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

The Comedy Network re an episode of *Gutterball Alley*

(CBSC Decision 01/02-0450 & 01/02-0481)

Decided September 13, 2002

R. Cohen (Chair), Sarah Crawford (Vice-Chair), R. Cugini, M. Hogarth,
H. Pawley

Since E. Duffy-MacLean, who customarily sits on this Panel, is employed by the corporate group that owns The Comedy Network, she did not participate in this decision.

THE FACTS

On January 22, 2002 at 9:30 pm, The Comedy Network broadcast an episode of its half-hour game show called *Gutterball Alley*, during the course of which contestants from the studio audience perform stunts or answer questions in order to win bowling balls that they then throw down a bowling alley to win cash prizes. The majority of the stunts and quizzes have a sexual aspect or component to them. For example, on the January 22 episode, in one game, the contestant had to watch video clips of pornographic movies and then guess what the actor's next line would be. (The f-word appeared in one of these clips and once more immediately beforehand.) In another, a male contestant had to taste a series of flavoured condoms, which had been placed over dildos, and guess what the flavour was. The stunts were also interspersed with comedy skits that also generally had sexual themes.

As well, at the end of this particular episode, members of the performance art troupe "Puppetry of the Penis" appeared as special guests and were incorporated into a game show stunt. Two men, wearing only capes, manipulated their penises and testicles into various shapes; the contestant had to guess what each form represented.

The program was preceded by a viewer advisory in audio and visual form, which stated:

The following program contains mature subject matter. Viewer discretion is advised.

Viewer advisories did not appear after any commercial breaks. A classification icon of 14+

appeared during the first 17 seconds of programming.

The CBSC received complaints from four individuals about this episode of *Gutterball Alley* (the full text of all correspondence can be found in the Appendix to this decision), two of whom returned their Ruling Requests. The first came from a viewer who characterized the program as “a disgusting display of pornographic, humiliating filth” (he made specific mention of the segments involving the condom tasting and the penis puppetry). He added: “I have an open mind and do not easily get unglued by television programming, but this filth goes way beyond the limit of artistic freedom.” He also stated his concern that children and young teens are watching television at that time of day.

The second complainant also referred to the program as “pornography”. She stated that she had only seen the last few moments of the program, but had been “shocked” to see “a close up of [a man’s] penis as he held his foreskin with his fingers and mimicked as if his penis were talking.” She was greatly concerned that such “sex, nudity and foul language” was coming into her home.

The Comedy Network’s Vice-President and General Manager sent responses to both complainants. He explained that The Comedy Network aims to “present a program schedule that is adult, irreverent and alternative to much of the mainstream comedy that is available on conventional broadcasters. As a consequence, our programming tends to be more risqué and controversial.” He went on to mention that the program was scheduled after the Watershed hour of 9:00 pm, included an advisory at the beginning alerting viewers to potentially offensive material and featured an “18+” classification icon. In addressing the complainants’ specific concerns about the penis puppetry, he wrote:

With regard to your specific concern, *Gutterball Alley* is known for its outrageous stunts and games. The segment that you saw was a portion of a performance from the play “Puppetry of the Penis.” The highly acclaimed production has toured the U.K., Australia, and North America – including Montreal and Toronto – and is currently playing in New York. Many international media sources have also had the group as guests. While we recognize that their humour is risqué, their performance has been met with wide popularity and positive reviews. Both the producer’s and the network’s decision to air it was based on this information.

In conclusion, he advised the complainants that The Comedy Network never intends to offend its audiences, but that it recognizes that “humour is subjective and what one person finds funny, another may not.”

Both complainants wrote back to the CBSC and requested that the matter be referred to the appropriate Adjudicating Panel. Both stated that an intention to be “risqué” and “irreverent”, as well as airing appropriate ratings and advisories were not justification for airing this type of “degrading” and “disrespectful” material, especially as young people may have access to it regardless of what time it is shown.

THE DECISION

The National Specialty Services Panel considered the complaint under the following provisions of the Canadian Association of Broadcasters' (CAB) *Voluntary Code Regarding Violence in Television Programming and Sex-Role Portrayal Code*:

CAB Sex-Role Portrayal Code, Article 4 (Exploitation):

Television and radio programming shall refrain from the exploitation of women, men and children. Negative or degrading comments on the role and nature of women, men or children in society shall be avoided. Modes of dress, camera focus on areas of the body and similar modes of portrayal should not be degrading to either sex. The sexualization of children through dress or behaviour is not acceptable.

CAB Violence Code, Article 4.0 (Classification System):

Exempt

Descriptive

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

Note: Exempt programming does not require an icon for on-screen ratings.

14+

Descriptive

Programming with this classification contains themes or content elements which might not be suitable for viewers under the age of 14. Parents are strongly cautioned to exercise discretion in permitting viewing by pre-teens and early teens without parent/guardian supervision, as programming with this classification could deal with mature themes and societal issues in a realistic fashion.

Content Guidelines

Language: could possibly include strong or frequent use of profanity

Sex/Nudity: might include scenes of nudity and/or sexual activity within the context of narrative or theme

18+

Descriptive

This classification applies to programming which could contain content elements that would make it unsuitable for viewers under the age of 18.

Content Guidelines

Language: might contain graphic language

Sex/Nudity: might contain explicit portrayals of sex and/or nudity

CAB Violence Code, Article 5.1 (Viewer Advisories):

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 last

evening hours which contains scenes of violence intended for adult audiences.

The National Specialty Service Panel Adjudicators viewed a tape of the program and reviewed all correspondence. The Panel concludes that there is no breach of Article 4 of the *CAB Sex-Role Portrayal Code* or the *CAB Violence Code*; however, it does find a breach of Article 5 of the *CAB Violence Code*, relating to viewer advisories.

Classification

As noted above, the broadcast included a 14+ icon; as also noted, the broadcaster's Vice President and General Manager replied to the complainants that the programming had included an 18+ advisory. Whether this was a simple error on the part of the broadcaster or evidence of the General Manager's belief that the show merited that extra precaution is not known to the Panel. In any event, it is the view of the Panel that *Gutterball Alley*, by its nature, is a variety type of program and, consequently, is exempt from the requirement to include an on-screen classification at all. The Panel particularly commends the broadcaster for including an icon despite the fact that it was not required to do so. As this Panel has stated in its decision of the same date in *Bravo! re the film Chippendales & the Ladies* (CBSC Decision 01/02-0379, September 13, 2002),

the Panel considers that the broadcaster's decision to include such information is thoughtful, helpful and praiseworthy. It inevitably assists viewers in making their television-watching choices. The Panel also considers that, had an icon been required, the 14+ choice would have been correct: "scenes of nudity and/or sexual activity within the context of narrative or theme" are permitted at this ratings level. Those boundaries were not exceeded.

The Panel wishes to suggest to all broadcasters that they adopt the practice of Bravo! applied in the case of *Chippendales & the Ladies*. Even where the content is such that the program would, according to the rules, fall into the exempt category, it would be a courtesy benefiting both the viewer and the broadcaster, whose interest is best served by ensuring that people who do not wish to see a genre of programming have the information to avoid it.

Consequently, there is no breach of the classification requirement of the *CAB Violence Code*. The Panel wishes to add, though, certain observations regarding the rating that was chosen in the light of the substantive expression of the complainants' concerns. First, a few words regarding the sexual commentary and double entendres. In the Panel's view, there is nothing in the sexual content of the episode of *Gutterball Alley* reviewed by it that exceeds the 14+ level; while there was sexual innuendo, at its most serious, or sexual silliness, at its least serious, there was no element of explicit portrayal of sexuality or nudity that would have elevated the program to an 18+ level. What depiction there was fell easily within the definition of "scenes of nudity and/or sexual activity within the context of narrative or theme." On the other hand, the presence of the f-word has, in other CBSC decisions, such as *Showcase Television re the movie Destiny to Order* (CBSC Decision 00/01-0715, January 16, 2002), qualified those programs as "intended for adult audiences." In that decision, this Panel found

it useful to observe that, were it called upon to characterize the severity and frequency of the

coarse words and expressions in *White Men Can't Jump* and *The Sopranos*, it would find that, in both cases, the language would be “intended for adult audiences” and entirely inappropriate for broadcast in a pre-Watershed context. Similarly, in *Destiny to Order* the Panel finds that the coarse language was “intended for adult audiences” and equally inappropriate for broadcast in a pre-Watershed context.

Similarly, in *WTN re the movie Wildcats* (CBSC Decision 00/01-0964, Decided January 16, 2002), this Panel decided that the “use of ‘fuck’ and ‘motherfucker’ in a dramatic film renders it programming ‘intended for adult audiences’.” The logical result of those rulings in the present file is that this episode of *Gutterball Alley* is intended for adult audiences, which would necessitate the application of the 18+ rating in circumstances in which a rating would be required. In other words, the use of “fuck” and derivatives qualifies as “graphic language” in the Content Guidelines of the AGVOT classification system.

Exploitation

The Panel understands that the purpose of the *CAB Sex-Role Portrayal Code* is generally to ensure the equality of the sexes on the airwaves and that, more specifically, the purpose of Article 4 of the Code is to ensure that there will be no *inequality* in the form of exploitation or degradation of either gender on the airwaves. The portrayal of the one sex vis-à-vis the other must be degrading or exploitative for such a conclusion to be drawn. The Panel does not find that the stunts and scenes in *Gutterball Alley* are degrading or exploitative of either gender.

Viewer Advisories

Although Article 5.0 concerning viewer advisories mentions violence only, it has long been CBSC practice to apply that provision to other types of content, such as nudity, sexuality and coarse language.

Viewer advisories differ slightly from classification issues. They are broader and more descriptive (and have, on the basis of CBSC decisions, been required in the case of programming including scenes of any type intended for adult audiences). They provide people with more than a single “catch-all” basket category for levels of coarse language, violence, nudity and sexual content. In descriptive words, they advise viewers of the kind of content they can anticipate encountering in a program about to be, or currently being, aired. In the matter at hand, the broadcaster is obliged to advise its audience of the coarse language in the program. It has done so only once, at the start of the program, and then only mentioned “mature subject matter”. There was no reference to coarse language at all, nor was there any subsequent viewer advisory coming out of the later commercial breaks. This amounts to a breach of Article 5.1 of the *Violence Code*.

Broadcaster Responsiveness

Broadcaster responsiveness is always an issue considered in CBSC adjudications. The CBSC considers that the dialogue between broadcasters and complainants is an extremely positive component of the self-regulatory process, to the point that it is in fact a membership responsibility of all CBSC broadcaster members; however, this assessment of the dialogue process does not affect the findings of CBSC Adjudicating Panels with respect to the actual content of the programming. In this case, the broadcaster responded to the complainant in a timely manner and adequately addressed the complainant's concerns, although the discrepancy between the rating applied to the program and referred to in the broadcaster's letter *may* suggest less care in reviewing the actual show than would have been helpful. The National Specialty Services Panel concludes that The Comedy Network has met its responsibilities of membership in this regard.

CONTENT OF BROADCASTER ANNOUNCEMENT OF THE DECISION

The Comedy Network 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 within seven days following the release of this decision during the time period in which the program *Gutterball Alley* was broadcast; 2) within the fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the statement to the complainants 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.

The Canadian Broadcast Standards Council has found that The Comedy Network has breached the provisions concerning the use of viewer advisories in the industry's *Violence Code*. The Council decided that the coarse language used in the episode of *Gutterball Alley* broadcast at 9:30 pm on January 22, 2002 necessitated viewer advisories. The Council concluded that, by failing to air any viewer advisories during the course of the program, alerting potential viewers to the coarse language in the program, The Comedy Network breached Article 5.1 of the *Violence Code*, which requires the use of viewer advisories following each commercial break during the program.

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

APPENDIX

CBSC File 01/02-0450 & -0481 The Comedy Network re an episode of *Gutterball Alley*

The Complaint

The CBSC received a total of four complaints about this episode of The Comedy Network's *Gutterball Alley*. Two correspondents requested that the matter be sent to a Panel for adjudication. The initial complaints from those two correspondents are found below:

Complaint #1

Cable Station: Comedy Network
Program: Gutter Ball [*sic*]
Time aired: Tuesday January 22, 2002 (evening)

I tuned into the Comedy network around 9:00 PM to what appeared to be a game show. What I witnessed was a disgusting display of pornographic, humiliating filth that was touted to be a game show in which the contestants had to perform ridiculous acts to win an opportunity to bowl for dollars. One contestant had to place various flavoured condoms, that were on 6 or 7 dildos, in his mouth to sample their flavour. This was done while one of the hosts held the dildo on his groin indicating his erect penis while the contestant put it in his mouth. This was to the great amusement of the audience.

Two other gentlemen stepped out of their seats with capes on while a contestant was asked to remove his shirt and stand before these two caped crusaders. When the capes were opened, both of the men were completely naked and began making artifacts with their penises. I mean they actually stood there on national television pulling and displaying their genitals to the laughter of a sick audience. This is at a time of the day when many young children and young teens are watching TV. What in the world has come over any regulatory board to allow such filth to be aired.

Complaint #2

On January 22, 2001 [*sic*] the program Gutterball [*sic*] on the comedy channel #34 offered by Shaw Cable systems in Kelowna, BC, Canada, which started at 10 p.m. had such a disgusting sight I decided to drop the channel amongst others that have disgusted our family. Sex, nudity and foul language seem to be tolerated and is coming into our home more frequently than it used to and I am shocked! I was channel surfing last night and came across the show Gutterball on its last few minutes of the program to see in horror a man wearing only a cape. Only a cape, which covered his back and sides and left his naked front exposed. Then there was a close up of his penis as he held his foreskin with his fingers and mimicked as if his penis were talking. (It's hard to describe). Like when you squeeze your bellybutton together and pretend it's a mouth and it's talking. He held his penis upright and you could see his testicles too. This is Pornography!!! He was on stage with four or five people crowded around him. I can't believe I'm even writing this down, never mind seeing it on tv. I'm sure your excuse for letting this come into our home has got something to do with

late night television!! How could you do this to us????

The first complainant sent a second e-mail on January 30 to the CBSC once he learned that the CRTC had forwarded his complaint to the CBSC:

To whom it may concern:

This is just a short note to follow up on a complaint I had originally made to one of your cable networks called the Comedy Network. Their response to my complaint was a courteous e-mail note saying they hope to win me back in the future.

I then sent a complaint to the CRTC who forwarded my complaint on to you. I cannot put enough emphasis on my disgust of this program called Gutter Ball [*sic*] that was aired by the Comedy Network. I have an open mind and do not easily get unglued by television programming, but this filth goes way beyond the limit of artistic freedom.

I understand that we are all in the business to make an income and improve profitability, but exposing your genitals and playing with them on public television is plain and simply sick.

They have dedicated pornographic channels for this. Try to imagine a child flipping to the Comedy Channel to see if something funny is on.

Do yourself a favour ... watch the program called Gutter Ball [*sic*] to hear the language and view the antics. Better still, watch the show aired on Tuesday January 22, 2002 (evening) in Dartmouth, Nova Scotia, to see for yourself.

Broadcaster Response

The Comedy Network's President and General Manager sent the same response to both complainants in March:

The Canadian Broadcast Standards Council (CBSC) has forwarded to us a copy of your electronic letter regarding the program "Gutterball Alley" which was broadcast on The Comedy Network at 9:30 p.m., on Tuesday, January 22, 2002.

From the beginning, The Comedy Network has set out to present a program schedule that is adult, irreverent and alternative to much of the mainstream comedy that is available on conventional broadcasters. As a consequence, our programming tends to be more risqué and controversial.

As you may be aware, 9:00 p.m. is generally accepted as the watershed in prime time where adult material appears. After 9:00 p.m., broadcasters may present programming which portrays adult situations and explicit language. Such programming usually includes an advisory at the beginning of the show which alerts audiences to material which may be offensive to some viewers. Such is the case with this program.

You may be interested to know that since September 29, 1997, all Canadian broadcasters adopted a comprehensive classification system to provide guidance to audiences regarding program content on such matters as violence, language, nudity, sexuality and/or mature

themes. All of our programs utilize this ratings system and specifically, after 9:00 p.m., a number of shows use the "18+" icon which advises viewers that the program may contain graphic language and elements intended for adult audiences. The "18+" icon was used on this program, in addition to our program disclaimer and voice-over advisory at the top of the show.

With regard to your specific concern, "Gutterball Alley" is known for its outrageous stunts and games. The segment that you saw was a portion of a performance from the play "Puppetry of the Penis." The highly acclaimed production has toured the U.K., Australia, and North America – including Montreal and Toronto – and is currently playing in New York. Many international media sources have also had the group as guests. While we recognize that their humour is risqué, their performance has been met with wide popularity and positive reviews. Both the producer's and the network's decision to air it was based on this information.

Having said that, please be assured that it is not our intention to offend our audiences. However, we also recognize that humour is subjective and what one person finds funny, another may not and, clearly, every television viewer is entitled to his or her opinion and choice.

In conclusion, we regret that this segment of "Gutterball Alley" offended you, but hope that you may find entertainment value in some of the other programs in our telecast schedule. We appreciate the time that you have taken to express your concerns.

Additional Correspondence

The first complainant sent the following e-mail to The Comedy Network and copied the CBSC on March 6:

Thank you for your reply to my complaint regarding one of your obviously popular and profitable shows 'Gutterball Alley'. I find it interesting when people defend this sort of behaviour by addressing all the moral issues and legal warnings that are in place when airing such productions. I have no doubt the audience for this sort of program are loyal and do enjoy its content as you went to great lengths to describe. As you point out, it is a popular show with an international following of over "+18" viewers.

I do appreciate that you abide by strict regulations that restrict this sort of show to be aired before 9:00 PM ... a truly [*sic*] noble gesture on the part of broadcasters worldwide. But it truly [*sic*] worries me that for every means of public degradation and human disrespect we have 'strict guidelines' to help all us other poor misguided fools understand that it's all legal and all those under 18 will head the warnings and only those over 18 will watch the show.

The destruction of the World Trade towers had a wide viewing audience and 'unbelievably' many cheered and celebrated the misery and pain of others. Does this mean that if 5 million Muslim viewers wanted this event aired over and over, it would be OK for some international organization to broadcast it for profit ... as long as they gave appropriate warnings and time restrictions?

What about child pornography ... it has a wide viewing audience of those who are loyal to its publication. Shouldn't we consider the potential profit this sort of show would bring in. After

all ... all we would have to do is give an advisory to the viewing audience (even an audio advisory for those who cannot hear).

Then of course there is always that "+18" symbol. Mr. Robinson, you are missing my point entirely. I have no doubt that there are loyal and dedicated viewers for the show Gutterball Alley, (even Gerry [*sic*] Springer had the same) but does all forms [*sic*] of dignity and human respect have to be sacrificed in the name of "art". Is this what they teach in broadcasting schools?

You know sir, this is the very first time in my life I have ever written a complaint such as this. I know why I did it, but it always blows me away to listen to those who justify 'trash' in the name of public interest.

I presently am a health professional involved with adult and pediatric cardiac surgery, who is well recognized in my field and have travelled to many international meetings presenting papers on various research and pertinent topics. I only tell you this because I come from a part of my city that the media routinely calls 'the ghettos, or the slums'. My sense of humour is perhaps better than most and I have seen things that perhaps many have not. I have no religious beliefs or political aspirations, and I smoke the occasional fine cigar with a good single malt scotch. But because of where I'm from and what I've accomplished I sleep well at night (albeit, only 4 or 5 hours).

Nobody has to tell you that your chosen profession has a tremendous impact on what people (of all ages) think and how they act in life. By airing such programs as Gutterball Alley, it merely supports those who dwell on stereotypical behaviour and disrespect of others. There is more to life than money, and profitability does not equal success. For decades I heard responses like yours about smoking tobacco from the executives of major (profitable) tobacco producers. Have you ever had a friend or relative die of lung cancer or suffer from lung disease?

Unfortunately, to change things it takes loud, vocal complaints from people like me, and vision from people like you ... it's too bad you are caught up in such popular words as risqué, controversial, watershed prime time, irreverent and alternative. At this point in North America it's not that you are pertinent, interesting, educational, funny, unique or inspirational ... it's just that you are daring, marketable, a curiosity and profitable.

Indeed, adult viewing ... that's like saying children's programming (as if adults didn't watch the latter).

Sit down with your children, or a group of junior high teens and ask them what they think of a program called "Puppetry of the Penis." Get real. I appreciate the time you have taken to express your points on public viewing.

The second complainant sent the CBSC the following e-mail on March 26:

Dear CBSC

My comments on this letter from The Comedy Network:

The Comedy Network intends the program "Gutterball Alley" to be "adult" and they also intend it to be "risqué and controversial" and it airs during "prime time" and it includes an "advisory".

I find it interesting and hard to believe the performance has won awards for this pornographic "Penis Puppetry". And I find it hard to believe that it's a "Highly Acclaimed Production" and is actually touring the World. And I find it hard to believe that the performance has been met with "wide popularity and positive reviews". All which is the basis of their decision to air it. I'm sure that The Comedy Network never intends to offend anyone. But I bet they have offended many more than I. And it's nice to hear that they recognize that I am entitled to my opinion and choice and that they appreciate the time I have taken to express my concerns. So big deal.

I have expressed my concerns and now what? Are these standards accepted by the CBSC now? Who has made the decision to allow pornography on television? Are there not laws against pornography? Does anybody at all see that it is pornography? The Comedy Network calls it puppetry. I say he was fondling himself. He was playing with his penis. It was rude and it was gross.

So it has been pushed to a time where children are unlikely to see it. But I don't want to see it either! I was channel surfing as many people do that have remote controls and accidentally happened upon it. Saying I don't have to tune in to the show and putting advisories before the show did not prevent me from seeing it and will not prevent a child from seeing it. I am so tired of seeing sex all over the television. I have cancelled most of my cable channels including The Comedy Network. It upsets me because I like watching television less and less because of the low standards that you set.