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**CANADIAN BROADCAST STANDARDS COUNCIL  
ONTARIO REGIONAL COUNCIL**

CITY-TV re Video Store Commercial

(CBSC Decision 94/95-0143)

Decided March 26, 1996

A. MacKay (Vice-Chair), R. Cohen (*ad hoc*), P. Fockler, T. Gupta,  
R. Stanbury, M. Ziniak

**THE FACTS**

On March 6, 1995, CITY-TV (Toronto) ran a commercial at 11:30 pm for Adults Only Video, apparently a group of video stores. In the commercial, the proprietor of Adults Only Video, seated on a stool in his shop, made the following statement:

Canadians enjoy the fundamental right to choose. And at Adults Only Video, we've designed our stores based on your right to exercise your personal choice, because we recognize that we're not for everyone. If you don't want to shop at our store, hey, that's okay but, for those of you who do want to make this your entertainment choice, we offer you quality selection and friendly service. So make us your choice. Adults Only Video, it's a matter of choice.

The Co-Founder of People against Pornography sent a letter to the Advertising Manager at CITY-TV and a copy to the CRTC. She said:

We are writing to voice our concerns regarding a particular advertisement viewed on local CITY-TV. The advertiser was [the] owner of Adult Video Stores across this province. He was "pitching" his product of "top quality porno videos" to the late night audience.

Our concern - our issue - is that [the owner], along with a store clerk is currently up on charges of obscenity under the Criminal Code in Durham Region. ... We question the ethics and integrity of local television stations, advertising committee and panels, in allowing this person commercial time, due to the ongoing circumstances.

The letter of complaint was forwarded to the CBSC, which, in turn, remitted it to the broadcaster for reply. The General Sales Manager of CITY-TV responded to the letter on March 25. He said:

I can assure you that we make every effort to take into account the sensitivities of our viewing audience when deciding whether or not a commercial is suitable for broadcast. We belong to the broadcaster-supported Telecaster Committee which pre-screens all commercials before they go to air on member stations. The Adult Video commercial was approved by the Telecaster Committee.

Aside from rejecting commercials that are in obvious and extremely bad taste, we do not feel it is our rightful role to act as a censor board. However, your comments are appreciated as they help us to define that which is acceptable to our viewing audience.

It should be noted that the commercials never aired prior to 8:00 pm and provided no provocative footage or descriptions of specific titles.

The viewer was unsatisfied with this response and requested, on March 30, that the CBSC refer the matter to the appropriate Regional Council for adjudication.

## **THE DECISION**

The CBSC's Ontario Regional Council considered the complaint under the *Code of Ethics* of the Canadian Association of Broadcasters (CAB). Clause 8 of that Code reads as follows:

Recognizing the service that commercial sponsors render to listeners and viewers in making known to them the goods and services available in their communities and realizing that the story of such goods and services goes into the intimacy of the home, it shall be the responsibility of member stations and their sales representatives to work with advertisers and agencies in improving the technique of telling the advertising story so that these shall be in good taste, simple, truthful and believable, and shall not offend what is generally accepted as the prevailing standard of good taste.

The Regional Council members viewed a tape of the commercial in question and reviewed all of the correspondence. The members consider that the commercial in question does not breach the terms of Clause 8 of the *CAB Code of Ethics*.

## **The CBSC's Mandate to Deal with Commercials**

As a practical matter, the CBSC has generally referred all advertising complaints related to *national* advertising campaigns to the Canadian Advertising Foundation (which is charged with the administration of numerous codes relating to one aspect or another of the advertising business) and reserved to itself those complaints which

seemed to be of a local nature. Since, in addition to the advertising provision in the *CAB Code of Ethics*, the CBSC has a recently added oversight responsibility under the *CAB Violence Code*, the Council is aware that it must deal with such matters from time to time. In *CFTO-TV and CFMT-TV re Walk to Work Commercials* (CBSC Decision 93/94-0015, June 22, 1994), the Council decided that the advertising in question fell within its mandate to consider. The Ontario Regional Council in that matter put the issue in the following terms:

While it is generally true that the CBSC does not deal with advertising-related complaints, this is a question of *practice* rather than mandate. In the first place, broadcasters are as responsible for the advertising content which they transmit as they are for the dramatic, journalistic and other content on their airwaves. Second, as stated immediately above, the *CAB Code of Ethics* contains a provision dealing in express terms with advertising content. Although not relevant to this case, it might be noted that the *Voluntary Code Regarding Violence in Television Programming* also provides an advertising-related mandate to the CBSC in Clause 3.3.

It is thus no longer necessary to discuss whether the CBSC is entitled to deal with those advertising matters which it is called upon to treat from time to time. The Council considers this a settled matter.

### **The Content of the Commercial**

The Council considers that this matter is straightforward. While the Council makes no comment on what its position might be in a contrary circumstance, it is clear that there is neither an obscenity nor a sexual reference or picture in the commercial, the entire text of which is cited above. The Council acknowledges that Clause 8 of the Code provides that a role of the commercial sponsor is to make "known to them [the public] the goods and services available in their communities." The members of the public then have the freedom to choose; those who are offended by the possibly prurient material available in the stores in question are not obliged to rent or buy therein. Whether such stores are or are not entitled to exist is a function of other laws. To the best of the knowledge of the Council, there is neither legal, regulatory nor Code restriction on the entitlement of the shops to tell of their wares.

In order, then, for the broadcaster airing the commercial to fall afoul of Clause 8, it is necessary that the telling of the advertising story be such that the commercial is not "in good taste, simple, truthful and believable" or that it does "not offend what is generally accepted as the prevailing standard of good taste." In this case, it cannot be denied that the commercial in question is neutral in its presentation. Since the Council is always extremely reluctant to deal with questions of good, middling and bad taste, it is pleased not to have to broach this issue in this case; in its view, a person sitting on a stool reciting the words quoted above does not even give rise to an evaluation of taste.

The issue, therefore, reduces itself to whether the commercial is “simple, truthful and believable”. Of this, the Council has no doubt. Moreover, the Council considers that the frank observation by the stores’ proprietor that “we recognize that we’re not for everyone” is more than fair. For those, on the other hand, who “do want to make this your entertainment choice,” all he said was “we offer you quality selection and friendly service.” The Council considers that the fundamental issue for the complainant is that she does not want to see such stores *in operation*. This, however, is not an issue for the broadcaster or the Broadcast Standards Council. It is a matter to take up in another forum.

As to whether the pendency of proceedings against the proprietor, an employee or the stores themselves, ought to prevent the running of such advertising, the Council equally has no doubt. If, indeed, the broadcaster had *not* agreed to run the advertising, this might have constituted an infringement of the store owner’s freedom of expression. In the end, this was not the case here.

### **The Role of Telecaster Committee Pre-Clearance**

The Council recognizes that the Telecaster Committee, founded by broadcasters, has a valuable pragmatic or functional role to play in the pre-clearance of television commercials. The Council is, however, equally aware that the Committee is not recognized by the CRTC as a regulatory body and that an approval from the Telecaster Committee does not absolve the broadcaster of responsibility for any content it airs.

### **The Broadcaster’s Response**

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. It is a responsibility of membership in the CBSC to be responsive to audience complaints. The letter from the General Sales Manager responded adequately to the issues raised. Nothing more is required of the broadcaster.

*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.*