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**CANADIAN BROADCAST STANDARDS COUNCIL  
ONTARIO REGIONAL PANEL**

CILQ-FM re the broadcast of a Rolling Stones concert

(CBSC Decision 04/05-1911 & -1915)

Decided December 15, 2005

M. Ziniak (Vice-Chair), B. Bodnarchuk, R. Cohen (*ad hoc*), M. Hogarth (*ad hoc*),  
M. Oldfield and C. Reyes

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**THE FACTS**

On August 10, 2005, the Rolling Stones were scheduled to play a live concert at the Phoenix Concert Theatre in Toronto, beginning at 9:30 pm. Apparently for the previous 36 hours, CILQ-FM (Q107, Toronto) advertised that it would be broadcasting that concert by the Rolling Stones. At approximately 9:00 pm on the 10<sup>th</sup>, Q107 promoted the upcoming broadcast in the following terms. The Q107 radio host for that broadcast, John Scholes, said (a full transcript of the broadcast can be found in Appendix A):

And a hundred people lucky enough to get tickets, uh, this morning around 8:30 are, uh, convening right now at the Phoenix Concert Theatre for a live Stones show. The club gig before they embark on that big world tour. As promised, live Stones in Toronto comin' up after the Beatles. Hang on.

After a commercial break and the airing of a song by the Beatles, at 9:30 pm, Scholes began the broadcast of the concert. In the background, there were the sounds of a crowd cheering and instruments warming up as Scholes made the following introduction:

All right, as promised, we continue the unofficial Rolling Stones Day here at the Q107, about to embark on another world tour. Uh, the club gig, live, tonight, right now in Toronto at the Phoenix Concert Theatre. As promised all day, the Stones live in Toronto. Enjoy everybody, on Q107.

The broadcast of the Rolling Stones concert consisted of songs and other elements typical of a live concert, such as comments to the audience by

frontman Mick Jagger and sounds of the crowd cheering. Scholes frequently interjected during the broadcast to name the songs that had just been performed and provide tidbits of information about the Rolling Stones. He also repeatedly referred to the broadcast as “live Stones” and made references to the Phoenix Concert Theatre show. For example, early in the broadcast, he stated:

Classic rock Q107, live Stones there. The, uh, club gig tonight before they embark on their, uh, big tour will be the Phoenix Concert Theatre. Man oh man, if I had a ticket for the show, well, I wouldn't be here now, would I? I believe, uh, “Sad, Sad, Sad”, the tune they just did there. And, uh, got it underway with “It's Only Rock 'n' Roll”. They do this every time they're in Toronto. They, uh, they prepare somewhere in the city and then they, uh, do a small club gig before they get outta here and, uh, treat a, uh, chosen crowd to an excellent show. I guess you're not going to hear me if you're at the show now, but when you get out, gimme a call. I wanna know how the show was. The Phoenix Concert Theatre is the place of the live Stones gig tonight. More live Stones in Toronto comin' up.

Again, at around 9:45 pm, Scholes made the comment, “And everybody enjoying the show, obviously” as the sound of a crowd cheering in the background was heard. Two bumpers coming in and out of commercial breaks also used the word “live” to refer to the broadcast: “This is the Rolling Stones live in Toronto. Classic rock Q107.” and “Celebrating a Toronto tradition. The Rolling Stones club gig. This is the world's greatest rock 'n' roll band live, Classic Rock Q107.”

Scholes concluded the broadcast with additional similar comments:

Live Stones. The club gig tonight, Phoenix Concert Theatre before they take off, uh, for good on a world tour all over the place. And, uh, Toronto September 26<sup>th</sup>. That will be the Rogers Centre. And a new album, *A Bigger Bang* hits stores on September 6<sup>th</sup> as well. If you're, uh, getting out of the show now, gimme a call. 870-ROCK. 870, we're all in the 416 [the area code]. Obviously I'm here, not there. Uh, let me know how it was. A little feedback if you will.

Following the broadcast, it became known that the concert aired by Q107 was in fact a performance that had been recorded live at a different Toronto club in 2002. It was not, therefore, a live broadcast of the Rolling Stones' August 10, 2005 performance at the Phoenix Concert Theatre.

The CBSC received nine complaints about this broadcast. Two of those complainants requested that the CBSC investigate the matter further. The first complainant outlined his complaint in the following terms (the full text of all correspondence can be found in Appendix B):

During the 9th of August 2005 it became known in Toronto, and then worldwide, that the Rolling Stones would be giving a special end-of-tour rehearsals show at the Phoenix Theatre in Toronto. Q107 then let it be known that they would be broadcasting during the show.

During 10th August the many program trailers, and the introduction to the "broadcast" were all intended to leave the impression that the broadcast was of

the actual show taking place at that time in Toronto. It was a clear intention to deceive the listeners. The word "live" was constantly emphasised. There was constant emphasis about the concurrency of the actual show that evening in Toronto.

Instead of broadcasting the actual show, they broadcast a recording (eh??) of the equivalent event prior to the Rolling Stones' previous tour in 2002.

My complaint therefore is one of deliberate deception of their audience.

The second complainant's concerns were similarly expressed:

Radio Station Q107 in Toronto heavily advertised and actively promoted a special broadcast of "The Rolling Stones Live from the Phoenix Club" in Toronto at 9:30 pm on 8/10/05 and then they aired a tape of a performance by The Stones from three years ago, also in Toronto, at the Palais Club. This was a deliberately misleading, disingenuous and unscrupulous usage of the airwaves by Q107. They knew exactly what they were doing and they did it anyway. They should have their licence revoked forthwith.

Q107's Program Director responded to all of the complainants on September 7. He explained the station's view of the event in the following way:

We always strive to find the best mix of programming that our listeners will appreciate and enjoy. During the week of August 08, 2005 we learned that the Rolling Stones would be playing a rare small-venue gig in Toronto. News of this performance spread quickly in Toronto and among fans of the Rolling Stones around the world. Knowing that only a small number of lucky fans would gain access to this concert we wanted to provide our listeners with a similar experience to seeing and hearing the Rolling Stones live in concert. For this reason we played a recording of the Rolling Stones live in concert in a similar-sized venue in Toronto from three years earlier.

Your email states that Q107 promoted that we would be broadcasting the concert live on our station and that our broadcast intended to leave the impression that the broadcast was of the actual show and a clear intention to deceive listeners. We certainly did not intend to deceive any of our listeners, but after evaluating the recording of the program, we do recognize that we could have more clearly explained that the concert we played was indeed a live recording of an earlier concert performance. In our haste to provide the live concert experience to our listeners we were remiss and should have made it clear that it was pre-recorded on air at the time. We see how this was confusing and regret that some listeners thought that we were actually broadcasting the live concert from the venue.

As Program Director for Q107 I take responsibility for the broadcast of the concert and the way it was presented. Please be assured that at Q107 we take our responsibilities as a broadcaster seriously. We work to ensure all our programming on Q107 complies with the *Broadcasting Act*, the *Radio Regulations* and the Canadian Association of Broadcasters *Code of Ethics*, standards required of us as a member of the CBSC. While we don't believe we contravened the Code in any way with this broadcast we regret that you felt misled [*sic*]. It certainly was not our intention.

Q107 listeners are extremely loyal to both the station and to the musical format. We think we have the best listeners in the world and are very sorry that we have disappointed you with this broadcast. We wish to extend our apology for a broadcast that should have been clearer about what it was playing.

The first complainant returned his Ruling Request on September 12 and responded to some of the points made by Q107:

It is clear that the perceptions of the event differ hugely.

It is unlikely that there would be very much of a point in counting the number of times the definite article was used, or implied, and/or how many times the indefinite article was used, or implied. Listening for subtle nuances of meaning and emphasis will not help.

It may be better to step back and consider the listeners' perception of the advertised event and what conditioned it.

It was heavily promoted, and gained (as [the Program Director] notes) a huge amount of publicity around the world. Such is the impact of the Internet. When considering the event, Rolling Stones fans such as myself necessarily took into account the likelihood of it being a truly live broadcast of that evening's concert in Toronto.

The alternative to consider was that it was a recording of some sort.

[...]

As the promotion, and indeed the start of the broadcast ("the Club Gig live tonight right now in Toronto at the Phoenix Concert Theatre. As promised all day – the Stones live in Toronto – enjoy everybody"?), proceeded it seemed that the balance of probability was that Q107 would really be playing a real-time as-it-happened broadcast. The alternative was that they were playing an unreleased recording.

[...]

It seems that somehow the unexpected happened – hence my assertion that there was major deception against the listening public. I find it hard to conceive that this was accidental.

The second complainant was also dissatisfied with Q107's response and filed his Ruling Request on September 14, with the following additional comments:

I'm sorry, but [the Program Director]'s sheepish explanation/apology on behalf of Q107 doesn't even begin to address the deliberate pattern of deception, obfuscation and misrepresentation foisted upon Rolling Stones fans on that evening.

As [the Program Director] points out in paragraph three of his response, "Only a small number of lucky fans would be able to gain access to (the actual concert on 8/10/05 at the Phoenix Club in Toronto)." For at least 36 hours before the Stones hit the stage at the Phoenix Club, Q107 encouraged listeners to "keep it right here on Q107 for Live Stones at 9:30 Wednesday night." At NO TIME ---- repeat

NO TIME ---- did anyone from Q107 make an honest announcement that the "Live Stones" they would be presenting would actually be a recording of a previous live performance.

[...]

The message is clear -- Q107 is no 1,000-watt college radio station that just got carried away with some over-zealous student announcers. They are a bonafide presence in the Toronto radio market, in brisk competition for listeners and advertising dollars, and they piggybacked the Stones show at the Phoenix to exact whatever monetary advantage they could glean from their actions with a fully pre-meditated strategy and malice aforethought.

I am writing on behalf of an ad-hoc Rolling Stones message board/blog site known as Stonesdoug.com and I can't tell you the number of members all over the world who were duped by Q107's "LIVE STONES" exhortations for 8/10/05. Nobody can rightly believe that any radio station would pull such a deceptive stunt as Q107 shamelessly carried out.

What LIVE STONES did Q107 think Stones fans were expecting to receive over their airwaves?

If they just wanted to play an old tape, why do it exactly at showtime at the Phoenix Club -- 9:30 pm EST -- except to deceive their audience?

In his document -- paragraph 4, line 6 -- [the Program Director] speaks of Q107's "haste" to provide a live concert experience for the station's listeners as if this was an instantaneous decision.

As cited earlier, Q107 was promoting this subterfuge for a full 36 hours before the broadcast. How hasty was that? This was an absolutely fully plotted and planned, deliberate shell game perpetrated against a countless number of music fans eager to hear songs from their new studio album and the 2005 version of the irrepressible and irresistible Rolling Stones.

[...]

[The Program Director's] mealymouthed, legal-speak response to my complaint is parenthetically unacceptable and I respectfully request that this matter be scheduled for a formal panel review by the Canadian Broadcast Standards Council (CBSC).

At that time, I suggest that you review a tape of Q107's broadcast that evening and ask yourselves what concert you're listening to -- the Phoenix Club on 8/10/05 or a show from three years beforehand?

Q107 didn't want anybody to know ... that's why they kept referring to their broadcast as "The Phoenix Club."

This simply cannot be allowed to stand without a monetary fine against Corus Entertainment or a formal censure.

Thank you for your consideration in this matter on behalf of all Rolling Stones fans, many of whom travel great distances to see them perform. The prospect of an actual live broadcast of the virtually-impossible-to-get-a-ticket-to Phoenix Club

show which was generously bandied forth to Q107's listenership -- only to be exposed as lies, lies, lies, lies and more lies, simply cannot be allowed to stand.

## THE DECISION

The Ontario Regional Panel examined the complaint under the following provisions of the Canadian Association of Broadcasters' (CAB) *Code of Ethics*:

### Clause 6 – Full, Fair and Proper Presentation

It is recognized that the full, fair and proper presentation of news, opinion, comment and editorial is the prime and fundamental responsibility of each broadcaster. This principle shall apply to all radio and television programming, whether it relates to news, public affairs, magazine, talk, call-in, interview or other broadcasting formats in which news, opinion, comment or editorial may be expressed by broadcaster employees, their invited guests or callers.

### Clause 12 – Contests and Promotions

All on-air contests and promotions shall be conceived and conducted fairly and legitimately and particular care shall be taken to ensure that they are not misleading, potentially dangerous or likely to give rise to a public inconvenience or disturbance [...].

The Ontario Regional Panel Adjudicators listened to a recording of Q107's Rolling Stones broadcast and reviewed all of the correspondence. The Panel concludes that Q107 is in breach of the two aforementioned Code provisions.

### Promotions: Fair or Misleading?

Although the CBSC has previously dealt with Clause 12 (Contests and Promotions) of the *CAB Code of Ethics*, this is the first occasion on which a Panel has been called upon to assess the promotions part of the clause, and, more specifically, the issue of the fairness or accuracy of a promotion. In this respect, the clause requires that “on-air [...] promotions shall be conceived and conducted fairly and legitimately and particular care shall be taken to ensure that they are not misleading [...].”

As a preliminary matter, the Panel wishes to note that “promotions” are not limited to such advertising as occurs prior to a broadcast, aired in order to entice listening (or viewing) of an upcoming program; they may also include trailers, bumpers and other types of promotional material that are aired *during* a broadcast. Such promotions serve to identify a program that is already underway for those listeners/viewers who may be surfing or just tuning in, on the one hand, or to encourage already engaged audience members to *remain* tuned to that broadcast. It follows that the bumpers aired by Q107 going into and out of the

commercial breaks during the Rolling Stones concert, as well as other language used by the host, all fall under the heading of “promotions”, as anticipated in Clause 12 of the Code. The question for the Panel is, then, whether those promotions were misleading.

On that point, the Panel considers that an ordinary reasonable listener could reach only one conclusion. The show promised to them was to be *the* live Rolling Stones Concert from *that* night. Nothing less. While the station said, in its reply to the complainants, “We certainly did not intend to deceive any of our listeners”, it hardly took their sensibilities into account. From the get-go, it said, “As promised, live Stones in Toronto comin’ up ...”. And how coincidental was it, from a listener’s perspective, that the broadcast of the “old” concert began at precisely the same time as the live concert? And that the background sounds at the start of the concert were those of a crowd cheering and instruments warming up? To compound the likelihood that the audience would believe it was *that night’s* live concert, the radio host said:

Uh, the club gig, *live, tonight, right now* in Toronto at the Phoenix Concert Theatre. As promised all day, the Stones *live in Toronto*. Enjoy everybody, on Q107. [Emphasis added.]

According to the complainants (but unverified by the CBSC), similar comments about the upcoming “live” Rolling Stones performance were made on air for at least 36 hours leading up to the broadcast. Also, the bumpers during the broadcast stated “This is the Rolling Stones live in Toronto” and “This is the world’s greatest rock ‘n’ roll band live.” The *repeated* juxtaposition of the word “live” and references to the Phoenix show occurring in the identical time period as the broadcast concert clearly left the impression to any listener that the broadcast was indeed that of the live 2005 Rolling Stones show. This impression was compounded by the sounds of a crowd cheering and other typical concert noises which served as background audio when Scholes was speaking. Further remarks such as “Phoenix Concert Theatre, 410 Sherbourne, the club gig for the Stones *before* they embark on their tour. It’s, uh, happening *right now*. *More live Stones* comin’ up, hang on” would have led any reasonable listener to assume that they were in fact listening to the concert then taking place at the Phoenix.

Despite the fact that the complainants perceived a premeditated effort on the part of Q107 to dupe its audience for commercial gain, the Panel has no wish to impugn Q107’s claim that the station did not intend to deceive its audience. The issue of the broadcaster’s intention or the approach to the planning of this event is not material. What is material is that the broadcasts reviewed would have led an ordinary reasonable listener to conclude that the broadcast was that of the live concert at the Phoenix Theatre when it was not. Consequently, the Ontario Regional Panel considers that the promos were misleading and in breach of Clause 12 of the *CAB Code of Ethics*.

### **Full, Fair and Proper Presentation**

Clause 6 of the *CAB Code of Ethics* also requires that any commentary be “full, fair and proper”. The Panel also considered the comments made by John Scholes during the course of the actual broadcast in light of that clause. These comments included identification of the songs performed by the Rolling Stones and other remarks cited above. The Panel acknowledges that at no time did the host directly state that the Rolling Stones concert being broadcast was in fact a live broadcast; it was, he left the distinct impression, *the* live broadcast from the Phoenix Concert Theatre. It also notes that the host did mention that he himself was *not* present at the Phoenix Theatre when he said, “If I had a ticket for the show, well, I wouldn’t be here now, would I?” and “Obviously I’m here, not there.” That could, of course, have been understood by a reasonable listener to have been simply a *technical* broadcasting issue, particularly when there was no suggestion that the *concert* was not live. The point surely is that it would have been entirely reasonable, indeed responsible, for the host to disclose that the broadcast was in fact a *recording* of a live Rolling Stones performance *from three years earlier*. In this case, the accumulation of the promotional spots and the host’s remarks during the broadcast also constituted an unfair and improper broadcast contrary to Clause 6 of the *CAB Code of Ethics*.

### **Broadcaster Responsiveness**

In all of its decisions, the CBSC examines the response of the broadcaster to the complainant(s). The CBSC expects that the station will provide a thorough, thoughtful and detailed reply to any and all complainant concerns. In doing so, the broadcaster need not agree with a complainant’s view of the broadcast. Indeed, it is usually only when there is a difference of opinion between the broadcaster and the complainant that a complaint results in adjudication by a CBSC Panel. In the matter at hand, Q107 provided a fairly lengthy reply to all of the nine complainants. Their response explained Q107’s rationale for airing the Rolling Stones concert, but assured the complainants that they had not intended to deceive their audience and, upon review of the broadcast, agreed that a listener could have been confused by the presentation and choice of words. Although two of the complainants did not find that explanation and admission satisfactory, the Ontario Regional Panel finds that Q107 clearly met its responsibilities of responsiveness in this instance.

### **ANNOUNCEMENT OF THE DECISION**

CILQ-FM is required to: 1) announce the decision, in the following terms, once during peak listening hours within three days following the release of this decision and once more within seven days following the release of this decision during the time period in which the Rolling Stones concert was broadcast; 2)

within the fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the statement to the complainants who filed the Ruling Requests; and 3) at that time, to provide the CBSC with a copy of that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by CILQ-FM.

The Canadian Broadcast Standards Council has found that Q107 breached the Canadian Association of Broadcasters' *Code of Ethics* in its presentation of a Rolling Stones concert broadcast on August 10, 2005. Q107's promotions for the concert and the host's commentary during the concert left the impression that the concert was a live broadcast of the Rolling Stones concert that was taking place that night. The broadcast was actually a pre-recorded concert from three years earlier. Q107's broadcast was misleading, unfair and improper, contrary to Clauses 6 and 12 of the *Code of Ethics*.

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

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## APPENDIX A

### CBSC Decision 04/05-1911 & -1915 CILQ-FM re a Rolling Stones concert

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CILQ-FM (Q107, Toronto) broadcast a concert by the Rolling Stones on August 10, 2005 from 9:30 pm to 11:00 pm. They also promoted the broadcast earlier in the day. The following is a transcript of the broadcast, beginning at 9:00 pm.

- songs

Scholes: Classic rock Q107, Dire Straits from *Brothers in Arms* and "So Far Away", The Band "Up on Cripple Creek" from their second, U2 "Bad" and the Stones "Under My Thumb" from *Aftermath* in 1966. Going to be back in Toronto September 26<sup>th</sup> at the Rogers Centre, the Q107 classic rock summer concert series. But, tonight, uh, it's live over at the Phoenix Concert Theatre for their club gig like they do, uh, when they practise, uh, before every world tour. At least for the last couple anyway. Uh, they like it here in Toronto. They get left alone. They can practise, get their chops down for the first, uh, month or two before going out on the world tour. And they like to, uh, pay us off. Like they're saying thank you with a club gig and so a few shows. And a hundred people lucky enough to get tickets, uh, this morning around eight thirty are, uh, convening right now at the Phoenix Concert Theatre for a live Stones show. The club gig before they embark on that big world tour. As promised, live Stones in Toronto comin' up after the Beatles. Hang on.

- commercial break

- Beatles song "Let It Be"

[sound of crowd cheering in background]

Scholes: All right, as promised, we continue the unofficial Rolling Stones Day here at the Q107, about to embark on another world tour. Uh, the club gig, live, tonight, right now in Toronto at the Phoenix Concert Theatre. As promised all day, the Stones live in Toronto. Enjoy everybody, on Q107.

- sounds of crowd cheering; instruments warming up; Stones performance

[crowd cheering in background]

Scholes: Classic rock Q107, live Stones there. The, uh, club gig tonight before they embark on their, uh, big tour will be the Phoenix Concert Theatre. Man oh man, if I had a ticket for the show, well, I wouldn't be here now, would I? I believe, uh, "Sad, Sad, Sad", the tune they just did there. And, uh, got it underway with "It's Only Rock 'n' Roll". They do this every time they're in Toronto. They, uh, they prepare somewhere in the city and then they, uh, do a small club gig before they get outta here and, uh, treat a, uh, chosen crowd to an excellent show. I guess you're not going to hear me if you're at the show now, but when you get out, gimme a call. I wanna know how the show was. The Phoenix Concert Theatre is the place of the live Stones gig tonight. More live Stones in Toronto comin' up.

- commercial break

announcer: This is the Rolling Stones live in Toronto. Classic rock Q107.

- Stones performance continues

[crowd cheering in background]

Scholes: Live Stones, Classic Rock Q107, the club gig tonight at the Phoenix Concert Theatre before they, uh, embark on their, uh, world tour. World tour number six million four hundred and twenty-seven. And everybody enjoying the show, obviously. I always get to listen from the outside. I'm not a big fan, but, uh, maybe next time if they decide to do this again. Of course they will! Uh, they got a new album coming out, by the way, *A Bigger Bang*. It'll be in stores on September 6<sup>th</sup>. And, uh, "Stray Cat Blues", right there. Nine forty-seven, Scholes here. Anytime you want to pick the tunes, be it a Stones tune or whatever, uh, the 925 Workplace Classic Rock Superset is what you can do. Q107.com, join on and, uh, nail down a bunch of tunes with your co-workers. What? Oh. And, uh, anytime you want to send it to us, we'll play 'em back at 9:00 am, 2:00 pm, 5:00 pm. And, uh, we'd love to get yours on as soon as we can. The club gig, as announced yesterday. Tickets, only a few of those around. And they were ten bucks and, uh, the place is pretty much full to whatever the Stones said it was gonna be. Phoenix Concert Theatre, 410 Sherbourne, the club gig for the Stones before they embark on their tour. It's, uh, it's happening right now. More live Stones comin' up, hang on.

- commercial break

announcer: Celebrating a Toronto tradition. The Rolling Stones club gig. This is the world's greatest rock 'n' roll band live, Classic Rock Q107.

- Stones performance continues

announcer: This is the Rolling Stones live in Toronto. Classic Rock Q107.

- Stones performance

announcer: Celebrating a Toronto tradition. The Rolling Stones club gig. This is the world's greatest rock 'n' roll band live. Classic Rock Q107.

- Stones performance continues

[crowd cheering in background]

Scholes: Classic Rock Q107, Stones live, the club gig tonight at Phoenix Concert Theatre before they embark on the world tour, number six hundred and twenty-four million. "Wild Horses" right there. Before that, uh, I believe "Torn and Frayed" from *Exile on Main Street*. A very slow, crooning version of "Honky Tonk". "Don't Stop" as well. And, uh, way back, I think I wrote it down. De de de, "Hot Stuff" would be the tune that we heard right there. It's, uh, Scholes here, ten seventeen, the mighty Q. Rolling Stones, September 26<sup>th</sup>, the Q107 Classic Rock summer concert series presentation is taking place here at the Rogers Centre. And the new, the new album, rather, *A Bigger Bang*. It'll be in stores on September 6<sup>th</sup>. So, uh, lookin' forward to all that. I think the rain for, uh, now is pretty much gone. Sunshine comin' through the next couple days. Twenty-seven, back up to, uh, around twenty-nine for Sunday. And possibly some showers. Again, the Stones, their, uh, club gig. The secret gig, not so secret now. Phoenix Concert Theatre tonight, 410 Sherbourne. Live in Toronto, more Stones comin' up.

- commercial break

announcer: This is the Rolling Stones live in Toronto. Classic Rock Q107.

- Stones performance continues

announcer: This is the Rolling Stones live in Toronto. Classic Rock Q107.

- Stones performance continues

[crowd cheering in background]

Scholes: Classic Rock Q107 and the Stones, live stuff there. The club gig tonight. The Phoenix Concert Theatre, 410 Sherbourne is where it's happening before they, uh, go out on the road for a, uh, I don't know how long this tour's gonna last. It's like around the world seven times, but, uh, it's gonna be a while. Back in Toronto September 26<sup>th</sup> at the Rogers Centre. I heard that, uh, I think it's San Francisco in November, Metallica opening for them, so that should be an interesting show. It's, uh, ten forty-three. Scholes here. *Feel the Noize: The Eight O'Clock Hairball* happens, uh, with Kim and Carly Saturdays, eight o'clock, goes until nine. The best in hair rock, tight jeans, teased out hair and skinny legs. That's what you get. And, uh, the music that goes along with. Catch the show and then, uh, head on down and head upstairs to the Classic Rock house party, live to air Saturday night. Love to see you down there. And, uh, "Heart of Stone", from the Stones as well. And, uh, way back I believe, uh, "Happy" from *Exile on Main Street*, as they continue there. It is live Stones in Toronto, the, uh, unofficial Stones Day here on Q107. Live at the Phoenix Concert Theatre. More Stones is comin' up.

- commercial break

announcer: Celebrating a Toronto tradition. The Rolling Stones club gig. This is the world's greatest rock 'n' roll band live. Classic Rock Q107.

- Stones performance continues

[crowd cheering in background]

Scholes: Live Stones. The club gig tonight, Phoenix Concert Theatre before they take off, uh, for good on a world tour all over the place. And, uh, Toronto September 26<sup>th</sup>. That will be the Rogers Centre. And a new album, *A Bigger Bang* hits stores on September 6<sup>th</sup> as well. If you're, uh, getting out of the show now, gimme a call. 870-ROCK. 870, we're all in the 416. Obviously I'm here, not there. Uh, let me know how it was. A little feedback if you will. Get to a little more Stones in just a little while. Something from their new album, gonna be out, uh, beginning of September. And we'll get to Deep Purple as well.

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## APPENDIX B

### CBSC Decision 04/05-1911 & -1915 CILQ-FM re a Rolling Stones concert

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#### The Complaints

The CBSC received nine complaints about this broadcast. Two of those complainants filed Ruling Requests. Their complaints are reproduced below.

Complaint File 04/05-1911, received August 12, 2005:

I wish to make the following complaint:

Radio Station: Q107 Toronto

Name of Program: Not Applicable. The complaint covers a time period, but [the] Program Director Q107, has accepted responsibility for the issues.

Date: 10th August 2005

Time: Much of day, but climaxing at about 21:30 local Toronto time.

Specific Concern:

During the 9th of August 2005 it became known in Toronto, and then worldwide, that the Rolling Stones would be giving a special end-of-tour rehearsals show at the Phoenix Theatre in Toronto. Q107 then let it be known that they would be broadcasting during the show.

During 10th August the many program trailers, and the introduction to the "broadcast" were all intended to leave the impression that the broadcast was of the actual show taking place at that time in Toronto. It was a clear intention to deceive the listeners. The word "live" was constantly emphasised. There was constant emphasis about the concurrency of the actual show that evening in Toronto.

Instead of broadcasting the actual show, they broadcast a recording (eh??) of the equivalent event prior to the Rolling Stones' previous tour in 2002.

My complaint therefore is one of deliberate deception of their audience.

Complaint File 04/05-1915, received by the CRTC August 11 and forwarded to CBSC in due course:

Radio Station Q107 in Toronto heavily advertised and actively promoted a special broadcast of "The Rolling Stones Live from the Phoenix Club" in Toronto at 9:30 pm on 8/10/05 and then they aired a tape of a performance by The Stones from three years ago, also in Toronto, at the Palais Club. This was a deliberately misleading, disingenuous and

unscrupulous usage of the airwaves by Q107. They knew exactly what they were doing and they did it anyway. They should have their licence revoked forthwith.

## **Broadcaster's Response**

The broadcaster responded to the complaints on September 7 with the following:

The Canadian Broadcast Standards Council ("CBSC") has asked us to respond to your email of August 11, 2005 where you raised concerns regarding the broadcast of a Rolling Stones concert that was aired on Q107 on August 10, 2005.

As you know, Q107 is a music radio station that provides its listeners with a classic rock format. The station airs a variety of entertainment via music and narrative content and through that has achieved massive acceptance among Toronto and area listeners.

We always strive to find the best mix of programming that our listeners will appreciate and enjoy. During the week of August 08, 2005 we learned that the Rolling Stones would be playing a rare small-venue gig in Toronto. News of this performance spread quickly in Toronto and among fans of the Rolling Stones around the world. Knowing that only a small number of lucky fans would gain access to this concert we wanted to provide our listeners with a similar experience to seeing and hearing the Rolling Stones live in concert. For this reason we played a recording of the Rolling Stones live in concert in a similar-sized venue in Toronto from three years earlier.

Your email states that Q107 promoted that we would be broadcasting the concert live on our station and that our broadcast intended to leave the impression that the broadcast was of the actual show and a clear intention to deceive listeners. We certainly did not intend to deceive any of our listeners, but after evaluating the recording of the program, we do recognize that we could have more clearly explained that the concert we played was indeed a live recording of an earlier concert performance. In our haste to provide the live concert experience to our listeners we were remiss and should have made it clear that it was pre-recorded on air at the time. We see how this was confusing and regret that some listeners thought that we were actually broadcasting the live concert from the venue.

As Program Director for Q107 I take responsibility for the broadcast of the concert and the way it was presented. Please be assured that at Q107 we take our responsibilities as a broadcaster seriously. We work to ensure all our programming on Q107 complies with the *Broadcasting Act*, the *Radio Regulations* and the Canadian Association of Broadcasters *Code of Ethics*, standards required of us as a member of the CBSC. While we don't believe we contravened the Code in any way with this broadcast we regret that you felt misled [*sic*]. It certainly was not our intention.

Q107 listeners are extremely loyal to both the station and to the musical format. We think we have the best listeners in the world and are very sorry that we have disappointed you with this broadcast. We wish to extend our apology for a broadcast that should have been clearer about what it was playing.

We trust the foregoing responds to the concerns you raised in your email regarding the Program. At Q107, 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.

## Additional Correspondence

The first complainant filed his Ruling Request on September 12 with the following note:

It is clear that the perceptions of the event differ hugely.

It is unlikely that there would be very much of a point in counting the number of times the definite article was used, or implied, and/or how many times the indefinite article was used, or implied. Listening for subtle nuances of meaning and emphasis will not help.

It may be better to step back and consider the listeners' perception of the advertised event and what conditioned it.

It was heavily promoted, and gained (as [the Program Director] notes) a huge amount of publicity around the world. Such is the impact of the Internet. When considering the event, Rolling Stones fans such as myself necessarily took into account the likelihood of it being a truly live broadcast of that evening's concert in Toronto.

The alternative to consider was that it was a recording of some sort.

As [the Program Director] writes "we wanted to provide our listeners with a similar experience". A totally appropriate way would have been to have found released live tracks that matched the songs being performed in the theatre and to have broadcast them in the same sequence as the show, or to create/re-create a 'live' event from existing released 'small club' performances.

The Rolling Stones are very careful about their released recordings – after more than 40 years they feel that they have a major portfolio of recorded work that they do not want compromised by releasing low quality material.

The ONLY 'small club' shows that have yielded released recordings were the 'El Mocambo' show in March 1977 (only 4 tracks), plus some tracks from The Paradiso Club (Amsterdam) and The Olympia Theatre (Paris) making up part of the 1995 *Stripped* album.

As the promotion, and indeed the start of the broadcast ("the Club Gig live tonight right now in Toronto at the Phoenix Concert Theatre. As promised all day – the Stones live in Toronto – enjoy everybody"?), proceeded it seemed that the balance of probability was that Q107 would really be playing a real-time as-it-happened broadcast. The alternative was that they were playing an unreleased recording.

Since (in their own words) Q107 write "We work to ensure all our programming on Q107 complies with the *Broadcasting Act*, the *Radio Regulations* and the Canadian Association of Broadcasters' *Code of Ethics*, standards required of us as a member of the CBSC." If those compliances are met, then an unreleased recording could not be expected.

It seems that somehow the unexpected happened – hence my assertion that there was major deception against the listening public. I find it hard to conceive that this was accidental.

Q107's representative admits "we played a recording of the Rolling Stones live in concert in a similar-sized venue in Toronto from three years earlier." No such recording has been released by the Rolling Stones.

The second complainant sent an e-mail to the CBSC expressing his dissatisfaction on September 14:

I am in receipt of an e-mailed document of explanation/apology from Program Director [B. B.] of Q107 Radio, Toronto, in response to my complaint, referenced above, pursuant to their disingenuous broadcast of "Live Rolling Stones" at 9:30 pm EST on 8/10/05.

I'm sorry, but [the Program Director]'s sheepish explanation/apology on behalf of Q107 doesn't even begin to address the deliberate pattern of deception, obfuscation and misrepresentation foisted upon Rolling Stones fans on that evening.

As [the Program Director] points out in paragraph three of his response, "Only a small number of lucky fans would be able to gain access to (the actual concert on 8/10/05 at the Phoenix Club in Toronto)." For at least 36 hours before the Stones hit the stage at the Phoenix Club, Q107 encouraged listeners to "keep it right here on Q107 for Live Stones at 9:30 Wednesday night." At NO TIME ---- repeat NO TIME ---- did anyone from Q107 make an honest announcement that the "Live Stones" they would be presenting would actually be a recording of a previous live performance.

That wouldn't have suited Q107's, or parent company Corus Entertainment's agenda to inveigle as many listeners as possible to listen to their station for -- ostensibly -- the Phoenix Club show -- and what the Stones sounded like THAT NIGHT -- not three years ago.

[The Program Director] not only portrays Q107 as an industry leader of rock music programming in his e-mail of 9/7/05 of which you have a copy, but he makes sure to carbon-copy four prominent executives of Corus Entertainment with the status of this matter.

The message is clear -- Q107 is no 1,000-watt college radio station that just got carried away with some over-zealous student announcers. They are a bonafide presence in the Toronto radio market, in brisk competition for listeners and advertising dollars, and they piggybacked the Stones show at the Phoenix to exact whatever monetary advantage they could glean from their actions with a fully pre-meditated strategy and malice aforethought.

I am writing on behalf of an ad-hoc Rolling Stones message board/blog site known as Stonesdoug.com and I can't tell you the number of members all over the world who were duped by Q107's "LIVE STONES" exhortations for 8/10/05. Nobody can rightly believe that any radio station would pull such a deceptive stunt as Q107 shamelessly carried out.

What LIVE STONES did Q107 think Stones fans were expecting to receive over their airwaves?

If they just wanted to play an old tape, why do it exactly at showtime at the Phoenix Club -- 9:30 pm EST -- except to deceive their audience?

In his document -- paragraph 4, line 6 -- [the Program Director] speaks of Q107's "haste" to provide a live concert experience for the station's listeners as if this was an instantaneous decision.

As cited earlier, Q107 was promoting this subterfuge for a full 36 hours before the broadcast. How hasty was that? This was an absolutely fully plotted and planned, deliberate shell game perpetrated against a countless number of music fans eager to hear songs from their

new studio album and the 2005 version of the irrepressible and irresistible Rolling Stones.

Sadly, [B. B.], Program Director at Q107 for less than two weeks before this incident occurred, used the allure of The World's Greatest Rock 'n' Roll Band to serve his own interests and that of his employer, a division of Corus Entertainment.

His mealy-mouthed, legal-speak response to my complaint is parenthetically unacceptable and I respectfully request that this matter be scheduled for a formal panel review by the Canadian Broadcast Standards Council (CBSC).

At that time, I suggest that you review a tape of Q107's broadcast that evening and ask yourselves what concert you're listening to – the Phoenix Club on 8/10/05 or a show from three years beforehand?

Q107 didn't want anybody to know ... that's why they kept referring to their broadcast as "The Phoenix Club."

This simply cannot be allowed to stand without a monetary fine against Corus Entertainment or a formal censure.

Thank you for your consideration in this matter on behalf of all Rolling Stones fans, many of whom travel great distances to see them perform. The prospect of an actual live broadcast of the virtually-impossible-to-get-a-ticket-to Phoenix Club show which was generously bandied forth to Q107's listenership -- only to be exposed as lies, lies, lies, lies and more lies, simply cannot be allowed to stand.