

# Canadian self-regulation

## The calm approach works

by Ronald I. Cohen

Janet Jackson's bare breast during the Super Bowl halftime show certainly got a reaction, both from the Federal Communications Commission, whose chairman expressed his "outrage" at the "classless, crass and deplorable stunt", and from the American public, which filled the Commission's in-basket with 200,000 complaints.

It was, however, just one of a series of American broadcasting faux-pas that have dotted the FCC's landscape over the past eight weeks. Two days before the game, the Commission had proposed a \$27,500 "monetary forfeiture" (fine) against Young Broadcasting for airing an excerpt of *less than one second* from the Pupperty of the Penis stage show and, three weeks later, the American regulator proposed fines of \$755,000 (all funds US\$) against radio giant Clear Channel for the sexually explicit dialogue of Ted Clem, aka Bubba the Love Sponge.

Perhaps in order to escape that liability and avoid fresh fines, Clear Channel first fired Clem and, then, two days later, dumped New York shock jock Howard Stern, with the expressed intention of "protecting [their] listeners from indecent content. [The Stern Show] was vulgar, offensive, and insulting, not just to women and African Americans but to anyone with a sense of common decency." The reality is that, as Stern himself said, he was only doing what he had been doing for 20 years. One wonders where the FCC and the American broadcasters have been since his WXRK debut in 1985.

The Stern story resonated with Canadians, who had experienced the New York shock jock's arrival in Toronto and Montreal in September 1997. While Stern's style was new and shocking to Canadians, Canada's private broadcasters had set up an infrastructure that could deal with this extreme form of broadcasting. And it did so, quite effectively.

Following Stern's Canadian debut, the CBSC received complaints from over 1,000 individuals. In their November 11 decision, the Council's Quebec and Ontario Regional Panels



found that each Stern episode "contained abusive or discriminatory comments directed at French-Canadians and other identifiable groups, made sexist remarks or observations, or contained unsuitable language or descriptions of sexual activity during a broadcast period when children could be expected to be listening to radio." Unlike its American counterpart, the CRTC did not have to get involved in this matter. It did not deal with the complaints, it did not issue any decision on

the subject, nor did it raise the Stern issue at the December 1997 Commercial Radio Hearings.

To ensure respect for the standards, the broadcasters themselves decided to import digital time shift recording equipment from the US. With it, they edited the show from about mid-December and forwarded daily edit logs to the CBSC. In this new, Canadian-edited format, the show lasted 11 months in Montreal and three to four years in Toronto.

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It is interesting to compare our two systems. In the United States, the huge monetary forfeitures appear to drive the agenda. Even at \$27,500 per incident, the cumulative fine can mount quickly, as in the Bubba case, to \$755,000. On March 11, though, the House of Representatives voted 391-22 to increase the penalty to \$500,000 per violation. The bill is now before the Senate.

In Canada, the CBSC has no punitive tools. No fines. Only the ability to require an offending broadcaster to read an announcement of the Council's finding on the air. Twice within seven days of the publication of the decision. Despite this lack of coercive measures, the system works just fine. Why? Because it's the private broadcasters' own system. They established it. They paid for it. They built it, clause by clause and code by code. It reflects their values. Each station knows that the rules and standards apply

to all broadcasters, equally. And they are fairly applied by Panels of equal numbers of public and industry Adjudicators.

Of course, it should be noted that Canadian standards are not the same as American standards. While 200,000 Americans complained to the FCC about Janet Jackson's bare breast, only about 50 Canadians expressed their concern to the CBSC. The Council had already dealt with glimpses of bare bosoms in *Fashion Television* a decade ago. In the U.S., less than one second of Pupperty of the Penis earned Young Broadcasting a hefty fine. The broadcast of a three-minute excerpt by the performers in that Australian stage show on the Comedy Network breached no Canadian codes.

On American MTV's broadcast of *The Osbournes*, the frequently used f-word is bleeped. On CTV it is not. The Canadian rationale: provided that viewers are informed of program content by the use of viewer advisories and ratings icons, sexual content and coarse language are acceptable on Canadian conventional television after the 9 p.m. Watershed. In the more punitive American environment, California Representative Doug Ose currently proposes the addition to the criminal provisions of the United States Code of a variation on the fabled George Carlin "Seven dirty words".

Different strokes for different folks. Canadian and American content issues are different. So, too, are our solutions. We are more concerned about violent content than they. Unduly discriminatory comments on the basis of race, national or ethnic origin, skin colour, religion, sexual orientation, and other such characteristics are not acceptable in multicultural Canada. Neither before nor after the Watershed. It also appears that we are more cautious in ensuring the proper presentation of gender equality than our neighbours.

The Canadian solution to what seems to be a more apocalyptic situation in the U.S. is, well, very Canadian. It is temperate. Heavy-handed governmental solutions, which hold sway down south, are not needed here. Just an effective self-regulatory system, strongly supported by the private broadcasters who created it.

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