
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

The Comedy Network re *Dream On*

(CBSC Decision 97/98-0571)

Decided July 28, 1998

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M. Hogarth and M. Ziniak

THE FACTS

Dream On is a half-hour situation comedy which is more risqué than conventional network television fare. It airs most weeknights at 9:30 p.m. on The Comedy Network. Starting on the evening of January 26, 1998, The Comedy Network aired a three part series of *Dream On* titled "Oral Sex, Lies and Videotape". The storyline of these episodes follows the main protagonist of *Dream On*, publishing house editor Martin Tupper, through an ordeal which arises out of his inadvertent videotaping of a popular kids' show host, Uncle Bouncy, receiving oral sex from a prostitute in a public alleyway.

During the course of the three episodes, the video footage of Uncle Bouncy receiving the services of a prostitute is shown on a few occasions. While the positioning of the characters gives a clear indication of what is going on, the scene, which is shown from afar, involves no nudity or sexual *explicitness*. There is, however, an entirely different scene (with characters other than Uncle Bouncy) involving nudity and sexual explicitness included in two of the three episodes in the series. A videotape of Martin Tupper awkwardly having sex with a woman, presumably his wife, is shown at the beginning of the first episode in the series and again in the last during the course of Tupper's testimony in a civil action brought against him for the sale of the Uncle Bouncy videotape to a local television station.

A viewer advisory preceded the episodes in question. It stated "The following program may contain material that some viewers may find offensive." The episodes were also rated "18+" and an on-screen icon to that effect appears at the beginning of each episode.

The Letter of Complaint

On February 4, 1998, a viewer complained to the Secretary General of the CRTC and copied her letter to the CBSC. Her letter stated that:

This is the first letter that I have ever written condemning anything that I have encountered through the media. However, it is now necessary to take a stand. I was shocked to see a program on the Comedy Network, January 27, 1998 at 9:30 p.m. I intentionally viewed it again January 28. The series is entitled "Dream On" and the shows viewed were called "Oral Sex, Lies and Videotape - Parts II and III."

I consider myself a liberal person with a very open point of view, love a good laugh - earthy or not, but this show went far beyond what is acceptable in main stream media. At this time I am receiving it as a free cable service. The [Comedy Network] channel was one that already had restricted viewing in our home all day long for my children. There are too many shows during the day that have some areas that I find unacceptable for my family so rather than constant monitoring I have now banned it altogether. The golf, family and home shows were our focuses. People that I have talked to about this scene have both been shocked and surprised that it was for common viewing.

Let me tell you what I found offensive. I should tell you that this is exactly what I saw and heard. I will say that all was in a context of a storyline - however when I saw the first offensive scene I was between channels and I did not know of any storyline.

Woman having oral sex with a man. Woman was kneeling with her head in his groin area. Man was standing. There was no question as to what was happening. [*Shown Jan 27, Jan 28 and probably Jan 26*]

Man and woman engaged in sex. Visual shots complete with loud sounds of intense love making. [*Shown Jan 28*]

Quotes from show on Jan 28

"What the fuck are you doing?" "This is bullshit."

He waved his penis in my face (man talking to man)

"I wonder what Randall looks like naked?" "I'll rip your fucking fingers off."

"I can't fucking believe that."

In addition, the characters were talking about having sex in public places.

I spoke to the screener at the Comedy Network on Jan 29 and there was very little concern from her. Her response was that this show was in a time slot that children are not watching and it has been labelled with a mature rating. She refused to give me a name within the Comedy Network which to address my immediate concerns. She said everything came through her. Not only have I now spent a lot of time getting this organized to present to the CRTC, this attitude has caused me to spend even more time researching the proper names and numbers of people to contact. I am self employed and this is time spent against my company. Is she representative of people working at the network?

The rating is shown as a very small 18+ in the upper corner and only for a very short time at the beginning of the show. Few people sit and watch a show from the initial start [*sic*] through to the end. Most have a remote and are viewing several shows. Therefore, the initial

rating is an ineffective warning. Secondly, there are very few families that have children older than the preschool years that don't at times stay up late, summer vacation, weekends, being babysat, special treat to stay up, etc. In addition, if the rating is for 18+, how many 17 year olds are asleep in bed at 9:30 p.m.? My children are nine and ten. I am a good parent concerned about all areas of their upbringing and yes they are up sometimes at 9:30 - it does happen.

I would like to see "Dream On" unavailable for viewing in Canada. As well further and ongoing screening of each show from the Comedy Network before airing on Canadian television should be a priority.

The Broadcaster's Response

The Vice President of Programming for the Comedy Network replied to the complainant on February 18, 1998 with the following:

The Canadian Radio-television and Telecommunications Commission (CRTC) and the Canadian Broadcast Standards Council (CBSC) have both forwarded a copy of your letter dated February 4, 1998 regarding the program "*Dream On*", for our attention and response.

It is not our intent to offend our viewers and we regret that you were offended by this show. From the beginning, *The Comedy Network* has set out to present a program schedule that is adult, irreverent and alternative to much of the mainstream comedy that is available on conventional broadcasters. As a consequence, our programming tends to be more risqué and controversial.

As you may be aware, 9:00 p.m. is generally accepted as the watershed in prime time where adult material appears. After 9:00 p.m., broadcasters may present programming which portrays adult situations and explicit language. Such programming usually includes an advisory at the beginning of the show which alerts audiences to material which may be offensive to some viewers. Such is the case with this program.

In addition, all Canadian broadcasters have recently adopted a comprehensive classification system to provide guidance to audiences regarding program content on such matters as violence, language, nudity, sexuality and/or mature themes. This system was developed by representatives of the Canadian broadcast, cable and production industry and based on extensive research and consultation with parents and with public interest groups. The guidelines centre on violence, but include language and sexual content as well.

English-language broadcasters have collectively agreed to use the on-screen classification displays, effective fall, 1997. All of our programs utilize this ratings system and specifically, after 9:00 p.m., a number of shows use the "18+" icon which advises viewers that the program may contain graphic language and explicit portrayals of nudity and/or sex. The "18+" icon is used on "*Dream On*" in addition to our visual program disclaimer and voice-over advisory at the top of the show.

Nevertheless, the opinions of our viewers are of concern to us. We compile viewer feedback and consider trends and suggestions. We are interested in understanding what our audience likes and dislikes. We also appreciate that while individual reactions to comedic material are subjective, overall audience reactions can be informative. We make our programming choices or adjustments with this knowledge in mind.

With regard to your conversation with our "screener" at The Comedy Network, I regret that you were not provided with the information you requested. Please be assured that you may contact me directly if you have any further concerns.

Please be advised that *The Comedy Network* is a member of the CBSC and complies with all industry codes. As indicated by the CBSC in their February 10 letter to you, if you are not satisfied with our response, you have the right to redirect your concerns to them.

In conclusion, again I regret that we offended you and hope that you may find entertainment value in some of the other programs in our telecast schedule.

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. On April 16, 1998, the complainant sent a note to the CBSC explaining her reasons for requesting a ruling by a Regional Council. The note read as follows:

Further to our conversation of this morning, I would like to say why I rejected the response from the Comedy Network.

1. I still firmly believe that the program of concern does not meet the guidelines set but far exceeds the limits. (Paragraph 3)
2. This program is readily available to all children. The ratings system briefly appears at the beginning of the show. (Paragraph 4)
3. The rest of the letter is mostly generic with [the] exception of paragraph 6. (A separate issue for their concern only) meant to appease me.
4. I have taken to viewing this program on occasion and have seen equally or more graphic and vulgar scenes, words & phrases!

Attached are two items that may be of interest. I have received very satisfying response from the advertisers in particular Campbells & Procter & Gamble.

The two items indicated as attached were an article from a local newspaper entitled "Children taping X-rated shows" and the response received from one of the advertisers contacted. These documents were illustrative of a societal issue but were not pertinent to the evaluation of the program in question; consequently, they were not considered by the Council in arriving at its ruling.

THE DECISION

The CBSC's Ontario Regional Council considered the complaint under the Canadian Association of Broadcasters' (CAB) *Sex-Role Portrayal Code* and the *Voluntary Code Regarding Violence in Television Programming*. The relevant clauses of those Codes 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.

Violence Code, Clause 3 (Scheduling)

- 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.

Violence Code, Clause 4 (Classification System)

Canadian broadcasters are in the process of co-operatively developing with other segments of the industry, a viewer-friendly classification system, which will provide guidelines on content and the intended audience for programming.

Once complete, the classification system shall complement this Voluntary Code. As it is recognized that a classification system will have a bearing on program scheduling, the provisions of article 3.0 above shall be reviewed at that time.

Violence Code, Clause 5 (Viewer Advisories)

- 5.1 To assist consumers in making their viewing choices, broadcasters shall provide a viewer advisory, at the beginning of, and during the first hour of programming telecast in late evening hours which contains scenes of violence intended for adult audiences.

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 recognizes that *Dream On* is a comedy intended for adult audiences. By broadcasting the show in a 9:30 p.m. time slot, it is clear that the program is not marketed to children. This is a reason for the creation of the watershed hour in the first place, namely, the differentiation of programming which *precedes* the 9:00 p.m. watershed hour from that which *follows* the watershed. After 4½ years of Canadian experience with the watershed (which has become used by broadcasters as the border between programming destined for the family and programming intended for adults, even beyond the originally intended concern for programming containing violent material suitable for adult audiences), members of the public have had much opportunity to become familiar with the heads-up provided by the arrival of 9:00 p.m. That being said, the Council understands that some children may, despite reasonable efforts by concerned parents, tune in to the show, whether advertently or inadvertently. This does not mean, however, that no programming considered inappropriate for children can be broadcast because of that risk. It is one of the costs associated with the rapid advance of the communications industry, whether on television, via the Internet or otherwise. The major steps taken by broadcasters to put systems in place to assist with parental vigilance, such as the broadcast Codes, the watershed, the classification system, on-screen icons, viewer advisories and the coming V-chip technology, set Canada far ahead of most Western countries in this area.

On the other hand, the Council must take into account the apparently (in this case) countervailing requirement laid down in the fundamental legislative expression of the will of the Parliament of Canada, namely, the *Broadcasting Act*. As stated in *CIII-TV (Global Television) re Before It's Too Late* (CBSC Decision 95/96-0172, October 21, 1996),

Canadian broadcasters are *required* to offer a diversity of programming to meet the needs and desires of all Canadian men, women and children. The *Broadcasting Act* provides that, as part of the broadcasting policy for Canada

(i) the programming provided by the Canadian broadcasting system should

(i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes.

The Council notes that specialty programming services play an important role, service by service, in the provision of diverse programming to Canadian audiences.

A similar point was made by the Quebec Regional Council in *CFJP-TV (TQS) re Été sensuel* (CBSC Decision 95/96-0233, August 14, 1998). In that decision which dealt with an erotic film aired under TQS's late-night series title *Bleu Nuit*, the Quebec Regional Council confirmed Canadian private broadcasters' right to cater to the tastes of *some* members of its audience with programming which might be offensive to others.

The Quebec Regional Council takes no issue with the assertion by the complainant that the film in question is an erotic film. ... 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.

The Council has no hesitation in concluding that such programming as *Dream On* has a place on Canadian television. In this case, the Ontario Regional Council does not consider that any provisions of the Codes administered by the CBSC has been breached by the Comedy Network, and, accordingly, is of the view that the broadcaster did not err in broadcasting the episodes of *Dream On* in question.

Classification Issues

The Council considers that The Comedy Network rated the program appropriately and notes that it also included a viewer advisory to alert its viewers of the potentially offensive content of the show. While the Council notes that the advisory did not include an audio component, contrary to the broadcaster's statement in its response to the complaint, and is of the view that the visual component could have been clearer (both with respect to the size and font of the writing and with respect to the content of the advisory), it considers that the broadcaster acted judiciously by displaying this advisory. In this case, although suggested by the *Violence Code*, such an advisory was not *required* by any Code.

With respect to the complainant's view that "the initial rating is an ineffective warning", the Council notes that the icon display is only a first step in the introduction of a classification system for Canadian television programming. Programming ratings will eventually be used in conjunction with "v-chip" technology which will permit viewers to block out undesirable programming. Until such time as v-chip technology is fully developed and widely available to the public, the Council considers that the display of the rating icon at the beginning of a program and then at the top of each subsequent hour of that program provides an appropriate balance between viewers' competing rights to receive ratings information and to view programming unobstructed.

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 fully 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.