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

Showcase Television re an episode of *Queer as Folk* (Episode #209)

(CBSC Decision 01/02-0759)

Decided February 28, 2003

R. Cohen (Chair), R. Deverell, E. Duffy-MacLean, M. Harris, M. Hogarth
and C. Murray

THE FACTS

On March 18, 2002, specialty service Showcase Television broadcast an episode of its weekly dramatic series *Queer as Folk*, which follows the lives of a group of gay men and women living in Pittsburgh. Showcase broadcasts the series at 10:00 pm on Thursdays (and 11:00 pm on Wednesdays) with an 18+ rating.

There were three storylines involving returning characters in the March 18 episode. In one, Ted, who had taken Viagra, found that he was then unable to lose his erection for an extended period of time. The second involved Brian attempting to cope with his strained relationship with his mother. The third dealt with Michael's attempt at reconciliation with an ex-boyfriend. The episode included a number of scenes of sexual activity, explicit conversations about sex, as well as some instances of coarse language. The episode was preceded by a viewer advisory in audio and visual format:

The following program contains nudity, sexuality and coarse language. Viewer discretion is advised.

Coming out of each of the commercial breaks, an advisory, broadcast in audio format only, stated "We now return to *Queer as Folk*. Viewer discretion is advised."

A viewer sent a complaint dated April 16 to the CRTC, which forwarded it to the CBSC in due course (the full text of that letter and all other relevant

correspondence can be found in the Appendix to this decision). The viewer stated his concern about the “graphic homosexual pornography and vulgar language” in the March 18 episode of *Queer as Folk*. He also stated his objection to the fact that Showcase Television, a specialty service, comes bundled with other channels in his satellite distribution service without his being aware or notified in any way that the service carries this type of content. He suggested that “children and babysitters will be going through the channels and coming across content which homeowners had no idea was on their television channels.”

Showcase responded to the complainant on May 7. The service explained its programming mandate to “offer an alternative to other broadcasters’ offerings” by broadcasting “high-quality international drama series and world-class films.” It noted that *Queer as Folk* has received critical acclaim for providing a realistic look at gay life. It acknowledged that “certain sex scenes may [cause] grave concern,” but pointed out that the scenes depict consensual sex and are relevant to the storyline. Showcase emphasized that it broadcasts this program after the “Watershed” hour of 9:00 pm, assigns it an 18+ rating and provides a viewer advisory. In response to the complainant’s concerns about his satellite channel package, Showcase explained that it is the distribution companies, not the broadcasters, that determine which services will be packaged together.

On May 8, the complainant requested that the matter be referred to National Specialty Services Panel for adjudication.

THE DECISION

The National Specialty Services Panel examined the complaint under the Canadian Association of Broadcasters’ (CAB) *Sex-Role Portrayal Code* and *Voluntary Code Regarding Violence in Television Programming*. The relevant provisions of those Codes read as follows:

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

The National Specialty Services Panel reviewed all of the correspondence and viewed a tape of the episode in question. The Panel finds no breach of the *CAB Sex-Role Portrayal Code*, but does find Showcase's provision of viewer advisories in violation of Article 5.1 of the *CAB Violence Code*.

A Preliminary Matter: The Treatment of This Complaint

As noted above, the complainant requested on May 8 that the CBSC adjudicate his complaint. Due to an administrative error of the CBSC Secretariat, this file was inadvertently not considered at a meeting of the National Specialty Services Panel that was held on September 13, which adjudicated a complaint about a different episode of *Queer as Folk* (that of November 12, 2001). The decision concerning the earlier episode was publicly released on November 4, 2002, obviously long after the broadcast of the episode being dealt with in this decision.

In its review of the complaint and the episode at hand, the CBSC Secretariat had determined that no new issues (new, that is, vis-à-vis those treated in the September 13 *Queer as Folk* decision) had arisen. Accordingly, the Secretariat sent the complainant in this file a copy of that decision with an explanatory letter on November 6. He wrote back to the CBSC on December 9 requesting that his specific complaint be examined by the National Specialty Services Panel since he was "particularly concerned with the fact that the warning of adult content before the show and after each commercial breaks [*sic*] were not identical to the September 13, 2002 decision which you have ruled on."

The CBSC agreed to adjudicate his complaint through the normal CBSC process and the result is the present decision.

The Program's Sexual Content

After reviewing the March 18, 2002 episode, the National Specialty Services Panel does not believe that any new programming considerations arise that it did not address in the first *Queer as Folk* decision. Both episodes included scenes of sexual activity and discussions about sex using explicit language. In the earlier decision, namely, *Showcase Television re an episode of Queer of Folk* (CBSC Decision 01/02-0217, September 13, 2002), this Panel addressed the complainant's concerns about the program's sexual content in the following terms:

The National Specialty Services Panel acknowledges that there is significant sexual content in the challenged episode of *Queer as Folk*, which is more than merely suggestive. It further acknowledges that the sexual content in question is intended for adult audiences. Although undeniably present, such sexual content

is not in violation of any codified standards when played after the Watershed hour. As the National Conventional Television Panel explained in *CTV re W-Five (Swingers)* (CBSC Decision 99/00-0347, February 14, 2001) (which dealt with the subject of swinging, that is, the exchange of sexual partners):

It is the experience of the CBSC that programs dealing with such an overtly sexual subject sometimes lead to some sensitivity of reaction on the part of the viewing audience. This does not, of course, mean that the broadcaster ought not to air such a program. As the broadcaster correctly points out, the *Broadcasting Act* itself provides, in Section 3(1)(i), that

the programming provided by the Canadian broadcasting system should

(iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern.

To this the Panel would add that Section 3(1)(i) also provides that

the programming provided by the Canadian broadcasting system should

(i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes

Nor does the Panel consider that the sexual content is at all exploitative, in terms of Article 4 of the *Sex-Role Portrayal Code*. In any event, the complainant's concerns lay with sexual explicitness rather than with gender representation. That is fair enough. There was, however, nothing in the content that violated any Code provision such that the program ought not to have been accessible for those persons who might have wished to see it. That, indeed, is the reason for which audiences are entitled to have sufficient information about program content to enable them to exercise a knowledgeable viewing decision.

While the Panel is unsure whether the complainant in the matter at hand is more concerned with the *graphic* nature of the sexual content or the *homosexual* nature of it (his expression was "graphic homosexual pornography"), it wishes to make plain its view that the only issue for the CBSC is the graphic aspect of the scenes. The Panel does not support any differentiation between homosexual and heterosexual sexual activity; its concern is solely the appropriateness of the *level* of activity, not the gender of the participants, in terms of the time at which the programming is shown and the information provided to the potential audience. As to the level of activity, it adopts its conclusions regarding content in the first *Queer as Folk* decision in the matter at hand.

Viewer Advisories

It ought to first be noted that, although Article 5.1 of the *CAB Violence Code* makes mentions of violence only, it has long been established by the CBSC that the requirements of that provision apply equally to other types of adult-oriented content, such as sexuality and coarse language.

The issue of viewer advisories in the matter at hand, like the issue of sexual content, is similar to the previous *Queer as Folk* decision. Contrary to the complainant's assertion that "the warning of adult content before the show and after each commercial breaks [sic] were not identical to the September 13, 2002 decision," the wording and format of the viewer advisories provided at the beginning and coming out of all commercial breaks in both episodes were identical. The sole difference in the provision of advisories was the number of them. In the *Queer as Folk* episode which was the subject of the first decision, the detailed audio and visual advisory was broadcast at the beginning of the program, while the shorter audio-only advisory was provided only after the second commercial break. In the March 18 episode in question here, the audio-only advisory was broadcast coming out of all three commercial breaks.

In the first *Queer as Folk* decision, Showcase was found in violation of Article 5.1 of the *CAB Violence Code* both for the inadequate number of viewer advisories, as well as for their format and the information provided in those advisories following the commercial breaks. In that case, this Panel stated

Showcase has failed to provide advisories coming out of every commercial break. Moreover, in the case of the second commercial break, the advisory was in audio format only; it also provided no information to the audience about the reason for which the program required a viewer advisory. The second advisory consisted of only a reminder of the name of the program and the general statement that "viewer discretion is advised". It did not reiterate the informative statements associated with the initial advisory as to the sexuality, coarse language and mature content. Both failures constitute breaches of Article 5.1 of the *CAB Violence Code*.

In the case of the March 18 episode, Showcase is not at fault with respect to the number of advisories provided. The Panel does, however, find Showcase in breach for its provision of audio-only advisories coming out of commercial breaks. As this Panel ruled in *Showcase Television re the movie Rats* (CBSC Decision 99/00-0772, August 23, 2001), the broadcast of an advisory in audio-only format was insufficient because

this warning in audio format only is of no assistance to the hearing impaired or to those who may be glancing at their television sets at a distance or with the volume turned down or otherwise rely on visuals only to determine the viewing choices for their household.

It also finds Showcase in breach for its failure to offer more specific information about the content of the program in those advisories. “Viewer discretion is advised” tells the audience nothing material about the program content. It does not differentiate, to its own disadvantage, between those who cannot tolerate, say, violent content but have no difficulty in accepting mature sexual content on their television screens. The purpose of advisories is to *inform*. The content-devoid four-word alert does not do that. It does not fulfill the needs of the viewer. It does not meet the basic requirements of Article 5.1.

Distribution of Services

A large portion of the complainant’s original letter outlined his objection to the lack of information provided to customers when choosing their television service provider and channels. He stated that Showcase comes bundled with other channels “without any notification that Showcase carries graphic, homosexual, vulgar language and pornography.” The Panel finds this perspective to be exaggerated and unjustified and the use of the word “pornography” in association with Showcase or the series *Queer as Folk* utterly inappropriate. With respect to the other elements of the complainant’s statement, the Panel notes that many services, stations and networks, whether specialized or conventional, broadcast some part of their programming schedule with mature elements including adult themes, coarse language, nudity, sexuality or violence. It can hardly be said of Showcase that its schedule is dominated by such programming.

In any event, as a general rule, in order to help viewers decide what they wish to see and what they would prefer to avoid, all private broadcasters provide tools and information that permit viewers to make informed choices. These include the implementation of the Watershed hour of 9:00 pm, before which no adult programming can be broadcast. Even after that hour, broadcasters provide on-screen ratings icons and viewer advisories, as well as the program encoding that is compatible with the use of the V-Chip, which has been built into all television sets sold in Canada for several years. Moreover, both digital cable and DTH satellite services permit the blocking of entire channels via their decoding boxes.

As to the bundling issue itself, Showcase correctly indicated in its response letter that a broadcaster “does not have any control over which channels are packaged together – this decision is made by individual cable providers.” In the light of the audience tools and information described above, families do, in any case, have sufficient opportunity to avoid programming they do not wish to see. The overall richness and variety of programming provided by general and niche broadcasters is entirely in keeping with the principle in the *Broadcasting Act* that programming provided by the overall broadcasting system “should be varied and comprehensive, providing a balance of information, enlightenment and entertainment *for men, women and children of all ages, interests and tastes*. [Emphasis added.]” That goal can only be achieved by the recognition and acknowledgment that having “different strokes for different folks” is fair, positive

and beneficial provided that it meets the codified standards and that those folks have the opportunity to make informed viewing choices.

ANNOUNCEMENT OF THE DECISION

When the CBSC receives multiple complaints of a similar nature about one program or series, it is customary procedure to address all complaints in the text of a single decision. In this case, it was an administrative error that prevented the March 18, 2002 episode of *Queer of Folk* from being treated at the same time as that of November 12, 2001. Both complaints, and now both decisions, dealt with the same issues, namely, the sexual content and the provision of viewer advisories. In accordance with the requirements of the first *Queer as Folk* decision, Showcase announced that it had breached Article 5.1 of the *CAB Violence Code* in its broadcast of the program on November 12. Since the National Specialty Services Panel comes to the same conclusion with respect to the currently challenged broadcast and since the broadcaster had no opportunity to modify its viewer advisory policies for this broadcast *following* the first decision, it finds that there is no need to repeat a similar announcement with respect to this decision. It is expected, however, that Showcase Television has had the opportunity to sort out the viewer advisory issues and will succeed in avoiding any further breaches of this nature in future broadcasts.

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

APPENDIX

CBSC File 01/02-0759

Showcase Television re an episode of *Queer as Folk* (Episode #209)

The Complaint

The following complaint dated April 16, 2002 was sent to the CRTC and forwarded to the CBSC in due course:

RE: Homosexual Pornography on Showcase Channel

I am writing to complain about the graphic homosexual pornography and vulgar language which is contained on the Showcase channel, one show in particular titled "Queer as Folk", specifically the broadcast on Monday, March 18, 2002 at 11:00 p.m.

My objection is that the Showcase channel comes bundled with other channels on satellite, therefore, there is no option whether or not this channel is received. This lack of informed consent is particularly problematic given that there is no notification that Showcase carries graphic homosexual, vulgar language and pornography that is being brought into people's homes without their full knowledge and consent.

As a lawyer it is the lack of informed consent to this content which is particularly insidious within the broadcast industry.

Children and babysitters will be going through the channels and coming across content which homeowners had no idea was on their television channels.

In our view, Showcase channel should have to have an explicit warning and information as to what exactly is on this channel before customers unwittingly purchase this homosexual pornography.

We look forward to your response as to what is going to be done about this problem.

Broadcaster Response

The broadcaster responded to the complainant's letter on May 7 with the following:

Showcase appreciates and considers all viewer feedback and we thank you for taking the time to express your concerns about our programming. We regret that you were offended by Showcase's broadcast of the series *Queer as Folk* on March 18.

I would like to take this opportunity to explain Showcase's programming policy. It is our programming mandate at Showcase to offer 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. The decision to air *Queer as Folk* is consistent with

Showcase's mandate to be the number one destination for critically-acclaimed programming from around the world.

Queer as Folk, a drama based on Britain's provocative series of the same name, depicts the lives of a group of gay men and women living in Pittsburg, Pennsylvania. The series has garnered significant critical acclaim in North America for its brave, realistic, funny and sometimes graphic slice of gay life, focusing on the relationships, careers, loves and ambitions of the characters. The Washington Post TV critic Tom Shales selected *Queer as Folk* as one of the year's Top 10 television programs, citing "it gets points just for its courage in presenting a totally unapologetic portrait of part of the homosexual subculture."

We understand that certain sex scenes may have caused you grave concern. Our view is that these scenes must be viewed within the context of the program as a whole. The sex scenes depicted in *Queer as Folk* are consensual and are essential to the story line. They help define the emotional relationships of the characters and their experiences.

Queer as Folk is intended for adult audiences only and Showcase has taken steps to broadcast this series responsibly. Before we decide to broadcast a program, 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 applicable broadcast laws and industry codes including, but not limited to, the Canadian Association of Broadcasters (CAB) "Code of Ethics", the CAB "Sex-Role Portrayal Code for Television and Radio Programming", and the "Voluntary Code Regarding Violence in Television Programming".

We are also concerned with the content of shows broadcast during hours when children may be watching. As required by the Voluntary Code Regarding Violence in Television Programming, Showcase is sensitive to the scheduling of programs with violent and other adult-oriented content. Such programming may not be aired prior to 9 p.m. However, in the case of *Queer as Folk*, it was decided that an even later viewing time (10 p.m.) would be appropriate so as to lower the likelihood of younger viewers inadvertently seeing the program. Because Showcase has both an Eastern and a Pacific feed, *Queer as Folk* does not air prior to 10 p.m. in any part of the country, and in some provinces airs as late as 12 a.m.

In addition, Showcase also complies with the new program classification system developed by the Action Group on Violence on Television to give Canadian parents the most advanced control system in the world. This six-level rating system is used to classify any levels of violence, language or sex/nudity in all drama, feature film and children's programming broadcast in Canada. The "18+" icon is shown during our broadcast of *Queer as Folk* to warn parents that this film contains themes or content elements which might not be suitable for viewers under the age of eighteen. This classification allows parents to use V-chip technology to screen out programs with mature subject matter, such as *Queer as Folk*, that they do not wish their children to watch. For more information about this technology, please visit www.vchipcanada.ca.

Finally, 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. In this instance a viewer advisory warning of scenes with violence, nudity and coarse language is before the broadcast of *Queer as Folk* and after each commercial break.

It is certainly not our intention to offend our viewers but to introduce them to the wealth of quality, unique drama from Canada and around the world. We realize this series is not suitable to everyone's tastes but we do want to provide viewers with the option to look at alternative lifestyles and stories. We have tried to construct the Showcase schedule to

deliver something for everyone, and to permit viewers to make their choices on an informed basis.

In your letter, you also mention that you are not happy with the channels that are included in your cable package. Showcase does not have any control over which channels are packaged together – this decision is made by individual cable providers.

Thank you for taking the time to voice your opinion. We do appreciate feedback and hope that this letter has addressed your concerns.

The complainant returned his signed Ruling Request form dated May 8.

Additional Correspondence

Due to an administrative error, this particular episode of *Queer as Folk* was not included in the adjudication material for the September 13, 2002 meeting of the National Specialty Services Panel at which another episode of the same program was examined. The complainant was, however, sent a copy of the *Queer as Folk* decision with the following cover letter on November 6:

Please find enclosed a copy of the CBSC's decision *Showcase re an episode of Queer as Folk* (CBSC Decision 01/02-0217, September 13, 2002) which was made public on November 4, 2002.

Although the episode discussed in the decision is not the episode that you had mentioned in your complaint, the CBSC Secretariat has viewed the March 18, 2002 episode and determined that that episode did not raise any additional issues from those examined in the enclosed decision.

If, in the future, you have seen or heard something on a CBSC member station that concerns you, please do not hesitate to contact us. We will then gladly handle your complaint.

The complainant responded to that letter on December 9 with the following request:

Further to your letter of November 6, 2002 enclosing a copy of CBSC's decision on Showcase re an episode of *Queer as Folk*.

Please be advised that in my view you have not fulfilled your responsibilities as the Canadian Broadcast Standards Council in suggesting that because you have reviewed *Queer as Folk* on September 13, 2002, that somehow applies to the episode which I complained of which was on March 18, 2002.

The CBSC Secretariat cannot unilaterally ignore the function of the Council which has an obligation to pursue my appeal. To do so is a derogation of the Council's duty and an overstepping of the Secretariat's duty.

I am particularly concerned with the fact that the warning of adult content before the show and after each commercial breaks [*sic*] were not identical to the September 13, 2002 decision which you have ruled on.

I am entitled to have a ruling on the March 18, 2002 decision and the Council should undertake it's [*sic*] duty in that regard. Failure to do so would likely be of interest to the media with respect to how the Council is in derogation of its duties with respect to investigating one show and then suggesting all shows are all the same and nothing new arises based upon one person's decision.

Pursuant to that letter the CBSC Secretariat informed the complainant that the episode in question would be reviewed at the next Specialty Services Panel meeting.