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**CANADIAN BROADCAST STANDARDS COUNCIL  
QUEBEC REGIONAL PANEL**

TQS re the movie *L’Affaire Thomas Crown* (*The Thomas Crown Affair*)

(CBSC Decision 01/02-0622)

Decided December 20, 2002

G. Bachand (Chair), R. Cohen (*ad hoc*), R. Parent, T. Rajan (*ad hoc*) and P. Tancred

Since B. Guérin, who customarily sits on this Panel, is employed by the broadcaster in question, he did not participate in this adjudication.

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## **THE FACTS**

TQS broadcast *L’Affaire Thomas Crown* (the dubbed version of the feature film *The Thomas Crown Affair*) on March 10, 2002 beginning at 7:00 pm; the film lasted just over three hours. The two principal subplots involve, first, the theft of a painting from an art museum and, second, the romantic intrigue between the two main characters, Catherine Banning, the insurance agent who is helping the police catch the thief, and Thomas Crown, the prime suspect. Their relationship leads to complications both in the investigation of the theft and in the lives of the two protagonists.

The majority of the film does not contain any material that would offend viewers. There is, however, one scene involving both nudity and sexual activity, which began at 8:20 pm and lasted approximately two minutes. In that scene, in the foyer of Thomas’ apartment, Catherine and Thomas take off their clothes and kiss passionately. They are then seen from an overhead camera angle engaging in sexual activity on the floor and on the stairs. The camera then returns to eye level and the viewer sees Catherine’s breasts as she and Thomas caress and kiss each other. Both Thomas’ and Catherine’s buttocks are also seen at various intervals in this scene.

Before the broadcast of the movie, TQS broadcast a promotional spot containing clips of scenes from the film, including clips from the love scene described above showing Catherine’s breasts. The movie was not preceded by any viewer advisory, nor were any

advisories present during the broadcast. A classification icon of 8+ was shown for eight seconds at the beginning of the broadcast and again for nine seconds at the beginning of the second hour. There was no icon at the beginning of the third hour.

A viewer was concerned about the broadcast of the love scene described above. He wrote a letter to the CRTC dated March 27 which was forwarded to the CBSC in due course (the text of all correspondence can be found in the Appendix to this decision). Noting the 8+ rating and the hour of broadcast, he described the scene in question as “the 2 main actors having intercourse, including scenes of the woman with top frontal view, and of the man [with] full back view” and stated that “this definitely was not acceptable for an 8 year old, or even a 14 year old to see.”

The broadcaster responded on April 15. TQS explained that it chooses its broadcasting content carefully and removes scenes that do not comply with the ethics of its company. With respect to the complainant’s specific concerns, TQS provided information about the classification system:

[W]e have broadcasted [sic] twice the 8+ identification sign (at the very beginning of the film and at the 62nd minute). However, please note that the Régie du cinéma du Québec’s rating for that movie is Visa général (General public without restriction which means, according to the Régie, that “although there may be some nudity, love scenes remain rather discreet”). It was the decision of TQS to upgrade the rating to an 8 years and over, considering the nudity and love scene.

The complainant returned his Ruling Request form on April 27.

## THE DECISION

The Québec Regional Panel examined the broadcast under the following provisions of the Canadian Association of Broadcasters’ (CAB) *Voluntary Code Regarding Violence in Television Programming*:

*CAB Violence Code*, Article 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.

*CAB Violence Code*, Article 4.0 (Classification System for French Language Broadcasters):

Classification Descriptions of the Régie du cinéma du Québec

### **8+ (General, not recommended for children)**

The “General” rating does not mean that the film is necessarily of interest to children. It means, rather, that they are not likely to find the content of the film disturbing. If, however, the nature of a “G”-rated film is such that it will upset the sensibilities of children younger than

age eight, the Régie du cinéma adds the following indicator to the “G” rating: Not recommended for young children”.

[...]

If nudity is present, the love scenes nevertheless remain discreet. Depending on the context, some strong language is acceptable.

### **13+**

La Régie includes in this category films requiring a certain level of discernment. These films contain scenes or sequences that may upset the sensibilities of younger audiences.

The adolescent audience is more aware of film techniques and is psychologically better equipped to follow more complex or disturbing films. Also, violence, eroticism, coarse language and horror may be more developed and constitute a dominant characteristic of the film. It is important, however, that the film conveys the significance of the various characters and their actions, as during adolescence, young people are not necessarily prepared to deal with everything. For this reason, certain themes (drugs, suicide, troubling situations, etc.) and the way in which they are treated are closely examined.

### **16 +**

By the age of 16, young people have reached a transition period bridging the end of adolescence and the beginning of adulthood. At this stage, they are more independent and have generally reached a certain level of psychological maturity. Films classified in this category present troubling themes, situations or behaviours and adopt a more direct view of things. They may consequently contain scenes in which violence, horror and sexuality are more detailed.

### **18 +**

Films for adults are often essentially based on the presentation of explicit sexual activity. They can also be films containing a greater level of violence with extremely realistic scenes of cruelty, torture and horror.

### Icon Use Protocols - Frequency

The rating icon is to be keyed over the first 15-16 seconds of the program. [...] For programs which run longer than one hour, the icon is to be repeated at the beginning of the second hour. These are minimal use standards; stations may wish to use the icons more frequently on programs with particularly sensitive content.

### *CAB Violence Code, Article 5.2 (Viewer Advisories):*

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.

Panel Adjudicators viewed the logger tape of the broadcast in question and reviewed all of the correspondence. The Panel finds that TQS is in breach of Article 4 regarding various classification issues and of Article 5.2 regarding viewer advisories.

## The Appropriate Classification

*L’Affaire Thomas Crown* is a dramatic feature film which, by its nature and pursuant to the requirements set out in “Classification System for Violence in Television Programming”, P.N. CRTC 1997-80, June 18, 1997, requires a classification icon. At all material times in the establishment of a Canadian classification system, it was agreed that the determination of the applicable classification level would be made by the broadcaster on the basis of one of the two systems established in Canada for conventional television and specialty services (the rules for pay television, which are not directly material to this decision, are different). As provided in the CRTC’s Public Notice, it was agreed by the Commission “that French-language broadcasters should use the rating system of the Régie du cinéma in Quebec.” (In the case of English-language programming, it is the system established by the Action Group on Violence on Television (AGVOT) that is applied.)

The effect of this Commission rule is that the categories, or levels, of classification used by broadcasters in Quebec are essentially those familiar to Quebec moviegoers, namely, G, 13+, 16+ and 18+. To these the broadcasters have added the rating level, 8+, which is the equivalent of the Régie’s “G, déconseillé aux jeunes enfants” (“not recommended for children”). More important, however, is the understanding of the effect of the above-cited principle from P.N. CRTC 1997-80. In the view of the Panel, the words clearly establish that it is the *rating system* of the Régie du cinéma on which broadcasters are expected to rely. It is not the actual *rating*. That choice is the responsibility of the broadcaster, not the Régie. If there were *any* doubt in that regard, it is resolved by the consideration of the full sentence (from which the above-cited reference to the Quebec rating system is taken). It provides

that pay television and pay-per-view services should continue to use the ratings of the provincial ratings boards and that French-language broadcasters should use the rating system of the Régie du cinéma in Quebec.

In other words, the ultimate discretionary broadcasters, the pay services, are to use *the actual ratings* chosen by the provincial ratings boards while the French-language conventional broadcasters are to use the *rating system* of the Régie du cinéma.

This interpretation is further supported by the fact that the CRTC provided in that same Notice that the CBSC would “act as [...] an arbitrator in disputes regarding the classification of television programs”, a duty which would be rendered meaningless if broadcasters had no responsibility with respect to the choice of rating. It is also obvious that the CRTC would not have expected the CBSC to play any role in arbitrating the Régie’s choice of ratings (insofar as those ratings are determined by that provincial authority *for the cinemas*); that CBSC duty could only logically be exercised relative to the *broadcaster’s* choice of rating for its television broadcast. In this respect, it is also material to underscore the fact that the Régie establishes the ratings for feature films shown on cinema screens, in other words, for films which are inaccessible to members of the public *unless they*

*exercise the conscious decision to pay for a movie ticket at the local cinema.*

Television is another matter. Conventional television broadcasters send their films into everyone's homes. There is no need for a more conscious and activist step on the part of the viewer than to turn on the set and select a channel (which may even be a not particularly activist step in the case of a channel-surfer, to choose one such relatively passive example). It is one reason, at least, for establishing a set of tools that will enable audience members to make *informed* viewing choices. These include broadcast codes, the establishment of a Watershed hour and the requirement of viewer advisories, as well as program ratings and V-chip encoding.

In other words, while the categories may be the same for both the cinema and the television screen, the determination of the applicability of the category to a particular program may differ. In the case at hand, as an example, the G rating given by the Régie was not thought high enough by TQS, which applied the 8+ rating as more pertinent for its viewers. As it happens, for reasons given below at greater length, the Panel considers that the appropriate rating *for television broadcast* is 13+. The point is that responsibility for making the choice of the rating to apply to a television broadcast is that of the broadcaster, not that of the Régie. At that point, any complaints regarding the choice of rating will be dealt with by the Quebec Regional Panel, which will decide whether the broadcaster's choice from among the classification levels established by the Régie is the correct one. As provided in "Classification System for Violence in Television Programming", P.N. CRTC 1997-80, June 18, 1997,

31. The Canadian Broadcast Standards Council (CBSC / the Council) is the self-regulatory agency that ensures adherence to the CAB Violence Code. In its Violence Policy, the Commission agreed that the CBSC should also act as a clearinghouse for ratings information and as an arbitrator in disputes regarding the classification of television programs.

In the case at hand, the Panel considers that both the G rating applied by the Régie and the 8+ rating selected by the broadcaster are too low. As the Vice President, Communications of TQS noted in her letter, the Régie's definition of the G-rating allows that, "although there may be some nudity, love scenes remain rather discreet." The broadcaster had raised the rating to 8+ in order to add, in effect, the Régie's further warning that the film is "not recommended for young children." The Panel agrees with the broadcaster's conclusion that the film should not be recommended for children, whether they be "young children" in the 8 and under category or children as defined by the relevant Code, namely, those under 12. Accordingly, the Panel considers that the 13+ level would be far more appropriate for this movie. As the Régie provides, this category includes films requiring a level of discernment on the part of the viewer. They "include scenes or sequences which may upset the sensibilities of younger audiences." Further down in the Régie's definition the word "eroticism" is used, rather than the gentler terms "nudity" and "love scenes", which are found in the G category. The Panel considers that "erotic" is the operative word to describe the love-making sequence in the foyer of Thomas' apartment.

The Quebec Regional Panel is also fully conscious of the fact that it is unlikely that this would be the rating selected by English-language broadcasters elsewhere in Canada as appropriate for this motion picture (assuming that the “problematic scene” were not cut). Based on principles established in other CBSC Panel decisions, it is likely that the rating chosen would be 18+ and that the film would require post-Watershed broadcast. This presents no problem, however, since the CBSC’s Regional Panels were established to reflect regional differences, as these may, from time to time, be reflected in broadcast practices and public tastes. The case at hand is one in which this regional distinction is apparent. It is, however, the conclusion of the Panel that the rating selected by TQS was not the correct one for the Quebec market and this constitutes a breach of Article 4 of the *Violence Code*.

### **The Display of the Classification Icon**

In addition to the foregoing region-specific issues, the Panel underscores certain of those general principles applicable to all private Canadian broadcasters with respect to the display of the ratings icon. First, the icon must appear at the beginning of the program and then, as the “Icon Use Protocols” of AGVOT provide, “at the beginning of the second hour.” While the Panel recognizes that the Protocols only provide for a *second* use of the icon “[f]or programs which run longer than one hour,” it considers that it would be of greater assistance to viewers if the icon were repeated at the top of *every* hour in the case of programs running long enough to pass over more than *two* tops of hours. Given the clear wording of the Protocols, the Panel is reluctant to conclude that TQS has breached the Code by failing to run the ratings icon at the start of the third hour; however, it strongly encourages TQS and all other broadcasters to adopt such a policy for the benefit of late-tuning viewers.

Second, the icon must appear on-screen for 15-16 seconds. In the case of *L’Affaire Thomas Crown*, the icon appearances at the start of the film and at the top of the second hour did not last more than nine seconds. In this respect, the broadcaster has breached one of the technical requirements of Article 4 of the *CAB Violence Code*.

### **Viewer Advisories**

Viewer advisories are an important requirement of the private broadcasters’ system for dealing with mature matter on television. As this Panel said in its decision of even date in *TQS re the movie Les Girls de Las Vegas (Showgirls)* (CBSC Decision 01/02-0478, December 20, 2002),

As noted in [a] previous section, the private broadcasters and the CRTC established a

balanced system in 1993, one which respected the rights of both broadcasters and viewers. The codifiers understood that the fundamental principle underlying all civic activity in Canada is freedom of expression and that an important principle underlying the *Broadcasting Act* is that “the programming provided by the Canadian broadcasting system should be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children *of all ages, interests and tastes* [emphasis added].” They equally understood that the goal was not to so open the door that viewers would not themselves have some control over what was on their television screens. In order to achieve that balance for the benefit of viewing audiences, they established tools to enable viewers to exercise their television tuning choices on an *informed* basis.

The initial tool was the viewer advisory, the provision of information regarding the issues likely to be of concern to some viewers: violence, coarse language, nudity, sexual content and even mature themes, on occasion. For maximum effectiveness in an age of remote control channel-surfing, the codifiers required that the advisories be broadcast at the start of the program *and* following each commercial break (during the first hour of post-Watershed programming).

In the case of *Les Girls de Las Vegas*, TQS ran the required advisory at the start of the film and then only one additional, but inadequate, advisory during the remaining course of the broadcast. In the present film, perhaps because of its view that the film was correctly rated 8+, TQS did not run any advisories during the broadcast. Even if this decision did result from the broadcaster’s view of the appropriate rating for the film, in light of the Panel’s findings above, it considers this failure in violation of the requirements of the private broadcasters’ codified standards.

### **Broadcaster Responsiveness**

It is a fundamental obligation of broadcasters to be responsive to complainants who take the time to express in writing their concerns about programming they have heard or seen on the airwaves. It is the duty of the CBSC Panels to assess the thoughtfulness of the broadcaster replies on each occasion that they adjudicate a file. In this case, the Panel considers that the broadcaster has fulfilled its obligations vis-à-vis the complainant. Nothing further is required in this instance.

### **ANNOUNCEMENT OF THE DECISION**

TQS is required to: 1) announce this decision, in the following terms, once during prime time within three days following the release of this decision and once more within seven days following the release of this decision in the time period in which *L’Affaire Thomas Crown* was broadcast; 2) within fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the announcements to the complainant who filed the Ruling Request; and 3) at that time, to provide the CBSC with

that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by TQS.

The Canadian Broadcast Standards Council has found that TQS= broadcast of the film *L’Affaire Thomas Crown* on March 10, 2002 breached the provisions of the *CAB Violence Code*. By rating the film 8+ when the explicitness of an erotic scene merited a rating of 13+, TQS breached Article 4 of that Code relating to classification. By failing to broadcast the classification icon it did choose for the full 15 seconds at the start of the film and at the beginning of the second hour, TQS also breached the article of the Code requiring specific classification information to assist viewers in deciding the suitability of the program for themselves and their families. By failing to provide viewer advisories at the beginning of the film and following every commercial break for the entire program, TQS also breached the article of the Code which requires such information to be provided so that the audience can make the necessary viewing choices for themselves and their families.

*This decision is a public document upon its release by the Canadian Broadcast Standards Council.*

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## APPENDIX

CBSC File 01/02-0622

**TQS re the movie *L’Affaire Thomas Crown (Thomas Crown Affair)***

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### The Complaint

The following complaint dated March 27, 2002 was sent to the CRTC and forwarded to the CBSC in due course:

The Ottawa-Hull TQS affiliate CFGS was showing the film "The Thomas Crowe [sic] Affair" from about 19:00 to 21:00. At 20:00, they showed the rating "8+", meaning the movie was appropriate for an 8 year old to watch. A few minutes later (between 20:00 and 20:15), they were showing scenes of the 2 main actors having intercourse, including scenes of the woman with top frontal view, and of the man full back view. At which point I changed the channel. I would not expect to see such scenes on TV, and especially at that time when children are still up. This definitely was not acceptable for an 8 year old, or even a 14 year old to see. I request that the CRTC takes steps to ensure this does not happen again. Thanks.

### Broadcaster's Response

The broadcaster responded to the complainant on April 15 with the following:

We have received your letter concerning the broadcast of *L’Affaire Thomas Crown* by TQS on March 10, which was forwarded to us by the Canadian Broadcast Standards Council (CBSC). We regret this movie offended you and we have taken note of your comments.

As you have mentioned it in your letter, we have broadcasted [sic] twice the 8+ identification sign (at the very beginning of the film and at the 62nd minute). However, please note that the Régie du cinema du Québec's rating for that movie is Visa général (General public without restriction which means, according to the Régie, that "although there may be some nudity, love scenes remain rather discreet"). It was the decision of TQS to upgrade the rating to an 8 years and older, considering the nudity and love scene.

TQS's programming consists of a great number of movies of various genres that are broadcasted daily. While we understand that some scenes in some of these films could have shocked you, we do carefully select each production and we remove scenes considered to be immoral and not complying with the ethics of our broadcasting company.

We always appreciate receiving our viewers' comments and we thank you for taking the time to write to us.

The complainant returned his Ruling Request form on April 27.