
**CANADIAN BROADCAST STANDARDS COUNCIL
QUEBEC REGIONAL COUNCIL**

TQS re Scheduling of Advertisements and Promos

(CBSC Decisions 98/99-0212, 0213 and 0882)

Decided June 23, 1999

P. Audet (Chair), Y. Chouinard (Vice-Chair), R. Cohen (*ad hoc*),
S. Gouin, P.-L. Smith and P. Tancred

THE FACTS

For reasons explained below, there was some confusion as to the identity of the commercials or program promos complained of by the individual (who was responsible for the filing of all three complaints which are the subject of this decision) and those which apparently ran at the times in question, according to the traffic logs of the broadcaster. Since the issues remain the same whether the advertising which ran was that highlighted by the complainant or that noted by the broadcaster, the discrepancy is of no material effect. The point is raised at the start of this decision, however, because there will immediately be seen to be a contradiction between the facts as laid out immediately below and the substance of the letters of complaint. The CBSC does assume, for these purposes, that the broadcaster's traffic logs were accurate.

On December 30, 1998, during the early morning children's show *Maya*, Télévision Quatre Saisons (TQS) aired a commercial for an "extreme fighting" tournament, the sport being a "no holds barred" fight consisting of a combination of wrestling, boxing and kick-boxing. The commercial was made up of short scenes from previous competitions showing men and women grappling, punching, kicking and stomping on each other.

On January 11, 1999, during the morning children's show *Bibi et Geneviève*, TQS aired a commercial for a science fiction feature film entitled *Virus*. The commercial included scenes from the movie which depicted explosions and various acts of destruction of property, people being pursued by a monster, a man pointing a gun, people screaming and a scary-looking cyborg.

On May 8, 1999, during the commercial break just prior to the commencement of a program on farm animals, TQS aired a promo for the upcoming broadcast of the feature film *Rob Roy*. The commercial showed a man pierced by an arrow, a man punching another in the face and a close-up of a gunshot.

The Letters of Complaint

On December 30, a viewer sent a complaint to the CRTC and the CBSC. This letter read, in part, as follows:

[Translation] This letter is a complaint about a commercial which aired on TQS on December 30, 1998 between 8:15 a.m. and 8:25 a.m. during the children's program *Maya*.

The commercial, which was very violent for very young children, constitutes a MORAL VIOLATION vis-à-vis children. The ad in question is for a movie about a teacher who works in a very violent school environment. ... To broadcast such a commercial during a gentle program for children between the ages of 3 and 8 years is a direct assault on the child viewer and his or her parents.

... I hope the programming directors will quickly come to understand the effect that this type of violent and brutal advertising has on children! And I hope that we will finally make a collective effort to protect our children from television violence.

On January 11, 1999, the same viewer sent a second letter to the CRTC and CBSC, this time complaining of an advertisement for a movie which he thought was *Terminator II* and which he indicated as having aired during the children's shows *Maya* and *Bibi et Geneviève*. This letter presented the same arguments as those raised in his December 30 complaint.

Sometime in May 1999 (the letter was erroneously dated May 8, the day *before* the broadcast of which he complains, but it was received by the CBSC May 26), the same viewer lodged his third complaint about violent advertising during early morning children's programming on TQS. That letter read as follows:

[Translation] I hereby express my concern with a violent commercial which was broadcast by TQS on May 9, 1999 between 7:15 and 7:30 am, just prior to a program dealing with farm animals.

This is the third complaint of this nature which I have had to make and I am starting to believe that TQS is really trying to pull the rug over our eyes by saying that it is another routing problem. The CBSC must stop believing such lies fed to it by the broadcaster.

I even consider that the weight of your penalty is insufficient to dissuade TQS and perhaps other stations from surreptitiously including violent ads during prime children's viewing time. I am dumbfounded that your organization is not capable of stopping such practices.

The violent ad in this case showed a man from the Middle Ages being pierced by an arrow.

I strongly urge your organization to take firm action and to become an important player in stopping television violence.

The Broadcaster's Response

TQS failed to reply to the first complaint but the Vice-President of Communications replied to the *second* letter of complaint on January 26, 1999 in the following terms:

We have received a copy of the letter that you sent us on January 11, 1999 in which you expressed your dissatisfaction regarding a commercial aired during a children's program.

We have considered your complaint and, after reviewing a tape of the show, have realized that the advertising for the film *Terminator II* was broadcast due to a error in rotation.

We are careful in ensuring that this type of advertisement never runs during children's programming.

We offer our most sincere apologies for this unfortunate mistake.

Please rest assured that we will inform the people concerned and that we will be much more careful in the future.

On March 10, following an inquiry by the CBSC Secretariat as to the missing response to the *first* letter of December 30, the broadcaster's Vice-President of Communications did respond to that first complaint with essentially the same letter as she wrote on January 26, but she noted in the March letter that "[translation] the commercial [broadcast on December 30] ... is not an ad for a movie but rather a wrestling-boxing style competition where there are 'no holds barred'."

The third complaint received the following brief response on June 28:

[Translation] We have received your letter which was sent to the CBSC and in which you set out concerns with respect to the broadcast of a promo for the movie *Rob Roy* on TQS on May 9 between 7:15 and 7:30 am.

Upon review, we note that the promo was in fact broadcast but in the break preceding the program.

The Requests for a Ruling and Additional Correspondence

The complainant was not satisfied with the broadcaster's responses and requested that all three of his complaints be referred to the Quebec Regional Council for adjudication. The following letter accompanied the first signed Ruling Request form:

[Translation] I wish to express my dissatisfaction with respect to the letter sent to me by TQS concerning violent commercials aired during children's programming on December 30 1998 (at least twice) and on January 11, 1999.

The response of the [Vice-President's of Communications] seems to ignore the complaint that I made over the telephone on December 30, 1998 in reference to a commercial for *Combat Extrême* which was aired during the children's programs *Maya* and *Les Pierres à Feu* between 8 a.m. and 9 a.m. If the best way to deal with a problem such as this is to call the station in question directly, it was not the case at TQS...

I believe that Ms. ..., who is in charge of rotation, should have taken care of the problem immediately after my phone call of December 30, 1998. In other respects, I believe that the rotation errors alleged by the Vice-President of Communications at TQS are simply excuses: in her reply, she said to me and I quote "We are committed to insuring that this type of advertisement never runs during children's programming." If this is true, how can they explain running this kind of commercial (*Virus*, *Combat Extrême*, *Terminator*) at least three times between December 30, 1998 and January 11, 1999.

Therefore, I do not accept these explanations and ask that you apply the sanctions outlined in your code of conduct to TQS.

THE DECISION

The CBSC's Quebec Regional Council considered the complaint under the *Voluntary Code Regarding Violence in Television Programming*. The relevant clauses of that Code read as follows:

Violence Code, Clause 2 (Children's Programming)

2.1 As provided below, programming for children requires particular caution in the depiction of violence; very little violence, either physical, verbal or emotional shall be portrayed in children's programming.

...

2.6 Programming for children shall not contain realistic scenes of violence which create the impression that violence is the preferred way, or the only method to resolve conflict between individuals.

Violence Code, Clause 3 (Scheduling)

3.2 Promotional material which contains scenes of violence intended for adult audiences shall not be telecast before 9 p.m.

3.3 Advertisements which contain scenes of violence intended for adult audiences, such as those for theatrically presented feature films, shall not be telecast before 9 p.m.

The Regional Council members viewed tapes of the commercials in question and reviewed all of the correspondence. The Council considers that the commercials in question contained violent content intended for adult audiences and should not have been aired prior to the watershed hour. By doing so, TQS has breached Article 3 of the *Violence Code*. Moreover, as some of the ads were broadcast during children's programming, the

inclusion of such violent material there also constitutes a breach of Article 2 of the *Violence Code*.

Some Initial Confusion

As noted above, there was some confusion surrounding the subject matter of the first two complaints. While, in his letter of December 30, the complainant referred to a movie about a teacher working in a violent environment, the broadcaster stated that the ad in question was actually for an extreme fighting tournament. The Council surmises that the complainant may have gotten the wrong broadcast date or time and finds it very unlikely that his description was actually for the extreme fighting tournament. In any event, the broadcaster proffered the extreme fighting ad as the one in question and so the Council considers it appropriate to consider *that commercial* in light of the Codes. There would not, in the Council's view, be any material difference in its conclusions unless the commercial complained of was *less* violent than the one which the broadcaster admitted airing.

As to the second complaint, while the complainant states that the ad was for a movie entitled *Terminator II*, the Council notes, as did the broadcaster, in providing the tapes, that the ad is in fact for a movie entitled *Virus*, which is actually produced by the same person as *Terminator II* and is materially in the same genre for the purposes of this decision.

The General Scheduling Issue

This is the Council's first opportunity to consider Articles 3.2 and 3.3 of the *Violence Code* which deal with the scheduling of promotional material and advertisements respectively. Both sections deal with what is essentially similar content and, correspondingly, set out identical requirements regarding scheduling. In a broader sense, the substance of these requirements is the same as the more familiar Article 3.1, which deals with general programming. The scheduling requirement is clear: "material which contains scenes of violence intended for adult audiences shall not be telecast before 9 p.m." While the Council may not yet have had the opportunity to consider promotional material and advertisements separately, it has had numerous opportunities to determine whether any *programming* "contained scenes of violence intended for adult audiences."

In one of the most oft-cited decisions on the point, namely, *CKCO-TV re Kazan* (CBSC Decision 96/97-0226, February 20, 1998), the Ontario Regional Council set out some criteria to determine whether scenes of violence are "intended for adult audiences". The decision concerned a Sunday matinee movie which told the story of a canine, part dog/part wolf, named Kazan whose personal challenge was to decide whether he belonged in the wilderness or in the company of humans. The movie included scenes depicting the strangulation of a man as well as the beating, shooting and near drowning of Kazan. The

Council found that none of these scenes of violence could be described as “intended for adult audiences”.

The Council does not consider that the scenes of violence contained in *Kazan* are of such a nature as to be intended for adult audiences only, although they contain more violent elements than do the scenes contained in *Before It's Too Late* and in the episode of *Matrix* considered by the Council. While it is difficult to propose any cut-and-dried formula to apply in coming to any such conclusion, the Council does consider that the presence of the combined elements of fear, suspense, gore and explicitness may help characterize programming containing scenes of violence as *adult*. The Council notes that the scenes of violence in the movie *Kazan* were short and often obscured to limit their scariness. The Council finds that, overall, the movie was very tame; in the Council's view, the few scenes of violence do not negate this characterization. Given the viewer advisories which preceded the broadcast of the movie and were repeated during the first commercial break, the Council is comfortable with CKCO-TV's scheduling of the movie *Kazan* at 1 p.m.

In this case, the Council has no hesitation in concluding that the advertisement for the movie *Virus*, which employed scenes of violence and promoted the scariness of the movie, contained “scenes of violence intended for adult audiences.” Nor does the Council have any difficulty in arriving at the same determination with respect to the promotional material for the upcoming broadcast of the movie *Rob Roy*.

The Council does not consider, however, that the scenes in the advertisement for the extreme fighting tournament were of such a nature as to fall afoul of the *scheduling* provision of the *Violence Code*. Their problem lies elsewhere.

Broadcast of Violent Ads and Promos During Children's Programming

Having concluded that two of the advertisements contained scenes of violence intended for adult audiences, it is not difficult to conclude that such ads should not have been included during children's programming. The promo for *Virus* clearly was and therefore TQS has breached provisions of Article 2 of the *Violence Code* which state that “very little violence ... shall be portrayed in children's programming” and “programming for children shall not contain frightening or otherwise excessive special effects not required by the storyline.”

Moreover, while the Council did not find the advertisement for an extreme fighting tournament to be in breach of the scheduling provision of the *Violence Code*, it does find that its inclusion in children's programming constitutes a breach of Article 2.6 of the Code which states that “programming for children shall not contain realistic scenes of violence which create the impression that violence is the preferred way, or the only method to resolve conflict between individuals.”

The General Issue relating to Scenes of Violence in *Children's* Programming

The issue relating to the watershed (discussed above with respect to two of the promos) is really quite straightforward. Canada's private broadcasters have collectively agreed that they will not broadcast *any form of violence intended for adult audiences* before 9:00 p.m. Whether it consists of dramatic programming, or paid or unpaid advertising for such programming, they decided that, as of January 1, 1994, *any* broadcasting which includes such elements would not be scheduled before 9:00 p.m. If the Clauses in question were not sufficiently clear (which, in the view of the Council, they are), then the principles *behind* these provisions were also laid out in the background material in the *Violence Code*, which provides, among other things:

- 1.11 This Voluntary Code represents a responsible and pro-active approach to the issue of violence in programming telecast by Canada's private, over-the-air broadcasters.
- 1.17 [C]reative freedom carries with it the responsibility of ensuring that our children are protected ...

And the Statement of Principle behind the Code also provides:

- 1.2 By their adherence to this Voluntary Code of practice, Canadian private broadcasters are publicly endorsing the following principles:
 - ...
 - 1.2.2 that young children not be exposed to programming which is unsuitable for them.
 - ...
- 1.3 By the adoption of this Voluntary Code Canadian private broadcasters shall ensure these standards are met in the production, the acquisition, the scheduling, the promotion and the telecast of their programming.
- 1.8 In all genres of programming, the depiction of violence shall be evaluated in relation to the individual program, its intended audience and the time of broadcast.

Broadcasters were unquestionably concerned about the welfare of children when they took the step of adopting this Code and this case clearly goes beyond the mere question of the inviolability of the watershed hour. As a question of fact, the three alleged transgressions by the broadcaster occurred in the context of programs *aimed at children*. If ever a case of greater vigilance was merited, it is in the case of *such* programming. While slip-ups in programming issues can, of course, occur from time to time, the repetition of the excuse related to problems of traffic rotation *in children's programming* is particularly problematic. Moreover, the broadcaster was put on alert in this regard *very shortly* after the initial traffic problem arose.

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 there were several problems. In the first place, the broadcaster totally ignored the complainant's letter until the CBSC, following up on the issue two months later, provoked a reply. On January 26 and March 10, the broadcaster merely referred to "an error of rotation" and, on June 28, the broadcaster's response could hardly have been said to have even attempted to address the issues raised by the complainant. It only reiterated the complainant's own observation that the promo in question aired "just prior to a program dealing with farm animals." The entire substance of the broadcaster's response was that "Upon review, we note that the promo was in fact broadcast but in the break preceding the program." Broadcasters owe more to their audience than such a brush-off, particularly in circumstances where they are, by their own admission (as well as, ultimately, the CBSC's finding), in breach of the *Violence Code*. Moreover, they are *required* to be responsive in terms of their membership in the CBSC.

In the circumstances, while the broadcaster was not in breach of the Council's standard of responsiveness with respect to its reply of January 26 and was on the verge of being in breach by not responding to the complaint of December 30 until prompted by the CBSC to do so, the Council is of the view that the letter of June 26 simply did not constitute a substantive response and was, consequently, in breach of the CBSC's members' requirement of responsiveness to complainants.

CONTENT OF THE ANNOUNCEMENT OF THE DECISION

The station is required to announce this decision forthwith, in the following terms, during prime time and, within the next thirty days, to provide confirmation of the airing of the statement to the CBSC and to the complainant who filed a Ruling Request.

The Canadian Broadcast Standards Council has found that TQS breached provisions of the Canadian Association of Broadcasters' *Voluntary Code Regarding Violence on Television* in airing, on December 30, 1998, and January 11 and May 9, 1999, advertisements and promotional material which contained scenes of violence intended for an adult audiences in the early morning and by not responding adequately to the viewer's complaint. By broadcasting the ads and promos prior to 9 p.m., the watershed hour established in the *Violence Code*, TQS has breached Article 3, the scheduling provision, of the *Violence Code*. Moreover, as some of the ads were broadcast during the children's programming portion of the broadcast schedule, the Council also found that TQS's actions constituted a breach of Article 2 of the *Violence Code*. By not addressing the substance of the

viewer's complaint, TQS has also breached one of the responsibilities of membership of the Council.

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