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## APPENDIX B

### CBSC Decision 08/09-0650 CFNY-FM re a "Spencer the Cripple" segment on the *Dean Blundell Show*

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#### The Complaint

The following complaint dated January 7, 2009 was sent to the CRTC and forwarded to the CBSC in due course:

At approximately 8:45 am on Monday January 5, 2009, I was listening to the "Edge" 102.1 in Toronto to a show I later learned is called "Spencer the Cripple" (I understand this to be a regular weekly spot). It generally consists of the 2 hosts asking extremely baseless and degrading questions largely focused on the sexual and bathroom habits of what I understand to be a quadriplegic man by the name of Spencer. I understand the object of the show is to generally sensationalize the "patheticness" and degrade the life and experiences of Spencer.

I enjoy "politically incorrect" humour but this so crossed the line in offensiveness I was in absolute disbelief that this is approved regulated Canadian content. It is so disrespectful on so many levels that I simply cannot believe that it can continue to be aired. It saddened me that we would allow this to be an expression of any broadcasting privilege, creativity or Canadian values or humanity. I await your response. Many thanks.

Once the complainant learned from the CRTC that the CBSC would be dealing with her complaint, she sent the following note directly to the CBSC on January 13:

Thank you too for your quick response. I did send a complaint to the station via email on January 5, but I never heard back from them. Just to clarify, while I complained about the January 5 segment, I understand "Spencer the Cripple" is a regular Monday morning segment so there may be some value in reviewing other segments which are unfortunately similar in content.

#### Broadcaster Response

CFNY-FM responded to the complainant with a letter dated January 28:

The Canadian Broadcast Standards Council (the "CBSC") has asked us to respond to your email of January 5, 2009 in which you raised concerns regarding comments made during *Dean Blundell Show* that aired on CFNY-FM that morning. Specifically, you take exception to the program hosts' discussion with a character known as "Spencer the Cripple", which you thought "crossed the line in offensiveness" and [was] "disrespectful on so many levels".

We have reviewed a tape of the program, and note that the comments you refer to were made within the context of a regular segment with Spencer Miller (or Spencer "the Cripple", as he refers to himself). While we appreciate that you may have been offended by the discussion, we do not believe that the comments were in any way a breach of the Canadian Association of Broadcasters Code of Ethics (the "Code"), which is administered by the CBSC and to which we adhere.

As you may be aware, Spencer is severely affected with cerebral palsy and has been confined to a wheel chair for his entire life. Spencer has become a motivational speaker, and refers to himself as a "cripple" as a means of dealing with his issues head on. Discussions with Spencer are always frank, and the excerpt you heard was no exception.

While we appreciate that you were offended by the material, the CBSC does not require broadcasters to ensure that its content pleases everyone. The CBSC recognizes that personal tastes differ, and that its mandate under the Code does not require it to judge matters of taste. The CBSC applies current social norms in its interpretation of the Code, acknowledges that a program may not be 'everyone's cup of tea' and assumes that some members of society will be offended (CFJP-TV TQS re *Quand l'amour est gai*, CBSC Decision 94/95-0204).

Furthermore, the CBSC has frequently stated that it is not any reference to race, national or ethnic origin, religion, age, sex, marital status or physical or mental handicap that will be sanctioned, but rather, only those references that contain an abusive or hateful element. While we appreciate that the discussion may be considered distasteful, we do not believe that any of the comments were in any way abusive or hateful towards Spencer or towards persons with physical handicaps, generally.

We take our responsibilities as broadcasters very seriously, and work hard to make sure all of our programming complies with the *Broadcasting Act*, the *Radio Regulations*, the Code and standards required of us as a member of the CBSC.

We trust that this letter has addressed your concerns. We recognize the importance of listener feedback and appreciate all comments.

### **Additional Correspondence**

Following receipt of the station's response, the complainant wrote back to the CBSC on January 29:

I received a response from the Broadcaster which I would like to evaluate in terms of assessing whether I should request a Ruling by a CBSC Panel. In the response, that I note you were copied on, the Broadcaster states, "...we do not believe that any of the comments were in any way abusive or hateful towards Spencer or towards persons with physical handicaps, generally".

My recollection of the show was that it was very abusive to Spencer and by extension to persons with disabilities - this indeed was the impetus for my complaint, as well as the overall offensiveness of the content. However, I am somewhat handicapped in assessing whether I should seek a review in that I do not have a copy of the broadcast to review - I am working off recollection. Can I get a copy from the CBSC or do I have to ask for it from the Broadcaster?

I know I only have 14 days to request a review, so I would like to move on this as soon as possible.

Your advice would be much appreciated.

The complainant also wrote directly to the station to request tapes on January 29:

Thank you for your response.

Can you please send me a copy of the January 5 segment? I have also asked the CBSC for a copy but I am not sure which is the proper route of request. I would like to review the segment again to assess whether to request a CBSC review by a panel. As you likely know, I only have 14 days from today to file the necessary request, so your prompt response would be appreciated.

If you are able to send me a copy of the broadcast, I will forward an address - or perhaps you can provide a link for me to listen to it again.

The CBSC explained to the complainant that it could not provide her with copies of the broadcast, but that it includes complete transcripts of content in most of its decisions. The CBSC informed her that she would have to contact the station directly to ask for tapes, but that the broadcaster was under no obligation to provide them to her.

The broadcaster responded to her request about tapes on January 30:

Unfortunately I cannot send you the logger tape from the broadcast that you are requesting as we don't make these available to public.

I see that [the CBSC Communications Coordinator] has also responded to you on this matter.

I can tell you that we have had specific conversations with the show's hosts about this particular broadcast and are working with them.

The complainant wrote again to both the CBSC and CFNY-FM on February 2:

Thank you for your responses.

It appears most unfair that in order to assess my right to seek a review, I cannot even access the material that is subject to review, but the radio station and CBSC can have a copy. I work extensively in the area of administrative law and the work of administrative tribunals and find this to be contrary to basic fairness. I appreciate that there is no "positive obligation" to provide me with a copy but surely it is just basic fairness – not to mention extreme short sightedness on the part of the station. It only adds frustration and aggravation to the process and does not help to foster any sentiment to informally resolve this matter.

From both of your responses I understand that I will have to take my own measures to try and obtain a copy of the broadcast in order to properly frame my request for a review more formally with the CBSC. I am sure you can appreciate that I would like to accurately frame my concerns in a credible manner and that it is too onerous to expect me to be able to do this on pure recollection of the broadcast alone. I will go to the extra effort of trying to obtain access to the broadcast from other publicly available means, but it is very disappointing that neither the station nor the CBSC will provide any assistance in this regard.

She then filed her Ruling Request on February 9:

I well appreciate that the purpose of the CBSC is not to be an arbitrator of good taste and that while the above show was offensive, that is not the test for a violation of the *Code of Ethics*.

If I understand the test correctly, it concerns whether content in the show was "abusive" to Spencer or persons with handicaps generally. I have been unable to obtain a copy of the

broadcast from the CBSC or the station (both refused my requests) and wisely it was removed from internet podcasts. So I attempt to provide an intelligible response based on my memory of the broadcast. I trust the panel will review the broadcast for overall violations of the *Code of Ethics* and not simply to respond to my concerns.

The most abusive comments I can recall to Spencer related to Spencer's apparent inability to be an interactive sexual partner or independently care for his personal hygiene. Of course the context and tone of the overall broadcast must be considered for its abusive nature but some of the particularly abusive comments included something to the effect of, "How do you wipe your ass?" (with laughter at the idea he could do anything on his own), and the hosts remarked something to the effect "do you tap your fingers to get her off?" when Spencer is having sexual relations with his girlfriend. They also mimicked how Spencer would sound when communicating in such circumstances in a manner intentionally directed at ridiculing his speech and that of other persons with disabilities.

The Broadcaster's response is clearly an adapted standard form response simply stating it has not violated CBSC rules. I find this inadequate and in keeping with the arrogance and dismissive nature of the communications received to date. I thoroughly enjoy certain "politically incorrect" humour that likely others would find distasteful. I would not be making this request for a review if I was not totally shocked by the abusive nature of the two hosts' conduct with Spencer, as well as the abusive messaging of the broadcast to persons with disabilities and to human dignity as a whole. The Broadcaster advised that they have spoken with the hosts - this is insufficient. Surely a public apology to Spencer and the audience, particularly to persons with disabilities, is warranted.

I hope you get the chance to listen to the broadcast and not just review a transcript as I believe the full presentation of the communication is important. I look forward to your response and appreciate the time and effort you will spend in reviewing this matter.