
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CJOH-TV re “White Men Can’t Jump”

(CBSC Decision 94/95-0060)

Decided March 12, 1996

R. Cohen (National Chair) (*ad hoc*), P. Fockler, T. Gupta, R. Stanbury
M. Ziniak

(Since the Regional Vice-Chair Al MacKay’s station was directly involved, he abstained from consideration of this matter)

THE FACTS

CJOH-TV broadcast the feature film “White Men Can’t Jump” at 9 p.m. on November 11, 1994. The film was preceded by an on-screen viewer’s advisory which stated:

Tonight’s Feature deals with mature subject matter and contains some sex and coarse language throughout. Viewer Discretion is advised.

There was also an oral advisory given at the start of the film; further advisories were shown at the commercial breaks at 9:15, 9:27 and 9:42.

There is no need for the Canadian Broadcast Standards Council to provide the customary transcript of challenged remarks. A sufficient number of the offending words are cited in the complainant’s letter below. Suffice it to say for these purposes that the film is replete with epithets and very coarse street language. There are also two love-making sequences which are not particularly graphic or even the subject matter of the viewer’s complaint.

The Complaint

On November 12, the viewer sent a letter to the broadcaster, complaining about the film and describing some of the language used during the course of the film. He said:

I am absolutely disgusted and shocked that anyone at your station would see fit to air this movie, unedited.

This film carries a Restricted rating, due to extremely foul language, sexual content and nudity. The fact that only a paying population over the age of 17 could see this film on it's [sic] release makes it even more unbelievable that you would release it, unedited, over free airways. This movie aired at 9:00 PM, prime time, at an hour when impressionable minds, unable to discriminate, would hear oft-repeated exclamations like "cocksucker!", "mother-fucker", "Jesus Christ!", "bullshit!", "asshole", and, quite literally, an innumerable amount of simple "fuck!"s (this only from the first 30 minutes that I chose to observe, dumbfounded)!

What has this world come to that I am now required to maintain constant watch over my children, in my own home, on free-access TV? Are those in the industry with the responsibility to make sound decisions, amoral, completely lacking in judgement, or was this simply a terrible mistake left unchecked through numerous levels of management? The argument that a five second disclaimer appearing before each segment makes it permissible for this trash to filter into my home and into the minds of young children is ridiculous. Anyone with an iota of common-sense will admit this.

[...] The fact that this movie was ever considered to air uncensored is a tragic statement on slipping standards and an indication of the overly extended leash that has apparently been afforded to you in the broadcast industry.

The Broadcaster's Reply

The Vice-President and Station Manager of CJOH-TV responded to the viewer on November 25. He said, among other things:

We appreciate your concerns in regards to the language and mature themes of this feature film, and offer our apologies if the content was distasteful to you.

In responding to your letter, we wanted to provide you with some background information on the recent developments of industry codes and standards which played a role in the decision by BBS - Ontario (CJOH TV) to air this film.

Last January, the Canadian Association of Broadcasters adopted a new, CRTC-approved code which dealt primarily with the issue of violence in television programming

When the Code was crafted, broadcasters were cognizant that in addition to concerns on violence, many in our audience also had views on the issues of language, nudity and mature themes in television programming. To that end, the Code's Statement of Principle states in clause 1.2.3:

"that viewers be informed about the content of programming they choose to watch"

That theme is carried through in the Code itself in Section 3, the scheduling provisions, which read as follows:

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.

3.1.2 Accepting that there are older children watching television after 9 pm, broadcasters shall adhere to the provisions of article 5.1 (Viewer advisories), enabling parents to make an informed decision as to the suitability of the programming for their family members.

BBS Ontario - CJOH TV, along with many other broadcasters, has adopted the provisions of Section 3.1.1 - the establishment of a "watershed hour" for adult programming containing violence - to also apply to the scheduling of programming which may have elements of language, nudity or mature themes.

To that end the decision was made that this film would be telecast after 9 pm, and would carry appropriate advisories, to enable viewers to make an informed decision on whether or not the film would be suitable for them.

The advisory which aired throughout the first hour of the program was as follows:

"Tonight's feature deals with mature subject matter and contains some sex and coarse language throughout. Viewer discretion is advised."

This advisory, in both audio and video form, was aired before the film began, and at the resumption of the film coming out of commercial breaks during the first hour of the program.

In editing the film for telecast, careful consideration was given to the language elements. It was the view that while use of the coarse language could possibly be offensive to some viewers, it was not gratuitous, in that it suited the nature of the characters and the physical setting of the plot.

Within the context of the overall story, the script reflects the language of the street, and as such is part of the lexicon of that particular reality. To have cut all the coarse language would have impaired the dialogue continuity. That in turn would have been a disservice to the film's creators and, in the end, to those viewers who wish to see films presented in as much of their original theatrical version as possible.

We appreciate that taste is a highly subjective matter. What is humorous to one individual could be insulting to another. The same is true of language, and nudity. That is why we took particular care in the wording and placement of the viewer advisories. We wanted to ensure that members of our audience who might possibly find the content not to their liking would have ample opportunity to make another viewing choice.

We regret that the content of this feature film was unpalatable to you. However we believe that in the scheduling of this movie, and with the provision of the viewer advisories, that we have met the conditions of the various industry codes to which we subscribe, as a member of the Canadian Broadcast Standards Council (CBSC).

The viewer was unsatisfied with this response and requested, on December 27, that the CBSC refer the matter to the appropriate Regional Council for adjudication.

THE DECISION

The CBSC's Ontario Regional Council considered the complaint under the *Voluntary Code Relating to Violence in Television Programming* of the Canadian Association of Broadcasters (CAB). Clause 3 of that Code reads as follows:

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.

3.1.2 Accepting that there are older children watching television after 9 pm, broadcasters shall adhere to the provisions of article 5.1 below (viewer advisories), enabling parents to make an informed decision as to the suitability of the programming for their family members.

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.

5.3 Suggested language for suitable viewer advisories is outlined in Appendix A

The Regional Council members viewed a tape of the film in question and reviewed all of the correspondence. The members consider that the broadcaster is not in breach of the Code.

The Content of the Program

The Council is entirely in agreement with the complainant that the language is coarse, even incessantly so for at least the first half hour of the film. The Council is equally of the view that the language used is that of the streets of California portrayed in the motion picture. Furthermore, the Ontario Regional Council has previously dealt with the issue in *CFRA-AM re Steve Madely* (CBSC Decision 93/94/-0295, November 15, 1994). At that time, the Council ruled:

There is no doubt that the host used the words "damn" and "Goddammit" during the course of his broadcast on the morning in question. It is equally clear that the complainant was offended by the use of those words. The use or misuse of these would, in the view of the Council, fall within the purview of Clause 6(3) of the *Code of Ethics* as an example of the

proper or improper presentation of comment or opinion. The Council has also frequently felt it appropriate to look for guidance in determining acceptable standards of broadcaster actions to the *Radio Regulations, 1986* or the *Television Broadcasting Regulations, 1987*. In this case, it is section 3(c) of the *Radio Regulations, 1986* which refers to language. It provides that "A licensee shall not broadcast ... (c) any obscene or profane language." In its determination of what constitutes "obscene or profane language", Council considered that current broad social norms must be applied. The Council also had to face the fact that some language which may at another time have been broadly considered obscene or profane had now slipped into common and marginally acceptable usage. Terms formerly considered blasphemous or irreligious are today non-religious and inoffensive to the population as a whole, even if perhaps in poor taste. In general, the Regional Council concluded that there may be words which ought not to be used in the medium but whose use could not be raised to the level of profanity or obscenity. While the word "damn" gave the Council no difficulty by current standards, this was a case which fell into that middle ground insofar as the word "Goddammit" was concerned. In their view, the host used the term as an epithetic expression of frustration but not in an *intentionally* irreverent, blasphemous or irreligious way.

While it is not the same language which was used in this film, the Council considers that the same principles are applicable and that it cannot interfere with the broadcaster's choice to air the film. The Council also adopts the conclusion of the Ontario Regional Council in the *Madely* decision, namely, "While good taste and judgment might have dictated the non-use of the expression on the public airwaves, it was not a sanctionable usage."

The Watershed Hour

The question of the timing of the airing of the film also comes into play. The Ontario Regional Council has also previously dealt with this issue in *CITY-TV re "Ed the Sock" Promotional Spots* (CBSC Decision 94/95-0100, August 23, 1995). At that time, the Council stated:

Since this is the Council's first decision dealing in any significant way with the "watershed" hour, it is worth noting what it is and what purpose it serves. In its literal sense, it, of course, denotes the line separating waters flowing into different rivers or river basins. Popularly, the term has been applied to threshold issues but the literal meaning of the word gives the best visual sense of programming falling on one side or the other of a defined line, in this case a time line. Programming seen as suitable for children and families falls on the early side of the line; programming targeted primarily for adults falls on the late side of the line. It should be noted that the definition of that time line varies from country to country, from 8:30 p.m. in New Zealand to 10:30 p.m. in France. (Great Britain, Finland, South Africa and Australia all share the Canadian choice of 9:00 p.m. as the watershed.)

In Canada, the watershed was developed as a principal component of the 1993 *Violence Code*, establishing the hour *before which* no violent programming intended for adult audiences would be shown. Despite the establishment of the watershed for *that* purpose, the Council has reason to believe that broadcasters regularly consider this hour as a rough threshold for *other* types of adult programming.

This was, in fact, the position taken by the station's Vice-President in his response and the Council is of the view that, provided viewers were alerted to the program content in

accordance with the terms of Article 5 of the *Violence Code*, the airing of the film at 9:00 pm would not give rise to a violation of the Code. This was indeed the case here; the viewer advisories were ample and the Council agrees that there was no breach of the Code.

The Issue of Broadcaster Responsiveness

In addition to its primary responsibility of measuring the complaint against the Code in question, the CBSC Regional Council always evaluates the *responsiveness* of the broadcaster to the complainant. This requirement to be responsive to audience complaints is a responsibility of membership in the CBSC. In this case, the Regional Council considers that the Vice-President and Station Manager of CJOH-TV sent an extremely thorough, thoughtful and appropriate reply to the complainant. Nothing more is required.

This decision is a public document upon its release by the Canadian Broadcast Standards Council. It may be reported, announced or read by the station against which the complaint had originally been made; however, in the case of a favourable decision, the station is under no obligation to announce the result.