
CANADIAN BROADCAST STANDARDS COUNCIL

QUEBEC REGIONAL PANEL

TQS re two episodes of *Les experts: Manhattan (CSI: New York)*

(CBSC Decision 08/09-0880)

Decided August 11, 2009

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M. Ille, J. Pennefather (*ad hoc*)

THE FACTS

Les experts: Manhattan is a French-language dubbed version of *CSI: New York*, a crime drama series broadcast by TQS. The series follows the activities of a group of special investigators as they use forensic techniques to solve crimes in New York City. The main characters in the two episodes examined for this decision were Mac Taylor, Stella Bonasera, Danny Messer, Lindsay Monroe, Sheldon Hawkes, Don Flack and Jessica Angell. A secondary character, Dr. Sid Hammerback, performed autopsies in the CSI lab.

On February 4, 2009, a viewer complained that TQS had changed the rating of this program to 8+ when, in the previous year, it had been rated 13+ (the full text of all correspondence can be found in the Appendix, available in French only). The viewer felt that this lower rating was inappropriate because the content of the program had not changed. There continued to be, in his words, [translation] “scenes of slaughtered and bloody corpses as well as segments showing realistic depictions of autopsies that are inappropriate for children.”

After the CBSC informed him that he would need to provide a specific episode to serve as an example, he wrote again on February 14 simply stating that the program aired every Monday from 8:00 to 9:00 pm. The CBSC reiterated that he would need to

provide the specific date of an episode that concerned him in order for the CBSC to proceed. The complainant did so on February 28, identifying every date that the program had aired in February. The CBSC thus ordered tapes of the February 16 and 23 episodes.

The broadcaster responded to the complainant on March 10 with the following explanation:

[translation]

It should be noted that TQS followed the classification system recommended by the RÉGIE DU CINÉMA DU QUÉBEC. The rating given to this series by the Régie was “G – NOT SUITABLE FOR YOUNG CHILDREN”, **which means it is suitable for viewers in the age category 8+**. You might be interested to know that the RÉGIE DU CINÉMA du Québec is the body mandated to assign codes to the classifications and warnings for all content broadcast by media in the province of Quebec (movie theatres, DVDs, television, etc.).

Pursuant to the rules of ethics, we are entitled to broadcast programs rated “General – Not suitable for young children” at the time the program was broadcast. Please note that an **8+** icon appeared at the beginning of the program and coming out of each commercial break for 16 seconds in each instance. It is up to viewers to determine, in view of the warnings given, if their children should watch the program or not.

As a broadcaster member of the CBSC, we have therefore complied with all the rules set out by that body.

The complainant was dissatisfied with that response and wrote to the CBSC on March 25:

[translation]

They tell me that they comply with the standards established by the Régie du cinéma du Québec. This reply does not exactly correspond to the original issue I raised in my complaint when I asked why the *CSI-NY* series is now rated 8+ when it was rated 13+ last year and its content has not changed. I will ask the Régie for more information. Thank you again for following up on this matter.

Both the February 16 and 23 episodes were broadcast at 8:00 pm. Both were rated 8+ and neither contained any viewer advisories.

The February 16 episode was entitled “Fées d’hiver” (“Happily Never After” in the original English), while the February 23 episode was entitled “Dent pour dent” (“All in the Family”). These two episodes, like most *CSI* episodes, followed a similar formula. The episodes contained two separate storylines, each beginning with an investigation of a dead body at the scene of the crime. There were close-ups of a body and various wounds as the investigators took photographs. In these two particular episodes, the wounds included a puncture wound in a woman’s chest, a stab wound in another

woman's stomach, a woman shot with a rifle and a man with blood around his mouth and head.

The bodies were then taken to the lab for autopsies. At various points in the episodes, the viewer saw the bodies on the autopsy tables with incision marks where the doctor had performed his examination. The doctor usually then described to the investigators what he had deduced regarding the cause of death.

As the episodes progressed, the investigators performed a variety of forensic experiments in the laboratory or at the scenes of the crimes and gradually discovered more about how the murders were committed. Images of the violence actually being committed were shown in flashbacks. For example, in one episode a woman was stabbed in the stomach with a hook, and in another a man was struck in the mouth with the muzzle of a rifle. These scenes were shown in close-up and resulted in a considerable amount of blood.

More and more details of the murders were revealed and a flashback eventually portrayed the criminal act from start to finish. In the "Fées d'hiver" episode a young man gave a young woman drugs to make her more receptive to his advances. When the effect of the drugs began to wear off and she screamed at him to get off her, he plunged a hook into her stomach and then dumped her body out of a window onto the top of a school bus. The second storyline in that episode involved another woman being pushed onto the hose of a liquid nitrogen tank, such that the hose pierced her chest and induced a heart attack from the intense cold temperature. The murders in the "Dent pour dent" episode involved two adolescent boys attempting to shoot a man; when the rifle jammed, they resorted to beating him with the weapon. When they then threw the gun off the building, it "unjammed" and fired, killing a young woman walking down the street. That episode also contained flashbacks of someone yelling at a young boy on a bicycle to get out of the way, as one of the characters remembered how his young neighbour had been killed.

THE DECISION

The Quebec Regional Panel examined the complaint under the following provisions of the Canadian Association of Broadcasters' (CAB) *Violence Code*:

Article 3.0 - Scheduling

3.1 Programming

3.1.1 Programming which contains scenes of violence intended for adult audiences shall not be telecast before the late evening viewing period, defined as 9 pm to 6 am.

Article 4.0 - Classification

8+ (General – Not Suitable for Young Children)

These programs are suitable for the general public but could contain mild or occasional violence that may disturb young children. Viewing with adult supervision is therefore recommended for young children (age 8 and under) who are less able to distinguish between real and make-believe programming.

13+

The program may be viewed, purchased or rented only by persons 13 years of age or older. Children under 13 may be admitted only if accompanied by an adult.

The Régie classifies in this category programs that require a certain level of judgement. These programs contain passages or sequences that may offend the sensibilities of younger viewers.

Teenage viewers are more aware of the fact that a program is not reality and are therefore better psychologically prepared to follow more complex or dramatic programs. Violence, eroticism, coarse language or horror may be more developed and may constitute a dominant characteristic of the program. However, it is important that the program allow viewers to discern the meaning that should be attributed to the various characters and their actions, because teenagers are not necessarily prepared to face everything. This is why certain themes (drugs, suicide, troubling situations, etc.) and their treatment are carefully examined.

16 +

The program may be viewed, purchased or rented only by persons 16 years of age or older.

At the age of 16, young people enter a transition period between the end of adolescence and the beginning adulthood. They are more independent, and have usually attained a certain level of psychological maturity.

Programs with this rating present troubling themes, situations or behaviours and adopt a more direct point of view about things. They may therefore contain scenes where violence, horror and sexuality are more graphic.

Article 5.0 – Viewer Advisories

5.1 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.

5.2 Broadcasters shall provide a viewer advisory at the beginning of, and during programming telecast outside of late evening hours, which contains scenes of violence not suitable for children.

The Quebec Regional Panel Adjudicators read all of the correspondence and viewed copies of the February 16 and 23 broadcasts. The Panel concludes that TQS violated Articles 3.0, 4.0 and 5.0 of the *CAB Violence Code*.

Scheduling of Violent Content

The National Conventional Television Panel has recently dealt with this issue in *CTV re an episode of Criminal Minds (“Omnivore”)* (CBSC Decision 08/09-1405, June 25, 2009). In that decision, although the Panel noted that there is no mathematical way of assessing the adult nature of the violent content, it could and did set out the criteria for making that assessment in the following terms:

Although it has dealt with violent content on television before, the CBSC does not have any sort of *mathematical* formula for determining what type of programming constitutes “intended exclusively for adults”. Panels have, however, grappled with the issue and developed criteria that enable them to arrive at an increasingly predictable conclusion. In *CKCO-TV re Kazan* (CBSC Decision 96/97-0226, February 20, 1998), the Ontario Regional Panel set out some of those criteria. Although the level of violence in that particular television movie was not adult, the Panel said: “While it is difficult to propose any cut-and-dried formula to apply in coming to any such conclusion, the Panel does consider that the presence of the combined elements of fear, suspense, gore and explicitness may help characterize programming containing scenes of violence as *adult*.” [The principle was followed in *TQS re the movie L’inconnu (Never Talk to Strangers)* (CBSC Decision 98/99-0176, June 23, 1999).] Then, in *CJMT-TV (OMNI.2) re episodes of Law & Order: Criminal Intent (“Want”) and Law & Order: Special Victims Unit (“Pure”)* (CBSC Decision 07/08-1441, January 7, 2009), the Ontario Panel expanded the list of criteria such that “the presence, and level of, gore, explicitness, graphic or horrific images, frequency of violence, fear, terror-provoking suspense, and realism will tend toward adulthood determinations.”

Applying those criteria to the challenged episodes, the Panel concludes that the level of gore and explicitness of the murders, including the plunging of a hook into the stomach of a woman, the dumping of her body out a window onto the roof of a school bus, the plunging of a liquid nitrogen hose into a woman’s chest, the beating of a man to death with a rifle butt, and the shooting of a woman with that rifle tossed off a building, qualified as exclusively adult. All of these scenes featured graphic, explicit, realistic and vivid detail. The Panel concludes that any pre-Watershed broadcast of these episodes of *Les experts: Manhattan* breaches the scheduling provision in Article 3 of the *CAB Violence Code*.

Classification

The broadcaster chose to classify the episode as 8+. In the view of the Panel, this was an inappropriate choice. When TQS argued in its response to the complainant that the Régie du cinéma du Québec [translation] “is the body mandated to assign codes to the classifications and warnings for all content broadcast by media in the province of Quebec (movie theatres, DVDs, television, etc.)” it was incorrect. The Régie has no role in the determination of ratings applicable to television programs. That is solely the

responsibility of the broadcasters themselves, using the same classification *categories* and descriptors employed by the Régie (with the addition of an 8+ category), but applying these as appropriate to the television medium. In *TQS re the movie L’Affaire Thomas Crown (The Thomas Crown Affair)* (CBSC Decision 01/02-0622, December 20, 2002), this Panel made the important decision that Quebec French-language broadcasters were entitled to use the *system* of the Régie, but could not necessarily rely on the actual *rating* given by the Régie to any particular film due to the different circumstances of the television environment. The full reasoning of the Panel can be found in that decision; however, in the end, the following explanation of the policy rationale may be instructive:

Television is another matter. Conventional television broadcasters send their films into everyone's homes. There is no need for a more conscious and activist step on the part of the viewer than to turn on the set and select a channel (which may even be a not particularly activist step in the case of a channel-surfer, to choose one such relatively passive example). It is one reason, at least, for establishing a set of tools that will enable audience members to make *informed* viewing choices. These include broadcast codes, the establishment of a Watershed hour and the requirement of viewer advisories, as well as program ratings and V-chip encoding.

In other words, while the categories may be the same for both the cinema and the television screen, the determination of the applicability of the category to a particular program may differ.

As to the broadcaster's choice of 8+, the nature and level of the violence (as discussed in the previous section of the decision) clearly reflect the need for a higher rating. On that issue, the Panel considers that 16+ would be appropriate. The Panel has judged the violence as too graphic, explicit and realistic to be broadcast before 9:00 pm. Nonetheless, it considers that teenagers of 16 years have the judgment to be able to view such programming with discernment, and that a rating of 16+ would have been the appropriate rating. In conclusion, the Panel finds that, by not having included a 16+ classification icon at the beginning of the program, TQS has breached Article 4 of the *CAB Violence Code*.

Viewer Advisories

Viewer advisories play an essential role in providing audiences with the information they require in order to make informed decisions regarding the appropriateness of potentially problematic programming for their households. That is why their wording is meant to be simple, straightforward and to-the-point. The nature of the potentially inappropriate content should be clear; it should refer, for example, to easily understood terms like violence, coarse language, sexual content, nudity, mature themes or the like. It is also important that the advisories be provided before the program begins and at each opportunity thereafter, that is to say, “following each commercial break”. In the matter at

hand, TQS broadcast no advisories at all. Consequently, the broadcaster has breached the provisions of Article 5 of the *CAB Violence Code*.

Broadcaster Responsiveness

In all CBSC decisions, the Council's Panels assess the broadcaster's responsiveness to the complainant. In the present instance, the Panel finds that the broadcaster's Director of Regulatory Affairs provided a brief reply to the complainant. While the response was specific regarding the rating of the program, it did not respond at all to his concern about the *change* in the rating level from the previous season. Nor did it deal at all with the question of the brutal nature of the violence, a point also raised by the complainant. In other words, the response could, in the view of the Panel, have been more fulsome and sensitive to the complainant. Nonetheless, the Panel is satisfied that the letter has just passed the threshold of adequacy, in terms of the broadcaster's membership obligation of responsiveness.

ANNOUNCEMENT OF THE DECISION

TQS 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 *Les experts: Manhattan* was broadcast, but not on the same day as the first mandated announcement; 2) within the fourteen days following the broadcasts 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 TQS.

The Canadian Broadcast Standards Council has found that TQS, now V, violated the Canadian Association of Broadcasters' (CAB) *Violence Code* in its broadcasts of *Les experts: Manhattan* on February 16 and 23, 2009 at 8:00 pm. The programs contained scenes of violence intended for adult audiences and therefore should only have been broadcast after 9:00 pm as required by Article 3 of the Code. TQS rated the program incorrectly as 8+ when it should have been 16+ under Article 4. And TQS did not provide any viewer advisories regarding the violent nature of the program, as required by Article 5 of the Code.

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

ANNEXE

Décision du CCNR 08/09-0880 TQS concernant deux épisodes de *Les experts : Manhattan (CSI : New York)*

La plainte

La plainte suivante en date du 4 février 2009 a été envoyée au CRTC et acheminée au CCNR :

J'aimerais savoir qui s'occupe du classement d'âge pour les émissions de télévision. Cela concerne la télésérie *CSI : New York* présentée à TQS. L'an passé, elle était classée 13 ans et + et cette année, elle est classée 8 ans et +. Or le contenu de cette émission n'a pas changé : ce sont des enquêtes policières qui présentent des scènes de cadavres massacrés et ensanglantés de même que des séquences d'autopsie très réalistes qui sont inappropriées pour des enfants. Je crois qu'une révision s'impose à ce sujet.

Le CCNR lui a expliqué qu'il faut fournir une date et une heure spécifique de diffusion, même si c'est tous les épisodes. Le plaignant a écrit de nouveau le 14 février :

L'émission *CSI : New York* est une télésérie (américaine) qui est présentée tous les lundis de 20 h à 21 h depuis quelques années sur réseau TQS. Il vous sera donc facile d'avoir quelques émissions qui sont toujours du même genre. Merci d'avoir répondu à ma requête.

Le CCNR lui a expliqué que c'est lui qui doit identifier un épisode qu'il a vu. Il a fourni ces renseignements le 28 février :

Merci encore de votre réponse. La dernière émission que j'ai écoutée est celle de lundi, 23 fév., 20 h mais ma plainte peut aussi s'appliquer aux émissions des semaines précédentes : 16 fév., 9 fév., 2 fév. et tous les lundis de janvier à 20 h.

Le CCNR a donc commandé les fichiers-témoins pour les épisodes des 16 et 23 février.

La réponse du télédiffuseur

TQS a répondu au plaignant le 10 mars :

Monsieur,

Le Conseil canadien des normes de la radiotélévision (CCNR) nous a fait parvenir votre plainte portant sur deux émissions de la série *CSI : New York, Les experts : Manhattan* diffusées sur nos ondes les 23 et 16 février 2009 à 20 h.

Il est à noter que TQS a suivi le classement recommandé par la RÉGIE DU CINÉMA DU QUÉBEC, qui a classé cette série « G – DÉCONSEILLÉ AUX JEUNES ENFANTS » **ce qui**

signifie un auditoire de 8+. Pour votre information, La RÉGIE DU CINÉMA du Québec est l'instance ayant pour mandat de codifier le classement et les avertissements de tout contenu diffusé sur nos médias au Québec (salles de cinéma, dvd, télévision, etc.).

Conformément aux règles d'éthique, nous sommes en droit de diffuser des émissions cotées "Visa général – Déconseillé aux jeunes enfants" à cette heure. Notez qu'une icône **8+** est apparue au début de l'émission et à chaque retour de pause pendant 16 secondes à chaque fois. En rapport avec les avertissements donnés, il revient aux téléspectateurs de juger si leurs enfants doivent ou pas regarder l'émission.

En tant que diffuseur membre du CCNR, nous avons donc respecté toutes les règles de l'organisme.

Nous vous remercions de nous avoir fait part de vos préoccupations et vous prions d'accepter nos sincères salutations.

Correspondance additionnelle

Le plaignant n'était pas satisfait de cette réponse et il a écrit au CCNR le 25 mars :

Bonjour. J'ai reçu la réponse de TQS la semaine passée. On me dit qu'ils se conforment aux normes de la Régie du cinéma du Québec. Cette réponse ne correspond pas tout à fait à l'origine de ma plainte qui était de savoir pourquoi cette série *CSI :NY* qui était classée 13 ans et + l'an passé, est maintenant classée 8 ans et + alors que son contenu n'a pas changé. Je m'informerai à la Régie pour plus de précision. Merci encore pour le suivi de ce dossier.