CANADIAN BROADCAST STANDARDS COUNCIL
QUEBEC REGIONAL PANEL

Canal D re *Festival Juste pour rire* and
Comicographies Juste pour rire: François Morency

(CBSC Decision 02/03-0142 & -0143)

Decided July 17, 2003

R. Cohen (*ad hoc*), B. Guérin, G. Moisan, R. Parent and P. Tancred

T. Rajan, who participated in other decisions taken on this date, did not participate in this adjudication since the programs in question received funding from the organization at which she is employed.

THE FACTS

During the month of September 2002, the specialty service Canal D broadcast two *Juste pour rire* programs from 12:00 to 1:00 pm. On September 15 it broadcast *Comicographies Juste pour rire: François Morency*, a humorous biographical documentary about the life and career of comedian François Morency. The program included interviews with Morency and clips of his performances. Some of Morency's jokes had a sexual element to them and/or contained offensive language (a number of these can be found in Appendix A, available in French only). For example, in one scene Morency informed the night club audience that his performance was not being broadcast live and, therefore, he could say whatever he wanted and it would be edited out later. He then pretended to take advantage of the situation by singing a little song composed of nothing but swear words. Among other jokes with a sexual theme, Morency made the following remarks in a scene in the last half of the documentary:

> [translation] That grosses me out. Just thinking about ... kissing a guy. Ugh! Y'know, or ... having a penis in your mouth. Argh! But I don't want to knock the girls who do that. Don't stop, it's much appreciated.

The other program at issue in this decision was an episode of *Festival Juste pour rire* broadcast on September 29. That program featured a series of stand-up comedy

routines from the gala performances at the Montreal Just for Laughs comedy festival. It was the routine by Maxim Martin towards the end of the program that concerned the complainant. Martin based his act on the controversial question of whether comedians push the envelope too far in their comments. Many of his jokes involved sexual subjects. Some of the key portions of his act are as follows (the full transcript of his routine can be found in Appendix A, available in French only):

> [translation] Comedians go too far. Stop the hypocrisy. I have seen on the front page of *Elle Québec* "Are the calories found in sperm making you fat?" And you really thought that I wouldn't talk about it? Y'know ... first of all, if you're getting fat from the sperm that you're consuming, the problem is maybe not the calories. I think I can use the word "slut" here, eh? Welcome light sperm, eh. Fat-free sperm for the whore who's watching her weight.
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> Tell me, what is more vulgar: a comedian who tells a joke about the fact that Bill Clinton had fun with a cigar on Monica Lewinsky or Pierre Bruneau who talks about it for a year and a half on the news? It wasn't a comedian that invented the fact that she was being masturbated with a Cohiba. Someone else told us about it. Except obviously all the comedians reacted the same way when they heard it on TV: We went "Wow, cigar in the vagina. There are jokes in that. Heh heh heh."

A viewer wrote on October 4 to complain about both programs (the full text of all correspondence can be found in Appendix B, available in French only). He specifically highlighted Morency's joke about "a penis in one's mouth" and Martin's sperm gag, complaining that "[translation] these types of comments have no place on television, and especially not at an hour when young people are watching."

Canal D responded to the complainant on November 7. They agreed that the two programs contained references to sexuality that may not be suitable for all audience members and assured the complainant that a viewer advisory would accompany all future broadcasts of those episodes.

The complainant filed his Ruling Request form on November 21.

THE DECISION

The CBSC Quebec Regional Panel examined the complaint under the scheduling and viewer advisory provisions of the Canadian Association of Broadcasters' (CAB) *Code of Ethics*. Those provisions read as follows:

CAB Code of Ethics, Clause 10 – Television Broadcasting

Scheduling

(a) Programming which contains sexually explicit material or coarse or offensive language intended for adult audiences shall not be telecast before the late viewing period, defined as 9 pm to 6 am. Broadcasters shall refer to the *Voluntary Code Regarding Violence in Television Programming* for provisions relating to the scheduling of programming containing depictions of violence.

(b) Recognizing that there are older children watching television after 9 pm, broadcasters shall adhere to the provisions of Clause 11 below (viewer advisories), enabling viewers to make an informed decision as to the suitability of the programming for themselves and their family members.

CAB Code of Ethics, Clause 11 – Viewer Advisories

To assist consumers in making their viewing choices, when programming includes mature subject matter or scenes with nudity, sexually explicit material, coarse or offensive language, or other material susceptible of offending viewers, broadcasters shall provide a viewer advisory

(a) at the beginning of, and after every commercial break during the first hour of programming telecast in late viewing hours which contains such material which is intended for adult audiences, or

(b) at the beginning of, and after every commercial break during programming telecast outside of late viewing hours which contains such material which is not suitable for children.

The Panel also considered the broadcaster's obligation to retain and supply logger tapes pursuant to the combination of the CRTC's and the CBSC's requirements, which may be summarized as follows. Broadcasters are required by CRTC Regulation to retain logger tapes of their programming for 28 days. By virtue of their membership in the CBSC, they are further required, when advised by the CBSC Secretariat pursuant to a complaint, to safeguard the relevant logger tapes for such longer periods as the Secretariat considers necessary and, when requested, to remit the required number of dubbed copies of these tapes to the CBSC.

The Quebec Regional Panel concludes that Canal D breached Clause 10(a) for broadcasting the September 29 episode of *Festival Juste pour rire* before 9:00 pm, but did not violate that clause in the case of *Comicographies*; however, Canal D also breached Clause 11 for failing to put viewer advisories on either program.

Content Categories

The combined effect of the scheduling and viewer advisory provisions of the *CAB Code of Ethics* is essentially the creation of three categories of programming. The first is programming which contains elements of sexually explicit material or language that are intended exclusively for adult audiences. Such programs may only be broadcast after the Watershed hour of 9:00 pm and must be accompanied by viewer advisories throughout the first hour. The second category is programming that may be aired before 9:00 pm, but contains certain elements that may be unsuitable for children under 12. This type of programming must be accompanied by viewer advisories throughout the entire broadcast when it is shown prior to 9:00 pm. The third type is programming which is not unsuitable for any audience members. Such programming may be aired at any time of day without viewer advisories. The question for the Quebec Panel is to determine into which category each of the episodes falls.

A Preliminary Issue: The Provision of Tapes

Canal D, through its parent company Astral, provided screener tapes rather than logger tapes for the purposes of this adjudication. In another decision of even date, namely, *VRAK.TV re Charmed ("Histoire de fantôme chinois")* (CBSC Decision 02/03-0365, July 17, 2003), that specialty service, which, like Canal D, is part of the same ownership structure (Astral Broadcasting Group Inc.), also provided screener tapes rather than those required for CBSC adjudication purposes. Among other things, official logger tapes, which are the formal and *precise* record of what was actually broadcast, would have provided information on the inclusion of viewer advisories. In this case, unlike that of VRAK.TV, Canal D's written response implies that viewer advisories were not present on either of the programs, since the broadcaster indicated that "[translation] a viewer advisory will be incorporated into any future broadcast." As these facts are uncontested, the Quebec Panel is able to address it. That being said, the Panel can do no better than to cite its conclusions in the VRAK.TV case.

> The CBSC has encountered this situation, namely, the inadvertent delivery of screener tapes, rather than logger tapes, in the past. In both *Bravo! re the documentary film Give Me Your Soul* (CBSC Decision 00/01-1021, January 16, 2002) and *Bravo! re the film The House of the Spirits* (CBSC Decision 00/01-0738, January 16, 2002), that specialty service provided the CBSC with screener tapes of the challenged programs. The CBSC recognized Bravo!'s misunderstanding of the logger tape requirement and found no breach, but stressed the importance of broadcasters supplying a *logger* tape:
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>> It [the logger tape] 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 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.
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> 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 Quebec Panel considers it appropriate to rule similarly in this case. VRAK.TV (and other specialty services owned by Astral Broadcasting Group Inc.) only became CBSC members in June 2002 and this was one of the first complaints for which the CBSC had requested tapes. Astral clearly acknowledged its error in this regard and the steps it had put in place to clear up the misunderstanding. Moreover, VRAK.TV verified its records and went so far as to provide logger copies of a different episode of the series in order to be of as much assistance as possible in the circumstances. The Panel finds no breach of VRAK.TV's responsibilities of membership in the provision of tapes to the Council.

On this first occasion of such an inadvertent error, the CBSC finds no breach of the broadcaster's obligations to retain and supply logger tapes, however, the importance of the obligation for both the CBSC and the CRTC should not be forgotten.

Scheduling

The Panel distinguishes between the episodes of *Juste pour rire*. It considers that the sexual references in the biographical episode dealing with the story of comedian François Morency, which included "kissing a guy" and other sexual contact between men, were often brief, veiled or light-hearted and employed doubles entendres or other humorous devices. They were neither graphic nor explicit and did not constitute programming intended exclusively for adults. That episode was, in other words, susceptible of being broadcast in the midday time slot in which it aired. This was not, however, the case with the routine by Maxim Martin, which was, in the view of the Panel, lengthier, cruder and more graphic on the subjects of fellatio and presidential masturbation of an intern with a large cigar, among others. Such material is suitable only for adult audiences and must not be broadcast before the 9:00 pm Watershed hour. In airing the September 29 episode in the middle of the day, the broadcaster breached Clause 10(a) of the *CAB Code of Ethics*.

Viewer Advisories

While the brief reference to fellatio in the September 15 biographical episode did not relegate it to a post-Watershed broadcast time slot, the Panel does consider that that part of the dialogue is unsuitable for children. It is of course clear from the Panel's discussion of the September 29 episode that, as exclusively adult fare, it is unsuitable for children. Since both episodes aired in pre-Watershed time slots, the broadcaster was obligated to include viewer advisories at the start of each episode and following every commercial break. By failing to do so, Canal D breached the terms of Clause 11(b) of the *CAB Code of Ethics*. The Panel does, however, acknowledge the broadcaster's initiative in recognizing its obligation to correct that omission for future broadcasts of these episodes.

Broadcaster Responsiveness

In all CBSC decisions, the Adjudicating Panels assess the broadcaster's responsiveness to the complainant. Although the broadcaster need not agree with the complainant, it is expected that its representatives charged with replying to complaints will address the complainant's concerns in a thorough and respectful manner. In this case, Canal D's response agreed in part with the complainant and assured him that action would be taken in the future. Although the Panel concluded that even more action was required in the case of *Festival Juste pour rire*, the Panel finds that Canal D met its responsibilities of responsiveness. Nothing further is required in this regard on this occasion.

ANNOUNCEMENT OF THE DECISION

Canal D 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 *Festival Juste pour rire* and *Comicographies* were 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) at that time, 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 Canal D.

The Canadian Broadcast Standards Council has found that Canal D has breached two provisions of the Canadian Association of Broadcasters' *Code of Ethics* in its broadcasts of *Comicographies Juste pour rire: François Morency* on September 15, 2002 and *Festival Juste pour rire* on September 29, 2002. By broadcasting an episode of *Festival Juste pour rire*, which contained exclusively adult-oriented sexual material, at 12:00 noon, and failing to provide viewer advisories at the beginning of, and during, that broadcast, Canal D violated Clauses 10 and 11 of the Code. By failing to provide viewer advisories at the beginning of, and during, the broadcast of an episode of *Comicographies Juste pour rire: François Morency*, which included material unsuitable for children, Canal D violated Clause 11 of the *Code of Ethics*.

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

ANNEXE A

Dossiers du CCNR 02/03-0142 et-0143

Canal D concernant *Festival Juste pour rire* et *Comicographies Juste pour rire: François Morency*

Festival Juste pour rire, monologue de Maxim Martin

Bonsoir. Bonsoir. Ça va bien? Oui? Good. Good. Good. Wow, avec tout ce qui s'est dit sur l'humour cette année, j'suis surpris d'vous voir ici. Je vous imaginais dehors avec des pancartes.

Pensons-y deux secondes. Lemire dit ci. Pinard dit ça. Les médias chialent contre les mots faciles. D'un bord t'a *Piment Fort*, de l'autre côté des *Francs tireurs* après ça t'a *La Fureur*, pis encore la messe du Dimanche à télé. De quoi est-ce qu'on est supposé parler? Qu'est-ce qu'il nous reste comme sujet? Quoi, des planches de plywood? C'est ça que vous voulez? Des jokes sur les planches de plywood? Hein?

Les humoristes vont trop loin. Arrêtez l'hypocrisie. J'ai déjà vu sur la page couverture de *Elle Québec* « Est-ce que les calories du sperme vous font engraisser? » Et vous pensez vraiment que j'en parlerais pas? T'sais… Premièrement, si t'engraisses à cause du sperme que t'ingurgites, le problème est peut-être pas les calories. Je pense que je peux commencer à utiliser le mot « salope » ici, hein? Welcome le sperme léger, hein. Hein, le sperme sans gras pour la cochonne qui fait attention à elle.

Expliquez-moi, c'est quoi qui est plus vulgaire : un humoriste qui fait un gag sur le fait que Bill Clinton s'amusait avec un cigare sur Monica Lewinsky ou Pierre Bruneau qui m'en parle pendant un an et demi aux nouvelles? C'est pas un humoriste qui a inventé le fait qu'elle se faisait masturber par un Cohiba. C'est quelqu'un qui nous l'a dit. Sauf qu'évidemment tous les humoristes ont eu la même réaction quand on a entendu ça à tv : on a fait « Wow, cigare dans le vagin. Il y a des gags à faire avec ça. Hé hé hé »

Laissez-moi vous dire ce que je trouve de vulgaire, c'est que les parents de Dédé Fortin apprennent la mort de leur fils à la télévision. Pas au courant? C'est vrai. Les parents de Dédé Fortin ont appris la mort de leur fils à la télévision. Comment j'pourrais vous dire ça… Tabarnac. Y'a pas personne qui a eu la décence de vérifier s'ils étaient au courant? Trop occupé à être le premier à en parler, j'suppose. Donc, selon vous qu'est-ce qui est pire? Que les parents de Dédé Fortin apprennent de la mort de leur fils à la télévision ou que la famille de Daniel Pinard apprenne qu'il est gai parce qu'une couple de comics ont fait des gags là-dessus. De toute façon, j'pense que la famille de Pinard avait de doutes qu'y'était gai. Quand ça fait huit ans que t'ammène le même coloc à Noël. Ouihihihi.

On s'attend de ça des humoristes. On peux-tu se calmer les nerfs deux secondes. Mais avant qu'on s'attaque trop sur notre cas, j'peux-tu vous poser une question? Qu'est-ce que Jo Jo Savard fait encore à télé? Ce que cette femme là fait, c'est criminel ce qu'elle fait ! Pis elle est encore à tv. Estie de Jo Jo. En fait je ne peux blâmer Jo Jo, j'peux seulement que blâmer les gens qui l'appellent. Arrêtez. Arrêtez de la faire vivre ! Elle a le culot de me dire qu'elle est capable de prédire mon avenir par téléphone. C'est drôle, eh, moi je me commande de la bouffe par téléphone pis ils se fourrent. Voici ce qu'ils me disent les dirigeants des postes : « on donne aux gens ce qu'ils veulent ». J'ai pas été consulté pour

Virginie, j'pense, eh? Surtout pas cinq jours par semaine. Y'en a-tu ici qui ont voter sur Maman Dion de bonne heure le matin?

Bon ben maintenant avec toute la chicane qui se passe, la seule affaire que je demanderais-là c'est quoi « la vulgarité »? C'est quoi « être vulgaire » aujourd'hui? Est-ce qu'on peut avoir une définition cohérente de « la vulgarité »? Exemple, bon on va vous montrer quelque…, okay? [Il laisse tomber son pantalon pour révéler son caleçon.] Si mettons, okay, si mettons j'sors au dépanneur en bobettes. Est-ce que c'est vulgaire? C'est fucké, ça c'est clair, on s'entend là-dessus là, mais… T'sais je veux dire, ça fait la job de cacher ce que c'est supposé de cacher, non?

Bon maintenant. [Il descend son caleçon pour révéler un petit maillot de bain rouge.] Si je vais à plage comme ça, c'est pas considéré vulgaire, puis pourtant c'est pas mal plus vulgaire que mes sous-vêtements, non? Avoir le choix, que je me promène en bobettes que comme ça? Ça, c'est vulgaire. Je commence à avoir de la bedaine [il pince son estomac]. C'est dégueulasse.

Bon maintenant, si je me sors une couille, okay? [Il sort un testicule du coin de son maillot de bain.] Est-ce que je suis vulgaire parce que j'ai une couille qui sort? Ah oui? Comment ça que Canal Vie peut montrer l'intérieur d'un vagin pendant trente minutes, mais moi si je montre ma couille, j'sus vulgaire? Parce que je suis humoriste, c'est ça? [Il remet son caleçon et son pantalon.] T'sé au bout de la ligne, pensez donc à ça, 'k? Pas ma couille là, mais….

Ça fait sept minutes que je vous donne du contenu, de la critique sociale dont on parle, pis la plus grosse catch de la soirée a été ma couille. Donc je vous pose la question à tout le monde : c'est quoi vous voulez, du contenu ou des couilles? Bonne soirée.

ANNEXE B

Dossiers du CCNR 02/03-0142 et-0143

Canal D concernant *Festival Juste pour rire* et *Comicographies Juste pour rire: François Morency*

I. La plainte

La lettre suivante en date du 4 octobre 2002 a été acheminée au CCNR par le CRTC :

> Monsieur, Madame,
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> Je souhaite porter plainte au sujet de trois émissions à la télévision. La première plainte concerne le Canal D au sujet d'une émission diffusée le dimanche 15 septembre entre midi et 13h sur la carrière de François Morency, humoriste. Il s'agit de la dernière période de 15 minutes de l'émission. Il a eu des propos obscènes au sujet de relations homosexuelles, y compris une mention sur le fait qu'il n'aimait pas « un pénis dans la bouche ». Je trouve que ce type de propos n'a pas sa place à la télévision, et surtout pas à une heure où les jeunes sont à l'écoute. Dimanche, le 29 septembre, à l'émission *Festival Juste pour rire* – Extraits, Normand Brathwaite se demandait si les humoristes allaient trop loin, puis on nous a présenté une partie d'un spectacle je crois de Martin Matte [sic] où il parlait des gens qui se plaignaient que le sperme les faisait engraisser. Il a continué en disant que « si vous ingurgitez le sperme, vous avez peut-être un autre problème. » La réponse à M. Brathwaite, c'est définitivement oui, on va trop loin ! Encore entre midi et 13h.
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> La troisième plainte concerne Télé-Québec au sujet d'une annonce diffusée lors de l'émission du lancement de l'année, vers 20 h le soir (lundi ou mardi 16 ou 17 septembre). L'annonce invitait les téléspectateurs à regarder une émission à 22h sur le jeu de l'amour en annonçant qu'on y parlerait d'aides mécaniques. C'est encore le problème d'une diffusion d'un message à une heure où des jeunes sont à l'écoute.
>
> J'invite le Conseil à être plus vigilant sur ces questions et à émettre des instructions aux diffuseurs pour que de pareils incidents ne se répètent plus.
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> En vous remerciant de votre collaboration, je vous prie d'accepter, Monsieur, Madame, l'expression de mes sentiments les meilleurs.

Note : Télé-Québec n'est pas membre du CCNR et donc ce n'est pas le CCNR mais bien le CRTC qui traite de cette partie de la plainte.

II. La réponse du télédiffuseur

La directrice, services juridique et réglementaire a répondu au plaignant le 7 novembre avec la lettre qui suit :

Nous avons pris connaissance de votre lettre du 4 octobre adressée au Conseil de la radiodiffusion et des télécommunications canadiennes (« CRTC ») qui nous a été subséquemment transmise par le Conseil canadien des normes de la radiotélévision (« CCNR ») le 21 octobre 2002.

Nous vous remercions de nous faire part de vos préoccupations à l'égard de l'émission portant sur la carrière de François Morency diffusée sur les ondes de Canal D le 15 septembre dernier, ainsi qu'à l'égard de l'émission du *Festival Juste pour rire* animée par Normand Brathwaite et diffusée sur les ondes de Canal D le 29 septembre dernier.

Il est exact que lesdites émissions humoristiques comportent des références verbales à la sexualité pouvant ne pas convenir à tous les membres de la famille. Ainsi, nous assurerons qu'une mise en garde à l'auditoire soit intégrée en vue de toute diffusion ultérieure.

Les commentaires reçus de nos téléspectateurs nous permettent d'ajuster et d'améliorer continuellement nos contenus et ainsi de mieux répondre à notre mandat en tant que diffuseur. À cet effet, nous vous remercions d'avoir communiqué avec nous et soyez assuré que nous prenons bonne note de l'appréciation que vous nous avez transmise.

Le plaignant a rendu ses formulaires de Demande de décision en date du 21 novembre pour les deux émissions