
**CANADIAN BROADCAST STANDARDS COUNCIL
ATLANTIC REGIONAL PANEL**

CTV re *W-Five* (Swingers)

(CBSC Decision 99/00-0347)

Decided February 14, 2001

Z. Rideout (Chair), R. Cohen (*ad hoc*), K. MacAulay, R. McKeen, H. Montbourquette

THE FACTS

On February 1, 2000, the *W-Five* episode included a segment entitled “Bob & Carol & Ted & Alice 2000” which was dedicated to the issue of swinging, a practice which, as Tom Clark, the program host, and Wei Chen, the segment host, noted, had been more in vogue in the 1970s but was now enjoying a revival following the apparent societal concerns about venereal disease in the intervening period. Although the program ran in other regions of the country on that date at different hours, it was seen by the complainant in Halifax, where it ran between 8:00 and 9:00 p.m. on that date; the challenged segment was aired at 8:30 p.m. At the beginning of the program, Tom Clark states: “We caution that this is a mature subject and it is intended for adults.” A similar type of oral advisory is again given by the program host about midway through the broadcast.

The segment personifies the resurgence of the swingers lifestyle in Canada by following two couples, euphemistically identified as Bob and Carol and Ted and Alice, from clothed interviews to the verge of their sexual interaction toward the end of the segment. During the interview component, the couples express their views on the subject quite candidly, elaborating on the need to conceal their activities from their children and families. Other persons, one of whom is a sexologist, share their opinions and experiences as well.

Among the various scenes, some of which appear to take place on a dance floor, several unidentifiable couples are shown moving to the music and embracing, if not groping, each other. While it is fair to say that there is no explicit sexual activity in the segment, there are certainly quite suggestive scenes, including those in the hot tub, in which Bob and Carol and Ted and Alice are shown undressing and stepping into the tub. In the process, we see

the men's buttocks and the women's breasts. The couples are also shown kissing while the men fondle the women's breasts. Once out of the hot tub, the two couples are shown drying off and then falling onto the bed. We then see both couples in bed continuing their foreplay but no explicit sexual acts are shown.

The complainant wrote to the CRTC the following day. His letter was, in the ordinary course, forwarded to the CBSC. He said, in part (the full text of this letter and all the other correspondence is reproduced in the Appendix hereto):

While watching the CTV program W5 last evening (8:00-9:00 p.m., AST), I was dismayed to see that it had a segment devoted to "Swingers" (people who exchange spouses for sexual purposes). What I found disturbing was that the segment showed complete frontal female nudity and also a male fondling the breasts of a female. I think that this was highly inappropriate for the time slot allotted to the program.

The Vice-President of News and Executive Producer of *W-Five* replied on March 2 as follows, in principal part:

W-Five clearly warned viewers before the documentary began, that the subject matter was intended for a mature audience. This warning was repeated half-way through the documentary. Viewers had the option to switch channels or turn the television off.

The program originated from CTV in Toronto. This segment was broadcast in different time zones across the country. In the Eastern Time zone it aired at 10:30 p.m. - 11:00 p.m., while in some parts of the country between 8:30 p.m. - 9:00 p.m. We at CTV are sensitive to who is watching our news programming at different times of the day. We regularly edit out violent images from war zones or crime scenes that we deem to be gratuitous. Similarly we edit out images where the only purpose is to titillate. While we edit out material, we also seek to achieve a balance in presenting images that illustrate a story or issue.

The McSorley stick swing incident is a case in point. It was a horrible and violent picture but at the same time it was we believe, important to use the images throughout the broadcast day in the context of reporting on hockey violence. While a TV movie or drama about hockey violence might be restricted to late hour viewing, news and public affairs programming is different and must have the ability to report on topics some may consider sensitive or offensive.

When the subject of a documentary is relationships and human sexuality, it is important to illustrate the issue in a limited and tasteful fashion without being pornographic or obscene. Eighty percent of the documentary was composed of on-camera interviews with individuals explaining in their own words, and willingly, their interests in this lifestyle. The pictures used for this program were carefully filmed and edited so as not to be salacious or prurient.

Allow me to explain why we chose to report on this topic.

CTV has a responsibility to report on all aspects of Canadian society, including issues about morality. This obligation is set out in The Broadcasting Act which states broadcasters should:

"provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern..."

We believe morality is an issue of public concern. As with most important issues, there are many varied and divergent ideas. The W-FIVE documentary reported on the resurgence and renewed interest in the swingers' lifestyle and we believe it was an appropriate topic that reflects some circumstances of contemporary Canadian life.

The complainant was dissatisfied with the reply and expressed his unhappiness in the following terms, in part:

I received this somewhat self-serving and arrogant reply from CTV regarding my original complaint. I believe my original point that this program was inappropriate for the time slot was totally glossed over.

Please notice that they showed this particular program at a later time slot in other markets, but chose to air it in the Maritimes during a time when children would be watching. The Maritimes should have been given the same consideration as the rest of the country.

THE DECISION

The Atlantic Regional Panel considered the complaint under the following provisions of the *Sex-Role Portrayal Code* and the *Violence Code*.

CAB Sex-Role Portrayal Code, Clause 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.

Guidance: "Sex-ploitation" through dress is one area in which the sexes have traditionally differed, with more women portrayed in scant clothing and alluring postures.

CAB Violence Code, Article 3.1.1 (Scheduling)

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.

(Note: To accommodate the reality of time zone differences, and Canadian distant signal importation, these guidelines shall be applied to the time zone in which the signal originates.)

The Regional Panel Adjudicators watched the tape of the program which they received from the broadcaster and reviewed all of the correspondence. While, for the reasons given below, the Panel does not consider the program in question in breach of the *CAB Sex-Role Portrayal Code*, it finds the scheduling of the program before the Watershed in violation of the scheduling provisions of the *Violence Code*.

A Preliminary Issue: The Logger Tape

As noted above, Panel Adjudicators viewed the tape received from the broadcaster. Normally, the broadcaster supplies a dub from the logger tape of the challenged program, which provides a time code, indicating precisely when the programming in question aired. In this case, CTV provided the Panel with a dub of the master of the program without time code. Given the central importance of the broadcast hour to this complaint, a dub of the logger tape of the program as broadcast in Halifax would have been particularly useful.

The Subject Matter: Too Exploitative?

It is the experience of the CBSC that programs dealing with such an overtly sexual subject sometimes lead to some sensitivity of reaction on the part of the viewing audience. This does not, of course, mean that the broadcaster ought not to air such a program. As the broadcaster correctly points out, the *Broadcasting Act* itself provides, in Section 3(1)(j), that

the programming provided by the Canadian broadcasting system should

(iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern.

To this the Panel would add that Section 3(1)(j) also provides that

the programming provided by the Canadian broadcasting system should

(i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes

While the Panel is well aware that this was not the primary concern of the complainant, it considers that it ought to deal with this potentially contentious aspect of the segment in question.

In this regard, the Panel concludes that the segment in question was of the well-known nature of a magazine format news and public affairs show and was produced with the goal and intention of being "limited and tasteful ... without being pornographic or obscene." Moreover, it is clear that, in terms of the *Sex-Role Portrayal Code*, it is not exploitative with respect to the presentation of either of the sexes vis-à-vis the other. Nor was there anything in the segment which would lead anyone to conclude that there is anything negative or degrading stated or suggested with regards to either men or women as a group.

The Subject Matter: Intended for Adults?

It remains for the Atlantic Regional Panel to determine whether the subject matter is intended for adults. It is true that the program host stated at the start of the program and again halfway through it that it was. That would not alone be determinative of the issue; however, in consideration of all of the elements of the segment, the Panel does not consider that it is possible for it to conclude otherwise. In this connection, it should be noted that the fact that the programming was of the nature of news and public affairs does not rescue it from its orientation. While the Panel has no quarrel with the importance of broadcasters treating matters of public interest even when they may have an erotic component, the issue is whether they are oriented exclusively toward adults. In this regard, reference to a number of previous Quebec decisions is pertinent.

It is true that, in *TQS re the Movie Strip Tease* (CBSC Decision 98/99-0441, February 21, 2000), the Quebec Regional Panel concluded that the showing of bare breasts prior to the Watershed hour of 9 p.m. was not in breach of the Code. In effect, that Panel drew the conclusion (material to this matter) that the presence of bare breasts on screen did not characterize such programming as *necessarily* intended exclusively for adults.

It is the view of the Council that, in the case of the film *Strip Tease*, the showing of the bare breasts of Demi Moore or the other dancers was in no way comparable to the erotic matter in *Été sensuel* [*TQS re Été sensuel* (CBSC Decision 95/96-0233, August 14, 1998)], much less than in *L'inconnu*. 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.

It is also true that, in its decision in *TQS re an episode of the program Faut le voir pour le croire* (CBSC Decision 99/00-0460, August 29, 2000), the same Panel found that the content of that program differed from that in *Strip Tease*. It held:

The Council has no hesitation in concluding that this case differs significantly from *TQS re the Movie Strip-Tease*. In this case, the broadcaster has supplied the element missing from *Strip Tease* which might result in a conclusion of inappropriateness of the program in a pre-Watershed environment. In the view of the Council, the sexual activity portrayed in this case was clearly of a nature intended for adult audiences. The practice of cunnilingus, the lovemaking in the clandestine circumstances of a parking garage on the hood of a car, the sexual interlude in an elevator, these are all activities which may not be problematic in the context of adult audiences but are entirely inappropriate, as the complainant states, for children.

Similarly, in *TQS re an episode of 2000 ans de bogues* (CBSC Decisions 99/00-0116 and 0345, August 29, 2000), the Panel considered that the program content was sufficiently erotic to be intended for adults.

In this case, the Council is of the opinion that the *symphony of images* presented in the program *2000 ans de bogues* is too risqué to be aired at 7:30 p.m. There are numerous illustrations of what concerns the Council. Among other things, despite the fact that they

were run at double speed and digital pixillation had concealed the actors' genitalia, the sexual acts during the pornography segment were excessive. Moreover, in distinct contrast to the film *Strip Tease*, the scenes of nudity in this case are presented in an overwhelmingly erotic context, namely, in one part of the episode, during the making of a pornographic film. In *2000 ans de bogues*, not only are we able to see the actresses' bare breasts, we are also able to see them engaging in explicitly sexual acts. The Council has no doubt that such scenes belong to the category of programming considered to be "intended for adult audiences"

In the case of the *W-Five* segment, there can be no doubt but that the material went beyond the bare breasts of *Strip Tease*. Here, the bare breasts and buttocks were displayed precisely because they were related to sexual activity. In fact, the discussion of that activity by third parties and by the very participants made it clear that this link was intended. The scenes of groping on the dance floor, the foreplay in the hot tub, the preliminary retirement to bed all make it clear to any viewer that what nakedness is shown is in a sexual context. The Panel does not consider that it is necessary that the *purpose* of the show's producer is to titillate. It suffices that the link between nudity and sexual activity is sufficiently established.

It should be added that the Panel is equally conscious of the fact that the swingers themselves made it absolutely clear that they considered it necessary to deceive their families, to lie to them about what they are doing. If this was not a matter suitable for their own children to learn, the Panel has doubts about the appropriateness of such information for other young people. As noted above, this appears also to have been the view of the broadcaster, for Tom Clark began the segment with the statement quoted above, namely, "We caution that this is a mature subject and it is intended for adults."

Application of these Principles to the Watershed Requirement

Having determined that the segment in question was, by all accounts, intended for adults, there can be no doubt that the broadcast of it prior to the Watershed constitutes a breach of the scheduling provision of the *Violence Code*. As the complainant argued, the material "was highly inappropriate for the time slot allotted to the program."

If anything, the argument of the Vice President of News, was convoluted on the issue of when the program actually played. He said:

The program originated from CTV in Toronto. This segment was broadcast in different time zones across the country. In the Eastern Time zone it aired at 10:30 p.m. - 11:00 p.m., while in some parts of the country between 8:30 p.m. - 9:00 p.m.

It should be clear to broadcasters and members of the public that the exception provided in the *Violence Code* regarding "Canadian distant signal importation" only applies to the time zone in which the *signal* originates and not to the time zone in which the *programming* originates. The difference, in other words, is between the extension over two or three or

more time zones of a signal which is *transmitted* at *one* instant in time to that broader audience, on the one hand, and the simple *delivery* of a program (whether by satellite, cassette or other means) on a non-time sensitive basis to the broadcaster which will *then* deliver the signal to its local audience, on the other. In the first case, the Code protects the originator of the signal; in the second case, it does not.

In this case, the Panel accepts the point that the programming originated in Toronto where the segment appears to have been broadcast at 10:30 p.m. In the Atlantic region, however, the program was run at 8:00 p.m. and the segment in question at about 8:30 p.m. In fact, in this case, the signal originated at that hour in the complainant's time zone. As the CTV representative said, the program did originate "In some parts of the country between 8:30 p.m.-9:00 p.m." This was one of those places. Where the others may have been, if anywhere, is not disclosed.

In the matter at hand, there can, therefore, be no doubt but that the broadcast in question was in breach of the scheduling provision of the Code.

Broadcaster Responsiveness

The CBSC always recognises the broadcaster's obligation, as a CBSC member, to be responsive to complainants. In the present case, the Panel regrets the fact that the broadcaster's Vice President of News wrote of many issues surrounding the airing of the show without dealing with the *principal* concern of the viewer, namely, the time slot in which the episode of *W-Five* aired. He *referred* to the fact that the show aired in different time zones in the country, never acknowledged that it *had* even run in the Atlantic Region in the 8:30-9:00 p.m. time slot, and never responded in any way to that concern of the complainant. A broadcaster is never constrained to *agree* with the complainant as a part of the process; however, the CBSC does expect that broadcasters will at least attempt to be responsive to the major concerns which are raised. In any event, the Vice President of News did discuss other substantive issues and, with respect to these, provided thoughtful and important information. On balance, the Panel finds the letter satisfactory.

CONTENTS OF THE ANNOUNCEMENT OF THE DECISION

The broadcaster is required to announce this decision forthwith, in the following terms, during prime time and, within the next thirty days, to provide confirmation of the airing of the statement to the CBSC and to the complainant who filed a Ruling Request.

The Canadian Broadcast Standards Council has found that CTV has breached the scheduling provision of the Canadian Association of Broadcasters' *Violence Code* in its broadcast of an episode of *W-Five* on February 1, 2000. The Council considers the program contained scenes of

sexuality intended for an adult audience. By airing the program in the early evening, at 8:30 p.m., rather than after the Watershed hour, CTV breached the scheduling requirements set out in Article 3 of the *Violence Code*.

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