
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CHRO-TV re *Dead Man's Gun* ("The Mesmerizer")

(CBSC Decision 97/98-1208)

Decided February 3, 1999

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

THE FACTS

On June 3, 1998, at 9 p.m., CHRO-TV (Pembroke and Ottawa) aired an episode of the series *Dead Man's Gun* entitled "The Mesmerizer". The series is set in the old "wild west". Each episode follows the trail of an enchanted gun as it passes from one character to another over the course of the series, bestowing upon the current holder of the gun certain magical powers. In the episode in question, the gun comes into the hands of a down-on-his-luck hypnotist, with the predictable effect of bestowing upon him the power to "impose his unspoken will" on people. The hypnotist uses this newly acquired magical power for personal gain, whether in the form of money, prestige or sexual favours.

In the scene which gave rise to the complaint, the hypnotist uses the power to coax a woman (whose husband, although nearby, is immobilized in a trance) to undress and, presumably (because no *sexual* activity is actually shown), have sex with him. The scene includes a brief glimpse of the woman's bustier, then her exposed breasts, but mostly, the short scene of the topless woman in knickers shows only her bare back.

The Letter of Complaint

On June 8, a viewer wrote to the Secretary General of the CRTC stating that:

This is the first time we have ever made a complaint to the CRTC. Last week we were very shocked and offended by a weekly program on CHRO from Pembroke, Ontario. The show "Dead Man's Gun, episode title "The Mesmerizer", aired on June 3, 1998 at 9 pm. It was rated "PG" with no warnings about the content of the show.

About 20 minutes in, a scene took place between a Mesmerizer and a woman he had placed in a trance. He told her to remove her dress. To our surprise, instead of showing her from the shoulders up, she was shown naked from the waist up. She then proceeded to push the man into a horizontal position and climb on top of him. We then quickly turned off the TV.

We feel 9 pm is too early to be showing nudity and sexual scenes. Most children are still awake, including our young son who was in the room with us at the time. Also, if the rating had been more appropriate, such as "18+", with some content warnings at the beginning we would have known not to watch this program from the start.

Most stations we are familiar with give strong warnings and ratings such as "14+" and "18+" for shows with equally or less offensive content than "Dead Man's Gun". We feel CHRO was very irresponsible in airing this program. Obviously they care more about ratings that the parents and children who may be watching their station.

The Broadcaster's Response

The Program Manager of CHRO-TV replied to the complainant on June 26 in the following way:

Thank you for your letter of June 8, 1998 outlining your concerns about the content of the program *Dead Man's Gun* that ran on our station June 3, 1998 at 9:00 pm.

The episode you referred to involves a Mesmerizer who persuades a woman to undress. You stated that that woman was shown naked from the waist up and she then proceeded to push the man into a horizontal position and climb on top of him. Upon reviewing the tape, the woman was seen clothed except for a moment when her bustier was removed and a tight shot revealed some nudity. The "sex" scene had the couple pictured clothed.

We feel that the scheduling of the program and episode at 9:00 pm and the title of the program is designed to attract a mature audience. The rating of PG suggests that there could be brief scenes of nudity and might have limited or discreet sexual references in content when appropriate to the storyline or theme. We respect your concern about the content of the show and your family comment on its suitability. We apologize for any difficulties this may have caused.

CHRO-TV is a member of the Canadian Associates [sic] of Broadcasters and adheres to the voluntary codes. I have enclosed a copy of the Canadian Broadcast Standards Council brochure for your information.

The complainant was unsatisfied with the broadcaster's response and requested, on July 2, 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 *Violence Code*. The relevant clauses of this Code read as follows:

CAB Violence Code, Clause 3.1 (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.

CAB Violence Code, Clause 4 (Classification System)

4.1 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.

CAB 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.

5.2 Broadcasters shall provide a viewer advisory at the beginning of, and during programming telecast outside of late evening hours, which contains scenes of violence not suitable for children.

5.3 Suggested language for suitable viewer advisories is outlined in Appendix A

The Council also referred to the description for the "PG" rating in the *Broadcaster Manual for the Canadian Program Classification System Using On-screen Icons* prepared for Canadian English-language Programming services by the Action Group on Violence on Television (AGVOT) in September 1997, which states:

Parental Guidance

Descriptive

This programming, while intended for a general audience, may not be suitable for younger children (under the age of 8). Parents/guardians should be aware that there might be content elements which some could consider inappropriate for unsupervised viewing by children in the 8-13 age range.

Programming within this classification might address controversial themes or issues. Cognizant that pre-teens and early teens could be part of this viewing group, particular care must be taken not to encourage imitational behaviour, and consequences of violent actions shall not be minimized.

Violence Guidelines

- any depiction of conflict and/or aggression will be limited and moderate; it might include physical, fantasy, or supernatural violence.
- any such depictions should not be pervasive, and must be justified within the context of theme, storyline or character development

Other Content Guidelines

- | | |
|------------|--|
| Language | - might contain infrequent and mild profanity
- might contain mildly suggestive language |
| Sex/Nudity | - could possibly contain brief scenes of nudity
- might have limited and discreet sexual references of content when appropriate to the storyline or theme |

The Regional Council members viewed a tape of the program in question and reviewed all of the correspondence. The Council considers that the program was appropriately rated and does not violate any of the Code provisions mentioned above.

The Content of the Program

To begin, the Council notes that the complainants' description of the scene which offended them is accurate. This having been said, the complainants perhaps leave a misleading sense in their letter both of the scene in question and even the overall flavour, if not the nature, of the episode, perhaps due to the fact that they "then quickly turned off the T.V." before the scene in question had even ended. This premature termination of the program tends to lead the reader of the complaint to the erroneous assumption that it (and perhaps other scenes later in the program) was far more sexually explicit than what was described; however, it should be noted that the sexual content of the episode in question effectively *ends* at the point of the scene described in the complainants' letter. No additional pieces of clothing are seen to be removed later in this scene or later in the show and no explicit lovemaking is depicted in the program *at all*. Nevertheless, while the episode in question did not contain any *additional* scenes of nudity or sexual explicitness, there does remain for the Council to treat a complaint which is accurate as to its description of content with respect to the one scene outlined above.

Watershed

The complainants state that "9 p.m. is too early to be showing nudity and sexual scenes". While the Ontario Regional Council is sympathetic to the complainants' concerns, it cannot agree with either their general principle or its application in this case. In explaining its point of view, the Council can do no better than to review a couple of its earlier decisions. In *CITY-TV re Ed the Sock* (CBSC Decision 9495-0100, August 23, 1995), the Council had its

first opportunity to examine issues of principle relating to the watershed hour. It observed, among other things, that

Since this is the Council's first decision dealing in any significant way with the "watershed" hour, it is worth noting what it is and what purpose it serves. In its literal sense, it, of course, denotes the line separating waters flowing into different rivers or river basins. Popularly, the term has been applied to threshold issues but the literal meaning of the word gives the best visual sense of programming falling on one side or the other of a defined line, in this case a time line. Programming seen as suitable for children and families falls on the early side of the line; programming targeted primarily for adults falls on the late side of the line. It should be noted that the definition of that time line varies from country to country, from 8:30 p.m. in New Zealand to 10:30 p.m. in France. (Great Britain, Finland, South Africa and Australia all share the Canadian choice of 9:00 p.m. as the watershed.)

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.

In *CITY-TV re the movie Eclipse* (CBSC Decision 97/98-0551, July 28, 1998), the Council further opined on the establishment of the watershed hour, as well as on the other "tools" provided by broadcasters to parents and viewers wishing to avoid certain types of programming:

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*.

In the circumstances of this case, the Council would be hard-pressed to find that the broadcaster violated any scheduling guidelines by airing the program when it did. First, the Council considers that the brevity and the relative innocuousness of the scene in question *might* not even have triggered any conclusion on its part (had it been called upon to deal with such a set of facts) that the program be shown *after* the watershed hour established by the *Violence Code*. Second, in any event, the program in question *was, in fact, aired after the 9 p.m. watershed hour*.

Viewer Advisories

Moreover, while the complainants would have liked to have been given more information regarding the content of the program in question, the Council does not find that the

broadcaster erred in not providing a viewer advisory and in giving the program the rating “PG”. Viewer advisories are required by the *Violence Code* when programming broadcast after the watershed hour “contains scenes of violence intended for adult audiences.” As in the case of the use of the watershed hour, however, broadcasters have often extended the use of advisories to other forms of adult content, such as programming which contains scenes of sex and/or nudity. The extension of the *use* of advisories, however, generally is also based on an extension of the *criteria* for its use, *i.e.* whether the program includes scenes “intended for adult audiences”. Applying such a criterion to the program in question, the Council easily concludes that no advisory would even have been necessary. This is not to say that it would not have been *helpful* to viewers to have an appropriate advisory (the Council believes it would have been) but only that such an advisory was not *required*.

Application of the AGVOT Ratings

While scheduling and viewer advisories, or the absence thereof, may provide some indications as to the content of upcoming programming, by far the most reliable tool provided to viewers for determining the palatability of a program’s content is its rating, displayed by way of an icon in the left right hand corner of the screen at the beginning of the following programming: drama, feature films, childrens and reality-based. Pursuant to AGVOT’s comprehensive classification system for Canadian television programming, set out in the *Broadcaster Manual for the Canadian Program Classification System Using On-screen Icons*, in addition to violence, programming ratings also take into account guidelines relating to language and sex/nudity.

The “PG” rating, a description of which is provided above, appears to the Council to be the most appropriate for the program in question. The sex/nudity guidelines for a “PG” rating are that the program “could possibly contain brief scenes of nudity” and “might have limited and discreet sexual references or content when appropriate to the storyline or theme”. The Council considers that the female upper-body nudity included in this program was indeed very brief and the absence of any depictions of actual sexual activity constitutes sufficiently “discreet” sexual content to justify this rating. Moreover, the appropriateness of the “PG” rating becomes even clearer when one compares the “PG” guidelines relating to sex and nudity to the parallel guidelines for the “14+” and “18+” ratings. In comparison to the PG descriptor contained above, the guidelines provide that programming rated as “14+” “might include scenes of nudity and/or sexual activity within the context of narrative or theme” while programming intended for viewers 18 years and older (18+) “might contain explicit portrayals of sex and/or nudity”. In the Council’s view, the single scene involving nudity was brief and the episode did have “limited and discreet sexual ... content” In the circumstances, the Council considers that the broadcaster’s PG choice was absolutely accurate.

The Council does wish to add a further comment in this connection. It recognizes that the ratings are but guidelines to the content of the programs to which they are applied. A 14+ rating, for example, does not *necessarily* mean that the program *will be appropriate* for all

14-year olds. Nor does a PG rating mean that every program to which that classification is applied will be suitable for all families even in the presence of the parent or parents. The classification system is a relatively new set of *subjective* guidelines which parents across the country must consider in terms of *their own* judgment about what works in *their* families. In the end, the labels used by the classification system are only labels. Moreover, they mesh the issues of violence, sex/nudity and language into a *single* overall rating, thereby requiring a kind of lowest common denominator evaluation by parents in their assessment of the rating as applied to any program. Ultimately, it is the content elements of each rating category which every family must evaluate in order to determine appropriateness for their own viewing.

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.