
**CANADIAN BROADCAST STANDARDS COUNCIL
QUEBEC REGIONAL COUNCIL**

CFJP-TV (TQS) re *Été sensuel*

(CBSC Decision 95/96-0233)

Decided August 14, 1998

Y. Chouinard (Vice-Chair), R. Cohen (*ad hoc*), M. Gervais, S. Gouin, P. Tancred

THE FACTS

Every Saturday night, Télévision Quatre Saisons (TQS) airs an erotic film under the series title *Bleu Nuit*. On July 27, 1996 at 11:30 p.m., CFJP-TV (Montréal) broadcast *Été sensuel*.

Suffice it to say, for the purposes of this decision, that there were many scenes of sexual activity and considerable nudity during the course of the movie and that these were manifest from the beginning of the film.

The film was preceded by the following on-screen viewer advisory: “[translation] WARNING: This film contains erotic scenes that may not be suitable for young children. Parental discretion is advised”. The advisory, which was also initially presented in audio form, was repeated only once, at 12:15 a.m., when it was scrolled across the bottom of the screen. A “13+” rating icon appeared on-screen at the start of the film and was repeated at the first commercial break.

The Letter of Complaint

The complainant sent her letter of concern to the station on the day following the broadcast.

[Translation] Could you please explain to me why you only present erotic movies. Why other television stations respect people and you don't. On July 27th, 1996, at exactly 11:30 p.m., you presented the movie *Été sensuel*, which, by the way, you rated as 13+. That means that

a 13 year old child can see nude girls caressing boys throughout the entire movie and you find this type of broadcast acceptable.

As a broadcaster, I consider that you are not facing up to your responsibilities and that you are not very imaginative. Do you think that it's interesting to note that a television station isn't able to respect women and that it uses this as a way to increase ratings? This is quite simply disgusting.

You used to present these idiotic films once a month, and only as of 12:30 a.m. Not only are you disrespectful of people like myself and of many other people, but you no longer respect anything. Do you have the mandate to give the province of Québec its sexual education?

The Broadcaster's Response

At the time of the meeting of the Quebec Regional Council at which this decision was taken, the response of the broadcaster was missing. It appears from the CBSC file record that a response may never have been sent by the broadcaster to the complainant but the state of its older records is such that the Council cannot so conclude definitively. In the particular circumstances of this file, the Quebec Regional Council does not draw any conclusion from the absence of such a letter.

In any event, the complainant viewer filed a Ruling Request on August 30, thereby requesting 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 *Sex-Role Portrayal Code* of the Canadian Association of Broadcasters (CAB). Clause 4 of that Code reads as follows:

(4) *Exploitation:*

Television and radio programming shall refrain from the exploitation of women, men and children. Negative or degrading comments on the role and nature of women, men or children in society shall be avoided. Modes of dress, camera focus on areas of the body and similar modes of portrayal should not be degrading to either sex. The sexualization of children through dress or behaviour is not acceptable.

Guidance: "Sex-ploitation" through dress is one area in which the sexes have traditionally differed, with more women portrayed in scant clothing and alluring postures.

The Regional Council members viewed a tape of the program in question and reviewed the complainant's letter. The Quebec Regional Council considers that the program does not breach the *Sex-Role Portrayal Code*.

The Content of the Program

The Quebec Regional Council takes no issue with the assertion by the complainant that the film in question is an erotic film. The only question, however, which it is called upon to decide here is whether the film is *exploitative*. The other contentions of the complainant which relate to whether this film or other such films are “idiotic” and whether or not the broadcasting of such a film is “disrespectful of people like myself” are *marketing* questions.

They relate to the broadcaster’s choice of material to air. If there is no breach of a Code (or, of course, the *Broadcasting Act* or Regulations or other laws of the land), the broadcaster is *entitled* to put the film on its airwaves. In a world which has become increasingly oriented toward niche broadcasting, any station or network appreciates that its choices will never appeal to *everyone*. This does not mean that such choices should not be made but only that, in making such choices, the broadcaster knows that only some, but not all, of the public will be pleased. It goes without saying that the broadcaster hopes always to make the correct choices but, where no Code is breached, the viewer is always free to go elsewhere. That is, in the end, the viewer’s only option and it is, from society’s perspective, a fair option, provided that society’s codified values have not been breached.

In the case of *Été sensuel*, the Council finds that there is none of the degradation of either sex which would be characteristic of a film which could be classified as exploitative. Fundamentally, the purpose of the *Sex-Role Portrayal Code* is to prevent “negative or inequitable sex-role portrayal of persons” but not “the depiction of healthy sexuality”. The Council considers that the treatment of sexuality in this film, while perhaps not of the highest cinematic level, is not in breach of the Code.

The Question of Classification

The complainant also raised the question of the classification of the film as “13+”, which she found insufficiently restrictive.

It should first be noted that, at the time of the broadcast of *Été sensuel*, there was no formal CRTC requirement for broadcasters to employ a classification system. Consequently, whatever ratings designation was broadcast was a voluntary provision of *additional* information by TQS. The formal CRTC-mandated system did not come into effect until September 1997, pursuant to the CRTC’s “Classification System for Violence in Television Programming” (Public Notice CRTC 1997-80, June 18, 1997). It should also be noted that, while the thrust of the required policy was toward violence in television programming, the Public Notice also provided the Commission’s recognition that the proposal of the Action Group for Violence on Television (AGVOT) went further.

The Commission notes AGVOT's intention to incorporate the violence classification system into a comprehensive ratings system for television programs that will also include information about such other content elements as coarse language, nudity and sex.

The Commission also noted that "AGVOT continues to work ... on harmonizing its classification system with the provincial ratings systems used by pay television and pay-per-view services, and with the Régie du cinéma system used by French-language broadcasters in Quebec." Pursuant to that CRTC Policy, AGVOT had agreed, on behalf of the industry, that the CBSC would, from September 1997, act "as an arbitrator in disputes regarding the classification of television programs." The film in question here was, however, broadcast prior to the coming into effect of the CBSC's arbitration role for such issues.

It should also be noted that the broadcaster employed the ratings classification for the program which had been made in accordance with the terms of the "Classement des oeuvres cinématographiques" of the Régie du Cinéma du Québec, which had determined that the rating of "13 ans et plus" was appropriate. In their decision of June 11, 1993, they provided their reasons for the classification in the following terms:

[translation] The intrigue in this movie gets off to a slow start. At the outset, emphasis is put on the creation of ambiance. A climate of well-being, of gentleness and tenderness reigns. This atmosphere, particularly conducive to dreams, memories and fantasies, allows for erotic scenes. In general, the descriptive treatment of these scenes is relatively conventional. Furthermore, the overall theme of the movie conveys a perfectly moral message. However, contact with this form of sensuality requires, on the part of the spectator, the beginnings of maturity. The jury therefore rates this movie "13+" and requires that the rating be accompanied by the word "erotic".

These reasons may have more relevance when supplemented by the general terms applicable to the various classifications in the Régie's document entitled "Film Classification in Quebec". In that respect, the Régie's terms of reference for films rated "13+" are the following:

The developing sexuality of adolescents still in the troublesome puberty stage calls for a certain restraint when classifying films in this category. Scenes of sexual intimacy of a dominant nature, for example, or the portrayal of unconventional sexual relationships, may not be suitable for this age group.

In order to fall into the "16+" category, the Régie's terms of reference provide:

Whatever the genre - comedy, suspense, drama - this sexual dimension, depending on its importance, may often determine a classification of "16 years and over". Treatment, as ever, is the ultimate consideration, each film being unique in its own right.

To fall into the "18+" category, "explicit sexual activity" would be required.

In summary, the broadcaster was voluntarily providing additional useful information to viewers by presenting as an on-screen icon the rating bestowed on the film by the Régie du cinéma. Since the period in which the rating was applied pre-dated the participation of the CBSC in the classification arbitration process, the Council is not in a position to question the rating given. (Nor, by that statement, should the Council be understood as saying that it *would* have done so, had the film been broadcast after September 1997.) In consequence, the Council considers that the broadcaster has, by providing both the ratings icon and the viewer advisory (which in accordance with the decision of the Régie, was accompanied by a reference to the presence of erotic scenes in the film) provided a benefit to viewers. It would, as the Council has noted in other recent decisions, been helpful to viewers generally to have the advisory repeated, at least in on-screen form, at each commercial break during the first hour of the broadcast; however, this is not *required* in the case of advisories not dealing with violent elements in a television broadcast.

Broadcaster Responsiveness

The CBSC always reviews the question of broadcaster responsiveness following the discussion of the substantive issues raised by the broadcast in question; however, as noted above, the Council is uncertain whether the absence of the broadcaster's response in the file was due to the non-fulfilment by the broadcaster of its obligation or the administrative fault of the Council itself. In the circumstances, it makes no comment on this issue.

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.