
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL PANEL**

CHFD-TV re the documentary *Dirty Business: Sex, Thighs and Videotape*

(CBSC Decision 04/05-1580)

Decided December 15, 2005

M. Ziniak (Vice-Chair), B. Bodnarchuk, R. Cohen (*ad hoc*), M. Hogarth (*ad hoc*),
M. Oldfield, C. Reyes

THE FACTS

CHFD-TV (Thunder Bay Television) broadcast the Canadian documentary film *Dirty Business: Sex, Thighs and Videotape* from 1:00 pm to 2:00 pm on May 15, 2005. The documentary, which was about the adult entertainment business, consisted of interviews with people working in different aspects of the industry: Latia Lopez, an aspiring porn actress from Winnipeg; Dawn and Dave, a married couple in Edmonton with their own adult website featuring Dawn in various nude and/or erotic poses; Johnny Ramone, a webmaster of porn Internet sites; and Gus and Rob, two friends in Calgary producing amateur porn movies.

The documentary dealt with the business side of the industry, through the entrepreneurial lives of the above-noted individuals, exploring issues such as Lopez's efforts to further her career, Gus and Rob's search for wider distribution of their films, and Dave and Dawn's and Ramone's management of their respective websites. The program consisted primarily of interviews with those (fully clothed) individuals; it also included numerous, albeit brief, clips from pornographic movies, photographs from websites and footage taken at a sex trade show. Women were frequently shown in lingerie or other skimpy clothing, touching and flaunting their bodies for the camera. Any images showing bare breasts or genitalia were blurred. No shots of sexual intercourse were shown, obscured or otherwise, but there were brief clips of couples in various states of undress kissing and touching each other.

The station did not broadcast any viewer advisories.

The CBSC received a complaint about the broadcast dated May 15. The complainant summarized her concerns in part as follows (the full text of all correspondence can be found in the Appendix):

Thunder Bay Television Station was broadcasting an absolutely inappropriate program from 1pm - 2pm entitled *Sex, Thighs and Videotape*. I watched it for about ten minutes, stunned that such a program would be on television early afternoon on a channel broadcast in my city. It was extremely sexual, it "fuzzed out" some areas in women but included far more visual images that required no blurring. The content was adult and pornographic. Children watch tv in the day time and it is horrifying to think that one would casually turn on the tv and find this filth on the tv. Not to mention, I do not want to watch it myself. What are the rules in regard to inappropriate broadcasting? If I wanted those programs I would pay for them.

CHFD-TV responded to the complainant on June 16 with the following:

Those who regularly watch our station on Sundays will know that we have never aired children's programming here (hence the lack of young viewers) and the 1:00-2:00 pm time period is devoted to Canadian Documentaries, which we acquire from Canwest/Global. The topics are different every week and range from: Canadian heroes, eating habits, geographical features, legends, societal issues, etc. This particular show was about the sex-trade in Canada and was true to documentary format.

Specifically, it dealt with the current growth of the sex-trade 'on-line'. Aspects examined included what motivates women to make a career of this, boundaries they set for themselves, their upbringing as it relates to this 'career', the use of business consultants and marketing agents, negotiating contracts, and those who get into production and distribution. Three Canadian examples were profiled – a couple in Edmonton who began by trying to pay off student loans, two young men in Calgary who consider themselves as producers but are not able to make it in the business and a Winnipeg actress who has spent a great deal of money trying to built a career.

Definitely, the majority of the program consisted of interviews. Where visuals were used, as you pointed out, a soft-focus covered naked breasts, but mostly clothing or lingerie was being worn. I don't know for sure which short portion of the show you saw, but the visuals were not overly sensationalized, over the course of the full 30 min. broadcast. The documentary raised some clear and thought provoking issues about the rise in this type of 'business' in Canada and, on balance, had merit.

Nevertheless, we are truly sorry that you found the program offensive. More importantly, although the show was not promoted in any way, we were remiss in airing the traditional viewer advisories during the actual broadcast. [...] This was not done intentionally, but the onus is on the station to provide viewers with such information so that they can make informed viewing decisions, and I'm the person who would be charged with doing this.

The complainant wrote back to the station on June 16:

Thank you for your response. However, I do not find it acceptable; I do not know what else I can do, however. So I will give you my opinion. It does not matter if you explain the whys or whats of the program that was on because, regardless, it was disgusting television. The same issue could be dealt with in a much more discreet way; the show was pornography. Calling it a documentary and thus, I imagine the goal to be, educational, is quite amusing. I know you did not produce the show but you, I assume, permitted it to air and even worse without warnings. (Which wouldn't have mattered to me). Unfortunately moral standards continue to decline in regard to television and CRTC standards; television stations such as yours obviously have little to no regard to young viewers or viewers such as myself who do not want to have that filth on their tv in the middle of the afternoon.

I do, however, take full responsibility for owning a tv and realize that that is my mistake. I can not blame anyone else for that. I do pray that the CRTC and stations such as yours become convicted [sic] about content and come to see that it benefits us all to have programming with moral integrity. Something for all of you to consider. At least save that kind of "crap" for midnight.

The complainant then filed her Ruling Request on July 6 with the following note:

I was not impressed by the justification for broadcasting such a program in the middle of the day. CHFD stated that children's programs are not run during that time period on Sundays. That is irrelevant. The entire point is that it was a disgusting, inappropriate show. Also, explaining the intent of the program series again was irrelevant. I understand all of what she said; the point is it is trash television. It was, in my opinion, way too sexually explicit as well as contained adult content that I, as an adult, choose not to watch. On local television channels I would hope there would be some safety in turning on the tv on a Sunday afternoon or any afternoon for that matter. [...] And to simply forget to post the warning at the beginning of each segment! Even if they had done that, it would have still been just as disgusting. I do confess I only watched five to ten minutes of it simply because I couldn't believe it. I realize that I am responsible for what I watch on television and get to turn the channel. But sometimes, you don't even get a chance to protect your eyes, it is too late when you are surfing through channels. I hope that one day we will go back to higher standards in broadcasting. Regardless of the intent of this horrid Canadian television show, the same point could have been put forth without the graphic images and language and content. What is on television only seems to be declining, the standards get lower and we all become numb to it.

THE DECISION

The Ontario Regional Panel examined the complaint under the following provisions of the Canadian Association of Broadcasters' (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.

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 Ontario Regional Panel Adjudicators viewed a logger tape dub of the broadcast and reviewed all of the correspondence. The Panel concludes that the broadcast was in violation of both of the foregoing Code provisions.

The Categorization of Programming

In applying the scheduling and advisory rules (for television programming other than that created for children), as laid down in Clauses 10 and 11 of the *CAB Code of Ethics*, the CBSC considers that there are in effect three categories of television programming. (While the principles enunciated in this section of the decision may be extended into all areas of adult content, the Panel limits its observations to matters involving sexual content.)

There are, first, programs that contain scenes of sexually explicit activity intended exclusively for adult audiences. Such programs must air post-Watershed, that is, after 9:00 pm and before 6:00 am, and be accompanied by viewer advisories.

Second, there are programs that contain sexual material that, while not intended exclusively for adults, is unsuitable for children (defined as persons under 12). Such programming can be aired before the Watershed but, when it is aired before 9:00 pm, it must be accompanied by viewer advisories.

Third, there are programs that are suitable for all audiences which can be aired at any time without any viewer advisories.

Where Does *Dirty Business* Fall?

In assessing the sexual content of a program for the purpose of determining its intended audience, the CBSC considers various content issues. One of these is the nature of the sexual activity. Another is the extent of the explicitness and, related thereto, the length and prominence of the activity. In *TQS re an episode of the program Faut le voir pour le croire* (CBSC Decision 99/00-0460 and 00/01-0123, August 29, 2000), for example, the Quebec Panel concluded that the “practice of cunnilingus, the love-making in the clandestine circumstances of a parking garage on the hood of a car, the sexual interlude in an elevator [...] are all activities which [...] are entirely inappropriate [...] for children” and were intended exclusively for adults. In *TQS re the program 2000 ans de bogues* (CBSC Decisions 99/00-0116 and -0345, August 29, 2000), the combination of bare breasts and explicitly sexual acts was also deemed adult fare. So, too, the “sexually explicit dialogue and adult-oriented explanatory discussion” in *WTN re Sunday Night Sex Show* (CBSC Decision 99/00-0672, January 31, 2001) and adult-themed documentaries about: the pornographic film industry (*Bravo! re the documentary film Give Me Your Soul* (CBSC Decision 00/01-1021, January 16, 2002)), anal sex (*Discovery Channel re an episode of The Sex Files* (CBSC Decision 00/01-0791, January 16, 2002)), telephone sex (*Bravo! re Love on the Line* (CBSC Decision 00/01-1050, May 3, 2002)) and bestiality (*TQS re two episodes of Sexe et confidences* (CBSC Decision 01/02-0329, April 5, 2002)). Even the explicit preparation for illicit sexual activity in *CTV re W-FIVE (Swingers)* (CBSC Decision 99/00-0347, February 14, 2001) was determined to be intended exclusively for adult audiences.

As might be understood from the corpus of CBSC jurisprudence, there is no mathematical formula applicable to such programming. It is not the presence or absence of scenes involving intercourse or other advanced sexual activity. It relates more to the balance of explicitness and subtlety or innuendo, the nature of the activities, the force or power of the sexuality or eroticism, the adult orientation of the content, the duration and/or frequency of the sexual activities, to some extent the context, and the overall confluence of such considerations.

In a contrary example, ruled not exclusively oriented toward adults, namely, *TQS re Strip Tease* (CBSC Decision 98/99-0441, February 21, 2000), the Quebec Panel found an absence of problematic content. As that Panel framed the issue,

While acknowledging that the showing of bare breasts on strip tease dancers was intended by the filmmaker to be sexual, the Council considers that the absence of sexual contact or lovemaking in the film rendered it, to all intents and purposes, sufficiently innocent that there would not even be a requirement that its broadcast occur only in a post-watershed time frame.

The Ontario Panel also bears in mind that *Strip Tease* told a story with another focus, namely, one about a single mother suddenly thrust into circumstances that required her to look for ways to sustain her family. There was, in other words, a

principal story line that was not at all erotic and, while the protagonist engaged in disrobing for pay, there was not even an erotic component to the rest of her life.

In the present matter, the focus of the documentary film is the combination of sexual and erotic activities and the maximization of pecuniary benefit from them. There is not even the modicum of an overlay of other issues, such as the relativity of power in pornography, which was a theme of the documentary film considered in the National Specialty Services Panel's decision in *The Documentary Channel re the documentary Sex: The Annabel Chong Story* (CBSC Decision 04/05-1522, July 20, 2005). The Ontario Regional Panel also finds the Quebec Panel's observations in *TQS re two episodes of Sexe et confidences* (CBSC Decision 01/02-0329, April 5, 2002) apt: "It considers that the explicit *references* to sexual activity [...] coupled with the images render the episode [...] clearly intended for adults. (Emphasis added)"

While, in the matter at hand, the interviews were with clothed people, there were clips from "pornographic" movies, website photographs, footage shot at a sex trade show, clips of couples in various states of undress engaging in sexual activities, and discussions with the Edmonton couple as they determined how far Dawn should progress from her isolated erotic performances to new levels of sexual *contact* with others. The collective effect was clearly content that was, in the view of the Panel, exclusively intended and solely appropriate for adult audiences.

Nor is the documentary saved by techniques such as blurring or pixilation. The intent and message were undeniably evident. As the Quebec Panel said in *TQS re the program 2000 ans de bogues* (CBSC Decisions 99/00-0116 and -0345, August 29, 2000), "despite the fact that they were run at double speed and digital pixilation had concealed the actors' genitalia, the sexual acts during the pornography segment were excessive."

The Panel hastens to add that it does not express any concern regarding the documentary film itself. It is dealing only with the issue of the Watershed and, on this point, it concludes that the broadcast of the documentary prior to the Watershed constitutes a breach of Clause 10 of the *CAB Code of Ethics*.

Viewer Advisories

Having reached the conclusion that the program was, because of its sexual content, exclusively destined to post-Watershed broadcast, the Panel finds, without reviewing the long line of CBSC jurisprudence, that the broadcaster was in breach of Clause 11 of the *CAB Code of Ethics* for failing to include viewer advisories in its broadcast.

Broadcaster Responsiveness

In all CBSC decisions, the Council's 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, the Panel finds that the broadcaster's Director of Television Programming provided a full explanation of its programming rationale and did not hesitate to apologize for failing to include viewer advisories. The Panel considers that CHFD-TV has fully met its CBSC membership responsibility of responsiveness on this occasion.

ANNOUNCEMENT OF THE DECISION

CHFD-TV is required to: 1) announce the 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 *Dirty Business* 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 complainant who filed the Ruling Request; and 3) at that time, to provide the CBSC with a copy of that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by CHFD-TV.

The Canadian Broadcast Standards Council has found that CHFD-TV violated provisions of the Canadian Association of Broadcasters' *Code of Ethics* in its broadcast of the documentary *Dirty Business: Sex, Thighs and Videotape* on May 15, 2005. Because the documentary contained sexually explicit content intended exclusively for adult audiences, its broadcast in the afternoon breached Clause 10 of the *Code of Ethics*, which requires such content to be aired after the 9:00 pm Watershed hour. By failing to air viewer advisories during the program, CHFD-TV also breached Clause 11 of the Code, which obliges broadcasters to provide such advisories to enable audiences to make informed viewing choices.

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

APPENDIX

CBSC Decision 04/05-1580 CHFD-TV re the documentary *Dirty Business: Sex, Thighs and Videotape*

The Complaint

The following complaint was sent to the CRTC on May 15, 2005 and forwarded to the CBSC in due course:

The channel call letters are CHFD-TV.

May 15, 2005 - On Channel 314 on the Starchoice Satellite Dish or Channel 4 and 6 on Cable - Thunder Bay Television Station was broadcasting an absolutely inappropriate program from 1pm - 2pm entitled *Sex, Thighs and Videotape*. I watched it for about ten minutes, stunned that such a program would be on television early afternoon on a channel broadcast in my city. It was extremely sexual, it "fuzzed out" some areas in women but included far more visual images that required no blurring. The content was adult and pornographic. Children watch tv in the day time and it is horrifying to think that one would casually turn on the tv and find this filth on the tv. Not to mention, I do not want to watch it myself. What are the rules in regard to innappropriate broadcasting? If I wanted those programs I would pay for them.

Broadcaster's Response

CHFD-TV's Director of Programming responded to the complainant on June 16:

On May 15, you wrote to the Canadian Broadcast Standards Council about a program you saw briefly on CHFD-TV being inappropriate. The show was a repeat (and final) telecast of a program entitled *Dirty Business*.

Those who regularly watch our station on Sundays will know that we have never aired children's programming here (hence the lack of young viewers) and the 1:00-2:00 pm time period is devoted to Canadian Documentaries, which we acquire from Canwest/Global. The topics are different every week and range from: Canadian heroes, eating habits, geographical features, legends, societal issues, etc. This particular show was about the sex-trade in Canada and was true to documentary format.

Specifically, it dealt with the current growth of the sex-trade 'on-line'. Aspects examined included what motivates women to make a career of this, boundaries they set for themselves, their upbringing as it relates to this 'career', the use of business consultants and marketing agents, negotiating contracts, and those who get into production and distribution. Three Canadian examples were profiled – a couple in Edmonton who began by trying to pay off student loans, two young men in Calgary who consider themselves as producers but are not able to make it in the business and a Winnipeg actress who has spent a great deal of money trying to built a career.

Definitely, the majority of the program consisted of interviews. Where visuals were used, as

you pointed out, a soft-focus covered naked breasts, but mostly clothing or lingerie was being worn. I don't know for sure which short portion of the show you saw, but the visuals were not overly sensationalized, over the course of the full 30 min. broadcast. The documentary raised some clear and thought provoking issues about the rise in this type of 'business' in Canada and, on balance, had merit.

Nevertheless, we are truly sorry that you found the program offensive. More importantly, although the show was not promoted in any way, we were remiss in airing the traditional viewer advisories during the actual broadcast. For this I have to take personal responsibility.

I was away on a rather sudden medical leave and this was a detail I did not attend to, prior to leaving. This was not done intentionally, but the onus is on the station to provide viewers with such information so that they can make informed viewing decisions, and I'm the person who would be charged with doing this.

My sincere apologies, Ms. [B.]. I hope you can find this response acceptable.

Additional Correspondence

The complainant wrote back to the station on June 16:

Thank you for your response. However, I do not find it acceptable; I do not know what else I can do, however. So I will give you my opinion. It does not matter if you explain the whys or whats of the program that was on because, regardless, it was disgusting television. The same issue could be dealt with in a much more discreet way; the show was pornography. Calling it a documentary and thus, I imagine the goal to be, educational, is quite amusing. I know you did not produce the show but you, I assume, permitted it to air and even worse without warnings. (Which wouldn't have mattered to me). Unfortunately moral standards continue to decline in regard to television and CRTC standards; television stations such as yours obviously have little to no regard to young viewers or viewers such as myself who do not want to have that filth on their tv in the middle of the afternoon.

I do, however, take full responsibility for owning a tv and realize that that is my mistake. I can not blame anyone else for that. I do pray that the CRTC and stations such as yours become convicted [*sic*] about content and come to see that it benefits us all to have programming with moral integrity. Something for all of you to consider. At least save that kind of "crap" for midnight.

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late when you are surfing through channels. I hope that one day we will go back to higher standards in broadcasting. Regardless of the intent of this horrid Canadian television show, the same point could have been put forth without the graphic images and language and content. What is on television only seems to be declining, the standards get lower and we all become numb to it.