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**CANADIAN BROADCAST STANDARDS COUNCIL  
QUEBEC REGIONAL COUNCIL**

CFJP-TV (TQS) re “Quand l’amour est gai”

(CBSC Decision 94/95-0204)

Decided December 6, 1995

P. Audet, J. Deschênes, R. Cohen (*ad hoc*), Y. Chouinard, L. Harvey\*

\*Mr. Harvey, who was employed by the broadcaster in question at the time this program was aired, abstained from consideration of this matter.

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## **THE FACTS**

On April 21, 1995, CFJP-TV, better known as Télévision Quatre Saisons (TQS) broadcast the NFB-produced film, *Quand l’amour est gai*, at 9 p.m. The film dealt with love and sexuality among homosexual men and the challenges facing the homosexual community. Although the Council was given a videotape of the program, rather than an “air check” of the show as it ran, it appears to be undisputed that TQS included advisories, both written and verbal, at the start of the film and at at least one of the commercial breaks. In addition, the film was preceded by a statement by the director, Laurent Gagliardi, as to the film’s intent. Gagliardi’s statement was as follows:

[Translation]

*Quand l’amour est gai* is essentially a film which focuses on who we, the gay people, are. I especially wanted to illustrate the joy and the pride in being gay; this can only be shown through a love relationship or sexuality. Scenes of nudity in the film reflect feelings of *affection*. I wanted to show images that one does not usually see on television or elsewhere.

In my opinion, the language in *Quand l’amour est gai* is not coarse: it is the language of reality. I believe it is important to produce films on this subject. The more we talk about it and the greater the number of films, especially on television, the more people will be aware of who we, the gay community, are. What I hope to achieve with *Quand l’amour est gai* is greater open-mindedness with respect to homosexuality.

During this statement, the film depicted two nude men in bed, caressing each other. While most of the film contained segments of interviews and individuals discussing their personal

experiences, it also contained approximately 10 brief scenes, lasting at most 30 seconds each, of nude men, in strip clubs, in bars or in bed, kissing or caressing each other.

### **The Complainant's First Letter**

A TQS viewer wrote to the station on May 12 to complain about the film. According to the viewer,

About 9:35 p.m., as I was searching for a TV program, this is what I saw on your station:

1. Two men dancing and stripping, lowering their trousers and exposing their nudity before the camera;
2. A man trying to explain how sexual intercourse lasting only two minutes was an act of love;
3. Men, undressing in a public shower, posing nude for the camera and explicitly showing their genitals;
4. Another man looking at a magazine containing homosexual pictures within view of the camera, stating that he had a date that evening and saying that he was sexually stimulated.

I should add that all this was shown in less than 15 minutes.

I would like to emphasize that I saw all this in less than 15 minutes and, furthermore, at what I consider to be an inappropriate time for public broadcasting. I would have been more tolerant if the subject of homosexuality had been dealt with silently or without explicit images as was the case that evening. However, I find your programming committee's decision to air this program, even with an advisory at the bottom of the screen following commercial breaks, to be unacceptable.

### **The Station's Response**

The Program Director of TQS replied to the complaint on May 23. In his letter, he indicated his regret at the viewer's discomfort with the film and explained the station's choice of programming:

This is a personal experience film produced by the National Film Board of Canada. It deals with homosexuality in our society by presenting the point of view and the experience of several homosexuals. Accordingly, it basically consists of comments by homosexuals and includes a few scenes involving nudity and demonstrations of affection among men. The scenes of nudity are presented in a sober and restricted context.

Given the sensitivity of the subject matter, the film was scheduled late in the evening, that is, at 9:00 p.m., and preceded by an advisory by the producer, Mr. Laurent Gaglardi, who

explained the thrust and theme of the film. Furthermore, we aired a written and voice-over advisory as follows:

[Translation]

“This film contains erotic scenes and language which may not be appropriate for young children. Parent discretion is advised.”

A horizontally scrolling advisory was also shown after the third commercial break, at 9:34 p.m. The “over 16” age limit mentioned in the advisory was established by the Régie du cinéma du Québec.

Télévision Quatre Saisons’s programming is necessarily quite diversified in order to meet our viewers’ expectations. We air various categories of films: in the afternoon, at 8:00 p.m., at 9:00 p.m. or after 11:30 p.m., depending on their theme or content. We live in a pluralistic society. While the values of some people may not coincide with those of others, it is important that these values be known and respected.

Finally, we should point out that Réseau de Télévision Quatre Saisons Inc. is a member of the Canadian Broadcast Standards Council. This organization promotes the respect of rigorous broadcasting standards. It follows up thoroughly and objectively on complaints, and contributes to the overall improvement of standards over time. Furthermore, the CBCS administers several codes, including a Code of Ethics, a Sex-Role Portrayal Code for Radio and Television Programming and a Voluntary Code Regarding Violence on Television.

We are convinced that Réseau de Télévision Quatre Saisons Inc. staff can respond to most of your observations and complaints satisfactorily. Should this not be the case, however, you may wish to pursue the matter with the Canadian Broadcast Standards Council. The enclosed leaflet explains the procedure to follow.

## **The Complainant’s Second Letter**

The viewer was unsatisfied with this response and took the opportunity mentioned by the broadcaster to bring his complaint before the CBSC. In his letter of June 8 to the CBSC, he reiterated his concerns about the film and commented on the broadcaster’s response. He explained:

[Translation]

[The Program Director] has the gall to tell me that “*The nudity scenes are presented in a sober and restricted context.*” May I bring to your attention some synonyms of the words sober and restricted: moderate, reserved, limited. The aforementioned scenes are certainly not consistent with the meaning of these words. One could talk about a restricted context if such scenes were shown in an establishment which specializes in this type of material. Airing such scenes on television for the public-at-large to see goes

beyond the meaning of a restricted context; in fact, it extends the target audience and their visibility.

Mr. Leduc also justifies the airing of this film by saying that it was aired in the “*late in the evening, that is, at 9:00 p.m.*” and that advisories had been broadcast during the program. It would seem that Mr. Leduc has forgotten that a great many children are not in bed by 9:00 p.m. and that the TV set is readily accessible at that time without parents being present, especially on a Friday night. Does he also need to be reminded of how easy it is to tape a program with a VCR while the TV set is turned off and no one is around? This type of program should have been aired much later, if at all.

Invoking the Régie du cinéma du Québec's rating of the film - incidentally, the Régie has no jurisdiction over broadcasters - appears to be a sneaky way of avoiding responsibility. The 16 years-old and over category does not have the same value on a public broadcasting channel as it does in a movie theater where young people can be denied access. Thus, the Programming Director should have been more discriminating in his judgment before deciding to air this film at that time in order to ensure greater consistency between his personal standard and the Régie's.

His letter also refers to values of in pluralistic society. I agree that the values of some people do not always coincide with those of others. But I have noted that a large number of friends, colleagues and family members, all with different backgrounds, support my undertaking.

The CBSC responded to the complainant and sent him a Ruling Request, which he signed and returned to the CBSC on September 6, requesting that his complaint be considered by the CBSC's Quebec Regional Council.

## **THE DECISION**

The CBSC's Quebec Regional Council considered the complaint under the Canadian Association of Broadcasters' (CAB) *Code of Ethics* and their *Voluntary Code Regarding Violence in Television Programming*, the relevant provisions of which read as follows:

### *Article 7, Code of Ethics (Controversial Public Issues)*

Recognizing in a democracy the necessity of presenting all sides of a public issue, it shall be the responsibility of member stations to treat fairly, all subjects of a controversial nature. Time shall be allotted with due regard to all the other elements of balanced program schedules, and to the degree of

public interest in the questions presented. Recognizing that healthy controversy is essential to the maintenance of democratic institutions, the broadcast publisher will endeavour to encourage presentation of news and opinion on any controversy which contains an element of the public interest.

Article 3.1.1, *Voluntary Code Regarding Violence in Television Programming*

Programming which contains scenes of violence intended for adult audiences shall not be telecast before the late evening viewing period, defined as 9 pm to 6 am.

The Regional Council reviewed the relevant correspondence and a tape of the program; it considers that TQS has not breached the provisions of either CAB Code.

### **The Broadcasting of Controversial Material**

The Canadian Broadcast Council has, on numerous occasions, confirmed its attitude regarding the principle of freedom of expression. It is hardly necessary to restate the importance of this principle to a democratic society; however, it may be useful for Canadians to remind themselves from time to time of the critical role played by radio and television broadcasters in the exercise of this freedom. After all, while the purity of the principles remains the same in small or large groups, the freedom to express cannot be as pervasive or influential exercised in a kaffeeklatsch or a street corner as across the public airwaves. The recognition of this influential role of broadcasters has resulted in burdens imposed both from the heights of Parliamentary statute to the broadcasters' own self-regulatory instruments. Thus the *Broadcasting Act* provides, among other things, in Section 3(1)(d) that

the Canadian broadcasting system should

...

(ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity...

That encouragement of diversity is also reflected in Article 7 of the *CAB Code of Ethics* which encourages the "presentation of news and opinion on any controversy which contains an element of the public interest." That same article provides that such "healthy controversy is essential to the maintenance of democratic institutions" and the Regional Council has little difficulty in concluding that the subject of the documentary program in question falls into the realm of "healthy controversy". The Council further acknowledges

that this program will not be everyone's "cup of tea" and it assumes that some members of society would be offended by the film. *That* is not, however, the criterion by which the program must be judged. It is rather that the film discusses a controversial subject which is an acknowledged component of Canadian society. By the nature of the medium, this discussion occurs in images rather than in words alone. Nothing else could be expected and the broadcaster can hardly be faulted on this account.

Nor is the issue whether or not the Program Director was fair in stating "Ces scènes de nudité ont été présentées sobrement dans un contexte fort bien circonscrit," a statement with which the viewer strongly disagreed. He was clearly of the opinion that none of the synonyms "moderate, reserved, limited" applied to the scenes of nudity and eroticism in this film. His words are worth repeating.

May I bring to your attention some synonyms of the words sober and restricted: moderate, reserved, limited. The aforementioned scenes are certainly not consistent with these meanings for several reasons. One could talk about a restricted context if such scenes were shown in an establishment which specializes in this type of material. *Airing such scenes on television for the public-at-large to see goes beyond the meaning of a restricted context; in fact, it extends the target audience and their visibility.*[Emphasis added].

It is, however, precisely what the complainant states in his last sentence which is the point of Article 7. It is to the public at large that broadcasters have the obligation to carry what to some may be unappealing or even unpleasant messages. This is exactly the role which TQS played in this instance. In this, the Council does not find them at fault. Regarding scheduling and viewer advisories, the Council provides its comments below.

### **The Scheduling of "Adult" Material**

The CBSC has, in a number of decisions, explored the question of the broadcast of "adult" programming at times when children could be watching television. While the Violence Code refers to "scenes of *violence* intended for adult audiences", CBSC Regional Councils have recognized that, generally speaking, the 9 p.m. watershed hour established in the Code is often used by broadcasters as a watershed for other types of programming, beyond that which could be considered "violent". In its decision concerning promotional material for the CITY-TV program, *CITY-TV re Ed the Sock* (CBSC Decision 9495-0100, August 23, 1995) the Ontario Regional Council affirmed that:

In Canada, the watershed was developed as a principal component of the 1993 *Violence Code*, establishing the hour *before which* no violent programming intended for adult audiences would be shown. Despite the establishment of the watershed for *that* purpose, the Council has reason to

believe that broadcasters regularly consider this hour as a rough threshold for *other* types of adult programming. There is, in fact, no formal restriction on the timing of broadcasting of slightly “racy” material but the earliest of the promos under consideration here could not be said to have been run in a time slot which was *primarily* a *young* children’s slot or even at a time when one would have expected significant numbers of young children to be watching television at all.

The Council elaborated on the principle of the watershed in its decision in *CFMT-TV re an Episode of “The Simpsons”* (CBSC Decision 94/95-0082, August 18, 1995):

There has been a tendency, since the introduction of the 9:00 pm watershed hour for everyone to treat that moment as the Great Divide. The community has tended to consider that *all* post-watershed programming falls into the “adults only” category and that *all* pre-watershed programming falls into the “suitable for *everyone*, including *young* children” category. Neither generalization is wholly accurate.

In the case at hand, the Quebec Regional Council considers that the scheduling of *Quand l’amour est gai* was appropriate at 9 p.m. Council is comfortable with TQS’ choice to schedule the program after the watershed, even though the program was not of a violent nature. Moreover, the Council members note the station’s use of advisories (which did not appear in the version provided to the Council for review but were acknowledged by the complainant and are not in dispute here) which were added to the introductory comments by the film’s director. These clearly provided the context for the film and advised viewers unequivocally of the mature themes to be addressed.

The Council also wishes to make certain comments regarding the nature of the scenes portrayed within the film. The Council members are of the view that the depiction of sexuality between men was entirely appropriate for this film whose theme was love and sexuality among homosexual men. In this context, the scenes are not gratuitous, excessive or exploitative.

### **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. It is a responsibility of membership in the CBSC to be responsive to audience complaints. The letter responded thoughtfully to the issues raised and invited the complainant to avail himself of the CBSC’s complaints process if he was unsatisfied with the station’s response. 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.