CANADIAN BROADCAST STANDARDS COUNCIL QUEBEC REGIONAL PANEL

VRAK.TV re Charmed ("Dead Man Dating")

(CBSC Decision 02/03-0365)

Decided July 17, 2003

T. Rajan (Vice-Chair), B. Guérin, G. Moisan, R. Parent and P. Tancred

THE FACTS

Charmed is a drama series about three sisters, Phoebe, Piper and Prue Halliwell, who are good witches. They are regularly called upon to use their supernatural powers against the forces of evil. VRAK.TV, a French-language specialty service for children, youth and families, broadcasts the dubbed version of this program in the early evening.

The episode entitled "Dead Man Dating" was broadcast from 7:00-8:00 pm on December 1, 2002. It was apparently preceded by a viewer advisory in both audio and visual format which stated:

[translation] Some scenes in this program may not be suitable for children under 13 years.

The advisory was not re-broadcast during the rest of the show. A 13+ classification icon was, however, broadcast at the beginning of the episode and coming out of every commercial break.

The episode began with a scene in which a young Chinese man named Mark found himself surrounded in an alley by a gang of other young men. A gunshot was fired and Mark fell down, but no blood or wounds were visible. Mark's ghost then rose from his body and watched as the members of the gang doused his corpse with gasoline and set it afire.

Mark's ghost visited the Halliwell sisters to ask for their assistance in ensuring that his corpse was identified and given proper burial before the guardian of hell could find him. The rest of the episode focussed on the Halliwell sisters tracking down the gang leader in order to help Mark's ghost. A sub-plot in the episode involved Phoebe taking a job as a psychic and having slow-motion visions of a man being struck by a car.

Aside from the initial murder scene described above and Phoebe's visions, the episode included few other scenes manifesting any form of violence. In one, after contacting the Halliwell sisters, Mark's ghost took Piper to the alley to show her his burned corpse. At that moment, the guardian of hell, with sinister glowing eyes and wearing suit of armour and a horned mask, arrived on horseback brandishing a lance. He charged at Mark's ghost and Piper but she used her supernatural powers to escape.

Halfway through the episode, Piper was kidnapped by the gang that had killed Mark, tied to a chair and threatened by the gang leader, Wong, who also yanked her hair. Prue, Phoebe and Mark's ghost followed the kidnappers to Wong's warehouse hideaway. Wong shot at them, but Prue exercised her extraordinary powers to stop the bullet in mid-air. Prue then used her powers of telekinesis to throw Wong down the stairs. Wong exited the warehouse only to find himself surrounded by police. Wong and the police exchanged gunfire and the gang leader was killed. Wong's ghost then rose from his body and encountered Mark's ghost and the Halliwell sisters in the alley. When the guardian of hell appeared once more, Mark's ghost took the opportunity to push Wong's ghost onto the guardian's lance. The lance pierced "the body" of Wong's ghost, causing him to writhe in pain for a moment before fading to nothingness.

The CBSC received a complaint dated December 1 (the full text of all correspondence can be found in the Appendix, available in French only). The viewer, who identified himself as the father of three children aged four, eight and ten, complained about "[translation] unnecessary violence" in the episode, referring in particular to the scene in which Mark's body was set on fire. He complained that broadcasting this scene was morally irresponsible and made violence look like a game.

A representative of VRAK.TV's Audience Relations Department responded to the complainant on December 17 with a short note informing him that all VRAK.TV programs are examined for violent content, though one scene may have escaped notice. The complaint, they advised, would be forwarded to the Programming Department.

On December 20, the Vice-President, Legal & Regulatory Affairs sent the complainant a lengthy letter detailing VRAK.TV's position on the issue. She assured the complainant that all programs are reviewed prior to broadcast on VRAK.TV to ensure that they comply with the *Voluntary Code Regarding Violence in Television Programming* and other relevant Codes. She argued that the specific scene mentioned by the

complainant must be viewed in the context of the entire program, with appropriate consideration given to its themes and plots involving the supernatural, on the one hand, and good versus evil, on the other. She noted that the scene in question was not gratuitous, as it was relevant to both the plot and character development. VRAK.TV believed that the target audience for *Charmed* would be sufficiently capable of discriminating between the fictional world of the series and reality. The Vice-President also observed that every family has different viewing preferences, so VRAK.TV had broadcast a 13+ icon at the beginning and coming out of every commercial break in accordance with the *Violence Code* to allow viewers to make appropriate program choices.

The complainant wrote back to the CBSC indicating that he was not satisfied with VRAK.TV's response. He asserted that the service did not have adequate controls on the amount of violence in certain programs. He requested adjudication by the Council and wrote that he was asking for nothing less than the program's removal from the schedule.

THE DECISION

The CBSC Quebec Regional Panel examined the complaint under the content, scheduling, classification and viewer advisory provisions of the Canadian Association of Broadcasters' (CAB) *Voluntary Code Regarding Violence in Television Programming*, which read as follows:

CAB Violence Code, Clause 1.1 (Content)

Canadian broadcasters shall not air programming which:

- contains gratuitous violence in any form*
- sanctions, promotes or glamorizes violence

(*"Gratuitous" means material which does not play an integral role in developing the plot, character or theme of the material as a whole.)

CAB Violence Code, Clause 3.1.1 (Scheduling of Programming)

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, Clause 4.0 (Classification System for French-Language Broadcasters)

Classification Description

[...]

13+

Some films will require of their audience a minimum degree of maturity in order to follow plot lines and maintain a critical view of events, events which a younger audience might have trouble comprehending. Often, difficulties lie not so much with the film itself: they relate to the inability of young viewers to confront certain realities.

Thus, when classifying a film for "13 years or over", the jury will be especially alert to the many and varied faces of violence – wanton destruction of property, vicious attacks on other human beings, -- grim reality, in short, wherever it is likely to intrude on the peace of mind of young people.

The developing sexuality of adolescents still in the troublesome puberty stage calls for a certain restraint when classifying films in this category. Scenes of sexual intimacy of a dominant nature, for example, or the portrayal of unconventional sexual relationships, may not be suitable for this age group.

Suicide is one of the themes most likely to prove unsettling for young adolescents. The high rate of suicides among teenagers in Québec is testimony enough to that, particularly among those who are troubled or who have difficulty "fitting in". For people such as this, to view a film in which suicide is represented as the only solution to personal or family problems can be an overwhelming experience.

Still, other social issues such as the disintegration of the family, mental instability, the fragility of values or marginal practices such as drug abuse become matters of concern to examiners. Again, the approach which a film director brings to his subject remains the all-important consideration.

As previously mentioned, some audiences, more than others, are likely to be offended by earthy language. Forceful expressions of this nature will be analyzed relative to the context in which they are used.

[...]

<u>Icon Use Protocols – Frequency</u>

The rating icon is to be keyed over the first 15-16 seconds of the program. [...] 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 5.2 (Viewer Advisories)

Broadcasters shall provide a viewer advisory at the beginning of, and during programming telecast outside of late evening hours, which contains scenes of violence not suitable for children.

The Panel also considered the broadcaster's obligation to retain and supply logger tapes pursuant to the combination of the CRTC's and the CBSC's requirements, which

may be summarized as follows. Broadcasters are required by CRTC Regulation to retain logger tapes of their programming for 28 days. By virtue of their membership in the CBSC, they are further required, when advised by the CBSC Secretariat pursuant to a complaint, to safeguard the relevant logger tapes for such longer periods as the Secretariat considers necessary and, when requested, to remit the required number of dubbed copies of these tapes to the CBSC.

The Quebec Regional Panel concludes that the episode of *Charmed* included no gratuitous violence and was broadcast at the proper hour but that VRAK.TV has breached the provisions of the *CAB Violence Code* relating to the mandated frequency of appearance of viewer advisories.

A Preliminary Issue: The Provision of Tapes

In accordance with its customary procedure pursuant to the requirement for an adjudication, the CBSC requested that the broadcaster send the Council logger tapes of the program. The tapes that arrived, however, were screener tapes rather than official logger tapes. The broadcaster was aware of its mistake, though, and, in a letter accompanying the tapes, explained the reason for the error. VRAK.TV indicated that, during the first while of their membership in the CBSC, there had been a misunderstanding about which tapes were required. As a result, they had saved only copies provided by their programming service rather than those reflecting the actual broadcast. The service assured the CBSC that, in future, they would hold logger tapes in the event of any Council requests.

Although the absence of logger tapes did not enable the Panel to *ensure* the state of classification icons and viewer advisories in the *actual* broadcast, the Panel felt comfortable with the representations of VRAK.TV, since, among other things, the service sent official logger tapes of a different episode of *Charmed* to demonstrate their treatment of ratings icons and advisories in a similar context. The broadcaster also confirmed that a viewer advisory had been broadcast at the beginning of the "Histoire de fantôme chinois" episode, accompanied by a 13+ classification icon and that the latter had been be re-broadcast coming out of each commercial break.

The CBSC has encountered this situation, namely, the inadvertent delivery of screener tapes, rather than logger tapes, in the past. In both *Bravo!* re the documentary film Give Me Your Soul (CBSC Decision 00/01-1021, January 16, 2002) and *Bravo!* re the film The House of the Spirits (CBSC Decision 00/01-0738, January 16, 2002), that specialty service provided the CBSC with screener tapes of the challenged programs. The CBSC recognized Bravo!'s misunderstanding of the logger tape requirement and found no breach, but stressed the importance of broadcasters supplying a *logger* tape:

It [the logger tape] shows *everything* that has *actually* been broadcast, together with a time code indicating at precisely what hour, minute and second every element of the broadcast occurred. It includes the programs themselves, as well as all interstitial elements, including advertisements, promos, viewer advisories, and such other elements as classification ratings. The screener tape is merely the record of the actual program which is then used for broadcast purposes. It does not show the entire program as actually aired. It is, so to speak, the *pre*-broadcast rather than the *post*-broadcast record. It is the logger tape which contains all the broadcast elements that the CBSC needs in order to adjudicate properly and it is, moreover, the logger tape that broadcast licensees are required by law and by condition of membership in the CBSC to retain.

The supply of a screener tape, technically speaking, constitutes a breach of CBSC requirements. In this case, however, upon inquiry, the Panel was informed that the broadcaster inadvertently supplied the incorrect version of the program and, as it happened, the supplementary information contained on the logger tape was not at issue on this occasion. The CBSC has also been advised that, in all matters arising hereinafter, Bravo! will be supplying logger tapes as required.

The Quebec Panel considers it appropriate to rule similarly in this case. VRAK.TV (and other specialty services owned by Astral Broadcasting Group Inc.) only became CBSC members in June 2002 and this was one of the first complaints for which the CBSC had requested tapes. Astral clearly acknowledged its error in this regard and the steps it had put in place to clear up the misunderstanding. Moreover, VRAK.TV verified its records and went so far as to provide logger copies of a different episode of the series in order to be of as much assistance as possible in the circumstances. The Panel finds no breach of VRAK.TV's responsibilities of membership in the provision of tapes to the Council.

Content Categories

The combined effect of the scheduling and viewer advisory provisions of the *CAB Violence Code* is essentially the creation of three categories of programming. The first is programming that contains elements of violence that are intended exclusively for adult audiences. The applicable rules require that such programs may only be broadcast after the Watershed hour of 9:00 pm and must be accompanied by viewer advisories at the beginning of the show, and following each commercial break, throughout the first hour (and not beyond that in the case of a program of longer duration).

The second category is programming that may be aired before 9:00 pm, but that contains certain elements that, although not intended exclusively for adults, may be unsuitable for children under 12. When this type of programming is broadcast before the Watershed hour, it must be accompanied by viewer advisories at the beginning of

the show, and following each commercial break, throughout the entire broadcast (whatever its duration).

The third type is programming that is not unsuitable for any audience members. It may be aired at any time of day and need not be accompanied by viewer advisories.

The requirement to display classification icons is not related to the same issue, namely, the categories of programming, as these are defined above. In fact, the requirement to display ratings icons is related to the *type* of programming, in this case, dramatic programming. All dramatic programming, regardless of the degree of adult content contained in it, requires an icon keyed over the first 15-16 seconds of the program and, for programs which run longer than one hour, the icon is to be repeated at the beginning of the second hour. (There are categories of programming exempt from this on-screen classification icon requirement; however, they are not germane to the complaint at hand.)

What is material about viewer advisories and ratings icons is that they are both methods of informing viewers about different aspects of the content of the program that is about to be broadcast or that is already underway. Whether or not this was accomplished properly by the broadcaster is discussed below.

Gratuitous Violence

The complainant was concerned with the "unnecessary" nature of the violence depicted. The Panel does not share his view. In the first place, it finds that there was actually very little violence during the course of the show. Second, it concludes that what violence there was was entirely material to the development of the plot. That it might have been somewhat shocking for young viewers is equally true but that does not render the violence gratuitous in nature. (For the discussion concerning young viewers, see the section on Viewer Advisories below.) There is, of course, no remedy for gratuitous violence in the sense that it is neither time-sensitive nor susceptible of remedial action by advice to viewers about such content. Programming that includes gratuitous violence cannot be broadcast on Canadian television.

Scheduling

It should also be noted that the content is far from being exclusively intended for adult audiences (and was thus susceptible of being broadcast prior to the Watershed hour of 9:00 pm). That it might have been somewhat shocking for young viewers does not force it into a post-9:00 pm time slot. Unlike the case of gratuitous violence, there is a

remedy for programming that includes material unsuitable for children that plays before 9:00 pm and that is discussed in the section on Viewer Advisories below.

Classification

The Panel considers that the 13+ rating was entirely appropriate for the program. As noted above, the violent content was limited and was germane to the story. In the matter at hand, however, the (at the time) new CBSC member got its viewer information rules confused. As noted immediately above, those types of programming requiring the display of ratings icon (including dramatic programming, such as *Charmed*), must apply the icon for 15-16 seconds at the start of the program and, for programs longer than one hour, at the top of the second hour. While the Quebec Regional Panel applauds that additional information provided by VRAK.TV for its audience by the use of the icon coming out of each commercial break, such frequent use is not required.

Viewer Advisories

On the other hand, as noted above, in those programs considered inappropriate for children (defined as under 12 years of age) (but not intended exclusively for adult audiences), viewer advisories are essential when the program airs before 9:00 pm. In the matter at hand, the Panel considers that the level of violence, while certainly not extreme, is inappropriate for young children. The sudden, unanticipated death, the deliberate pouring of gasoline on the corpse and the burning of the body would be likely to shock children and, in such circumstances, viewer advisories are required. The broadcaster as much as acknowledged that fact by including an advisory at the start of the program. It should be noted that the Panel's conclusion applies to the specific episode considered here and only to such other episodes of *Charmed* (or other programs) as may include comparable content. Such decisions regarding the provision of viewer information must be made from time to time as they may be called for by the content of individual episodes.

In any event, VRAK.TV appears to have confused the required frequency of icons and advisories, as noted above. In the result, the viewer advisories were not repeated following each commercial break. Consequently, VRAK.TV has breached Article 5.2 of the *CAB Violence Code*.

Broadcaster Responsiveness

In all CBSC decisions, the Adjudicating Panels assess the broadcaster's responsiveness to the complainant. Although the broadcaster need not agree with the complainant, it is expected that its representatives charged with replying to complaints will address the complainant's concerns in a thorough and respectful manner. In this case, VRAK.TV provided two responses to the complainant, one of which was quite lengthy and specifically addressed the scene that concerned him. VRAK.TV has clearly met its responsibility of responsiveness in this instance. Nothing further is required in this respect.

ANNOUNCEMENT OF THE DECISION

VRAK.TV 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 *Charmed* was broadcast; 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) at that time, 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 VRAK.TV.

The Canadian Broadcast Standards Council has found that VRAK.TV breached the article of the Canadian Association of Broadcasters' *Violence Code* in its broadcast of an episode of *Charmed* on December 1, 2002. Although VRAK.TV did broadcast a viewer advisory at the beginning of the program, its failure to provide viewer advisories following every commercial break during the entire hour of the program, VRAK.TV breached Article 5.2 of the Code which requires such information to be provided so that the audience can make the necessary viewing choices for themselves and their families.

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

ANNEXE

Dossier du CCNR 02/0365

VRAK.TV concernant Charmed ("Histoire de fantôme chinois")

I. La plainte

Le courriel suivant en date du 1 décembre 2002 fut acheminé au CCNR par le CRTC :

Vrak.TV -Charmed - L' épisode du 1er décembre 2002

Épouvantable ... violence inutile ... on voit un jeune garçon tirer à bout portant sur un autre jeune et l'asperger d'essence pour l'enflammer ... c'est l'fun ça hein??? Ça fait dur franchement ... un bel exemple de votre indifférence face à cette violence. En tant que diffuseur vous avez des responsabilités morales vis-à-vis la société! En êtes-vous conscient??? J'en doute ... vous contribuer à associer la violence à un jeu...

II. La réponse du télédiffuseur

Un représentant de VRAK.TV a répondu au plaignant le 17 décembre :

Bonjour,

Toutes nos émissions sont soumises à un contrôle de qualité et du niveau de violence de chaque émission en acquisition. Il se pourrait qu'une séquence ait malheureusement échappé à ce contrôle. Votre commentaire a été acheminé à la programmation qui, au besoin, prendra les mesures nécessaires.

Merci de votre vigilance.

Espérant le tout conforme, veuillez agréer, Monsieur, l'expression de mes sentiments les meilleurs.

La Vice-présidente, Services juridique, réglementaire et relations aux affiliés a envoyée une réponse plus détaillée au plaignant trois jours plus tard, soit le 20 décembre :

Objet : Épisode Histoire de Fantômes Chinois de la série « Charmed »,

Le Conseil canadien des normes de radiotélévision nous a fait parvenir copie de votre plainte relative à la diffusion de l'épisode Histoire de Fantômes Chinois de la série « Charmed » sur les ondes de VRAK.TV le 1er décembre dernier.

Tout d'abord, nous désirons vous assurez que VRAK.TV est très soucieux de la qualité de sa programmation et de l'appréciation de celle-ci par son auditoire. C'est pourquoi nous prenons à cœur et très au sérieux toute préoccupation exprimée par nos auditeurs. Nous souhaitons également porter à votre attention le fait que chaque émission est visionnée par l'équipe de programmation avant que celle-ci ne soit diffusée sur les ondes de VRAK.TV, afin de s'assurer qu'elle est conforme aux codes de programmation auxquels nous sommes assujettis, notamment le Code d'application volontaire concernant la violence à la télévision, et qu'elle convient aux auditeurs de notre service.

Les propos de votre courriel référent à une scène spécifique de l'épisode Histoire de Fantômes Chinois que vous qualifiez de « violence inutile ». Cette scène doit être interprétée et évaluée dans le contexte de la trame de fond et d'intrigue de « Charmed ». Cette série présente les péripéties de trois sorcières qui ont des pouvoirs surnaturels, mais qui ne peuvent les utiliser que pour faire le bien. Chaque épisode présente une aventure au cours de laquelle les forces du bien affrontent les forces du mal, et où chaque fois, le bien triomphe; et dans le cas de l'épisode Histoire de Fantômes Chinois, le passage dont vous faites mention dans votre lettre n'est pas gratuit, en ce sens qu'il est essentiel au déroulement de l'intrigue et à l'évolution des personnages. Le suivi effectué auprès de nos groupes cibles nous a permis aussi de constater que les jeunes auditeurs sont en mesure d'apprécier la différence entre le monde fictif de « Charmed » et la réalité.

Évidemment, chaque famille a des critères différents quant à la programmation qui lui convient et afin que les parents puissent s'assurer que leur enfant écoute les émissions qui lui conviennent, compte tenu du niveau de sensibilité de leur enfant, nous avons apposé une vignette 13+ au début de l'émission et au retour de chaque pause publicitaire, conformément au Code de déontologie et au Code d'application volontaire concernant la violence à la télévision auxquels VRAK.TV souscrit.

Nous vous remercions de l'attention que vous portez aux émissions regardées par votre enfant et des commentaires que vous nous transmettez. N'hésitez pas à communiquer avec nous si vous avez d'autres inquiétudes ou suggestions. Les commentaires des parents sont importants au maintien et à l'amélioration constante de la qualité de la programmation de VRAK.TV.

III. Correspondance additionelle

Le plaignant a envoyé le courriel suivant le 17 décembre :

Je vous fais part de la réponse du diffuseur en regard de ma plainte. Je ne suis pas satisfait de la réponse. Je ne crois pas qu'il y a un contrôle de qualité suffisant au niveau de la violence par ce diffuseur à cause de la trop grande quantité d'actes violents à l'intérieur de certaines émissions de sa programmation. Je demande donc au conseil d'étudier ma plainte et je demande aussi rien de moins que de retirer cette émission.

Merci

Le 14 mars, VRAK.TV a envoyé les enregistrements de l'émission avec la lettre suivante :

Madame,

Tel que demandé, vous trouverez sous pli deux (2) exemplaires des bandes-vidéo de l'émission mentionnée ci-haut.

Bien que nous conservions désormais les bandes-témoins que vous nous demandez, il semble que dans les premiers temps de notre adhésion au CCNR, une certaine incompréhension de notre part a fait en sorte que nous avons conservé les copies de notre service de programmation et non celles de la mise en onde. En conséquence, nous n'avons malheureusement plus les bandes-témoins de l'épisode qui fait l'objet de la plainte, mais seulement les bandes-vidéo de notre service de programmation, que nous vous faisons parvenir avec la présente lettre.

Suite à nos vérifications, nous vous confirmons qu'une mise en garde à l'auditoire est présentée au début de chaque émission de la série « Charmed », accompagnée d'un icône de classification 13+ diffusé au début de chaque épisode ainsi qu'au retour de chaque pause. L'épisode visé par la plainte comprenait cette mise en garde à l'auditoire ainsi que l'icône de classification. Afin de vous permettre de mieux évaluer le tout, nous nous permettons de joindre la bande-témoin d'un autre épisode de « Charmed » diffusé, celui-ci, le 8 mars dernier à 19h.

N'hésitez pas à contacter la soussignée pour toute question ou tout commentaire que vous pourriez avoir à l'égard de ces exemplaires.

Je vous prie d'agréer, Madame, mes salutations les meilleures.