
**CANADIAN BROADCAST STANDARDS COUNCIL
QUEBEC REGIONAL PANEL**

TQS re three episodes of *Kama Sutra*

(CBSC Decision 03/04-1233)

Decided February 10, 2005

G. Bachand (Chair), T. Rajan (Vice Chair), R. Cohen (*ad hoc*), B. Kenemy,
G. Moisan, M.-A. Murat

THE FACTS

On April 14, 15 and 16, 2004, at either 11:30 pm (in two cases) or at midnight (in the other instance), TQS broadcast the following three episodes (« Moyens de désirs intenses », « L'amour charnel », « L'art de se mordiller ») in its series *Kama Sutra*. Each episode lasted 30 minutes and told the fictional story of a couple desirous of improving their sexual life with the assistance and instruction of a sensual woman named "Dahlia", who was an expert in the erotic arts of the *Kama Sutra* (written by Vatsyayana, who is believed to have lived between the 1st and 6th centuries). Each episode included scenes with nudity and explicit sexual activity. The broadcaster aired a viewer advisory in both oral and visual formats at the start of each episode but did not repeat it again following any of the commercial breaks:

Warning: This film contains erotic scenes and nudity suitable for a mature audience.

TQS also included an "18+ érotisme" ratings icon for 5 to 8 seconds at the start of each episode.

On April 18, the complainant sent an e-mail to the CBSC, in which she complained about more than one program at the same time; she said in part (the full text of this e-mail and all other correspondence can be found in the Appendix):

The shows and cinemas that I mentioned above are unduly sexually explicit, perverse and quite offensive. The message that these shows and cinemas are sending out is that all women have lesbian intentions and that we are all nymphomaniacs, which I don't agree with or appreciate. Broadcasting these kinds of shows and cinemas is wrong for Television Quatre Saisons to do, because I think that us women deserve a lot more respect than that, and still Television Quatre Saisons continues to broadcast them excessively.

I would like for [sic] the Canadian Broadcast Standards Council to take a good look at the shows and cinemas to see how degrading, perverse, offensive and unsuitable they are and the message that they are sending out, because it's just wrong.

The Vice President, Communications, replied on April 24. She said in part:

TQS's programming consists of a great number of movies or shows of various genres that are broadcast daily. Each adult programming feature is broadcasted [sic] after the "watershed" hour of 11:00 pm and is preceded by a notice to the effect that some scenes to be shown is [sic] for an adult audience. While we understand that some scenes in some of these shows could have shocked you, we do carefully select each production screened in adult programming and we remove scenes considered to be immoral and not complying with the ethics of our broadcasting company. Moreover, there is always the appropriate warning indicating the required age for viewing the said show.

Kama Sutra and *Bleu Nuit* [the other show complained of] are broadcast on TQS and we believe that viewers appreciate those types of shows late on a week night. We are very pleased to be able to offer programming different from that of our competitors, being the only French-language network to show erotic movies of quality, containing no violence or pornographic scenes.

On May 8, the complainant expressed her dissatisfaction with the broadcaster's response, adding, in part:

In their response they wrote that they are pleased to offer shows and cinemas that contain "no" violence or pornographic scenes, which is very strange because it contradicts the shows and cinemas that I have filed a complaint about.

[...]

It seems like Télévision Quatre Saisons is exploiting the Canadian Broadcast Standards Council's Watershed hours by using it as an excuse to broadcast whatever they want. These kinds of shows and cinemas should only be broadcasted on Adult themed networks and not on publicly accessible networks like Télévision Quatre Saison.

The CBSC considered this letter to be the equivalent of a Ruling Request.

THE DECISION

The Quebec Regional Panel examined the broadcast under the following provisions of the Canadian Association of Broadcasters' (CAB) *Code of Ethics*,

Voluntary Code Regarding Violence in Television Programming and Sex-role Portrayal Code:

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.

CAB Violence Code, Article 4.0 (Classification system)

Frequency

The rating icon is to be keyed over the first 15-16 seconds of the program. [...] For programs which run longer than one hour, the icon is to be repeated at the beginning of the second hour. These are minimal use standards; stations may wish to use the icons more frequently on programs with particularly sensitive content.

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.

Panel Adjudicators viewed the logger tape of the broadcast in question and reviewed all of the correspondence. The Panel finds that TQS is in breach of Article 4 of the *CAB Violence Code* regarding the length of display of the classification icon and of Clauses 10 and 11 of the *CAB Code of Ethics* regarding viewer advisories.

Sexual Exploitation

This complaint raises issues that are essentially identical to those dealt with in its decision of even date in *TQS re the Bleu Nuit movie Mission de charme* (CBSC Decision 03/04-0976, February 10, 2005). The Panel considers that it is sufficient to cite the same decisions it referred to in its discussion of the subject of exploitation there. In one of the early CBSC decisions dealing with an late-night erotic film, namely, *TQS re Été sensuel* (CBSC Decision 95/96-0233, August 14, 1998), this Panel said that it

takes no issue with the assertion by the complainant that the film in question is an erotic film. The only question, however, which it is called upon to decide here is whether the film is *exploitative*. The other contentions of the complainant which relate to whether this film or other such films are “idiotic” and whether or not the broadcasting of such a film is “disrespectful of people like myself” are *marketing* questions. They relate to the broadcaster’s choice of material to air. If there is no breach of a Code (or, of course the *Broadcasting Act* or Regulations or other laws of the land), the broadcaster is *entitled* to put the film on its airwaves. In a world which has become increasingly oriented toward niche broadcasting, any station or network appreciates that its choices will never appeal to *everyone*. This does not mean that such choices should not be made but only that, in making such choices, the broadcaster knows that only some, but not all, of the public will be pleased. It goes without saying that the broadcaster hopes always to make the correct choices but, where no Code is breached, the viewer is always free to go elsewhere. That is, in the end, the viewer’s only option and it is, from society’s perspective, a fair option, provided that society’s codified values have not been breached.

In the case of *Été sensuel*, the Council finds that there is none of the degradation of either sex which would be characteristic of a film which could be classified as exploitative. Fundamentally, the purpose of the *Sex-Role Portrayal Code* is to prevent “negative or inequitable sex-role portrayal of persons” but not “the depiction of healthy sexuality”. The Council considers that the treatment of sexuality in this film, while perhaps not of the highest cinematic level, is not in breach of the Code.

Then, in one of its leading decisions on such subject matter, namely, *Showcase Television re Bubbles Galore* (CBSC Decision 98/99-1087 et -1133, November 19, 1999), the Ontario Regional Panel, which was there called upon to deal with the issue of exploitation in the context of an erotic film, said:

While it is only accurate to observe that, on a strictly quantitative basis, there may be more nudity of women than men depicted in the program, the Council considers it material to remember that the goal of the movie, as well as the film within the film, has been to portray adult film creation from the point of view of women. The creative point, therefore, is intended to be inherently sensitive, hence unexploitative, from the perspective of gender portrayal. In any case, there is male nudity depicted and, in the context of the film, the Council is not of the view that there is any material imbalance in this respect. Moreover, [...] the creators of *Bubbles Galore* have clearly depicted the female characters in the film as superior to the male characters in both morality and intelligence but not in so inegalitarian a fashion as to unbalance the equation from the other point of view.

More recently, in *TQS re two episodes of the program Sex Shop* (CBSC Decision 03/04-0162 & -0320, April 22, 2004), this Panel arrived at a similar conclusion with respect to erotic programming. It concluded:

On the basis of the foregoing principles, namely, a) that there is a difference between sex and sexual exploitation, b) neither gender was degraded at the expense of the other, and c) the subject matter of the episode relating to the erotic film industry was bound to have an erotic component, the Panel finds no aspect of the content of either of the two episodes of *Sex Shop* in any way problematic in terms of and of the foregoing codified content provisions.

In the present matter, while the Quebec Regional Panel agrees that the challenged episodes are sexually explicit, it does not consider that they are either exploitative or degrading. Nor does it consider that the episodes sent out the message, as the complainant alleged, that “*all* women have lesbian intentions [or] are *all* nymphomaniacs [emphasis added].” In fact, most of the sexual activity involves men as well as women and neither gender is degraded vis-à-vis the other. There is no breach of Clause 4 of the *CAB Sex-Role Portrayal Code*.

Classification Icons

On this issue, the Panel applies the reasoning it expostulated in *TQS re the Bleu Nuit movie Mission de charme* (CBSC Decision 03/04-0976, February 10, 2005):

Canada’s private broadcasters have taken various initiatives in order to put audiences in a position to make informed viewing choices. One of these is to provide classification icons on-screen at the start of the broadcast and at the top of each successive hour. The icon must be the appropriate one and must be present for at least 15 seconds on each mandated occasion. In the case of *Mission de charme*, the rating of 18+ was appropriate but, although TQS ran the icon at the start of the program and following *every commercial break*, which it was not required to do, it only displayed the icon for 7-8 seconds at the beginning and at the top of the second hour. For this reason, the broadcaster has breached one of the technical requirements of Article 4 of the *CAB Violence Code*.

The broadcaster has breached Article 4 of the *CAB Violence Code* in the present instance as well.

Viewer Advisories

On this issue, the Panel also applies its reasoning in *TQS re the Bleu Nuit movie Mission de charme* (CBSC Decision 03/04-0976, February 10, 2005):

One of the other viewer assistance tools provided by broadcasters is the viewer advisory, which provides more detailed information about the content of the program. Such advisories must be present at the start of a program and following every commercial break during the first hour of any broadcast intended exclusively for adult audiences. In this case, they were not present following the commercial breaks. This constitutes a breach of Clauses 10(b) and 11 of the *CAB Code of Ethics*.

The broadcaster has breached Clauses 10(b) and 11 of the *CAB Code of Ethics* in the present instance as well.

Broadcaster Responsiveness

All private broadcaster members of the CBSC do, by their membership, undertake, among other things, to respond in writing to the persons who take the time to express their concerns about programming or other broadcast matter. It is the expectation of the CBSC that broadcasters will focus their letters of response on the substance of the complaint registered with them. If the complainant is dissatisfied with the response, he or she fills in a Ruling Request and the Council puts the complaint file into the CBSC's adjudication process. It is, however, the frequent experience of the CBSC that careful, thoughtful broadcaster replies are satisfactory to the complainant. Such an effective broadcaster-complainant dialogue often results in the closure of the file. It is, however, one of the ironies of the process that the only files that proceed to CBSC Panel decisions are those in which the complainant has not been satisfied by the dialogue. While this is, of course, true in the matter at hand, the Panel considers that the broadcaster has fulfilled its membership obligations in this regard on this occasion.

An Issue of Timing: Previous CBSC Decisions

On this issue, the Quebec Regional Panel concludes precisely as it has in *TQS re the Bleu Nuit movie Mission de charme* (CBSC Decision 03/04-0976, February 10, 2005). For the reasons given in that decision (which follow below), the Quebec Regional Panel concludes that the broadcaster is not required to broadcast the announcement of this decision.

The timing of this broadcast and complaint is material to the CBSC decision regarding the outcome of the present file. In a series of decisions relating to TQS, namely, *TQS re two episodes of the program Sex Shop* (CBSC Decision 03/04-0162 & -0320, April 22, 2004), *TQS re an episode of Loft Story* (CBSC Decision 03/04-0200 & -0242, April 22, 2004) and *TQS re the movie Film de peur* (CBSC DECISION 02/03-0940, April 22, 2004), all of which were decided on April 22, 2004 and released to the public on June 10, this Panel found problems with the broadcaster's use of classification icons and viewer advisories. In those decisions, this Panel made the point that TQS had previously breached Code provisions relating to the proper use of advisories and the duration of the classification icon display. In such circumstances, the Panel required TQS

within the thirty days following its receipt of the text of this decision [namely, *TQS re the movie Film de peur* (CBSC decision 02/03-0940, April 22, 2004)], provide the CBSC with concrete indications of the measures which it intends to put in place in order to: a) avoid the recurrence of the display of the classification icon for a duration that does not conform to the codified requirements; and b) ensure that it will include viewer advisories with the required form and frequency in its programming.

It should be added that TQS responded to that CBSC requirement on a full and co-operative basis and there has been every indication since the broadcaster's reply of July 9, 2004 to that CBSC 30-day demand that the company has been in full compliance with the CBSC order of June 10. Given that the broadcast in the file at hand aired two months before the June 10 decision, when the broadcaster could not have been aware of the full extent of the concerns, interpretations and requirements of the CBSC, and that it has subsequently put in place the measures to ensure it would be in full compliance, the Quebec Regional Panel does not consider that there is any reason to require the customary broadcast of the announcement of this decision. Accordingly, although the Panel concludes that TQS has breached Article 4 of the *Violence Code* regarding the length of display of the classification icon and of Clauses 10 and 11 of the *CAB Code of Ethics* regarding viewer advisories, it considers that the broadcaster has: a) taken all necessary steps to announce comparable CBSC decisions in the past; and b) revised its internal systems so as to avoid similar Code breaches in the future. In the circumstances of this decision and the two other comparable decisions of even date involving TQS, namely, *TQS re three episodes of Kama Sutra* (CBSC Decision 03/04-1233, February 10, 2005) and *TQS re the Bleu Nuit movies Le journal de désirs and Hôtel Exotica* (CBSC Decision 03/04-1236, February 10, 2005), the Quebec Regional Panel concludes that the broadcaster is not required to broadcast the announcement of this decision.

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

ANNEXE

Dossier du CCNR 03/04-1233 TQS concernant trois épisodes de *Kama Sutra*

La plainte

La lettre suivante en date du 18 avril 2004 a été envoyée au CCNR :

Name of show: *Kama sutra*

Time and date of shows: 23h30 on Wednesday April 14, Thursday April 15 and Friday April 16, 2004.

Name of Cinema 1: *Bleu nuit* [Le journal des désirs]

Time and date of cinema: 23h50 on Saturday April 10, 2004.

Name of cinema 2: *Bleu Nuit* [Hôtel Exotica]

Time and date of cinema: 24h00 on Saturday April 17, 2004.

The shows and cinemas that I mentioned above are unduly sexually explicit, perverse and quite offensive. The message that these shows and cinemas are sending out is that all women have lesbian intentions and that we are all nymphomaniacs, which I don't agree with or appreciate. Broadcasting these kinds of shows and cinemas is wrong for Television Quatre Saisons to do, because I think that us women deserve a lot more respect than that, and still Television Quatre Saisons continues to broadcast them excessively.

I would like for the Canadian Broadcast Standards Council to take a good look at the shows and cinemas to see how degrading, perverse, offensive and unsuitable they are and the message that they are sending out, because it's just wrong.

Thank goodness that there are networks like TVA and la SRC, which have honor and respect for us women.

[Les plaintes concernant les films de *Bleu nuit* ont été traités dans la Décision du CCNR 03/04-1236.]

La réponse du télédiffuseur

La Vice-présidente des Communications a répondu au plaignant le 24 avril avec la lettre qui suit :

We have received your letter concerning *Kama Sutra* and *Bleu Nuit* broadcast by TQS, which was forwarded to us by the Canadian Broadcast Standards Council (CBSC). We regret these shows offended you and we have taken note of your comments.

TQS's programming consists of a great number of movies or shows of various genres that are broadcast daily. Each adult programming feature is broadcasted after the "watershed"

hour of 11:00 pm and is preceded by a notice to the effect that some scenes to be shown is [sic] for an adult audience. While we understand that some scenes in some of these shows could have shocked you, we do carefully select each production screened in adult programming and we remove scenes considered to be immoral and not complying with the ethics of our broadcasting company. Moreover, there is always the appropriate warning indicating the required age for viewing the said show.

Kama Sutra and *Bleu Nuit* are broadcast on TQS and we believe that viewers appreciate those types of shows late on a week night. We are very pleased to be able to offer programming different from that of our competitors, being the only French-language network to show erotic movies of quality, containing no violence or pornographic scenes.

We always appreciate receiving our viewers' comments and we thank you for taking the time to write to us.

Correspondance additionnelle

La plaignante a demandé une décision du CCNR le 8 mai :

I would like to request a ruling from the Canadian Broadcast Standards Council on the shows and cinemas that I have mentioned above, because I'm not satisfied with the response that I have received from Télévision Quatre Saisons on Wednesday May 5th, 2004. In their response they wrote that they are pleased to offer shows and cinemas that contain "no" violence or pornographic scenes, which is very strange because it contradicts the shows and cinemas that I have filed a complaint about.

The shows and cinemas that I mentioned above are unduly sexually explicit, perverse and quite offensive. The message that these shows and cinemas are sending out is that all women have lesbian intentions and that we are all nymphomaniacs, which I don't agree with or appreciate. Broadcasting these kinds of shows and cinemas is wrong for Télévision Quatre Saisons to do, because I think that us women deserve a lot more respect than that, and still Télévision Quatre Saisons continues to broadcast them excessively.

It seems like Télévision Quatre Saisons is exploiting the Canadian Broadcast Standards Council's Watershed hours by using it as an excuse to broadcast whatever they want. These kinds of shows and cinemas should only be broadcasted on Adult themed networks and not on publicly accessible networks like Télévision Quatre Saisons.

I would like for the Canadian Broadcast Standards Council to take a good look at the shows and cinemas to see how degrading, perverse, offensive and unsuitable they are and the message that they are sending out, because it's just wrong.