
CANADIAN BROADCAST STANDARDS COUNCIL

QUEBEC REGIONAL PANEL

Canal D re an episode of *Sexe Réalité*

(CBSC Decision 09/10-1790)

Decided January 25, 2011

G. Moisan (Vice-Chair), Y. Bombardier, A. H. Caron, R. Cohen (*ad hoc*), V. Dubois

THE FACTS

Sexe Réalité is a one-hour program providing sexual information to viewers on a variety of subjects. It is broadcast on Friday and Saturday nights at midnight by specialty service Canal D. On June 18, 2010, the program included four distinct segments. The first was « Sodomie 101 » (“Sodomy 101”), which was essentially coverage of a workshop on the subject of anal sex. There were interviews with the female instructor and the participants (who seemed to be members of the general public) and scenes with naked couples practising what they were learning.

The subject of the second segment, “Suicide Girls”, was punk-style pin-ups, which focussed on women posing naked, either individually or in groups.

The third segment focussed on male strippers, who were principally shown in a club environment during strip shows or engaged with women in their audiences. They were provocatively dressed in bikini briefs which revealed penis contours and they engaged in simulated sexual activity with the women who had come to see the shows.

In the last of the segments, “Soirées sexuelles” Soirées sexuelles (Sexual Evenings), couples were participating in orgies.

Canal D broadcast the challenged episode at midnight. The specialty service included an 18+ ratings icon for 15 seconds at the start of the program and following every commercial break. The broadcaster also aired the following viewer advisory in video

and audio format at the beginning of the show, but did not repeat it during the course of the episode:

[Translation]

Warning: This program contains sexually explicit material intended for adult audiences.

The complainant sent the following message on the CBSC's website complaints form on June 25: [Translation] "detailed, sodomy, explicit details. More than XXX." On July 13, Canal D's legal counsel replied in principal part as follows (the full text of all the correspondence, in French only, can be found in the Appendix):

[Translation]

We have received and read your complaint dated June 25, 2010 concerning the broadcast of the program *Sexe Réalité* on June 18, 2010 at midnight by Canal D's programming service. We would like to begin by expressing to you that we regret that the broadcast of the program *Sexe Réalité* offended you.

However, we do wish to point out to you that the Canadian Association of Broadcasters' *Code of Ethics* administered by the Canadian Broadcast Standards Council (CBSC) clearly states at Article 10 that "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."

In addition, Article 11 of the Canadian Association of Broadcasters' *Code of Ethics* stipulates that broadcasters shall provide viewer advisories when programming includes mature subject matter or scenes with nudity, sexually explicit material, coarse or offensive language, or other material susceptible of offending viewers.

As a broadcaster who is a member of the Canadian Association of Broadcasters, we wish to assure you that Canal D rigorously adheres to the Canadian Association of Broadcasters' *Code of Ethics*. It is for that reason that the program *Sexe Réalité* is not only broadcast within the watershed period, but also contains a warning at the beginning informing viewers that it contains sexually explicit material intended for adult audiences. Moreover, an icon informing viewers that the program is intended for those who are 18 or more appears at the beginning of the program and after every commercial break.

The CBSC received the complainant's Ruling Request the following day.

[Translation]

I understand that the broadcaster is showing the program at the appropriate hour and includes an advisory. However, in the program of June 18, 2010 on sodomy certain acts were shown that go beyond the threshold of what an adult such as myself can tolerate. As an example, at one point in the program viewers see a woman wearing a black latex glove who has inserted that gloved hand into her husband's anus while she says and shows that she is inserting her entire hand up to her mid-forearm.

THE DECISION

The Quebec Regional Panel examined the complaint under the following articles of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* and *Equitable 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.

CAB Equitable Portrayal Code, General Principles

[c] Nothing in this Code should be interpreted as censoring the depiction of healthy sexuality.

CAB Equitable Portrayal Code, Clause 8 - Exploitation

- a) Broadcasters shall refrain from the airing of programming that exploits women, men or children.

The Panel Adjudicators read the correspondence and watched the program in question. The Panel concludes that the broadcast breached Clause 11 of the *CAB Code of Ethics*, but none of the other codified standards cited above.

Sexual Content

A number of CBSC Panels have been asked to review programming with quite explicit sexual content over the years. The general conclusion of these decisions has been that such content may be broadcast after the start of the Watershed (between 9:00 pm and 6:00 am). As the National Specialty Services Panel said in *Teletatino re the film La Chiave Del Placere (The Key to Sex)* (CBSC Decision 06/07-0081, May 1, 2007),

The CBSC has dealt with complaints about erotic films in the past. In those decisions, it has always taken the position that sexually explicit content is not inevitably equivalent to exploitation. Provided that no degrading comments are made about the nature or role of either gender, and that neither gender is portrayed to the detriment of the other, the program will not be understood to be in violation of the [exploitation standard].

This Panel has examined a number of qualitatively similar complaints. In one decision involving an erotic movie that was also aired at midnight, namely, *TQS re the Bleu nuit movie Mission de charme* (CBSC Decision 03/04-0976, February 10, 2005), this Panel concluded that “the challenged feature film is sexually explicit but not sexually exploitative and that neither gender is degraded vis-à-vis the other.” It has followed that jurisprudential line in *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).

In the matter at hand, the Panel concludes that the genders were treated without exploitation vis-à-vis each other and that the sexual activity, although explicit, was not exploitative. In addition, it considers that the depiction falls with the General Principle cited above, namely, that “[n]othing in this Code should be interpreted as censoring the depiction of healthy sexuality.” The Panel also finds that the sexual content, which was exclusively adult in nature, was broadcast at an entirely appropriate hour, well after the start of the Watershed. In such circumstances, provided viewers are given sufficient information to enable them to make an informed viewing choice, their choice is to watch or change the channel. There is no breach of Clause 8 of the *CAB Equitable Portrayal Code* on this occasion.

Classification Icons and Viewer Advisories

As noted in the immediately preceding paragraph, it is the obligation of broadcasters to provide their audiences with sufficient information to make *informed viewing choices*. In order to do this, they must employ ratings icons at a level that conforms to the substance of the program content *and* viewer advisories. The ratings icons are a shorthand form of advice, principally but not solely age-related in their presentation (in English-language programming: C, C8, G, PG, 14+, 18+; and in French-language programming: G, 8+, 13+, 16+ and 18+). As is evident, they do not provide the viewer

with an explanation of the type of content that results in the age-related classification. In any case, the broadcaster's obligation is to provide the ratings icon at the beginning of the program and at the start of the second hour, when the program runs more than sixty minutes. That is, as the Icon Use Protocol provides, a "minimal use standard [...]; stations may wish to use the icons more frequently on programs with particularly sensitive content." Canal D has chosen to display the icon at the start of the program and following every commercial break. That is more than is required; Canal D is to be applauded for that additional viewer advice.

Since it is to be expected that some types of content, whether sexual, violent or containing coarse language will be of greater concern to some families and of less concern to others, it is also important to provide more detailed information to viewers. *That* is the purpose of viewer advisories, which use words, not symbols, to inform audiences of what they can expect. As the National Specialty Services Panel explained in *Comedy Network re an episode of Gutterball Alley* (CBSC Decision 01/02-0450 & 01/02-0481, September 13, 2002),

Viewer advisories differ slightly from classification issues. They are broader and more descriptive [...]. They provide people with more than a single "catch-all" basket category for levels of coarse language, violence, nudity and sexual content. In descriptive words, they advise viewers of the kind of content they can anticipate encountering in a program about to be, or currently being, aired.

There are, however, two informative elements required. One is the substance of the advisory and the other is the frequency of the provision of that information to audiences.

On the substantive (content) side, Canal D has been precise. It has alerted viewers to the sexually explicit nature of the program. Nothing more was needed as to the content of the advisory. That said, the rules relating to the frequency of broadcast of the advisories are important and were not, on this occasion, respected. For a one-hour program exclusively intended for adult audiences and broadcast in the Watershed period, Clause 11 is clear. The appropriate viewer advisory must appear at the start of the program *and following every commercial break*. The reason for that rule is obvious. People tune in and out of programs. They channel surf. The rule was established in the expectation that viewers may not arrive at the start of the show. They are not on that account less entitled to the information about the program than those individuals who are there from the very beginning of the program. The Panel finds the statement of the National Specialty Services Panel in *WTN re Sunday Night Sex Show* (CBSC Decision 99/00-0672, January 31, 2001) apt in this respect.

[T]he Panel considers it important to emphasize the informative value to viewers of advisories coming out of *every* commercial break. It is not reasonable to expect that viewers who may be channel-surfing or simply turning on their television sets ten or fifteen or more minutes into a show should be deprived of *such important viewing information*. [Emphasis added.]

There are many CBSC Panel decisions that make the point about the requirement of viewer advisories at the beginning of the show and following *every single* commercial break. [See, for example, *TQS re the movie L'inconnu (Never Talk to Strangers)* (CBSC Decision 98/99-0176, June 23, 1999); *CTV re Poltergeist - The Legacy* (CBSC Decisions 96/97-0017 and 96/97-0030, May 8, 1997); *TQS re the movie Les Girls de Las Vegas (Showgirls)* (CBSC Decision 01/02-0478, December 20, 2002); and *VRAK.TV re Charmed ("Dead Man Dating")* (CBSC Decision 02/03-0365, July 17, 2003), among others.] The Panel comes to the same conclusion as the long line of jurisprudence, namely, that Canal D has breached Clause 11 of the *CAB Code of Ethics* as the result of its broadcast of an insufficient number of viewer advisories during the course of this episode of *Sexe Réalité*.

The Panel also notes that Canal D advised the CBSC Secretariat on September 8, 2010 that, at some point between the broadcaster's receipt of the June 25 complaint and the date of the September letter, the company changed its practice to reflect the requirements of Clause 11. In that September letter, the company's Legal Counsel wrote:

[Translation]

Please note that following the complaint concerning the episode broadcast on June 19 [*sic June 18*] we have adjusted the frequency of the warnings such that they appear at the beginning of each episode as well as after each commercial break, in addition to showing the 18+ icon.

The Panel commends Canal D for taking that step and making the adjustment even prior to the date of the decision in the matter at hand.

Broadcaster Responsiveness

In all CBSC decisions, the Council's Panels assess the broadcaster's responsiveness to the complainants. In the present instance, the Panel finds that the response of the broadcaster's Legal Counsel was a careful attempt to deal with the issues related to a sexually explicit program. His reply was thoughtful although it did not satisfy the complainant. That is, of course, always the case in any matter that ultimately gets to a Panel adjudication. Indeed, it is a prerequisite to that step in the formal Panel process. In the end, the Quebec Panel agreed with the substance of what Canal D's Legal Counsel said on the sexual content issue. That said, the Panel also notes the proactive step of the broadcaster to deal with Canal D's misunderstanding of the viewer advisory requirements. All things taken into account, the Panel considers that Canal D has fully met its membership obligation of responsiveness in this instance.

ANNOUNCEMENT OF THE DECISION

Canal D 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 *Sexe Réalité* 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 Canal D.

The Canadian Broadcast Standards Council has found that Canal D breached the Canadian Association of Broadcasters' *Code of Ethics* in its broadcast of an episode of *Sexe Réalité* on June 19, 2010. Although Canal D did broadcast a viewer advisory at the beginning of the program, its failure to provide viewer advisories following every commercial break during the entire hour of the program constituted a breach of Clause 11 of the Code, which requires such information to be provided so that the audience can make the necessary viewing choices for themselves and their families.

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

ANNEXE

Dossiers du CCNR 09/10-1790 Canal D re Sexe Réalité

La plainte

Le 25 juin 2010, le CCNR a reçu la plainte suivante par l'entremise de son formulaire web :

station : Canal D
émission : *Sexe Réalité*
date : 18 juin 2010
heure : minuit
préoccupation : Sexe détaillé, sodomie, détails explicite. Plus que XXX.

La réponse du télédiffuseur

Canal D a répondu le 13 juillet :

Nous avons pris connaissance de votre plainte du 25 juin dernier concernant la diffusion, le 18 juin 2010 à minuit, de l'émission *Sexe Réalité* sur les ondes du service de programmation de Canal D. Nous tenons premièrement à vous mentionner que nous sommes désolés si la diffusion de l'émission *Sexe Réalité* ait pu vous choquer.

Nous tenons cependant à vous souligner qu'en vertu du *Code de déontologie* de l'Association canadienne des radiodiffuseurs administré par le Conseil canadien des normes de la radiotélévision (le « CCNR »), il est clairement indiqué, à l'Article 10 que les « émissions à l'intention des auditoires adultes ayant du contenu sexuellement explicite ou comportant du langage grossier ou injurieux ne devront pas être diffusées avant le début de la plage des heures tardives de la soirée, plage comprise entre 21 h 00 et 6 h 00 ».

Par ailleurs, le *Code de déontologie* de l'Association canadienne des radiodiffuseurs prévoit à son Article 11 des mises en garde qui doivent être faites par les télédiffuseurs lorsque la programmation renferme des sujets délicats ou, du contenu montrant des scènes de nudité, des scènes sexuellement explicites, du langage grossier ou injurieux ou, d'autre contenu susceptible d'offenser les téléspectateurs.

En tant que diffuseur membre de l'Association canadienne des radiodiffuseurs, nous tenons à vous assurer que Canal D respecte rigoureusement le *Code de déontologie* de l'Association canadienne des radiodiffuseurs et c'est pour cette raison que l'émission *Sexe Réalité* est non seulement diffusée à l'intérieur de la plage des heures tardives, mais qu'elle contient un avertissement au début de l'émission informant le public que l'émission renferme du contenu sexuellement explicite et qu'elle vise un public averti. De plus, une pastille

informant le public que l'émission est destinée à un public de 18 ans et plus apparaît au début de l'émission et au retour de chaque pause commerciale.

Nous tenons une fois de plus à vous mentionner que nous sommes désolés si la diffusion de l'émission *Sexe Réalité* ait pu vous choquer mais espérons sincèrement que vous apprécierez l'explication que nous vous avons fournie. Par ailleurs, sachez que les commentaires de nos téléspectateurs sont très importants pour nous et nous permettent d'améliorer constamment notre programmation et de mieux comprendre comment nos émissions sont reçues par le public.

Correspondance additionnelle

Le (la) plaignant(e) a soumis sa Demande de décision le 14 juillet :

Je comprend[s] que le diffuseur met l'émission à la bonne heure et met la mise en garde. Cependant dans l'émission du 18 juin 2010 sur la sodomie des gestes durant l'émission dépassaient le degré de tolérance qu'un adulte comme moi peut endurer. Je vous donne [un] exemple que durant le programme on voit une femme avec un gant de latex noir enfoncé dans l'anus de son mari dire et nous montrer qu'elle enfonce toute sa main jusqu'à mi avant-bras.

J'aimerais au moins qu'on retire cet épisode.

Astral a envoyé les fichiers-témoins le 8 septembre avec l'explication suivante :

Tel que demandé par Madame C., via courriel, le 18 juillet 2010 nous avons fait parvenir au CCNR, à l'égard du dossier mentionné en objet, deux (2) copies des bandes-témoins de l'épisode de la série *Sexe Réalité* diffusé sur les ondes de la chaîne spécialisée Canal D le 19 juin dernier.

Toutefois, l'enregistrement des bandes-témoins pour l'émission désignée à la plainte a débuté trop tard et ne contient malheureusement pas l'avertissement habituellement diffusé au début de chaque épisode de cette série indiquant aux téléspectateurs que l'émission qu'ils appréhendent à visionner renferme du contenu sexuellement explicite et qu'elle vise un public averti. Il n'est malheureusement plus possible d'obtenir un enregistrement adéquat de cet épisode en particulier puisque les bandes-témoins ne sont plus disponibles pour cette date du 19 juin 2010.

Par ailleurs, nous vous joignons aux présentes deux (2) copies des bandes-témoins de l'épisode de la série *Sexe Réalité* diffusé le 27 août dernier, lesquelles copies contiennent les avertissements habituellement compris lors de la diffusion des épisodes de cette série. Vous remarquerez que, suite à la plainte relative à l'épisode du 19 juin dernier, nous avons ajusté la diffusion des avertissements de façon à ce qu'ils apparaissent au début de chaque épisode, ainsi qu'au retour de chaque pause publicitaire, et ce, en plus de la pastille 18+.