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

Bravo! re the film *The House of the Spirits*

(CBSC Decision 00/01-0738)

Decided January 16, 2002

R. Cohen (Chair), P. O'Neill (Vice-Chair), R. Cugini, E. Duffy-MacLean, H. Pawley

Since S. Crawford, who customarily sits on this Panel, is employed by the corporate group that also owns the broadcaster in question, she did not participate in the resolution of this matter.

THE FACTS

On March 2, 2001, beginning at 8:30 pm EST, the specialty service Bravo! ran the film *The House of the Spirits*, based on the book by Isabel Allende, which traces the turbulent life of a privileged family in South America. It should be noted that Bravo! is a specialty service that, like most other specialty services, has a single feed across the country. In their case, that broadcast feed originates in Toronto.

On the screener copy of the feature film viewed as a part of this adjudication, there was a viewer advisory, both oral and on-screen, which stated:

The following program contains violence, nudity and mature subject matter. Parental discretion is advised.

Since the copy was not a *logger* tape of the film as it was actually broadcast, there is no indication of the actual classification icon that was used. Based on the language of the complainant noted below, it would appear that 14+ was the rating chosen.

On March 5, a viewer sent a letter of complaint to the CRTC, which forwarded it to the CBSC in due course. That letter said in part (the full text of all of the correspondence is included in the Appendix):

It was a most inappropriate time slot for this movie. Opening with a somewhat brutal rape it continues with graphic sex scenes and a great deal of extremely disturbing brutality. This at a time when many young people are watching television.

While the rating sign appears in the upper left hand corner of the screen, a recent survey clearly showed that a preponderance of parents are unaware of its significance.

“Buttons” and rating signs only work in homes where there are concerned parents. I am sure you are well aware of that.

I have written to Bravo but ultimately the onus is upon a regulatory body, in this case the C.R.T.C. to make sure that the young are protected as much as possible from material unsuitable for their level of maturity. I would deem “The House of Spirits” a seventeen rating. Already the R label is, in many cases, inappropriate.

Having received the letter of complaint directly from the complainant prior to the involvement of either the CRTC or the CBSC, Bravo!’s Director of Programs and Acquisitions responded on March 21. Her letter said, in principal part,

“House of the Spirits” has won awards at various international festivals including Over All Concept; Individual Achievement; Best Film; Best Screenplay. Based on the well-known novel by Isabel Allende, it is a study of spirit, hope, and courage, a love story spanning three generations, dealing with mystic experiences, cruel ambition and selfless devotion, performed movingly by a stellar cast. While not easy material, and not to everyone’s taste, the graphic scenes are integral to the realization of the film and the meaningful adaptation of the book.

“House of the Spirits” was scheduled on a Friday, the regular evening that Bravo! has established over a period of time for “alternative cinema.” As an award-winning film of considerable critical merit, “House of the Spirits” is certainly an appropriate fit. We felt it was important to bring back a film of this quality to our viewers, provided we identified the nature of its content. “House of the Spirits” has played in the same timeslot previously, with no complaint. It was scheduled in the latest available start time in prime time, given the film’s long running time.

As a result of your complaint, we have reviewed the film, and acknowledge that unfortunately, the most graphic scenes occur early in the film, prior to the watershed hour of 9.00 p.m. in the province of origination. While we believe this is a quality film, we are sensitive to the fact that it may have caused some discomfort to viewers, and have decided to withdraw it from prime time broadcast in future. We thank you for bringing your concerns to our attention.

Responsible television is a partnership between broadcasters and parents. As responsible broadcasters, we can only do so much when scheduling material aimed at mature viewers. Appropriate scheduling ratings and advisories are designed as tools to aid parents in the monitoring of their children’s viewing. “House of the Spirits” carried the appropriate disclaimer about coarse language and nudity. As written notices, disclaimers provide further clarification for parents about the content of a program. In addition, we are now providing V-chip coding, to further assist parents in the selection of programs they consider suitable viewing for their children. An Arts channel like Bravo! can not, however, aim all its programming at a pre-adolescent level.

Once the CBSC became a party to the complaint, it wrote to Bravo! (as is the Council’s standard practice) to ask that the specialty service respond directly to the complainant. Bravo! did so on April 25 and the Director of Programs and Acquisitions said in part:

We do take viewers’ concerns seriously, and as my original formal response indicated, we have acted on your letter, and we are in agreement with you about the telecast, and will not telecast the film in an inappropriate time period again.

We operate within regulatory guidelines in terms of watershed hours and rating requirements. As responsible programmers of an arts channel, we try to maintain the balance between appropriate scheduling and artistic expression. We have very few complaints such as yours, and hope you will accept that “House of the Spirits” was an unfortunate situation.

The complainant sent the following note with her Ruling Request:

I believe I have already made my concerns re the appropriateness of the viewing time of “House of Spirits,” (8 p.m. March 2 of this year) quite clear. Whilst I am aware of its superior quality, its scenes of brutality and subsequent sex and nudity are not fit material for the young and impressionable, and sadly so many of them are glued, unsupervised, to this intrusive agent day and night.

As I have made clear with material sent to you, on/off buttons don’t work; little signs in the corner of the screen are ignored.

THE DECISION

The CBSC’s National Specialty Services Panel considered the complaint under the Canadian Association of Broadcasters’ (CAB) *Violence Code*. The relevant provisions of that Code read as follows:

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.

(Note: To accommodate the reality of time zone differences, and Canadian distant signal importation, these guidelines shall be applied to the time zone in which the signal originates.)

CAB Violence Code, Article 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.

CAB Violence Code, Article 7 (Violence Against Women)

- 7.2 Broadcasters shall ensure that women are not depicted as victims of violence unless the violence is integral to the story being told. Broadcasters shall be particularly sensitive not to perpetuate the link between women in a sexual context and women as victims of violence.

The National Panel Adjudicators viewed a screener tape of the program in question and reviewed all of the correspondence. For the reasons explained below, the Panel finds that the program was aired appropriately in terms of the scheduling requirements of Article 3 of the *Violence Code* and that there was no breach of any of the other of the foregoing provisions.

The Applicability of the Watershed

The applicability of the Watershed provision to all types of programming containing material intended for adult audiences (including nudity, coarse language and other such matter, as well as violence) has been dealt with so thoroughly that this Panel will not reiterate its reasoning here. It will merely refer to the review of its previous decisions in *WTN re Sunday Night Sex Show* (CBSC Decision 99/00-0672, January 31, 2001).

This is, however, the first opportunity for a CBSC Panel to consider whether a program beginning at an hour prior to the Watershed must respect the pre-Watershed content standards *only* for the portion of the broadcast that occurs prior to 9:00 pm or whether, by beginning at that early hour, it must respect the more stringent rules for the duration of the program. The Panel appreciates that the complainant has not focussed on this “technical” but extremely material issue. Her concern is rather with the content of the show; however, she has raised an important matter that the CBSC has not previously had occasion to review. The Council has not previously been called upon to adjudicate the status of a broadcast that straddled the Watershed hour, beginning before it and ending after it and containing, on either one side or the other of it, material intended for adult audiences that ought not to be shown in a pre-Watershed time period.

While, in the matter at hand, the complainant has focussed her attention more on the pre-Watershed material, the Panel considers that the entire film includes content of a more or less homogeneous nature. It, therefore, must consider whether the broadcaster would be “protected” by the Watershed principle if the scenes that might be considered to be exclusively adult-oriented only fell *after* the 9:00 pm limit. It concludes that this was not the intention of the codifiers and that the adoption of such a principle would create a serious blurring of the Watershed, which would be in the interests of neither the public nor the broadcasters. The codifiers chose a precise hour in the evening which seemed reasonable to the purpose. It was, so to speak, midway through the evening. It was, for most families, a time when parents would likely be home and the family dinner concluded. It was an hour that could even be reasonably understood to permit some family viewing time. It constituted a *divide*, providing some time before the late evening news when

parents might be able to see programming of a more adult nature without compromising their appropriate-for-the-family viewing time.

In such circumstances, the Panel considers that it would not be consistent with the foregoing intentions to permit a program containing adult material at any time in its broadcast to slide over the line, thus blurring that defined limit. Broadcasters have worked hard to inure audiences to appreciate the fact that programming broadcast after 9:00 *may* include material appropriate for adult audiences while that aired prior to that hour *will not* contain such content. It has indeed been beneficial for broadcasters to have a sense that they could be free to schedule material after 9:00 pm that was intended for a very significant part of their audience. Correspondingly, parents have become entitled to develop a sense of security regarding what they and their families may tune in before that hour. Once they have made their viewing choices on the assumption that the broadcaster's *pre-Watershed* programming is free of adult matter, the Panel considers that parents are entitled to maintain their confidence in the program they have selected without being shocked by an about-face in the content part way through *that* broadcast.

In the example at hand, *The House of the Spirits*, Bravo! selected 8:30 pm as the hour at which the feature film would begin. Those who chose to watch were entitled to expect that the movie would not contain adult-oriented matter either before the Watershed *or after it*. For reasons expressed more fully below on the subject of the content of the film, it is the view of the Panel that Bravo! has met its responsibilities in this respect throughout the broadcast (this despite the fact that one of the complainant's greatest concerns related to the "brutal rape" scene which was shown prior to 9:00 pm.).

Moreover, Bravo! has taken the step, as broadcasters often do, of acceding to the request of the viewer regarding the timing of future broadcasts of the film. It is a mark of the responsiveness of Bravo! to its audience that it has done so without any external compulsion. Even in circumstances where, as here, a program is *not* found to have exceeded the broadcasters' own common set of broadcast principles, its broadcaster may determine that its show would be better aired at an hour that might accommodate the tastes of some of its audience. It is to the credit of Bravo! that it has chosen to do so in this instance.

The Nature of the Content: Intended for Adults?

The scene which most disconcerted the complainant was the rape scene 18 minutes into the program. While, as CBSC Panels have previously acknowledged, all rapes are, by their nature, acts of violence, this alone does not make them unsusceptible of broadcast. In the challenged scene, which is very short and extremely material to the development of the plot of the Allende story, the viewer sees only the start of the assault by Esteban and the blank resigned stare on Pancha's face. Indeed, the scene is not at all explicit or graphic. It is, of course, suggestive but it is clear, on the basis of its brevity and detachment from explicitness, that, for the filmmakers, it

amounts to little more than a story point. While by definition, it is an act of violence, it is neither erotic nor graphic enough to constitute a scene reserved for broadcast during adult viewing time.

In dealing with rape in *CTV re Complex of Fear* (CBSC Decision 94/95-0022, August 18, 1995), the Ontario Regional Panel said

The Regional Council noted four rape scenes in the film. While any scene depicting rape is necessarily awful, the members remarked that no scene lasted more than several seconds, none depicted the actual rape, and none glamorized the rape. In fact, scenes following the rapes depicted the *consequences* of the rape: the shock and despair of the victims as they related the event to the police; the occasional refusal of police to accept the characterization of the event as a rape; victims' self-doubt as to blame for the occurrence; the imputed role of previous victim behaviour as a contributing factor; and so on.

In no way did these scenes encourage or glorify violence against women. While the film dealt with a form of crime that is defined by violence against women, the film itself did not depict gratuitous, or unnecessary, violence against women. In other words, the Council affirmed that a film *about* rape does not necessarily *condone* rape.

In a contrary circumstance, in *CHCH-TV re the movie Strange Days* (CBSC Decision 98/99-0043 and 0075, February 3, 1999), the same Panel drew a different conclusion regarding the rape in that film.

The one scene, though, which has most troubled the Council is the gruesome strangulation and rape of a woman which, in its length and graphic presentation, exceeded *in the television context* what may have been necessary to advance the plot. Whether the scene should have been as long (or longer) in the theatrical version is not at issue. For the television version, measured against industry Codes, it is the view of the Council that it could have been edited without sacrificing any artistic integrity, and ought to have been edited in order to be long enough to make its point but not so long as to amount to violence for violence's sake.

Apart from the rape scene, there is no other scene in the film that the Panel considers so extreme as to be classified as viewable *only by adult audiences*, the criterion which requires a post-Watershed broadcast. There are other scenes in the film that have a mature cast to them, such as the torture of Blanca and the whipping of Pedro, but the Panel finds these disturbing rather than graphic. In *CKCO-TV re Kazan* (CBSC Decision 96/97-0226, February 20, 1998), the Ontario Regional Panel had to deal with scenes of violence in a Sunday afternoon movie. It concluded that the film was appropriately scheduled prior to the Watershed.

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 the Panel's view, none of the scenes in this compelling story, *The House of the Spirits*, is intended exclusively for adult audiences. There is no breach of the Code associated with the content of the broadcast.

Logger Tapes and Screener Tapes: The Broadcaster's Obligations

The Panel had only a screener tape to review, thus depriving it of the ability to adequately assess whether the broadcaster had properly included viewer advisories and classification icons at the beginning of the film and coming out of each commercial break. While that point does not seem to be at issue for the complainant, who takes issue with the very relevance of advisories and icons, it is a question that would normally be considered by any CBSC Adjudicating Panel. In this case, due to what the Panel considers to be an inadvertent misunderstanding of the broadcaster's obligations to supply *logger* tapes, rather than screener tapes, of the challenged program, no such examination is possible. This was also the case in *Bravo! re the documentary film Give Me Your Soul* (CBSC Decision 00/01-1021, January 16, 2002) since the company policy regarding the supply of tapes was consistently in error. The CBSC has since received the broadcaster's assurance that the problem has been corrected for all future CBSC requests. In the *Give Me Your Soul* decision, this Panel described the problem in the following terms:

The obligation of all broadcasters is to supply the CBSC with logger tapes, when requested to retain programming upon receipt of a viewer complaint. In this case the broadcaster supplied screener tapes. The difference between the two relates to the obligation under Section 7(4)(a) of the *Specialty Services Regulations, 1990* (and all corresponding regulations for radio and television broadcasters) to "retain a clear and intelligible audiovisual recording of all of its programming [...] for a period of four weeks after the date of the distribution." That tape is a logger tape. It shows *everything* that has *actually* been broadcast, together with a time code indicating at precisely what hour, minute and second every element of the broadcast has occurred. It includes the programs themselves, as well as all interstitial elements, including advertisements, promos, viewer advisories, and such other elements as classification ratings. The screener tape is merely the record of the actual program which is then used for broadcast purposes. It does not show the entire program as actually aired. It is, so to speak, the *pre*-broadcast rather than the *post*-broadcast record. It is the logger tape which contains all the broadcast elements that the CBSC needs in order to adjudicate properly and it is, moreover, the logger tape that broadcast licensees are required by law and by condition of membership in the CBSC to retain.

The supply of a screener tape, technically speaking, constitutes a breach of CBSC requirements. In this case, however, upon inquiry, the Panel was informed that the broadcaster inadvertently supplied the incorrect version of the program and, as it happened, the supplementary information contained on the logger tape was not at issue on this occasion. The CBSC has also been advised that, in all matters arising hereinafter, Bravo! will be supplying logger tapes as required.

The error was clearly not intended to subvert the CBSC process. Moreover, it was not material to the complainant. In the circumstances, and on the assumption that the problem will not recur, the Panel finds no breach in this respect.

Viewer Advisories and Classification Icons

The Panel does consider it important to respond to the following statement by the complainant regarding classification icons, which is also pertinent to the question of viewer advisories:

While the rating sign appears in the upper left hand corner of the screen, a recent survey clearly showed that a preponderance of parents are unaware of its significance.

“Buttons” and rating signs only work in homes where there are concerned parents. I am sure you are well aware of that.

Even if the complainant is correct regarding *current* audience employment of, and appreciation of the importance of, these valuable viewing tools, the Panel does not accept that members of the audience ought to be relieved of their responsibility in becoming familiar with the tools and their use. The viewer aids have been established by broadcasters to improve the audience’s arsenal of information which will enable them to make *informed* choices regarding programming selection. Broadcasters now also encode programs with the required information for the operation of the V-chip in order to give audiences yet another opportunity to ensure that programming they may not wish to see can be avoided. It would not be reasonable to conclude that viewers should abdicate their responsibility to take the fullest advantage of these viewing aids. It may be a question of time and effective media education but it is a step that must be taken. Broadcasters still have their own obligations relating to the Watershed and other Code-related standards but viewers must play their role in the exercise of the viewing options that broadcasters have equipped them to undertake.

Broadcaster Responsiveness

There is a CBSC membership requirement that underscores the importance of the role of the broadcaster in dialoguing with the complainant. When an individual takes the time to put pen to paper or fingers to keyboard, the CBSC recognizes the effort and considers that it merits the time and thoughtfulness of a broadcaster in replying. In this case, the Director of Programs and Acquisitions of Bravo! has accomplished this particularly well, especially considering that the primary response was sent even before the CBSC had become involved and required that step.

This decision is a public document upon its release by the Canadian Broadcast Standards Council. It may be reported, announced or read by the station against which the complaint had originally

been made; however, in the case of a favourable decision, the station is under no obligation to announce the result.

APPENDIX

Complaint File 00/01-0738 Bravo! re the film *The House of the Spirits*

I. The Complaint

The following complaint of March 5, 2001 was sent to the CRTC and was forwarded to the CBSC:

To Whom it may concern,

On March 2nd "The House of Spirits" was shown on the network Bravo at 8.30 pm. It was a most inappropriate time slot for this movie. Opening with a somewhat brutal rape it continues with graphic sex scenes and a great deal of extremely disturbing brutality. This at a time when many young people are watching television.

While the rating sign appears in the upper left hand corner of the screen, a recent survey clearly showed that a preponderance of parents are unaware of its significance.

"Buttons" and rating signs only work in homes where there are concerned parents. I am sure you are well aware of that.

I have written to Bravo but ultimately the onus is upon a regulatory body, in this case the C.R.T.C. to make sure that the young are protected as much as possible from material unsuitable for their level of maturity. I would deem "The House of Spirits" a seventeen rating. Already the R label is, in many cases, inappropriate.

I feel the C.R.T.C. is not paying attention and is doing a very poor job, in fact you are irrelevant [*sic*], like so many government institutions.

Surely these enclosures make my point.

The complainant included newspaper clippings from various years with the following titles:

Rising concerns fail to curb violence on TV, study says

Sex and foul language up in prime time

Going soft on porn

The OFF button is not enough

TV, Internet filters unpopular

After 8 years, TV violence still shocks Virginie

II. Broadcaster Response

The complainant had contacted the broadcaster before filing a complaint with the CRTC (forwarded to the CBSC). Bravo!'s initial response from March 21, 2001 is as follows:

I am in receipt of your letter of complaint about our broadcast of the movie "House of the Spirits."

"House of the Spirits" has won awards at various international festivals including Over All Concept; Individual Achievement; Best Film; Best Screenplay. Based on the well-known novel by Isabel Allende, it is a study of spirit, hope, and courage, a love story spanning three generations, dealing with mystic experiences, cruel ambition and selfless devotion, performed movingly by a stellar cast. While not easy material, and not to everyone's taste, the graphic scenes are integral to the realization of the film and the meaningful adaptation of the book.

"House of the Spirits" was scheduled on a Friday, the regular evening that Bravo! has established over a period of time for "alternative cinema." As an award-winning film of considerable critical merit, "House of the Spirits" is certainly an appropriate fit. We felt it was important to bring back a film of this quality to our viewers, provided we identified the nature of its content. "House of the Spirits" has played in the same timeslot previously, with no complaint. It was scheduled in the latest available start time in prime time, given the film's long running time.

As a result of your complaint, we have reviewed the film, and acknowledge that unfortunately, the most graphic scenes occur early in the film, prior to the watershed hour of 9.00 p.m. in the province of origination. While we believe this is a quality film, we are sensitive to the fact that it may have caused some discomfort to viewers, and have decided to withdraw it from prime time broadcast in future. We thank you for bringing your concerns to our attention.

Responsible television is a partnership between broadcasters and parents. As responsible broadcasters, we can only do so much when scheduling material aimed at mature viewers. Appropriate scheduling ratings and advisories are designed as tools to aid parents in the monitoring of their children's viewing. "House of the Spirits" carried the appropriate disclaimer about coarse language and nudity. As written notices, disclaimers provide further clarification for parents about the content of a program. In addition, we are now providing V-chip codings, to further assist parents in the selection of programs they consider suitable viewing for their children. An Arts channel like Bravo! can not, however, aim all its programming at a pre-adolescent level.

We appreciate hearing from our viewers, and encourage them to contact us directly with their concerns, as we continue to strive to improve our service. Thank you again for your thoughtful letter.

The CBSC asked the broadcaster to respond to the letter of complaint that was sent to the CBSC. The broadcaster's response, dated April 25, 2001, is as follows:

Thank you for taking the time to respond to my letter about "House of the Spirits" and for sending the related cuttings about violence on television.

We do take viewers' concerns seriously, and as my original formal response indicated, we have acted on your letter, and we are in agreement with you about the telecast, and will not telecast the film in an inappropriate time period again.

We operate within regulatory guidelines in terms of watershed hours and rating requirements. As responsible programmers of an arts channel, we try to maintain the balance between appropriate scheduling and artistic expression. We have very few complaints such as yours, and hope you will accept that "House of the Spirits" was an unfortunate situation.

We appreciate having had the opportunity of a dialogue with you on the matter, as we strive to improve our service.

III. Additional Correspondence

On April 25, 2001, the complainant sent the CBSC her Ruling Request along with the following letter:

To Whom it may concern,

I believe I have already made my concerns re the appropriateness of the viewing time of "House of Spirits," (8 p.m. March 2 of this year) quite clear. Whilst I am aware of its superior quality, its scenes of brutality and subsequent sex and nudity are not fit material for the young and impressionable, and sadly so many of them are glued, unsupervised, to this intrusive agent day and night.

As I have made clear with material sent to you, on/off buttons don't work; little signs in the corner of the screen are ignored.

What is the answer? I don't know, but more vigilance and responsibility on the part of the CBSC is certainly needed.