
**CANADIAN BROADCAST STANDARDS COUNCIL
QUEBEC REGIONAL PANEL**

TQS re two episodes of the program *Sex Shop*

(CBSC Decision 03/04-0162 & -0320)

Decided April 22, 2004

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

THE FACTS

On October 11 and November 15, 2003 at midnight, TQS broadcast episodes of the “docutainment” program *Sex Shop*. Both episodes featured adult-entertainment stars. The broadcasts contained interviews with the entertainers and showed clips of their work, including numerous sexually explicit scenes. A viewer advisory was presented both on-screen and in audio format at the beginning of the show. It stated “Cette émission comporte des scènes de nudité et d’érotisme s’adressant à un auditoire adulte averti.” The advisory was shown again coming out of each commercial break but only as a “crawl” at the bottom of the screen. The crawl did not include an audio component.

The broadcaster also rated the program “18+” with the extra mention of “érotisme” and it displayed an icon indicating this rating at the beginning of the program as well as following each commercial break (for 8 seconds the first time and 5 seconds the second time).

A complaint was received from a viewer who stated, in part (the full text of all the correspondence can be found in the Appendix to this decision):

These types of adult shows or even movies that are broadcasted [*sic*] on the ‘morally corrupt’ network (TQS) should not be televised on basic channels (local stations).

These programs do nothing but exploit and demean women. It is disturbing to see that they can be viewed without a cable or satellite subscription.

Another viewer stated the following (in part):

This kind of sex-based program [...] offends, exploits and indignifies [*sic*] women. This network is obviously without self-respect, but it should not have the right to disrespect women by showing any sort of sex-based program. As a single mother and as a woman, I was shocked to say the least when I accidentally came across this program while changing

channels. Not only could I not believe what I saw, but the fact that a sex-based program is being shown a [sic] channel opened to the general public including children, is completely wrong, inappropriate and furthermore indecent.

TQS' Vice-President of Communications responded, in part, to the complaints in the following terms:

TQS's programming consists of a great number of movies or shows of various genres that are broadcast daily. Each adult programming feature is preceded by a notice to the effect that some scenes to be shown is for an adult audience. While we understand that some scenes in some of these shows could have shocked you, we do carefully select each production screened in adult programming and we remove scenes considered to be immoral and not complying with the ethics of our broadcasting company. Moreover, there is always the appropriate warning indicating the required age for viewing the said show. The shows aimed at adults are broadcast after 11:00 pm, the time after which it is advisable to broadcast shows addressed to adults. The CBSC has rendered many rulings to that effect.

Sex Shop is broadcast on TQS and we believe that viewers appreciate this type of show late on a weekend night. We are very pleased to be able to offer programming different from that of our competitors, being the only French-language network to show erotic movies of quality, containing no violence or pornographic scenes.

Neither complainant was satisfied with this response and both returned their signed Ruling Request form. The complainant in the first file also provided additional comments regarding her views on the station in question. These can be found in the Appendix to this decision.

THE DECISION

The Quebec Regional Panel considered the matter under various provisions of the Canadian Association of Broadcasters' (CAB) *Code of Ethics*, the *CAB Voluntary Code Regarding Violence in Television Programming* relating to classification icons, as well as the exploitation clause of the *CAB Sex-Role Portrayal Code*:

CAB Code of Ethics, Clause 10 – Television Broadcasting

Scheduling

(a) Programming which contains sexually explicit material or coarse or offensive language intended for adult audiences shall not be telecast before the late viewing period, defined as 9 pm to 6 am. Broadcasters shall refer to the *Voluntary Code Regarding Violence in Television Programming* for provisions relating to the scheduling of programming containing depictions of violence.

(b) Recognizing that there are older children watching television after 9 pm, broadcasters shall adhere to the provisions of Clause 11 below (viewer advisories), enabling viewers to make an informed decision as to the suitability of the programming for themselves

and their family members.

CAB Code of Ethics, Clause 11 – Viewer Advisories

To assist consumers in making their viewing choices, when programming includes mature subject matter or scenes with nudity, sexually explicit material, coarse or offensive language, or other material susceptible of offending viewers, broadcasters shall provide a viewer advisory

(a) at the beginning of, and after every commercial break during the first hour of programming telecast in late viewing hours which contains such material which is intended for adult audiences, or

(b) at the beginning of, and after every commercial break during programming telecast outside of late viewing hours which contains such material which is not suitable for children.

CAB Violence Code, Article 4.0 (Classification System):

Description of the Régie du cinéma du Québec classifications

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.

Exempt category

Exempt programming includes: news, sports, documentaries and other information programming; talk shows, music videos, and variety programming.

CAB Sex-Role Portrayal Code, Article 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.

Panel Adjudicators reviewed all of the correspondence and viewed the logger tapes of both episodes. The Panel finds that TQS is in breach of Article 11 regarding viewer advisories, but not in breach of the other articles listed above.

Sexual Explicitness and Sexual Exploitation

The CBSC has frequently been called upon to deal with the question of sexual exploitation in the context of sexually explicit broadcasts. In its first decision dealing with an erotic film

broadcast, *TQS re Été sensuel* (CBSC Decision 95/96-0233, August 14, 1998), the Québec Regional Panel said that it

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*. [...] 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 a negative or inequitable sex-role portrayal of persons@ but not a 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.

On the issue of sexual explicitness, in the more recent decision *TQS re the movie Les girls of Las Vegas (Showgirls)* (CBSC Decision 01/02-0478, December 20, 2002), the Quebec Regional Panel stated the following:

The Panel appreciates that the concern of the complainant is not primarily oriented toward the issue of exploitation but rather toward the frequency and explicitness of the on-screen sexual activity. In this regard, the Panel cannot be of further assistance to the complainant. Nearly a decade ago, Canada's private broadcasters and the Canadian Radio-television and Telecommunications Commission (CRTC) established the Watershed hour, which required that all programming containing scenes with violent content intended for adult audiences was restricted to broadcast hours after 9:00 pm. In the intervening years, the CBSC has, in its decisions, most notably *TQS re L=inconnu (Never Talk to Strangers)* (CBSC Decision 98/99-0176, June 23, 1999), extended that principle to programming including all types of material intended for adult audiences. The effect of this principle is that broadcasters cannot play adult-oriented sexual material before 9:00 pm but that, once that hour has passed, they can, provided that they advise their audience that they are about to broadcast programming that viewers may wish to avoid (more about the issues of advisories and classification icons below). While the Quebec Panel readily acknowledges that *Les Girls de Las Vegas* included considerable nudity and some erotic content, it recognizes equally that the subject of the film was an aspect of the sex/erotism industry which is not in violation of the law. It is to be expected that the film's content would reflect this; the Panel finds nothing that cannot be properly aired in the post-Watershed time period, which is where TQS has situated the broadcast.

On the basis of the foregoing principles, namely, a) that there is a difference between sex and sexual exploitation, b) neither gender was degraded at the expense of the other, and c) the subject matter of the episode relating to the erotic film industry was bound to have

an erotic component, the Panel finds no aspect of the content of either of the two episodes of *Sex Shop* in any way problematic in terms of and of the foregoing codified content provisions.

Advice to Viewers

In addition to the content issues, the Panel finds no difficulty in either the hour of the scheduling or the classification of the program in question. In fact, the Panel appreciates that TQS has displayed the classification icon on a broadcast which normally would be exempt from the classification system since *Sex Shop* can be said to fall within the category of “documentaries and other information programming”, which require no rating under the approved classification system for Canadian broadcasters. (It should be noted, however, that had the on-screen classification been required, TQS’ broadcast would not have met the technical requirements which specify that the icon must remain on-screen for 15 to 16 seconds. In this case, it was on-screen for 8 seconds initially and then appeared again for 5 seconds after each commercial break.)

That being said, the Panel considers that, by failing to provide all viewer advisories in both audio and video format, the broadcaster has done a disservice to its viewers and has breached Clause 11 of the *CAB Code of Ethics*. Classification icons and viewer advisories differ in nature and purpose and the rules applicable to each reflect those differences. Broadcasters must display each at the times and according to the rules established for their use.

Repetitive Nature of the Broadcaster’s Breaches

This is not the only time that TQS has been found in breach with respect to the provision of viewer advisories. See the decision taken on this date by this Panel in *TQS re the movie Film de peur* (CBSC Decision 02/03-0940, April 22, 2004), concerning the repetitiveness of breaches by TQS with respect to the proper display of viewer advisories.

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 broadcaster’s letter does deal in sufficient detail with the substantive issues raised by the complainant and the Panel finds that it is a satisfactory response. Nothing more is required of TQS in this respect on this occasion.

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 *Sex Shop* was broadcast; 2) within fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the announcements to the complainants 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 program *Sex Shop* on January 19, 2002 breached a provision of the *CAB Violence Code*. By failing to provide viewer advisories in audio as well as video format following every commercial break, TQS 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.

ANNEXE

TQS concernant Sex Shop (Décision du CCNRD 03/04-0162 & -0320, rendue le 22 avril, 2004)

I. Les plaintes

Le CCNR a reçu deux plaintes concernant le programme *Sex Shop*. Les plaintes de ces deux individus sont reproduites ci-bas :

La première plainte (Dossier du CCNR 02/03-0162) se lit comme suit :

concern : These types of adult shows or even movies that are broadcasted [*sic*] on the 'morally corrupt' network (TQS), should not be televised on basic channels (local stations).

These programs do nothing but exploit and demean women. It is disturbing to see that they can be viewed without a cable or satellite subscription.

The CBSC should investigate the types of programs televised on this shameless network.

La deuxième plainte (Dossier du CCNR 02/03-0320) :

Complaint: What right does TQS have to show this kind of sex-based program that offends, exploits and indignifies [*sic*] women. This network is obviously without self-respect, but it should not have the right to disrespect women by showing any sort of sex-based program. As a single mother and as a woman, I was shocked to say the least when I accidentally came across this program while changing channels. Not only could I not believe what I saw, but the fact that a sex-based program is being shown a channel opened to the general public including children, is completely wrong, inappropriate and furthermore indecent.

II. La réponse du télédiffuseur

TQS a envoyé plus ou moins la même réponse aux deux plaintes.

We have received your letter concerning "Sex Shop" broadcast by TQS, which was forwarded to us by the Canadian Broadcast Standards Council (CBSC). We regret this show offended you and we have taken note of your comments.

TQS's programming consists of a great number of movies or shows of various genres that are broadcast daily. Each adult programming feature is preceded by a notice to the effect

that some scenes to be shown is for an adult audience. While we understand that some scenes in some of these shows could have shocked you, we do carefully select each production screened in adult programming and we remove scenes considered to be immoral, not complying with the ethics of our broadcasting company or inconsistent with the codes administrated by the CBSC. Moreover, there is always the appropriate warning indicating the required age for viewing the said show. The shows aimed at adults are broadcast after 11:00 pm, the time after which it is advisable to broadcast shows addressed to adults. The CBSC has rendered many rulings to that effect.

Sex Shop is broadcast on TQS and we believe that viewers appreciate this type of shows late on a week ends night. We are very pleased to be able to offer programming different from that of our competitors, being the only French-language network to show erotic movies of quality, containing no violence or pornographic scenes.

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

III. Correspondance additionelle

La plaignant (Dossier du CCNR 02/03-0162) a rendu sa Demande de décision en date du 12 novembre, accompagnée par le message suivant :

I have recently received a response from TQS, and I am completely dissatisfied with it. It seems, according to their response, that they are proud of their late night adult programming on Saturdays (i.e: Sex-Shop & Bleu Nuit). Although I wasn't surprised, taking into consideration that this is a station without ANY morals what-so-ever, I am disturbed by the fact that they are proud of this kind of programming that objectifies and belittles women. They seem to be nothing more than irresponsible ratings-driven mongrels, determined to continue to televise this filth on their station.

La plaignante (Dossier du CCNR 02/03-0320) a rendu sa Demande de décision en date du 20 décembre, accompagnée par le message suivant :

To the CBSC,

I have received a response from TQS and it does not address the main issues of my complaint. I don't think that they even bothered reading my complaint.

I ask the CBSC not to make my surname available to the public or the media, instead I ask that the CBSC use my first name and only the initial of my surname [...]. The reason is that I would like to have my surname kept private. I do not want anyone beside the CBSC to have it. Thank you.