
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CILQ-FM re the *Howard Stern Show* (Lost Innocence)

(CBSC Decision 99/00-0216)

Decided July 6, 2000

R. Stanbury (Chair), P. Fockler (Vice-Chair), M. Hogarth (*ad hoc*),
M. Oldfield and S. Whiting

THE FACTS

On December 8, 1999, CILQ-FM (Toronto)'s broadcast of the *Howard Stern Show* included the following brief dialogue between Stern, some of his broadcast team and a belly dancer.

Quivers: How old were you when you lost your virginity?
Dancer: Fifteen.
Sidekick: Fifteen months.
Stern: You must have been messed up, honey.
Quivers: Who did you lose your virginity to? Some older guy?
Dancer: To a retard, a real idiot.
Stern: Welcome to the ...
Dancer: I hope he's listening.
Stern: I'm sure he is. We have more retards in our audience.
Quivers: We have all the retards.
Stern: In fact, I'm the king of the retards. I'm pretty sure I'm the same retard.

The complainant, who had previously filed a complaint on similar subject matter with the CBSC, wrote to the CBSC the following day. In that letter, he attempted to distinguish the current challenged broadcast from that which was the subject matter of *CILQ-FM re the Howard Stern Show (Staff Insults)* (CBSC Decision 97/98-1223, February 3, 1999). He said:

My complaint [in the previous case] was rejected on the basis that the remarks were directed to an individual and did 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.

He then requested treatment of the current complaint in the following terms:

I would ask your Council to consider this as a new complaint and would hope that it will not be dismissed as being directed at only one individual but rather is a mocking of a defined minority group.

The broadcaster's Operations Manager responded to the complainant on December 24. He said, in part:

It is our opinion that these comments were not directed at a minority group or an individual. These comments were intended to be humorous and can be described as a colloquialism. Although, perhaps, in poor taste, these comments, in our opinion, were not intended to demean or belittle mentally challenged individuals.

(Copies of the complete correspondence can be found in the Appendix to this decision.) The complainant was unsatisfied with this response and requested, on January 5, 2000, that the CBSC refer the matter to the appropriate Regional Council for adjudication.

THE DECISION

The CBSC's Ontario Regional Council considered the complaint under the *Code of Ethics* of the Canadian Association of Broadcasters (CAB). Clause 2 of that Code reads as follows:

CAB Code of Ethics - Clause 2 (Human Rights)

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. As in the previous Stern decision on this subject, the Council, while believing the comments inappropriate and in bad taste, does not consider Stern's comments to be in violation of Clause 2.

The Content of the Program

In the program episode which was the subject of the previous decision on this issue, namely, *CILQ-FM re the Howard Stern Show (Staff Insults)* (CBSC Decision 97/98-1223, February 3, 1999), the host had insulted a member of his staff who had misperformed his duties. The insult had been delivered by using the terms "retard" and "retarded" to describe

the employee. In that decision, the Ontario Regional Council expressed its regret over the fact that the host “continues his casual and insensitive treatment of identifiable minority groups” but it decided that no breach of the Code was disclosed. It described the terms as “generalizations which carry a negative connotation” but concluded that “no conscious discrimination against a specific group was apparently intended.”

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.

Essentially, the Council’s earlier decision finding no breach with respect to the use of the words “retard” and “retarded” was based on the fact that their use in that context did not amount to either “making fun” of a mentally disabled individual, or group of individuals, or negative labelling, stereotyping or mocking of the mentally disabled group as a whole, the two types of comments which might fall afoul the human rights provision of the *CAB Code of Ethics*. The Council certainly found the host’s use of the words to be “tasteless, rude, insulting, offensive and unpalatable to responsible and socially mature adults” but it was unable to find a breach of the Code as there was *no connection* between the remarks and the group which is entitled to the protection of the human rights provision. In that case, the host had used the words to demean a staff member who was an “individual [...] who falls within the general population”, i.e. who was not known to actually suffer from mental deficiency. Therein lay the insult.

In the present case, the Council does not find any material distinction which would enable it to come to a different result. If anything, the usage of the word “retard” in this case is even further removed from a breach of the Code because it is not even conveying the meaning of mental deficiency. Its use in this case, by both the belly dancer and by Howard Stern, refers to the street level colloquial meaning which the word now carries. The word is now sometimes used interchangeably with such other insults as “jerk”, “idiot” and “creep”. In this case, when used by the belly dancer, it conveys her annoyance at and scorn for the man who had sex with her when she was only 15. There is no suggestion whatsoever that the “ex” had been a person of diminished mental capacity. When used by Stern, it is also

conveying this meaning, which Stern attributes to himself and his entire listening audience, admitting that they are all similar to this “ex”. Stern also uses the word in this case in such a way that it would not rank as high on the level of abusiveness (if the Council had found it to be discriminatory and had to determine whether it breached the Code by being *abusively* discriminatory) as in the previous decision.

In the end, while the Council deplores the crude, offensive, infantile and irresponsible terminology used by the host and, on a general societal level, deplores the fact that a word such as “retard” has developed into such a “street term”, the Council must conclude that the only issue raised in this case is one of taste, something the Council has always held should be left for listeners to decide via the on/off switch. Had the host made fun *of* the protected group, the Council’s decision would almost certainly have been otherwise. That is not, however, the example with which the Council was presented on this occasion.

The Council notes that the broadcaster’s ongoing self-editing of the *Stern Show* has generally been successful in ensuring compliance of the show to Canadian broadcast standards. The Council specifically notes that it is aware, on the basis of the ongoing edit logs which it receives from CILQ-FM on a co-operative basis, that such words as “retard” and “retarded” are frequently, if not always, digitally removed from the show. Whether or not all such editing would have been necessary to avoid Code breaches in every case, the Council cannot, of course, judge in the absence of tapes and context; however, the Council applauds *all* editing of such language by the broadcaster. Even if, on some occasions, the material excised *might* not have constituted a technical breach of the Code, such epithets cast no positive reflection on either the Canadian broadcasting system or CILQ-FM. The Council hopes that the broadcaster’s editing process may continue to be as circumspect and generally effective in this respect in the future as it has been until now.

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. The broadcaster referred to its previous letter to the complainant in connection with Decision 97/98-1223 and added further comments relating to its view of the characterization of the on-air host’s remarks. Nothing more could be required of the broadcaster. Consequently, the broadcaster has not breached the Council’s standard of responsiveness.

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.

APPENDIX
TO CBSC DECISION 99/00-216
CILQ-FM re Howard Stern Show

I. The Complaint

The following complaint dated December 9, 1999 was sent to the CBSC. As you will see from the correspondence below, this is the same complainant as the one who previously complained to the Council concerning Howard Stern's use of the word "retard":

Dear Sir or Madam,

By letter dated August 27, 1999, you sent me the decision of the Ontario Regional Council with respect to my complaint against the Howard Stern Show.

My complaint was rejected on the basis that the remarks were directed to an individual and did not attribute negative stereotypical characteristics to a defined minority group in such a manner as to amount to a breach of the human rights provisions of the Code. The decision at page seven goes on to say that 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. Finally, the comment is made, "it thus misses on the occasion that abusively discriminatory nature which brands offending comments which are found to be in breach of the Code."

On December 8th, 1999 at 9:45 a.m. Howard Stern was interviewing a young woman and she volunteered that when she was sixteen years of age, she was impregnated by a retard. Howard Stern retorted that most of his audience are retards and that he himself was the king of the retards.

I would ask you council to consider this as a new complaint and would hope that it will not be dismissed as being directed at only one individual but rather is a mocking of a defined minority group.

It is interesting to note in passing that I merely tuned into the show as a spot check and the aforementioned remarks occurred within the first two minutes of my listening.

I have advised you in the past that I am the Honorary Legal Counsel for the Reena Foundation which serves a large segment of developmentally disabled persons in the Toronto community. Obviously your Council's ruling of February 3, 1999, which I presume was sent to Mr. Stern and CILQ-FM had no impact whatsoever and ought not to be dismissed on the convenient excuse of freedom of speech.

I look forward to the Council's response to my complaint.

II. The Broadcaster's Response

The Regional President, WIC Radio Ltd - CILQ-FM, dated December 24th, 1999 with the following:

Dear Mr. Raphael:

The CBSC has forwarded your complaint of December 9, 1999, to us for response.

As you noted in your letter of December 9th, this is not the first complaint you have had with the Howard Stern Show. Accordingly, we will not take up any of your time detailing that the Howard Stern Show, although contentious, is intended to be humorous.

On the day in question, Howard Stern does refer to "most of his audience being retards" and that he, himself, "is king of the retards".

It is our opinion that these comments were not directed at a minority group or an individual. These comments were intended to be humorous and can be described as a colloquialism. Although, perhaps, in poor taste, these comments, in our opinion, were not intended to demean or belittle mentally challenged individuals.

We apologize that these comments offended you.

III. Additional Correspondence

In a letter dated January 5, the complainant stated that he was unsatisfied with the broadcaster's response. This letter stated:

Thank you for your letter dated December 16, 1999.

I enclose copy of letter from CILQ dated December 24th which I received January 4th. I find the response unacceptable and would request the appropriate ruling.