
**CANADIAN BROADCAST STANDARDS COUNCIL
QUEBEC REGIONAL COUNCIL**

TQS re an episode of the program *Faut le voir pour le croire*

(CBSC Decision 99/00-0460)

Decided August 29, 2000

G. Bachand, R. Cohen (*ad hoc*), G. Poulin, P. Tancred

THE FACTS

On March 14, 2000, as a part of their series *Faut le voir pour le croire*, Télévision Quatre Saisons (TQS) (Montreal) aired an episode which included scenes of nudity and sexual activity in the 7:30 pm time slot. The potentially offending scenes were somewhat obscure due to their having been filmed in semi-dark circumstances or even as a result of the poor rather “home-movie” quality of some of the filming. Other clearer scenes included appropriate video distortion in the form of happy faces covering what would otherwise have been exposed genitalia.

The broadcast elicited a letter from a woman who complained that she had been watching the program with her husband and two teenaged children and found the episode “inapproprié et immorale” [inappropriate and immoral]. She elaborated on what she found offensive in the show:

Dans les scènes qui y étaient présentées, entre autres, deux femmes dans une buanderie qui se faisaient le cunnilingus, ensuite il y avait un couple dans un ascenseur où l'on voyait l'homme dénudé et empoigner généreusement les seins de la femme, il y avait également un couple dans un stationnement sur le capot d'une voiture [en train d']avoir une relation sexuelle par derrière. Ils ont également montré plusieurs autres scènes de nudité et ainsi rabaisser la sexualité à un niveau plus bas que l'animal, car même des animaux n'ont pas la perversité des humains. Cela atteint gravement la pudeur et la moralité des enfants de notre génération. Ce passage de l'émission a duré environ une quinzaine de minutes, ils ont placé à quelques endroits des “sourires” sur les parties génitales des gens pour prétexte de pudeur mais les scènes étaient tellement explicites et inacceptables que cela m'a donné “Le Haut le Coeur”.

[English translation, added after initial publication]

In the scenes shown, among other things, there were two women at a laundromat performing

cunnilingus, then a couple in an elevator where you could see a naked man grabbing the woman's breasts. There was also a couple in a parking garage on the hood of a car having sex from behind. They also showed numerous scenes of nudity and reduced sexuality to a level more base than animals, since even animals are not as perverse as humans. This greatly offends the decency and morality of our generation's children. This segment of the show lasted approximately fifteen minutes. In a few places, they put "happy faces" over the people's genitals under the pretext of being modest, but the scenes were so explicit and unacceptable that they made me sick.

She made several references in her letter to the fact that she found the material pornographic. The full text of her letter can be found in the Appendix to this decision.

On April 12, TQS's Vice-president, Communications, responded with a brief letter, (the full text of which can be found in the Appendix to this decision) the essential paragraph of which stated:

Cette émission rapporte des situations cocasses où des gens se sont trouvés dans l'embarras à leur insu. Effectivement, il arrive que des scènes plus osées soient présentées. Toutefois, les scènes les plus voyantes sont censurées. De plus, cette émission ne s'adresse pas à un public jeune, mais averti et qui a toujours le choix de changer de chaîne ou continuer à écouter l'émission tout en acceptant son contenu.

[English translation, added after initial publication]

This program presents amusing situations whereby people are caught in embarrassing situations without their knowledge. Effectively, it is the most shocking scenes that are presented. However, the most explicit scenes are censored. In addition, this program is not intended for a young audience, but rather one that is informed about the content. The audience always has the option of changing the channel or continuing to watch the program knowing the nature of its content.

The complainant was dissatisfied with the broadcaster's reply and requested, on April 17, 2000, that the matter be referred to the Quebec Regional Council for adjudication.

THE DECISION

The Quebec Regional Council considered the complaint under the *Voluntary Code regarding Violence in Television Programming*, the applicable provisions of which reads as follows:

Violence Code, Article 3 (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.

Violence Code, Article 4 (Classification System)

- 4.1 Canadian broadcasters are in the process of co-operatively developing with other

segments of the industry, a viewer-friendly classification system, which will provide guidelines on content and the intended audience for programming.

Once complete, the classification system shall complement this Voluntary Code.

Quebec Regional Council members screened the program and reviewed the correspondence. They consider that the broadcast of the episode of *Faut le voir pour le croire* under consideration here at 7:30 pm constitutes a violation of Article 3.1.1 of the *Violence Code*. The Council also finds that the failure to classify the program (and the absence of an on-screen ratings icon) constitutes a violation of Article 4 of the *Violence Code*.

The “Watershed” Issue

Since the decision at hand is so similar to that in *TQS re 2000 ans de bogues* (CBSC Decision 99/00-00116 and 0345, August 29, 2000), decided by the same Council on the same date, there is nothing in the substantive reasoning in support of the Council’s conclusions to distinguish the two. In that decision, the Council referred to the Ontario Regional Council’s decision in *CITY-TV re Ed the Sock* (CBSC Decision 94/95-0100, August 23, 1995), in which that Council, explaining the “Watershed” for the first time, stated metaphorically:

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.)

The Ontario Council then proceeded to draw the necessary distinction between programming containing violent content, the original purpose of the Code as adopted, and the use to which broadcasters themselves had already, two years after the adoption of the Code, begun to apply the concept.

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. There is, in fact, no formal restriction on the timing of broadcasting of slightly “racy” material but the earliest of the promos under consideration here could not be said to have been run in a time slot which was *primarily* a *young* children’s slot or even at a time when one would have expected significant numbers of young children to be watching television at all.

See also *CFMT-TV re The Simpsons* (CBSC Decision 94/95-0082, August 18, 1995). Based on the broadcasters' own day-to-day practices, it was, thereafter, quite logical, and only a matter of time, before the principle of the Watershed was extended to *all* programming intended for adult audiences. That step was taken by this Council in *TQS re the movie L'inconnu* (CBSC Decision 98/99-0176, June 23, 1999). On that occasion, the Council concluded:

Having determined that the movie contained scenes of violence and sex intended for adult audiences, the Council *must* conclude that the movie should not have been broadcast in a pre-watershed time period. Accordingly, the Council concludes that the broadcaster is in violation of Clause 3.1 of the *Violence Code* ...

Having perhaps more of an opportunity than some of the other Regional Councils to apply the Watershed provision to scenes of nudity and sexuality, the Quebec Regional Council, in *TQS re the Movie Strip Tease* (CBSC Decision 98/99-0441, February 21, 2000), found no breach on that occasion with respect to the exhibition of bare breasts in a pre-Watershed time frame. It concluded:

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.

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 love-making 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. The showing of this episode of *Faut le voir pour le croire* at a pre-Watershed hour is clearly in breach of the Code.

The Classification Issue

The policy regarding classification, proposed by Canada's private broadcasters and accepted by the CRTC, is initially dealt with in *Policy on Violence in Television Programming*, 14 March 1996, P.N. CRTC 1996-36. In the words of the Commission,

The scope of the classification system should be responsive to the public's concerns while being practical to implement. The Commission expects classifications to be applied, at a

minimum, to children's programming (programs intended for children under 12 years of age), drama, "reality-shows" (reality-based dramatic programs), feature films, promotions for any of these programs and advertisements for theatrical releases. In order to ensure the protection of children from the harmful effects of TV violence, regardless of the time at which the programming is scheduled, the programming described above should be encoded with ratings at all times.

In *Classification System for Violence in Television Programming*, 18 June 1997, P.N. CRTC 1997-80, the Commission reiterated the foregoing criteria in substantially the same language but in a slightly different format:

- the scope of the classification system should be responsive to the public's concerns while being practical to implement;
- classifications should be applied, at a minimum, to children's programming (programs intended for children under 12 years of age), drama, "reality-shows" (reality-based dramatic programs), feature films, promotions for any of these programs and advertisements for theatrical releases; and
- in order to ensure the protection of children from the harmful effects of television violence, regardless of the time at which the programming is scheduled, the programming described above should be encoded with ratings at all times.

The Commission then described the proposed AGVOT system, indicating specifically that "Except for the exempt category, which includes news and public affairs, programs will be rated as falling into one of the following categories [the list follows]." The Commission then proceeded to make clear its acceptance of the fact that "the proposed rating system meets the criteria set out in its Violence Policy." The Classification System is then laid out in the Appendix to the Public Notice, which defines the "Exempt" category in the following terms:

Exempt programming includes: news, sports, documentaries and other information programming; talk shows, music videos, and variety programming.

As is perfectly clear from the Commission's Public Notices, the establishment of the classification system has a *considerable* amount to do with *children* and what parents may wish their families to see *and* not to see. Moreover, from all of the foregoing, it is clear to the Council that it was the intention of the broadcasters and of the Commission that *all* programming was intended to be classified *except for those types of programming included in the Exempt category*. It remains for the Council to determine whether the programming under consideration in *this* decision falls into any of the types of programming listed in the Exempt category. It concludes that this is *not* the case.

The question turns on what is meant by "documentaries and information programming". The Council has no doubt that it does not include *all* non-dramatic programming. Apart from anything else, the Commission's policy criteria on violence establish that "reality-shows" *are* included in their anticipated list of types of programming *requiring* classification. There is, in other words, a spectrum of reality-based programming running from that which is intended to be exempt, namely, documentaries and information programming, to that which is intended to be rated, namely, reality shows programming. The Council considers

that a method of describing this distinction in simple terms would be to say that such non-dramatic programming ranges between enlightening and entertaining. This is not to suggest that enlightening programming cannot be entertaining or that entertaining programming cannot be enlightening. It is only to say that that programming which is *primarily enlightening* is what the broadcasters and the CRTC expected would be exempt and that which is *primarily entertaining* which the broadcasters and the industry expected would be subject to classification.

In this respect, the Canadian Television Fund defines a “documentary” as

a non-fiction representation of reality that contains the following elements:

- informs or engages in critical analysis of a specific topic or point of view;
- provides an in-depth treatment of the subject;
- is meditative and reflective;
- is primarily designed to inform but may also entertain;
- treats a specific topic over the course of at least 30 minutes (including commercial time);
- requires substantial time in preparation, production and post-production;
- has an original narrative and visual construction (which may include scenes of dramatic re-enactments);
- has enduring appeal and therefore a long shelf life

Projects presenting information primarily for its entertainment value are not considered to be documentaries.

In summary, the Quebec Regional Council has no doubt but that the episode of *Faut le voir pour le croire* under consideration was intended as unadulterated entertainment and was subject to the requirement that it be classified in accordance with the rating system applied by the Quebec Régie du Cinéma. In this case, bearing families in mind, the Council is of the view that the rating 13+ would be insufficiently restrictive since it provides that “Scenes of sexual activity of a dominant nature, for example, or the portrayal of unconventional sexual relationships, may not be suitable for this age group.” Although the 18+ category includes “films showing explicit sexual activity”, it is the view of the Council that the 16+ rating would be appropriate.

Repeated Disrespect for the *Violence Code*

Beyond its findings against the broadcaster in the present case, the Quebec Regional Council is very troubled by the fact that, in its programming decisions, TQS pays absolutely no attention to the scheduling requirements of the *Violence Code*. In *TQS re Scheduling of Advertisements and Promos* (CBSC Decisions 98/99-0212, 0213 and 0882, June 23, 1999), the Council considered the airing of commercials and promotional material by the broadcaster, not merely before the Watershed, but *within children’s television programming*.

In this case, the Council has no hesitation in concluding that the advertisement for the movie *Virus*, which employed scenes of violence and promoted the scariness of the movie, contained “scenes of violence intended for adult audiences.” Nor does the Council have any difficulty in arriving at the same determination with respect to the promotional material for the upcoming broadcast of the movie *Rob Roy*.

Then, in *TQS re the movie L'inconnu* (CBSC Decision 98/99-0176, June 23, 1999), as noted above, this Council considered that the broadcast of the psychological thriller *L'inconnu (Never Talk to Strangers)* included sexual material intended for adult audiences and, consequently, in breach of the Code. Finally, in this regard, there are the examples of this decision and that of the same Council, rendered today, in *TQS re an episode of 2000 ans de bogues* (CBSC Decisions 99/00-0116 and 0345, August 29, 2000). In both cases, the Council has had no hesitation in concluding that the airing of this allegedly documentary style of programming, which does not require the presence of on-screen rating icons in Canada, has included scenes of sexuality intended for adult audiences which ought not to be aired prior to the Watershed hour.

There has been but one other occasion when it appeared that a CBSC member station might have been acting in disregard of the private broadcasters' codified standards and the conclusion of an earlier decision of a CBSC Regional Council. Since, in that case, continuing episodes of the same radio show were involved, it was perhaps a more evident practice of the station. In that matter, *CILQ-FM re the Howard Stern Show* (CBSC Decision 97/98-0487, 488, 504 and 535, February 20, 1998), the Ontario Regional Council explained the requirements of membership and their application to such a situation.

As the CBSC Members Manual provides, under the heading “Criteria of Membership”, “To become a member of the Council, a broadcaster ... must agree to carry out the responsibilities of membership outlined in the following” and, under the immediately following heading “Responsibilities of Membership”, it is provided:

Stations voluntarily becoming members of the Council agree to:

- (a) Abide by, and agree to be judged by, the broadcasting codes of the CAB administered by the Council.
- (b) Encourage, educate and assist managers, programmers, producers, journalists and performers to understand, and conduct themselves in accordance with these standards.

Thereafter, as a part of “Compliance”, the rules of membership provide:

If a member broadcaster fails to comply with a decision of the Council, by not broadcasting a Council decision in favour of the complainant or by refusing to adhere to an approved standard, the broadcaster's membership in the Council will be revoked.

The consequence of not adhering to the “approved standards”, which were the creation of the private broadcasters themselves, would be the removal of the member from the voluntary authority of the CBSC. While, ultimately, all CBSC members are subject to the regulatory authority of the CRTC, any broadcasters who might cease to be members would be more immediately involved with the formal regulatory regime.

It should not be forgotten that the standards were instituted by Canada's private broadcasters to ensure that the acceptable content criteria of broadcast material would be the same for all listeners and viewers and, moreover, that no individual stations would be able to steal a competitive march on other broadcasters in their market by breaching those standards.

It is an extremely positive endorsement of the self-regulatory process that, hitherto, the CBSC has never invoked the above-noted provisions relating to adherence to standards to remove a member from its midst. It is equally significant that no member has ever resigned by reason of its refusal to adhere to industry Codes.

In the case of the *Howard Stern Show*, the broadcaster had already put infrastructural mechanisms in place *prior to* the rendering of the second decision and it was clear that diligent, even expensive, methods were being employed to ensure that the program would conform to Canadian private broadcaster standards. In this instance, the broadcaster's Code breaches have not involved a single program. Rather, they are spread over movies, movie commercials and television series; however, at the end of the day, they constitute the same thing. This broadcaster has evidenced its desire to broadcast sexual content clearly intended for adult audiences in a pre-Watershed environment on an ongoing basis in disregard of the conclusions of this Council.

In the circumstances, in addition to its finding regarding the specific breach in the case of the broadcast under consideration, the Council specifically concludes that the broadcaster must, within the thirty days following its receipt of the text of this decision, provide the CBSC with concrete indications of the measures which it intends to put in place in order to avoid the recurrence of the broadcasting of inappropriate sexual content prior to the Watershed. Failing that, the CBSC will determine whether there is any reason for which Télévision Quatre Saisons should be entitled to remain a member of the CBSC or whether TQS should become the first private broadcaster in Canada to be removed from the self-regulatory mechanism.

CONTENT OF THE ANNOUNCEMENT OF THE DECISION

The station 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 Télévision Quatre Saisons breached provisions of the Canadian Association of Broadcaster's *Violence Code* in its broadcast of an episode of *Faut le voir pour le croire* on March 14, 2000. In the Council's view, the episode contained scenes of sexuality clearly intended for adult audiences. By broadcasting the program in the early evening, at 7:30 p.m., rather than after the watershed hour, TQS has breached the scheduling requirements set out in Article 3 of the *Violence Code*. In addition, by failing to include the rating

of the program in accordance with the rating system of the Régie du Cinéma, TQS has breached the classification requirements set out in Article 4 of the *Violence Code*.

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

ANNEXE
Décision du CCNR 99/00-0460
TQS concernant l'émission *Faut le voir pour le croire*

I. La plainte

Le 16 mars 1999, téléspectateur envoya la lettre suivante au CRTC, laquelle fut acheminée au CCNR :

Je vous écris pour vous formuler une plainte au sujet de l'émission "Faut le voir pour le croire" diffusé au canal télévision Quatre saisons à 19h30 mardi le 14 mars 2000. On y voyais des couples hétérosexuelles et homosexuelles avoir des rapports sexuels à l'insu des caméras. Je trouve inapproprié et immorale de diffuser de telle chose à la télévision.

J'étais assise avec mon mari et mes deux enfants de 11 et 15 ans et nous venions tout juste de regarder au même poste "Drôle de Vidéo". Donc, tout le monde sais bien que tous les enfants aiment bien cet émission "Drôle de Vidéo" et que la plupart des familles à cette heure là regarde TQS. Dans les scènes qui y étaient présentées entre autres deux femmes dans une buanderie qui se faisaient le cunnilingus ensuite il y avait un couple dans un ascenseur où l'on voyait l'homme dénudé et empoigné généreusement les seins de la femme, il y avait également un couple dans un stationnement sur le capot d'une voiture avoir une relation sexuelle par derrière, ils ont également montré plusieurs autres scènes de nudité et ainsi rabaisser la sexualité à un niveau plus bas que l'animal, car même des animaux n'ont pas la perversité des humains. Cela atteint gravement la pudeur et la moralité des enfants de notre génération. Ce passage de l'émission a duré environ une quinzaine de minutes, ils ont placé à quelques endroits des "sourires" sur les parties génitales des gens pour prétexte de pudeur mais les scènes étaient tellement explicites et inacceptables que cela m'a donné "Le Haut le Coeur".

Comment des gens peuvent-ils téléviser pareils scènes pornographiques à la télé à ces heures d'écoute. Souvent le mardi, moi et mon époux allons au cinéma (car c'est à rabais le mardi), que serait-il arrivé si nous n'aurions pas été là, les enfants auraient probablement regardé toutes les scènes pornographiques et malgré le fait de notre présence ils ont eu le temps d'en voir suffisamment pour troubler leur pudeur et pour fausser la vraie image de la sexualité et tous les commentaires qui accompagnaient ces images laissaient sous-entendre l'infidélité des partenaires. Je trouve aberrant de constater que de telle chose se produise à l'heure actuelle où l'on constate l'éclatement des familles, la jeunesse qui semble de plus en plus troublée, ne cherchez pas plus loin, leur pureté est entachée au plus haut point par des émissions comme celle-ci.

Dans ma jeunesse (j'ai 33 ans) il n'y a pas si longtemps on n'aurais jamais vu chose pareille. Voici toute mon indignation! En espérant ne plus voir de telle chose. Je place en vous ma confiance pour que cette plainte ne soit pas sans effet et que nous, petits téléspectateurs assis dans notre salon ayons notre mot à dire en ce qui concerne ce qui est diffusé à la télévision. Merci!

II. La réponse du télédiffuseur

La Vice-présidente aux Communications de TQS a répondu au plaignant le 12 avril 2000, avec la lettre qui suit :

Nous accusons réception de la lettre que vous nous avez fait parvenir via le CCNR concernant votre insatisfaction face à la diffusion de l'émission *Faut le voir pour le croire*, diffusée le 14 mars dernier. Nous regrettons que cette émission vous ait offensé, ainsi que votre famille et nous avons pris bonne note de vos commentaires.

Cette émission rapporte des situations cocasses où des gens se sont trouvés dans l'embarras à leur insu. Effectivement, il arrive que des scènes plus osées soient présentées. Toutefois, les scènes les plus voyantes sont censurées. De plus, cette émission ne s'adresse pas à un public jeune, mais averti et qui a toujours le choix de changer de chaîne ou continuer à écouter l'émission tout en acceptant son contenu.

De plus, prenez note que TQS ne diffuse aucune émission nommée "Drôle de vidéo", qui jouait précédemment chez un compétiteur.

Nous apprécions recevoir les commentaires de nos auditeurs et nous vous remercions d'avoir pris le temps de nous écrire.

Veillez agréer, Madame, nos sincères salutations.