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**CANADIAN BROADCAST STANDARDS COUNCIL**

**ONTARIO REGIONAL PANEL**

**CIHT-FM re a “Josie & The City” segment on *The Morning Hot Tub***

(CBSC Decision 08/09-1628)

Decided June 25, 2009

M. Ziniak (Chair), H. Hassan (Vice-Chair), M. Hamilton, J. Pungente

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**THE FACTS**

*The Morning Hot Tub* is CIHT-FM (Hot 89.9, Ottawa)’s morning show which airs weekdays from 5:30 to 9:00 am. It is hosted by Mauler, Rush, Jenni and Josie and consists of news, music, traffic and weather updates, discussions of current affairs, and humorous banter among the hosts. In one recurring segment on the program, called “Josie & The City”, Josie discusses entertainment news and celebrity gossip. The “Josie & The City” segment on May 5, 2009 began at 7:43 am. A transcript of the pertinent parts of the dialogue follows (a more complete transcript can be found in Appendix A):

Josie: Oprah is ready to let her audience in on some big O secrets.

Jenni: Ooh.

Rush: Oh?

Josie: And in this case the “O” stands for ... “orgasm”.

Jenni: Yes. [Jenni & Josie laugh]

Rush: Oprah Winfrey ... on my mind.

Josie: The truth is in the, uh, sagging market, even Oprah's ratings are, uh, experiencing a little lull.

Jenni: Mm hm.

Josie: So, um, she's decided that this is what's going to give her show the boost it needs.

Jenni: All right.

Josie: Uh, when she had sex therapist Doctor Laura Berman on –

Jenni: Amazing!

[...]

Josie: Now, it was very controversial.

Rush: Mm hm.

Josie: Very controversial. Because, uh, Doctor Laura suggested that young girls be introduced to vibrators.

Jenni: Mm hm.

Josie: So that they don't have to rely on other boys –

Jenni: Mm hm.

Josie: – for, uh, for pleasure. And that was –

Rush: Hey, we can't shake that fast!

Josie: Pardon me?

Rush: We can't shake that fast. [Jenni laughs]

Josie: Oh my goodness! You're right.

Rush: Yes!

Josie: You're right. You're not powered by Duracell.

Rush: We are not.

Josie: Uh huh.

Rush: I mean, maybe if we're really, really cold, but that's about it. [Jenni & Josie laugh]

Josie: So, uh, so anyways that show was very controversial. And, you know, the ratings went through the roof, uh, Oprah's phones lit up, message boards lit up.

Rush: Mm hm.

Josie: And so, uh, the Big O has decided talking about big Os –

Jenni: Yeah.

Josie: – uh, is good for her ratings, so she has now instructed her producers to come up with more sex-related topics to discuss on her show. So you can expect a lot more of Doctor Laura Berman in the future.

The CBSC received a complaint about the segment on May 5. A parent was concerned that the conversation about the Oprah Winfrey show was inappropriate sexual content for morning radio. He outlined his concerns, in part, as follows (the full text of all correspondence can be found in Appendix B):

While driving my children to school (ages 13 and 10), the “Josie & The City” segment came on and the subject was Oprah Winfrey's next program about the big O, not standing for Oprah, but for “orgasm”. This led to a side conversation about a prior Oprah show, which was referred to as very controversial, in which a noted sex therapist recommended the introduction of young girls to vibrators, so that they did not have to rely on boys for pleasure.

I was trying to turn the radio off, because the content was way beyond the realms of what I consider to be appropriate for a station whose primary demographic includes pre-teen and teen listeners. My 13-year-old daughter was blocking my access to the power button because the content piqued her curiosity, so more was heard than I wanted.

This is not the only occasion that I have had to turn off that station because of the adult nature of the content at that time of day, however, it is the only occasion that I was unable to turn off the power and far too much was heard by my children.

[...]

What mechanism is there to ensure that inappropriate content is not aired without warning to parents of children who only want to listen to that radio station, other than me turning off the power when I am offended by what I (and my children) hear?

The Hot 89.9 Program Director responded to the complainant on May 12:

I have received your letter and have reviewed the segment from the morning show that you make reference to. We do not make a habit of warning our audience about questionable topics as the show is unscripted and many of the comments are ‘off the cuff’ as was the case with this particular topic.

Our target demographic is females 25 to 34, and, as a result, our conversations are often considered inappropriate for younger listeners.

The complainant submitted his Ruling Request on May 12 and included a letter he had sent back to the station:

The broadcaster essentially ignored my concern, and I would like to know if the content should have been preceded by a warning, which would have allowed me to prevent my children from hearing the content in question.

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Target demographic aside, there are broadcast standards for a reason, and there is a code of ethics in place. I assert that the program in question contravened the standards and all I was looking for is some mechanism to allow those that are concerned to take measures to prevent children from being exposed to adult content.

Since the program is scheduled before the watershed hour, it would seem to me that the program directors should be required to advise listeners that the topic they are about to discuss may contain material that is inappropriate for some members of the audience. Even programming that occurs after the watershed hour carries such a warning.

Having planned to discuss a television program that dealt with orgasm, I find it offensive that you hide behind a defense of "unscripted" programming and "off the cuff" remarks. If your station has the sense to issue a warning before playing Britney Spears' "If You Seek Amy", I fail to comprehend why you can't air the same warning prior to engaging in unscripted banter about topics that involve sexuality at 7:40 in the morning.

What you have done by responding in a completely disenfranchised manner with no concern related to the justifiable objection of a listener to content that is clearly inappropriate for young listeners, is guarantee that your audience will shrink by, as a minimum, one family.

This reply to you will most certainly be followed by a ruling request to the CBSC to determine if I am correct in my assertion that your discussion contravened accepted standards in Canadian broadcasting.

## THE DECISION

The Ontario Regional Panel examined the complaint under Clause 9 (Radio Broadcasting) of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* which reads as follows:

Recognizing that radio is a local medium and, consequently, reflective of local community standards, programming broadcast on a local radio station shall take into consideration the generally recognized access to programming content available in the market, the demographic composition of the station's audience, and the station's format. Within this context, particular care shall be taken by radio broadcasters to ensure that programming on their stations does not contain:

[...]

b) Unduly sexually explicit material; and/or

[...]

The Panel Adjudicators read all of the correspondence and listened to a recording of the challenged segment. The Panel concludes that CIHT-FM did not violate the aforementioned Code provision.

### **Explicit versus Suggestive Content**

While the CBSC has considerable sympathy for the position of the father driving his daughter to school on the date of the challenged broadcast, the Council's challenge is to weigh freedom of speech with the codified standards to which the complainant has alluded. To make that assessment, the Council has over the years developed jurisprudence relating to the word "unduly" in Clause 9(b). CBSC Panels have decided that "unduly sexually explicit material" means material that is too explicit for daytime or early evening radio hours, namely, times of the day at which children are likely to be listening. This category includes detailed descriptions of actual sexual activity or extremely obvious references to an actual sexual act. Among the types of content falling into the converse of that category are sexual innuendo, double entendres, the mere mention of body parts, and mild references to sexuality. Examples of the latter category, which the Panel considers are of most relevance to the broadcast in the matter at hand, follow.

In *CFMI-FM re Brother Jake Morning Show (Wake up Contests)* (CBSC Decision 01/02-0875, January 14, 2003), for example, the British Columbia Regional Panel dealt with two radio contests, one entitled "Wake Up Woody" and the other "Wake Up Wendy". On-air contestants had to use innovative sexual techniques to wake up their sleeping partner while the *Brother Jake Morning Show* crew listened on the telephone and *broadcast* the stunt. The on-air hosts explained the contest with comments such as "you go downtown" and "south of the equator". When Jake asked one of the recipients of the stunt what had happened, she said that her boyfriend was "climbing between my legs and, you know, trying to wake me up." A listener felt that both the contests' concept and the actual dialogue that took place during the stunts were too sexually explicit for a time when families were getting ready for work and school. Basing its decision on past cases involving both sexual innuendo and sexually explicit dialogue, the B.C. Regional Panel concluded that the content broadcast as part of these contests could not be found in breach of the Code:

In the matter at hand, the Panel finds considerable sexual banter that is on the edge but nothing that falls over it. The contest is filled with double entendres and suggestive comments; however, after examining the comments closely, the Panel concludes that there is nothing that is explicit enough to be in breach of the Code provision. The Panel is not even convinced that all children would even understand the innuendo; however, even if some might, the Adjudicators are not of the view that the two contests are sufficiently explicit to fall afoul of the Code. When Panels reach such conclusions, they

are constrained to decide that the principle of freedom of speech overrides suggestive or taste-doubtful content.

In *CFRQ-FM re Morning Show ("Faking It" Contest)* (CBSC Decision 01/02-1137, March 7, 2003), the Atlantic Regional Panel dealt with a complaint about a fake orgasm contest. Apparently in honour of "Second Annual National Orgasm Day", the morning show hosts invited listeners to call in and fake an orgasm on the air. They took three calls during the program, each participant providing a comedic take on a fake orgasm, such as baa-ing like a sheep and interjecting the French expression "j'arrive". A listener felt that this was inappropriate material for times of the day when children could be listening. The Panel concluded that, although the content had a sexual theme, no comments were made that could be considered explicit:

In the present case the Atlantic Panel finds that there was no explicitness involved. In the first place, the term "fake" was used repeatedly. Not only was there no suggestion of reality, but there was also no detail or description of an explicit sexual act. All the callers seemed to be providing their own take on the sexual silliness that characterized the "contest". At *worst*, the Panel finds that the material may be juvenile, tasteless or inappropriate, but there is nothing about the content that moves it from the inappropriate to the unacceptable. In other words, even if children might have been listening (and the station's demographics do not suggest that this *might* have been the case), the subject matter would not have presented a problem. The Panel finds no breach of the above-cited provision of the *CAB Code of Ethics* here.

In *CJAY-FM re Forbes and Friends (joke songs and parody advertisement)* (CBSC Decision 02/03-0674, December 15, 2003), the Prairie Regional Panel decided that a parody advertisement for a product called "Mr. Big, the Wiener Wizard", which claimed it was able to "double the size of your wiener", was not over the edge.

The parody commercial for the Wiener Wizard is, in the view of the Panel, entirely dependent on an understanding of the double entendre at play. It falls squarely into the category of innuendo and there is nothing on the face of the parody that would even suggest a sexual component to the utterly uninstructed. Such humour is not in breach of Clause 9(b) of the *CAB Code of Ethics*. The third item, the joke song that refers to the "enormous penis" is closer to the edge.

[...]

The suggestion of a swollen member here is, of course, closer to the sense of sexual activity but the thrust of the song is not clearly that. While the question of bad taste is certainly present, the Panel is constrained to reiterate the CBSC's position that taste alone is a matter for the on/off switch or the change of station dial. The discussion of penis size is not in and of itself sufficiently unequivocally a sexual matter that it can be said to be in breach of the Code. It is sufficiently on the cusp that it must be protected by the underlying principle of freedom of expression.

While there are many more decisions of various CBSC Panels that deal with this issue, the Panel considers that the foregoing examples make it clear that the reference to orgasm, vibrators and "shaking that fast" are mild and unexplicit enough to be permissible at times of the day when children could be expected to be listening.

Parenthetically, the Panel wishes to clarify the point raised by the complainant regarding the Watershed (the period between 9:00 pm and 6:00 am, outside of which no programming destined exclusively for adults can be broadcast on television). That is a television “tool” that has not yet been adapted for radio broadcasts. The equivalent has been the just-noted reference to the fuzzier notion of “times of the day when children could be expected to be listening.” The Panel is also quite conscious of the fact that the discussion by Josie may not be free from embarrassment for a parent, who might wish to choose his or her moment to broach such matters with a child. Nonetheless, the codified standards cannot be expected to sanitize the airwaves; they must balance the rights of those who speak and those who listen. In this case, as noted above, the Panel is of the view that the challenged programming may be broadcast, even at a time of the day when children could be expected to be exposed to it.

That said, the complainant has raised another fair, and important, issue, namely, the prospect of “some mechanism to allow those that are concerned to take measures to prevent children from being exposed to adult content.” CBSC Panels have often noted that broadcasters are customarily aware of their audiences and their needs and interests. While there is no *requirement* for listener advisories on radio (as there is for viewer advisories on television in certain circumstances), a radio station could always choose to alert its listeners of forthcoming problematic content. An informal, helpful, although not mandatory, advisory could benefit listeners such as the complainant in this instance. Even though, as the Program Director has said, the station does “not make a habit of warning our audience about questionable topics,” it might choose to revisit the idea at appropriate times, even though there is no obligation to do so.

On the substance of the complaint, though, the Panel does conclude that there was no unduly explicit sexual content in the challenged episode. Consequently, there was no breach of Clause 9(b) of the *CAB Code of Ethics*.

### **Broadcaster Responsiveness**

In all CBSC decisions, the Council’s Panels assess the broadcaster’s responsiveness to the complainant. In the present instance, the Panel finds that the response of CIHT-FM’s Program Director was rather short and not particularly helpful with respect to the concerns of the complainant. Since it touched on a principal concern of the complainant regarding listener advisories, it was responsive, but the Panel considers that it ought to have evidenced greater sensitivity toward the full nature and depth of the concerns. In the end, the Panel considers that CIHT-FM has just crept over the threshold of meeting its responsiveness responsibilities of CBSC membership.

*This decision is a public document upon its release by the Canadian Broadcast Standards Council. It may be reported, announced or read by the station against which the complaint had originally been made; however, in the case of a favourable decision, the station is under no obligation to announce the result.*

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## APPENDIX A

### CBSC Decision 08/09-1628 CIHT-FM re a “Josie & The City” segment on *The Morning Hot Tub*

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The *Morning Hot Tub* is the morning show of CIHT-FM (Hot 89.9, Ottawa) which airs from 5:30 to 9:00 am on weekdays. It is hosted by Mauler, Rush, Jenni and Josie. One recurring segment on the program is called “Josie & The City” in which Josie discusses entertainment news and celebrity gossip. The following segment aired on May 5, 2009 at 7:43 am.

Rush: It is time now for Josie & The City brought to you by the Ottawa Hospital and CHEO Lottery. Hurry up, the deadline for the early bird tickets is Friday.

Josie: Oprah is ready to let her audience in on some big O secrets.

Jenni: Ooh.

Rush: Oh?

Josie: And in this case the “O” stands for ... “orgasm”.

Jenni: Yes. [Jenni & Josie laugh]

Rush: Oprah Winfrey ... on my mind.

Josie: The truth is in the, uh, sagging market, even Oprah’s ratings are, uh, experiencing a little lull.

Jenni: Mm hm.

Josie: So, um, she’s decided that this is what’s going to give her show the boost it needs.

Jenni: All right.

Josie: Uh, when she had sex therapist Doctor Laura Berman on –

Jenni: Amazing!

Josie: I don’t –

Jenni: I love her!

Josie: Yeah, did you see those shows?

Jenni: Yes! She’s so good.

Josie: Oh, that was so, so good!

Jenni: Yes!

Josie: Now, it was very controversial.

Rush: Mm hm.

Josie: Very controversial. Because, uh, Doctor Laura suggested that young girls be introduced to vibrators.

Jenni: Mm hm.

Josie: So that they don't have to rely on other boys –

Jenni: Mm hm.

Josie: – for, uh, for pleasure. And that was –

Rush: Hey, we can't shake that fast!

Josie: Pardon me?

Rush: We can't shake that fast. [Jenni laughs]

Josie: Oh my goodness! You're right.

Rush: Yes!

Josie: You're right. You're not powered by Duracell.

Rush: We are not.

Josie: Uh huh.

Rush: I mean, maybe if we're really, really cold, but that's about it. [Jenni & Josie laugh]

Josie: So, uh, so anyways that show was very controversial. And, you know, the ratings went through the roof, uh, Oprah's phones lit up, message boards lit up.

Rush: Mm hm.

Josie: And so, uh, the Big O has decided talking about big Os, –

Jenni: Yeah.

Josie: – uh, is good for her ratings, so she has now instructed her producers to come up with more sex-related topics to discuss on her show. So you can expect a lot more of Doctor Laura Berman in the future.

Jenni: Yes.

Rush: All right.

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## APPENDIX B

### CBSC Decision 08/09-1628 CIHT-FM re a "Josie & The City" segment on *The Morning Hot Tub*

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#### The Complaint

The CBSC received the following complaint on May 5, 2009 via its webform:

station: CIHT Radio (HOT 89.9) Ottawa  
program: *Morning Hot Tub*: Mauler, Rush, Jenni and Josie  
date: May 5, 2009  
time: 7:40 am  
concern: Inappropriate sexual content.

While driving my children to school (ages 13 and 10), the "Josie in the City" segment came on and the subject was Oprah Winfrey's next program about the big O, not standing for Oprah, but for "orgasm". This led to a side conversation about a prior Oprah show, which was referred to as very controversial, in which a noted sex therapist recommended the introduction of young girls to vibrators, so that they did not have to rely on boys for pleasure.

I was trying to turn the radio off, because the content was way beyond the realms of what I consider to be appropriate for a station whose primary demographic includes pre-teen and teen listeners. My 13-year-old daughter was blocking my access to the power button because the content piqued her curiosity, so more was heard than I wanted.

This is not the only occasion that I have had to turn off that station because of the adult nature of the content at that time of day, however, it is the only occasion that I was unable to turn off the power and far too much was heard by my children.

I tried to look up the contact information for the radio station and my server will not allow access because the content of the radio station is considered inappropriate by my Department.

What mechanism is there to ensure that inappropriate content is not aired without warning to parents of children who only want to listen to that radio station, other than me turning off the power when I am offended by what I (and my children) hear?

#### Broadcaster Response

The station responded on May 11:

I have received your letter and have reviewed the segment from the morning show that you make reference to. We do not make a habit of warning our audience about questionable topics as the show is unscripted and many of the comments are 'off the cuff' as was the case with this particular topic.

Our target demographic is females 25 to 34, and, as a result, our conversations are often considered inappropriate for younger listeners.

Thank you for your feedback; I will be sharing it with Mauler, Rush, and Jenni as well.

## **Additional Correspondence**

The complainant replied to the station on May 12:

Target demographic aside, there are broadcast standards for a reason, and there is a code of ethics in place. I assert that the program in question contravened the standards and all I was looking for is some mechanism to allow those that are concerned to take measures to prevent children from being exposed to adult content.

Since the program is scheduled before the watershed hour, it would seem to me that the program directors should be required to advise listeners that the topic they are about to discuss may contain material that is inappropriate for some members of the audience. Even programming that occurs after the watershed hour carries such a warning.

Having planned to discuss a television program that dealt with orgasm, I find it offensive that you hide behind a defense of "unscripted" programming and "off the cuff" remarks. If your station has the sense to issue a warning before playing Britney Spears' "If You Seek Amy", I fail to comprehend why you can't air the same warning prior to engaging in unscripted banter about topics that involve sexuality at 7:40 in the morning.

What you have done by responding in a completely disenfranchised manner with no concern related to the justifiable objection of a listener to content that is clearly inappropriate for young listeners, is guarantee that your audience will shrink by, as a minimum, one family.

This reply to you will most certainly be followed by a ruling request to the CBSC to determine if I am correct in my assertion that your discussion contravened accepted standards in Canadian broadcasting.

The complainant also filed his Ruling Request on May 12, attaching the above letter he sent to the station:

Attached is my response to the radio station, which was copied to [the CBSC], and I include here for completeness.

The broadcaster essentially ignored my concern, and I would like to know if the content should have been preceded by a warning, which would have allowed me to prevent my children from hearing the content in question.

Target demographic aside, there are broadcast standards for a reason, and there is a code of ethics in place. I assert that the program in question contravened the standards and all I was looking for is some mechanism to allow those that are

concerned to take measures to prevent children from being exposed to adult content.

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