
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CILQ-FM re the *Howard Stern Show* ("Staff insults")

(CBSC Decision 97/98-1223)

Decided February 3, 1999

A. MacKay (Chair), R. Stanbury (Vice-Chair), R. Cohen (*ad hoc*),
P. Fockler, M. Hogarth and M. Ziniak

THE FACTS

On July 16, 1998, CILQ-FM's (Toronto) daily broadcast of the *Howard Stern Show* (in fact a repeat show during the summer break) included an "argument" concerning the preparation, or lack thereof, for the day's show; whether or not the "argument" was contrived or real is not germane to the conclusions of the Ontario Regional Council. The contentious dialogue, which lasted more than 30 minutes overall (including the length of the commercial break), began as follows:

Howard Stern: Where is the Stuttering John tape? Why is it every time Stuttering John does an interview ...

John: I was told at 7:15.

Howard Stern: Now, John, ...

John: By Aurila [ph]. It's the girls at ... "Hey hum, Joan went out to interview some Barbara Bush yesterday, why don't you go listen to the tape?" So I just went and listened to it.

Howard Stern: Now why, why again did you roll it off with Eli at 5:30?

John: At 5:30 yes, but he was backed up.

Howard Stern: Who was backed up?

John: Eli.

Howard Stern: With what?

John: With all the other tapes that he's got.

Eli: So I do have to say in my defence, had I known, I could have prioritized what was going on.

Howard Stern: Didn't I tell you to call Gary the night before and check with him and get going and that he should be in early to go through the tapes? How many... Listen, we had this argument the other day. I don't want to go through the same stuff every frigging day.

John: No, no, no, it was just one interview and I just...

Howard Stern: Well, why, how long does it take? I was a production engineer for years. It takes me two seconds, I could roll it off in my sleep.

John: Yeah, but Eli's no Scott, like I said.

Howard Stern: No, he is ..., it doesn't make a difference if he is a Scott or not. Gary should have gotten here early if he's no Scott.

Gary: I was here early. No one told me until this morning.

Howard Stern: But you're the boss. Why is no one telling you? Why are you not upset about it?

Gary: How would I know?

Howard Stern: Who did you talk to about it? How would you know? That's my problem. You don't know anything.

Gary: But Howard, how would I know if somebody goes out? How would I know?

Howard Stern: You didn't know John went out yesterday?

Gary: No, I didn't.

Howard Stern: Then why isn't he telling you? Why don't you set up a system?

As the argument became more heated, the following disparaging remarks were made:

Howard Stern: John, John, hello!

John: Yeah, yeah, I got you.

Howard Stern: You're retarded, hello!

John: Yeah, Howard. I got you. At 5:30 we [stuttering] pulled the whole tape. At 5:30 ...

Howard Stern: You pulled the tape at 5:30, now what time is it?

John: It's getting, you know, it's about 7:30.

Howard Stern: Yeah! So why does it take 2 hours?

John: Because he's got a lot ...

Howard Stern: Because you're a retard.

John: No, because Eli's got a lot of other tape.

Robin: But you needed this tape first, so he could put the other tape off is what we're saying here, John.

John: I understand, I understand.

Howard Stern: John, no, you don't understand. You're stupid as a wall. I don't care if you tell me you're IQ's 138 or what. You're not bright.

John: Well, I am.

Howard Stern: We just went through this the other day. You were all upset, you were practically in tears.

...

Gary: Now, why am I stupid?

Howard Stern: Let me remind you why you're stupid. Because I told you the other day why you were stupid, but you must have forgotten it again.

Gary: I'm so stupid, I forgot why I'm stupid.

Howard Stern: That's right! [laughing] You know right now.

Robin: Where's the Gary puppet?

Howard Stern: Where's the Gary puppet, there's another guy, no Gary puppet [inaudible]. It's a stupid contest and it's a dead heat right now, ladies and gentlemen. Let's see who wins. Now you're stupid because you continue to blame Eli; you blame John.

Gary: I'm not blaming anybody.

Howard Stern: You don't know who went out. You don't know anything. You're the guy in charge, you're the producer.

...

Howard Stern: We're having a big meeting, me, you, Cathy Tobin and Laura, my personal assistant. We're going to find out what's going on around here. I want to know what's going on. I want to know what everyone is doing.

Gary: Whenever we're having this meeting, I'm ready.

Howard Stern: I'm not ready. You know why? I'm so busy working, I don't have time to get you together.

Gary: I'm sorry. I'm sorry.

Howard Stern: That's why I'm so busy. I don't have time to have a meeting with you. I wish you were a self-starter. I wish you weren't a loser. You know, I got to put an ad in the paper: "Need a producer. No losers need apply. Only self-starters."

Letter of Complaint

On June 3, a listener wrote the following general letter of complaint to the CRTC on the subject of Stern's *general* attitude toward developmentally handicapped persons:

I am writing to you in my capacity as the Honorary Legal Counsel for the Reena Foundation and as the parent of a developmentally handicapped daughter. For your information, the Reena Foundation is a charitable organization concerned and committed to the well being of children and adults who are developmentally handicapped and require integration into the community. The Foundation manages a number of group homes and apartments occupied by members of the developmentally handicapped community.

I am a fairly frequent listener to the Howard Stern Show and at times find it alternating between reasonably good satire and boredom. I note that during various stages of the broadcast there is a caveat that the program is not for all listeners and further, that it is being monitored in accordance with Canadian broadcasting standards.

My complaint is that Mr. Stern uses the word retarded or retard in a most hateful and offensive manner. He even has a regular who is simply described as the retard. The manner in which the word is used either as a noun or an adjective is offensive and demeaning to members of the developmentally handicapped community. It depicts them as lesser citizens and, makes mocking fun of their disabilities and deficiencies. In fact the word retardation has now been displaced and is properly referred to as developmental handicap.

As a lawyer and as an advocate, I support freedom of speech but not expressions of hatred and contempt for a segment of our population that needs support and encouragement and not insults and rejection. I would not think that that form of discrimination should meet Canadian broadcasting standards and if the program is being monitored and obviously time delayed then such segments can easily be deleted or bleeped out.

I thank you for your attention and look forward to your response.

In the normal course, that letter was forwarded by the CRTC to the CBSC.

The Broadcaster's Response

The letter of complaint elicited the following response, on June 22, from CILQ-FM's President:

Thank you for sending us a copy of your June 3 letter to the CRTC about the Howard Stern Show.

As you have noted, Q107 is editing the program to comply with Canadian broadcast standards. We are sensitive to the specific concern you have raised.

We do not believe that all uses of the word "retard" or "retarded" run afoul of the law or of broadcast standards. Moreover, as a listener to the Howard Stern Show, I am sure you appreciate that the context in which his remarks are made is a key element in determining whether a line has been crossed. Where it has, we believe we are taking the appropriate steps to remedy any problems through our editing procedure.

If you have a concern about a particular comment or program segment, please let us know and we will review it in light of our editing procedures. We take your views seriously and appreciate your input.

The Complainant's Follow-up Letters

In his letter of July 10, the complainant expressed his discontent with both that response from the broadcaster and with the response of June 29 from the CBSC, in which the Council stated that it could "only proceed with the formal complaints process when we have details regarding the issue troubling the listener and the date, approximate time and the station of the offending broadcast." Prompted to do so by both the broadcaster and the CBSC Secretariat, the complainant provided more specific information relating to his concerns about Stern's attitude toward developmentally handicapped persons in a letter dated July 16, which referred to the program mentioned at the start of this decision:

Today at 9:35 a.m., Howard Stern referred to one of his employees as a retard and then as retarded and in the same breath called him as stupid as a brick wall. For the reasons set out in my letters of June 3rd and July 10th, the words are hateful and offensive and I will await word from you as to how you and Q107 deal with this specific complaint.

The Broadcaster's Second Response

The President of CILQ-FM responded to this letter on August 5:

I have reviewed the broadcast complained about with Q107's producer/editor of the Howard Stern Show and with legal counsel.

The comments made by Mr. Stern were directed at John, one of the producers of the Stern Show, who Mr. Stern felt had not adequately prepared for the program that day. They were directed at a specific person in a specific circumstance. The words used were not generically

applied to a particular group and were not discriminatory. They do not meet the test of "abusive comment which tends or is likely to expose an individual or group to hatred or contempt on the basis of ... mental handicap" which is the prohibition contained in both the *Radio Regulations, 1986* and the Canadian Association of Broadcasters' *Code of Ethics*.

As we indicated to you in our previous letter, we do edit segments in which, taking into account the context, use of the word "retard" is offside the law and broadcast codes. In this case, there was no need to edit because there was no such breach.

I trust this adequately addresses your concerns.

The Final Round of Correspondence

The complainant was unsatisfied with the broadcaster's second response and requested, on August 12, that the CBSC refer the matter to the appropriate Regional Council for adjudication. His request for a ruling was accompanied by a letter which read in part:

I disagree with Mr. Luzzi's interpretation of the manner in which the offensive words were used. The context in which the employee was referred to does expose to hatred or contempt persons with developmental handicaps. Incidentally, on Howard Stern's broadcast on August 11th at about 10:20 a.m. he announced the holding of a contest and invited applicants to participate and those would include midgets, people with harelips and the mentally retarded. So much for Mr. Luzzi's assurance of editing.

I enclose my Ruling Request and look forward to your response.

The broadcaster responded to this letter on September 3 with the following brief letter:

I am in receipt of your ruling request directed to the CBSC - along with your comments about the August 11th show.

The comments of August 11th are, in my view, parallel to your previous complaint, which is to be decided upon by the Ontario Regional Council.

Under the circumstances, it would seem reasonable that their decision would also be applicable to this situation as well.

THE DECISION

The CBSC's Ontario Regional Council considered the complaint under the human rights provision of the *CAB Code of Ethics*. The text of this clause reads as follows:

CAB Code of Ethics, Clause 2

Recognizing that every person has a right to full and equal recognition and to enjoy certain fundamental rights and freedoms, broadcasters shall endeavour to ensure, to the best of their ability, that their programming contains no abusive or discriminatory material or

comment which is based on matters of race, national or ethnic origin, colour, religion, age, sex, marital status or physical or mental handicap.

The Regional Council members listened to a tape of the program in question and reviewed all of the correspondence. The Council finds that the program in question, while on the edge of unacceptability, discloses no breach of the Code.

The Content of the Program

The Ontario Regional Council has dealt with the content of several previous *Howard Stern Show* episodes in two previous decisions, both of which found that the broadcaster, in airing the segments there complained of, had breached the *CAB Code of Ethics* and the *CAB Sex-Role Portrayal Code*. See *CHOM-FM and CILQ-FM re the Howard Stern Show* (CBSC Decisions 97/98-0001+ and 0015+, October 17 and 18, 1997) and *CILQ-FM re the Howard Stern Show* (CBSC Decision 97/98-0487, 488, 504 and 535, February 20, 1998). The Council does not consider it necessary to reiterate the positions on the various issues which it has taken in those decisions, nor should this decision be understood as departing in any way from what this Council has said there.

In the program challenged by the complainant here, the host of the show continues his casual and insensitive treatment of identifiable minority groups. While, in this case, Stern used the words "retard" and "retarded" to insult one of his own production staff with whom he was apparently extremely displeased in terms of an aspect of the production for that day's show, the terms are generalizations which carry a negative connotation. As such, they risk falling afoul of the *CAB Code of Ethics* and may, on some future occasion, where the facts differ from those the Council faces today. In this case, the Council is of the view that on the two occasions on which he used those terms, the lines were sandwiched among many other criticisms of the individual and no conscious discrimination against a specific group was apparently intended, much less the level of *abusively* discriminatory comment, a benchmark which is well established by past CBSC decisions, which is needed to trigger the sanction of the human rights provision of the Code.

In *this* case, the Council does not consider that these words were directed *toward* persons of diminished mental capacity in a disparaging way so as to constitute abusively discriminatory comment. As already observed above, the comments in question were rather aimed at a specific individual working on the Stern Show who falls within the general population. In order to insult *him*, though, for apparent incompetence in connection with the production of the particular episode of the Stern Show, the host saw fit to choose the designation of a mentally challenged sector of the population as an insult (one insult among many, it should be noted, that were directed at the staff member in question). The gesture was clearly tasteless, rude, insulting, offensive and unpalatable to responsible and socially mature adults.

In the view of the Council, it was directed at an individual and does not attribute negative stereotypical characteristics to a defined minority group in such a manner as to amount to a breach of the human rights provision of the Code. Moreover, the references stand alone without any additional characterisation of the referenced group elsewhere in *that* show. The remarks did not mock or make fun of members of the handicapped group generically but rather attributed diminished mental capacity to an *unchallenged* individual. It thus misses *on this occasion* that abusively discriminatory nature which brands offending comments which are found to be in breach of the Code.

In the end, though, the Council finds itself very much on the edge regarding the statements of the host, in circumstances not dissimilar from those encountered by the B.C. Regional Council in *CHAN-TV re Newscast (Recycling Society)* (CBSC Decision 96/97-0004, March 10, 1997). In that case, the Council concluded:

All in all, the Council considers that the reporter, the News Director and the station ought to have exercised greater vigilance in the way they chose to tell this story which they were justified in bringing to the attention of the public. *It is not, and cannot be, that every inadvertence or inappropriate comment will fall afoul of the various broadcaster Codes. This is a case where they do not but where the Council would have wished that the broadcaster had been further from the edge.* [Emphasis added.]

As in the B.C. case, the Council does not conclude that the challenged comments constitute a Code breach. As it has stated in past decisions, the CBSC takes great care to err on the side of freedom of speech, even in cases involving allegations of discriminatory comment. That being said, the Council wishes to underline that its conclusion does not support in any way such tasteless commentary. On this occasion, it is an issue of taste alone where, in the Council's view, the sanction is that of the listener via the on/off switch. The Council does not intervene in such instances.

Broadcaster Responsiveness

In addition to assessing the relevance of the Codes to the complaint, the CBSC always assesses the *responsiveness* of the broadcaster to the substance of the complaint. In this case, the Council considers that the broadcaster's exchange of responses addressed thoughtfully and fairly the issues raised by the complainant. Consequently, the broadcaster has not breached the Council's standard of responsiveness. Nothing more is required.

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.