



Broadcasting Decision CRTC 2010-534

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Ottawa, 30 July 2010

Cogeco Diffusion inc.
Québec, Quebec

Complaint relating to the broadcast of *Bouchard en parle* on CJMF-FM Québec

The Commission finds that comments broadcast during the 26 January 2009 episode of the program Bouchard en parle, while unpleasant, did not breach the objectives of the Broadcasting Act or the Radio Regulations, 1986.

Background

1. On 18 February 2009, the Commission received a complaint from Françoise David concerning the 26 January 2009 broadcast of the program *Bouchard en parle* (the program) on CJMF-FM Québec, which is owned by Cogeco Diffusion inc.
2. Because the licensee is a member of the Canadian Broadcast Standards Council (CBSC), the Commission referred the complaint to the CBSC for a decision. The Commission also sent the CBSC nineteen other complaints it received relating to the same episode.
3. On 3 March 2009, the CBSC informed the complainant that it would not deal with her complaint because there was a possibility of legal action, which is incompatible with the established CBSC process. However, the CBSC still reviewed the other nineteen complaints.
4. Following the CBSC's decision, the Commission informed the complainant on 3 April 2009 that it would deal with her complaint. However, in order to avoid influencing the industry self-regulation process, the Commission stated that it would not render its decision on the merits of Ms. David's complaint until the CBSC had rendered its decision on the other complaints.
5. In October 2009, the CBSC Secretariat rendered its decision, dismissing the other nineteen complaints. The Commission then deemed it appropriate to ask the complainant for her comments on the CBSC decision. In a letter dated 16 December 2009, Ms. David restated the elements of her complaint, as listed below.
6. On 28 January 2010, the complainant confirmed with the Commission that she had not begun any legal action against CJMF-FM or the host over the comments aired during the program.

The program

7. The program *Bouchard en parle* airs in the morning (6 a.m. to 10 a.m.) on CJMF-FM and is hosted by journalist Sylvain Bouchard. CJMF-FM is a talk radio station, and on *Bouchard en parle*, the host gives his opinions on various topics of public interest, sometimes in a critical or exaggerated manner. The program also includes an open-line segment that allows listeners to share their opinions on the topics discussed on the air, whether they agree with the host or not.
8. On 26 January 2009, during the program *Bouchard en parle*, the host was discussing a workbook used in a course on ethics and religious culture. Page 198 of the workbook featured text about Françoise David and a photograph with the caption [translation] “Introducing an activist for social justice.”
9. The host objected to the inclusion of Françoise David, a well-known politician and head of the Québec Solidaire party, in the workbook. He described her inclusion as [translation] “Communist political propaganda” and “socialist brainwashing,” and described Ms. David as a [translation] “Soviet leader” and a “Communist.”
10. The host stated that he would have had the same reaction had any other politician appeared in the workbook. He said that young people should be [translation] “taught how to think, not what to think.”
11. The host encouraged students to tear the page with Ms. David’s photograph out of their workbooks for a chance to win a copy of the video game *Guitar Hero*. He suggested that they [translation] “crumple up Françoise David’s face and ... put it where it belongs, the wastebasket, the garbage.”
12. The contest was scheduled to run for a week but ended on 30 January 2009, after CJMF-FM received a letter from Ms. David.

The complaints made by the complainant

13. Ms. David specifically complained about the following aspects of the program:
 - the host’s description of Ms. David as a [translation] “Soviet leader” and his having encouraged listeners to [translation] “crumple up Françoise David’s face and [...] put it where it belongs, the wastebasket, the garbage,” which in her view constituted personal attacks against her;
 - the host’s description of the workbook as [translation] “Communist political propaganda” and of the teachers as “left-wing unionist teachers” who engage in “socialist brainwashing.”
 - that urging students to tear out that page of the workbook was an incitement to violence ([translation] “crumple up Françoise David’s face”) and mischief;

- that the host's comments about Ms. David also targeted women in general; and
- that the host's comments were abusive and breached the high programming standard required of licensees under the *Broadcasting Act* (the Act); paragraph 3(b) of the *Radio Regulations, 1986* (the Regulations); and clauses 2, 7 and 17 of the *Canadian Association of Broadcasters' Code of Ethics* (the Code).

Response by CJMF-FM

14. CJMF-FM responded to Ms. David's complaint on 23 April 2009. The licensee expressed opposition first to the sections of the complaint that referred to breaches of sections of the *Criminal Code* and the *Civil Code of Québec*, arguing that these statements of fact and statements of law did not fall within the Commission's jurisdiction.
15. CJMF-FM stated that the station and its hosts, including Mr. Bouchard, are well known in the Québec radio market as a talk radio station, expressing opinions on topics of public interest. The licensee stated that criticism of Ms. David was legitimate because she is an active political figure and was recognized as such. CJMF-FM also stated that the opinion expressed by Mr. Bouchard, while debatable or exaggerated, was not unreasonable or offensive toward Ms. David and was restricted to her political life.
16. CJMF-FM also stated that the use of adjectives such as [translation] "Marxist," "Communist," "socialist" and "Soviet" was justified under the circumstances, considering that Québec Solidaire, the political party headed by Ms. David, has officially acknowledged that the Communist Party of Quebec has ties with or is represented within Québec Solidaire, as the host stated during the broadcast.
17. The licensee submitted that it did not breach any applicable regulations. Finally, the licensee stated that, on 4 February 2009, it had issued the following press release expressing its regrets:

[Translation] 93.3 acknowledges that this contest may have been considered to be in poor taste and may also have offended some people, including Françoise David, which the station regrets.

Commission's analysis and determinations

18. During its review, the Commission took into consideration the complainant's concerns, CJMF-FM's response, and its own analysis of the broadcast. The review was conducted in light of the prohibition against broadcasting abusive comments as set out in section 3(b) of the Regulations; the principles established in the Code; and the Canadian broadcasting policy objectives set out in the Act, including the high programming standard mentioned in section 3(1)(g) of the Act.

Statements concerning Ms. David

19. As stated above, Ms. David complained about being treated as a [translation] “Soviet leader,” “Marxist” and “Communist.” Ms. David also complained about the use of the phrases [translation] “Communist propaganda” and “socialist brainwashing” to describe her inclusion in the workbook.
20. In Public Notice 1988-213, the Commission specified that it considers “gratuitous personal attacks on individuals or groups ... examples of failure to meet the high programming standards required of each licensee.” More recently, in Broadcasting Decision 2002-189, the Commission stated that the right to criticize is not absolute and does not include the right to make personal attacks.
21. When the Commission analyzes a complaint made concerning a breach of the high programming standard, such as an allegation of personal attacks, the context in which the comments were broadcast is of great importance and must be taken into consideration.
22. Although the complainant and some listeners may have been shocked by the host’s statements, and although the Commission shares the station’s view that the contest could have been considered to be in poor taste, it is not the Commission’s responsibility to take regulatory action with regard to comments that are in poor taste. The right to freedom of expression, as indicated particularly in section 2(3) of the Act, includes the right to criticize and to broadcast controversial or unpopular opinions.¹
23. Under these circumstances, the Commission considers that the host’s statements do not constitute gratuitous personal attacks. The words chosen to describe Ms. David may have been exaggerated, unpleasant or in poor taste, but it remains that they pertained to the complainant’s public and political roles and not to her personal attributes or motivations. Furthermore, Ms. David was not being targeted as a woman. The host’s criticism of the inclusion of Ms. David in the workbook stemmed from his view that a politician and head of a political party should not appear in that publication. His view is that young people should not be “taught what to think, but rather how to think.” The host also stated that he would have had the same reaction had any other political leader appeared in the workbook. Furthermore, the host justified his comparison of Ms. David to a Soviet leader and a Communist by stating that Québec Solidaire acknowledges that some of its members belong to the Communist Party of Quebec.
24. The Commission notes that the program includes an open-line segment that features opinions, and that the statements were therefore clearly presented as the host’s opinions and not as objective facts. In this context, the Commission is satisfied with

¹ This principle was reiterated by the Commission in Broadcasting Decision 2006-293 (see paragraphs 26 and 27 of that decision).

CJMF-FM's response. The host had the right to express his opinion or criticism, however exaggerated or inappropriate, concerning a topic of public interest.

25. Consequently, the Commission concludes that the licensee did not breach the high programming standard set out in the Act.

Statements concerning teachers

26. The Commission has reached the same conclusion in regard to the host's criticism of teachers. In calling teachers [translation] "left-wing socialists," he was stating his opinion on the education of students, which is a topic of public interest. The host's comments cannot be considered personal attacks because he was not targeting teachers as individuals, but rather criticizing the way they teach young people (what to think instead of how to think).

27. In this context, the Commission concludes that the licensee did not breach the high programming standard.

Allegation of statements against women

28. As for the complainant's allegation that the host's comments were also directed against women, the Commission considers that at no point in the broadcast did the host make comments about women, let alone negative, abusive or offensive comments. Although the host's criticism targeted the inclusion of Ms. David, who is a woman, in the workbook, and although she has been involved in promoting women's rights, the criticism was related to her political deeds and opinions and not to her identity as a woman. A reasonable listener would quickly be able to understand that Mr. Bouchard was not attacking women as a group.

29. The Commission therefore concludes that, in this regard, no regulations were breached.

Incitement to violence

30. The complainant claimed that the host's encouraging young people to tear out page 198 of their workbook constituted incitement to commit mischief within the meaning of the *Criminal Code*, and that, by suggesting that they [translation] "crumple up Françoise David's face," he was inciting violence against her and against women.

31. With regard to the references to the *Criminal Code*, it is not within the Commission's purview to make determinations concerning allegations of criminal acts under the *Criminal Code*. The Commission considers that a reasonable listener would be able to understand the host's comment to be limited to the physical act of tearing out the workbook page without physically attacking Ms. David or women in general.

32. Consequently, the Commission concludes that Mr. Bouchard's comments in this regard do not breach the high programming standard.

General allegation of abusive comments under section 3(b) of the Regulations

33. Ms. David's complaint alleged a breach of section 3(b) of the Regulations; however, she did not indicate which comments breached this provision. The Commission therefore examined all of the comments aired in order to determine whether they breached section 3(b) of the Regulations.
34. The Commission shares CJMF-FM's view that the host's comments, specifically those directed against Ms. David, were not made on the basis of any of the attributes listed in section 3(b) of the Regulations.² As stated earlier, the Commission considers that Mr. Bouchard's criticisms were not directed against Ms. David as a woman, but as a politician. Furthermore, the Commission is convinced that the host's comments were not likely to expose an individual or group to hatred or contempt.
35. Therefore, the Commission concludes that the comments voiced by the host and broadcast by CJMF-FM did not breach section 3(b) of the Regulations.

Breach of Clauses 2, 7 and 17 of the CAB's Code of Ethics

36. The complainant also alleged that certain clauses of the Code were breached. The Commission notes that the CBSC, in its October 2009 decision, concluded that there was no breach of the Code. Although the Code is not imposed on radio licensees as a condition of licence, it represents what the broadcasting industry considers to be the high programming standard prescribed by the Act. Given the conclusions set out above, the Commission considers that the licensee did not violate the Code.

Conclusion

37. After examining the 26 January 2009 broadcast of the program *Bouchard en parle* and after considering the documents submitted by the complainant and by the licensee, the Commission concludes that the comments broadcast during the program *Bouchard en parle*, while unpleasant, did not breach the objectives of the Act or the Regulations.

Secretary General

Related documents

- *Complaints about the broadcast of episodes of the program Les Francs-tireurs by Télé-Québec*, Broadcasting Decision CRTC 2006-293, 14 July 2006
- *Short-term licence renewal for CHOI-FM*, Broadcasting Decision CRTC 2002-189, 16 July 2002

² Abusive comments are comments made on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age, or mental or physical disability of an individual or a group.

- *Policy regarding open-line programming*, Public Notice CRTC 1988-213, 23 December 1988