
CANADIAN BROADCAST STANDARDS COUNCIL

ONTARIO REGIONAL PANEL

CFNY-FM re a “Spencer the Cripple” segment on the *Dean Blundell Show*

(CBSC Decision 08/09-0650)

Decided June 25, 2009

M. Ziniak (Chair), H. Hassan (Vice Chair), M. Hamilton, J. Pungente

THE FACTS

The Dean Blundell Show airs from 5:30 to 10:00 am weekdays on CFNY-FM (102.1 The Edge, Toronto). It is hosted by Dean Blundell, Todd Shapiro and Jason Barr and includes the usual music, news and traffic reports, humorous banter among the hosts, as well as occasional celebrity interviews and in-studio guests. For a period of time, one recurring guest was Spencer Miller, an author and motivational speaker with cerebral palsy, who made public appearances to discuss disability-related issues. He sometimes referred to himself as “Spencer the Cripple”, which also became the name of these recurring segments on the *Dean Blundell Show*.

Miller appeared on the program on January 5, 2009 in a segment that began at approximately 8:50 am. The following is a transcript of the pertinent parts of that dialogue (the full transcript can be found in Appendix A):

Dean: 102.1 The Edge. The Offspring and “Hammerhead”. Or “You’re Gonna Go Far Kid”. One of the two. It doesn’t matter, it’s The Offspring.

Todd: Ha [laughs].

Dean: Um, 8:51. Minus four your high today. Right now it’s minus three. [Affects funny voice] Spencer the Cripple is in the hizzay.

Spencer: Hi, guys.

Todd: [In background, using funny voice] How's it going?

Dean: Hi, Spence.

[*Chariots of Fire* song playing in background]

Spencer: Good. How are you?

Todd [in funny voice]: Good to see ya. Happy New Year!

Dean: Still, uh, still crippled?

Spencer: I think so, yes.

Todd [in background]: Wo oh, woo ooh.

Dean: Now, your Christmas was good? What'd you get for Christmas? What did Santa bring you?

Spencer: Uh, no-, uh, nothing really. Uh, I got a, a, uh, webcam, but that was pretty much it.

Todd: Wo ho ho ho ho ho.

Dean: Woah. [Hosts laugh]

Jason: Oh no. That cannot be good.

Dean: I said ah ye-ah.

Todd: Yeah, 'cause on the webcam, you get outta your wheelchair, you look normal.

Dean: That's right. Hey. You know, this is gonna, this is the start of your –

Spencer: No, I –

Dean: – of your working career. You're gonna do, like, crippled sex chat dot com.

Todd: It's brilliant.

Spencer: I don't look normal because if I sit in the chair, people, people can only see me for about two minutes until I slide down off the chair and then they're like "Where'd he go?" So.

[Discussion continued about the webcam and Skype.]

Dean: So you got a webcam. What else'd you get for Christmas? Any socks, underwear, gloves, traditional things?

Spencer: I, I got some socks, yes.

Jason: Mm hm.

Spencer: And, and, uh, --

Jason: Wet wipes?

Spencer: No. A few pairs of boxers, though.

Todd: You know what'd be a good present for Spence? You, like, open up a gift and it's, like, a new assistant. And she's in the box. [Laughs]

Dean: Yeah. With one really, really soft hand for wiping.

Jason: Mm hm.

Dean: Like, I don't like the one I got last year. He had a hang-nail. [Todd laughs]

Jason: [Affects woman's voice.] My, my name is Joyce. I've moisturized for several years. I have very supple hands for wiping your bottom. Sweet.

Dean: Do other people do that for you?

Spencer: Wipe?

Dean: Actually wipe your bum?

Spencer: No! We've had this discussion.

Dean: You do it yourself?

Spencer: That's one thing I can do for myself.

Dean: Oh, okay.

Todd: I'd like to see you do it. [Laughs.]

Dean: Yeah, do it right now. Put your hand back there.

Jason: Yeah, you seem to get upset when we ask that question, but you understand, like, we still say the names of the songs because not everyone's heard them.

Spencer: Right.

Jason: You know?

Spencer: Yes.

Jason: Like, that was The Offspring.

Todd: Yep.

Jason: But we can't just play it and expect people to know. People need to know if you wipe your bum.

Todd: We also keep asking you 'cause I don't think we believe ya. 'Cause you can't even give me five. Watch. Gimme five. No, see, you missed.

Dean: You missed.

Jason: Just the tip. Did you give the tips of the fingers?

Dean: You tippy-ed, you tippy-ed him. You touched the tip of your fingers to his hand.

Spencer: I didn't even do that.

Dean: Gimme a thumbs up. That's terrible, it's like thumbs sideways. Now you're giving me the finger sideways. [Other host laughs.] I don't think you can wipe your own bum. Admit it!

Spencer: Yes, I can.

Jason: I have trouble sometimes.

Todd: Like properly, or sometimes does the assistant just get it, just clean you right up for you? [Laughter]

Spencer: No, no. I, I do it. I do it for myself.

Jason: All right.

Todd: You're wiping [??].

Dean: So, now, what did you get for your girlfriend?

Todd: Wiping the [?].

Spencer: I got her some flowers.

Dean: Yeah?

Spencer: Um, and a thing at the, uh, at the Great American Back-Rub in, uh, the Eaton Centre.

Todd: What's that, like a spa or somethin'?

Spencer: Yes. And, uh, a nice package from, uh, The Body Shop.

Dean: Your pants?

Spencer: That too, yes.

Dean: A nice package from your pants?

Spencer: Yes.

Dean: Did you have the sex over the holidays?

Spencer: I did.

Todd: Yeah, yeah, what's up!

Dean: Did you bring a ruckus? Did you bring the ruckus? [Todd chuckles.]

Spencer: I tried, yes. But, uh, but I learned one thing.

Dean: What's that?

Spencer: You need to have –

Jason: If it's brown, don't go down. [Todd laughs.]

Spencer: Besides that.

Todd: If it's red, stay in bed. [Jason laughs.]

Dean: If it's green, she's real mean. [More laughter.]

Spencer: Are you done?

Jason: [Affects funny voice.] If it's white, it's all right.

Todd: Haa. We weren't done.

Spencer: You need to have the coitus on a regular basis or your stamina goes down really quick.

Dean: Your stamina?

Jason: Well, I mean, Spence, I mean, people really aren't, probably aren't thinkin' that you're ... Don't know how you're expectin' much.

Todd: What're you talkin' about?

Spencer: Remember, remember when –

Jason: You just lay there, dude.

Dean: Wh-, what are you talkin', yeah. Your, your, your stamina [Todd laughs] is sitting in a chair. That's what you need stamina for. I got stamina to sit in a chair all day long.

Spencer: First you say I lie down, now you say I'm sitting in a chair. Make your mind up.

Dean: Well, what are you? Lying down or sitting in a chair? Both.

Spencer: It depends.

Dean: But I can tell you this. You are not the aggressor. So you're, if you have the stamina to sit there like that, you can have sex all day long.

Spencer: Right.

Todd: Your assistant needs stamina like gettin' you off the chair and lyin' you down first.

Dean: Yes, and, uh, make sure we wipe you down after.

Spencer: No, but, um, 'member how we were, uh, discussing earlier how when I first brought Tina in, um, that we lasted for about forty minutes.

Dean: Mm hm.

Spencer: That kind of rapidly decreased over the holidays.

Dean: Right.

Jason: Why?

Dean: Now you're down to a time that we'd actually believe?

Jason: Like a minute and a half?

Dean: Three? Four?

Todd: How does this theory make sense?

Spencer: More like ten.

Dean: Ten.

Jason: Ten.

Todd: How does this make sense? So you're sayin' that the more you do it, the less stamina you have?

Spencer: No.

Dean: No. The opposite.

Spencer: No.

Todd: I'm proving a point.

Spencer: That –

Todd: Which is how the hell did you go forty minutes the first time that you hadn't had it in three years?

Jason: Oh, good point, Todd.

Todd: Thank you.

Jason: I wasn't payin' attention.

Todd: No, you weren't gettin' to it.

Jason: Right. [Hosts laugh.]

Spencer: Well –

Jason: Yeah?

Spencer: It, it was –

Jason: Liar!

Spencer: No, I, Tina admitted it.

Todd: [Makes sound mocking a person with a speech disability.]

Jason: Come on.

Spencer: Tina admitted it. And even, and even Dean believed that I went forty minutes.

Dean: Well, I just, I thought you were gettin' such a, such a, a butt-whooping from these guys mentally, I had to believe you because I thought it was the nice thing to do. I find it hard to believe.

Todd: [Laughs loudly & claps hands.] I love Dean for that reason alone. He's real good.

Dean: I find, I find it hard to believe that you, uh, had coitus for forty minutes. However, nothing is impossible and I have seen the impossible. So.

Jason: Yeah, like, if you're talkin' from when you first went in the apartment to final sponge bath, forty minutes, okay.

Spencer: Listen. I don't know how it happened, but it happened. And, and –

Dean: Were you drunk? Did you have whisky wiener?

Spencer: No, I didn't.

Todd: You're makin' no sense!

Spencer: Thank you.

Todd: No problem. What was the impossible you've seen? Was it that cell phone search thing?

Jason: Yeah, what was that?

Dean: That's one of 'em.

Todd: Yeah, okay. [Laughs.]

Dean: And, uh, the dude with the horse.

Todd: Yeah, that was, that's totally impossible.

Dean: But he's dead, so.

Jason: Yeah. Different.

Dean: But, truth is –

Spencer: And the fact that I actually had sex with somebody.

Dean: Well, no, that's possible. I wouldn't, I agree. It's just the length of time.

Todd: Yes.

Dean: Usually when you tell a lie, you try and make it a little bit believable.

Spencer: Right. I still – [Hosts laugh.]

Jason: Forty minutes. If you'd said fifteen, we woulda went "okay".

Dean: I woulda, I woulda been proud o' ya for fifteen.

Todd: Yeah! Even eight!

Dean: You didn't even double it. You almost tripled it!

Spencer: No, I'm telling you, we, we went for forty minutes.

Dean: She went for forty minutes. You laid there for forty.

Spencer: More or less.

Dean: Yeah.

Jason: Yeah.

Dean: So don't say "we". See, I can do that. I just gotta think about baseball.

Spencer: You're, you're making me sound, not only like a blow-up doll, but a stick figure.

Dean: Well, what do you do actively in, in, in a sexual, uh, escapade? I mean –

Spencer: Ask someone else.

Dean: No, but I'm serious. [Todd laughs.] Well, what do you contribute?

Spencer: Not a lot.

Dean: There you go.

Todd: Yeah.

Dean: So, I'm maybe making you sound like an apparatus, but it doesn't matter because –

Spencer: Hey man, you get it, you get it.

Jason: Yeah, enjoy it.

Todd: Atta boy! See. That's all we're sayin'. You put your face on it? [Laughs.]

Spencer: Once or twice.

Todd: Yeah well.

Jason: Now do you have a rule? Do you use a tap-out rule or anything? Because, I mean –

Dean: She could choke you, yeah.

Jason: It's not like you can throw her off.

Dean: Did you hear the story that happened? To a woman?

Spencer: No.

Dean: Oh, it's a terrible story. This nurse, a woman's in a coma. Nurse, a true, it's a true story. Nurse is in a coma.

Todd: Sure.

Dean: Er, woman's in a coma. And the woman's in there sponge-bathing her and she's, she's washing her privates. She's been in a coma for, like, months. Uh, so she's washing her, her holy of holies. All of a sudden, there's blip on the screen and she moves a little bit and her eyes twitch. True story. So the woman, the nurse rushes out of the room, she gets to the husband, she goes "Listen, this might sound really bizarre, but, um, I think you might be able to help your wife's process of coming along by performing an oral act on her. Or, you know, by you guys having oral pleasure."

Jason: She said that? Wow.

Dean: "Cause I just did the sponge bath and, uh, I really believe, like, –

Jason: Mm hm.

Dean: “– if you and your wife have some oral pleasure, I think you could help maybe revive her.” So twenty minutes later, all of a sudden the monitors go “eeee”.

Todd: [Makes high pitched noise like heart monitor going flat.]

Dean: Nurse runs in. She’s dead. The woman is dead. True story. Guy’s buckling up his pants. Woman goes “What’s wrong?” The guy says “I think she choked to death.”

Spencer: Wow.

Dean: So, there’s always the concern there for you with that.

Jason: Yeah. [Todd laughs.]

Spencer: Never thought about it that way. But I will now.

Todd: [Makes gargling/glugging noise like he’s choking.]

Dean: Just, uh, just be careful.

Spencer: I will.

Dean: ‘Cause you gotta have some good short-hand. You gotta be able to communicate, like, a –

Jason: Little tap out.

Dean: One tap means, one tap means uh, –

Todd: Yeah.

Dean: – you’re having a great time. Two tap [*sic*] means go faster. One big slap means just get off, I can’t breathe already.

Spencer: Yes.

Todd: [Makes noises like he is being smothered & trying to talk.]

Spencer: Another, another uncanny imitation of me.

Todd: You’re welcome.

Spencer: Thanks.

Dean: Nine-oh-two, more with Spencer the Cripple coming up, as well as Todd’s vacation in Jamaica. We’ll chat with some Jamaicans coming up next as well. Hang on.

Jason: We’ll do some traffic.

Dean: Time for a look at Edge traffic.

[Traffic & commercial break]

Jason: Sorry. I saw it was only, like, ten-seconds a spot.

Dean: We're good.

Jason: I know you're chewing.

Dean: No, I'm not chewing.

Jason: Not anymore. You're done.

Dean: Here's somethin' to chew on. Spencer's getting married. [Laughter.]

Jason: Yep.

Dean: We'll chat about that. Todd in Jamaica.

Todd: [Affects Jamaican accent.] Yeah, mon.

Spencer: And my job possibilities.

Jason: Oh! Look at that!

Todd: Yeah, mon.

Jason: Makin' a guy cry can help.

Dean: Yeah, we did make him cry last time.

Spencer: Can we not talk about that, please?

Jason: Why?

Spencer: It wasn't my finest moment.

Dean: It was a sensitive moment.

Jason: Yeah.

Todd: You're a cute, little crippled crier boy.

Spencer: Once again, showing your sensitivity in spades.

Jason: Yeah. It's okay. Then we cheered you up with a basket on your head.

Todd: Cute little crippled girl. [Laughs.]

Spencer: That you would not let me take off.

Jason: [?] cute you were.

Dean: I had nothing to do with it. I'm over here.

Jason: Lady, what are you saying? [Laughter.]

Dean: 9:05. MGMT, 102.1 The Edge.

A listener was concerned about the content of this segment and, on January 7, wrote an e-mail to the CRTC, which was forwarded to the CBSC in due course. The listener outlined her concerns in the following terms:

At approximately 8:45 am on Monday January 5, 2009, I was listening to the "Edge" 102.1 in Toronto to a show I later learned is called "Spencer the Cripple" (I understand this to be a regular weekly spot). It generally consists of the 2 hosts asking extremely baseless and degrading questions largely focused on the sexual and bathroom habits of what I understand to be a quadriplegic man by the name of Spencer. I understand the object of the show is to generally sensationalize the "patheticness" and degrade the life and experiences of Spencer.

I enjoy "politically incorrect" humour but this so crossed the line in offensiveness I was in absolute disbelief that this is approved regulated Canadian content. It is so disrespectful on so many levels that I simply cannot believe that it can continue to be aired. It saddened me that we would allow this to be an expression of any broadcasting privilege, creativity or Canadian values or humanity. I await your response. Many thanks.

The broadcaster responded to the complainant with a letter dated January 28. The station took the following position regarding the segment (the full text of that letter and all other correspondence can be found in Appendix B):

We have reviewed a tape of the program, and note that the comments you refer to were made within the context of a regular segment with Spencer Miller (or Spencer "the Cripple", as he refers to himself). While we appreciate that you may have been offended by the discussion, we do not believe that the comments were in any way a breach of the Canadian Association of Broadcasters *Code of Ethics* (the "Code"), which is administered by the CBSC and to which we adhere.

As you may be aware, Spencer is severely affected with cerebral palsy and has been confined to a wheel chair for his entire life. Spencer has become a motivational speaker, and refers to himself as a "cripple" as a means of dealing with his issues head on. Discussions with Spencer are always frank, and the excerpt you heard was no exception.

While we appreciate that you were offended by the material, the CBSC does not require broadcasters to ensure that its content pleases everyone. The CBSC recognizes that personal tastes differ, and that its mandate under the Code does not require it to judge matters of taste. The CBSC applies current social norms in its interpretation of the Code, acknowledges that a program may not be 'everyone's cup of tea' and assumes that some members of society will be offended (CFJP-TV TQS re: *Quand l'amour est gai*, CBSC Decision 94/95-0204).

Furthermore, the CBSC has frequently stated that it is not any reference to race, national or ethnic origin, religion, age, sex, marital status or physical or mental handicap that will be sanctioned, but rather, only those references that contain an abusive or hateful element. While we appreciate that the discussion may be considered distasteful, we do not believe that any of the comments were in any way abusive or hateful towards Spencer or towards persons with physical handicaps, generally.

We take our responsibilities as broadcasters very seriously, and work hard to make sure all of our programming complies with the *Broadcasting Act*, the *Radio Regulations*, the Code and standards required of us as a member of the CBSC.

We trust that this letter has addressed your concerns. We recognize the importance of listener feedback and appreciate all comments.

On January 29, the complainant wrote back to the CBSC asking if she could obtain tapes of the segment to review them in light of what the broadcaster wrote in order to determine whether she wished to pursue her complaint any further:

My recollection of the show was that it was very abusive to Spencer and by extension to persons with disabilities - this indeed was the impetus for my complaint, as well as the overall offensiveness of the content. However, I am somewhat handicapped in assessing whether I should seek a review in that I do not have a copy of the broadcast to review - I am working off recollection. Can I get a copy from the CBSC or do I have to ask for it from the Broadcaster? I know I only have 14 days to request a review, so I would like to move on this as soon as possible.

The CBSC explained to her that it was not able to provide her with recordings of the challenged broadcast. The complainant had also written directly to the station to make this same request for tapes, but the station indicated that it was under no obligation to furnish her with copies of its programming. The complainant wrote again to both the CBSC and CFNY-FM on February 2:

It appears most unfair that in order to assess my right to seek a review, I cannot even access the material that is subject to review, but the radio station and CBSC can have a copy. I work extensively in the area of administrative law and the work of administrative tribunals and find this to be contrary to basic fairness. I appreciate that there is no "positive obligation" to provide me with a copy but surely it is just basic fairness – not to mention extreme short sightedness on the part of the station. It only adds frustration and aggravation to the process and does not help to foster any sentiment to informally resolve this matter.

From both of your responses I understand that I will have to take my own measures to try and obtain a copy of the broadcast in order to properly frame my request for a review more formally with the CBSC. I am sure you can appreciate that I would like to accurately frame my concerns in a credible manner and that it is too onerous to expect me to be able to do this on pure recollection of the broadcast alone. I will go to the extra effort of trying to obtain access to the broadcast from other publicly available means, but it is very disappointing that neither the station nor the CBSC will provide any assistance in this regard.

She then filed her Ruling Request on February 9:

I well appreciate that the purpose of the CBSC is not to be an arbitrator of good taste and that while the above show was offensive, that is not the test for a violation of the *Code of Ethics*.

If I understand the test correctly, it concerns whether content in the show was "abusive" to Spencer or persons with handicaps generally. I have been unable to obtain a copy of the broadcast from the CBSC or the station (both refused my requests) and wisely it was

removed from Internet podcasts. So I attempt to provide an intelligible response based on my memory of the broadcast. I trust the Panel will review the broadcast for overall violations of the *Code of Ethics* and not simply to respond to my concerns.

The most abusive comments I can recall to Spencer related to Spencer's apparent inability to be an interactive sexual partner or independently care for his personal hygiene. Of course the context and tone of the overall broadcast must be considered for its abusive nature but some of the particularly abusive comments included something to the effect of, "How do you wipe your ass?" (with laughter at the idea he could do anything on his own), and the hosts remarked something to the effect "do you tap your fingers to get her off?" when Spencer is having sexual relations with his girl friend. They also mimicked how Spencer would sound when communicating in such circumstances in a manner intentionally directed at ridiculing his speech and that of other persons with disabilities.

The Broadcaster's response is clearly an adapted standard form response simply stating it has not violated CBSC rules. I find this inadequate and in keeping with the arrogance and dismissive nature of the communications received to date. I thoroughly enjoy certain "politically incorrect" humour that likely others would find distasteful. I would not be making this request for a review if I was not totally shocked by the abusive nature of the two hosts' conduct with Spencer, as well as the abusive messaging of the broadcast to persons with disabilities and to human dignity as a whole. The Broadcaster advised that they have spoken with the hosts - this is insufficient. Surely a public apology to Spencer and the audience, particularly to persons with disabilities, is warranted.

I hope you get the chance to listen to the broadcast and not just review a transcript as I believe the full presentation of the communication is important. I look forward to your response and appreciate the time and effort you will spend in reviewing this matter.

THE DECISION

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

CAB Equitable Portrayal Code, Clause 2 – Human Rights

Recognizing that every person has the right to the full enjoyment of certain fundamental rights and freedoms, broadcasters shall ensure that their programming contains no abusive or unduly discriminatory material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, gender, sexual orientation, marital status or physical or mental disability.

CAB Equitable Portrayal Code, Clause 3 – Negative Portrayal

In an effort to ensure appropriate depictions of all individuals and groups, broadcasters shall refrain from airing unduly negative portrayals of persons with respect to race, national or ethnic origin, colour, religion, age, gender, sexual orientation, marital status or physical or mental disability. Negative portrayal can take many different forms, including (but not limited to) stereotyping, stigmatization and victimization, derision of myths, traditions or practices, degrading material, and exploitation.

CAB Equitable Portrayal Code, Clause 4 – Stereotyping

Recognizing that stereotyping is a form of generalization that is frequently simplistic, belittling, hurtful or prejudicial, while being unreflective of the complexity of the group being stereotyped, broadcasters shall ensure that their programming contains no unduly negative stereotypical material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, gender, sexual orientation, marital status or physical or mental disability.

CAB Equitable Portrayal Code, Clause 5 – Stigmatization and Victimization

Recognizing that members of certain of the following identifiable groups face particular portrayal issues, broadcasters shall ensure that their programming does not stigmatize or victimize individuals or groups on the basis of their race, national or ethnic origin, colour, religion, age, gender, sexual orientation, marital status or physical or mental disability.

CAB Equitable Portrayal Code, Clause 7 – Degrading Material

Broadcasters shall avoid the airing of degrading material, whether reflected in words, sounds, images or by other means, which is based on race, national or ethnic origin, colour, religion, age, gender, sexual orientation, marital status or physical or mental disability.

CAB Equitable Portrayal Code, Clause 10 – Contextual Considerations

Broadcasts may fairly include material that would otherwise appear to breach one of the foregoing provisions in the following contextual circumstances:

- a) Legitimate artistic usage: Individuals who are themselves bigoted or intolerant may be part of a fictional or non-fictional program, provided that the program is not itself abusive or unduly discriminatory;
- b) Comedic, humorous or satirical usage: Although the comedic, humorous or satirical intention or nature of programming is not an absolute defence with respect to the proscriptions of this Code, it is understood that some comedic, humorous or satirical content, although discriminatory or stereotypical, may be light and relatively inoffensive, rather than abusive or unduly discriminatory;
- c) Intellectual treatment: Programming apparently for academic, artistic, humanitarian, journalistic, scientific or research purposes, or otherwise in the public interest, may be broadcast, provided that it: is not abusive or unduly discriminatory; does not incite contempt for, or severely ridicule, an enumerated group; and is not likely to incite or perpetuate hatred against an enumerated group.

CAB Code of Ethics, Clause 2 – Human Rights

Recognizing that every person has the right to full and equal recognition and to enjoy certain fundamental rights and freedoms, broadcasters shall ensure that their programming contains no abusive or unduly discriminatory material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status or physical or mental disability.

CAB Code of Ethics, Clause 9 – Radio Broadcasting

Recognizing that radio is a local medium and, consequently, reflective of local community standards, programming broadcast on a local radio station shall take into consideration the generally recognized access to programming content available in the market, the demographic composition of the station's audience, and the station's format. Within this context, particular care shall be taken by radio broadcasters to ensure that programming on their stations does not contain:

[...]

- b) Unduly sexually explicit material; and/or

The Panel Adjudicators read all of the correspondence and listened to a recording of the broadcast segment. The Ontario Regional Panel concludes that the broadcast violated Clauses 2, 3, 4, 5 and 7 of the *CAB Equitable Portrayal Code* and Clauses 2 and 9(b) of the *CAB Code of Ethics*.

A Preliminary Matter: Provision of Tapes to Complainants

Although this issue is not germane to the evaluation of the challenged content, the CBSC considers it material to discuss in light of the complainant's concern that she would not be in a position to, first, determine "whether I should seek a review" at all, and, second, to "accurately frame my concerns in a credible manner [since] it is too onerous to expect me to be able to do this on pure recollection of the broadcast alone." She added, in her Ruling Request of February 9, "I trust the Panel will review the broadcast for overall violations of the *Code of Ethics* and not simply to respond to my concerns."

First, the CBSC wishes to make clear that there is nothing capricious or unco-operative in either its, or the broadcaster's, practice of declining to provide tapes or recordings of programming to complainants. On the most basic level, the issue is the combination of efficiency and economy. The Council receives in the vicinity of two thousand complaints each year. If each and every complainant, or even a significant proportion (half? a quarter? even a tenth?) of them, sought such a recording, the burden for both the broadcaster and the CBSC would be considerable. Moreover, there is the risk that persons simply wishing the tape of a program might formulate a complaint, knowing that this would hypothetically entitle them to a recording of a program about which they had no real complaint whatsoever. And there exist commercial enterprises that supply such recordings for a fee. The CBSC has no wish to be in competition with them or to supplant their business interests. There is also a concern about the potential violation of copyright in the recorded material in the event of distribution beyond the needed regulatory purpose associated with the CBSC's mandate.

Second, and, in some respects more importantly, the complainant *suffers no prejudice* on account of lack of access to the original recording in the formulation of her or his

complaint. Because the CBSC itself, and perforce its Adjudicators, in the review of every complaint have the fullest access to the original broadcast matter, the Panel decisions are made with reference to the actual broadcast, and not solely on the formulation by the complainant, who does not have the original content at hand. This is not to say that the Panel is not frequently well-informed by complainant characterizations of issues, but rather that a poorly-argued case (whether due to ineffective argument *or* the absence of the underlying electronic evidence of the broadcast) will *not* weaken the possible outcome of the adjudication. Moreover, as a further check-and-balance, and as a reflection of the transparency of the CBSC process, a description or, where feasible, a transcription of the challenged program will be provided as a part of the decision itself. This leaves assiduous complainants in the position of being able to determine the extent of their agreement, or disagreement, with the Panel decision.

Third, complainants in general need not fear the outcome of this complainant's other well-put concern, namely, "I trust the Panel will review the broadcast for overall violations of the *Code of Ethics* and not simply to respond to my concerns." This is an important point, and one long taken into account by adjudicating Panels, although never yet expressed in one of their decisions. CBSC Panels are well aware that the interests of the public are best served by the Panel's consideration of all the issues raised by the *broadcast* rather than just the *complaint*. They are very conscious of the fact that broadcasts are fleeting and, with the exception of the technical facility now provided by PVRs in the case of television, complainants are not generally in a position to note accurately and fully the content that has concerned them. Moreover, they are aware of the fact that complainants cannot be expected to be familiar with either the Codes administered by the CBSC or the hundreds and hundreds of decisions CBSC Panels have rendered in fleshing out those skeletal standards. Consequently, CBSC Panels recognize their responsibility to give the fullest consideration to issues raised by the programming, whether all of these have or have not been the subject of the complaint or complaints filed about a broadcast.

Stigmatization and Victimization: Discrimination against Persons with Disabilities

The relatively new *Equitable Portrayal Code (EPC)* has defined some of the issues previously dealt with under the generic Human Rights Clause of the *CAB Code of Ethics*. Clause 2 of that Code has become a part of the *EPC* in essentially the same form (also as Clause 2, the one small wording change not being a matter of moment in the present decision). In addition, though, the new Code has bolstered the prohibitions included in the Human Rights Clauses by establishing in Clause 3 the additional prohibition of the broadcast of *unduly negative portrayal*. In fact, the Panel considers

that many comments determined to be in breach of Clause 3 may at once be found in breach of Clause 2 as well.

For purposes of greater clarity, the *EPC* has also provided examples of negative portrayal, one of which, Clause 5 (Stigmatization and Victimization), focuses more pointedly on persons with a physical or mental disability by requiring that broadcasters ensure that their programming does not stigmatize or victimize individuals on the basis of their disability. This is the first time that a CBSC Panel is called upon to deal with *this* form of negative portrayal.

The source for the inclusion by the codifiers of the *EPC* of the Clause dealing with Stigmatization and Victimization was the field investigation leading to the 2005 CAB report entitled *The Presence, Portrayal and Participation of Persons with Disabilities in Television Programming*. That said, the principles flowing from the report that led to Clause 5 are in no way limited to *television* portrayal; they apply full-blown to radio broadcasting as well. As that report observed (on p. 24), stereotypically, persons with disabilities are frequently “portrayed in ways that perpetuate myths about life with a disability or feature inaccurate information about disabilities, or emphasize such qualities of life as helplessness or misery.” They are, in that general sense, often victimized, “portrayed as vulnerable or weak.” They may also be stigmatized, that is, according to the *Oxford English Dictionary*,

Mark[ed] with a sign of disgrace or infamy; [...] call[ed] by a disgraced or reproachful name; [...] or] characterize[d] by a term implying severe censure or condemnation.

In the challenged programming, and possibly in other episodes of the *Dean Blundell Show* that are not being considered at this time, there was forthright discussion of Spencer Miller’s physical disability. The Panel wishes it to be clearly understood that it finds no inherent problem in any discussions of that subject, nor even with the injection of *some* (need the Panel add, appropriate level of) humour in connection with such dialogue. If anything, there can be an extremely positive aspect to heightening the awareness of the general public to the infrequently discussed issues associated with persons with disabilities.

If, however, that was the noble goal here, it was quickly lost. The hosts sought no benefit in the arena of public discourse or informative discussion. They sought only humorous advantage for their own benefit. They unrelentingly made Miller the target of jokes and mockery. The routine based on the wheelchair-bound Miller’s ability to wipe himself was not merely in bad taste (that being an issue for the listener’s on-off switch), but it was also a form of victimization and stereotyping. One of the unnecessary and utterly inappropriate examples was host Blundell’s accusation: “I don’t think you can wipe your own bum. Admit it!” A cruel, harsh, finger-pointing differentiation for what is for most adults a basic (if generally undiscussed) activity.

The subject switched to sex. Here again the hosts had at Spencer Miller. First, host Jason Barr suggested that people really are not expecting much of Miller in this area. While his next comment might be interpreted as being of more general application, Barr then suggested that Miller's durability would be rather short, "Like a minute and a half?" And Blundell asked, perhaps with an element of scepticism, what Miller's "contribution" to a sexual encounter would even be. In general, it could be said that the hosts graphically challenged Miller's ability to present himself as at all normal in this regard. All in all, the Panel finds that the hosts' comments in the areas of personal hygiene and sexual performance inappropriately portrayed Spencer Miller, as a result of his disability, as helpless and incapable. It also finds that their comments in these areas were reproachful, insulting and condemnatory, the whole in violation of the *Equitable Portrayal Code's* Stigmatization and Victimization Clause; and that they constituted unduly negative stereotyping in violation of Clause 4; as well as the general provisions included in Clause 2 of both Codes and 3 of the *EPC*.

Language and Tone

In general, the Panel also considered that some of the various throw-away characterizations, comments and voice tone were problematic. As an example: one of Dean Blundell's opening comments was "Still crippled?" It was followed soon after by host Todd Shapiro's "on the webcam, you get outta your wheelchair, you look normal," meant to suggest, it appears to the Panel, that he had no right to appear normal. And Shapiro's observations of Miller, first as "a cute, little crippled crier boy" and then as a "cute little crippled girl" were particularly inappropriate. So too another of his comments was that a good present for Spencer Miller would be a new assistant, who would be "in the [gift] box". Laughing at the mention of Miller's stamina was another example of a quality he apparently had no right to even have. There were numerous examples of laughter and tonally inappropriate comments at Spencer Miller's expense. In one example that the Panel found particularly shocking, Shapiro even made a mocking sound of a vocally-challenged person, which of course had *no relevance whatsoever* to Miller's physical affliction, unless one were making the assumption that *all* persons with a disability could be put in the same container, as in "seen one, seen them all." In *CILQ-FM re the Howard Stern Show (Group Homes)* (CBSC Decision 99/00-722, August 11, 2000), this Panel noted that the producer of that show had been partially successful in removing some problematic comments of the type that have remained in the present matter. The Panel noted:

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.

In *CKAC-AM re an episode of Doc Mailloux* (CBSC Decision 05/06-0642, February 3, 2006), the host had shown disrespect for persons afflicted with trisomy 21 (commonly known as Down Syndrome) by arguing that persons with the Syndrome did not have the same value as healthy, so-called “normal” people. The Quebec Panel concluded that

the foregoing dialogue reflects a disrespect for those afflicted with trisomy 21. On the level of societal *value*, Mailloux is almost filled with contempt for the notion that a “normal” woman would be compared as equal to a trisomy 21-handicapped woman. It is, he goes so far to say, “dangerous, unhealthy and inappropriate” to make such a suggestion. [...] To all of the foregoing, the Panel wishes to add the expression of its concern about the danger of public desensitization which may result from such comments. The host with a microphone is, by definition, a powerful figure. He or she is in a position of credibility [...]. Comments of this kind are at risk of “sticking”, that is, of leaving audience members with a sense of accuracy or legitimacy, which represents a danger for the identifiable group being disparaged, if not reviled.

The Panel concludes that the comments of the co-hosts of the *Dean Blundell Show* fell into the category of degrading material, in violation of Clause 7 of the *EPC*.

Sexually Explicit Content on Radio

The key to understanding this issue is the adverb “unduly”. CBSC Panels have long determined that sexual innuendo, double entendres, the mention of body parts and mild references to sexuality will not violate the Code since they are not *unduly* sexually explicit. The various CBSC Panels reviewing this issue have decided that “unduly sexually explicit” means too explicit for daytime or early evening radio hours, that is, those times of the day at which children are likely to be listening. Thus, detailed descriptions of actual sexual activity or references to an actual sexual act have been found to violate the Code when aired at such times. On the latter point, the Panel considers that morning radio is precisely the time of day at which children might form a part of the audience, if not on their own, then with their parents in the kitchen or in the car on the way to school.

In *CFMI-FM re Brother Jake Morning Show* (CBSC Decision 00/01-0688, January 23, 2002), the B.C. Regional Panel examined episodes of the station’s morning show, in which one host recounted his date of the previous night where he was “givin’ it to her” on a workbench and “she’s goin’ nuts grabbin’ my nuts”; there was also a comedic sketch in which a woman with a Mexican accent was clearly in the throes of passion yelling out things like “oh the tongue”. In a decision on an episode of the very program under consideration here, namely, *CFNY-FM re The Show with Dean Blundell* (CBSC Decision 01/02-0267, June 7, 2002), this Panel also found problematic sexual content, including the following conversation about Todd Shapiro’s date:

Todd: Uh, well yes, I was gonna say somethin’ but I don’t know if I can say it.

Dean: What?

Todd: Umm. Well. It was very windy that day.

Dean: There was some blowin'?

Todd: Yes. [All laugh]

Dean: Todd picks up this, this, we won't explain it to you because we don't want to leave you in the lurch. Todd picks up this girl who apparently, by all accounts, hated him when he was there being a male chauvinist pig.

[...]

Dean: Whatever. You go and get a couple of drinks. You go back to your place.

Todd: And, uh, yeah, things progressed in my bedroom quite nicely ... after my mom left.

[...]

Dean: Todd still lives at home. He had to shut the door to his house. He, she performs pleasures on him.

[...]

Dean: She, uh, fellated you within three hours of knowing her.

Todd: And it was awesome.

For other examples of unduly sexually explicit dialogue, see, among other decisions, *CIRK-FM re K-Rock Morning Show* (CBSC Decision 01/02-0713 & -1113, February 5, 2003), *CIKI-FM re a joke on Tout le monde debout* (CBSC Decision 02/03-0358, July 17, 2003), *CHMJ-AM re Tom Leykis Show (Valentine's Day)* (CBSC Decision 02/03-0673, July 22, 2003), *CKVX-FM re comments made on the Pepper and Crash Show* (CBSC Decision 02/03-0237, July 22, 2003), *CFBR-FM re a spoof song* (CBSC Decision 02/03-0738, December 15, 2003), *CJAY-FM re Forbes and Friends (graphic discussion)* (CBSC Decision 03/04-0157, April 16, 2004), *CHOI-FM re Le monde parallèle de Jeff Fillion (Sexual comments)* (CBSC Decision 03/04-0018, April 22, 2004), *CKAC-AM re an episode of Doc Mailloux (Adolescent Sexuality)* (CBSC Decision 05/06-1104, June 30, 2006), and *CKAC-AM re Doc Mailloux (six episodes)* (CBSC Decision 06/07-0168 & -0266, August 23, 2007).

In the matter at hand, the Ontario Panel considers that the collective discussion of regular coitus, laying or sitting down (during sex), wiping off, duration of the act, oral sex with Spencer Miller, and the joke about fellatio with the hospitalized woman crossed the line into unduly explicit sexual content, consequently in breach of Clause 9(b) of the *CAB Code of Ethics*.

Contextual Considerations

The *Equitable Portrayal Code* anticipates that broadcasts that would otherwise appear to breach one of the provisions defining negative portrayal may not be found in breach of the Code when their context may reflect legitimate artistic usage, intellectual treatment, or acceptable comedic usage. In other words, the codifiers anticipated that there may be three categories of circumstances in which broadcasting may reflect or include discriminatory or hurtful content that targets identifiable groups without offending codified standards. Thus, the Panel understands that dramatic, documentary or journalistic programming may portray discriminatorily offensive or hate-filled characters or plots without falling afoul of the provisions of the *EPC*. So, too, such categories of programming may reflect academic, artistic, humanitarian, journalistic, scientific or research purposes, or otherwise in the public interest without breaching the *EPC*.

The Panel considers that neither of the foregoing contextual considerations applies to the challenged episode of the *Dean Blundell Show*. It is rather the third category, the comedic, humorous or satirical intention that the Panel will assess. As the provision notes, that does not in any way constitute “an absolute defence with respect to the proscriptions of this Code.” The requirement, though, is for the comically-intended comments to be “light and relatively inoffensive, rather than abusive or unduly discriminatory.” On this point, the Panel has already concluded that the joking comparison between the wheelchair-bound Miller’s ability to wipe himself and that of persons not afflicted with a physical disability was a “cruel, harsh, finger-pointing differentiation.” The Panel has also noted “numerous examples of laughter and tonally inappropriate comments at Spencer Miller’s expense,” including the “particularly shocking [...] mocking sound of a vocally-challenged person, which of course had *no relevance whatsoever* to Miller’s physical affliction.”

The Panel does not find the foregoing material to be light and relatively inoffensive examples of acceptable humorous banter. It does not consider the examples to be the equivalent of the challenged humour in *CHFI-FM re The Don Daynard Show* (CBSC Decision 94/95-0145, March 26, 1996), where the hosts told a series of “light bulb” jokes, including one which asked, “How many Jewish mothers does it take to change a light bulb?” In that decision, this Panel said of the humour: “It poked fun but did not bludgeon. It tickled but was not nasty.” In the matter at hand, the Panel concludes that the humour did not tickle; it was nasty. Consequently, the Panel concludes that the comedic usage consideration does not mitigate its conclusions regarding the foregoing violations of the *EPC*.

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 Panel considers that the letter of the Program Director provided a thorough, thoughtful and contextual reply to the complainant, including references to Spencer Miller's non-broadcast public advocacy role and references to previous CBSC jurisprudence. Nothing more could be expected of any broadcaster. CFNY-FM has amply fulfilled its obligation of membership in the CBSC on this occasion.

ANNOUNCEMENT OF THE DECISION

CFNY-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 Spencer segment of the *Dean Blundell Show* was broadcast, but not on the same day as the first mandated announcement; 2) within the fourteen days following the broadcasts of the announcements, to provide written confirmation of the airing of the statement to the complainant who filed the Ruling Request; 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 CFNY-FM.

The Canadian Broadcast Standards Council has found that CFNY-FM (102.1 The Edge) violated the Canadian Association of Broadcasters *Equitable Portrayal Code* and *Code of Ethics* in its broadcast of a segment with disabled advocate Spencer Miller on the *Dean Blundell Show* of January 5, 2009. The Panel found that some of the hosts' comments were reproachful, insulting and condemnatory, and inappropriately portrayed Miller, as a result of his disability, as helpless and incapable, the whole in violation of Clauses 2, 3, 4, 5 and 7 of the *Equitable Portrayal Code* and Clause 2 of the *CAB Code of Ethics*. The Panel also found that the collective discussion of unduly explicit sexual content at times of the day when children might be listening in breach of Clause 9(b) of the *Code of Ethics*.

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

APPENDIX A

CBSC Decision 08/09-0650 CFNY-FM re a “Spencer the Cripple” segment on the *Dean Blundell Show*

The following is a transcript of the “Spencer the Cripple” segment that aired during the *Dean Blundell Show* on January 5, 2009 at approximately 8:45 am on CFNY-FM (102.1 The Edge, Toronto).

Dean: 102.1 The Edge. The Offspring and “Hammerhead”. Or “You’re Gonna Go Far Kid”. One of the two. It doesn’t matter, it’s The Offspring.

Todd: Ha. [laughs]

Dean: Um, 8:51. Minus four your high today. Right now it’s minus three. [affects funny voice] Spencer the Cripple is in the hizzay.

Spencer: Hi, guys.

Todd: [in background, using funny voice] How’s it going?

Dean: Hi, Spence.

[Chariots of Fire song playing in background]

Spencer: Good. How are you?

Todd [in funny voice]: Good to see ya. Happy New Year!

Dean: Still, uh, still crippled?

Spencer: I think so, yes.

Todd [in background]: Wo oh, woo ooh.

Dean: Now, your Christmas was good? What’d you get for Christmas? What did Santa bring you?

Spencer: Uh, no-, uh, nothing really. Uh, I got a, a, uh, webcam, but that was pretty much it.

Todd: Wo ho ho ho ho ho.

Dean: Woah. [hosts laugh]

Jason: Oh no. That cannot be good.

Dean: I said ah ye-ah.

Todd: Yeah, ’cause on the webcam, you get outta your wheelchair, you look normal.

Dean: That's right. Hey. You know, this is gonna, this is the start of your –

Spencer: No, I –

Dean: -- of your working career. You're gonna do, like, crippled sex chat dot com.

Todd: It's brilliant.

Spencer: I don't look normal because if I sit in the chair, people, people can only see me for about two minutes until I slide down off the chair and then they're like "Where'd he go?" So.

Dean: So have you used the webcam yet?

Spencer: Yes, I have.

Dean: What'd you use it for?

Spencer: Uh, this thing called Skype. It's a –

Dean: Excuse me?

Spencer: I Skyped people over my holidays.

Dean: Ex-cu-se me?

Jason: What is that?

Todd: What the hell does that mean?

Spencer: It's a, uh, a, it's an internet phone thing. Where you can contact people all over the world.

Todd: Random strangers? Like, just diallin' up the wrong number?

Spencer: Uh, no. Uh, you, uh, you –

Dean: Were you bored one night? Yeah, you did that. You phoned some number and you're like [affects funny voice] "Oh, uh, nevermind, sir. I got the wrong number. Anyways, do you want to talk to me for a few minutes?" Were you like that?

Spencer: More or less.

Dean: Thought so.

Todd: So you call up people, but you can see them?

Spencer: Yes.

Dean: Is it real time?

Spencer: Yes, it is.

Dean: There's no delay?

Spencer: Not really, no.

Todd: Does it skip a bit? Like every, every three or four seconds, whatever?

Spencer: It, it skips a little bit.

Todd: Yeah.

Spencer: If they –

Dean: Weird.

Spencer: -- move around too quickly. Which isn't my problem.

Dean: No.

Spencer: But, uh, like, it's pretty good. So.

Todd: What do you talk to people about?

Jason: Yeah.

Spencer: No, it's, uh, --

Dean: It's like a chat group?

Spencer: No. It's to keep in contact with friends that might be overseas or something like that.

Jason: And you have friends overseas?

Spencer: I have friends in Hawaii and a couple of different things.

Todd: Who?

Dean: Yeah, who?

Spencer: Uh, my friend Caroline, uh, just went to BYU in Hawaii. Uh –

Dean: BYU is in Hawaii?

Spencer: They have a campus there, yes.

Jason: Bring your uterus?

Todd: No.

Dean: Brigham Young.

Todd: I don't think it's, I don't think it's "bring your uterus".

Dean: Oh. Yeah, it's definitely not "bring your uterus". [Todd laughs]

Jason: I don't know.

Todd: Pretty good acronym. [laughs]

Dean: So you got a webcam. What else'd you get for Christmas? Any socks, underwear, gloves, traditional things?

Spencer: I, I got some socks, yes.

Jason: Mm hm.

Spencer: And, and, uh, --

Jason: Wet wipes?

Spencer: No. A few pairs of boxers, though.

Todd: You know what'd be a good present for Spence? You, like, open up a gift and it's, like, a new assistant. And she's in the box. [laughs]

Dean: Yeah. With one really, really soft hand for wiping.

Jason: Mm hm.

Dean: Like, I don't like the one I got last year. He had a hang-nail. [Todd laughs]

Jason: [affects woman's voice] My, my name is Joyce. I've moisturized for several years. I have very supple hands for wiping your bottom. Sweet.

Dean: Do other people do that for you?

Spencer: Wipe?

Dean: Actually wipe your bum?

Spencer: No! We've had this discussion.

Dean: You do it yourself?

Spencer: That's one thing I can do for myself.

Dean: Oh, okay.

Todd: I'd like to see you do it. [laughs]

Dean: Yeah, do it right now. Put your hand back there.

Jason: Yeah, you seem to get upset when we ask that question, but you understand, like, we still say the names of the songs because not everyone's heard them.

Spencer: Right.

Jason: You know?

Spencer: Yes.

Jason: Like, that was The Offspring.

Todd: Yep.

Jason: But we can't just play it and expect people to know. People need to know if you wipe you bum.

Todd: We also keep asking you 'cause I don't think we believe ya. 'Cause you can't even give me five. Watch. Gimme five. No, see, you missed.

Dean: You missed.

Jason: Just the tip. Did you give the tips of the fingers?

Dean: You tippy-ed, you tippy-ed him. You touched the tip of your fingers to his hand.

Spencer: I didn't even do that.

Dean: Gimme a thumbs up. That's terrible, it's like thumbs sideways. Now you're giving me the finger sideways. [other host laughs] I don't think you can wipe your own bum. Admit it!

Spencer: Yes, I can.

Jason: I have trouble sometimes.

Todd: Like properly, or sometimes does the assistant just get it, just clean you right up for you. [laughter]

Spencer: No, no. I, I do it. I do it for myself.

Jason: All right.

Todd: You're wiping [??].

Dean: So, now, what did you get for your girlfriend?

Todd: Wiping the [?].

Spencer: I got her some flowers.

Dean: Yeah?

Spencer: Um, and a thing at the, uh, at the Great American Back-Rub in, uh, the Eaton Centre.

Todd: What's that, like a spa or somethin'?

Spencer: Yes. And, uh, a nice package from, uh, The Body Shop.

Dean: Your pants?

Spencer: That too, yes.

Dean: A nice package from your pants?

Spencer: Yes.

Dean: Did you have the sex over the holidays?

Spencer: I did.

Todd: Yeah, yeah, what's up!

Dean: Did you bring a ruckus? Did you bring the ruckus? [Todd chuckles]

Spencer: I tried, yes. But, uh, but I learned one thing.

Dean: What's that?

Spencer: You need to have –

Jason: If it's brown, don't go down. [Todd laughs]

Spencer: Besides that.

Todd: If it's red, stay in bed. [Jason laughs]

Dean: If it's green, she's real mean. [more laughter]

Spencer: Are you done?

Jason: [affects funny voice] If it's white, it's all right.

Todd: Haa. We weren't done.

Spencer: You need to have the coitus on a regular basis or your stamina goes down really quick.

Dean: Your stamina?

Jason: Well, I mean, Spence, I mean, people really aren't, probably aren't thinkin' that you're ... Don't know how you're expectin' much.

Todd: What're you talkin' about?

Spencer: Remember, remember when –

Jason: You just lay there, dude.

Dean: Wh-, what are you talkin', yeah. Your, your, your stamina [Todd laughs] is sitting in a chair. That's what you need stamina for. I got stamina to sit in a chair all day long.

Spencer: First you say I lie down, now you say I'm sitting in a chair. Make your mind up.

Dean: Well, what are you? Lying down or sitting in a chair? Both.

Spencer: It depends.

Dean: But I can tell you this. You are not the aggressor. So you're, if you have the stamina to sit there like that, you can have sex all day long.

Spencer: Right.

Todd: Your assistant needs stamina like gettin' you off the chair and lyin' you down first.

Dean: Yes, and, uh, make sure we wipe you down after.

Spencer: No, but, um, 'member how we were, uh, discussing earlier how when I first brought Tina in, um, that we lasted for about forty minutes.

Dean: Mm hm.

Spencer: That kind of rapidly decreased over the holidays.

Dean: Right.

Jason: Why?

Dean: Now you're down to a time that we'd actually believe?

Jason: Like a minute and a half?

Dean: Three? Four?

Todd: How does this theory make sense?

Spencer: More like ten.

Dean: Ten.

Jason: Ten.

Todd: How does this make sense? So you're sayin' that the more you do it, the less stamina you have?

Spencer: No.

Dean: No. The opposite.

Spencer: No.

Todd: I'm proving a point.

Spencer: That –

Todd: Which is how the hell did you go forty minutes the first time that you hadn't had it in three years?

Jason: Oh, good point, Todd.

Todd: Thank you.

Jason: I wasn't payin' attention.

Todd: No, you weren't gettin' to it.

Jason: Right. [hosts laugh]

Spencer: Well –

Jason: Yeah?

Spencer: It, it was –

Jason: Liar!

Spencer: No, I, Tina admitted it.

Todd: [makes sound mocking a person with a speech disability.]

Jason: Come on.

Spencer: Tina admitted it. And even, and even Dean believed that I went forty minutes.

Dean: Well, I just, I thought you were gettin' such a, such a, a butt-whooping from these guys mentally, I had to believe you because I thought it was the nice thing to do. I find it hard to believe.

Todd: [laughs loudly & claps hands] I love Dean for that reason alone. He's real good.

Dean: I find, I find it hard to believe that you, uh, had coitus for forty minutes. However, nothing is impossible and I have seen the impossible. So.

Jason: Yeah, like, if you're talkin' from when you first went in the apartment to final sponge bath, forty minutes, okay.

Spencer: Listen. I don't know how it happened, but it happened. And, and –

Dean: Were you drunk? Did you have whisky wiener?

Spencer: No, I didn't.

Todd: You're makin' no sense!

Spencer: Thank you.

Todd: No problem. What was the impossible you've seen? Was it that cell phone search thing?

Jason: Yeah, what was that?

Dean: That's one of 'em.

Todd: Yeah, okay. [laughs]

Dean: And, uh, the dude with the horse.

Todd: Yeah, that was, that's totally impossible.

Dean: But he's dead, so.

Jason: Yeah. Different.

Dean: But, truth is –

Spencer: And the fact that I actually had sex with somebody.

Dean: Well, no, that's possible. I wouldn't, I agree. It's just the length of time.

Todd: Yes.

Dean: Usually when you tell a lie, you try and make it a little bit believable.

Spencer: Right. I still – [hosts laugh]

Jason: Forty minutes. I've you'd said fifteen, we woulda went "okay".

Dean: I woulda, I woulda been proud o' ya for fifteen.

Todd: Yeah! Even eight!

Dean: You didn't even double it. You almost tripled it!

Spencer: No, I'm telling you, we, we went for forty minutes.

Dean: She went for forty minutes. You laid there for forty.

Spencer: More or less.

Dean: Yeah.

Jason: Yeah.

Dean: So don't say "we". See, I can do that. I just gotta think about baseball.

Spencer: You're, you're making me sound, not only like a blow-up doll, but a stick figure.

Dean: Well, what do you do actively in, in, in a sexual, uh, escapade? I mean –

Spencer: Ask someone else.

Dean: No, but I'm serious. [Todd laughs] Well, what do you contribute?

Spencer: Not a lot.

Dean: There you go.

Todd: Yeah.

Dean: So, I'm maybe making you sound like an appartus, but it doesn't matter because –

Spencer: Hey man, you get it, you get it.

Jason: Yeah, enjoy it.

Todd: Atta boy! See. That's all we're sayin'. You put your face on it? [laughs]

Spencer: Once or twice.

Todd: Yeah well.

Jason: Now do you have a rule? Do you use a tap-out rule or anything? Because, I mean –

Dean: She could choke you, yeah.

Jason: It's not like you can throw her off.

Dean: Did you hear the story that happened? To a woman?

Spencer: No.

Dean: Oh, it's a terrible story. This nurse, a woman's in a coma. Nurse, a true, it's a true story. Nurse is in a coma.

Todd: Sure.

Dean: Er, woman's is in a coma. And the woman's in there sponge-bathing her and she's, she's washing her privates. She's been in a coma for, like, months. Uh, so she's washing her, her holy of holies. All of a sudden, there's blip on the screen and she moves a little bit and her eyes twitch. True story. So the woman, the nurse rushes out of the room, she gets to the husband, she goes "Listen, this might sound really bizarre, but, um, I think you might be able to help your wife's process of coming along by performing an oral act on her. Or, you know, by you guys having oral pleasure."

Jason: She said that? Wow.

Dean: "Cause I just did the sponge bath and, uh, I really believe, like, --

Jason: Mm hm.

Dean: "-- if you and your wife have some oral pleasure, I think you could help maybe revive her." So twenty minutes later, all of a sudden the monitors go "eeee".

Todd: [makes high pitched noise like heart monitor going flat]

Dean: Nurse runs in. She's dead. The woman is dead. True story. Guy's buckling up his pants. Woman goes "What's wrong?" The guy says "I think she choked to death."

Spencer: Wow.

Dean: So, there's always the concern there for you with that.

Jason: Yeah. [Todd laughs]

Spencer: Never thought about it that way. But I will now.

Todd?: [makes gargling/glugging noise like he's choking]

Dean: Just, uh, just be careful.

Spencer: I will.

Dean: 'Cause you gotta have some good short-hand. You gotta be able to communicate, like, a –

Jason: Little tap out.

Dean: One tap means, one tap means uh, –

Todd: Yeah.

Dean: -- you're having a great time. Two tap [sic] means go faster. One big slap means just get off, I can't breathe already.

Spencer: Yes.

Todd: [makes noises like he is being smothered & trying to talk]

Spencer: Another, another uncanny imitation of me.

Todd: You're welcome.

Spencer: Thanks.

Dean: Nine-oh-two, more with Spencer the Cripple coming up, as well as Todd's vacation in Jamaica. We'll chat with some Jamaicans coming up next as well. Hang on.

Jason: We'll do some traffic.

Dean: Time for a look at Edge traffic.

[traffic & commercial break]

Jason: Sorry. I saw it was only, like, ten-seconds a spot.

Dean: We're good.

Jason: I know you're chewing.

Dean: No, I'm not chewing.

Jason: Not anymore. You're done.

Dean: Here's somethin' to chew on. Spencer's getting married. [laughter]

Jason: Yep.

Dean: We'll chat about that. Todd in Jamaica.

Todd: [affects Jamaican accent] Yeah, mon.

Spencer: And my job possibilities.

Jason: Oh! Look at that!

Todd: Yeah, mon.

Jason: Makin' a guy cry can help.

Dean: Yeah, we did make him cry last time.

Spencer: Can we not talk about that, please?

Jason: Why?

Spencer: It wasn't my finest moment.

Dean: It was a sensitive moment.

Jason: Yeah.

Todd: You're a cute, little crippled crier boy.

Spencer: Once again, showing your sensitivity in spades.

Jason: Yeah. It's okay. Then we cheered you up with a basket on your head.

Todd: Cute little crippled girl. [laughs]

Spencer: That you would not let me take off.

Jason: [?] cute you were.

Dean: I had nothing to do with it. I'm over here.

Jason: Lady, what are you saying? [laughter]

Dean: 9:05. MGMT, 102.1 The Edge.

APPENDIX B

CBSC Decision 08/09-0650 CFNY-FM re a "Spencer the Cripple" segment on the *Dean Blundell Show*

The Complaint

The following complaint dated January 7, 2009 was sent to the CRTC and forwarded to the CBSC in due course:

At approximately 8:45 am on Monday January 5, 2009, I was listening to the "Edge" 102.1 in Toronto to a show I later learned is called "Spencer the Cripple" (I understand this to be a regular weekly spot). It generally consists of the 2 hosts asking extremely baseless and degrading questions largely focused on the sexual and bathroom habits of what I understand to be a quadriplegic man by the name of Spencer. I understand the object of the show is to generally sensationalize the "patheticness" and degrade the life and experiences of Spencer.

I enjoy "politically incorrect" humour but this so crossed the line in offensiveness I was in absolute disbelief that this is approved regulated Canadian content. It is so disrespectful on so many levels that I simply cannot believe that it can continue to be aired. It saddened me that we would allow this to be an expression of any broadcasting privilege, creativity or Canadian values or humanity. I await your response. Many thanks.

Once the complainant learned from the CRTC that the CBSC would be dealing with her complaint, she sent the following note directly to the CBSC on January 13:

Thank you too for your quick response. I did send a complaint to the station via email on January 5, but I never heard back from them. Just to clarify, while I complained about the January 5 segment, I understand "Spencer the Cripple" is a regular Monday morning segment so there may be some value in reviewing other segments which are unfortunately similar in content.

Broadcaster Response

CFNY-FM responded to the complainant with a letter dated January 28:

The Canadian Broadcast Standards Council (the "CBSC") has asked us to respond to your email of January 5, 2009 in which you raised concerns regarding comments made during *Dean Blundell Show* that aired on CFNY-FM that morning. Specifically, you take exception to the program hosts' discussion with a character known as "Spencer the Cripple", which you thought "crossed the line in offensiveness" and [was] "disrespectful on so many levels".

We have reviewed a tape of the program, and note that the comments you refer to were made within the context of a regular segment with Spencer Miller (or Spencer "the Cripple", as he refers to himself). While we appreciate that you may have been offended by the discussion, we do not believe that the comments were in any way a breach of the Canadian Association of Broadcasters Code of Ethics (the "Code"), which is administered by the CBSC and to which we adhere.

As you may be aware, Spencer is severely affected with cerebral palsy and has been confined to a wheel chair for his entire life. Spencer has become a motivational speaker, and refers to himself as a "cripple" as a means of dealing with his issues head on. Discussions with Spencer are always frank, and the excerpt you heard was no exception.

While we appreciate that you were offended by the material, the CBSC does not require broadcasters to ensure that its content pleases everyone. The CBSC recognizes that personal tastes differ, and that its mandate under the Code does not require it to judge matters of taste. The CBSC applies current social norms in its interpretation of the Code, acknowledges that a program may not be 'everyone's cup of tea' and assumes that some members of society will be offended (CFJP-TV TQS re *Quand l'amour est gai*, CBSC Decision 94/95-0204).

Furthermore, the CBSC has frequently stated that it is not any reference to race, national or ethnic origin, religion, age, sex, marital status or physical or mental handicap that will be sanctioned, but rather, only those references that contain an abusive or hateful element. While we appreciate that the discussion may be considered distasteful, we do not believe that any of the comments were in any way abusive or hateful towards Spencer or towards persons with physical handicaps, generally.

We take our responsibilities as broadcasters very seriously, and work hard to make sure all of our programming complies with the *Broadcasting Act*, the *Radio Regulations*, the Code and standards required of us as a member of the CBSC.

We trust that this letter has addressed your concerns. We recognize the importance of listener feedback and appreciate all comments.

Additional Correspondence

Following receipt of the station's response, the complainant wrote back to the CBSC on January 29:

I received a response from the Broadcaster which I would like to evaluate in terms of assessing whether I should request a Ruling by a CBSC Panel. In the response, that I note you were copied on, the Broadcaster states, "...we do not believe that any of the comments were in any way abusive or hateful towards Spencer or towards persons with physical handicaps, generally".

My recollection of the show was that it was very abusive to Spencer and by extension to persons with disabilities - this indeed was the impetus for my complaint, as well as the overall offensiveness of the content. However, I am somewhat handicapped in assessing whether I should seek a review in that I do not have a copy of the broadcast to review - I am working off recollection. Can I get a copy from the CBSC or do I have to ask for it from the Broadcaster? I know I only have 14 days to request a review, so I would like to move on this as soon as possible.

Your advice would be much appreciated.

The complainant also wrote directly to the station to request tapes on January 29:

Thank you for your response.

Can you please send me a copy of the January 5 segment? I have also asked the CBSC for a copy but I am not sure which is the proper route of request. I would like to review the segment again to assess whether to request a CBSC review by a panel. As you likely know, I only have 14 days from today to file the necessary request, so your prompt response would be appreciated.

If you are able to send me a copy of the broadcast, I will forward an address - or perhaps you can provide a link for me to listen to it again.

The CBSC explained to the complainant that it could not provide her with copies of the broadcast, but that it includes complete transcripts of content in most of its decisions. The CBSC informed her that she would have to contact the station directly to ask for tapes, but that the broadcaster was under no obligation to provide them to her.

The broadcaster responded to her request about tapes on January 30:

Unfortunately I cannot send you the logger tape from the broadcast that you are requesting as we don't make these available to public.

I see that [the CBSC Communications Coordinator] has also responded to you on this matter.

I can tell you that we have had specific conversations with the show's hosts about this particular broadcast and are working with them.

The complainant wrote again to both the CBSC and CFNY-FM on February 2:

Thank you for your responses.

It appears most unfair that in order to assess my right to seek a review, I cannot even access the material that is subject to review, but the radio station and CBSC can have a copy. I work extensively in the area of administrative law and the work of administrative tribunals and find this to be contrary to basic fairness. I appreciate that there is no "positive obligation" to provide me with a copy but surely it is just basic fairness – not to mention extreme short sightedness on the part of the station. It only adds frustration and aggravation to the process and does not help to foster any sentiment to informally resolve this matter.

From both of your responses I understand that I will have to take my own measures to try and obtain a copy of the broadcast in order to properly frame my request for a review more formally with the CBSC. I am sure you can appreciate that I would like to accurately frame my concerns in a credible manner and that it is too onerous to expect me to be able to do this on pure recollection of the broadcast alone. I will go to the extra effort of trying to obtain access to the broadcast from other publicly available means, but it is very disappointing that neither the station nor the CBSC will provide any assistance in this regard.

She then filed her Ruling Request on February 9:

I well appreciate that the purpose of the CBSC is not to be an arbitrator of good taste and that while the above show was offensive, that is not the test for a violation of the *Code of Ethics*.

If I understand the test correctly, it concerns whether content in the show was "abusive" to Spencer or persons with handicaps generally. I have been unable to obtain a copy of the broadcast from the CBSC or the station (both refused my requests) and wisely it was removed from internet podcasts. So I attempt to provide an intelligible response based on my memory of the broadcast. I trust the panel will review the broadcast for overall violations of the *Code of Ethics* and not simply to respond to my concerns.

The most abusive comments I can recall to Spencer related to Spencer's apparent inability to be an interactive sexual partner or independently care for his personal hygiene. Of course the context and tone of the overall broadcast must be considered for its abusive nature but some of the particularly abusive comments included something to the effect of, "How do you wipe your ass?" (with laughter at the idea he could do anything on his own), and the hosts remarked something to the effect "do you tap your fingers to get her off?" when Spencer is having sexual relations with his girlfriend. They also mimicked how Spencer would sound when communicating in such circumstances in a manner intentionally directed at ridiculing his speech and that of other persons with disabilities.

The Broadcaster's response is clearly an adapted standard form response simply stating it has not violated CBSC rules. I find this inadequate and in keeping with the arrogance and dismissive nature of the communications received to date. I thoroughly enjoy certain "politically incorrect" humour that likely others would find distasteful. I would not be making this request for a review if I was not totally shocked by the abusive nature of the two hosts' conduct with Spencer, as well as the abusive messaging of the broadcast to persons with disabilities and to human dignity as a whole. The Broadcaster advised that they have spoken with the hosts - this is insufficient. Surely a public apology to Spencer and the audience, particularly to persons with disabilities, is warranted.

I hope you get the chance to listen to the broadcast and not just review a transcript as I believe the full presentation of the communication is important. I look forward to your response and appreciate the time and effort you will spend in reviewing this matter.