep with you before marriage ... Or even after for that matter!

A number of elements of that editorial concerned viewers, including the negative remarks made about Stephen Harper, English Canadians and immigrants.

Adult Material

Others complained about the sexual content and coarse language included in the program.

One such sketch was the aforementioned spoof of the Bernier-Couillard relationship. At one point in the sketch, Couillard was seen stretched out (fully-clothed) on a kitchen table. Bernier, standing in front of her, dropped his pants. The viewer saw only his boxer shorts, but his movements simulated a rather cartoonish rabbit-like act of intercourse. Couillard, however, seemed entirely uninterested and was reading the confidential documents during the “sexual” act. Bernier announced [translation] “Julie, you’re too beautiful, I think I’m going to come right now!”

Another sexual reference was made in a sketch about Vincent Lacroix, the CEO of a mutual fund company who had gone to jail for fraud. In the sketch, Lacroix was in prison and singing a song about his experiences there. The lyric was [translation] “The guys threw me a party/That’s why I tore this, this big”, as Lacroix formed a circle with his two hands to show the size of the tear of his anus.

The aforementioned *Occupation Double* parody also contained some sexual material in comedic reference to the proposed coalition between party leaders Stéphane Dion, Jack Layton and Gilles Duceppe. Stéphane Dion and Jack Layton were sitting beside each other on a bed, wearing only t-shirts and boxer shorts, and drinking champagne.

Mocking Layton's ability to speak French, the skit depicted the Layton character mistakenly using the word "fellation" for "federation" and saying to Dion [translation] "Oh, Stéphane. You're my one and only to save the Canadian fellation." To which Dion responded: [translation] "But tell me, when it's time to get down to action, will I be on top? For a while now, I don't know why, but I've been very uncomfortable in the bottom position." Dion then climbed on top of Layton and the viewer saw that Dion had daggers in his back.

In an "interview segment", Layton then said [translation] "What I liked best about our night of love was when Gilles Duceppe came to join us." The scene then cut to the bedroom where Duceppe, also in boxer shorts, had joined Layton and Dion. Duceppe got into bed with them and asked [translation] "Where is Quebec's place in all of this?" Dion responded [translation] "There's always room for Quebec to be crushed underneath." Layton was between Dion and Duceppe. He rubbed their bare legs and said [translation] "The funniest thing is that it's us three who are getting so close, but it's Harper who's getting fucked."

The program also contained a few instances of coarse language, such as "ostie", "marde" and "fourrer".

A few viewers complained that the sexual content and coarse language were inappropriate for a program that is widely watched by families, including children who are allowed to stay up later on New Year's Eve. The Panel was also conscious of the fact that the show was replayed at a much earlier, pre-Watershed hour on the following day.

Representation of Women

One complainant suggested that the representation of Julie Couillard was "sexist". In the media coverage of the Bernier-Couillard case, much had been made of the fact that Couillard had worn a revealingly low-cut dress to a formal affair at the Governor-General's residence. In the sketch, Couillard was depicted wearing a similar dress and portrayed as a confident woman who was able to manipulate the hapless Bernier with her good looks and sexuality.

The complainant did not specify exactly what aspect of the depiction concerned her, but it should also be noted that the real Julie Couillard had a cameo role in the program, and was shown later in the program talking to the fake Julie and partaking in the exaggerated depiction of her own personality by the actor.

Comments about General Motors

One other complainant, who identified himself as the owner of a General Motors franchise, complained about critical comments that were made about that company.

Again, during one of the Morissette-Mercier segments, Mercier specifically mentioned Chrysler and GM and offered his thoughts on the financially-troubled car companies in the following terms:

[translation]

Before giving them billions, would it be too much to ask them to make cars that don't fall apart when you're driving, so you don't have to ask your wife to put nude photos of herself on the Internet just to be able to pay for a tank of gas! Stop making cars that aren't worth shit, that are bigger than tanks, and that consume more than Jean Lapointe in his good years, and maybe then you wouldn't need help, you damn bunch of tools! [Audience applause] Eh? Not content enough to screw us when they sell us the car, the tax I pay, I'd like them to put it in the health care system, that'll give it to them. During that time, I have to waste eight hours in emergency for an ingrown toenail that's hurting like hell because I have no choice but to walk because my damn car is always broken down!

The complainant wrote that these comments about GM were [translation] "fallacious, untrue and venal." He insisted that the quality and cost of GM vehicles were just as good as any other makes. He also questioned whether GM and Chrysler had been singled out, and he made the point that no mention had been made of Ford, perhaps, he speculated, because Ford was a sponsor of the *Bye Bye* program.

SRC's Response

SRC responded to the public outcry about *Bye Bye 2008* by publishing letters in newspapers and sending a letter to each of the complainants in February 2009. The thoughtful, detailed, responsive letter and accompanying appendix sent to each complainant (in either French or English, to correspond with the language of each complaint, the French letters dated February 5 and the English letters February 6) recounted some of the additional steps taken by the broadcaster and the show's creators, explaining SRC's position in part as follows (the full text of the letter is available in Appendix D):

Airing a humorous, satire-oriented program open to many levels of interpretation is always risky business. This is all the more true when the show in question is the most anticipated, most watched and most talked about broadcast of the year, like our New Year's Eve *Bye Bye*. 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.

On January 5, 2009, the content producers, script editors and scriptwriters of *Bye Bye 2008* explained the show from their angle, in a press release issued by their production company Novem: "*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" [translation]. At a highly publicized press conference, the producers also apologized to Nathalie Simard and the audience for the *Bye Bye* skits involving her, in light of their indirect links with Ms. Simard. In an interview that aired on Radio-Canada, Ms. Simard said she accepted the producers' public apology.

Radio-Canada is receptive to all the comments expressed, and will factor them into future discussions and decisions regarding projects of a similar nature. This should, however, not be interpreted as our disowning the program team that put its heart and soul into this broadcast.

Aside from its controversial content, the 2008 edition of *Bye Bye* included delightful music-hall numbers, well-known songs from times past and lively traditional music. A remarkable panoply of stars performed for an appreciative audience, bringing us, you will agree, moments of grace as they gave us their music and expressed their wishes for a better world.

What we take away [sic] from the audience response is that it shows just how delicate a balancing act we face. On one hand, we have the creators' inspiration, on the other, the unwritten boundaries that vary from one person or social group to the next. Some will accuse us of not being vigilant enough and others of censorship, sometimes on the same issue. This is inevitable in a pluralist, democratic society.

Were we overly tolerant of some skits in the latest *Bye Bye*? In an open letter published on January 7 of this year, the Executive Vice-President of CBC/Radio-Canada French Services says: "The answer we've been receiving from the public is a resounding yes, and we've taken note." He adds: "One thing is certain: this example illustrates just how in touch Radio-Canada needs to be with Canadians and how it must spare no effort to fulfill this responsibility fairly and transparently, while respecting freedom of expression and the public's sensibilities."

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. With regard to certain complainants' references to violations of the Broadcasting Act or the 1987 Television Broadcasting Regulations, I would refer you to the attached document, which examines some aspects of the broadcast in greater detail from a legal perspective and explains why *Bye Bye 2008* did not in fact violate the applicable legislation.

Thank you for taking the time to write and express your views. If you have any further comments on our programming, please feel free to contact our Audience Relations Department, which will respond to your request as quickly as possible.

As indicated in that letter, SRC attached another document that outlined the applicable laws and regulations, cited previous CRTC decisions that touched on similar issues and drew a case for their applicability to the *Bye Bye 2008* episode. That document is also available in Appendix D. The Panel notes that both SRC documents focus on the broadcaster's compliance with the *Broadcasting Act* and the *Television Regulations, 1987*. Neither document refers specifically to the broadcaster's Conditions of Licence,

which include the *CAB Equitable Portrayal Code* and the *Violence Code*, although the letter contends that “*Bye Bye 2008* was not in breach of any applicable standards and policies governing violence and explicit sexuality on television.” In other words, SRC has presented no argument or defence supporting its compliance with either of those Conditions of Licence. This does not, of course, mean that it has *not* complied with either Code. Those determinations will be made by the CBSC.

THE DECISION

The Quebec Regional Panel examined the complaints under the provisions of the CAB’s *Equitable Portrayal Code*, *Violence Code* and *Code of Ethics* cited just below. Although the point has been made above with respect to other issues, it should again be noted here that, of these Codes, the *Equitable Portrayal Code* and the *Violence Code* are Conditions of Licence for all Canadian television broadcast licensees. Consequently, they apply in full measure to SRC. For those unfamiliar with the *Equitable Portrayal Code*, it succeeds and replaces the *Sex-Role Portrayal Code*. In *Regulatory Policy: Equitable Portrayal Code*, Broadcasting Public Notice CRTC 2008-23 (17 March 2008), the Commission stated, in paragraph 32:

[T]he Commission **approves** the *Equitable Portrayal Code* [...]. The Commission amends the *Sex-Role Portrayal Code for Television and Radio Programming* by replacing it with the Code, effective immediately. All licensees that, by condition of licence, have until now been governed by the *Sex-Role Portrayal Code* are now governed by the *Equitable Portrayal Code*.

It should also be noted that this is the first decision rendered by the CBSC under the *Equitable Portrayal Code*, which has only been in force since March 17, 2008. That said, many of the principles relevant here and enshrined in its Clauses have been previously applied in decisions rendered under the *CAB Code of Ethics* and the *CAB Sex-Role Portrayal Code*. Indeed, the *Equitable Portrayal Code* in effect codifies many of the principles developed and expanded in the CBSC’s jurisprudence based on those Codes. Moreover, although the *CAB Code of Ethics* is not a Condition of Licence for SRC, the applicability of some of its provisions to a public broadcaster is discussed at length above in the section entitled “The Relevance of Private Broadcaster Standards to the Public Broadcaster”.

The *Equitable Portrayal Code*

CAB Equitable Portrayal Code, Clause 2 – Human Rights

Recognizing that every person has the right to the full enjoyment of certain fundamental rights and freedoms, broadcasters shall ensure that their programming contains no abusive or unduly discriminatory material or comment which is based on matters of race,

national or ethnic origin, colour, religion, age, gender, sexual orientation, marital status or physical or mental disability.

CAB Equitable Portrayal Code, Clause 3 – Negative Portrayal

In an effort to ensure appropriate depictions of all individuals and groups, broadcasters shall refrain from airing unduly negative portrayals of persons with respect to race, national or ethnic origin, colour, religion, age, gender, sexual orientation, marital status or physical or mental disability. Negative portrayal can take many different forms, including (but not limited to) stereotyping, stigmatization and victimization, derision of myths, traditions or practices, degrading material, and exploitation.

CAB Equitable Portrayal Code, Clause 4 – Stereotyping

Recognizing that stereotyping is a form of generalization that is frequently simplistic, belittling, hurtful or prejudicial, while being unreflective of the complexity of the group being stereotyped, broadcasters shall ensure that their programming contains no unduly negative stereotypical material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, gender, sexual orientation, marital status or physical or mental disability.

CAB Equitable Portrayal Code, Clause 7 – Degrading Material

Broadcasters shall avoid the airing of degrading material, whether reflected in words, sounds, images or by other means, which is based on race, national or ethnic origin, colour, religion, age, gender, sexual orientation, marital status or physical or mental disability.

CAB Equitable Portrayal Code, Clause 8 – Exploitation

a) Broadcasters shall refrain from the airing of programming that exploits women, men or children.

CAB Equitable Portrayal Code, Clause 9 – Language and Terminology

Broadcasters shall be sensitive to, and avoid, the usage of derogatory or inappropriate language or terminology in references to individuals or groups based on race, national or ethnic origin, colour, religion, age, gender, sexual orientation, marital status or physical or mental disability.

[...]

b) It is understood that language and terminology evolve over time. Some language and terminology may be inappropriate when used with respect to identifiable groups on the basis of their race, national or ethnic origin, colour, religion, age, gender, sexual orientation, marital status or physical or mental disability. Broadcasters shall remain vigilant with respect to the evolving appropriateness or inappropriateness of particular words and phrases, keeping in mind prevailing community standards.

CAB Equitable Portrayal Code, Clause 10 – Contextual Considerations

Broadcasts may fairly include material that would otherwise appear to breach one of the foregoing provisions in the following contextual circumstances:

- a) Legitimate artistic usage: Individuals who are themselves bigoted or intolerant may be part of a fictional or non-fictional program, provided that the program is not itself abusive or unduly discriminatory;
- b) Comedic, humorous or satirical usage: Although the comedic, humorous or satirical intention or nature of programming is not an absolute defence with respect to the proscriptions of this Code, it is understood that some comedic, humorous or satirical content, although discriminatory or stereotypical, may be light and relatively inoffensive, rather than abusive or unduly discriminatory;

The CAB Violence Code

CAB Violence Code, Article 7.0 – Violence against Women

7.1 Broadcasters shall not telecast programming which sanctions, promotes or glamorizes any aspect of violence against women.

7.2 Broadcasters shall ensure that women are not depicted as victims of violence unless the violence is integral to the story being told. [...]

The CAB Code of Ethics

CAB Code of Ethics, Clause 2 – Human Rights

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

CAB Code of Ethics, Clause 6 – Full, Fair and Proper Presentation

It is recognized that the full, fair and proper presentation of news, opinion, comment and editorial is the prime and fundamental responsibility of each broadcaster. This principle shall apply to all radio and television programming, whether it relates to news, public affairs, magazine, talk, call-in, interview or other broadcasting formats in which news, opinion, comment or editorial may be expressed by broadcaster employees, their invited guests or callers.

CAB Code of Ethics, Clause 10 – Television Broadcasting (Scheduling)

(a) Programming which contains sexually explicit material or coarse or offensive language intended for adult audiences shall not be telecast before the late viewing period, defined as 9 pm to 6 am. Broadcasters shall refer to the *CAB Violence Code* for provisions relating to the scheduling of programming containing depictions of violence.

CAB Code of Ethics, Clause 11 – Viewer Advisories

To assist consumers in making their viewing choices, when programming includes mature subject matter or scenes with nudity, sexually explicit material, coarse or offensive language, or other material susceptible of offending viewers, broadcasters shall provide a viewer advisory

[...]

(b) at the beginning of, and after every commercial break during programming telecast outside of late viewing hours which contains such material which is not suitable for children.

The Public Regulatory Instruments

Broadcasting Act, Broadcasting Policy for Canada

3. (1) It is hereby declared as the broadcasting policy for Canada that

[...]

(g) the programming originated by broadcasting undertakings should be of high standard

Television Broadcasting Regulations, Programming Content

5. (1) A licensee shall not broadcast

a) anything in contravention of the law;

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

c) any obscene or profane language or pictorial representation.

The SRC Conditions of Licence: French-Language Television Network

As noted above, when the *Equitable Portrayal Code* replaced the *Sex-Role Portrayal Code*, all broadcasters affected by the Condition of Licence applying the *Sex-Role Portrayal Code* became governed by the *Equitable Portrayal Code*. The following COL (# 5) should be read in that light.

5. The licensee shall adhere to its self-regulatory guidelines on sex-role portrayal, as amended from time to time and approved by the Commission and, as a minimum, to the CAB's *Sex-Role Portrayal Code for Television and Radio Programming*, as amended from time to time and approved by the Commission.

6. The licensee shall adhere to the guidelines on the depiction of violence in television programming set out in the CAB's *Voluntary Code regarding Violence in Television Programming*, as amended from time to time and approved by the Commission.

The Panel Adjudicators read all of the correspondence and viewed the challenged program. The Panel concludes that the December 31, 2008 11:00 pm broadcast violated: Clauses 2, 3, 4 and 7, but not 9, of the *CAB Equitable Portrayal Code*; as well as Article 7.1 of the *CAB Violence Code*. Since Clause 2 of the *CAB Code of Ethics* is

for all present intents and purposes the equivalent of Clause 2 of the *Equitable Portrayal Code*, the Panel considers it of little value to also review the program under the *Code of Ethics* provision. The Panel considers that the comments and sketches about blacks were sufficiently egregious to amount to a breach of Section 5(1)(b) of the *Television Broadcasting Regulations*.

The Panel also concludes that, in addition to the violation of the above-noted Code provisions, the January 1, 2009 8:00 pm broadcast breached Clause 11 of the *CAB Code of Ethics* because the rebroadcast program did not include viewer advisories. It concludes that, based on prior CRTC broadcasting decisions, the violation of Clause 11 would constitute a breach of the high standard provision in Section 3(1)(g) of the *Broadcasting Act*.

Presentation of the Decision

Given the scope of the issues raised by the 210 complainants, which are spread over a range of codified standards, some of which fall within SRC's Conditions of Licence and some of which do not, it has seemed useful to the Panel to separate these in the decision reasons by codified area, beginning with the COL Codes.

The *Equitable Portrayal Code* Issues

The Panel dealt, under the heading of the *Equitable Portrayal Code*, with comments and sketches about Blacks, English Canadians, South Asians, First Nations peoples, immigrants, convenience store operators, and women, as well as issues relating to contextual considerations.

Comments and Sketches about Blacks

The vast majority of the complaints filed with respect to *Bye Bye 2008* referred to the representation of Blacks. Indeed, a review of the challenged program reveals a not inconsiderable number of comments, puns or observations on this theme. It should also be noted preliminarily that the defensive comments made by the producers and cited in the SRC letter of February 5/6 are quite beside the point: "it would be quite wrong to claim the show included racist content. We deny that very strongly." This decision has nothing to do with racism on the part of the producers or the broadcaster. It has to do with the broadcast of comments that, *independent of their intention*, constitute potential breaches of the applicable standards. The CBSC will make that evaluation.

The Panel acknowledges that the standard established in Section 5(1)(b) of the *Television Broadcasting Regulations* appears on its face to be more rigorous than that found in Clause 2 of the *Equitable Portrayal Code*. It would appear to require that the comment or pictorial representation either “tends to or is likely to expose an individual or a group or class of individuals to *hatred or contempt*. [Emphasis added.]” The test in Clause 2 is tied to the assessment of a comment as either “abusive or unduly discriminatory”, without any linked requirement that the individual or group be exposed to hatred, contempt or any equivalent societal reaction. It is, in other words, the understanding of the Panel that program content may violate Clause 2 of the *Equitable Portrayal Code* without rising to a level that would constitute a breach of Section 5(1)(b) of the *Television Broadcasting Regulations*. In any event, the Quebec Panel has been asked for its conclusions on the broadcast’s respect for the Regulation as well as the Condition of Licence. It will deal with both issues, except in those circumstances in which it finds no breach of the Human Rights Clause in the *Equitable Portrayal Code*. In any such instance, the Panel will assume that the higher standard of abusive comment contained in the *Television Broadcasting Regulations* will not have been met.

From its earliest decisions on the Human Rights Clause, the CBSC has made it clear that humour that is by its nature discriminatory does not on that account alone fall afoul of the codified standard prohibiting abusive or unduly discriminatory commentary [see, e.g., *CFOX-FM re the Larry and Willie Show* (CBSC Decision 92/93-0141, August 30, 1993) and *CHOG-AM re the Jesse and Gene Show* (CBSC Decision 93/94-0242, November 15, 1994)]. In an early decision of this Panel, namely, *CKTF-FM re Voix d’Accès* (CBSC Decision 93/94-0213, December 6, 1995), the issue of drawing the fine line between the acceptable and the unacceptable was discussed in the following terms:

The question, of course, is to determine which “ethnic” jokes or comments will be understood as crossing the boundary of acceptability. There are those which are sanctionable and those which, even if tasteless or painful to some, are not. It would be unreasonable to expect that the airwaves be pure, antiseptic and flawless. Society is not. Nor are individuals in their dealings with one another. Nonetheless, the airwaves are a special and privileged place and those who occupy that territory are expected to play a more restrained and respectful social role.

What may constitute the limits of acceptability in each challenged case will need to be appreciated in its context. Certain cases will clearly fall on one side or the other of the boundary. Others will lie uncomfortably on the line.

It goes without saying that there is no way to *quantitatively* characterize any given comment or visual material to determine whether it has crossed the line that separates breach from non-breach. There is, of course, content that needs no delicate assessment. It may be so timid and tentative that it is far from being abusive or unduly discriminatory. Other content may be so bold and nasty that it tramples on the line. Attempting to grapple with this issue, in *CHFI-FM re the Don Daynard Show* (CBSC Decision 94/95-0145, March 26, 1996), the Ontario Panel laid down a guideline that,

while no more mathematical, seemed to explain the distinction between the acceptable humour in that case and potentially more problematic content in easily grasped terms: “It poked fun but did not bludgeon. It tickled but was not nasty.” In another decision, involving jokes focussed on Hindus, the humour was of an opposite nature. In *CKTF-FM re comments made on Les méchants matins du monde* (CBSC Decision 00/01-0705, April 5, 2002), this Panel applied the foregoing principle in the following way:

The jokesters did not “poke” fun; they bludgeoned. They did not “tickle”; they were nasty. They did not joke *with* Hindus; they laughed *at* Hindus; they made fun *of* Hindus. They demeaned and denigrated the objects of their “humour”. This was “grit your teeth”, “cringe in discomfort” mockery; it had no cuteness or levity to offer.

There is, of course, also humour that is not so readily classified, humour that demands delicate Panel assessment. That is largely the case in the matter at hand. That said, the very first challenged comment was, in the view of the Panel, egregious.

[translation]

It will be good to have a Negro in the White House. It will be practical. Black on white, it will be easier to shoot him.

The Panel finds nothing redeeming in the allegedly comedic notion that an American President should be shot, still less that this would be *easier* to achieve *because of the colour of the President’s skin*. It was a disturbing, wounding, abusive racial comment. It was, in the sense of the preceding decision, “grit your teeth”, “cringe in discomfort” comment. It was abusive in terms of Clause 2 and degrading in terms of Clause 7.

In another sketch that followed immediately thereafter, the interviewer appeared to confuse the President Obama character with a Black Montreal singer [translation] “because the Blacks, you all look alike.” He added that people should [translation] “hide their purses” because a Black was coming on the program, following that with the line that his black guest could not rob you at home, because he’s on your television screen, “but he could take off with the TV anyway.” And there was another unnecessary and negatively-toned stereotypical reference to a “plan d’nègre”. Then, as if to hammer home the point regarding the entire set of stereotypical observations, the interviewer made a further generalization about the physical attributes of Blacks. This Panel has previously dealt with comments similar to some of the above observations in *CKOI-FM re a segment by Cathy Gauthier on Fun Radio* (CBSC Decision 04/05-1729, September 9, 2005). In that segment, the host spoke the following monologue:

There’s something else I’m a bit ashamed of and that is that I can’t differentiate Asians. You know, I read in a newspaper not long ago that a little Chinese girl had disappeared. I’d like to find her, but I can’t because I don’t know what the difference is between, um, you know, between a Chinese, a Japanese, a Korean, a Thai. I don’t know; it’s all the same to me. So, I don’t take any chances when I see an Asian on the street that looks like, that is only so tall, I just yell “Kim! Your mother is looking for you!” [laughter from the hosts]. “Your modder looking for you! [pseudo-Asian onomatopoeias]” [laughter from the

hosts]. There are many Asians in my neighbourhood, and I know why they're small. It's because they have no room to grow. There's like thirteen of them in a studio apartment; it's ridiculous. Four of them have to go out on the balcony just so they can open the fridge door. It's pretty bad. Those Asians, I don't want to take issue with them, but I think they're taking over the world.

The majority of this Panel found the comments in violation of Clause 2 of the *CAB Code of Ethics*. The position was explained in the following terms:

In the matter at hand, the minority considers that the co-host was mocking her own inadequacy, rather than that of the targeted minority. The majority, on the other hand, find the co-host's refuge in her own shame that she cannot tell Asians apart the springboard for *her* humour at *their* expense. Had she just left that line about her own inability to distinguish among Chinese, Japanese, Koreans and Thais, that position might have been credible, albeit insulting to Asians, who *do* understand and take pride in their racial, ethnic and national heritages. She was, however, ready to add injury to insult. Putting on a pseudo-Asian accent to simulate their inexperience with both English and French, she mocked them on that same collective basis, accompanied by howls of laughter from her co-hosts. She then stereotypically diminished their physical stature, packed them into small apartments and then hooted at their inability to even open the refrigerator door without making room by having some of them step out on the balcony. The co-hosts then pushed the matter further by attributing to all Asians an inevitable consumption of Canada's territory from Quebec to Vancouver as the result of, again stereotypically, the population explosion associated with *that* community, as the co-host sees all Asians. She capped the comment off with a renamed country she called, duly accented, "Lakanadai". The humour in the routine was not, in the view of the Panel majority, trivial or harmless. Unduly discriminatory comments may take many forms. These include derision, stereotyping and mockery, which were all present.

In *CKTF-FM re comments made on Les méchants matins du monde* (CBSC Decision 00/01-0705, April 5, 2002), which was based on the preposterous notion of "hunting" Hindus, one of the hosts observed how to succeed in trapping them.

[translation]

A month before, you put your curry blocks around your blind [the hosts laugh]. Then I use the Hindu snare which I bait with a stolen VCR or ugly clothing [the hosts laugh]. Preferably brown. [...] The more fearless will surely risk getting near the Hindus by wearing a fake turban on their heads and smelling their rears to appear to be one of them.

The foregoing comments of course constituted a breach of the Human Rights Clause. While at the time of the *Fun Radio* and *Les méchants matins du monde* decisions, the *Equitable Portrayal Code* was not in force, it now is and its terms anticipate the form of negative portrayal present in those broadcasts and in the *Bye Bye* broadcast. It is the view of the Panel that the challenged content in the above examples is all of simplistic, belittling, hurtful and prejudicial, and constitutes unduly negative stereotypical content, contrary to Clause 4 of the Code, as well as unduly discriminatory content in breach of Clause 2 of that Code.

The broadcast continued its targeting of Blacks at other moments in the program; it found additional comments that fell into the same category as those cited immediately above. In the Stephen Harper-Michaëlle Jean skit, for example, the Governor-General was identified as a housekeeper, and in the Céline Dion skit, the pre-eminent Nelson Mandela was equated with a gardener. While the Panel recognizes that the attribution to the Prime Minister of the statement that he [translation] “always preferred Blacks when they were in other countries” could be mocking *his* immigration policies, it is, in the view of the Panel, equally probable that it is merely another component of the humour at the expense of Blacks that is endemic to the entire show. It finds these comments in breach of Clauses 2 and 4 of the Code.

Abusive Comment under the *Television Broadcasting Regulations, 1987*

The CRTC has asked the CBSC, via its Panel process, to also consider compliance issues concerning *Bye Bye 2008* under the *Broadcasting Act* and the *Television Broadcasting Regulations*. The Quebec Regional Panel considers that its conclusions regarding the offending items it has identified above would also have the effect of amounting to a breach of Section 5(1)(b) of the *Television Regulations*. It is the view of the Panel that the comments, when considered cumulatively, as they must be in light of their thematic reappearance throughout the program, fail the CRTC’s three-pronged test: 1. The comments are abusive; 2. The abusive comments, when taken in context, tend or are likely to expose an individual or a group of individuals to contempt; and 3. The abusive comments are based on race and/or colour.

The Panel does find that the abusive comments are likely to expose Blacks to contempt and/or equivalent sentiments of scorn, belittling and disrespect. Insofar as the issue of context is concerned, the Panel understands that the intended humorous context of *Bye Bye* is not the same as the more serious context of the morning public affairs program identified by the CRTC in *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). The Panel does not, however, consider that the context of *Bye Bye* removes the *fundamental* standards from the broadcaster’s toolbox. They remain every bit as applicable. Audience expectation may be laughs, but it is not abusive comment. The broadcaster is not shielded from the application of Section 5(1)(b) on this account. The Commission’s justification for this position is found in paragraph 17 of that decision:

The purpose of section 3(b) of the [Radio] Regulations on abusive comments [the equivalent of Section 5(1)(b) of the Television Regulations] 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.

That decision was followed by another CRTC decision dealing with comments by Doc Mailloux, this time on SRC, *Complaints concerning abusive comments broadcast by Société Radio-Canada on the 25 September 2005 episode of the program Tout le monde en parle*, Broadcasting Decision CRTC 2006-565 (28 September 2006). Despite the fact that that broadcast was a *variety* program, the SRC was found in breach of Section 5(1)(b) of the Regulations for

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.

In light of the foregoing, it is the view of the Quebec Panel that the cumulative portrayal of Blacks in *Bye Bye 2008* is in violation of Section 5(1)(b) of the *Television Broadcasting Regulations, 1987*.

The Use of the Word “Nègre”

The foregoing being said, the Panel was also called upon to deal with several instances of the use of the word “nègre” during the show. Numerous Francophone complainants found the word pejorative, hence unacceptable. The Panel believes that those complainants, who described the word as “the n-word”, were assimilating “nègre” to the English epithet “nigger” (commonly rendered in Anglophone broadcasting anywhere in the world as the “n-word”). The question for the Panel is whether they are equivalent, whether, as proscribed by Clause 9, broadcasters *must* avoid the use of the word as “derogatory or inappropriate language or terminology in references to individuals or groups based on race [or] colour.”

In the English-language context, the globalization of communications, the universality of the Internet, and the influence of the language, particularly American English, has brought the n-word regrettable renown. With its roots in the tragic racial history of 19th century America, the n-word has become utterly unwelcome on Canadian Anglophone airwaves. While the Panel does not believe that the French word “nègre” has attained the same detestable state as its English counterpart, it considers that it is on the cusp of unacceptability. Like the English word “Negro”, of which “nègre” is the technical lexicographical equivalent, it has a legitimate anthropological use. In measuring any specific challenged usage, much must, of course, depend on tone and contextual

considerations. Given the tone and theme of much of *Bye Bye 2008*, the Panel doubts that the term has been used for thoughtful, academic or even respectful purposes. While “nègre” may not yet have the full pejorative impact of the n-word in English Canada, the Panel believes that it is tentatively headed in that direction. It is a prime example of what the *Equitable Portrayal Code*'s codifiers anticipated in Clause 9(b), which reads:

It is understood that language and terminology evolve over time. Some language and terminology may be inappropriate when used with respect to identifiable groups on the basis of their race, national or ethnic origin, colour, religion, age, gender, sexual orientation, marital status or physical or mental disability. Broadcasters shall remain vigilant with respect to the evolving appropriateness or inappropriateness of particular words and phrases, keeping in mind prevailing community standards.

The Panel believes that the French word “nègre” ought to be used with caution on Francophone Canadian airwaves; those who do not do so make that choice at some risk. It is not, however, prepared to conclude that the use of “nègre” in *Bye Bye 2008* has gone over the edge. It finds no breach of any of Clauses 2, 3 or 9 of the *Equitable Portrayal Code* on this occasion.

The SRC Explanation of February 5/6

In its letter of February 5/6 to each complainant, SRC sought to explain and justify its humour in *Bye Bye 2008*, indicating that it

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.

In this attempt, SRC has, in the view of the Panel, failed at least in part. While the show may have succeeded in parodying the on-screen character, some of the comments simply went too far in terms of Canadian broadcast standards. Those cited above are reminiscent of those of an Ottawa talk show host commenting on the Government's decision to close down the Somalia Commission, adjudicated in *CFRA-AM re The Lowell Green Show (“Somalia Commission Report”)* (CBSC Decision 96/97-0238, February 20, 1998). The host's challenged words:

All this fuss over a couple of Somalis. Couple of wogs. Come on, give us a break here. Couple of flip flops. Give us a break; nonsense. Let's get on with something that's really important in this country, okay? Do you agree with me? Far too much concern over a couple of Somalis?

The station's News Director argued that the host had an excellent track record in dealing with important public issues and that he had simply been using rhetorical

devices to condemn the Federal Government decision to end the inquiry. The Ontario Panel disagreed, acknowledging that, while it

considers that the rhetorical tools of sarcasm, parody, facetiousness, irony, hyperbole and the like may be an effective means of expressing an editorial perspective, the News Director's argument regarding the use of these devices does not either render the user impervious to any claim that the host has, in a particular instance, overstepped the bounds of Canada's broadcast standards.

More recently, in *CKNW-AM re episodes of Bruce Allen's Reality Check and the Christy Clark Show* (CBSC Decision 07/08-0127 & -0469, November 27, 2007), the editorialist Bruce Allen claimed the freedom to express his opinions, on the one hand, and argued that his statements had been misunderstood, on the other. Actually, he said, he was *against* the immigrant-bashing that his editorial seemed to support in some respects. The British Columbia Panel chose

to dispel the sense of absolute freedom conveyed by Allen and to make it abundantly clear that there *are* limitations to what can be said on Canadian airwaves, *even in the context of an opinion* expressed by an editorialist. An opinion is not a blank cheque. It is not the equivalent of the Monopoly game "Get out of Jail Free" card.

While, in the end, the Panel split on the assessment of Bruce Allen's words, they were in agreement regarding the source of the problem, namely, Allen himself.

Bruce Allen's observations remind the Panel of the old story of the mother watching her son in a military parade who exclaims "Look, everyone's out of step but my Johnny." With the exception of a brief instant, when he provided his maximum concession, "at worst, the wrong choice of words," Allen seems to have blamed anyone and everyone but himself for the furore that arose. The Panel does not share his view of where responsibility lies. If listeners did not take away what Allen, after the fact, asserts they ought to have, it is not because *they* have mis-heard or mis-read; it has solely to do with what *he wrote and said*. Had he skilfully articulated the position he subsequently said he meant *in the first place*, this public controversy might have been avoided. He did not do so. He did not leave the sense in his *first* commentary that he in any way disagreed with the examples of Government rulings he cited. In that respect, he was the author of his own misfortune. The misunderstanding results primarily from *his* words, not from the public's absorption of them.

The Quebec Panel finds the SRC explanation of its *intention* similar to the above cases. Its problem arose from *its* broadcast content choices. If SRC had intended to condemn the evils identified in its letter, it ought to have done so more adroitly, more cleverly, with a finer touch and a tighter focus. SRC ought to have anticipated the fall-out that ensued. If only a pellet had been needed, a howitzer was not the appropriate modality.

Comments about English Canadians

There were complainants who were troubled by the comments made in another Jean-François Mercier rant about English Canadians. The offending remarks were actually tied closely to those made about the Prime Minister, which are dealt with below. For the purposes of this section, the two groups of observations must, of course, be severed. Those relevant here include accusations that English Canadians are [translations] “inbreds”, whose wives are “dried-up old prunes”, whose cities are “lame”, whose bars close at four in the afternoon, and whose girls “won’t sleep with you before marriage ... Or even after for that matter.” The Quebec Regional Panel acknowledges that the talk is trashy, crude and in bad taste. But, carefully analyzed, the worst that could be said of Mercier’s insults is that they make English Canadians out to be basically boring and dull. No sex. No drink. No good times. Impliedly “not like *us*.”

The Panel admits that the one particularly negative term is “inbreds”, but it views that tossed-off accusation as unrealistic and unrelated in any substantive way to any customarily recognized traits. And it is ugly references to publicly perceived stereotypical characteristics that are, in some respects, the most serious problem. Foolish, tasteless comments that lure no-one toward truth-in-accusation are like water off a duck’s back. They are, by the yardstick of an adjudicating Panel, meaningless and far from abusive (which might be the case even if the speaker had intended them to be abusive). That is the Panel’s perception of the comments made about English Canadians in *Bye Bye 2008*, some crude, some not, but all harmless in terms of Clause 2 or 4. There is no breach here.

Comments about South Asian and Canadian Indians

There were comments made about Indians of both South Asian and North American origin, the latter being more commonly and respectfully described as First Nations peoples. Those referring to the deaths resulting from the November 2008 terrorist attack in Mumbai led to the Jean-François Mercier comment, [translation] “I understand why, for a while now, it takes them a long time to respond at Bell Client Services.” The Panel finds nothing about this comment that is even moderately discriminatory about South Asian Indians. It says more about Canadian corporate outsourcing practices and is, in terms of the Human Rights Clause, utterly benign.

As to the comment regarding First Nations peoples, the Panel recognizes that the Jean-François Mercier remark [translation] “Then the Indians will be sniffing coke and Tony Conte will be dealing gas” plays on a series of situations contrary to fact. The first relates to the hypothetical circumstance of which Mercier “dreamt”, namely, that the price of gas would be so high that traffic would fairly fly across the Champlain Bridge

(since only the financially well-off could then afford gasoline). The third is that Tony Conte would be dealing gas (rather than cocaine, the offence for which he had been charged in October 2008). The second is that “Indians” would be sniffing coke, rather than gas, which is a serious problem affecting the young in many Aboriginal communities. The Panel acknowledges the unflattering generalization but does not find that, as an isolated comment, it rises to the level of abusive or unduly discriminatory comment, necessary to trigger the sanction of Clause 2, or to the level of unduly negative stereotypical material or comment, necessary to trigger the sanction of Clause 4. That said, the Panel does find the generalization on the cusp of unacceptability. It also considers that the use of the term “Indians” in referring to Canadian First Nations peoples is worth avoiding, even in a humorous context, although not in breach of the Code.

Comments about Immigrants and Convenience Store Operators

It was the reference to Prime Minister Harper’s allegedly negative attitude toward immigrants, legislatively manifested, that led to the conclusion that immigration was (in the creators’ futuristic scenario) curtailed, thus leading to an absence of convenience store (dépanneurs) operators. While here, too, the Panel finds the comment utterly benign, it must add the following two clarifications.

The first is that comments, even those that are not benign or are uncharitable, or even, within limits, negative, will not fall afoul of either Clause 2 or 4 in the event that they are not focused on at least *one* of the identifiable groups listed in the Clauses. Broadly negative comments targeting immigrants as a group are simply not the substance, or within the protective ambit, of those Clauses. This Panel explained the distinction in *CKAC-AM re an episode of Doc Mailloux* (CBSC Decision 03/04-0453, February 10, 2005) in the following terms:

[T]he Panel fully appreciates that Pierre Mailloux holds a strong opinion on the question of immigration and that he is prepared to share it readily and in forceful terms with his listeners. It also acknowledges that, as unpleasant as the host’s attitudes may be to some members of various immigrant communities (as well as the many more generous and receptive Quebeckers and Canadians), by virtue of the principle of freedom of expression, he is entitled to speak against the prospect of wide-ranging immigration. He is entitled to be xenophobic (that he denies that he appears disingenuous to the Panel) and to favour the fullest form of assimilation of immigrants into Quebec society. He is entitled to prefer that they leave their religious and cultural traditions, practices and vestments in their country. He is even entitled, within limits, to be ungenerous vis-à-vis foreigners. As an example, “If you flee your country because it doesn’t make sense, then don’t bring those senseless things with you” (translation). The implication is that someone leaving a country is doing so because that nation is not of interest and that, in such circumstances, a person *should not* bring along anything associated with the former country because nothing associated with it *could* be of interest. It is a black-and-white, narrowly xenophobic approach to immigration, denying the prospect of *any* benefit that

could be accrued by Quebec and Canadian society from the richness of extra-national cultures.

When, however, he holds identifiable groups up to ridicule and disrespect by making abusive or unduly discriminatory comments, he crosses the line of entitlement and loses the benefit of the shield of free expression. [...] The bottom line is that the Panel considers that the host is entitled to espouse his chauvinistic intolerance until such time as his disrespect leaks into individual races and nationalities [which it did on that occasion].

The B.C. Regional Panel concluded similarly in *CKNW-AM re episodes of Bruce Allen's Reality Check and the Christy Clark Show* (CBSC Decision 07/08-0127 & -0469, November 27, 2007). In that decision, the Panel was called upon to assess a commentary on such issues as Sikh religious headgear and passport photographs; the predominance of the names stated to be Singh and Khan; burka-covered Muslim women voting; turban-wearing Mounties; and the conflict between turbans and helmets for motorcycle riders, which were "all issues of current, or recent, public discussion, and, even if controversial, absolutely fair to raise and discuss." It acknowledged that "[w]hile most of the examples appear to be Sikh community focussed, they [we]re not all of that nature."

The Panel concludes, therefore, that the identification of the issues noted in this paragraph is neither unduly discriminatory nor tied specifically to *an* identifiable group. In such circumstances, the Panel cannot, and does not, conclude that the challenged *Reality Check* is in breach of the Human Rights Clause of the *CAB Code of Ethics*.

The Quebec Panel considers that the *Bye Bye* comments made about immigrants in general are not about any of the identified groups in Clause 2 and that Clause would not find its application here, even if the comments had not been benign.

The second clarification is that the comments in *Bye Bye* were made about a profession or occupation and these are not among the identifiable groups protected by Clause 2. The B.C. Panel explained this point in the following terms in *CKLZ-FM re Announcer Comments* (CBSC Decision 94/95-0113, December 18, 1996):

This is, however, the first occasion on which a listener has complained of language used with respect to an *occupation*. The only previous circumstance which has led the CBSC to broaden the interpretation of "matters of race, national or ethnic origin, colour, religion, age, sex, marital status or physical or mental handicap" arose in *CHQR-AM re Forbes and Friends* (CBSC Decision 92/93-0187, August 8, 1994), in which the Prairie Regional Council ruled [that sexual orientation could be included]. It is not the view of the B.C. Regional Council that it would be possible by definition to extend "race, national or ethnic origin, colour, religion, age, sex, marital status or physical or mental handicap" to include occupation or profession. Such a change, were one merited, would require the intervention of the codifiers.

In *CJKR-FM re Announcer Comments* (CBSC Decision 99/00-0130, May 5, 2000), the Prairie Panel

note[d] that there is no protection granted under the human rights provision of the Code for a *profession or an occupation* and being a Chinese restaurateur, or any other type of business person of any other ethnic origin, will not entitle one to protection.

The Quebec Panel agrees that the occupation of convenience store operator is not protected under either of Clauses 2 or 4.

For all of the foregoing reasons, the comments regarding immigrant convenience store operators do not violate either Clause 2 or Clause 4 of the *Equitable Portrayal Code*.

The Representation of Women

As mentioned above, one complainant was concerned that the representation of Julie Couillard was “sexist”. To resolve this issue, the Panel relied on Clause 8 of the *Equitable Portrayal Code*, which is the only clause from the *CAB Sex-Role Portrayal Code* that was retained in the new Code. That Clause required broadcasters to refrain from airing content that exploits women (as well as men and children, an aspect of the Clause which is not relevant here).

In the interpretation of this Clause in previous decisions, the CBSC has explained that particular female characters can be portrayed as flirtatious, sexually-available or even promiscuous, without violating that provision. In addition, women can be depicted in revealing clothing. For example, in *CITY-TV re Beavis and Butt-head* (CBSC Decision 93/94-0074, June 22, 1994), the two title characters of the animated program were discussing the female characters of the teen dramatic program *Beverly Hills 90210*. One of the plot devices of the series at the time was the contrast in sexual mores between the characters Kelly and Donna. Kelly was the more promiscuous of the two, which led Beavis and Butt-head to refer to her as a “slut”. In that case, the Ontario Regional Panel did not consider that the characterization of *one* female fictional character as a “slut” constituted an exploitative depiction of *all* women.

Tone and context can be extremely material in any appreciation of comments made on air. A word or phrase which may be insulting or degrading when used in isolation may, when heard or read in context, may be interpreted otherwise. The Regional Council agreed with CITY-TV that Beavis and Butt-head are “an exaggerated parody of two teenage misfits whose antics take place in a cartoon world.” They are a constant send-up of themselves as much as other programs and aspects of society which they lampoon. They do not seek emulation. They may not, to the standards of many in society, even be in good taste. The question here is only whether their use of the term “slut” is negative or degrading regarding the role of women or an abusive or discriminatory comment based on sex.

The Regional Council did not consider that this short (47 seconds) segment of the *Beavis and Butt-head* show had anything to do with insulting women. It was a comment about a *specific* person in a *specific* program. The word “slut” was not generically applied to women or even to women in the particular program. It did not incite hatred against any

group or even against any individual person. It referred to Kelly; it may have meant to describe Kelly; but it would be a gross exaggeration to suggest that it constituted “abusive or discriminatory [...] comment [...] which is based on [...] sex.” Indeed, anyone familiar with the program parodied (*Beverly Hills 90210*) will know that there is a difference between the sexual standards of the two women (Donna and Kelly) to whom reference is made by these crude characters.

At the very beginning of *Bye Bye 2008*, an actress playing Couillard was seen in a bedroom with co-performer Louis Morissette. It was implied that the two had just had a *clandestine* sexual encounter, although “Julie” told Morissette to say hello to his spouse, Véronique Cloutier, who was hosting *Bye Bye*. Morissette “accidentally” left the script of the variety program with Julie, a gag that played off the fact that the real Julie Couillard had garnered headlines when her boyfriend, Federal Minister of Foreign Affairs Maxime Bernier, had left confidential Government documents at her home. In another sketch, entitled [translation] “Couillard: The Truly True Story”, Couillard was depicted as assertive and manipulative as she attempted to involve Bernier in various schemes, including covering up the murder of a biker ex-boyfriend. In both of the sketches, the actress portraying Couillard was wearing a low-cut brown dress, reminiscent of the one the real Couillard had worn to the Governor-General’s residence when she had accompanied Bernier to his swearing-in ceremony as minister.

While the *Beavis and Butt-head* decision involved the use of a specific word rather than an overall portrayal or imitation, the Quebec Panel reaches the same conclusion with respect to the depiction of a single individual, Julie Couillard. Moreover, since exaggeration is a defining characteristic of parody and satire, it was understandable, indeed entirely expected, that *Bye Bye 2008* would highlight those aspects of Couillard’s behaviour that had received the most media attention in the previous year, and these were not in short supply. Consider the following: the real Julie Couillard had a sordid romantic past which included affiliations with biker gang members; she had made the unconventional choice to wear a cleavage-enhancing dress to a formal function at Rideau Hall; she was accused of dating Bernier simply to further her own interests; and, following the scandal, she wrote a tell-all memoir in which she offered her opinions on Bernier’s vanity and contempt for his constituents. It was not surprising, then, that the *Bye Bye* skit depicted Couillard in figure-flattering clothing and as a wilful woman who used her “feminine wiles” to manipulate Bernier. Put in other terms, Couillard was the “femme fatale” in Bernier’s saga, both in real life and in *Bye Bye 2008*’s satirical version thereof. The Quebec Panel considers that this particular depiction of a specific woman does not constitute exploitation, nor does it make negative generalizations about women in general. Consequently, it does not violate Clause 8 of the *CAB Equitable Portrayal Code*.

The Contextual Considerations

Although this is the first occasion on which the CBSC is called to interpret Clause 10(b) of the *Equitable Portrayal Code*, that provision is itself drawn from the Council's jurisprudence. The principal decision in this area was *CHOM-FM and CILQ-FM re The Howard Stern Show* (CBSC Decision 97/98-0001+, October 17-18, 1997), in which the Quebec and Ontario Regional Panels jointly concluded that the September 1997 broadcasts of *The Howard Stern Show* contravened the *Code of Ethics* and *Sex-Role Portrayal Code* for its negative comments about identifiable groups. The stations defended the show as satire/comedy and Stern himself argued that he was not the President of the United States and ought not to be taken seriously. He disparaged those who take the show and his comments seriously by saying:

We're just trying to entertain, okay? This is not – I'm not a head of state. We ought to remind Serge Menard [then Quebec Minister of Justice] that I am not a head of state. Okay? I'm a disc jockey. Mellow out, get a sense of humour. Stupid. It's comedy, not U.S. policy. Okay? I'm not the president yet.

The Panels made the following comments regarding the comedic defence:

The fact that no-one mistakes him for a head of state does not mean that this gives him the entitlement to say whatever comes into his head and out of his mouth. The Regional Councils cannot comment on whether he might have such a privilege in the United States but, in their view, he cannot expect such a free rein in Canada. There are in this country limitations on what a broadcaster is free to air and the use of abusively discriminatory language such as he used on September 2 clearly surpasses the permissible. Even had his comments been understood as comedic by some elements of his audience, they would be excessive by Canadian standards.

That decision was followed by the Ontario Regional Panel in *CFRA-AM re The Lowell Green Show (Somalia Commission Report)* (CBSC Decision 96/97-0238, February 20, 1998). It was the broadcaster's contention that by the use of otherwise insulting ethnic epithets to malign Government policy, not the Somali people, talk show host Lowell Green was "merely being facetious and cynical, characteristics of the host which [...] are well-known to his listeners." Regarding the pertinence of this argument, the Panel disagreed, stating that

the rhetorical tools of sarcasm, parody, facetiousness, irony, hyperbole and the like may be an effective means of expressing an editorial perspective, [but] the use of these devices does not [...] render the user impervious to any claim that the host has, in a particular instance, overstepped the bounds of Canada's broadcast standards.

In *CILQ-FM re The Howard Stern Show* (CBSC Decision 97/98-0487+, February 20, 1998), in dealing with a later complaint, the Ontario Panel further elucidated its earlier position vis-à-vis the comedic defence. It conceded

that the show purports to be comedy. It also acknowledges that there are listeners who view what Stern says as funny, if not hilarious. That, however, is not the point. There are

comments which, whether intended or not to be funny, are in breach of the broadcasters' own Codes of conduct. What can be said in one's living room or in the locker room does not automatically become eligible for over-the-air consumption. Sexist, abusive and racist comments, and commentary advocating violence against identifiable groups may well be amusing to some people but, in violating the CAB Codes or the *Radio Regulations, 1986*, they do not pass the test of broadcast acceptability.

The difficulty with the position of those who would excuse comments on the basis of comedic intent is that the extension of the principle to its logical extreme would lead to a conclusion which the Council finds untenable. It would ultimately justify any comment which a host or broadcaster said was intended to be humorous. This could not possibly have been the intention of the creators of the broadcast Codes. Had it been, they would have included an explicit exemption for comedy or humour. They did not.

In *CKVL-AM re the André Arthur and Martin Paquette Show* (CBSC Decision 98/99-1184, February 21, 2000), the hosts of a morning talk show bantered about the murder of a black man by a Hindu which had occurred in Montreal the preceding day. The hosts diminished the significance of the murder by comparing it to a settling of accounts between biker gangs, a type of murder often not viewed as a matter of societal importance since the perpetrator and victim are both seen as acting outside the limits of the law. A listener complained that the comments constituted “a lack of respect for cultural communities and an incitement to racial intolerance that are absolutely unacceptable on the part of CKVL.” This Panel, in finding the hosts' comments abusive and unduly discriminatory, stated the following regarding the broadcaster's argument of comedic justification:

In the end, the hosts' intentions to be funny cannot be relevant. The Council has, after all, rarely, if ever, seen a *purposeful* example of malevolent intention in such cases. Absent some clear intention to the contrary, the Council assumes *good* intention and the desire to make people laugh. Where that result is achieved at the expense of an identifiable group which is being abusively targeted, the comment will be in breach despite the contrary intention of the host.

Clause 10 of the Code makes it clear that “comedic, humorous or satirical intention” may be raised as a defence *provided that* the manifestation of that intention is “light and relatively inoffensive rather than abusive or unduly discriminatory.” In the measure of that quality, the Panel considers that the statement of the Ontario Panel in *CHFI-FM re the Don Daynard Show* (CBSC Decision 94/95-0145, March 26, 1996) is apt. That Panel concluded that the Jewish mother light bulb joke that was the subject of that complaint “poked fun but did not bludgeon. It tickled but was not nasty.” It is clear from the inclusion of the words “rather than” in Clause 10(b), that no quarter was created by the codifiers for abusive or unduly discriminatory content. This contextual consideration is simply a now *codified* recognition of the acceptability of admittedly discriminatory content. That said, Clause 10(b) opens no *new* doors. A finding of “abusive or unduly discriminatory” content will still constitute a breach of the *Equitable Portrayal Code*.

Applying the foregoing principle to *Bye Bye 2008*, the Panel concludes that the finding that the content referring to Blacks described in the above section constituted abusive or unduly discriminatory content in breach of Clauses 2, 4 and 7 of the Code stands.

The Violence Code Issues

These are limited to the sketch related to the family of Patrick Roy; the *CAB Violence Code* is also a COL for SRC.

The Roy Family Sketch and the Violence Code

There are, in a sense, two separate major components of the sketch associated with the family of Patrick and his sons, Jonathan and Frederick, Roy. The first of these parodies the allegedly violent tendencies of the male members of the family, via images of broken doors, intra-family assaults, an assault upon a stranger, and a smashed television set. The second of these emphasizes the violence from the perspective of the wife of Patrick and mother of Jonathan. As a result of the widespread publicity given to the violent tendencies of both the father and the sons, as evidenced in charges and investigation by the ordinary courts, on the one hand, and organized hockey, on the other, the Panel finds no problem in the satirical portrayal by *Bye Bye 2008* of the male family members' violent tendencies.

Where the Panel does have a problem, though, is in what it considers the *excessive* portrayal of the mother as victim. The rule in the *CAB Violence Code* is not only that broadcasters are prohibited from airing programming which sanctions, promotes or glamorizes violence against women, but also that women are not to be depicted as victims of violence *unless the violence is integral to the story being told*. In *CTV re Complex of Fear* (CBSC Decision 94/95-0022, August 18, 1995), it was acknowledged by the Panel "that a film *about* rape does not necessarily *condone* rape." In that case, the televised film in no way glorified the several rapes that were a part of the story of a serial rapist in a residential complex, on the one hand, and, at the same time, it sensitively "depicted the *consequences* of the rape", on the other. Note that, where one scene of violence was unnecessary to *CHCH-TV re the movie Strange Days* (CBSC Decision 98/99-0043 and 0075, February 3, 1999), the Ontario Regional Panel decided that the broadcast breached Article 7 of the *CAB Violence Code*. While that particular scene in *Strange Days* was gruesome in a way that goes well beyond the sketches in the matter at hand, the following principles laid down in the reasoning of the Ontario Panel are pertinent here.

[That scene] in its length and graphic presentation, exceeded [...] what may have been necessary to advance the plot. [...] [I]t is the view of the Council that it could have been edited without sacrificing any artistic integrity, and ought to have been edited in order to be long enough to make its point but not so long as to amount to violence for violence's sake.

In an earlier decision of this Panel, namely, *CKRS-AM re an episode of Champagne pour tout le monde* (CBSC Decision 01/02-0331, April 5, 2002), the host had referred to singer Whitney Houston as a battered woman who [translations] “likes to be beaten”, asserting that “a smack in the face is a good thing, eh?” and, undaunted by his co-host's attempt to exit the dialogue, he repeated that “She needs a smack in the face; there are those [women] who need that.” This Panel applied the principle established in Article 7 of the *CAB Violence Code* to that broadcast and concluded:

The argument that the host did not intend to say this, or that he was being provocative, engaging or sarcastic, holds no water. There is simply no justification for supporting the idea of wife-beating on the airwaves. In the terms used by the CRTC in its CKVU-TV decision, it is not debatable. Freedom of expression is not a broad enough concept for Canada's private broadcasters to include such dangerous comments. The December 6 dialogue of Louis Champagne clearly constitutes a breach of [...] the *CAB Violence Code* article prohibiting violence against women.

The Panel has no hesitation in applying the principle established by it in the Champagne decision of seven years ago to the matter at hand. Not only did the wife flinch when her husband approached to give her a hug, in anticipation of a slap or punch, not only did she don a hockey helmet in self protection later, but one of the sons was the person to actually punch her during the skit, leaving her with a black eye as a result. There was simply no creative need for the Roy men to beat the mother up and to leave the impression that this element was a constant in their family life. The show's creators may have viewed these actions as a satirical depiction of the Roy men's violent tendencies, but, in the view of the Panel, they went too far. They exaggerated the reality at the level of the victim, as much or more than at the level of the perpetrators. While a single instance may have been historically appropriate to reflect the one occasion when Patrick Roy was investigated for domestic violence, no more examples were required to make the point, particularly when it was the sons who were linked to the additional events. Moreover, given the divorce of Patrick Roy and his wife almost three years before *Bye Bye 2008*, it is difficult for the Panel to assume the relevance of the exacerbated theme of violence against women in the immediately preceding year. The Quebec Panel considers the Roy family skit in violation of Article 7 of the *CAB Violence Code*.

The CAB Code of Ethics Issues

Based on the CRTC decisions cited above, it would appear that the regulator's perspective is that many, perhaps most, perhaps even all, of the private broadcaster standards ought to apply in equal measure to Canada's public broadcasters. Whatever that determination would be, the following is what the CBSC would decide on the basis of the standards it applies.

Sketches about Nathalie Simard

Nathalie Simard was the target of sketches that mocked her apparent inconsistency over the issue of media attention. Having announced her intention to move to the Dominican Republic to avoid the glare of the media, which had highlighted her every move since the revelation of her sexual abuse, Ms. Simard had, of her own volition, granted numerous interviews to the press. The question for the Panel is whether the parody rose to the level of unfair or improper comment in terms of Clause 6 of the *CAB Code of Ethics*.

This Panel has dealt with complaints challenging broadcast comments about public personalities in several previous decisions. In *CJMF-FM re the program L'heure de vérité avec André Arthur* (CBSC Decision 99/00-0240, August 29, 2000), for example, the host responded with sarcasm to a famous Quebec family's organisation of a holiday fundraiser, adding that the family was marked by [translations] "psychological problems, addiction problems and alcoholism problems." He then went on to describe the family as a "family of crooks". This Panel found a breach of Clause 6 of the *CAB Code of Ethics*. It explained its position as follows:

The inflammatory unjustifiable language of the host is a travesty and the *worst* type of journalistic excess to which talk radio can succumb. It adds absolutely nothing remotely worthwhile to public discourse. It is petty, scurrilous and hateful. It is not full, but empty; not fair, but the most unfair use of a one-way microphone; and not proper, but improper and inappropriate.

In *CHOI-FM re Le monde parallèle de Jeff Fillion* (CBSC Decision 02/03-0115, July 17, 2003), the co-hosts discussed a rival Quebec City broadcaster, referring to him as a [translations] "conceited asshole" "that worthless piece of trash", a "loser", a "piece of vomit", a "shit disturber" and a "tree with rotten roots". Acknowledging that Quebec City had, at the time, a rather "aggressive" style of talk radio, this Panel nonetheless concluded that the foregoing comments exceeded the standard mandated in Clause 6.

Whether in Quebec City or elsewhere, and depending on the style of the individual talk show host, there may be more or less detachment from a point-of-view regarding the issues, and there may be more or less refinement or intellectual content. There should, however, always be overriding elements of civility, in the sense that any commentary

must be full, fair and proper. This does not exclude the possibility of expressions of rivalry in referring to other points of view or other stations' hosts. It means, though, that any such comment cannot exceed the foregoing bounds.

In *CKTB-AM re the John Michael Show (Middle East Commentary)* (CBSC Decision 01/02-0651, June 7, 2002), the Ontario Panel made the point that "Skilled practitioners of the [talk radio] art must be deft, not brutal." The Quebec Panel considers that host Fillion was anything but deft. He was crude and offensive. He spouted ugly and generalized epithets, comprehensible only in their flailing nastiness and not because a serious listener might have actually understood what his competitor did, if anything, to merit criticism. Thus, for example, the Quebec Panel finds that "conceited asshole", "that worthless piece of trash", a "loser", a "piece of vomit", a "shit disturber" and a "tree with rotten roots" fall into this category, whereas focussed comments such as the accusation that Tétrault was "a poor communicator" who had lost most of his listeners are fair game.

Fillion demonstrated an utter lack of respect, not only for the competitive host, but also, more important, for the audience he *ought* to serve. The public interest is in no way served by such shallow grandstanding from the safe side of the microphone.

In *CJRC-AM re an interview by Daniel Séguin on L'Outaouais ce matin* (CBSC Decisions 03/04-2082 and 04/05-0023, April 4, 2005), the host was interviewing the owner of CHOI-FM, one of the controversial, and very aggressive, Quebec City radio stations that had itself meted out considerable harsh and excessive comments (see, e.g., the decision cited immediately above). During that interview, there was a rather free-wheeling back-and-forth, cut-and-thrust, in which, among other things, the interviewer asserted:

[translation] I'm very happy that they are shutting you up, that they are finally getting rid of you. [...] I hope the CRTC puts the boots to you and that they will pursue the matter and nail you to the wall.

This Panel "consider[ed] that the bulk of the dialogue between Daniel Séguin and Patrice Demers was substantive and a valid interchange of perspectives on the issues one would have expected to encounter on a CHOI-FM-related discussion." At one point, it escalated, though, and the interviewer left the high road and attacked with [translations] "I was really looking forward to [...] telling you literally to fuck off" and "And it's my turn to tell you to fuck off, Mr. Demers, and I do so with pleasure this morning." Even though this language was not of the descriptive nature of that used in the two previously cited decisions, this Panel "consider[ed] that the use of such aggressive language to insult [M. Séguin's] invited guest was improper and in breach of Clause 6 of the Code."

In the matter at hand, the Panel finds that the parodies of Nathalie Simard in no way reflected the nasty, aggressive, even brutal language in the decisions referred to above. In the view of the Panel, the *Bye Bye Simard* satire was deft and manifested a light touch. To apply here language used by the CBSC in another context, it tickled but did not bludgeon. After all, Ms. Simard was a public figure, who had presented her own apparently contradictory positions to an insatiably curious public. And those who sow

public seeds are not always able to control the nature of what they reap. The show's creators took what they found in the public arena and recast it skilfully and fairly. The Panel also recognizes the successful efforts of the producers to carefully avoid *any* reference to the issue of sexual abuse suffered by Ms. Simard. In so doing, they also avoided any possible accusation of conflict of interest with respect to the relationship between her assailant and the creators of *Bye Bye 2008*. That said, the Panel acknowledges their apology to Ms. Simard and their recognition (enunciated in SRC's letter to the complainants) "of their indirect links with Ms. Simard." That matter was handled tactfully and with honour. In the view of the Quebec Panel, there was no breach of Clause 6 of the *CAB Code of Ethics*. In the circumstances, the Panel does not consider that the Simard parodies would have amounted to a breach of the "high standard" provision of the *Broadcasting Act*.

That the show's creators later apologized publicly to Nathalie Simard was a matter entirely separate from the issue of broadcast standards.

Sketches about Other Persons

There is little to add to the Panel's observations on Nathalie Simard in relation to the segments touching on the other public and political figures targeted in *Bye Bye 2008*. As is the case with satire and parody, persons, objects or events are mocked, sent up, made fun of. The characteristics that are lampooned are, as in the case of a political cartoon in a newspaper, isolated, even taken out of context, and, above all, emphasized, indeed *over-emphasized*, and exaggerated. It can be expected that those who satirize or parody take the normal and render it abnormal, the reasonable and render it unreasonable, the sublime and render it ridiculous. The key to their acceptability from a standards perspective is not their success as wit or humour, since that determination is such a personal matter for the audience, but their fairness or propriety. Is the parody nasty, bitter or hateful? As this Panel put the point in *CKTF-FM re comments made on Les méchants matins du monde* (CBSC Decision 00/01-0705, April 5, 2002), the host and a fictitious frequent caller "demeaned and denigrated the objects of their 'humour'. This was 'grit your teeth', 'cringe in discomfort' mockery; it had no cuteness or levity to offer."

Entertainers

It is the view of the Panel that the skits relating to Céline Dion, her son and husband, and Denise Bombardier underscored the emotionality of Céline Dion's singing style, the reputedly controlling nature of her husband, the utterly obscuring hairstyle of her son, and the worshipful adoration of interviewer Denise Bombardier's treatment of the star (using terms like [translation] "ecstasy", "I'm orgasming"). The Panel finds that none of

these characterizations depart from legitimate parody or satire. Although pointed, as they must be, none was discomfiting in the manner expressed in the previous paragraph.

The Panel concludes similarly regarding the Chantal Lacroix skit, in which the shutting down of her TQS show *90 minutes de bonheur* and her subsequent role as plaintiff in a lawsuit against the former owners of the television station, left her, in the satire, out on the street, without work, the apex of the skit being her roasting of a lamb on a spit in the street ([translation] “Dan! Stay, I’ve made black sheep barbecue!”).

Politicians and Their Friends

In the view of the Panel, the bar is placed at a different level in the world of political figures. As the Ontario Panel said in the case of the broadcast of a parody song relating to Member of Parliament Jag Bhaduria,

public figures, such as politicians, are often held up to criticism and parody. Indeed, it is the most essential component of the principle of free speech that the fullest criticism of political figures and political positions be permitted in a free society. Provided that the satire or criticism is levelled at political persons on the basis of their actions as public figures *and not on the basis of their national or ethnic origin*, it must be permitted, if not encouraged.

In a sense, the breadth of permissible discussion of political figures follows the breadth of permissible discussion of political issues. In *CHOM-FM and CILQ-FM re the Howard Stern Show* (CBSC Decisions 97/98-0001+ and 0015+, October 17 and 18, 1997), for example, this Panel, in concert with the Ontario Panel,

note[d] the importance of differentiating between insults aimed at identifiable groups and comments related to the political or historical environment in Canada and in France. The breach they find is limited to the comments mentioned in the [...] section [dealing with negative comments *directed at* the French and the French-Canadians]. Those comments relating to the state of radio in Canada, the use of English in Quebec, the value of French culture, Canada as an appendage of the United States, the role of the vanquished French in Vichy France, the issues relating to separatism, and so on, are the host’s *opinions* and, unless utterly and irresponsibly uninformed, [...] they are his to espouse.

Those who are democratically elected and espouse the political positions about which comments may be freely made are themselves necessarily exposed to criticism and commentary. They are regularly parodied and even pilloried. In psychological self-defence, they must develop thicker skins than most citizens. They are, except on the floor of the House of Commons, protected by private law remedies against defamation, but their shields against harsh comments are thin. And a wrong step can unleash fusillades of critical and satirical outpourings. As long as the broadcast commentaries or other content are full, fair and proper, that is, not muddied by, for example, malice or other evidence of unfairness, parodies of politicians will not breach Clause 6 of the *CAB Code of Ethics*.

The events surrounding the short-lived career of MP Maxime Bernier as Minister of Foreign Affairs and his girlfriend Julie Couillard were a satirist's dream, involving, as they did, in a political cauldron, beauty, bikers, bombast, and bumbling. The creators of *Bye Bye 2008* took full advantage of all the elements. Their irreverent skits included cartoonish sex on a kitchen table, a dead boyfriend (shot in the head) in the closet, a distracted girlfriend reading forbidden texts during sex, and so on. The Panel finds all of these to have been legitimate fodder for *Bye Bye*'s creators, and fairly handled, in terms of Clause 6.

While the circumstances surrounding the coalition formed by the Liberals and NDP, in concert with the Bloc Québécois, did not provide the same type of comedy associated with the Bernier-Couillard affair, the show's producers mined humour from that hard news political story. Not surprisingly, they played on the oft-used phrase describing the parties and their leaders as being "in bed with" each other as their theme, complete with the prop of the bed itself. They made light-hearted fun of NDP leader Jack Layton's use of the French language with, among other humour, his belief in Stéphane Dion as his "one and only to save the Canadian *fellation*." The writers also squeezed what humour they could out of the inevitable "who's on top?" gag accompanying the bedroom scenes. Here, too, the Panel finds irreverence, but only, in the broadcast sense, of the most politically justifiable kind. It finds no breach of Clause 6 on account of this coalition-driven theme.

The humour relating to Prime Minister Harper was not all as light and frothy as the foregoing political examples. It is true that the rather straight-laced image of the Prime Minister was well spoofed by the image of him, fully dressed in a business suit, in a hot tub with the Governor-General in a bikini. The rant by Jean-François Mercier was not as gentle. In it, the Prime Minister was referred to as "an idiot" and a "walking lobotomy", and there was an implication that he had a very conservative perspective on immigration ([translation] "Harper voted in a law that screws all our immigrants"). In this connection, he was depicted in another part of the program as stating that [translation] "I've always preferred Blacks when they were in other countries." The Panel considers that the comments painting him as a very *conservative* individual, particularly in the context of issues relating to immigration and race, relate to political policy and, even if a harsh and exaggerated representation of his views, are fair political comment.

The one observation of the Prime Minister as a [translation] "walking lobotomy" is farther from the justifiable line. It is, on its face, unrelated to policy positions, and it is without question gratuitous and tasteless. In the view of the Panel, it is a vacuous comment that reflects poorly on the writers. Despite that characterization, the Panel does not consider that the comment goes as far as would be required to be in breach of Clause 6. When it measures even such a comment against the fundamental freedom of expression that guides its assessments, the Panel concludes that it falls on the

tasteless but protected side of the fine line. It finds no breach of Clause 6 in any of the comments about the Prime Minister.

The Poor

In another of his commentaries, Jean-François Mercier made some snide comments about the poor. Describing the poor as [translation] “too dense” to know what to do with money, in the event that one chose to give them any, he sarcastically observed that they would only understand “une hypothèque [i.e. a mortgage]” to be the building next door to a “roulathèque [i.e. a roller-skating rink]”. His conclusion: “the poor contract STDs, not mortgages.” In *CJMF-FM re the program L’heure de vérité avec André Arthur* (CBSC Decision 99/00-0240, August 29, 2000), adopting a similar tone,

the host criticised welfare recipients in the province of Quebec, claiming that they “sleep” and “burp their beer” at the end of the month, and that “in ten days’ time, they will be back putting themselves in debt at the expense of their children who won’t get lunch.”

In that decision, this Panel

considered whether the host’s comments criticizing welfare recipients could constitute a violation of Clause 6 [...] of the Code. While the Council considers that the aggressive, mocking, arrogant style of the host does no justice to the medium of radio, it is of the view that the comments do not constitute a breach of the clause in question. In such circumstances, the Council is of the opinion that there is no violation and that freedom of speech must prevail.

This Panel concludes that the Mercier comments about the poor are of a similar nature and that its conclusion in the André Arthur decision applies to the matter at hand. It finds no breach of Clause 6 as a result of the broadcast of those comments.

General Motors

In a rant on the subject of the automobile manufacturers GM and Chrysler, Jean-François Mercier was particularly colourful, essentially accusing the companies of shoddy workmanship. The single complainant who raised this issue wrote that the comments were [translation] “fallacious, untrue and venal.” While there are private law recourses to protect against defamatory comments, such remedies have nothing whatsoever to do with the CBSC. With respect to the applicable broadcast standards, the Quebec Panel considers that Mercier was at liberty to express his personal opinion on the quality of automobiles, as he would have been on the subject of television sets, fast food emporia, motion pictures, the rendering of various kinds of consumer services, and so on. While the comments ought to be fair and proper to meet the requirements of Clause 6, they may by definition be *opinions* and reflect bias. The Panel considers that the underlying principles of freedom of expression must hold sway, in the absence of egregiously unfair or improper comments. It cannot speculatively provide examples

here, but it is certain that the Jean-François Mercier observations fall *far* short of the level needed to constitute a breach of the Clause 6 standard.

The January 1 Rebroadcast, the Watershed, and Viewer Advisories

Although logger tapes of the January 1 rebroadcast of *Bye Bye 2008* were not available by the time the CBSC was asked to begin its review of the file, SRC has confirmed to the CBSC “that the program *Bye Bye 2008* rebroadcast Thursday, January 1, 2009 at 8:00 pm was in all respects identical to the program broadcast live on December 31, 2008 at 11:00 pm. In both cases, no viewer advisory was broadcast at the beginning or during the program.” Consequently, the principal issue for the Quebec Panel on this occasion is whether any of the late night content was too adult for the earlier 8:00 pm timeframe. In one of the two programs evaluated by this Panel in *Canal D re Festival Juste pour rire and Comicographies Juste pour rire: François Morency* (CBSC Decision 02/03-0142 & -0143, July 17, 2003), it determined that

the sexual references in the biographical episode dealing with the story of comedian François Morency, which included “kissing a guy” and other sexual contact between men, were often brief, veiled or light-hearted and employed doubles entendres or other humorous devices. They were neither graphic nor explicit and did not constitute programming intended exclusively for adults. That episode was, in other words, susceptible of being broadcast in the midday time slot in which it aired.

In *TQS re the movie L’Affaire Thomas Crown (The Thomas Crown Affair)* (CBSC Decision 01/02-0622, December 20, 2002), this Panel considered the television broadcast of that feature film, complete with the more than two minute erotic love-making scene between Pierce Brosnan and Rene Russo, at 8:30 pm, that is to say, prior to the Watershed period (9:00 pm to 6:00 am). Its conclusion was that the broadcast was susceptible of airing before the Watershed. On the basis of those decisions, the Panel considers that the fully-clothed, amusing, but admittedly suggestive, sexual content involving the Bernier-Couillard frolicking, Vincent Lacroix’s prison experience, and the in-bed coalition leaders were suitable pre-Watershed content.

Although the Panel considers that the foregoing content was susceptible of pre-Watershed broadcast, its view is that it is inappropriate for children. In similar circumstances in *Canal D re Festival Juste pour rire and Comicographies Juste pour rire: François Morency* (CBSC Decision 02/03-0142 & -0143, July 17, 2003), this Panel concluded:

While the brief reference to fellatio in the September 15 biographical episode did not relegate it to a post-Watershed broadcast time slot, the Panel does consider that that part of the dialogue is unsuitable for children. [...] Since [the episode] aired in [a] pre-

Watershed time [slot], the broadcaster was obligated to include viewer advisories at the start of [the] episode and following every commercial break.

Similarly, in *TQS re the movie L’Affaire Thomas Crown (The Thomas Crown Affair)* (CBSC Decision 01/02-0622, December 20, 2002), the broadcaster assumed that viewer advisories were not required. This Panel disagreed, concluding that the “failure [to include advisories was] in violation of the requirements of the private broadcasters’ codified standards.” It flows from the foregoing that the Panel concludes that the inappropriateness for children of the combination of the sexual content and the occasional coarse language necessitated viewer advisories. The failure to include these constitutes a breach of Clause 11(b) of the *CAB Code of Ethics*.

On the basis of past CRTC decisions, including those cited hereinbelow, the Panel considers that this would also amount to a breach of the high standard provision contained in Section 3(1)(g) of the *Broadcasting Act*. In *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), for example, although SRC *had* included the requisite viewer advisories, the CRTC made the following point:

Clause 11 of the Code stipulates that to assist consumers in making their viewing choices, when programming includes mature subject matter or scenes with nudity, sexually explicit material, coarse or offensive language, or other material that may offend viewers, broadcasters shall provide a viewer advisory. These advisories are required for programming containing this type of content that is broadcast in late viewing hours and programming broadcast outside of late viewing hours which contains material not suitable for children.

In *Complaints regarding the broadcast prior to the watershed hour by MuchMusic of Spring Break '08, a promotional spot for that program and an interview aired on Much on Demand*, Broadcasting Decision CRTC 2008-311 (14 November 2008), where the broadcaster had not provided viewer advisories during *Much on Demand*, the CRTC said:

Clause 11 of the *Code of Ethics* stipulates that to assist consumers in making their viewing choices, when programming includes mature subject matter or scenes with nudity, sexually explicit material, coarse or offensive language, or other material that may offend viewers, broadcasters shall provide a viewer advisory. These advisories are required for programming containing this type of content that is broadcast in late viewing hours and programming broadcast outside late viewing hours that contains material not suitable for children.

The *Code of Ethics* is administered by the Canadian Broadcast Standards Council (CBSC) for private broadcasters who are members of the CBSC. Although MuchMusic is not a member of the CBSC, the Commission considers that, given the objectives of the Act, the licensee is required to adhere to the same broadcast standards as the industry as a whole. Canadian viewers are entitled to expect that all broadcasters adhere to current social accountability standards designed to protect the youngest viewers.

[...]

The Commission notes that detailed and explicit portrayal of sexual activity is considered to be material intended for adult audiences, and is therefore subject to scheduling and advisory requirements. Furthermore, explicit descriptions of particular sex acts at times of day when children are likely to be listening have been found to contravene established standards.

In light of the above, the Commission finds that by airing the interview before 9 p.m., and failing to provide viewer advisories before the broadcast, the licensee again failed to meet the Canadian broadcasting policy objective set out in section 3(1)(g) of the Act that programming be of high standard.

Conclusions

In their decisions, CBSC Panels customarily take the measure of the broadcaster's responsiveness to complainants. In this regard, the Panel does conclude that SRC's responses to the complainants, supplemented by the appendix prepared by its Law Department, were candid, thoughtful, and focussed. The Panel also notes the intervening public steps taken by the network and the producers and commends the network for its responsiveness to the concerns of the public.

The quality of the broadcaster's responsiveness does not, however, mitigate in any way the CBSC's conclusion regarding the *substance* of the *Bye Bye 2008* program, which was that: the comments about Blacks in the December 31, 2008 11:00 pm broadcast breached Clauses 2, 3, 4 and 7 of the *Equitable Portrayal Code*, and violated Section 5(1)(b) of the *Television Broadcasting Regulations, 1987*; and the violence against women in the Roy family skit breached Article 7.1 of the *CAB Violence Code*. In addition to the foregoing breaches, which applied to the unmodified January 1, 2009 8:00 pm rebroadcast of the show, the CBSC also concludes that the rebroadcast breached Clause 11 of the *CAB Code of Ethics* because it did not include viewer advisories. Finally, it concludes that, based on prior CRTC broadcasting decisions, the breach of Clause 11 would constitute a violation of the high standard provision in Section 3(1)(g) of the *Broadcasting Act*.

As a general practice, in the event of an adverse finding, the CBSC Panel establishes the terms of an announcement that the broadcaster must make. Given that the Quebec Regional Panel has rendered this decision, or report, at the request of the CRTC, rather than as the result of the membership of SRC in the CBSC, there can be no requirement imposed by the CBSC on the broadcaster. Any consequence, in the event of an adverse finding by the CRTC, will be defined by the regulator pursuant to its own decision on these complaints.

This decision is a public document upon its release by the Canadian Broadcast Standards Council.