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## CANADIAN BROADCAST STANDARDS COUNCIL

### ONTARIO REGIONAL PANEL

#### CFNY-FM re a “Gay Jeff” segment on the *Dean Blundell Show*

(CBSC Decision 08/09-0700)

Decided June 25, 2009

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

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### 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 with occasional on-air appearances of female producer Dani Stover. The show 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 Jeff, a gay man and friend of Shapiro, who appeared on the program to talk about his life experiences as a member of the gay community. The segment was therefore referred to as the “Gay Jeff” segment.

Jeff appeared on the program on January 22, 2009 in a segment that began at approximately 9:35 am. Blundell read a question from a listener who wanted an update on Jeff’s relationship with a man who had appeared on a reality television program. The dialogue indicated that Jeff had paid for the man’s airplane ticket to come to Toronto to visit him. All of this had apparently been discussed on one or more previous “Gay Jeff” segments. Jeff said that the relationship had fizzled because the man had gotten a job selling gym memberships. The pertinent parts of the segment follow (the full transcript can be found in Appendix A):

Jeff: It’s, it’s a, whatever, he’s a guy who has big expensive gyms. And he’s selling gym memberships.

Dean: What's wrong with that?

Todd: Oh, now that he's not a tv star?! [Jeff laughs] You're a –

Dean: Oh, you are a –

Todd: I almost swore!

Dean: You are a bit of a douche.

Todd: So you fly him here like a hooker.

Dean: Come on!

Jeff: He was a star then.

Todd: He comes over. He's a little man-whore. You have the coitus or whatever you guys do.

Jeff: Uh, yeah.

Todd: And then –

Dean: The butt love!

Jeff: There's nothing *but* love there, yeah. It was –

[...]

Todd: You are such a horrible person.

Jeff: So I can't, I can't date him anymore.

Todd: You're horrible.

Jeff: And he lives far away.

Dean: Yes, that's terrible.

Jeff: And I could've just used the excuse that he lives far away and I want someone that lives closer. But, come on, he's selling gym memberships and I can't, I can't introduce that to mom.

Dean: So what? What do you mean you can't?! He's a normal guy. He's selling gym memberships. You gotta introduce him to mom.

Jeff: I don't do normal guy! Well, I do *do* him, but I won't, like, I can't date him, seriously.

Jason: That's terrible.

Jeff: Maybe one day when he works himself up to assistant manager, we'll, uh, we'll talk again.

Todd: Ass man? Is that the short form for that?

Jason: Yeah, ass man.

Todd: That's why you like that.

Jeff: He's going to be the ass man. [laughs]

Jason: Are you serious?

[...]

Jeff: I'm totally not joking. Come on! No. If I wanted to date someone who sells memberships, I'll sleep with someone from my own gym.

Dean: He's, um, you know what he is? He's one of them gold-diggin' dudes.

Jeff: I'm not a gold-digging dude!

Dean: I'm sorry, you're a brown-digger. Yeah.

Jeff: I'm a brown-digging dude.

Jason: Lookin' for that nugget.

[...]

Todd: But you're not, you know the stereotypical gay guy which is very, uh, open and free and just likes men. And they're very forgiving and they're just sweet. You're actually kind of like a frat boy disguised as a gay dude.

Jeff: A little bit, yeah.

Todd: Where you kinda got that pompous attitude. You're sort of a bro in disguise.

Jeff: A little bit cocky. A little bit.

[...]

Dean: "Cocky" is a great word.

Jason: Yeah, yeah.

Jeff: I'm a little bit cocky when it comes to it.

Jason: You are what you eat.

Jeff: Yeah, exactly. You see, I was just thinking that too.

Todd: And you expect a lot out of a life partner.

Jeff: I do. Because –

Todd: But not out of someone you'll just fly down here like a little hooker.

Jeff: Well. Well, come on. For four hundred bucks, wouldn't you sleep with him?  
Well, not –

Todd: No.

Jeff: You know what I mean?

Dean: No.

Jason: No, I wouldn't do him for ten million bucks.

Jeff: Okay, well, that's the wrong audience. Dani?

Dean: Not even, not even a woman. No.

[...]

Jeff: Dani, would you have slept with him on, after you saw him on the show? Yes or no?

[...]

Dani: I, I'm not really into, like the macho –

Jason: Mm hm.

Dani: – gay guys.

Jeff: Muscle-y, big –

Dani: No offence, Jeffy. I love you.

Jeff: – tattooed thing. You're not into that?

Dean: But do you find it a little bit odd? Like, would you fly someone up here that you'd never really met to have sex with?

Dani: No.

Dean: And then fly them back again?

Dani: I wouldn't. But I think the standards are different in the gay community. Correct me if I'm wrong.

Jeff: Yeah, that's true.

Jason: Lower?

Jeff: Shut up, Jason. You were doing so well. I was liking you so much.

Todd: Like, like on your knees lower?

Jason: Yeah, yeah, lower. [Todd & Dean laugh] Like, really low.

Dean: Lower.

Jeff: So low you have to bend over?

Jason: Yeah, lower.

[...]

Dean: Dani, can I tell you right now? I'm gonna say something. I'm gonna be totally serious right now. If I wasn't sort of your boss. [Dani laughs] And if I was better looking and younger and had way more money, I'd fly you anywhere you wanted.

Jeff: Hey, I'm gay and I'd fly Dani anywhere to come see me on vacation. No problem. She's a dope girl and she's hot.

Dean: Yeah, but you'd, I'd fly her out for totally different reasons.

Dani: Oh, thanks, guys.

Jeff: That's okay. I'd fly her with no –

Dean: [laughs] "Thanks, Dean –"

Jeff: – with no ulterior motive. I would fly you out. I love you that much.

Dean: "Thanks, Dean, for grossing me out."

Jason: You should probably not go into those reasons. Since she does work with you.

Dani: Oh, tomorrow now I'm going to read my ...

Dean: Your what?

Dani: The policy.

Todd: We have a policy here?

Dean: Yeah, we've got –

Jason: Oh, like the human resources thing.

Todd: We have policies here?

Jason: Yeah.

Dean: She's past her three month probation.

Todd: Dani, I'm not that wealthy, but I'd provide a bed and breakfast for you. [Dani laughs]

Jeff: Well, at least a bed.

Dean: Mostly a bed.

[...]

Jason: You don't know what Todd defines a "bed and breakfast" as, okay?

Jeff: The backseat and a sandwich?

Dean: No, no. Not even that.

Todd: The chin omelette's the breakfast. [Dean laughs] The chin omelette, baby. Eat it up!

Jeff: That's so gross.

Dean: We've got a point, Jeff. That you flew this guy out. And this is what this other Jeff wanted to know. You flew him out for the expressed purpose of not having a long-term relationship with him.

Jeff: It's true.

Dean: You flew him out to let him stick that thing in your thing and have a great time.

Todd: Unbelievable.

Dean: Is that not correct?

Jeff: Yeah, that's pretty true.

Dean: Well.

Todd: He's a hooker.

Jeff: You know what? He's not a hooker.

[...]

Todd: Yeah right. I guarantee his [?] is like eight inches.

[...]

Jeff: And who does ads at the back of magazines now, I'm sure. To pay the bills in New York.

Dean or Todd: [laughing] You're horrible.

Jeff: For gym memberships. Whatever. Yes, bottom line is I'm not really talking to him anymore because I already got all nine that I needed from him.

Todd: Eww.

Jason: Throw up.

Jeff: Nine reasons to invite him back.

[Jason, Todd & Dean make vomiting and gagging noises.]

[...]

Jeff: So that's the answer to that question.

Dean: All right, I got it, I got it.

Jeff: There you go. Happy now?

Dean: Grossing me out.

Jeff: Whatever. It was a question. I didn't ask it.

Dean: Yeah. You're grossing me out now. Listen, it's cool. I love you, you're my pal, but –

Jeff: I know.

Dean: – when you start giving length. [others laugh]

Todd: Which is important to –

Dean: It becomes very specific and gross.

Todd: Yeah. We're very creative minds.

Jason: Because, you know, we, we're, we visualize things and thinkin' that length, you're not a very big guy.

Dean: I just picture your, –

Jason: If you [???

Dean: – with every thrust your eyes get bigger.

[...]

Todd: Huge. Like that chick in the *Guinness Book of World Records* where they pop out of her head.

Dean: Yeah! With every thrust.

Todd: Yeah, yeah.

Dean: Every time that guy went for it, your eyes are heeonk, heeonk.

Jason: Either that or if you looked at his face you'd think he was stickin' his tongue out.  
[sound of sticking tongue out]

Jeff: [laughs] That's so, that's so true.

The CBSC received a complaint from a listener dated January 22. The listener was concerned that the above conversation was too explicit for morning radio. He outlined his concerns as follows (the full text of all correspondence can be found in Appendix B):

A totally disgusting conversation about how the gay announcer had performed oral sex on a fellow with a 9" penis that he had met over the internet. I am anything but a prude but there is a time/place for discussing oral sex in graphic detail and Thursday morning radio ain't it. Hopefully you can gain access to this time slot and judge for yourself.

The station replied to the complainant on February 16 with the following explanation of its programming:

We have reviewed the program, and confirm that the hosts and guest announcer "Gay Jeff" did discuss a sexual relationship he had had. The conversation had nothing to do with oral sex, however, nor was it in any way sexually explicit. While we appreciate that you may have found this exchange disgusting, we do not believe that it breached the Canadian Association of Broadcasters' *Code of Ethics* (the "Code"), which is administered by the CBSC and to which we adhere.

The CBSC has stated that a program may contain sexual overtones, but should not be sexually explicit (CJYC-FM re *Local Exotic Dancer Bar Commercial*, CBSC Decision 97/98-0282). Where a program is not explicit and does not contain any suggestion of reality or description of an explicit sexual act, the CBSC has further stated that it would not find a breach of the Code (CFRQ-FM re *The Morning Show*, CBSC Decision 01/02 - 1137). The CBSC has also found that a program filled with double entendres and suggestive comments was not explicit enough to be in breach of the Code (CFMI-FM re *Brother Jake Morning Show*, CBSC Decision 01/02-1137). In the case at hand, the hosts referred to someone sticking "that thing in your thing" and Jeff stated that he "got all nine that he needed from him....nine reasons to invite him back". While offensive, these comments were merely suggestive, and in no way sexually explicit.

While we understand that you may have found the comments offensive, the CBSC has said that where programming is directed at an adult audience, "there is no overriding societal interest in curtailing the broadcaster's right to freedom of expression", and that in those circumstances, crude and vulgar language should be regulated in the same way as other matters of bad taste, i.e. via the on/off or dial button (CIQC-AM re *Galganov in the Morning*, CBSC Decision 97/98-0473). As noted above, the program is directed at an adult audience, and as such, does not need to be rigorously screened.

In view of the foregoing, we do not believe that the program violated the Code. We do regret, however, that you were offended by some of some of our programming. 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* and 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.

The complainant wrote back to the station on February 17, disagreeing with the CFNY-FM's contention that the segment was not sexually explicit:

I challenge you to take any 10 strangers off the street, play them that clip, and ask them what it was about. You and I both know what the feedback would be. So please, don't respond with such a ridiculous comment and insult my intelligence as well.

Having caught a few more tasteless/immature 'episodes' it's so painfully obvious that in the absence of any real talent your "team" is compelled to go for the mindless, shock-jock approach. Every second comment comes across as a desperate s-t-r-e-t-c-h for a cheap

laugh. Do you guys actually get together as a company, look around the boardroom table at each other and take personal pride in your collective “professionalism”?

The complainant also wrote directly to the CBSC on February 20 requesting that the CBSC review the matter:

Broadcaster’s response was little more than an obvious templated email that quoted prior legal ruling and provided their own assessment as to why they were not in conflict with the guidelines. I am formally requesting that CBSC review the tape from this time period.

He then provided some additional thoughts via e-mail on February 23 about the general state of media in Canada and the CBSC’s process:

Clearly many people are being offended by inappropriate content to the point that they feel they must take action. I’m sure that many times that amount are also offended but can’t be bothered going through this lengthy process, something that I’m sure the stations take into account as they push the envelope while playing shock-jock wanna-be’s. The massive backlog of complaints also demonstrates that the penalties must either be few, nominal, or both ... else this would not continue.

I’ll look forward to observing the process and the outcome.

## THE DECISION

The CBSC’s Ontario Regional Panel reviewed the complaint under Clause 9 (Radio Broadcasting) of the Canadian Association of Broadcasters’ (CAB) *Code of Ethics* which reads as follows:

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 segment. The Ontario Panel concludes that the broadcast did not violate Clause 9(b) of the *CAB Code of Ethics*.

## Sexual Explicitness on Radio

The key terminology, as laid down in Clause 9(b) of the *CAB Code of Ethics* is “unduly sexually explicit material”. The implication of the phraseology is that *some* sexually explicit material *will be* acceptable; it is only *unduly* sexually explicit material that will not be. It is evident that one person’s measure of those words can be expected to differ from another’s and that there cannot be a *mathematical* formula applicable to such circumstances as those that face the Ontario Regional Panel in the matter at hand. And yet the CBSC Adjudicators *must* arrive at an assessment of what is and what is not acceptable for radio broadcast at different times of day. It can and will do so, relying on previous CBSC jurisprudence, which reflects the considered judgment of many Adjudicators evaluating the issue of sexual explicitness across Canada over nearly twenty years. Even with that tool in hand, the Panel has no illusions. It does not, indeed it *cannot*, hope to arrive at a mathematical predictability in such matters.

Historically, “unduly” has been a function of the time of day. The CBSC has interpreted the word to mean *too* explicit for daytime or early evening radio hours, in other words, too explicit for times of the day when children could reasonably be expected to be listening. Bearing that in mind, the various CBSC Panels have determined that sexual innuendo, double entendres, mention of body parts and mild references to sexuality will not be understood to be “too” or “unduly” explicit, even at that time of day. On the other extreme, detailed descriptions of actual sexual activity or clearly understandable references to an actual sexual act will violate the Code if aired at a time when children could be listening. The foregoing borders of sexual explicitness are still hypothetical. What follow are examples.

In *CJYC-FM re Local Exotic Dance Bar Commercial* (CBSC Decision 97/98-0282, November 25, 1998), for example, the Atlantic Panel was faced with the question of an advertisement for a local exotic dance bar, which used the phrase “moan and groan” to describe a contest at Chez Cherie. The Panel compared the content with that on the Howard Stern radio show.

[T]he content of the Stern show was considerably more “shocking” than the Chez Cherie commercial described above. In the end, there was nothing in the commercial itself which was problematic. The references were oblique; at their *worst*, “moan and groan” can in no way be equated to the *explicit* sexual discussion on *The Howard Stern Show*.

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, which contained some content they defined as sexual innuendo and some that was more sexually explicit. The first category included the host’s remark that he would like his female co-host to “hold my import”; euphemisms referring to masturbation; the hosts making fun of a newscaster for accidentally pronouncing the word “deck” as “dick”; and so on. The more explicit (and Code-violating) content included a lengthy conversation

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”, as well as a comedic sketch in which a woman with a Mexican accent was clearly in the throes of passion yelling out such things as “oh the tongue”.

In another Brother Jake decision, namely, *CFMI-FM re Brother Jake Morning Show (Wake up Contests)* (CBSC Decision 01/02-0875, January 14, 2003), the B.C. Panel dealt with two radio contests, one entitled “Wake Up Woody” and the other “Wake Up Wendy”. Contestants had to use innovative sexual techniques to wake up their sleeping partner while the *Brother Jake Morning Show* crew listened on the telephone and broadcast the stunt. A listener felt that both the contests’ concept and the actual dialogue that took place during the stunts were too sexually explicit for a time when families were getting ready for work and school. The on-air hosts explained the contests with comments such as “you go downtown”, “south of the equator”. When Jake asked one of the recipients of the stunt what had happened, she said that her boyfriend was “climbing between my legs and, you know, trying to wake me up.” The Panel explained its position as follows:

In the matter at hand, the Panel finds considerable sexual banter that is on the edge but nothing that falls over it. The contest is filled with double entendres and suggestive comments; however, after examining the comments closely, the Panel concludes that there is nothing that is explicit enough to be in breach of the Code provision. The Panel is not even convinced that all children would even understand the innuendo; however, even if some might, the Adjudicators are not of the view that the two contests are sufficiently explicit to fall afoul of the Code. When Panels reach such conclusions, they are constrained to decide that the principle of freedom of speech overrides suggestive or taste-doubtful content.

In *CFRQ-FM re Morning Show (“Faking It” Contest)* (CBSC Decision 01/02-1137, March 7, 2003), the Atlantic Regional Panel dealt with a complaint about a fake orgasm contest. Supposedly in honour of the “Second Annual National Orgasm Day”, the morning show hosts invited listeners to call in and fake an orgasm on the air. They took three calls during the program, each participant providing a comedic take on a fake orgasm, such as baa-ing like a sheep and interjecting the French expression “j’arrive”. A listener felt that this was inappropriate material for a time of the day when children could be listening. The Panel concluded that, although the content had a sexual theme, no comments had been made that could be considered explicit:

In the present case the Atlantic Panel finds that there was no explicitness involved. In the first place, the term “fake” was used repeatedly. Not only was there no suggestion of reality, but there was also no detail or description of an explicit sexual act. All the callers seemed to be providing their own take on the sexual silliness that characterized the “contest”. At *worst*, the Panel finds that the material may be juvenile, tasteless or inappropriate, but there is nothing about the content that moves it from the inappropriate to the unacceptable. In other words, even if children might have been listening (and the station’s demographics do not suggest that this *might* have been the case), the subject matter would not have presented a problem.

In *CJAY-FM re Forbes and Friends (multiple choice “quiz”)* (CBSC Decision 02/03-0638, December 15, 2003), the Prairie Regional Panel dealt with a multiple choice “quiz” in which the answer “c” was always the correct choice as well as the most provocative answer. On the morning in question, there were three quiz questions. The Prairie Panel considered that the third joke, which referred to “taints”, a term for the perineum, proximate to both male and female genitalia, was not in breach of Clause 9(b). The Panel explained this conclusion in the following terms:

This part of the “quiz” is, at worst, a case of bad taste and sexual innuendo. It falls into the category of some of the matters treated in *CFMI-FM re Brother Jake Morning Show* (CBSC Decision 00/01-0688, January 23, 2002), which the B.C. Regional Panel viewed as “juvenile, sophomoric, locker-room style and in poor taste,” but not in breach of the Codes.

[...]

While the term may be slang for genitalia, any reference to sexual activity in part ‘C’ of that “quiz” is obscure, rather than explicit. The Panel concludes that the third of the “quiz” questions is not in breach of Clause 9(b) of the *CAB Code of Ethics*.

In *CFMI-FM re Brother Jake Morning Show (St. Patrick’s Day)* (CBSC Decision 02/03-0904, December 23, 2003), the B.C. Regional Panel dealt with a parody song broadcast as part of a St. Patrick’s Day broadcast. While the Panel found an undeniable reference to sexual matters in the song which told the story of two gay men, it determined “that the two comments are quite subtle and far from explicit. They might, in the view of the Panel, even be sufficiently obscure to pass under the radar of many persons.” The comments in question related to the refrain of the song “Michael Fitzpatrick and Patrick Fitzmichael”, the potentially offensive lyrics being “When they go home they fill each other in” and “Between them they’ve got just one pair of brown eyes.” The Panel did not find that these comments were sufficiently explicit to fall afoul of the provisions of the Code.

In *CJAY-FM re a Sports Report* (CBSC Decision 02/03-0234, February 5, 2003), the on-air personality, “Wicksie”, reported a sports score with the information that one team “got bent over and fisted” by the other. He followed that statement with “Can you feel that?! Can you, baby?!” The Prairie Panel concluded

that the analogy is too sexually explicit for the time of day at which the report was broadcast, namely, 7:20 am. [...] [T]here was no attempt to mask the sexual meaning with double entendres or innuendo. The sexual reference was obvious and would likely have been widely understood by the majority of the station’s listeners.

In *CJAY-FM re Forbes and Friends (Parody song re Chinese restaurant & Thai sex trade workers)* (CBSC Decision 03/04-0259, April 16, 2004), the Prairie Regional Panel dealt with a parody song and discussions about a then-current news story. The song, entitled “Singapore Whore”, was broadcast following the hosts’ discussion about a police raid on Calgary massage parlours believed to have been operating as common

bawdy houses and related to sex trafficking of Thai women. The song based its humour in the thick accent of a Singaporean woman and the confusion of a potential client at the woman's invitation to "make love to me in my ash." The Panel noted the repetitive references to anal sex and stated that "While a single reference might have been subtle or might have led to a double-entendre, the repetition of those references and the descriptors ('my round inviting ash', 'my round supple ash', 'my J-Lo ash') [...] renders the potentially ambivalent term 'ash' quite clear and explicit." It further stated that

in this case, some of the morning crew's comments regarding occurrences in common bawdy houses were unduly sexually explicit. Specifically, the Panel notes the repetition of a prostitute's invitation to have anal intercourse with her as well as the comment "Imagine who's been there before you. Humm, isn't that lovely!" combined with the reply "Oh, boy. Lot of juice there!" In the Panel's view, these comments constitute unduly sexually explicit content for morning radio and are in breach of Clause 9 of the *CAB Code of Ethics*.

In another example of subtlety stretched into explicitness, and involving the same Calgary radio station and host, namely, *CJAY-FM re Forbes and Friends (graphic discussion)* (CBSC Decision 03/04-0157, April 16, 2004), the Prairie Regional Panel examined a segment in which the hosts commented on, and provided details of, the rape allegedly committed by American basketball player Kobe Bryant. The broadcast also included a joke about a man who mistook a foot doctor for a house of prostitution and a parody commercial for "Head" shampoo. A complainant found the content of that "humorous" dialogue to be both inappropriate and too explicit for the airwaves. While the Panel considered that both the joke and the parody were "not even, in fact, on the cusp of explicitness," it found the discussion involving Bryant and his accuser to be unduly sexually explicit. In explaining its conclusion, it provided a useful perspective on the meaning of "explicit".

With respect to the first issue, the *Shorter Oxford English Dictionary* defines the aspect of "explicit" that is material to the Panel as "distinctly expressing all that is meant; leaving nothing merely implied or suggested; unambiguous; clear." While there can be no doubt that the use of the verb "rape" alone could be understood as clear and unambiguous, it is not in this sense that the Panel understands the codifiers' intention in using the term "explicit". The Panel considers that the codifiers meant explicit in the sense of graphic, full, expressing all that is meant, which is to say more than the isolated verb could convey. Indeed, it would make little sense for the use of a solitary verb, however unequivocal, to fall into the "explicit" category. What was intended was the unnecessary and excessive building upon that foundation, the "unduly explicit" description of, in this case, sexual activity.

In applying that understanding to the words "He grabbed her by the neck with both hands, which is a foul, turned her around, bent her over the chair and raped her," the Panel considers that the broadcaster has been "unduly sexually explicit". Had the host limited his observation to the fact that Bryant had raped the accuser, that would almost certainly have presented no problem. He chose, however, to convert the rape (if rape there was – this matter is still before the Courts as of the date of this decision) [note that the charge was subsequently dropped when the apparent victim refused to testify against

Kobe Bryant] into a four-step event, which exceeded the bounds of Clause 9 of the *CAB Code of Ethics*.

This Panel was also called upon to deal with another *Dean Blundell Show* broadcast on this very day, namely, *CFNY-FM re a "Spencer the Cripple" segment on the Dean Blundell Show* (CBSC Decision 08/09-0650, June 25, 2009). While that decision was primarily focussed on other issues, it also dealt briefly with the issue of unduly explicit sexual content. This Panel's conclusions in that matter speak for themselves.

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*.

CBSC jurisprudential examples abound, but the Ontario Panel finds enough in the foregoing decisions to permit it to draw its conclusions in the *Dean Blundell Show* case at hand. The Panel finds the material distasteful, crass and inappropriate for the time period of the broadcast. It also believes that the broadcaster *should* rein in such content, given the time of day at which the challenged show is broadcast. It arrives at that recommendation even though it concludes that the dialogue did not rise above innuendo, tasteless innuendo, but innuendo nonetheless. It considers that the examples were simply insufficiently explicit to amount to "unduly sexually explicit" content. This is not to say that they might not be *understood* by some young persons; it is rather that the sexual dialogue was not anything like the "in your face" examples cited above. And material that is on the cusp is protected by the application of the principle of freedom of expression, which takes precedence over material that is not clearly in breach of a codified standard.

### **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 is acutely conscious of the fact that the complainant does not merely disagree substantively with the broadcaster, but he was also somewhat contemptuous of the reply. In his words: "Broadcaster's response was little more than an obvious templated email that quoted prior legal ruling and provided their own assessment as to why they were not in conflict with the guidelines." The CBSC Secretariat sees a significant number of broadcaster responses in the course of every year, and it has some basis for assessing these. Both the Secretariat and the Panel consider that the letter of the Program Director actually provided a thorough, thoughtful and contextual reply to the complainant, including references to previous CBSC jurisprudence. That is what a careful broadcaster reply ought to do. There is nothing wrong, and indeed much right,

with a broadcaster guiding its content decisions, both before the fact and after, with references to the standards and the CBSC's interpretations of them. Moreover, there is nothing inherently incorrect or unreasonable in the broadcaster's taking the position that it was right to air what it did. They do not always do so, but it is reasonable that they take such a position. In fact, in this section of every decision, the Panel occasionally observes that it is not unusual that the complainant disagrees with the broadcaster. That is, after all, how a formal Panel decision comes about. In any case, the Panel is of the view that nothing more by way of a reply could be expected of any broadcaster. CFNY-FM has amply fulfilled its CBSC membership obligation of responsiveness on this occasion.

*This decision is a public document upon its release by the Canadian Broadcast Standards Council. It may be reported, announced or read by the station against which the complaint had originally been made; however, in the case of a favourable decision, the station is under no obligation to announce the result.*

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**APPENDIX A**

**CBSC Decision 08/09-0700**  
**CFNY-FM re a "Gay Jeff" segment on the *Dean Blundell Show***

---

The following is a transcript of the "Gay Jeff" segment that aired during the *Dean Blundell Show* on CFNY-FM (The Edge 102.1, Toronto) on January 22, 2009 beginning at approximately 9:35 am.

Dean: 102.1 The Edge, "Let It Die". It's the, uh, Foo Fighters. MIA before that with "Paper Planes". Ohhh 9:35. Got an email from somebody that, uh, wants to know "Hey, this Oscar talk is all good." This from another guy named Jeff, by the way.

Jeff: Mm hm.

Dean: "This Oscar talk's all good, but whassup with Jeff and that workout freak?"

Jeff: [laughs] Oh!

Dean: "Thanks. Waiting to hear, Jeff."

Jeff: Ooh.

[pause]

Dean: So?

Jason: So, yeah?

Jeff: That's about, that's what's up.

Jason: That would be directed to you.

Jeff: Oh, uh.

Dean: You don't talk to him at all?

Jeff: Uh, no, it, we'll Facebook a little bit, but he's, uh, --

Dean: This is a guy from a reality tv show named J. D. Workout?

Jeff: J. D. Jordan is his name.

Dean: Whatever.

Jeff: Anyways. Yeah, there's, there's a reason why. I may be a little bit [whispers] shallow sometimes.

Dean: No, not you.

Jeff: Just a little bit. And, and --

Todd: He wasn't.

Jason: No, he was deep.

Jeff: He's a very good-looking guy who's on a reality tv show where he was, ever, a trainer whatever. And he moved to New York recently and I've been talking to him since he got there. And he got a job at the Dave Barton gym or whatever, I think it's called.

Dean: At a gay bar gym?

Jeff: At a Dave Barton gym.

Dean: Mm.

Jeff: It's, it's a, whatever, he's a guy who has big expensive gyms. And he's selling gym memberships.

Dean: What's wrong with that?

Todd: Oh, now that he's not a tv star?! [Jeff laughs] You're a --

Dean: Oh, you are a –

Todd: I almost swore!

Dean: You are a bit of a douche.

Todd: So you fly him here like a hooker.

Dean: Come on!

Jeff: He was a star then.

Todd: He comes over. He's a little man-whore. You have the coitus or whatever you guys do.

Jeff: Uh, yeah.

Todd: And then –

Dean: The butt love!

Jeff: There's nothing *but* love there, yeah. It was –

Todd: But now that he's just selling gym memberships, which, by the way, you do!

Jeff: No, I don't. I'm a trainer. I've nothing to do with selling memberships.

Todd: Whatever! Jeff –

Jeff: Anyways.

Todd: Do you make some commission selling memberships?

Jeff: No, I don't.

Todd: When did that end?

Jeff: I have never done that in my entire life actually!

Todd: You're such a liar.

Jeff: No, it's actually true! Anyways, who doesn't know me at all. So much for my friendship. [Dean laughs] He's, [laughs] he's doing, he's selling gym memberships.

Todd: You are such a horrible person.

Jeff: So I can't, I can't date him anymore.

Todd: You're horrible.

Jeff: And he lives far away.

Dean: Yes, that's terrible.

Jeff: And I could've just used the excuse that he lives far away and I want someone that lives closer. But, come on, he's selling gym memberships and I can't, I can't introduce that to mom.

Dean: So what? What do you mean you can't?! He's a normal guy. He's selling gym memberships. You gotta introduce him to mom.

Jeff: I don't do normal guy! Well, I do *do* him, but I won't, like, I can't date him, seriously.

Jason: That's terrible.

Jeff: Maybe one day when he works himself up to assistant manager, we'll, uh, we'll talk again.

Todd: Ass man? Is that the short form for that?

Jason: Yeah, ass man.

Todd: That's why you like that.

Jeff: He's going to be the ass man. [laughs]

Jason: Are you serious?

Jeff: You guys got that. I'm glad you brought it up. [hosts laugh]

Jason: Are you just joking or are you really feel [*sic*] that way?

Jeff: No, I'm just joking.

Dean: No he's not.

Jason: No you're not.

Jeff: I'm totally not joking. Come on! No. If I wanted to date someone who sells memberships, I'll sleep with someone from my own gym.

Dean: He's, um, you know what he is? He's one of them gold-diggin' dudes.

Jeff: I'm not a gold-digging dude!

Dean: I'm sorry, you're a brown-digger. Yeah.

Jeff: I'm a brown-digging dude.

Jason: Lookin' for that nugget.

Todd: I think part of the thing with you, right, you come from a very successful, waspy background, right? So I don't think that's fair to say.

Jeff: Yeah, so I'm not lookin' for, for, I'm okay money-wise.

Todd: Yeah, you, and I'm, Jeff is just like, he's, I think he's, like, just, correct me if I'm wrong, okay?

Jeff: That could happen all day.

Todd: And tell me if this sounds harsh.

Jeff: Okay.

Todd: But you're not, you know the stereotypical gay guy which is very, uh, open and free and just likes men. And they're very forgiving and they're just sweet. You're actually kind of like a frat boy disguised as a gay dude.

Jeff: A little bit, yeah.

Todd: Where you kinda got that pompous attitude. You're sort of a bro in disguise.

Jeff: A little bit cocky. A little bit.

Todd: Yeah.

Jeff: Yeah.

Todd: Because of his upbringing, I think. You're, you're like –

Dean: "Cocky" is a great word.

Jason: Yeah, yeah.

Jeff: I'm a little bit cocky when it comes to it.

Jason: You are what you eat.

Jeff: Yeah, exactly. You see, I was just thinking that too.

Todd: And you expect a lot out of a life partner.

Jeff: I do. Because –

Todd: But not out of someone you'll just fly down here like a little hooker.

Jeff: Well. Well, come on. For four hundred bucks, wouldn't you sleep with him? Well, not –

Todd: No.

Jeff: You know what I mean?

Dean: No.

Jason: No, I wouldn't do him for ten million bucks.

Jeff: Okay, well, that's the wrong audience. Dani?

Dean: Not even, not even a woman. No.

Todd or Jason?: Okay, maybe ten.

Jeff: Dani, would you have slept with him on, after you saw him on the show? Yes or no?

Dean: Yeah, come here.

Dani: No.

Jason: No.

Dean: If that guy were straight?

Jeff: If you saw that guy –

Dean: If that guy was straight?

Jeff: Yeah. And you saw him on the show and he was a straight guy?

Dani: Oh, he's not really my type.

Dean: What, totally effeminate and weird-lookin'?

Jason: [??] gay.

Jeff: He wasn't effeminate really.

Dani: I, I'm not really into, like the macho –

Jason: Mm hm.

Dani: – gay guys.

Jeff: Muscle-y, big –

Dani: No offence, Jeffy. I love you.

Jeff: – tattooed thing. You're not into that?

Dean: But do you find it a little bit odd? Like, would you fly someone up here that you had never really met to have sex with?

Dani: No.

Dean: And then fly them back again?

Dani: I wouldn't. But I think the standards are different in the gay community. Correct me if *I'm* wrong.

Jeff: Yeah, that's true, that's true.

Jason: Lower?

Jeff: Shut up, Jason. You were doing so well. I was liking you so much.

Todd: Like, like on your knees lower?

Jason: Yeah, yeah, lower. [Todd & Dean laugh] Like, really low.

Dean: Lower.

Jeff: So low you have to bend over?

Jason: Yeah, lower.

Jeff: Dani, who's your favourite reality star?

Dani: Ooh, good question.

Jason: Richard Hatch?

Todd: Brody Jenner?

Jeff: Think Brody Jenner.

Dani: You know what? I'm, I'm enjoying the, the Bro-man.

Jeff: Okay. Think if Brody Jenner started messaging you on Facebook and wanted to come and see you and you just, would you throw some money his way and, and see this guy?

Todd: No, no. What if you started –

Dani: I wouldn't be throwing any money Brody's way. He'd be throwin' money my way.

Todd: What if you started messaging *him* first, though. You forgot that part of the story.

Jason: Yeah, yeah.

Jeff: Yeah, whatever.

Dean: What if you were stalking *him*?

Dani: I, I find it far-fetched. Like, if I were to start emailing any reality star, uh –

Jason: Uh huh.

Dani: Like, first of all, I wouldn't. But if, if it ever happened and it kinda came to the point where they were, we were talking about meeting up. First of all, I don't have four hundred bucks to fly anyone anywhere. I don't even have four hundred bucks to fly *me*.

Dean: Dani, can I tell you right now? I'm gonna say something. I'm gonna be totally serious right now. If I wasn't sort of your boss. [Dani laughs] And if I was better looking and younger and had way more money, I'd fly you anywhere you wanted.

Jeff: Hey, I'm gay and I'd fly Dani anywhere to come see me on vacation. No problem. She's a dope girl and she's hot.

Dean: Yeah, but you'd, I'd fly her out for totally different reasons.

Dani: Oh, thanks, guys.

Jeff: That's okay. I'd fly her with no –

Dean: [laughs] "Thanks, Dean –"

Jeff: – with no ulterior motive. I would fly you out. I love you that much.

Dean: "Thanks, Dean for grossing me out."

Jason: You should probably not go into those reasons. Since she does work with you.

Dani: Oh, tomorrow now I'm going to read my ...

Dean: Your what?

Dani: The policy.

Todd: We have a policy here?

Dean: Yeah, we've got –

Jason: Oh, like the human resources thing.

Todd: We have policies here?

Jason: Yeah.

Dean: She's past her three month probation.

Todd: Dani, I'm not that wealthy, but I'd provide a bed and breakfast for you. [Dani laughs]

Jeff: Well, at least a bed.

Dean: Mostly a bed.

Jason: You don't know what –

Dani: Cab fare.

Jason: You don't know what Todd defines a "bed and breakfast" as, okay?

Jeff: The backseat and a sandwich?

Dean: No, no. Not even that.

Todd: The chin omelette's the breakfast. [Dean laughs] The chin omelette, baby. Eat it up!

Jeff: That's so gross.

Dean: We've got a point, Jeff. That you flew this guy out. And this is what this other Jeff wanted to know. You flew him out for the expressed purpose of not having a long-term relationship with him.

Jeff: It's true.

Dean: You flew him out to let him stick that thing in your thing and have a great time.

Todd: Unbelievable.

Dean: Is that not correct?

Jeff: Yeah, that's pretty true.

Dean: Well.

Todd: He's a hooker.

Jeff: You know what? He's not a hooker.

Todd: He is.

Jeff: He's a membership sales associate.

Todd: Yeah right. I guarantee his [?] is like eight inches.

Dean: At a gym. [laughs]

Jeff: And who does ads at the back of magazines now, I'm sure. To pay the bills in New York.

Dean or Todd: [laughing] You're horrible.

Jeff: For gym memberships. Whatever. Yes, bottom line is I'm not really talking to him anymore because I already got all nine that I needed from him.

Todd: Eww.

Jason: Throw up.

Jeff: Nine reasons to invite him back.

[Jason, Todd & Dean make vomiting and gagging noises.]

Dean: Nine forty-two.

Jeff: So that's the answer to that question.

Dean: All right, I got it, I got it.

Jeff: There you go. Happy now?

Dean: Grossing me out.

Jeff: Whatever. It was a question. I didn't ask it.

Dean: Yeah. You're grossing me out now. Listen, it's cool. I love you, you're my pal, but –

Jeff: I know.

Dean: – when you start giving length. [others laugh]

Todd: Which is important to –

Dean: It becomes very specific and gross.

Todd: Yeah. We're very creative minds.

Jason: Because, you know, we, we're, we visualize things and thinkin' that length, you're not a very big guy.

Dean: I just picture your, –

Jason: If you [???

Dean: – with every thrust your eyes get bigger.

Jason: Yeah.

Todd: Huge. Like that chick in the *Guinness Book of World Records* where they pop out of her head.

Dean: Yeah! With every thrust.

Todd: Yeah, yeah.

Dean: Every time that guy went for it, your eyes are heeonk, heeonk.

Jason: Either that or if you looked at his face you'd think he was stickin' his tongue out.  
[sound of sticking tongue out]

Jeff: [laughs] That's so, that's so true.

Dean: Nine forty-three. More with Jeff. And Josie's coming up shortly too. Hang on.

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## APPENDIX B

### CBSC Decision 08/09-0700 CFNY-FM re a "Gay Jeff" segment on the *Dean Blundell Show*

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#### The Complaint

The following complaint dated January 22, 2009 was sent to the CRTC and forwarded to the CBSC in due course:

Occurred Jan 22/09 on Toronto Radio Station Edge 102.1. Time 9:30 am to 9:45 am. A totally disgusting conversation about how the gay announcer had performed oral sex on a fellow with a 9" penis that he had met over the internet. I am anything but a prude but there is a time/place for discussing oral sex in graphic detail and Thursday morning radio ain't it. Hopefully you can gain access to this time slot and judge for yourself. Also, I tried to call the station but they do not have a number other than the request line. Is this permissible?

#### Broadcaster Response

CFNY-FM responded to the complainant with a letter dated February 16:

The Canadian Broadcast Standards Council (the "CBSC") has asked us to respond to your email of January 29 [*sic*], 2009 in which you raised concerns regarding comments made during the *Dean Blundell Show* on CFNY-FM on January 22, 2009. Specifically, you said you heard "a totally disgusting conversation about how the gay announcer had performed oral sex on a fellow with a 9" penis that he had met over the internet."

We have reviewed the program, and confirm that the hosts and guest announcer "Gay Jeff" did discuss a sexual relationship he had had. The conversation had nothing to do with oral sex, however, nor was it in any way sexually explicit. While we appreciate that you may have found this exchange disgusting, we do not believe that it breached the Canadian Association of Broadcasters' *Code of Ethics* (the "Code"), which is administered by the CBSC and to which we adhere.

The CBSC has stated that a program may contain sexual overtones, but should not be sexually explicit (CJYC-FM re: *Local Exotic Dancer Bar Commercial*, CBSC Decision 97/98-0282). Where a program is not explicit and does not contain any suggestion of reality or description of an explicit sexual act, the CBSC has further stated that it would not find a breach of the Code (CFQR-FM re: *The Morning Show*, CBSC Decision 01/02 -1137). The CBSC has also found that a program filled with double entendres and suggestive comments was not explicit enough to be in breach of the Code (CFMI-FM re: *Brother Jake Morning Show*, CBSC Decision 01/02-1137). In the case at hand, the hosts referred to someone sticking "that thing in your thing" and Jeff stated that he "got all nine that he needed from him....nine reasons to invite him back". While offensive, these comments were merely suggestive, and in no way sexually explicit.

While we understand that you may have found the comments offensive, the CBSC has said that where programming is directed at an adult audience, "there is no overriding societal interest in curtailing the broadcaster's right to freedom of expression", and that in those circumstances, crude and vulgar language should be regulated in the same way as other matters of bad taste, i.e. via the on/off or dial button (CIQC-AM re: *Galganov in the Morning*, CBSC Decision 97/98-0473). As noted above, the program is directed at an adult audience, and as such, does not need to be rigorously screened.

In view of the foregoing, we do not believe that the program violated the Code. We do regret, however, that you were offended by some of some of our programming. 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* and 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**

The complainant wrote back on February 17:

Seriously? You can actually respond with: "The conversation had nothing to do with oral sex, however, nor was it in any way sexually explicit." Unbelievable!

I challenge you to take any 10 strangers off the street, play them that clip, and ask them what it was about. You and I both know what the feedback would be. So please, don't respond with such a ridiculous comment and insult my intelligence as well.

Having caught a few more tasteless/immature 'episodes' it's so painfully obvious that in the absence of any real talent your "team" is compelled to go for the mindless, shock-jock approach. Every second comment comes across as a desperate s-t-r-e-t-c-h for a cheap laugh. Do you guys actually get together as a company, look around the boardroom table at each other and take personal pride in your collective "professionalism"?

I'm taking my media advertising budget elsewhere. I really hope y'all found it to be a hilarious skit ... because it probably cost you somewhere between \$10-\$20K. Now THAT's funny!

[CBSC Communications Coordinator]: Could you please tell me whether you listened to this radio spot and whether it is your position that "The conversation had nothing to do with oral sex, however, nor was it in any way sexually explicit."

In response to that final question, the CBSC Communications Coordinator explained to him that the CBSC only reviews the programs once a complainant has filed a Ruling Request. He then did so on February 20 with the following note:

Occurred Jan 22/09 on Toronto Radio Station Edge 102.1. Time 9:30 am to 9:45 am. A totally disgusting conversation about how the gay announcer had performed oral sex on a fellow with a 9" penis that he had met over the internet.

Broadcaster's response was little more than an obvious templated email that quoted prior legal ruling and provided their own assessment as to why they were not in conflict with the guidelines. I am formally requesting that CBSC review the tape from this time period.

After receiving the CBSC's confirmation that his Ruling Request was being processed, the complainant offered some additional thoughts on February 23:

The fact that you have a six month backlog of media complaints speaks volumes about the media itself. Clearly many people are being offended by inappropriate content to the point that they feel they must take action. I'm sure that many times that amount are also offended but can't be bothered going through this lengthy process, something that I'm sure the stations take into account as they push the envelope while playing shock-jock wanna-be's. The massive backlog of complaints also demonstrates that the penalties must either be few, nominal, or both ... else this would not continue.

I'll look forward to observing the process and the outcome.