
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL PANEL**

CITY-TV re the feature film *Jade*

(CBSC Decision 03/04-0382)

Decided October 22, 2004

R. Stanbury (Chair), M. Ziniak (Vice-Chair), R. Cohen (*ad hoc*),
J. David and M. Oldfield

Since B. Bodnarchuk is employed by the same corporate group that owns CITY-TV, he did not participate in the adjudication of this file.

THE FACTS

The 1995 feature film *Jade*, a murder mystery with a sexual theme, was broadcast on CITY-TV (Toronto) at 9:00 pm on November 8, 2003. Three characters, Assistant District Attorney David Corelli (played by David Caruso), psychiatrist Trina Gavin (played by Linda Fiorentino), and lawyer-husband Matt Gavin (played by Chazz Palminteri) are entangled in a web of sex and murder. The movie includes scenes with sexual activity and others with violence, as well as a certain amount of coarse language (including the f-word and its derivatives).

Before the start of the movie, the broadcaster aired an oral and visual advisory in the following terms: "Viewer discretion is advised as some scenes contain violence, nudity & coarse language." During the course of the movie, the broadcaster aired oral and visual advisories after each commercial break throughout the entire movie (rather than just during the first hour of the late viewing period broadcast, as required by the codes); however, in each instance, the oral advisory differed substantially from the visual warning. The oral advisory was in the following terms: "We now return to *Jade*. Viewer discretion advised." The visual warning read as follows: "Some scenes contain violence, nudity & coarse language. Viewer discretion advised." The broadcaster also aired an 18+ classification icon at the beginning of the movie for 13 seconds and at the start of the second hour for 12 seconds.

The following complaint was faxed to the CRTC, which forwarded it to the CBSC in due course on November 28 (the pertinent part is provided here; the full text of the complaint and all other correspondence can be found in the Appendix):

City-Tv seems to be making a habit of delivering movies with the compulsory warning popping up every now and then but Saturday evening Nov. 8, they really “pushed” too far. This movie-Jade- was not only pornographic- it was downright OBSCENE.

There is a place for this kind of “entertainment” – sex, violence, coarse language – and it’s not City Tv!

The Vice President, Programming, of CHUM Television responded to the complainant's letter on December 18. She said in part:

First, a bit about our programming philosophy. We have always tried 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 make major edits which gravely alter a film’s integrity. We try to treat our viewers in a mature and responsible way and offer them the tools (through viewer advisories, rating icons, etc.) to choose for themselves whether they or their children should watch a particular film.

The movie “Jade” was handled in exactly this manner. It was judiciously edited to remove some material, carried a rating icon of 18+ and did not begin until 9pm – all in accordance with Canadian broadcasting industry and government standards.

Perhaps some background about this film may be appropriate. It was rated ‘R’ by the Motion Picture Association in the United States not NC17 meaning any teenager with an adult accompanying them could see the movie. In Ontario, the movie was also rated R – we gave it the equivalent Canadian television rating of 18+ as noted above. We also ran viewer advisories at the beginning of the film and out of each commercial break to specifically give our audience the information needed to make their viewing decisions.

[...] JADE does have a muted and grungy feel to it which may contribute to your sense that the movie had seamy excesses but it’s that engaging attention to detail that makes the movie work. The anger, the fear and the passion of the characters all feel genuine. I mention all this only to point out that a movie crafted and released such as this one cannot be deemed pornographic in the legal sense of the term. I would agree that it has a rather juvenile tastelessness to it but what may be “obscene” or repugnant to you personally is not necessarily applicable in broadcast terms.

The complainant responded to the broadcaster’s representative on January 26, saying in part:

Tell me what exactly is an “urban skewing” adult viewer?

Please do not patronize me. I am an avid film viewer and have some knowledge of film production. I do not care who directed the film, starred in the film, or what honours it received. Its “seamy excesses” and “engaging attention to detail” was not only pornographic, it was obscene!

Its place is on PAY TV.

The CBSC Secretariat took this expression of dissatisfaction to be the equivalent of a Ruling Request.

THE DECISION

The Ontario Regional Panel examined the broadcast under the following provisions of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* and *Violence 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 3.0 – 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, Article 4.0 – Classification System

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 5.1 (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 Ontario Regional Panel reviewed all of the correspondence and screened a tape of the film in question. For the reasons provided at greater length below, the Panel considers that the broadcast of the challenged film breached Clause 11 of the *CAB Code of Ethics* and Articles 4 and 5 of the *CAB Violence Code*.

Pornography?

The complainant has contended vigorously that the film “was not only pornographic – it was downright OBSCENE.” The Panel acknowledges that some of the material in the film is explicit but this does not render it pornographic. Moreover, pornography is a term envisaged in, and prohibited by, the *Criminal Code*. It understandably falls well outside the scope of the Codes administered by the CBSC; however, in light of the allegations made by the complainant in this case, and the relevance of statements made in the 1992 decision of the Supreme Court of Canada in *R. v. Butler* with respect to the issue of pornography, the Panel considers it useful and appropriate to counter the complainant’s terminology with portions of the majority opinion of the late Mr. Justice Sopinka here:

Community standards must be contemporary. Times change, and ideas change with them. Compared to the Victorian era this is a liberal age in which we live. One manifestation of it is the relative freedom with which the whole question of sex is discussed. In books, magazines, movies, television, and sometimes even in parlour conversation, various aspects of sex are made the subject of comment, with a candour that in an earlier day would have been regarded as indecent and intolerable. We cannot and should not ignore these present-day attitudes when we face the question whether [the subject materials] are obscene according to our criminal law.

[...]

The cases all emphasize that it is a standard of *tolerance*, not taste, that is relevant. What matters is not what Canadians think is right for themselves to see. What matters is what Canadians would not abide other Canadians seeing because it would be beyond the contemporary Canadian standard of tolerance to allow them to see it.

Since the standard is tolerance, I think the audience to which the allegedly obscene material is targeted must be relevant. The operative standards are those of the Canadian community as a whole, but since what matters is what other people may see, it is quite conceivable that the Canadian community would tolerate varying degrees of explicitness depending upon the audience and the circumstances.

[...]

Among other things, degrading or dehumanizing materials place women (and sometimes men) in positions of subordination, servile submission or humiliation. They run against the principles of equality and dignity of all human beings. In the appreciation of whether material is degrading or dehumanizing, the appearance of consent is not necessarily determinative. Consent cannot save materials that otherwise contain degrading or dehumanizing scenes. Sometimes the very appearance of consent makes the depicted acts even more degrading or dehumanizing.

This type of material would, apparently, fail the community standards test not because it offends against morals but because it is perceived by public opinion to be harmful to society, particularly to women. While the accuracy of this perception is not susceptible of exact proof, there is a substantial body of opinion that holds that the portrayal of persons being subjected to degrading or dehumanizing sexual treatment results in harm, particularly to women and therefore to society as a whole. [...]

Because this is not a matter that is susceptible of proof in the traditional way and because we do not wish to leave it to the individual tastes of judges, we must have a norm that will serve as an arbiter in determining what amounts to an undue exploitation of sex. That arbiter is the community as a whole.

The courts must determine as best they can what the community would tolerate others being exposed to on the basis of the degree of harm that may flow from such exposure. Harm in this context means that it predisposes persons to act in an anti-social manner as, for example, the physical or mental mistreatment of women by men, or, what is perhaps debatable, the reverse. Anti-social conduct for this purpose is conduct which society formally recognizes as incompatible with its proper functioning. The stronger the inference of a risk of harm the lesser the likelihood of tolerance. [...]

[... E]xplicit sex that is not violent and neither degrading nor dehumanizing is generally tolerated in our society and will not qualify as the undue exploitation of sex unless it employs children in its production.

The Panel considers that the sexual activity in this film does not fall within, or even near, the boundaries of pornographic material. There is sexual explicitness, to be sure, but there is no degrading or dehumanizing context associated with it. There is violence but it is not associated with the sexuality itself. In conclusion, in the present matter, the Panel finds no element of pornography present. Nor, it is evident, does it find a breach of any of the foregoing Code provisions relating to the content.

The Classification Icon

One of the tools that broadcasters are required to provide their audiences is an on-screen classification system. The icons that appear on the television screen at the start of each program and at the top of each hour thereafter (for programs of longer than 60 minutes duration) are a source of information for viewers, which enables them to make informed viewing decisions. In *TQS re the movie Film de peur* (CBSC Decision 02/03-0940, April 22, 2004), the broadcaster had provided a 13+ classification icon at the start of the broadcast and following each commercial break, for 8, 9 or 10 seconds, on each occasion. Although the Quebec Regional Panel noted that the icon was only required at the start of the film and at the beginning of the second hour (the broadcaster had overzealously supplied too many icons to viewers), it concluded that the duration of the display of the required icon at the required times was clearly insufficient. It said:

The broadcasters' rules provide that the icon must be displayed for 15-16 seconds at the start of the program and at the top of each subsequent hour. In the case of *Film de peur*, the display of the pre-program icon was for 9 seconds, the 7:00-pm display was for 8, and the 8:06-pm display was for 10. Each of these displays was insufficient and constituted a breach of the technical requirements of the classification system, as established pursuant to Article 4 of the *Violence Code*.

The conclusion is no different in the present instance. CITY-TV's 12-13 second displays of the ratings icon were insufficiently long and are in violation of the provisions of Article 4 of the *Violence Code*.

Viewer Advisories

Viewer advisories are one of the several tools provided by broadcasters to members of the public to enable them to determine what will not be offensive in terms of their own viewing choices. The National Conventional Television Panel made some important broad statements concerning the use of viewer advisories in *CTV re the Sopranos* (CBSC Decision 00/01-0130+, March 8, 2001). It stated:

The purpose of viewer advisories is sometimes thought to be oriented toward children. While their utility for that purpose is clear and important, they are, as a tool, media literacy based and oriented toward adults as much as children. They are intended to provide viewers with sufficient information to enable them to determine, whether for their children *or for themselves*, what will be suitable viewing fare. It is of the essence of the Canadian broadcasting system, which, the *Broadcasting Act* provides, encourages diversity of programming for the broad range of interests and tastes of Canadians, that potential viewers be advised, even after the protective Watershed hour (which is principally children-oriented), that programming may contain elements which they may not find palatable.

Once the principle underlying the importance of viewer advisories is understood, it is easy

to imagine why it is essential that they reflect the content of the program about which they are intended to provide information. While the visual advisories associated with the broadcast of *Jade* alerted potential viewers to the presence of coarse language, violence and nudity, there is no mention whatsoever of sexual content, which is central to the theme of the film and the very matter which provoked the complainant to allege that the film was both obscene and pornographic. Moreover, after the advisory preceding the opening credits, the content of the oral form of the advisory did not even match the written form; it was shorter and offered far less information regarding the nature of the film's content. It was, in many respects, similar to the problems encountered by the National Specialty Services Panel in *Showcase Television re the movie Rats* (CBSC Decision 99/00-0772, August 23, 2001). That movie was preceded by a viewer advisory in audio and on-screen formats which stated: "The following program contains scenes of nudity and coarse language. Viewer discretion is advised." Thereafter, following each commercial break, an oral advisory was broadcast which stated simply "Viewer discretion is advised." The Panel drew several conclusions. First, it decided that the wording of the initial advisory did not accurately describe the contents of the film since there was no nudity; there were, however, scenes of sexual activity, mature subject matter and some disturbing scenes, which the advisories should have indicated. Second, the Panel found that the shorter advisories coming out of the commercial breaks were inadequate because they did not provide "any reasons for which a viewer might choose to exercise discretion." Third, the shorter advisories' audio-only format was insufficient because "this warning in audio format only is of no assistance to the hearing impaired or to those who may be glancing at their television sets at a distance or with the volume turned down or otherwise rely on visuals only to determine the viewing choices for their household."

Applying these principles to the present matter, the Ontario Regional Panel concludes that the broadcaster has breached the advisory provisions of Clause 11 of the *CAB Code of Ethics* by failing to refer to the sexual content of the motion picture. It also concludes that the differing form of the audio and visual advisories coming out of each commercial break constitutes a breach of that clause and of Article 5 of the *CAB Violence Code*. It is not that the audio form is not word-for-word identical to the visual form but rather that it provides an inadequate level of information about the content of the film. There is no reference to any of the violence, coarse language, nudity or sexual content.

Broadcaster Responsiveness

In all CBSC decisions, the Council's Panels assess the broadcaster's responsiveness to the complainant. Although the broadcaster need not agree with the complainant, it is expected that its representatives charged with replying to complaints will address the complainant's concerns in a thorough and respectful manner. In this case, the Panel finds that the broadcaster's response was, in this regard, entirely appropriate. The Panel considers that CITY-TV has fully met its responsiveness responsibilities of CBSC membership.

ANNOUNCEMENT OF THE DECISION

CITY-TV 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 *Jade* 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 CITY-TV.

The Canadian Broadcast Standards Council has found that, in its broadcast of the motion picture *Jade* on November 8, 2003, CITY-TV breached provisions of the Canadian Association of Broadcasters' *Code of Ethics* and the *Violence Code*. By failing to mention the presence of explicit sexual content in the film in its on-screen advisories to viewers and any information relating to the elements of violence, coarse language, nudity and sexual content in its oral advisories, CITY-TV has violated the provisions of Clause 11 of the *Code of Ethics* and Article 5 of the *Violence Code*. In addition, by broadcasting the ratings icon for only a part of the required time, CITY-TV has breached Article 4 of the *Violence Code* that requires the provision of ratings information which is of assistance to viewers in deciding the suitability of the program for themselves and their families.

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

APPENDIX
To
CITY-TV re the feature film Jade (CBSC Decision 03/04-0382, October 22, 2004)

I. The Complaint

The following complaint was received by the CBSC on November 28, 2003:

Channel- City Tv- Toronto
Date- Nov. 8/03
Time- Sat. evening 9-11
Program- "Jade"- the movie

Directors-

City-Tv seems to be making a habit of delivering movies with the compulsory warning popping up every now and then but Saturday evening Nov. 8, they really "pushed" too far. This movie-Jade- was not only pornographic- it was downright OBSCENE.

There is a place for this kind of "entertainment" – sex, violence, coarse language – and it's not City Tv!

Now, please do not come back at me demanding certain segments and actual times. The WHOLE movie was OBSCENE!

I await your action on this.

II. Broadcaster Response

The broadcaster responded to the complainant's letter on December 18, with the following:

We are in receipt of your letter regarding the movie JADE, forwarded to us by the CBSC.

First, a bit about our programming philosophy. We have always tried 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 a make major edits which gravely alter a film's integrity. We try to treat our viewers in a mature and responsible way and offer them the tools (through viewer advisories, rating icons, etc.) to choose for themselves whether they or their children should watch a particular film.

The movie "Jade" was handled in exactly this manner. It was judiciously edited to remove some material, carried a rating icon of 18+ and did not begin until 9pm – all in accordance with Canadian broadcasting industry and government standards.

Perhaps some background about this film may be appropriate. It was rated 'R' by the Motion Picture Association in the United States not NC17 meaning any teenager with an adult accompanying them could see the movie. In Ontario, the movie was also rated R – we gave

it the equivalent Canadian television rating of 18+ as noted above. We also ran viewer advisories at the beginning of the film and out of each commercial break to specifically give our audience the information needed to make their viewing decisions.

The Oscar-winning director of THE FRENCH CONNECTION and Oscar nominee for the EXORCIST, William Friedkin, directed this movie. It stars main stream Hollywood actors David Caruso (CSI: MIAMI), Linda Fiorentino (MEN IN BLACK) and Oscar nominee Chazz Palmiteri. This film also had the honour of appearing at the Venice Film Festival. JADE does have a muted and grungy feel to it which may contribute to your sense that the movie had seamy excesses but it's that engaging attention to detail that makes the movie work. The anger, the fear and the passion of the characters all feel genuine. I mention all this only to point out that a movie crafted and released such as this one cannot be deemed pornographic in the legal sense of the term. I would agree that it has a rather juvenile tastelessness to it but what may be "obscene" or repugnant to you personally is not necessarily applicable in broadcast terms.

While I cannot agree with your assessment of this film, it is never our intention to offend our viewers and I do apologize for inadvertently doing so. All viewer feedback is important to us as we continue to strive to improve our programming. Please feel free to contact me directly should you have any further questions.

III. Additional Correspondence

On January 26, the complainant wrote the following note addressed to the broadcaster but sent to the CBSC:

I cannot believe you actually viewed this film- JADE.

Tell me what exactly is an "urban skewing" adult viewer?

Please do not patronize me. I am an avid film viewer and have some knowledge of film production. I do not care who directed the film, starred in the film, or what honours it received. Its "seamy excesses" and "engaging attention to detail" was not only pornographic, it was obscene!

Its place is on PAY TV.