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**CANADIAN BROADCAST STANDARDS COUNCIL  
BRITISH COLUMBIA REGIONAL PANEL**

CFMI-FM re *Brother Jake Morning Show* (Wake up Contests)

(CBSC Decision 01/02-0875)

Decided January 14, 2003

S. Warren (Chair), H. Mack (Vice-Chair), R. Cohen (*ad hoc*), G. Leighton,  
D. Millette, J. Rysavy

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**THE FACTS**

On April 25 and 26, 2002, CFMI-FM (Rock 101, Vancouver) broadcast episodes of the *Brother Jake Morning Show* which included a contest called, when dealing with men, "Wake up Woody" and, when dealing with women, "Wake up Wendy", the goal of which was to win tickets to a forthcoming Vancouver Canucks hockey game. While a full transcript of the relevant portions of the two episodes can be found in Appendix A, the contest is easily explained by reporting that it relates to callers' innovative sexual techniques in awakening a sleeping partner during the morning broadcast period for the show (with an open telephone handset within earshot of the activity). One example follows here:

**Female:** Hello.

**Jake:** Are you awake yet?

**Female:** [laughs] I am now.

**Jake:** [laughs] What happened? What was goin' on?

**Female:** Well I was supposed to be sleeping in this morning, but I was, well I won't call it rudely awakened, but I was awakened by my boyfriend [intentionally clears throat].

**Jake:** Uh huh? What was he doin'?

**Female:** He was like climbing between my legs and, you know, trying to wake me up and at first I was annoyed, but now I'm not so sure.

[Jake et al. laugh]

The complainant sent a letter to the CBSC on May 16. It accompanied a letter of April 26 to the CBSC which he had never sent, as well as one to the radio station of May 1 and the broadcaster's reply of May 11 to that complaint. (The full text of this and all other correspondence can be found in Appendix B.) The complainant observed that the contests do "not take into consideration that this 'sarcasm, humor and information' [referred to in the broadcaster's letter of May 11] is being aired at the same time most families are having breakfast and taking their children to school." He noted that, during the week prior to the date of his letter, the usual morning show crew were on holidays and that "the announcers and the air-comedy is [sic] clean and entertaining. It is just this time slot and just the *Brother Jake* program content that I have trouble with." In his earlier letter sent directly to the broadcaster, he wrote:

It is obviously totally tasteless, totally inappropriate in both topic and timing, and apparently allowed by management, as it was done two days in a row.

The broadcaster's response of May 11, signed by the Program Director, said, in part:

The Contest involved participants waking up their spouses such that husbands were required to come up with innovative and humorous ways to awaken their wives and vice versa. The winner of this Contest was to be awarded a pair of hockey tickets to a sold-out Game. We appreciate that some of the contestant's [sic] innovative approaches may have been somewhat suggestive. We recognize that the content of the "skits" performed by some of the callers may be controversial and not appeal to some listeners' comedic tastes. Humour and taste are extremely subjective elements relative to the point of view of an individual.

Once the CBSC became involved in the complaint process, it wrote, in accordance with its customary procedures, to the broadcaster, requesting that it reply to the complainant. Although it had previously done so, the broadcaster took the second opportunity and wrote on June 13. The explanatory paragraph had been rewritten and now put the broadcaster's position in the following terms:

The Contest involved participants waking up their spouses such that husbands were required to come up with innovative and humorous ways to awaken their wives and vice versa. The winner of this Contest was to be awarded a pair of hockey tickets to a sold-out Game. We appreciate that some of the contestants [sic] innovative approaches may have been in bad taste and even somewhat suggestive. Please be assured that the host and producers take steps to ensure that any "sexually sensitive" materials are usually presented through the use of euphemisms/innuendos (as pointed out in your letter) and in a comedic manner. The euphemisms used are not explicit or raunchy. Anyone listening who did not already have a mature understanding of the general topic would not have understood the euphemisms. We recognize that the content of the "skits" performed by some of the callers may be controversial and not appeal to some listeners' comedic tastes. Humour and taste are extremely subjective elements relative to the point of view of an individual.

The complainant wrote back to the CBSC on June 21, at which time he returned his signed Ruling Request. He also said, in his covering letter:

What he fails to acknowledge is the fact that children are listening to their station during the morning program, and that a disclaimer will not stop that fact.

A ride at an amusement park can prohibit a child from participation if they do not come up to a minimum height. A radio or TV station can air programs of a controversial nature late at night, [...] as young children would not be expected to be up at that time. To air a solicitation to engage in live sex on the radio at 8 AM on a school day is unacceptable. To air the act of sexual arousal on the air is unacceptable. To follow up and do it the next day is totally unbelievable and unacceptable. The station management, by allowing this level of programming, is condoning this type of broadcast. Young people at 8 AM will be listening to the radio at that time and this type of content, as aired on April 25<sup>th</sup> & 26<sup>th</sup> is, I feel, unacceptable.

## **THE DECISION**

The British Columbia Regional Panel considered the complaint under the following provision of the Canadian Association of Broadcasters' (CAB) *Code of Ethics*:

*CAB Code of Ethics*, Clause 6, paragraph 3:

It is recognized that the full, fair and proper presentation of news, opinion, comment and editorial is the prime responsibility of the broadcast publisher.

The B.C. Regional Panel Adjudicators listened to a tape of the episodes of the *Brother Jake Morning Show* in question and reviewed all of the correspondence. The Panel considers that neither episode is in breach of the foregoing clause.

### **Sexual Content in Morning Radio**

The position of past CBSC decisions on this subject is easily summarized. Sexually explicit material is unacceptable on morning radio or at other times when children might be listening but sexual innuendo or sexually suggestive content is not. Drawing that line is frequently challenging for CBSC Panels. It has also tended to be their conclusion in those circumstances in which they have not found a breach of the above Code provision that they have described the considered material tasteless. It is to this conclusion that the Panel arrives in the present instance.

In *CFMI-FM re Brother Jake Morning Show* (CBSC Decision 00/01-0688, January 23, 2002), there were discussions and comedic sketches that contained sexual innuendo but there were also others with more explicit sexual content. An

example of the latter involved one host's account of his previous night's date where the woman "starts to do this wild striptease" and "gets down to her thong". He then went on to explain how he threw "her on the workbench" where "she's goin' nuts grabbin' my nuts and I'm just thinking 'this is great!'" An example of a comedic sketch that featured sexually explicit content was a clip of a woman with a Mexican accent in the throes of passion, shouting out "oh, the tongue!" and "oh, the finger!" In *CHOM-FM and CILQ-FM re The Howard Stern Show* (CBSC Decision 97/98-0001+, October 17-18, 1997), the Quebec and Ontario Regional Panels ruled similarly with respect to Stern's account of his family vacation where his wife had forgot to bring her vibrators. The case of *CFNY-FM re The Show with Dean Blundell* (CBSC Decision 01/02-0267, June 7, 2002) was very similar to the earlier *Brother Jake* decision. In it, the Panel found that the banter included discussions about pop culture, current events and unusual news stories, but often veered off into conversations and jokes containing sexual innuendo as well as occasionally more explicit sexual detail about the sex lives of the hosts and celebrities.

On the other hand, in *CIGL-FM re a song entitled "The Bad Touch"* (CBSC Decision 99/00-0654, October 12, 2000), the Ontario Regional Panel found the song lyrics merely suggestive and not in breach of the Code:

The song playfully alludes to the sexual fantasies of the songwriter without explicitly describing them. In one such reference, the songwriter muses "I got the notion that the motion of your ocean means 'Small Craft Advisory'." The lyrics are far removed from the explicitness of the graphic descriptions which led to a finding of breach in the Howard Stern decision

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. They find no breach of the Code in the matter at hand.

### **Broadcaster Responsiveness**

Since one of the responsibilities of membership in the CBSC Manual is to "co-operate fully with complainants by responding quickly and effectively to their concerns," CBSC Panels always take the time, in the course of their deliberations, to review the broadcaster's responsiveness to the complainant. Compliance with this undertaking is a matter required in all files under consideration by the CBSC's Panels. In this case, the Program Director wrote

two letters, rather than just one. While they were quite similar in large measure, both dealt fairly and at some length with the issues at hand. Nothing more is required in this instance.

*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 File 01/02-0875 CFMI-FM re *Brother Jake Morning Show* (Wake Up Contests)

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The following are the relevant portions of the “Wake Up Contests” on the *Brother Jake Morning Show* from April 25 and 26, 2002:

April 25

7:11 am

Introduction to “Wake Up Woody Contest”

**Jake:** It's eleven after seven o'clock. And I want to say hi to all the women out there this morning. And I have something special. I have a mission; there's a mission.

**Cori:** Really?

**Jake:** A double-oh-seven mission.

**Marty:** If you choose to accept it.

**Jake:** If you choose to accept this mission, you and your man could be going to play-off hockey. That's right, play-off hockey will be back here on Saturday.

**Marty:** Something will self-destruct in twenty seconds.

**Jake:** Well, if you're lucky, that's true. Uh, we are going to give away a pair of game six tickets, GM Place this Saturday night. Now the phones are lit up. I didn't even told ya, I haven't even said what I wanted you to do because I know a lot of you will not even think about doing this.

**Marty:** But a lot of you will.

**Jake:** Lot of you will and a lot of you do. [Marty laughs.] And you don't even have to use your real name. But, you know, there's a lot of guys in this town that work all night. I've heard this. You hear it over and over again.

**Marty:** There's some guys sleeping right now.

**Jake:** Guys are sleeping right now. But the women are up. They're up and they're motoring around and they're probably listening to the radio right now, the *Bro Jake Show* on 101.1. Here's what I would like you to do. It's somethin' we did in the past a coupla years back. It's called “Wake Up Woody”. [laughter in background] Wake up woody. How do you do that?

**Cori:** Three guesses.

**Jake:** You sneak into the, you sneak into the bedroom, you put the phone, take a hand, you know with a remote phone. Not one with a wire on it. One that's a remote

phone. Put it next to his head. Now what you do, you slip in there and you wake up woody.

**Marty:** Yes. You go downtown.

**Jake:** You go downtown. Exactly. Right around the corner.

**Marty:** Yeah, South America.

**Oly:** South of the equator.

**Jake:** South of the equator. Yes, lower, yes, lower than the belly button.

**Cori:** Below the belt.

**Jake:** Yes it's wake up woody. That's right.

**Marty:** And all we want is the reaction.

**Jake:** It rhymes with "bro". [all laugh] Okay. Do we have to be a little more specific?

**Marty:** No! It's wake up woody!

**Jake:** Wake up woody. Now he's gotta be sleeping. Or in a groggy state.

**Marty:** That's right.

**Jake:** You gotta slip those little jammies off.

**Cori:** There are, there are men going back to bed as we speak.

**Jake:** I don't care. I just wanna hear it. And the best one will win. Actually, I mean, it may even be the first one. Somebody's gotta do it. That's a tough call. Oh you're still phoning, look and isn't that nice.

**Oly:** I know. Well, I'll go to the phones.

**Jake:** You gotta handle it O.

**Oly:** Yeah. Well. I gotta handle on it all right.

**Jake:** [chuckles] You're handling it now just thinkin about it.

**Oly:** One of my favourite segments.

**Jake:** Seven fourteen, wake up woody, for Canucks play-off tickets. [Oly chuckles] Need we say more. It rhymes with "bro". Good luck everybody, here's your traffic.

7:50 am

Discussion about Contest

**Jake:** We're gonna' take it down nice and sexy. 'Cause somebody will be going into a bedroom in less than ten minutes to wake up woody. That's right. We have thrown

the gauntlet down. We have put the challenge out to women all over the lower mainland. Doesn't matter where you are.

**Cori:** We have raised the stakes.

**Jake:** We have raised the stakes. Or raised the stake.

**Cori:** The stake.

**Jake:** To pitch a tent. To go in and basically wake up woody. It really is self-explanatory. That will happen very soon and we guarantee titillating, exciting and new. Oh, I almost went into "The Love Boat" there [other laugh].

**Cori:** [sings] "The Love Boat".

**Oly:** [joins in, singing] "titillating" ...

**Jake:** [joins in, singing] "exciting and new". But it's gonna be great. And, uh, you know, it's one of those things. We always look forward to waking up woody. Because most guys will wake up with woody. And it's so hard to roll over, isn't it?

**Oly:** Well at least you don't fall out of bed.

**Jake:** That's true. It's like a side stand on a Harley Davidson. [Cori laughs] Anyway, here we go with your traffic.

[Cori does traffic.]

**Jake:** Ladies and gentlemen, here we go. Love you, love you to death. We're gonna, uh, get, get ready to wake up woody. So stay tuned.

7:52 am

## Wake Up Woody Contest

**Jake:** It's eight in front of eight. This is Bro Jake. Boys, this is our favourite time of the morning, this is when we get a chance to wake up woody. Not that we're excited about that, but I know there's some woman out there that would be excited enough to wake her man up woody style to get tickets courtesy of Molson Canadian and Rock 101. Play-off tickets for Saturday when the Canucks come back and clinch it in six. That's my prediction.

**Oly:** Here here.

**Jake:** Are you ready?

**Oly:** Yes sir.

**Jake:** Do you have somebody on the phone?

**Oly:** I do. I'm very excited.

**Jake:** What's her name?

**Oly:** Cheryl.

**Jake:** Cheryl. Cheryl?

**Cheryl:** [whispers] Hi.

**Jake:** Who's this?

**Cheryl:** It's Cheryl.

**Jake:** Hi, how're you doin'?

**Cheryl:** Good.

**Jake:** Are you ready?

**Cheryl:** Yeah.

**Jake:** All right, let's go.

**Cheryl:** Okay.

**Jake:** Okay. Where are you now?

**Cheryl:** I'm in the bedroom.

**Jake:** Okay.

**Cheryl:** Okay. Hold on. [extended silence]

**Jake:** She's in the bedroom. Are you still there? Hello?

**Cheryl:** Okay, I'm getting into bed.

**Jake:** All right.

**Cheryl:** Okay. Hold on a minute here. I'm just goin' on that side of the bed.

**Jake:** Okay.

**Cheryl:** Okay.

**Jake:** Yeah. [extended silence]

[man with Cheryl grunts; Jake and others try to laugh quietly; man grunts again]

**Man with Cheryl:** What are you doing? [Jake et al laugh] Oh I gotta whizz. [Jake et al laugh louder]

**Cheryl:** That didn't work very well.

**Jake:** You're a winner!!

**Others:** Yeah!!! [All laugh]

**Cheryl:** Well now I woke him up.

**Jake:** Oh my god. All right. You rock Cheryl. [All still laughing]. Oh my god, that is the funniest. Oh, that is unbelievable.

**Cheryl:** Real romantic.

**Jake:** Oh god. [All laugh]. I think right now we're going to go to the bathroom while he has a whizz here [audio sketch of man groaning]. There you go. Wow. So there's a successful, uh, woody awakening.

**Marty:** [laughing] I got to take a whizz.

**Oly:** [imitating man] "I gotta whizz."

**Jake:** [imitating man] "I gotta whizz. And I'll be right back." Beautiful. There you go, play-off tickets, wake up woody. And we may do this again tomorrow. You never know. Four in front of eight o'clock. Happy fellating.

## April 26

7:55 am

### Wake Up Wendy Contest

**Jake:** Hi everybody, yes. We've had Wake Up Woody. Now it's gonna be Wake Up Wendy or somethin' like that. We're goin' to the phone. Who's on the phone?

**Caller Pete:** Pete.

**Jake:** Pete?

**Pete:** Yes.

**Jake:** Pete, is this your wife?

**Pete:** Uh, girlfriend.

**Jake:** Girlfriend?

**Pete:** Yeah.

**Jake:** Um, have you done this before? Have you ever woken her up by doing something like that?

**Pete:** Oh yeah, all the time.

**Jake:** Really?

**Pete:** [laughs] Yeah.

**Jake:** Wow. I think all the girls in the audience right now are pretty excited. [all laugh] Let's go down the corridors.

**Pete:** Okay, I've got to be very quiet, she's a very light sleeper.

**Jake:** Okay, and do you know -?

**Pete:** Goin' down the hall. Okay, I'm pushing open the bedroom door. [long pause] I'm going over to the bed. [long pause] Puttin' the phone down. [long pause]

[faint sound of female moaning]

**Female:** What are you doing? Pete, oh Pete, oohh.

**Pete:** [laughs] Did you hear that?

**Female:** Who are you talking to?

**Pete:** It's the radio station.

**Female:** What!? What are you doing!?

**Pete:** Shh, shh. It's okay.

**Female:** What's okay!?

[Jake et al. laugh]

**Jake:** You're goin' to the game!

**Pete:** Quiet. What's that?

**Jake:** You're goin' to the game!

**Pete:** Excellent. Excellent. Well done.

**Marty:** Is she there? Can we talk to her?

**Oly:** Yeah, can we, can we talk to her?

**Pete:** She had absolutely no idea.

**Female:** What's going on!?

**Pete:** She has absolutely no idea what's going on. Hold on, just let me bring her up to speed. It's the radio station. We just won hockey tickets.

**Female:** What!? Why!?

**Pete:** It's Wake Up - . What are we calling it? Wake Up Wanda. Right?

**Jake:** That or a clam dig. [All laugh]

**Marty:** Put her on the phone.

**Jake:** Put her on the phone!

**Pete:** Okay, hold on, one sec.

**Female:** Hello?

**Jake:** Hi!

**Female:** Hello.

**Jake:** Are you awake yet?

**Female:** [laughs] I am now.

**Jake:** [laughs] What happened? What was goin' on?

**Female:** Well I was supposed to be sleeping in this morning, but I was, well I won't call it rudely awakened, but I was awakened by my boyfriend [intentionally clears throat].

**Jake:** Uh huh? What was he doin'?

**Female:** He was like climbing between my legs and, you know, trying to wake me up and at first I was annoyed, but now I'm not so sure.

[Jake et al. laugh]

**Jake:** You're goin' to the game, sold-out game, yes!

**Female:** Tomorrow night?

**Jake:** Yeah, it's gonna be on Saturday at four o'clock.

**Female:** All right.

**Jake:** It's a sold-out show, congratulations.

**Female:** Thank you so much.

**Jake:** You're quite a sport.

**Female:** Can we hang up now so he can finish now or what?

**Jake:** Yes, absolutely.

**Oly:** Hang on, don't hang up.

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## APPENDIX B

### CBSC File 01/02-0875 CFMI-FM re *Brother Jake Morning Show* (Wake Up Contests)

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#### The Complaint

On May 16, 2002, the complainant filed a complaint with the CBSC and faxed a series of documents: a letter from April 26 addressed to the CBSC which he had never sent; a letter to CFMI-FM of May 1 and CFMI-FM's response dated May 11. That correspondence is reproduced below along with the cover letter he sent on May 16.

May 16, 2002

Ref: CFMI/Rock 101 broadcast, "Brother Jake morning show" 04/25,26/02

Please find enclosed a letter addressed to you dated April 26th, 2002, a cover letter of May 1st, 2002, sent to CFMI-FM/ROCK101, and the response letter from the station's program director dated May 11th, 2002. These letters are self-explanatory, where I gave the radio station first opportunity to respond to a complaint.

In review of the program director's response, I do not see adequate justification for the occurrence of April 25-26 broadcast, nor rectification to clean up the Brother Jake morning show.

[The Program Director's] comments that the program format successfully attracts a 25-45 year old adult demographic, and is of a "controversial" nature. This does not take into consideration that this "sarcasm, humor and information" is being aired at the same time most families are having breakfast and taking their children to school. I could not care less if this program is popular, or the No.1 morning show. The topics of discussion, and the level of the "humor" should not be broadcasted when kids can hear the "controversial" banter. This form of programming, if allowed at all, should be on late at night where it would not be readily accessible to listening children. [The Program Director] may feel that good taste, or crude and vulgar language is not the responsibility of the broadcaster, and is somewhat condoned ("marginally acceptable") by the CBSC, but I feel that the A.M. morning slot is totally inappropriate for the Brother Jake crudity and profanity.

It should be noted that since May 6th, the usual morning crew of Jake and his associates have been on holidays. I find it interesting that during that time, as per all the other air time on CFMI-FM/ROCK101, the announcers and the air-comedy is clean and entertaining. It is just this time slot and just the Brother Jake program content that I have trouble with.

I wish to formalize my request as outlined within my letter of April 26, 2002, and register a whole new complaint against CFMI-FM/ROCK101. This complaint is for the programming of the Brother Jake morning show aired on April 25 & 26, 2002. As commented within that letter, I expect to go through the same process as I did before, and will process the CBSC official complaint documentation upon its receipt.

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April 26, 2002

Ref: CFMI/Rock 101 broadcast, "Brother Jake morning show" 04/25, 26/02

I am the instigator of an initial complaint referred to as your file# 00/01-688 which was responded to on April 19, 2002, and received by me yesterday evening, April 25, 2002. The timing of your response was very coincidental, as I was extremely curious about where my original complaint was, for I had decided that morning to send off a totally new complaint about a whole new level of broadcast garbage as aired by CFMI-FM/ROCK 101.

The program as aired April 25<sup>th</sup> got me going, when one of the announcers at about 0625h was discussing something eluding [*sic*] to "shit for brains". This got me listening closer, as I was bugged by this comment. The following ½ hour was littered with the usual junk, which according to my interpretation of the CBSC standards, were rude and tasteless, but would not be considered in violation of the *CAB Code of Ethics*, until 0710, where the ice-breaker came in. The announcer called for listeners to enter a contest, which they had tried out a couple of years before. Listeners were requested to call-in and "Wake-up Woody". The next ½ hour contained the usual suggestive mindless banter as before, with the next "wake-up Woody" discussion at 0740h. The listening female audience was requested to take their phones into the bedrooms of their sleeping husbands and "Wake Up Woody". The best response would get weekend hockey tickets to Saturday's sold-out game. The announcers discussed various issues about this, where one "raised the stake" and "set the side stand on the Harley" so you wouldn't fall out of bed. At 0750, woody was waken [*sic*] up. A woman phoned in and on live air, roused her man, whereby she got the hockey tickets.

The comments afterwards became more incriminating, where one of the announcers did more than state innuendos. If this was not bad enough, while I was listening for an on-the-air statement this morning (April 26) regarding your ruling request [*sic*] on 00/01-0688, the announcers requested at approximately 0740h that as yesterdays contest was such a success that they would have a "Wake-up Wendy" contest as a opposite sex version of the previous days contest.

A man listener was requested, as before, take the phone into the bedroom and "Wake-up Wendy", or Wanda, or Wilma. The announcer stated that Wilma was good, as in "Wilmafingendo". At 0755h, Wilma, Wendy, or whatever was woken up. The respondent stated that she was awakened by her boyfriend as he was prying her legs apart. This couple got the tickets and once again, tasteless discussions ensued afterwards.

I find it amazing that this station can continue to spit into the face of the City of Vancouver with this "entertainment". I saw an article in last week's local newspaper, where X-FM104 had two announcers chastised for saying 'bitch-slapped". This violation was handed-out a couple of months after it apparently occurred, where my first complaint took 15 months to resolve.

I perceive what appears to be a very concerning observation, where a small budget radio station gets justice metered out swiftly for a small violation, whereas the twice number one morning radio show in Canada can defer for over a year, and continue to air programming material I would consider far worse.

I wish to register a whole new complaint against CFMI-FM/ROCK101 for the disgusting and tasteless programming of April 25 & 26, 2002, as aired on the Brother Jake morning show and detailed above. As further offending material is observed, these will be passed on. I expect to go through the same process as I did before, and will process the CBSC official

complaint documentation upon its receipt.

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May 01, 2002

ATTN: Vice President, CFMI-FM

Your name has been referred to in previous correspondence between myself and the CBSC, relating to a complaint re: "The Brother Jake show". Further CC's on the same letter noted [Vice-President of Regulatory Affairs] at Corus Corporate. As a consideration, I have carbon copied [her] on this letter, so that I will properly address the protocol as outlined by the CBSC.

One of the initial letters from my ruling request on a previously aired CFMI-FM/ROCK101 program from the CBSC indicated that the regulatory body encouraged direct correspondence between a complainant and the broadcaster. As a result of this, and in light of the fact that my previous complaint resulted in a ruling noting that CFMI-FM breached a portion of the CAB *Code of Ethics*, I wish for your views and comments on my attached letter prior to any official submittal [sic].

I initially drafted this letter with intent to directly initiate a formal complaint, once again, against the Brother Jake show, whereby I felt that his morning program had sunk to a new low in radio broadcasting. I remembered the "Direct Contact" comment of the CBSC and decided to see what may come of this.

Out of consideration of you, the broadcaster, I am giving you the first opportunity to defend the actions of one of your employees. I wish to ask you; why do you at CFMI-FM and Corus allow for programming such as this to go on the air? It is obviously totally tasteless, totally inappropriate in both topic and timing, and apparently allowed by management, as it was done two days in a row. I wish to ask what you propose to do, if anything, about this and other similar incidences by Jake Edwards and his morning associates. I further wish to know if you will initiate some form of internal policing which would not allow for this type of broadcasting to continue.

I wish for you to respond to me by May 15<sup>th</sup>, 2002 or sooner. This time will allow me to consider your comments, and if found inadequate, will allow for ample time for me to formalize my official complaint and for the CBSC to request your tapes of the most recent broadcast.

I look forward to your prompt response, and would love to here that you are either muzzling or replacing your morning DJs.

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May 11, 2002

This is in response to your draft letter (to the CBSC) of April 26, 2002 and your letter of May 1, 2002 [...].

Your letters set out your concerns regarding some comments made on the Brother Jake Show (the "Program") that was aired on CFMI-FM (the "Station").

As you know, the Program, like many other contemporary music, news and entertainment radio shows can sometimes be controversial in nature. It attracts listeners, in particular adults in the 25 - 54 category from a wide variety of listener backgrounds including young professionals, blue and white collar workers, looking for entertainment in their drive to work

in the morning. The Program uses a blend of sarcasm, humour and information and has been doing so for the past several years, with a steadily growing audience. In fact, for the past three years, Bureau of Broadcast Measurement ratings have consistently rated the Brother Jake Show as No.1 for the adult 25 - 54 category.

In particular, your letter sets out your concerns regarding a contest that was aired on the Program on April 25 and April 26, 2002. The Contest involved participants waking up their spouses such that husbands were required to come up with innovative and humorous ways to awaken their wives and vice versa. The winner of this Contest was to be awarded a pair of hockey tickets to a sold-out Game. We appreciate that some of the contestants' innovative approaches may have been somewhat suggestive. We recognize that the content of the "skits" performed by some of the callers may be controversial and not appeal to some listeners' comedic tastes. Humour and taste are extremely subjective elements relative to the point of view of an individual.

The Canadian Association of Broadcasters codes (the "Codes"), administered by the CBSC have clarified that "the broadcaster's programming responsibility does not extend to questions of good taste"<sup>1</sup>. The CBSC applies current social norms in its interpretation of the Codes. In previous decisions, the CBSC has noted, "some language which may at another time have been broadly considered obscene or profane had now slipped into common and marginally acceptable usage."<sup>2</sup> The CBSC has acknowledged that crude or vulgar language is not necessarily obscene or profane and therefore not in violation of the Codes.<sup>3</sup>

The CBSC has also acknowledged that a program "will not be everyone's 'cup of tea' and it assumes that some members of society would be offended... *That* is not, however, the criterion by which the program must be judged."<sup>4</sup> In addition, the CBSC has noted that "it is essential to draw a distinction between a broadcast which is *intended* to be serious or at least leaves the impression that it intends to be serious and one which *clearly* does not. Where the audience is given no reason to expect that the substance of the comments made is serious, their attitude could *reasonably* be expected to be different. A remark which might reasonably be assessed as abusive in a serious context and thus in breach of the *Code of Ethics* may not be so viewed in the comedic environment."<sup>5</sup> Moreover, the CBSC has noted that where the programming is directed to an adult audience, "there is no overriding societal interest in curtailing the broadcaster's right to freedom of expression" and that in those circumstances, "crude and vulgar language should be 'regulated' in the same way as other matters or taste. i.e. via the on/off or dial button."<sup>6</sup>

We deeply regret that the Program offended you for that was not our intent. We have taken the time to thoroughly review the tapes of both programs in an effort to properly respond to your complaints and are of the view that while the language and subject matter of the Programs may have been in poor taste, it did not breach the CBSC Codes. We have however, reviewed your concerns internally and have had discussions with our on-air staff about appropriate on-air content and we will continue to exercise greater diligence on such matters. Please be assured that we take our responsibilities as a broadcaster very seriously. At ROCK 101, we work to ensure all our programming complies with the Broadcasting Act, the Radio Regulations and the Codes and standards expected of us as a member of the CBSC.

We trust the foregoing responds to the concerns you raised in your letter regarding the Program. At ROCK1 01, we recognize the importance of listener feedback and appreciate all comments. We thank you for taking the time and initiative to share your concerns with us.

<sup>1</sup> Clause 1 – CAB Code of Ethics Commentary

<sup>2</sup> *CFRA-AM re Steve Madely* (CBSC Decision 93/94-0295, November 15, 1994)

<sup>3</sup> Clause 1 – CAB Code of Ethics Commentary

<sup>4</sup> *CFJP-TV (TQS) re "Quand l'amour est gai"* (CBSC Decision 94/95-0204, December 6, 1995)

<sup>5</sup> *CHUM-FM re Sunday Funnies* (CBSC Decision 95/96-0064, March 26, 1996)

<sup>6</sup> *CIQC-AM re Galganov in the Morning* (CBSC Decision 97/98-0473, August 14, 1998)

## Broadcaster Response

The CBSC gave the broadcaster an opportunity to respond a second time to the complainant, which they did on June 13:

The Canadian Broadcast Standards Council ("CBSC") has asked us to respond to your letter of May 16, 2002. In your letter, you raised concerns regarding comments made in the Brother Jake Morning Show (the "Program") aired on CFMI-FM (the "Station") on April 25, 2002.

As noted in our previous response to you dated May 11, 2002, the Program, like many other contemporary music, news and entertainment radio shows can sometimes be controversial in nature. It attracts listeners, in particular adults in the 25 - 54 category from a wide variety of listener backgrounds including young professionals, blue and white collar workers, looking for entertainment in their drive to work in the morning. The Program uses a blend of sarcasm, humour and information and has been doing so for the past several years, with a steadily growing audience. In fact, for the past three years, Bureau of Broadcast Measurement ratings have consistently rated the Brother Jake Show as No.1 for the adult 25 - 54 category.

In particular, your letter sets out your concerns regarding a contest that was aired on the Program on April 25 and April 26, 2002. The Contest involved participants waking up their spouses such that husbands were required to come up with innovative and humorous ways to awaken their wives and vice versa. The winner of this Contest was to be awarded a pair of hockey tickets to a sold-out Game. We appreciate that some of the contestants innovative approaches may have been in bad taste and even somewhat suggestive. Please be assured that the host and producers take steps to ensure that any "sexually sensitive" materials are usually presented through the use of euphemisms/innuendos (as pointed out in your letter) and in a comedic manner. The euphemisms used are not explicit or raunchy. Anyone listening who did not already have a mature understanding of the general topic would not have understood the euphemisms. We recognize that the content of the "skits" performed by some of the callers may be controversial and not appeal to some listeners' comedic tastes. Humour and taste are extremely subjective elements relative to the point of view of an individual.

The Canadian Association of Broadcasters codes (the "Codes"), administered by the CBSC have clarified that "the broadcaster's programming responsibility does not extend to questions of good taste"<sup>1</sup>. The CBSC applies current social norms in its interpretation of the Codes. In previous decisions, the CBSC has noted, "some language which may at another time have been broadly considered obscene or profane had now slipped into common and marginally acceptable usage."<sup>2</sup>

The CBSC has acknowledged that crude or vulgar language is not necessarily obscene or profane and therefore not in violation of the Codes.<sup>3</sup> The CBSC has also acknowledged that a program "will not be everyone's 'cup of tea' and it assumes that some members of society would be offended... *That* is not, however, the criterion by which the program must be judged."<sup>4</sup> In addition, the CBSC has noted that "it is essential to draw a distinction between a broadcast which is *intended* to be serious or at least leaves the impression that it intends to be serious and one which *clearly* does not. Where the audience is given no reason to expect that the substance of the comments made is serious, their attitude could *reasonably* be

expected to be different. A remark which might reasonably be assessed as abusive in a serious context and thus in breach of the *Code of Ethics* may not be so viewed in the comedic environment."<sup>5</sup> Moreover, the CBSC has noted that that where the programming is directed to an adult audience, "there is no overriding societal interest in curtailing the broadcaster's right to freedom of expression" and that in those circumstances, "crude and vulgar language should be 'regulated' in the same way as other matters of taste, i.e. via the on/off or dial button."<sup>6</sup> In this instance, you will appreciate that this Program is directed to an adult audience.

We deeply regret that the Program offended you for that was not our intent. We have taken the time to thoroughly review the tapes of both programs in an effort to properly respond to your complaints and are of the view that while the language and subject matter of the Programs may have been in poor taste, it did not breach the CBSC Codes. We have however, reviewed your concerns internally and have had discussions with our on-air staff about appropriate on-air content and we will continue to exercise greater diligence on such matters. Please be assured that we take our responsibilities as a broadcaster very seriously. At ROCK 101, we work to ensure all our programming complies with the Broadcasting Act, the Radio Regulations and the Codes and standards expected of us as a member of the CBSC.

We trust the foregoing responds to the concerns you raised in your letter regarding the Program. At ROCK101, we recognize the importance of listener feedback and appreciate all comments. We thank you for taking the time and initiative to share your concerns with us.

<sup>1</sup> Clause 1 - CAB Code of Ethics Commentary

<sup>2</sup> *CFRA-AM re Steve Madely* (CBSC Decision 93/94-0295, November 15, 1994)

<sup>3</sup> Clause 1 - CAB Code of Ethics Commentary

<sup>4</sup> *CFJP- TV (TQS) re "Quand l'amour est gai"* (CBSC Decision 94/95-0204, December 6, 1995)

<sup>5</sup> *CHUM-FM re Sundav Funnies* (CBSC Decision 95/96-0064, March 26, 1996),

<sup>6</sup> *CIQC-AM re Galqanov in the Morning* (CBSC Decision 97/98-0473, August 14, 1998)

## Additional Correspondence

The complainant was unsatisfied with the broadcaster's response and sent the following fax on June 21 along with his signed Ruling Request form:

Please find enclosed a signed copy of your "Ruling Request Form" as sent to me in your letter of May 22<sup>nd</sup>, 2002. I forward this request to you, as I feel that the June 13<sup>th</sup> letter of justification from [the Program Director] of CFMI-FM/ROCK-101 still did not change my mind about my complaint sent to you on May 16, 2002.

In review of the program director's response, the level of broadcast is focused on adults in the 25-54 year age group. I have even noted that, of late, CFMI-FM/ROCK-101 is airing a disclaimer that the AM morning show contains content of an adult nature ... etc. What he fails to acknowledge is the fact that children are listening to their station during the morning program, and that a disclaimer will not stop that fact.

A ride at an amusement park can prohibit a child from participation if they do not come up to a minimum height. A radio or TV station can air programs of a controversial nature late at night, e.g. Bravo's Friday night Showcase, as young children would not be expected to be up at that time. To air a solicitation to engage in live sex on the radio at 8 AM on a school day is unacceptable. To air the act of sexual arousal on the air is unacceptable. To follow up and

do it the next day is totally unbelievable and unacceptable. The station management, by allowing this level of programming, is condoning this type of broadcast. Young people at 8 AM will be listening to the radio at that time and this type of content, as aired on April 25<sup>th</sup> & 26<sup>th</sup> is, I feel, unacceptable.

Please consider my complaint, and find the signed Ruling Request Form following.