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

Discovery Channel re an episode of *The Sex Files*

(CBSC Decision 00/01-0791)

Decided January 16, 2002

R. Cohen (Chair), P. O'Neill (Vice-Chair), S. Crawford (Vice-Chair), R. Cugini,  
H. Pawley

Since E. Duffy-MacLean, who customarily sits on this Panel, is employed by the corporate group that also owns the broadcaster in question, she did not participate in the resolution of this matter.

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**THE FACTS**

On March 17, 2001 at 12:00 midnight EST, the Discovery Channel aired an episode of *The Sex Files* entitled "The Rear End". The program contained interviews and discussions with various sex experts about the physiology of human buttocks and their role in sexual activity. The episode also included scenes of couples (discreetly) engaged in anal sex. There was no viewer advisory or classification icon at the beginning of the program; however, viewer advisories did appear coming out of each commercial break. They stated

This program contains nudity and sexually explicit scenes. Viewer discretion is advised.

These advisories were in visual form only; there was no audio component.

On March 26, the CBSC received a complaint from a viewer in British Columbia who wrote, in part (the full text of all correspondence can be found in the Appendix to this decision):

The first show in question appeared @ 11:30 p.m. on channel 24 'The Discovery Channel'. It showed graphic anal sex throughout its airing. I am deeply disturbed that this kind of television is seen acceptable for public viewing. I have a deep concern that one of my younger teenage children may see this while babysitting etc. I do not wish my children to [be] assaulted with material that clearly is not appropriate for their age.

[...]

Our cable company is Regional Cable Systems out of Edmonton. Our children should be able to watch television without fear of having their innocence violated. I do hope that the CBSC Secretariat will apply the appropriate *Code of Ethics* to *Sex Files* [...]. I look forward to this matter being dealt with swiftly.

The President and General Manager of Discovery responded to the complainant with the following letter, dated May 9, which stated in part:

The *Sex Files* continues to be a showcase for the latest scientific findings and trends regarding human sexuality. The material covered by the series is not provided to promote sexual activity, but to offer our mature viewers much desired, medically proven information that dispels myths and untruths. While never gratuitous in its depiction and description of this sensitive subject, Discovery Channel understands this programming is not for everyone.

In light of this, in addition to airing the program near midnight in your area, the program also features an 18+ rating, an audio and video disclaimer at the beginning of and throughout each show, and it is coded to be responsive to a programmed V-chip. We do all of this to allow our viewers and responsible parents to make an informed decision whether or not to change the channel.

In closing, Discovery Channel respects your opinion as to what best suits you, but we also respect the rights of the hundreds of thousands of mature Canadians who each week choose to enjoy this informative and entertaining television program that helps enhance their lives.

The complainant requested that the matter be adjudicated by the National Specialty Services Panel and wrote, in part, on May 22:

I am still not satisfied with their response. Namely their indication to me that *Sex Files* was broadcast in our area around midnight. This is simply not true. The broadcast I refer to in my complaint was aired around 8:00 pm. [...] [T]he *Sex Files* [was] broadcast at a time period that is sensitive to family viewing. I do not feel that it is necessary for me to purchase a V chip when that precaution would not help if my children happened to be in another home visiting at the time of the airing.

If these broadcasters consider this to be appropriate television to subject children to, I would like to know what their reasoning is behind their position. Also, what would they consider to be an appropriate time to air their broadcasts?

## THE DECISION

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

### *CAB Violence Code*, Article 3 (Scheduling) (and accompanying note)

- 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.

(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.)

### *CAB Violence Code, Article 4 (Classification System)*

Exempt

#### Descriptive

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

Note: exempt programming does not require an icon for on-screen ratings.

Icon Use Protocols

#### Frequency

The rating icon is to be keyed over the first 15-16 seconds of the program. It is expected the Americans will have their ratings up for 15 seconds. For programs which run longer than one hour, the icon is to be repeated at the beginning of the second hour. These are minimal use standards; stations may wish to use the icons more frequently on programs with particularly sensitive content.

### *CAB Violence Code, Article 5 (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.

### *CAB 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 and 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.

The National Panel Adjudicators viewed the tape of the program in question and reviewed all of the correspondence. For the reasons explained below, the Panel finds that the broadcast was in breach of Article 5 of the *CAB Violence Code* due to the absence of a viewer advisory at the beginning of the program; there was not otherwise a breach of any of the other foregoing provisions.

### **The Sexual Content**

The program in question contains some sexually explicit discussions and actions. The approach of the program is, however, informative and enlightening, not salacious or titillating. Men and women are depicted and treated with respect and in a balanced manner. As the CBSC has stated in the past, Article 4 of the *CAB Sex-Role Portrayal*

*Code* (which is entitled “exploitation”) is not intended to prevent the presentation of healthy adult sexuality, which is precisely what this program aims to promote. The National Specialty Services Panel finds no breach of the *CAB Sex-Role Portrayal Code* in the broadcast of “The Rear End”.

### **Time of the Broadcast and the Watershed Hour**

There appears to be some confusion on the part of the complainant as to what time she saw this particular episode of *The Sex Files*. As indicated in the above correspondence, the complainant’s first letter declares that the program aired at 11:30 pm, while the second letter contradicts it by stating that the broadcast was “around 8:00 pm”. The broadcaster’s response asserts that the program aired “near midnight” in the complainant’s area; however, it subsequently became clear to the CBSC Secretariat that Discovery was operating on a single feed, and the 12:00 midnight Eastern Standard Time hour of broadcast leads the Panel to the inexorable conclusion that the program aired at 9:00 pm in British Columbia (where the complainant saw it). This is essentially confirmed on the basis of the time-coded logger tapes that the Panel members viewed.

Article 3.0 of the *CAB Violence Code* explains that, for the purposes of the scheduling provision, it is the broadcast time *in the province of origination* that will be considered in order to accommodate the reality of different time zones. This same Panel addressed this issue in *WTN re Sunday Night Sex Show* (CBSC Decision 99/00-0672, January 31, 2001):

While the Panel shares [the complainant’s] 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 WTN decision, the Panel commended the broadcaster for being sensitive to Western viewers in its decision to air the program at 11:00 pm EST, thus remaining post-Watershed in nine of the ten provinces.

The accommodation of viewers was, if anything, even better in the case of Discovery Channel’s broadcast of *The Sex Files* at 12:00 am EST. That choice of such a late broadcast time resulted in the program being aired at or after 9:00 pm in *all ten* provinces.

The Panel notes, however, the complainant's assertion as to the unacceptability of even that hour on the basis that some young people may still be exposed to this explicit content in a post-Watershed time slot. While the Panel understands that this is a possibility, the scheduling provision is quite clear that 9:00 pm is the Watershed hour across Canada. Consequently, the Panel finds no breach of the Watershed requirement and commends Discovery for demonstrating the utmost sensitivity to viewers in Western time zones in its choice of a broadcast hour.

### **Classification Icons**

Classification is one tool (viewer advisories are another) that provides information to audiences so that they may make educated program choices for themselves and their children based on their tastes and preferences. For most types of programming, broadcasters are required to display the classification icon at the beginning of the program and to encode the information into the broadcast for compatibility with V-chip technology. Certain types of programming are, however, granted an exemption from classification. As noted above, "documentaries and other information programming" fall into this category and are thus not required by Article 4 of the *CAB Violence Code* to carry a classification icon.

Although no classification icon *appeared* at the beginning of this episode of *The Sex Files*, the broadcaster's response indicated that Discovery Channel attributed an 18+ rating to this program. Subsequent information provided by the broadcaster revealed that Discovery does in fact customarily encode and classify *The Sex Files*; however, on the date of this broadcast, Discovery Channel had recently relocated its master control centre, which likely led to the failure to include a classification icon. Given the classification exemption accorded to this type of program under Article 4, there is no question of finding a breach for the failure to provide a rating icon; moreover, the Panel commends Discovery and encourages the service to continue its practice of featuring a classification icon in *The Sex Files*. It demonstrates special sensitivity to viewers who may wish to be made aware of the sexually explicit nature of this program and to block it out with V-chip technology.

### **Viewer Advisories**

No corresponding exemption exists relating to the provision of viewer advisories. All programming telecast in late evening hours that contains scenes intended for adult audiences must include a viewer advisory at the beginning of, and during the first hour of any program of one hour or more in length. Although Article 5.1 of the *CAB Violence Code* makes specific mention of violence only, it has long been the practice of the CBSC and the broadcasters themselves to apply this Code provision to other scenes intended for adult audiences, such as those containing sexual activity, nudity, coarse language or other such mature subject matters.

It is very clear that the sexually explicit scenes and discussions found in this episode of *The Sex Files* are targeted to an exclusively adult audience and are subject to Article 5.1 of the *CAB Violence Code*. As indicated above, this episode of *The Sex Files* did not feature a viewer advisory at the beginning, although it did include visual advisories coming out of each commercial break. While broadcasting advisories in visual form only does not constitute a breach of the Code, the Panel does consider that advisories in both audio and video formats is more helpful. The Atlantic Regional Panel has commented on this issue in *CIHF-TV (MITV) re an episode of Millennium* (CBSC Decision 96/97-0044, February 14, 1997):

There is no obligation that any of the advisories be *oral*; however the CBSC considers that MITV acted wisely in making the first advisory both oral and written [...]. It enables viewers who may not be paying total attention to the screen at that moment to be aware that they may not find the coming program suitable.

The Code does provide, however, that a viewer advisory *at the beginning* of the program is required, and it is on this account that the National Specialty Services Panel finds Discovery Channel in breach. Discovery again cited its relocation of master control office as the explanation for this error. Despite this, the Panel must make it perfectly clear that the obligation to provide such advisories is an *obligation of result*. Broadcasters must find a way, notwithstanding such indispositions which inevitably arise from time to time, to avoid such errors. The viewing public depends on that and the *CAB Violence Code* does not allow for exceptions to the rule regarding advisories. In *CTV re Poltergeist - The Legacy* (CBSC Decisions 96/97-0017 and -0030, May 8, 1997), the Ontario Regional Panel found a breach of this article where the broadcaster did not provide viewer advisories during the entire first hour of the program. The Panel made the following comments about the importance of viewer advisories:

The rationale underlying the requirement of viewer advisories is found in the background section of the Code, which states 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 *during the course* of the first hour serves as a second, third and fourth chance for viewers to receive important information concerning the program they are considering watching, even where they may tune in late. The Code takes into account that many viewers make their viewing choices *after* the first few minutes of a program, which may result in a viewer missing an initial 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 insufficient for viewers and in breach of the spirit and wording of the Code.

Similarly, in *CHMI-TV re the movie Double Team* (CBSC Decision 99/00-0372, May 5, 2000), where the broadcaster aired advisories at the beginning of the violent film, but coming out of *only some* commercial breaks, the Prairie Regional Panel concluded that advisories were necessary *throughout* the film.

As previously mentioned, viewer advisories are one of the tools that broadcasters have created in their efforts to balance the need to offer varied programming appealing to different tastes with the desire of some viewers to be warned of content they may wish to avoid. The initial advisory is obviously crucially important in that it is the *first* opportunity for viewers to be made aware that upcoming programming may not be to their tastes. They are then able to avoid such programming *before* it begins, rather than having to view the beginning of the program to determine if it is or will be suitable for them.

### **Broadcaster Responsiveness**

Broadcaster responsiveness is always an issue considered in CBSC adjudications. The CBSC considers that the dialogue between broadcasters and complainants is an extremely positive component of the self-regulatory process; it is in fact a membership responsibility of all CBSC broadcaster members. In this case, the Panel considers that the broadcaster has adequately addressed the complainant's concerns, despite the fact that the response did not satisfy the complainant. It also acknowledges, on the basis of information subsequently received by the Secretariat, that the assertion of the broadcaster's President (in his letter to the complainant) that a classification icon and viewer advisory appeared at the beginning of the program resulted from his being unaware of the error that occurred in this particular episode and not because of any attempt to misrepresent the issue.

### **ANNOUNCEMENT OF THE DECISION**

Discovery Channel 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 more within seven days following the release of this decision during the time period in which *The Sex Files* had been broadcast; 2) within fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the announcements 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 which must be made by Discovery Channel.

The Canadian Broadcast Standards Council has found that Discovery Channel has breached the viewer advisory provision of the Canadian Association of Broadcasters' *Violence Code* in its broadcast of an episode of *The Sex Files* on March 17, 2001. Although Discovery had provided a viewer advisory following each subsequent commercial break, its failure to provide a viewer advisory at the beginning of the program was in violation of Article 5.1 of the *CAB Violence Code*, which states "To assist consumers in making viewing choices, broadcasters shall provide a viewer advisory, at the beginning of, and during the first our of programming telecast in late evening hours which contains scenes intended for adult audiences."

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



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## APPENDIX

### Complaint File 00/01-0791 Discovery re an episode of *The Sex Files*

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#### I. The Complaint

The following complaint was received via e-mail on December 30, 2000:

To Whom It May Concern;

I wish to lodge a complaint in regards to the very lax standards utilized by your council in regards to explicit programme content, you allow on our airwaves. In B.C. such channels as TLC, Discovery and City Tv (Toronto) display R rated and AO rated shows, starting at about 8:00p.m. our time. I am outraged that my children, (aged 16, 13 and 8) have to be exposed to such trash! Even if this programming began at 11:00 p.m. as it does back east, I would not wish my teens to witness such explicit behaviour (as shown in the programme 'Sex Files') if they happened to be up late babysitting.

One evening, I recall 'channel surfing' only to be assaulted by a woman demonstrating Masturbation on screen. Perhaps a well placed law suit would help you to enforce tighter regulations in regard to the choices you allow to be broadcast into our homes!!!

I have worked with such organizations as Canadian Family Action Coalition and Canada In Prayer. I am confident that these organizations would support a Canada wide campaign to rid our TV screens of such garbage!!

I hope to hear from you in the near future as to what 'standards' your council will be willing to enforce to protect the underage children in our country.

The complainant then sent the following e-mail on March 26, 2001 in response to the CBSC's request for specific broadcast dates and times:

I wish to acknowledge your January 23 e-mail and guidelines for making a complaint. Last Saturday, March 17, 2001 the same two television shows that caused me to complain in December of last year, gave me grave concern once more.

The first show in question appeared @ 11:30 p.m. on channel 24 'The Discovery Channel'. It showed graphic anal sex throughout its airing. I am deeply disturbed that this kind of television is seen acceptable for public viewing. I have a deep concern that one of my younger teenage children may see this while babysitting etc. I do not wish my children to [be] assaulted with material that clearly is not appropriate for their age.

[The complainant also complained of another program on another station. That issue was dealt with in a separate file.]

Our cable company is Regional Cable Systems out of Edmonton. Our children should be able to watch television without fear of having their innocence violated. I do hope that the CBSC secretariat will apply the appropriate code of ethics to "Sex Files" [...]. I look forward to this matter being dealt with swiftly.

#### II. Broadcaster Response

The President and General Manager responded to the complainant with the following letter dated May 9, 2001:

Your email of March 26 to the Canadian Broadcast Standards Council, regarding the Discovery Channel program "The Sex Files", was forwarded to Discovery Channel to respond.

The Sex Files continues to be a showcase for the latest scientific findings and trends regarding human sexuality. The material covered by the series is not provided to promote sexual activity, but to offer our mature viewers much desired, medically proven information that dispels myths and untruths. While never gratuitous in its depiction and description of this sensitive subject, Discovery Channel understands this programming is not for everyone.

In light of this, in addition to airing the program near midnight in your area, the program also features an 18+ rating, an audio and video disclaimer at the beginning of and throughout each show, and it is coded to be responsive to a programmed V-chip. We do all of this to allow our viewers and responsible parents to make an informed decision whether or not to change the channel.

In closing, Discovery Channel respects your opinion as to what best suits you, but we also respect the rights of the hundreds of thousands of mature Canadians who each week choose to enjoy this informative and entertaining television program that helps enhance their lives.

Thank you for taking the time to write.

### **III. Additional Correspondence**

The complainant initially sent in her Ruling Request form prior to having received a response from the broadcaster. In response to the CBSC's request for her to consider Discovery Channel's response before re-submitting the Ruling Request form, the complainant sent the following e-mail on May 22, 2001:

Thank-you for your e-mail concerning my complaint. I was under the impression that the ruling request form was mandatory due to time factor, regardless of having received the response from the Broadcaster. Having said that I am still not satisfied with their response. Namely their indication to me that Sex Files was broadcast in our area around midnight. This is simply not true. The broadcast I refer to in my complaint was aired around 8:00 pm. [...] [T]he Sex Files [was] broadcast at a time period that is sensitive to family viewing. I do not feel that it is necessary for me to purchase a V chip when that precaution would not help if my children happened to be in another home visiting at the time of the airing.

If these Broadcasters consider this to be appropriate television to subject children to, I would like to know what their reasoning is behind their position. Also, what would they consider to be an appropriate time to air their broadcasts?

Thank-you for your attention to this matter.