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**CANADIAN BROADCAST STANDARDS COUNCIL  
NATIONAL SPECIALTY SERVICES PANEL**

Showcase Television re the movie *Rats*

(CBSC Decision 99/00-0772)

Decided August 23, 2001

R. Cohen (Chair), R. Deverell, E. Duffy-MacLean, M. Hogarth and H. Pawley

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**THE FACTS**

At 7:00 pm on July 29, 2000, Showcase Television aired a feature film entitled *Rats* which follows the psychological degeneration of a down-and-out Toronto documentary filmmaker.

This middle aged filmmaker suffers from a terrible creative block, which affects both his professional and his personal life. What makes matters worse is his recent discovery of a rat infestation in his luxurious home. He becomes obsessed with the rats and decides to make them the subject of his next documentary. As his work progresses, so do both the rodent infestation and his own psychological disturbance. The filmmaker becomes tormented by nightmares about rats.

The film contained two sexual scenes, neither of which reveal any nudity. The first, a rather brief scene at 7:05 pm, shows the distracted filmmaker lying in bed with his girlfriend on top of him. In the second scene involving sexual activity, the filmmaker is sitting in a large chair with another woman astride him, both in the throes of ecstasy. The scene is considerably longer than the first, lasting approximately 1 minute and 25 seconds, and, while it does not contain any nudity, it is explicit in its visual depiction of intercourse, including the intimate climactic moment.

In addition to the sexual scenes, the movie was also based on an adult theme, which focussed on the disturbed and disintegrating mental state of the protagonist.

The 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." In addition, a "PG" rating icon appeared once, at the beginning of the movie.

On August 9, a viewer sent the following letter to the CRTC, which forwarded the matter to the CBSC in due course:

I am writing to lodge a complaint.

About 7:05 p.m. in the evening of Saturday, July 29, 2000, I turned on Showcase's TV Channel 39 to behold a man and woman in bed, woman on top and pumping to [the] beat [of] the band. The movie containing the scene was *Rats*.

I don't see the need for this kind of demonstration in any movie at any time, but particularly at 7 o'clock in the evening when my children are up and about.

A Viewer Relations officer at Showcase replied to the complainant on September 11, the letter reads in part (the letter can be found in its entirety in the Appendix):

The decision to air *Rats* is consistent with Showcase's mandate to provide an alternative to other broadcasters' offerings. One way that we have achieved this distinction is to broadcast high-quality international drama series and world-class films in our movie slot called *The Showcase Revue*. *Rats* is a Canadian film, directed [by] Jacques Holender. The movie tells the story of a middle-aged filmmaker who becomes obsessed with making a documentary about the rats that have infested his home.

While Showcase is proud to broadcast a wide range of films, it is our policy to carefully consider each film that is aired on the network. Before we decide to broadcast a film, our Programming Department screens it to ensure that it is suitable for broadcast. The determination of suitability includes ensuring that the broadcast would not contravene the Canadian Association of Broadcasters' "Sex-Role Portrayal Code for Television and Radio Programming", the "Broadcast Code for Advertising Children" or the "Voluntary Code Regarding Violence in Television Programming."

In order to assist our viewers in making their viewing choices, we run a viewer advisory before such programs indicating whether they contain scenes of violence, nudity and/or coarse language. If appropriate, a "viewer discretion is advised" advisory is shown not only before the broadcast begins, but also after commercial breaks.

The complainant was unsatisfied with the broadcaster's response and requested, on September 27, that the CBSC refer the matter to the appropriate adjudicative Panel. With this request, the complainant added the following note, addressed to the broadcaster, which further explained his position (the full letter is included in the Appendix):

[I]nstead of responding clearly and directly to my concerns, your letter engages in what appear to be standard, legal-style statements. The question remains, why are any movies containing scenes like that in *Rats* being run at 7:00 p.m. in the evening when children, who cannot be supervised every minute by parents, are up and about and at the TV? Viewer discretion advisories are hardly an appropriate warning tool for children and do not justify thoughtless and irresponsible programming. Surely, there are non-offensive movies/programs that could be scheduled into the early evening time slots.

## THE DECISION

The CBSC's National Specialty Services Panel considered the complaint under the *Voluntary Code regarding Violence in Television Programming*. The relevant clauses of that Code read as follows:

### *Violence Code, Clause 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.

### *Violence Code, Clause 4 (Classification System - PG Rating Criteria)*

#### 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 or content when appropriate to the storyline or theme |

### *Violence Code, Clause 4 (Classification System - Icon Use Protocols - Frequency)*

The rating icon is to be keyed over the first 15-16 seconds of the program. It is expected the Americans will have their ratings up for 15 seconds. 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.

### *Violence Code, Clause 5 (Viewer Advisories)*

- 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.

The National Specialty Services Panel Adjudicators viewed a logger tape of the movie in question and reviewed all of the correspondence. In the Panel's view, the movie contained scenes intended for adult audiences. Consequently, by a) broadcasting the movie in the early evening with b) an initial advisory which missed the essential information to be conveyed to potential viewers and c) an inadequate advisory coming out of each commercial break, Showcase has breached Clauses 3 and 5 of the *Violence Code*. In addition, the Panel finds the PG rating applied by the broadcaster inappropriate for the

movie; it concludes that the 14+ classification to be apt. Moreover, by failing to show the icon at the beginning of the second hour of the film, the Panel finds the broadcaster in breach of clause 4 of the *Violence Code*.

### **The Content of the Program: Scenes Intended for Adult Audiences**

The main issue for the Specialty Services Panel is to determine whether any of the scenes in this movie could be characterized as being “intended for adult audiences”, the criterion which triggers the application of the Watershed provision of the Violence Code. In this respect, the complainant specifically pointed to the first love-making scene which aired just 5 minutes into the movie, at 7:05 pm, and the Panel includes in this assessment the second love-making scene which occurred at 8:36 pm.

To begin this discussion, the Panel notes that the Watershed provision in the Violence Code has been extended in the CBSC jurisprudence beyond the scenes of *violence* intended for adult audiences nominally included there to *other scenes* of mature subject matter, most notably, scenes including sexual activity which could be characterized as intended for adult audiences. In *TQS re the movie L'inconnu (Never Talk to Strangers)* (CBSC Decision 98/99-0176, June 23, 1999), the first decision fully extending the principle in this way, the Quebec Regional Panel found that the scenes of rough love-making in that film ought not to have aired in a pre-Watershed environment. In *TQS re Strip Tease* (CBSC Decision 98/99-0441, February 21, 2000), that same Panel considered the scenes of nudity included in that movie to different effect. In that case, although bare breasts were in plain view, the Panel did not find that the broadcaster had breached the Watershed provision by airing the movie at 8 pm. The Panel stated:

While acknowledging that the showing of bare breasts on strip tease dancers was intended by the filmmaker to be sexual, the Council considers that the absence of sexual contact or lovemaking in the film rendered it, to all intents and purposes, sufficiently innocent that there would not even be a requirement that its broadcast occur only in a post-watershed time frame.

As the CBSC Panels have explored the meaning of the phrase “intended for adult audiences”, the term has been clarified further. Thus, in *CITY-TV re a broadcast promo for SexTV* (CBSC Decision 99/00-0133, July 6, 2000), the Ontario Regional Panel, in considering the early evening broadcast of a promotional spot which featured a nude woman lying sideways, facing the camera although with her legs and arms discretely covering her breasts and genitalia, stated that “to fall afoul the scheduling provision of the *Violence Code*, the challenged programming must not merely be >attractive’ *mainly* to adults, it must be intended for an adult audience *to the exclusion of a non-adult audience.*”

In the matter at hand, there are depictions of sexual activity but no nudity. In that sense, it is the reverse of the situation faced by the Quebec Panel in *Strip Tease*. The CBSC has long made it clear that nudity alone is, as in the case of *Strip Tease* and earlier

jurisprudence cited there, not a type of subject matter which must only run in a post-Watershed programming environment. It has only been so considered when coupled with adult-oriented sexual activity. The Specialty Services Panel has no difficulty, though, with the idea that it is sexual activity and not nudity that drives the “adult” characterization. It is entirely clear that a scene may be sufficiently sexually explicit *without* nudity that it ought to be accessible to adults to the exclusion of younger family members. The Panel considers that the second love-making scene in *Rats*, which lasted for 1 minute and 25 seconds, falls into that category. It is not merely a romantic encounter or suggestive. It is erotic, actively demonstrative, extended, and climactic. It is inappropriate for airing at 7 pm. By broadcasting it before the Watershed, Showcase has breached Clause 3.1 of the *Violence Code*.

### **The Issue of Viewer Advisories**

Viewer advisories are an essential component of the private broadcasters’ panoply of tools to assist viewers in making informed choices as to what they wish to watch or consider appropriate for those in their families to watch. In addition to the Code provisions, the broadcasters have collaborated to provide ratings icons (of which more below), an emerging V-Chip technology, and the concept of viewer advisories. Although specific examples of these are included as a part of the *Violence Code*, those models are not meant to be limitative. When used at their best, such advisories *tell* viewers in *appropriate* detail what the nature of the programming is. At worst, *even when included*, they do not provide viewers with useful or pertinent information regarding the programming to which they apply.

Advisories must also take into account that not all viewers tune their sets to programming at the top or bottom of each hour. Consequently, the rules provide that they must also be present coming out of each commercial break during the first hour of programming after 9 pm and during the entire program where they are required in a pre-9 pm environment.

Some of the foregoing principles have been elaborated in *CTV re Poltergeist - The Legacy* (CBSC Decisions 96/97-0017 and 96/97-0030, May 8, 1997), the Ontario Regional Panel made general comments on the rationale underlying the requirement for the provision of advisories which can easily apply to the requirements relating to pre-watershed programming such as here. It stated:

The rationale underlying the requirement of viewer advisories is found in the background section of the Code, which state that “... creative freedom carries with it the responsibility of ensuring ... that viewers have adequate information about program content to make informed viewing choices based on their personal tastes and standards.” The repetition of viewer advisories *during the course of* the first hour serves as a second, third and fourth chance for viewers to receive important information concerning the program they are considering watching, *even where they may tune in late*. The Code takes into account that many viewers make their viewing choices *after* the first few minutes of a program, which may result in a viewer missing an initial advisory. The Council is of the view that CTV’s approach to viewer

advisories in this case, *i.e.* other than the initial advisory, providing them only in the *second* hour of the program, is insufficient for viewers and in breach of the spirit and wording of the Code. [Emphasis added.]

When these principles are applied to the present program, the broadcaster has failed on two counts. First, by providing an initial detailed advisory which did not fit with the movie in question and second, by not providing any useful information in the subsequent viewer advisories following each commercial break.

In the first place, Showcase's initial advisory for the movie *Rats* indicated that the movie contained "scenes of nudity and coarse language." As indicated above, there was no nudity in the movie (with the irrelevant exception, for these purposes, of the brief showing of a photo of the genitalia of a man suffering from bubonic plague). There were, however, scenes of sexuality, mature subject matter and some disturbing scenes. The advisory provided by Showcase prior to the showing of the movie indicated none of that and did not provide a fair warning to potential viewers (with the exception of the coarse language, of which there were a few examples late in the film, but this is not at issue here).

In the second place, the broadcaster has either ignored or not focussed on the requirement with respect to the advisories needed during the course of the movie, following each commercial break. Those advisories simply stated "Viewer discretion is advised" *without providing any reasons* for which a viewer might choose to exercise discretion. To be absolutely clear, "Viewer discretion is advised" is not what the private broadcasters intended when they mandated viewer advisories in the *Violence Code*.

The Panel also notes that the advisories provided during the course of the program were in auditory format only, *i.e.* they were not presented on-screen. In the Panel's view, the use of audio is insufficient to address the full responsibility of the broadcaster in providing fair warning to its potential viewers. The Panel is keenly aware that the provision of 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 volume turned down or otherwise rely on visuals only to determine the viewing choices for their household.

In the result, for the reasons noted in this section, the Panel concludes that Showcase has failed to meet the requirements of Clause 5.2 of the *Violence Code*.

### **Program Classification**

As stated in *CFJP-TV (TQS) re Été sensuel* (CBSC Decision 95/96-0233, August 14, 1998), pursuant to the CRTC's policy regarding a "Classification System for Violence in Television Programming" (Public Notice CRTC 1997-80, June 18, 1997), the CBSC is charged with acting "as an arbitrator in disputes regarding the classification of television programs."

In this case, the classification attributed by Showcase to the movie *Rats* was Parental Guidance or "PG". The content guidelines for this classification provide that, under the heading "Sex/Nudity", 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 next classification level above PG is "Over 14 Years" or 14+. Those content guidelines provide that the program "might include scenes of nudity and/or sexual activity within the context of narrative or theme". In the view of the Panel, the more appropriate classification, in light of the discussion above concerning scenes intended for adult audiences, was 14+. As the Prairie Regional Panel observed in *CHMI-TV re the movie Double Team* (CBSC Decision 99/00-0372, May 5, 2000),

the purpose of the 14+ rating, in the view of the Council, is to provide sufficient information for families that, despite its compatibility with a more mature audience, they may determine *for their own homes* that it may constitute suitable viewing for their older children.

The Panel also notes that the classification icon was only displayed at the beginning of the movie at 7 pm and was not shown again at the top of the next hour, contrary to the "Icon Use Protocols" set out by AGVOT which require that "For programs which run longer than one hour, the icon is to be repeated at the beginning of the second hour." The omission of the second display of the classification icon also constitutes a breach of Clause 4 of the *Violence Code*.

### **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, while it did comment on the movie in question, it did not address the *only* issue raised by the complainant, namely, the scheduling of the program. It would be beneficial for the continuing dialogue between broadcasters and members of the public to deal more fully and directly with the issues raised by concerned and serious complainants, even though the broadcaster is under no obligation to share their point of view regarding the program itself.

### **CONTENT OF THE ANNOUNCEMENT OF THE DECISION**

Showcase Television 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 during the time period in which *Rats* was originally broadcast; 2) within the fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the statement to the complainant who filed the Ruling Request; and 3) 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 Showcase.

The Canadian Broadcast Standards Council has found that Showcase Television breached provisions of the Canadian Association of Broadcasters' *Violence Code* in its broadcast of the feature film entitled *Rats* on July 29, 2000. In the Council's view, the movie contained scenes of sexuality intended for adult audiences. By broadcasting the movie in the early evening, at 7:00 p.m., rather than after the watershed hour of 9:00 p.m., and by failing to provide a viewer advisory focussed on sexual content at the start of the film as well as adequate viewer advisories following each commercial break, Showcase has breached both the scheduling and advisory requirements set out in Clauses 3 and 5 of the *Violence Code*. In addition, by failing to show the classification icon at the beginning of the second hour of the film, Showcase has breached Clause 4 of the *Violence Code*.

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



APPENDIX  
TO CBSC DECISION 99/00-0772  
**Showcase re the movie *Rats***

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## I. The Complaint

The following complaint dated August 9, 2000 was sent to the CRTC and forwarded to the CBSC in due course:

I am writing to lodge a complaint.

About 7:05 p.m. in the evening of Saturday, July 29, 2000, I turned on Showcase's TV Channel 39 to behold a man and woman in bed, woman on top and pumping to [the] beat [of] the band. The movie containing the scene was *Rats*.

I don't see the need for this kind of demonstration in any movie at any time, but particularly at 7 o'clock in the evening when my children are up and about.

## II. Broadcaster Response

The broadcaster responded to the complainant's letter on September 11, 2000 with the following:

We are in receipt of your letter to the CRTC, which was forwarded to us by the Canadian Broadcast Standards Council. We regret that you were offended by the film *Rats*. Given your concerns, I would like to take this opportunity to explain a little bit about Showcase's programming policy.

The decision to air *Rats* is consistent with Showcase's mandate to provide an alternative to other broadcasters' offerings. One way that we have achieved this distinction is to broadcast high-quality international drama series and world-class films in our movie slot called *The Showcase Revue*. *Rats* is a Canadian film, directed [by] Jacques Holender. The movie tells the story of a middle-aged filmmaker who becomes obsessed with making a documentary about the rats that have infested his home.

While Showcase is proud to broadcast a wide range of films, it is our policy to carefully consider each film that is aired on the network. Before we decide to broadcast a film, our Programming Department screens it to ensure that it is suitable for broadcast. The determination of suitability includes ensuring that the broadcast would not contravene the Canadian Association of Broadcasters' "Sex-Role Portrayal Code for Television and Radio Programming", the "Broadcast Code for Advertising Children" or the "Voluntary Code Regarding Violence in Television Programming."

In order to assist our viewers in making their viewing choices, we run a viewer advisory before such programs indicating whether they contain scenes of violence, nudity and/or

coarse language. If appropriate, a "viewer discretion is advised" advisory is shown not only before the broadcast begins, but also after commercial breaks. The following is the viewer advisory that ran at the beginning of and throughout the broadcast of *Rats*. "The following program contains scenes with nudity and coarse language. Viewer discretion is advised."

Thank you for taking the time to voice your opinion about the scheduling of this film. We appreciate feedback from our viewers and hope that this letter has addressed some of your concerns.

### **III. Additional Correspondence**

The complainant was unsatisfied with the broadcaster's response and sent the following letter dated September 27:

Thank you for your letter regarding my complaint about the scheduling of the film *Rats*.

Unfortunately, instead of responding clearly and directly to my concerns, your letter engages in what appear to be standard, legal-style statements. The question remains, why are any movies containing scenes like that in *Rats* being run at 7:00 p.m. in the evening when children, who cannot be supervised every minute by parents, are up and about and at the TV? Viewer discretion advisories are hardly an appropriate warning tool for children and do not justify thoughtless and irresponsible programming. Surely, there are non-offensive movies/programs that could be scheduled into the early evening time slots.