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**CANADIAN BROADCAST STANDARDS COUNCIL  
NATIONAL SPECIALTY SERVICES PANEL**

WTN re *Sunday Night Sex Show*

(CBSC Decision 99/00-0672)

Decided January 31, 2001

R. Cohen (Chair), P. O'Neill (Vice-Chair), S. Crawford, M. Hogarth,  
E. Holmes, H. Pawley, S. Teicher

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**THE FACTS**

On July 2, 2000, the program *Sunday Night Sex Show* was broadcast by WTN at 8:00 p.m. (PDT) in British Columbia. (It should be noted that WTN, which is situated in Winnipeg, broadcasts to its subscribers throughout the country via a single feed out of Toronto.) The program, a call-in show on which the host, Sue Johanson, answers questions and gives advice on matters relating to human sexuality, was preceded by the following viewer advisory in both oral and on-screen form: "This program contains sexually explicit dialogue. Viewer discretion is advised." In addition, the show's host made the following statement at the beginning of the episode:

Welcome to the *Sunday Night Sex Show*. I am Sue Johanson and we are talking sex. And if you are a parent, you've got to talk sex. In 1997, 38% of 15-year old girls and 45% of 15-year old boys had sex. And condom use was erratic at best. The focus of the *Sunday Night Sex Show* is to know what you're doing, think ahead, plan ahead and never let sex just happen. We try to answer your questions about sex and love. We review new books and sex toys and we update you on all new research. So let's start with you. Got a question? Got a concern? Give me a call.

There was another advisory following the second commercial break but no other viewer advisories following the first, third and fourth commercial breaks.

On the challenged episode the host replied to calls from viewers about the following issues, among others: how to talk dirty to your male partner (Liz), how to give your partner multiple orgasms (Melissa), possible causes for a partner's impotence (Catherine), potential sexual side effects of steroid use (Rico), the effect of having a threesome on future relationships (Melanie), the effects of sex underwater (Charlotte), a product evaluation of a vibrator by

Sue herself (with an example present, although not in sexual use), problems with under- and over-lubrication (Anna and Natalie), whether finding the A-spot meant that the caller was bi-sexual (Darren), and Sue's review of a book on sexual positions (without showing actual positions).

The program prompted a viewer to communicate his concerns two days later via the CBSC's web site complaint form, on which he stated, in part: "I feel that 8:00 in the evening is too early for a show which displays sex toys, vibrators, advice about sex lubricants, diagrams of sexual positions and homosexual sex acts. I do not object to the show, only the hour at which we get it here." The full text of this complaint and the broadcaster's response are provided in the Appendix to this decision. The President of WTN replied on July 31 in the following terms:

WTN broadcasts programs that offer different points of view and balanced coverage on a wide range of topics. As a network, we make it clear to our viewers when a program has mature subject matter. In the case of the Sunday Night Sex Show, each episode carries this advisory: "This program contains sexually explicit dialogue. Viewer discretion is advised." WTN stands by the content of this program and believes that the information conveyed is extremely important, particularly within today's potentially dangerous sexual environment.

WTN's President also noted the availability of cable products permitting more parental control over accessibility to channels and services.

We recognize that in this hectic environment it is not possible to control every minute of everyday, let alone supervise and monitor the whirlwind lives of our families. In response to this need, the cable industry has developed and makes available a wide range of consumer products to assist us in managing those things most important to the way we choose to live our lives. These products simply remove the opportunity and offer a sense of security in limiting what our children can access. Your cable carrier is equipped with information on these products or if you wish, WTN will forward you extensive product information.

The viewer was unsatisfied with this response, and sent the following letter on August 3:

I received your letter dated July 31 today. In it you failed to answer the only questions I posed in my original letter. [...] So here they are again:

1. Why do you think Sunday Night Sex Show should air at 8:00 pm PDT?
2. Do you consider this an appropriate time? If so, why?
3. Does WTN consider certain timeslots inappropriate for Sunday Night Sex Show? If so, what is the earliest in the evening you would show SNSS [*sic*] in the time-zone it originates in?

## THE DECISION

The CBSC's National Specialty Services Panel considered the complaint under the Canadian Association of Broadcasters' (CAB) *Sex-Role Portrayal Code* and *Violence Code*. The relevant provisions of those Codes read as follows:

### *Sex-Role Portrayal Code, Article 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.

### *CAB Violence Code, Article 5.1 (Viewer Advisories)*

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.

The National Panel Adjudicators viewed a tape of the program in question and reviewed all of the correspondence. For the reasons explained below, the Panel finds that the program was aired appropriately in terms of the scheduling requirements of Article 3 of the *Violence Code*; however, it equally concludes that the broadcaster did not include sufficient viewer advisories as anticipated in accordance with the requirements of Article 5.1 of that Code.

## **The Applicability of the Watershed Requirement to All Types of Adult Programming**

While it is not necessary for this Panel to dwell on this matter since it is the established policy of the Canadian Broadcast Standards Council for several years now, the Panel considers that a résumé of these principles may be valuable in the first of the decisions of the National Specialty Services Panel on this subject.

Although the terms of the *CAB Violence Code* are limited to programming containing “scenes of *violence* intended for adult audiences [emphasis added]”, it almost instantly since the introduction of the *Violence Code* on January 1, 1994 became the *de facto* policy of the broadcasters that *all* kinds of programming intended for adult audiences should be subject to the Watershed requirement limiting the availability of such adult-oriented content to the post-9 p.m. hour. It was, in other words, clear from the start that Canada’s private broadcasters were sufficiently concerned about their audiences that the benefit of such caution for children and families ought to be reflected in their broadcasting choices. Growing out of this pragmatic approach to the broadcasters’ view of the Watershed, the

CBSC gradually drew the conclusion that its extension from scenes of violence to scenes of sexuality and other equivalent matters was both reasonable and desirable.

It began with the decision of the Ontario Regional Panel in *CITY-TV re Ed the Sock* (CBSC Decision 94/95-0100, August 23, 1995), in which that Panel observed, “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.” In *CFMT-TV re an Episode of “The Simpsons”* (CBSC Decision 94/95-0082, August 18, 1995), that same Panel stated:

Private broadcasters have *voluntarily* tended to extend this principle to all programming containing any material which they believe is intended for adult audiences, even if not of a violent nature.

Then, in *TQS re the movie L'inconnu (Never Talk to Strangers)* (CBSC Decision 98/99-0176, June 23, 1999), the Quebec Regional Panel took the step of formalizing the extension of the Watershed to non-violent programming. It concluded:

The Council also considers that some of the erotic scenes, in particular the very first sex scene which depicts “rough” lovemaking, come within the purview of what would generally be considered as material “intended for adult audiences”. [...] 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* which states that “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.”

More recently, in *TQS re an episode of the program Faut le voir pour le croire* (CBSC Decision 99/00-0460, August 29, 2000), the Quebec Panel ruled:

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.

In *CTV re W-Five (Swingers)* (CBSC Decision 99/00-0347, February 14, 2001), the Atlantic Regional Panel concluded that the segment on swinging in Canada as a lifestyle, showing both genitalia and a sexual context for these, constituted programming intended for adult audiences, requiring post-Watershed broadcast. As that Panel explained:

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.

[...]

[T]he 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 Council 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.

In this regard, it should be noted that the news and public affairs orientation of that show, a factor also relevant to the present decision, was also discussed there. The Panel dealt with it in the following terms:

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.

With respect to the present matter, while Sue Johanson's explanations are positive, useful, focussed and helpful, and not salacious, gratuitous, exploitative or even titillating, the foregoing principle leaves no doubt that here, too, the show is unquestionably directed toward adults. While the *Sunday Night Sex Show* is not graphic, it does include sexually explicit dialogue and adult-oriented explanatory discussion.

### **The Sex-Role Portrayal Issues**

Nothing is easier for the Panel to deal with than the sex-role portrayal issues represented in this programming. Simply put, it is difficult for the Panel to imagine a more sex-neutral approach to such a program than is presented by the host. She deals with the calls as presented by her producer, treats each subject with the same impartial air and could not be described as other than impeccable in her gender-neutrality.

### **The Scheduling Issue**

While straightforward on one level, the scheduling issue is ultimately far more complex in the geographically huge Canadian context. The provisions in the *Violence Code*, which have been extended to be applicable to all forms of adult-oriented programming, are absolutely clear. On the one hand, programming intended for adult audiences must be shown post-Watershed. On the other hand, an exception is provided for signals originating in a time zone other than that in which it is received *pre*-Watershed. In such a case, the Code provides that the broadcaster is to be judged by the respect for the Watershed shown in the time zone in which the signal originates.

The complainant has, with justifiable concern, raised the question of the appropriateness of the broadcast of this show in *his* time zone at what is, from his perspective, a pre-Watershed hour. If, the Panel presumes he asks, such a program is defined as unsuitable in one part of the country, how can it be suitable in *another* part of the same country?

While the Panel shares his concern, it also understands the conundrum presented by the vast size of Canada. Given the declared goal of the *Broadcasting Act* to provide programming which will be “varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,” it must be recognized that this task is to be achieved across six time zones with a relatively thinly spread population base. Since most of the specialty services have a single feed for the entire country (some, but not many, have two feeds), it necessarily results that only some parts of the country can be happy all of the time in terms of the issue of the hour of broadcast of adult programming. Compromise, balance and fairness are essential components of the solution. An adult program which *just* respects the Watershed in St. John’s will be on at dinnertime in Toronto and during pre-dinner after school hours in Calgary and Vancouver. One which *just* respects the Watershed in Vancouver will be on after people have gone to bed in Toronto, Halifax and St. John’s. One which just respects the Watershed in Toronto finds people awake in the Atlantic Provinces but at dinner in Edmonton and Victoria.

In the view of the National Panel, what the broadcaster has chosen to do in this case is to balance all the time zones, as well as anyone could reasonably expect. Rather than *just* respect the Toronto time zone (and one cannot lose sight of the economic fact that more than 50% of the Canadian population resides in that time zone), WTN has *stretched* its market by airing the *Sunday Night Sex Show* at 11 p.m. EST, thus remaining post-Watershed in nine of the ten Provinces, albeit barely viewable time-wise in the Atlantic Region. By choosing that hour for its broadcast of the challenged show, it has also placed itself in a post-dinner environment in the *one* time zone in the country where it is still pre-Watershed, namely, British Columbia, thus providing an easier opportunity for parents to regulate family viewing than in, say, a 6:00 or 7:00 p.m. local time slot.

In other words, the National Specialty Service Panel does not consider that the broadcaster could have made more sensitive choices regarding the nation as a whole and, indeed, the various time zones within the country, bearing in mind the needs and entitlements of viewers from east coast to west coast. The broadcaster also provided information to viewers in the form of advisories which would enable those who did not wish this show to be a part of their viewing choices to avoid it. Nonetheless, the Panel does recognize the seriousness of the complainant’s concern. It does not, however, appear to the Panel that the Canadian broadcasting system can offer a more manageable and viable alternative than that provided by this broadcaster on this occasion. By their nature, specialty services do not provide the time zone options of national conventional television networks. Consequently, some additional parental surveillance component is required for families which wish to limit certain more mature viewing options. The Panel recognizes that this constitutes a price for those families but considers it a fair price in return for the immense

value of the national programming opportunities for the Canadian public. Moreover, there are currently technical forms of assistance available (which will soon be more widely accessible) which enable parental viewing decisions to be still easier.

## Viewer Advisories

All of the foregoing being said, the scheduling issue is fundamentally related to the advice given to potential viewers regarding content. Even after the Watershed, which itself serves as a form of generalized advice to viewers that programs airing after that hour *may* contain material intended for adult audiences, viewers are entitled to know, both for themselves and their children, what type of content may be included in a show which could be objectionable to them. The advisories provide more pertinent details regarding the type of material which may be present in the programming about to be, or in the process of being, screened which will enable a viewer, even one tuning in after the start of the show, to evaluate the appropriateness of the content for his or her tastes.

It is for this reason that advisories are called for by the *Violence Code* “at the beginning of, and during the first hour of programming which contains scenes [...] intended for adult audiences.” As the Quebec Regional Panel stated in *TQS re the movie L’inconnu (Never Talk to Strangers)* (CBSC Decision 98/99-0176, June 23, 1999), “The Council does not consider that the *one-time* scroll of the viewer advisory meets the requirements of providing viewers advisories *during* programming.” In *CTV re Poltergeist - The Legacy* (CBSC Decisions 96/97-0017 and 96/97-0030, May 8, 1997), the Ontario Regional Panel had to evaluate a situation in which the two-hour pilot contained advisories at the beginning of, and during the *second* hour, but not otherwise during the first hour. The Panel found a breach.

While the Council notes that the majority of the violent scenes were concentrated in the second hour of the program and also notes that viewer advisories were provided for these upcoming scenes, the Council finds that the wording of subsection 5.1 of the *Violence Code* is unequivocal: “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.” [emphasis added]

The rationale underlying the requirement of viewer advisories is found in the background section of the Code. Therein it is stated that “[...] creative freedom carries with it the responsibility of ensuring [...] that viewers have adequate information about program content to make informed viewing choices based on their personal tastes and standards.” The repetition of viewer advisories in the first hour serves as a second chance for viewers to receive important information concerning the program they are considering watching. The Code takes into account that many viewers make their viewing choices in the first few minutes of a program, which at times leads viewers to miss an initial viewer advisory. The Council is of the view that CTV’s approach to viewer advisories in this case, i.e. other than the initial advisory, providing them only in the second hour of the program, is unfair to viewers, especially parents who screen programs for their children.

Applying these principles to the matter at hand, the 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. This is the moreso true when the broadcaster *knows* that a program containing adult content will be shown on a pre-Watershed basis in some parts of the country. In the matter at hand, the broadcaster inserted viewer advisories at the beginning of the program and after the second commercial break. There were none after the first, third or fourth commercial breaks. In this respect, despite the care which was taken in the scheduling of the program, the absence of the required advisories during the entire first hour of the show constitutes a breach of the Code.

### **Broadcaster Responsiveness**

In addition to assessing the relevance of the Codes to the complaint, the CBSC always assesses the *responsiveness* of the broadcaster to the substance of the complaint. From the complaint's subsequent correspondence, it is clear that he was dissatisfied that the broadcaster did not respond to his concerns. That being said, the Panel is aware of the care and sensitivity which were manifest in the broadcaster's attempt to explain the options which were available to the complainant to assist in his control over content. The Panel is equally aware that there was little further explanation which could have been provided regarding the scheduling issue with which the broadcaster was in full compliance. There is nothing more which could reasonably have been expected of the broadcaster.

### **Content of Broadcaster Announcement of the Decision**

WTN is required to: 1) announce this decision, in the following terms, once during prime time within three days following the release of this decision and once within seven days following the release of this decision during the course of the *Sunday Night Sex Show*; 2) within the fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the statement to the complainant who filed the Ruling Request; and 3) to provide the CBSC with that written confirmation and with air check copies of the broadcasts of the two announcements.

The Canadian Broadcast Standards Council has found that WTN has breached the requirement concerning the use of viewer advisories in the industry's *Violence Code*. While the Council found that the *Sunday Night Sex Show*, which aired on July 2, 2000, was broadcast at the proper hour, it should have contained viewer advisories following each of the commercial breaks during the first hour of the show advising audiences of its sexually explicit content.

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

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**APPENDIX**  
**TO CBSC DECISION 99/00-0672**  
***WTN re Sunday Night Sex Show***

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**I. The Complaint**

The following complaint dated July 4, 2000 was sent to the CBSC via the CBSC's web site template:

I feel that 8:00 in the evening is too early for a show which displays sex toys, vibrators, advice about sex lubricants, diagrams of sexual positions and homosexual sex acts. I do not object to the show only the hour at which we get it here. The solution is for WTN to show it later in their single feed broadcast so as not to offend west coast viewers. They refuse to do this until they are granted a second satellite feed which may or may not happen in one to two years. In which time, my community's standards are defined by another community, a central Canadian community. Last year, community pressure in Manitoba forced them to move the show back an hour but that still does us little good out here in B.C. Wonderful World of Disney, The Simpsons and Touched by an Angel are all on at the same time as this woman graphically discusses just about every sexual act available. It is morally wrong for this show to air so early in the evening when children could be watching unsupervised. The watershed Act should be amended to allow for sexually graphic and explicit shows as well as violent ones.

**II. Broadcaster Response**

The broadcaster responded to the complainant's letter on July 31, 2000 with the following:

Truly one of the most significant issues that face each and every one of us, is how to control the tremendous amount of electronic media that bombards us everyday. Over the past few years there has been an unprecedented influx of information into our homes, offices and even our automobiles. And there is still more to come. The growth of the cable television industry has impacted not only the individual but industry members as well. Some analyst have said that the speed with which technology is advancing far outweighs our ability as people to manage it.

As a member of this dynamic industry WTN - Women's Television Network not only faces the challenge of delivering entertaining, informative and relevant product to the women of Canada, but we must be competitive in this ever changing marketplace. Programming to 53% of the population is as exciting as it sounds. Our audience is as diverse as the population at large with interests that pan the realm of possibility. In meeting this challenge WTN has reached out to our audience in a quest to understand what it is they want. Their response has been frank, honest and unguarded and we have listened. WTN broadcasts programs that offer different points of view and balanced coverage on a wide range of topics. As a network, we make it clear to our viewers when a program has mature subject matter. In the case of the Sunday Night Sex Show each episode carries this advisory, "This program contains sexually explicit dialogue. Viewer discretion is advised." WTN stands by the content of this program and believes that the information conveyed is extremely important, particularly within today's potentially dangerous sexual environment. The content is driven by the viewing audience, allowing those watching to express their concerns and ask their questions in a safe, non-judgmental domain.

We recognize that in this hectic environment it is not possible to control every minute of everyday,

let alone supervise and monitor the whirlwind lives of our families. In response to this need, the cable industry has developed and makes available a wide range of consumer products to assist us in managing those things most important to the way we choose to live our lives. These products simply remove the opportunity and offer a sense of security in limiting what our children can access. Your cable carrier is equipped with information on these products or if you wish, WTN will forward you extensive product information.

Thank you for your letter. The concerns you have raised have been documented and will be part of our ongoing programming and network decisions.

### **III. Additional Correspondence**

On August 3, 2000, the complainant responded to the broadcaster's letter with the following:

I received your letter dated July 31 today. In it you failed to answer the only questions I posed in my original letter. I can't understand how you could fail to see that they were the reason I was writing to you. I know you partially explained yourself to me on the phone but I require your response in writing so that you don't sue me if you see your name in any media stories. So here they are again:

1. Why do you think Sunday Night Sex Show should air at 8:00 pm PDT?
2. Do you consider this an appropriate time? If so, why?
3. Does WTN consider certain time slots inappropriate for Sunday Night Sex Show? If so, what is the earliest in the evening you would show SNSS in the timezone it originates in?

My MP was disgusted enough at your company taking advertising dollars over concern for community standards that he passed my original complaint and Vancouver Sun letter on to Heritage Minister Sheila Copps. A dozen other people here I have talked to also think your show airs too early.

Do you want WTN to be the focal point of a national debate about the loophole in the Violence Act? Are you prepared to go on national tv and tell BC parents that 8:00 is an appropriate time? They will see that you are hiding behind a poorly written law. I would be amazed at anyone who could attempt to defend this time slot.

My hope is that you will join those of us who want to close the loophole in the Violence Act which allows one region to set the standards of another region. I don't think you read my letter carefully because you spent your reply defending the need for SNSS.

I don't object to the show, just the time slot. You clearly dodged those questions. If you want to use a loophole (that might yet be closed) to set my community's standards from afar, you could at least have the decency to justify yourself. It is called corporate accountability.

I await your response to my original questions posed July 6. Thank you again for your time.

On August 8, 2000, the complainant requested that the CBSC refer the matter for adjudication.