
APPENDIX C

CBSC Decision 05/06-0023 CHKG-FM re *Lac Viet Radio*

The Complaint

The CBSC received the following complaint, forwarded from the CRTC, dated September 6, 2005:

Dear CRTC,

I am writing to complain about Lac Viet Radio Programme on CHKG-FM, Vancouver:

Lac Viet Public Education Society
Đài Phát Thanh Lạc Việt FM 96.1
c/o 520 Kingsway
Vancouver, B.C. V5T 3J9
Tel: 604-307-8785
Fax: 604-708-8785

In their two broadcasts (7:00-10:00 am), on April 23/2005 and on April 30/2005, Lac Viet Public Education Society (Dai Phat Thanh Lac Viet FM 96.1) broadcasted a “special announcement”. This announcement was repeatedly read three times: two consecutive times on 23/04/2005 – by Ms. Tamy Dao first (*not recorded*) and then by Ms. Hong Tuoi (*recorded*) – and once more on 30/04/2005 by Ms. David Nhung [*sic*] (*recorded*). In the announcement, they flagrantly violated the listeners’ rights of speak [*sic*] and made serious lies and slanders concerning me (Tien The Nguyen).

(a) They unfoundedly announced that: “*From now on, we will not allow a group of distorters and destroyers against Lac Viet Radio to telephone in for discussing and urging. We do not consider them as our listeners (meaning that we exclude them from our audience). Concretely (meaning actually), we will not allow Mr. Tien The Nguyen to telephone in for discussing or arguing*”

(b) They blatantly lied that: “*Mr. Tien used uncultured words about Lac Viet Radio board in his talks with other Vietnamese seniors*”;

(c) They blatantly lied that: “*In the general meeting of the Vietnamese Community in Greater Vancouver (17/04/2005), Mr. Tien attributed the unfounded pro-communist tendency to Lac Viet Radio*”;

(d) They blatantly lied that: “*Mr. Tien hurt Mr. G. [R.] – a UBC lecturer – while Mr. G. [R.] ([N, A. Q.]) talked in a Lac Viet Radio broadcast*”;

(e) They blatantly lied that: “*Mr. Tien personally called Mr. G. [R.] many times in order to find fault with him, to admonish him and to deter him*”.

I think that Lac Viet Public Education Society (Dai Phat Thanh Lac Viet FM 96.1) obviously slandered me and they flauntingly violated the right of speak [*sic*] and the *Radio Regulations*, Part 1.1, Broadcasting Content, 3(a), (b), () [*sic*], (d), (e), page 8 of 19.

I wish

- (a) Lac Viet Public Education Society (Dai Phat Thanh Lac Viet FM 96.1) would be severely punished for their violations according to the *Radio Regulations*;
- (b) They should make written apologies and send those to me. They would announce their apologies on air during two broadcasts and in each one they would read their apologies twice;
- (c) They would publicize their apologies on the Vietnamese magazines: *Thoi Su, Phong Su* and *Tu Do*;
- (d) They would compensate me (*indemnify me*) for the loss of my reputation.

I completely believe in your fairness in arbitrating. Thank you very much.

Broadcaster's Response

The broadcaster responded on November 10 with the following:

With reference to your letter to the CRTC dated September 6, 2005 concerning a Vietnamese program on CHKG-FM 96.1 called *Lac Viet Radio*, we have transcribed the segments of programming you had taped on a cassette (Enclosure 1). Although there was no indication from the hosts' words the exact broadcast dates of the programming, we trust the information you have provided and shall call them the programming broadcast on April 23 and April 30 of 2005.

The relevant content of the taped programming is only about 3 minutes in length and it is mainly about an announcement made by the program hosts that you found non-agreeable. Apparently the same announcement was broadcast on April 23 as well as April 30 of 2005 and you have taped both broadcasts of the announcement in the cassette.

On your September 6, 2005 letter to the CRTC, you believe the *Lac Viet* radio programming has slandered you, and violated your right to speech as well as the *Radio Regulations* Part 1.1, Broadcasting Content, 3 (a), (b), (d) and (e). The above mentioned regulations are as follows:

A Licensee shall not broadcast:

- (a) Anything in contravention of the law;
- (b) Any abusive comment 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, color, religion, sex, sexual orientation, age or mental or physical disability;
- (c) Any obscene or profane language;
- (d) Any false or misleading news; or
- (e) Any telephone interview or conversation, or any part thereof, with any person unless
 - (i) The person's oral or written consent to the interview or conversation being broadcast was obtained prior to the broadcast, or
 - (ii) The person telephoned the station for the purpose of participating in a broadcast.

After a thorough study of the transcript of the segments you have taped, we cannot find the *Lac Viet* radio programming has violated any of the above regulations.

We do admit, however, it is very rare for our programs to issue a statement on air defending their ethics and principles. Nevertheless, I shall point out the fact that, on top of the numerous phoned-in comments you had made on air during the *Lac Viet* program before the April 23 & 30, 2005 incidents, you have sent letters to Lac Viet on March 20, 2004 and April 21, 2004, and you have published two full-page open letters on the *Phóng Sự* magazine in October (Enclosure 2) and November 2004 (Enclosure 3) respectively. Strong accusations were made against *Lac Viet* in those phoned-in comments, letters and announcements. Statements and accusations like, "On the morning of March 20, ... Your Program spoke about the 'yellow flag' using the same lines as the government of the communist party in Hanoi" (1), "... you insisted on 'asking the opinions of the majority' in the style of the Hanoi regime, 'provocative and unfair' ..." (2), "I hope the Producer and all of *Lac Viet* staffs will change and choose the correct mission for your Radio program in the near future" (3), "the 7 of you have sat on the head of the motherland and the people" (4), are slanderous and have seriously damaged the goodwill and reputation of *Lac Viet* and their producers, hosts, guests and supporters. It was only as the last resort that *Lac Viet* has decided to issue a statement on air.

The nature of the problem in this case, we believe, is the difference in perception of what kind of program *Lac Viet* should be. Due to the training and expertise of the producers and program hosts, the target audience at that particular time slot (early Saturday morning) and the format of the program, we have decided from the very beginning that this radio program be informative but non-political and non-religious. Naturally our decision would not please everyone in the Vietnamese community and we have received anonymous complaint letters against *Lac Viet* for not displaying the Vietnamese nationalist flag (former South Vietnam national flag) at its functions and not playing the South Vietnam nationalist anthem at the beginning of the radio program. Those anonymous letters even jumped to the conclusion that *Lac Viet* is pro-Communist. However, we still believe the *Lac Viet* radio program is more beneficial to the Vietnamese Community if the program remains neutral of political standing and put the emphasis on education, community network and, for new immigrants, on how to adjust to life in Canada.

Although *Lac Viet* has an open-line segment that welcomes listeners to phone in, we also have very strict regulations on how to handle phone-ins and who to put on air. We advise our producers to screen all incoming calls, be especially cautious when dealing with controversial topics and know when to move on from overly heated arguments or possibly abusive comments. *Lac Viet* is a live program and we as the licence holder of this radio station is [sic] ultimately responsible for all comments made on air, whether they are from the hosts, the guests or the callers. We can't help but to stay on the conservative side.

Nevertheless, it is not our intention to upset anyone with our programming. Should you feel deprived of your freedom to speak on air, that you were never given a chance to defend yourself, or you feel you are not allowed the opportunity to express your points of view, we invite you to give us a written statement to address the issue on hand and we shall broadcast your statement on the *Lac Viet* program.

When reading your statement on air, we will make it clear that the statement is supplied by you and that it only reflects your belief and points of view, not of the radio station.

Please limit the length of your statement to 500 words, content of which should be fair and truthful. It should also be free of personal attacks and abusive comments. Please submit

your statement to the undersigned in Vietnamese and English and we shall forward it to the CBSC for reference and advice. Should any part of the statement appear to be unsuitable for broadcasting on air, we shall inform you and work out the changes together. When the statement is announced on air, we will tape it for record.

Please make use of this opportunity to let your opinions be known to our audience.

Should you have any questions regarding this matter, please feel free to contact the undersigned at (###) ###-#### or fax to (###) ###-####.

Notes: The original Vietnamese texts read:

- (1) “Cũng sáng 20/3, ... Quý Đài đã nói về “lá cờ vàng” theo kiểu nói của chính quyền của đảng cộng sản Hà Nội.”
- (2) “... cái “tôn chỉ phi chính trị” mà Đài Lạc Việt đã chọn lựa mười năm về trước, kiên trì nó đến nay và nhất định vẫn cố chấp nó như quý vị đã khẳng định khi “trưng cầu ý kiến số đông” theo kiểu Hà nội – “xách động và unfair” sáng 20-3.”
- (3) “Tôi mong mỗi bà Giám đốc và toàn Ban Lạc Việt sẽ thay đổi đúng hướng cái tôn chỉ của Đài trong thời gian tới.”
- (4) “7 vị đã ngồi lên trên đầu tổ quốc và dân tộc.”

Enclosures:

- Enclosure 1: Transcript from cassette, segments of programming on April 23 & 30, 2005.
 Enclosure 2: Open Letter from Mr. Tien The Nguyen published on *Phóng Sự* magazine, October 2004.
 Enclosure 3: Open Letter from Mr. Tien The Nguyen published on *Phóng Sự* magazine, November 2004.

Additional Correspondence

The complainant returned his Ruling Request by both regular mail and website form on November 22 with the following note:

In my understanding, the response sent to me and signed by Ms. [S. H.], Director of International Program, Fairchild Radio, did not exactly deal with the complaints I had submitted to CRTC and to CBSC.

Would you please fairly arbitrate this dispute in order to enforce the CBSC's broadcasting regulations and to consolidate the public's trust in CBSC.

Would you please ignore the first form I sent to you. Thank you very much.

Fairchild Radio sent additional information to the CBSC on December 2:

Thank you for your email dated December 1, 2005. I understand the CBSC B.C. Regional Panel will study the case in the next meeting and we would like to provide you with the transcripts of the two letters sent from Mr. Tien The Nguyen to *Lac Viet Radio* program dated March 20, 2004 and April 21, 2004. These two letters are not new evidence. On our reply to Mr. Tien The Nguyen dated November 10, 2005 (also c.c. to CBSC), we have quoted from

them (on page 2 of our letter) but we did not include the whole body of the letters in our enclosure. As a result, the quotes might seem a little out-of-the-blue and might not do Mr. Tien The Nguyen justice. We have now included the original letters in Vietnamese and the transcription in English.

Meanwhile, we shall not take further action on this case and will wait patiently for CBSC's adjudication.

Should you have any questions regarding this matter, please feel free to contact the undersigned at (###) ###-#### or fax to (###) ###-####.

The complainant sent another letter on January 13, 2006:

I would like to submit to you this supplemental document in order to clarify my complaint and ruling request submitted to you (CBSC File C05/06-0023). I hope this document would help you more in making a relevant decision on the issue.

First, I would like to emphasize that I am complaining about LAC VIET PUBLIC EDUCATION SOCIETY or DAI PHAT THANH LAC VIET FM 96.1 (LVPES/DPTLV)'s violations in their broadcasts such as the following.

1. LVPES/DPTLV has eliminated a large group of Vietnamese British Columbians listeners (VBCLs) to their broadcasts and has not allowed these VBCLs (to call in) to participate in the discussions on numerous controversial issues presented. Therefore, LVPES/DPTLV has violated the right of getting information as well as the right of expressing opinions.
2. LVPES/DPTLV lied blatantly about the relationship between Mr. [C. R.] and Mr. Tien The Nguyen (Mr. Tien has not known Mr.[C.]'s telephone number). Being on air, Mr. [C.] only gave Mr. Nguyen the email address [...@...]. You can check the fact with Mr. [R.].
3. LVPES/DPTLV presented unfairly many public controversial issues in Vietnamese British Columbians community; LVPES/DPTLV were frequently allotting more time and allowing more expressing-turns in the discussions on controversial issues to get more support for LVPES/DPTLV's point of view and to suppress the con side.
4. LVPES/DPTLV frequently used and broadcasted coarse, aggressive and abusive languages in their broadcasts criticizing and attacking the opponents.
5. LVPES/DPTLV frequently encouraged anonymous callers-in (no names cited, no phone numbers cited) to criticize and to attack its opponents in almost all discussions on controversial issues presented.

Secondly, I would like to inform you that I sent to you by post one more audio tape, containing recorded witnesses supporting my above-stated points. You will receive the tape in a few days later. In order to save your time and money, not all the whole recorded discussions were sent to you. Later, if you ask me to send you any whole discussion, I will then satisfy your request.

Thirdly, I believe that precise translations of taped broadcasts into English will help you save your time and the tax-payers money in the would-be adjudication. Therefore, I would like to suggest you to hire licensed translators to help you. Moreover, I would like also to advise that you need not dealing with the controversial issues in the Vietnamese Canadian community contained in the taped broadcasts, although they really are the main causes of the conflicts in the Vietnamese British Columbians community.

Fourthly, based on their behaviour, I think no one of the LVPES/DPTLV's staffs/members (including the president/the director) has the relevant qualification requested by the standards of CRTC and of CBSC. Probably, they committed mistakes because they did not read even did not understand the CRTC's *Radio Regulations* and the CBSC Codes. Would you please ask LVPES/DPTLV to have qualified staffs and request them to have those relevant staffs by prohibiting the unqualified ones. I think that this will enforce the CBSC Codes and the CRTC's *Radio Regulations*; consequently, the public's trust in CBSC and in CRTC will be consolidated.

Fairchild Radio sent the CBSC the English translations of the transcripts with the following letter:

On the following pages please find the English translation of the material submitted to the CBSC by Mr. Tien The Nguyen on January 12, 2006.

- Enclosure 1: English translation of Mr. Tien's written excerpt of the *Lac-Viet* programming, titled "Side A"
- Enclosure 2: English translation of Mr. Tien's written excerpt of the *Lac-Viet* programming, titled "Side B"
- Enclosure 3: Transcript of the cassette tape (side B only) provided by Mr. Tien, containing excerpts of the *Lac Viet* programming

According to the transcript, Mr. Tien only selected pieces of radio programming to support his argument. Those excerpts were cut and paste clips from different dates and were taken out of context. Many examples of ill-mannered tones and strong comments that Mr. Tien found upsetting were not even from the hosts, but the callers. My assumption is that by submitting the excerpts, Mr. Tien wanted to prove to the CBSC that the *Lac Viet* hosts are unprofessional broadcasters because they use "attacking intonation" that is "not suitable for a democratic discussion", "nagging intonation" that is "only suitable for nagging a husband", not properly addressing an elderly person knowing he is over 70 years old, using "heavy words without evidences", interrupting callers' opinions and cutting short callers' calls. (Enclosure 1 and 2)

However, what the pre-edited, heavily manipulated excerpts did not show was the fact that since its airing on 96.1FM in 2002, *Lac Viet* has served as a trusted forum for exchanging ideas. It provides fair opportunities to people of different points of view to express their opinions, whether they agree with *Lac Viet* or not.

If the excerpts prove anything, it is that Mr. Tien himself frequently utilized this forum to express his opinion. Knowing all along that Mr. Tien did not agree with *Lac Viet* on many issues, the hosts of *Lac Viet* still put Mr. Tien on air and allowed him a lengthy talk to respond to accusations made by the Committee against Anonymous Letters and other listeners. Ironically, when he was put on air and encouraged by the hosts to voice his opinion, Mr. Tien stated more than once that he "would not answer (the accusations) directly today", and he "would not enter into a discussion today", but would "continue to discuss in the magazine". (Enclosure 3)

The disagreement between *Lac Viet* and Mr. Tien has a very complicated background. Issues like whether or not to display the Yellow Flag (resembling the flag of the former government of South Vietnam, a symbol of anti-Communist, anti-North Vietnam) and whether or not to sing the national anthem of South Vietnam at public functions are controversies that

split the community. Some people, especially the hardcore anti-Communists, interpret anyone's refusal to perform the above as signs of "pro-Communist", "turning a blind eye and a deaf ear to the suffering of refugees"; while there are other people, though they identify themselves as anti-Communists, do not approve of the former government of South Vietnam and do not think this former government was a shining example of human rights, thus they do not support having the Yellow Flag as the symbol of their homeland.

In the issues of the Yellow Flag and the national anthem, *Lac Viet* wants to remain neutral. It does not take side with the Communists, but it doesn't take side with the Anti-Communists either. Many people including Mr. Tien are upset by *Lac Viet*'s decision of not displaying the Yellow Flag at its functions and not including the South Vietnam national anthem at the beginning of each program. Yet the majority of listeners agree with *Lac Viet*, resulting in a war of widely distributed anonymous letters, articles in newspapers and magazines, and threats. At one point, *Lac Viet* even called the police for help. Members of the *Lac Viet* program, together with other community groups, set up a committee called Committee Against Anonymous Letters. The Committee organized a press conference on October 24, 2004 and asked the police to sit on panel at the press conference. On the day of the press conference, a VPD liaison officer called and said because the topic was politically related and the threats of physical harms against *Lac Viet* contributors were under investigation, it would not be appropriate for the police to be represented.

Mr. Tien is one of the most vocal in expressing his opposition to *Lac Viet*. He had called in the *Lac Viet* program – and was often put on air – almost on a weekly basis before *Lac Viet* made the statements on April 23 & 30, 2005. He has also been publishing numerous articles on newspapers, magazines and the internet to support his accusation. Mr. Tien is a well-known person and a man of resources, making generous contributions to newspapers and magazines. He confidently stated in his call to *Lac Viet* that "with each publication of (a certain) magazine", he will have "at least 2 writings". He even told *Lac Viet* upfront that of those two writings on the magazine, "one will offend *Lac Viet*". (Enclosure 3)

As a radio station, our job is to provide a fair and balanced radio program to our listeners but we will not put pressure on our producers and hosts regarding their political orientation. I can't lie but admit that sometimes I do worry about their personal safety. Being labeled a pro-Communist is a serious matter, it could cause retaliation from some hostile extremists in the community. That is why the *Lac Viet* hosts were so frustrated, even appeared to be paranoid, over Mr. Tien's numerous articles printed on media and his many speeches made at different community gatherings. (The Open Letters published on the October and November issues of *Phóng Sự* magazine under Mr. Tien The Nguyen's name are examples of those articles, transcripts of which have been submitted to the CBSC with our November 10, 2005 reply).

Our position remains the same as our November 10, 2005 reply. It is not our intention to upset anyone including Mr. Tien. If Mr. Tien feels he has been deprived of his opportunity to express himself, we welcome him to provide us a written statement to clarify his viewpoint and we shall read it on air.

A bit of progress has been made since Mr. Tien's letter to the CBSC dated January 12, 2006. On February 11, 2006 Mr. Tien called in live during the *Lac Viet* program. The special guest of the day was a famous singer-songwriter Mr. Tuan Khai Pham. The hosts assumed it should be a safe topic to allow Mr. Tien's participation so Mr. Tien was put on air. According to our hosts, the conversation started politely. Mr. Tien remarked it was nice to have Mr. Pham on air in Vancouver. Then Mr. Tien started to change direction and made some unfavorable comments about a caller before him. The hosts hurried Mr. Tien to finish his talking but thanked him for his opinion. Though briefly, Mr. Tien did speak on air for about two to three minutes (the hosts even let him finish reading his poem on air). This gesture

showed our program's sincere intention to move on and to compromise. We hope this little progress can be the first step to a long journey of understanding and working together.

I understand the panel of CBSC will discuss the case on May 9, and we are ready to receive your judgement. Should there be any question regarding the case, please feel free to contact the undersigned at (###) ###-#### or fax to (###) ###-####.