
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CITY-TV re movie *Eclipse*

(CBSC Decision 97/98-0551)

Decided July 28, 1998

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

THE FACTS

On January 21, 1998 at 9:00 pm, CITY-TV (Toronto) aired a Canadian movie entitled *Eclipse*. This Jeremy Podeswa-directed feature film explored many facets of human sexuality. Themes dealt with in the movie included homosexuality, prostitution, adultery and juvenile sexuality. Not surprisingly, the movie contained many scenes involving nudity and sexually explicit dialogue.

The movie was preceded by a viewer advisory in both visual and audio format which stated: "Viewer discretion is advised. Some scenes contain nudity, violence, adult situations and coarse language." This viewer advisory was rebroadcast before each commercial break throughout the movie. In addition, an on-screen icon, displayed at the beginning of the movie and after an hour of broadcast, rated the movie as "18+".

The Letter of Complaint

On January 23, 1998, a viewer wrote a letter of complaint to the CBSC stating that:

I wish to lodge a complaint about a movie which was shown on City TV Wed., January 21. The movie was entitled "Eclipse" and was aired at 9:00 pm.

This movie had several sexual scenes and conversations between men and women.

There was a particular scene where two males were in bed together and talked about the removal of the aftertaste of ejaculate.

There were several scenes that were offensive to me. We consider ourselves quite liberal in our views and can tolerate a lot, but this movie went too far. Children could have easily run into this garbage, let alone adults.

I am appalled that this movie was aired on City TV. I appreciate any help you can give the public with respect to this airing and will be available to answer any questions you might have.

The Broadcaster's Response

On February 6, 1998, CITY-TV's Program Director responded to the complainant with the following:

I am writing in response to your recent email to the CBSC.

First, a bit of background on our programming philosophies. We have always taken a strong stance against gratuitous violence and especially anything that features women in violent unconsenting sexual situations. We have always been at the vanguard of sex-role portrayal at Citytv and, in fact, are the recipients of a couple of major awards in this area.

Our philosophy has always been to select films and programs that will appeal to our urban skewing adult viewers. Whenever possible, Citytv attempts to show films in their entirety rather than have to make major edits which seriously alter a film's integrity. Over the years, we have developed a relationship with our audience that we take very seriously. We try to treat our viewers in a mature and responsible way and offer them the tools (through viewer advisories, ratings icons, etc.) to choose for themselves whether they or their children should watch a particular film.

The movie ECLIPSE is a Canadian movie directed by an award-winning young Canadian director and was featured at the 1994 Toronto International Film Festival. The theme of the movie might be simply stated as "what goes around, comes around". In the film, sexual activity circulates - giving people something to share, making communication possible. It is set against the backdrop of increasing public delirium surrounding a solar eclipse in Toronto.

The movie certainly was adult in its orientation. We, therefore, ran advisories at the top of the movie and at each commercial break advising people of the content of the movie and offering them the chance to choose whether they would like to watch or not. In addition the ratings icon of 18+ appeared at the top of the movie and at each hour. The movie did not begin until 9:00pm, which is the accepted watershed hour and well after children should be up alone watching television. The content of the movie, while sexual in nature, was all consensual, never totally explicit and never violent in any way.

I am sorry if this material inadvertently offended you. The dialogue you referred [to] was meant to be witty and sarcastic but I can understand how it may have offended and for this I do apologize. We may consider further edits for the next airing of this movie. This may not be the kind of material that you or I would choose to watch on television but it does not mean that others do not have the right to choose this for themselves - in fact, we received a lot of calls and Internet mail asking us to continue this type of programming.

I hope I have been able to allay some of your concerns. Please feel free to write to us directly should you have any further questions.

The complainant was unsatisfied with the broadcaster's response and requested, on February 26, 1998, 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 Clause 4 of the *CAB Sex-Role Portrayal Code* as well as Clause 3 of the *CAB Voluntary Code Regarding Violence in Television Programming*. The texts of these clauses read as follows:

Sex-Role Portrayal Code, Clause 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.

CAB Violence Code in Television Programming, Clause 3 (Scheduling)

- 3.1 Programming
 - 3.1.1 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.
 - 3.1.2 Accepting that there are older children watching television after 9 pm, broadcasters shall adhere to the provisions of article 5.1 below (viewer advisories), enabling parents to make an informed decision as to the suitability of the programming for their family members.
- 3.2 Promotional material which contains scenes of violence intended for adult audiences shall not be telecast before 9 pm.
- 3.3 Advertisements which contain scenes of violence intended for adult audiences, such as those for theatrically presented feature films, shall not be telecast before 9 pm.

The Regional Council members viewed a tape of the program in question and reviewed all of the correspondence. The Council considers that the program in question does not violate either of the Codes mentioned above.

The Content of the Program

The Ontario Regional Council has no difficulty in concluding that *Eclipse* was controversial, both in its subject-matter and in its presentation. By accepting this as a fair

characterization of the movie, the Council does not, however, conclude that the film should not have been aired. In general, the CBSC has long held that the basic general principle of freedom of expression will militate in favour of a broadcast, whether controversial or otherwise, except in those circumstances in which some overriding standard imposed by the private broadcasters in their Codes supersedes. In a decision of the Quebec Regional Council which also dealt with a controversial documentary film with a sexual theme, namely, *CFJP-TV (TQS) re "Quand l'amour est gai"* (CBSC Decision 94/95-0204, December 6, 1995), the Quebec Regional Council expressed this perspective in the following terms:

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.

The Quebec Regional Council confirmed Canadian private broadcasters' right to cater to the tastes of some with programming which may be offensive to others in *CFJP-TV (TQS) re Été sensuel* (CBSC Decision 95/96-0233, August 14, 1998). In that decision, the Council considered whether an erotic film aired as a part of TQS's late-night series *Bleu Nuit* was exploitative.

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 this case, while the Ontario Regional Council understands that the complainant was offended by the explicitness of some aspects of the film, it cannot find that there is any way in which the broadcast of *Eclipse* has violated any broadcaster Code provision. It is explicit but not exploitative. As to the aspersions regarding the *quality* of the film, the Council does not ever comment. Such matters are, of course, purely subjective and beyond the purview of the Codes and the Council. They must, in fairness, be solved by the on-off switch in circumstances in which, as here, the broadcast comes well within the purview of the broadcaster's freedom of expression.

Moreover, it is for precisely this reason that Canada's private broadcasters wished to *balance* freedom of expression and the expectation that not all persons will wish to watch all programming. They did this by establishing a watershed hour of 9 p.m. for programs containing violent content intended for adult viewing, a principle which broadcasters have been entirely willing to extend with greater and greater frequency to all genres of programming containing other types of material thought not palatable to all. They did this by providing a system of viewer advisories, again originally intended for programming with violent content but extended more and more frequently by broadcasters to other forms of content not suitable to all. They did this by establishing a classification system and on-screen icons. The presence of all of the foregoing categories of information are designed to enable viewers to make the choices suitable for their homes and families *even in circumstances where there is no breach of a Code*.

The Council notes that CITY-TV took *every* reasonable step to diminish the likelihood that anyone who might be offended by the film would be likely to be exposed to it. In the first place, CITY-TV aired the film after the generally-accepted "watershed hour" for adult programming (which coincides with the watershed established in the *Voluntary Code Concerning Violence in Television Programming* for programming containing scenes of violence intended for adult audiences). The Council notes that the broadcaster alerted viewers to the content of the movie with an advisory which, although judicious, was not technically *required* by any Code. Moreover, these advisories were shown after *every* commercial break, in other words, more frequently than would have been required even in circumstances where the programming would have contained elements of violence targeted at adult viewers. And, finally, the Council notes that the movie received the highest classification, namely, "18+" and an icon displaying this rating was shown at the beginning of the film and then at the top of each hour throughout the movie. The broadcaster could not have done more to ensure that vigilant viewers would be appropriately advised of the film's content.

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. In this case, the Council considers that the broadcaster's response addressed extensively, thoughtfully, pointedly and fairly all the issues raised by the complainant. Consequently, the broadcaster has not breached the Council's standard of responsiveness. Nothing more is required.

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.