
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CILQ-FM re the *Howard Stern Show (Group Homes)*

(CBSC Decision 99/00-0722)

Decided August 11, 2000

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

THE FACTS

On July 14, 2000, CILQ-FM (Toronto)'s broadcast of the *Howard Stern Show* included the following dialogue between Stern, some of his broadcast team and a couple of callers, beginning just after 10:00 am. Relevant excerpts follow (the full transcript of the segment of the episode dealing with diminished property evaluation can be found in Appendix A below). The segment began with a discussion of the diminished value of homes which are located adjacent to power lines;

Scott: Tell them your latest dilemma. Does he know that?
Gary: What is my latest dilemma?
Scott: Gary was asking everybody how close would you live next to power lines.
Gary: Would you buy a house near power lines?
Gary: For like a hundred thousand less.
Howard: Yeah, no kidding.

It then segued to a discussion of home valuation where the alleged cause of home devaluation might be the presence of a group home for developmentally challenged persons:

Howard: You know what I like on the news? When they go to these suburban neighbourhoods and they go "And today, the people of Uniondale rejected the idea of having a group home right in its midst." Well, of course ...
Robin: People are trying to sell their property.

Howard: Some guy. Some guy worked his whole life for that investment, and now the news guy is putting him down because he doesn't want to have a group home in his community. Excuse me.

...

Howard: What is it, Tom?

Tom: There was an uproar in my neighbourhood when ... they installed a retarded home.

Howard: Yeah, same in mine. No kidding.

Howard: The older people who are for it, are like, out-of-towners.

Robin: Yeah, people who don't live in the neighbourhood.

Howard: "It's not proven anywhere that retarded people rape." Yeah, right, so they get horny and know what to do with it. Okay, yeah, great. Yeah, that's what I want, a retarded home. "This is a beautiful home, there's a retarded home next door to it." Yeah, go sell your house. You've spent a lifetime.

Robin: Let me just put in that it's wrong that people feel this way.

Howard: Of course.

Tom: They're playing catch with bricks.

Robin: Oh, you.

Howard: "Now, I'm telling you this is a great investment. This house is a steal. It's been on the market for 7 years. And, they're ready to sell these people. The house has all new amenities. They'll take back the mortgage on it. It's fantastic. I'm telling you. Now, I do advise you keep your pets inside though. Do you have pets? You do? Okay, well then, keep them inside."

Robin: It's like that movie with the nanny who is out of her mind, and they had the retarded guy who would come work on the house. You know, like good retarded people like that you don't worry about. But that's not who you're gonna ...

Gary: They put one of those in Uniondale next to a grammar school and everyone went nuts.

Howard: "Look, everyone, the family across the street is taking a family crap on the lawn". (Howls of laughter.) Oh, great, yeah, I'll sell my house.

Howard: Now you, Junior.

Junior: (Speaking like a person with an incapacity; unintelligible.)

Robin: Now, I swear to you these schizophrenics are under control on medication.

Howard: Yeah, no problem. Oh yeah, they're all under medication ...

Gary: I was just going to say "Let's put them next to a grammar school" ...

Howard: So what did the real estate agent say when they brought you up to the power lines. Did they even mention it? They act like they don't even see it, right?

The complainant, who had previously filed two complaints on similar subject matter with the CBSC, wrote to the CBSC on July 17. In that letter, as in his previous complaint in the recently decided *CILQ-FM re the Howard Stern Show* (CBSC Decision 99/00-0216, July 6, 2000), he attempted to distinguish the current challenged broadcast from those which were the subject matter of that case and of *CILQ-FM re the Howard Stern Show (Staff Insults)* (CBSC Decision 97/98-1223, February 3, 1999). He wrote, in part (the full text of all of the correspondence being available in Appendix B) of

a discussion between Howard Stern and one of his staff about the purchase of a home. That led to a most obscene discussion about group homes for the retarded devaluating properties.

The remarks then dealt with the sexual proclivities of developmentally handicapped people and description of defecating on the front lawn of a group home for the retarded. Naturally, the word developmentally handicapped was never used and the segment went on and on about the retarded having group homes and affecting property values thereby punishing homeowners who had saved to purchase a home. The attack was obviously directed at the developmentally handicapped community who live in group homes.

He added:

I continue to find it more than alarming with the comment that is announced throughout the programme that the content complies with the recognized standards of the CRTC.

The broadcaster's Operations Manager responded to the complainant on August 3. He said, in part:

Your complaint is dealing with a segment of the program in which Howard Stern and the other hosts on the show discuss purchasing a home. It is my opinion that you have chosen to selectively interpret the comments made on the program. The segment of this program also included discussion with respect to group homes and halfway houses, in addition to homes for the developmentally handicapped. The discussion included comments from Robin Quivers, the co-host, that "it is wrong" and Howard Stern replying "of course", that these types of community facilities affect property values. I believe the point they were trying to make is that it is unfortunate our society views these types of facilities in this manner. Unfortunately, I believe that their comments are, in fact, correct that property values are unfairly impacted in certain circumstances.

My interpretation of the segment is not that this was an attack on the handicapped, but rather typical of many Stern segments, satirical of society in general.

By prior arrangement with the complainant and the broadcaster, the CBSC immediately referred this matter to the Ontario Regional Council for adjudication so that this decision and *CILQ-FM re the Howard Stern Show* (CBSC Decision 99/00-0216, July 6, 2000) could be dealt with expeditiously and released at the same time as the previous one.

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. Contrary to the two previous Stern decisions on this subject, the Council considers Stern's comments to be in violation of Clause 2.

The Previous Decisions on the Same Subject Matter

In the program episode which was the subject of the first 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." The Council stated:

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 second decision, *CILQ-FM re the Howard Stern Show (Lost Innocence)* (CBSC Decision 99/00-0216, July 6, 2000), released today, the Council was unable to find any material distinction which would have enabled it to come to a different result.

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.

The Content of the Current Episode

The matter at hand differs materially from that of the two previous episodes. In the view of the Council, it is *precisely* what it had previously anticipated when it said “Had the host made fun of the protected group, the Council would almost certainly have decided otherwise.” The Council has no hesitation in concluding that the host and his cohorts have done so. The theme of the segment was, baldly, that “a retarded home” will diminish surrounding property values, that “retarded” persons do cruel things to animals, that “retarded” persons are more prone to commit rape and do socially unacceptable things in public and so on. The on-air staff also casually, and ignorantly, endow “retarded” persons with schizophrenic symptoms and one of the callers made audible fun of mentally challenged persons, which only gave rise to bemused reaction on the part of the show's staff. It is apparently the view of Stern and his sycophants that this is nothing short of hilarious, a perspective not shared by decent-minded individuals. To his credit, the broadcaster's Operations Manager tried valiantly to justify the show, not on the customary basis of the comedic defence, but on the basis of legitimate, if not valid, social commentary, topped up with a bit of sarcasm. He states: “My interpretation of the segment is not that this was an attack on the handicapped, but rather typical of many Stern segments, satirical of society in general.”

The Council finds that the host has made fun of a protected group, indeed, has gone so far as to *ridicule* the group itself on the basis of their challenged status. It is a cruel use of the position he occupies at the public microphone. The comments create an atmosphere of intolerance. If any part of the audience buys into the expressed sentiment, it represents a loss to all of society. Desensitization of the public is a large price to pay for uninformed, abusively discriminatory comment and the Council has no doubt that the commentary in this program amounts to that, in breach of Clause 2 of the *CAB Code of Ethics*.

The Failure of the Editing Process on this Occasion

Since February 1998, the broadcaster has been editing the Stern Show in order to excise commentary which, on the basis of the two initial CBSC decisions, might be viewed as being in breach of Canadian private broadcaster standards. As a part of its collaborative efforts in this regard, the broadcaster has supplied the CBSC with edit logs describing the material deleted from the program every week. While the edit logs do not always provide the detailed wording of the material which has been deemed offensive by the station's Toronto-based producer, the CBSC has an ongoing indication of what has been removed. All in all, it has been a commendable collaboration, which has resulted in a significantly reduced number of complaints, although there have been several CBSC decisions since the second decision of March 1998, at which point the then new editing system was put in place by CILQ-FM. Apart from the decisions on the same subject matter noted above, in which the broadcaster was not found in breach of any Code, there was only that in *CILQ-FM re The Howard Stern Show (Poland)* (CBSC Decision 97/98-1186, February 3, 1999) in which CILQ-FM was found in breach. In other words, the system had been working to a considerable extent.

In this case, however, the broadcaster's Stern Show producer was not as cautious in the editing of the segment. It is curious that the edit logs for this date indicate that the producer did remove, at 10:07 a.m., a "comment about blacks and the mentally challenged and property value." Also, at 10:10 a.m., the editor removed "Howard imitating [a] mentally challenged [person]" as well as "more comments about the mentally challenged." Regrettably, though, aspects of the dialogue which appear to have been of the same genre were left in.

It is clear to the Council that a part of its acceptance of the original arrangement regarding the continued broadcast of the show was related to the assumption that the broadcaster *would succeed* in ensuring that the show would conform to the broadcast standards. It is equally clear to the Council that, with respect to the broadcast of segments in which the term "retarded" (or any related term) has been used, the broadcaster has edged closer to the line. If the only way for the broadcaster to *ensure* that it does not *cross* the line is for it to err on the side of caution, removing more of the continually tasteless commentary than it might otherwise remove, then this is the course of action it must take. As this Council concluded in *CILQ-FM re the Howard Stern Show* (CBSC Decision 97/98-0487, 488, 504 and 535, February 20, 1998),

In other circumstances, the CBSC could well decide that CILQ-FM or any other broadcaster in a continuing breach of the Codes be asked to leave the Council. This is not the case in the present circumstances for *one* reason only. The member has explicitly and unequivocally declared its support of the self-regulatory process and its intention of complying with Canadian broadcast Codes and regulations. ...

The Council does consider that it is only reasonable to provide CILQ with the opportunity to demonstrate, with its additional personnel and new digital technology, that it can in fact edit the Stern Show to ensure compliance with industry Codes.

While it remains to be proven to the CBSC that this new infrastructure can, in fact, succeed, the Council believes that it has a responsibility to provide this member station with the chance to make these new processes work. *If the station can achieve Code compliance, so much the better. If, however, it cannot, then it will ultimately have to deal with these issues in another forum.* [Emphasis added.]

There, from the Council's perspective, the matter rests. The station must demonstrate its intention *and ability* to comply with the standards in order to maintain its status.

A Final Issue

The complainant has raised the additional point that “I continue to find it more than alarming with the comment that is announced throughout the programme that the content complies with the recognized standards of the CRTC.” The Council would also be very concerned if such a statement were being made. It is not. As had occasionally occurred in the past, a listener, straining to grasp every word fairly and carefully, does not have the benefit which the Council has, namely, to have a *tape* of the program to review, replay and replay again, to be *sure* of the content. In this case, the statement of the broadcaster to which the complainant has referred in absolute good faith, is in fact worded as follows:

Please be advised that this program is being monitored to ensure compliance with Canadian broadcast Code and standards.

The Council doubts that the wording lulls any listener into a sense that the program *in fact complies* with the standards. That judgment is, of course, one for the Council to make. The listener advisory only alerts listeners to the fact that the program is being monitored, or watched, in order to attempt to achieve the desired result. There is no implication that this Council or any other body, much less the CRTC, *has exercised* such oversight that the result can be *assumed* to have been achieved.

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 has once again attempted to be responsive to the complainant's concern on the issue of this kind of language. That he broadcaster and the complainant have not seen eye-to-eye on this point is not the critical issue. The broadcaster has responded substantively. Nothing more is required. Consequently, the broadcaster has not breached the Council's standard of responsiveness.

ANNOUNCEMENT OF THE DECISION

The station is required to announce this decision forthwith, in the following terms, during prime time and, within the next thirty days, to provide confirmation of the airing of the statement to the CBSC and to the complainant who filed a Ruling Request.

The Canadian Broadcast Standards Council has found that CILQ-FM breached provisions of the Canadian Association of Broadcasters *Code of Ethics* in its July 14, 2000, broadcast of the *Howard Stern Show*. In broadcasting comments by Stern, his staff and callers insulting and ridiculing developmentally challenged persons and making unfounded and discriminatory assertions regarding the presence of their group homes in a neighbourhood, CILQ-FM has aired abusively discriminatory comments about mentally handicapped individuals contrary to the human rights provision of the *CAB Code of Ethics*.

This decision is a public document upon its release by the Canadian Broadcast Standards Council.

APPENDIX
TO CBSC DECISION 99/00-722
CILQ-FM re Howard Stern Show

The segment in question begins at 10:03 a.m. with Howard and his colleagues discussing the dilemma faced by a member of his entourage named Gary (sometimes referred to as Bababoui), whether or not to buy a house near power lines. This led to a discussion about the devaluation of houses near group homes for the mentally disabled. The discussion went as follows:

Scott: Tell them your latest dilemma. Does he know that?
Gary: What is my latest dilemma?
Scott: Gary was asking everybody how close would you live next to power lines.
Gary: Would you buy a house near power lines?
Gary: For like a hundred thousand less.
Howard: Yeah, no kidding. Do you like your wife's breasts?
Gary: Yes.
Howard: Do you want them cut off after...
Gary: No.
Robin: And, what do you want your children to look like?
Gary: Won't want to cut them off though...
Howard: Did you see.. Speaking of that, did you see "60 Minutes"? Wasn't that cool?
Robin: Yes, Howard. Oh no, that boy.
Howard: Oh, man, they had all these freaks on that lived too close to Chernobyl or something.
Robin: No, it was weird. It was nuclear test sites...to set off bombs...
Howard: In Russia, they used to, like, test their bombs like, next to people just to see what would happen...on their own people. So, like you know, they blew up the bomb and nothing really happened until, like, the next generation...

[more of the same for the next three minutes or so]

Howard: Listen, why don't you move next to some power lines?
Gary: No, no, no. We're not moving next to power lines. I was just asking...
Howard: I'm telling you man, be careful with that stuff because, you know, if you move next to power lines, your cows won't give milk.
Gary: They were like a hundred miles away.
Howard: Were they like... What do you mean? Like huge...
Gary: You can imagine houses...it's on a street.
Howard: It's probably a great house, too.
Gary: It's a great house. And then there's a street...
Howard: Whenever I go house hunting, it's always like that. You find these great houses, and there's always one thing wrong.
Gary: Like, we found a really great house, but you look right out the back door, and there's a little league field. You know, like 9 o'clock every Saturday, you have kids playing... Right in the backyard.
Scott: ...drug dealers...

Howard: Yeah, yeah. It's not the little league you mind, it's all the drug deals that go down all night.

Gary: High school kids at night with beer...

[one minute omitted]

Howard: You know what I like on the news. When they go to these suburban neighborhoods and they go "And today, the people of Uniondale rejected the idea of having a group home right in its midst". Well, of course...

Robin: People are trying to sell their property.

Howard: Some guy... Some guy worked his whole life for that investment, and now the news guy is putting him down because he doesn't want to have a group home him in his community. Excuse me.

Robin: Or a halfway house.

Howard: Yeah, when I start seeing Dan Rather and those guys who have group homes next to their fancy condos, that's when I'll know that that guy is wrong.

Robin: Group homes, halfway houses and housing projects.

Howard: What is it Tom?

Tom: There was an uproar in my neighbourhood when... they installed a retarded home.

Howard: Yeah, same in mine. No kidding.

Howard: The older people who are for it, are like, out-of-towners.

Robin: Yeah, people who don't live in the neighborhood.

Howard: "It's not proven anywhere that retarded people rape". Yeah, right, so they get horny and know what to do with it. Okay, yeah great. Yeah, that's what I want, a retarded home. "This is a beautiful home, there's a retarded home next door to it". Yeah, go sell your house. You've spent a lifetime...

Robin: Let me just put in that it's wrong that people feel this way.

Howard: Of course.

Tom: They're playing catch with bricks.

Robin: Oh, you.

Howard: "Now, I'm telling you this is a great investment. This house is a steal. It's been on the market for 7 years. And, they're ready to sell these people. The house has all new amenities. They'll take back the mortgage on it. It's fantastic. I'm telling you... Now, I do advise you keep your pets inside though. Do you have pets? You do? Ok, well then, keep them inside."

Robin: It's like that movie with the nanny who is out of her mind, and they had the retarded guy who would come work on the house. You know, like good retarded people like that you don't worry about. But that's not who you're gonna...

Gary: They put one of those in Uniondale next to a grammar school and everyone went nuts.

Howard: "Look everyone, the family across the street is taking a family crap on the lawn". (howls of laughter). Oh, great, yeah, I'll sell my house.

Howard: Now you Junior.

Junior: (speaking like a person with mental deficiencies)

Robin: Now, I swear to you these schizophrenics are under control on medication.

Howard: Yeah, no problem. Oh yeah, they're all under medication...

Gary: I was just going to say "let's put them next to a grammar school"...

Howard: So what did the real estate agent say when they brought you up to the power lines. Did they branch in? They act like they don't even see it, right?

Gary: It's no big deal. It's no big deal...

[continued to talk about house near power lines]

APPENDIX
TO CBSC DECISION 99/00-722
CILQ-FM re Howard Stern Show

I. The Complaint

The following complaint dated July 17, 2000 was sent to the CBSC. As you will see from the correspondence below, this is the same complainant as the one who complained to the Council on two previous occasions concerning Howard Stern's use of the word "retard":

For identification purposes, I enclose a copy of your letter to me of May 19, 2000.

I would like to augment my complaint with respect to a further Howard Stern Broadcast on CILQ-FM which took place on Friday, July 14th, 2000 between 10:00 am and 10:15 a.m. The segment started off with jokes and crude comments about the victims of the Chernobyl nuclear disaster in 1984. There then followed a discussion between Howard Stern and one of his staff about the purchase of a home. That led to a most obscene discussion about group homes for the retarded devaluating properties. The remarks then dealt with the sexual proclivities of developmentally handicapped people and description of defecating on the front lawn of a group home for the retarded. Naturally, the word developmentally handicapped was never used and the segment went on and on about the retarded having group homes and affecting property values thereby punishing homeowners who had saved to purchase a home. The attack was obviously directed at the developmentally handicapped community who live in group homes. I trust that your adjudication committee will agree with me that there was no humour or redeeming value in the segment and I continue to find it more than alarming with the comment that is announced throughout the programme that the content complies with the recognized standards of the CRTC.

I thank you for your ongoing consideration and look forward to the results of the adjudication with this added material taken into account.

II. The Broadcaster's Response

The Regional President, WIC Radio Ltd - CILQ-FM, responded on August 3rd, 2000 with the following:

We are responding to your complaint to the CBSC of July 12, 2000, which they forwarded to us on July 25, 2000. Specifically, you are complaining about a segment of the Howard Stern show, which aired July 14, 2000.

It is my understanding from your letter that you are trying to "augment" your previous complaint with respect to the Howard Stern show.

Your complaint is dealing with a segment of the program in which Howard Stern and the other hosts on the show discuss purchasing a home. It is my opinion that you have chosen to selectively interpret the comments made on the program. The segment of this program also included discussion with respect to group homes and halfway houses, in addition to homes for the developmentally handicapped. The discussion included comments from the co-host, that "it is wrong" and Howard Stern replying "of course", that these types of community facilities affect property values. I believe the point they were trying to make is that it is unfortunate our society views these types of facilities in this manner. Unfortunately, I believe that their comments are, in fact, correct that property values are unfairly impacted in certain circumstances.

My interpretation of the segment is not that this was an attack on the handicapped, but rather typical of many Stern segments, satirical of society in general.

We recognize that the Howard Stern brand of entertainment is not everyone's taste and regret that you were offended by his comments.

The Stern show generates strong emotional reactions on both sides of the issue. Some feel that nothing short of its removal from Canadian airwaves will suffice. Others are just as adamant about Canadians' freedom of expression and listeners' rights to receive programming of their choice.

We do take steps to ensure that warnings about the nature and content of the show are broadcast at least twice each hour and in other day parts whenever the program is being promoted, in an effort to inform listeners (and parents) who may be sensitive to such issues.

A program producer whose sole function is to monitor the show is employed, with a view to ensuring sensitivity to and continuing compliance with Canadian Broadcast Regulations.

A new state of the art piece of digital equipment has been installed which facilitates the seamless editing of the Howard Stern Show and increases the length of our broadcast delay by 400%.

As we noted earlier, the Howard Stern Show has polarized public opinion. The most recent BBM ratings released, indicate that approximately 488,300 Q107 listeners choose Howard Stern each week as their preferred program despite a multitude of alternatives.