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

Showcase Television re an episode of the series *Real Sex*

(CBSC Decision 02/03-1667)

Decided January 30, 2004

R. Cohen (Chair), S. Crawford (Vice Chair, Industry), H. Pawley (Vice Chair,  
Public), M. Hogarth, M. Harris, V. Morrisette, P. O'Neill

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**THE FACTS**

The documentary magazine series *Real Sex* was broadcast Monday through Thursday from 4:45 to 5:45 am by the specialty service Showcase Television, which provides two feeds to the country, one based on Toronto time and the other based on Vancouver time. Both signals are transmitted from their operations centre in Toronto via satellite to cable companies which download the appropriate signal for their time zone. The Showcase programming, as broadcast in Toronto, including this series, was uploaded to satellite in order to be available at the same hour in the Pacific time zone as it had been in the Eastern time zone. In the matter at hand, the complainant, being from neither of those time zones, and without knowing why this was the case, had seen the program on August 8, 2003 between 6:45-7:45 am in Winnipeg. This resulted from the fact that the complainant's cable operator was supplying its subscribers with the Vancouver signal (which, as discussed in greater detail below, is two hours behind Winnipeg's Central Time zone).

As the show's title suggests, the series has a sexual theme and the episode of that date included explicit sex scenes, which demonstrated various sexual positions, a "threesome", a sex-doll and other sex-toys in use, an orgy, and more. Indeed, there is no disagreement between the broadcaster and the complainant as to the sexual explicitness of the broadcast.

The show was preceded by two viewer advisories in oral and visual form, one before and one following the opening credits. The first of these stated: "This program contains scenes with nudity, sexuality and coarse language. Viewer

discretion is advised.” Showcase also aired a classification icon of 18+ at the beginning of the show. The second visual advisory stated: “The following program contains scenes and language of a frank and explicit nature. Viewer discretion is advised.” The broadcast also included viewer advisories coming out of each commercial break.

The complainant wrote that very day to the CRTC (this e-mail and all other correspondence relating to this matter are reproduced in the Appendix). He said that he had been

channel surfing this morning at approximately 7:00 am (Central) and came upon an Adult programme with graphic nudity and sexual discussion (*Real Sex*) on Showcase (channel 49 in Winnipeg). According to the digital programme guide from Shaw Cable, this programme was scheduled from approx 6:45 to 7:50 am and is considered by them as ADULT and the warnings after the commercials echoed the rating.

I am not a prude and don't have a problem with this type of programming, at the proper time. Channels around Ch 49 are child related, i.e. cartoons, YTV, Teletoon, TreeHouse etc. and kids are up at this time getting ready to go to daycares and the like. What are the parameters (recommended timings) for showing this type of programming? Can this type of programming be kept off the open channels at times when children could be watching TV?

Showcase's Publicist responded to the complainant's e-mail on August 29. She wrote, in part:

We regret that you were offended by Showcase's broadcast of ***Real Sex*** from 4:45 to 5:45 ET on Friday, August 8.

[...]

***Real Sex*** is a documentary magazine series which explores how couples find sexual stimulation and fulfillment. It is a candid and intriguing look at some of the exciting and novel ways that men and women are re-discovering sex in today's society. The series follows the *Showcase Revue* (Monday through Thursday) and finishes airing by 6 a.m. ET/PT.

We understand that the sex scenes may have caused you grave concern. Our view is that these scenes must be viewed within the context of the program as a whole. The sex scenes depicted in ***Real Sex*** are consensual. They help define the emotional relationships of the characters and their experiences.

This program is intended for adult audiences only and Showcase has taken steps to broadcast this series responsibly. [...]

As required by the Voluntary Code Regarding Violence in Television Programming, Showcase is sensitive to the scheduling of programs with violent and other adult-oriented content. Such programming may not be aired prior to 9 p.m., or after 6 a.m. (times refer to point of origin of the broadcast, which is Toronto for Showcase). ***Real Sex*** always airs between 9 p.m. and 6 a.m. in order to lower the likelihood of younger viewers inadvertently watching the program.

Please note that the Canadian Broadcast Standards Council has set the watershed hour of 9 p.m. to 6 a.m., which means that material not suitable for children may air, with proper advisories, after 9 p.m., and before 6 a.m. ET. Though **Real Sex** finished airing at 7:45 in your time zone, Showcase is complying with CBSC regulations by airing these programs during this time slot.

[...]

Finally, in order to assist our viewers in making their viewing choices, we run a viewer advisory before such programs indicating whether they contain scenes that may be offensive to some viewers. A viewer advisory warning of scenes with nudity, sexuality and coarse language is aired before the broadcast of **Real Sex** and after each commercial break.

The complainant was not satisfied with this response. He was, in fact, quite unhappy with the time zone error. He expressed the matter in the following terms, in part.

Regarding the first paragraph of letter from [the Showcase Publicist], she states that the programme was shown from 4:45 to 5:45 a.m. ET, and this would have been translated to show times in Winnipeg of 3:45 to 4:45 a.m. CT and this is false (FACT: Winnipeg is only one hour behind Toronto during the whole year). Instead, my email stated that the programme was from approximately 6:45 to 7:50 a.m. CT – and if the feed was from Toronto (7:45 to 8:50 a.m. ET), this directly contradicts her statements in paragraph six and seven regarding the concern of SHOWCASE and the CBSC standard of “such programming will not be aired prior to 9 p.m. or after 6 a.m....”. Are you sure this feed was sent from ET or was it PT (Vancouver – 4:45 to 5:50 a.m. PT)?

Secondly, I wish to bring up the apparent CBSC standard of ADULT programme broadcast times. Although SHOWCASE maybe [*sic*] legally able to show (appropriate times from the point of origin) this programming at these times, it does not cover the moral issue of discrimination due to the number of time zones in this country and the centralization of programming. All the children in Toronto and Vancouver are looked after by this ‘standard’, however it is not a Country-wide ‘standard’ and the broadcaster should ensure that all time zones are treated equally under the ‘standard’. Is a child’s propensity to negate violence on TV stronger outside of Toronto and Vancouver time zones? I understand that in many cases there are two centres of programming (Toronto and Vancouver), but in this particular case, the broadcaster failed in its duty to ensure that the rest of the world outside of Toronto/Vancouver were also covered by the ‘standard’.

## THE DECISION

The National Specialty Services Panel considered the complaint under the following provisions of the Canadian Association of Broadcasters’ (CAB) *Code of Ethics*:

*CAB Code of Ethics* Clause 10 (Television Broadcasting -- Scheduling)

- (a) Programming which contains sexually explicit material or coarse or offensive language intended for adult audiences shall not be telecast before the late viewing period, defined as 9 pm to 6 am. Broadcasters shall refer to the *Voluntary Code Regarding Violence in Television Programming* for provisions relating to the scheduling of programming containing depictions of violence.
- (b) Recognizing that there are older children watching television after 9 pm, broadcasters shall adhere to the provisions of Clause 11 below (viewer advisories), enabling viewers to make an informed decision as to the suitability of the programming for themselves and their family members.
- [...]
- (d) Broadcasters shall take special precautions to advise viewers of the content of programming intended for adult audiences, which is telecast before 9 pm in accordance with Clause 10(c).

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

The National Specialty Services Panel read all of the correspondence and viewed a tape of the episode. The Panel recognizes the very real concerns of the complainant, which it discusses below, but concludes that Showcase Television was in full compliance with its obligations under the *CAB Code of Ethics*.

### **The West-to-East Time Zone Issue**

This is the first occasion on which a CBSC Panel is called upon to deal with the intrusion of programming intended for Watershed-period broadcast on the early morning, rather than the early evening, viewing period. Showcase Television, in an effort to be more sensitive to audiences across the country, has long provided a split feed, thereby giving British Columbia viewers the opportunity to see post-Watershed broadcasts in the same circumstances that such programming is offered to Quebec/Ontario audiences. There was, however, a complication, and that fly in the ointment resulted from the decision of the cable operator, not the broadcasters. Faced with the option of picking up one of two feeds provided by Showcase, the Shaw cable company chose to offer its Manitoba subscribers the B.C. feed, which runs two hours *behind* Central Time, rather than the Toronto feed, which runs one hour *ahead* of Central Time. While this choice has a positive effect on the opening of the Watershed time frame in Winnipeg, rendering it effectively 11:00 pm (rather than 9:00 pm), it wreaks havoc on the closing of the Watershed broadcast period, rendering it in effect 8:00 am, rather than 6:00 am, well into children's early morning viewing patterns.

Had the cable operator chosen the Toronto feed, the imposition on Manitoba viewers would have been the effective rendering of the Watershed time frame as

8:00 pm to 5:00 am, local time. In the case of the series *Real Sex*, the challenged episode would have aired from 3:45-4:45 am Winnipeg time and the complaint in question would not have been filed.

### **The Canadian Time Zone Conundrum**

In another matter dealt with by this Panel at its adjudication meeting today, namely, *History Television re an episode of the series Sexual Century* (CBSC Decision 02/03-1495, January 30, 2004), the problem was similar in nature, although the invasion of non-Watershed viewing time was on the evening hour in British Columbia, rather than the early morning in Manitoba. The program content was also sexual and the specialty service in question only provided the nation with a single broadcast feed. This Panel noted that it had,

on several previous occasions, faced the difficult issue of providing appropriate content to audiences in all Canadian time zones. Each time it has rendered such a decision in response to a pre-9:00 pm broadcast in the West, it has expressed its sympathy and concern. On the present occasion, it can do no less.

The complainant in that case was neither flexible nor sympathetic to the codified exception that permits programs to be broadcast freely in Canada *as long as they respect the Watershed "in the time zone in which the signal originates."* As the Panel observed,

His argument is, of course, in essence that persons in every Canadian time zone are entitled to the same consideration. While the CBSC does not disagree with the legitimacy of the aspiration, it does recognize the immense practical difficulty of establishing such a set of rules.

In the History Television decision, this Panel referred to its previous decisions in *WTN re Sunday Night Sex Show* (CBSC Decision 99/00-0672, January 31, 2001) and *Bravo! re the documentary film Give Me Your Soul* (CBSC Decision 00/01-1021, January 16, 2002), explaining the dilemma in balancing the goals of providing greater programming options with the preparedness of viewers to use the many options to avoid programming they do not find suitable. It added that there was nothing that could be done to counter the exception provided in both the *CAB Violence Code* and the *CAB Code of Ethics*.

It should also be noted that the fact that the physical signal originated in Toronto does not render the exception that "these guidelines shall be applied to the time zone in which the signal originates" inoperative. When the codifiers laid down the principle of the time zone in which the signal originates, the Panel understands that they intended to say that the issue was where the signal was *intended to appear to be originating*. While the *Violence Code* (where this principle was first introduced) was presented to the public in a different technological era, in October 1993, its intention was even then related to time and not to geography. The Specialty Services Panel is applying it on this basis

(whether with respect to the *Violence Code* exception or that in the *CAB Code of Ethics*) and expects that any other CBSC Panels called upon to deal with this issue will do so in the same way.

### **The CRTC on Time Zones and the Future**

The Panel considers it prudent to note here, as this Panel has done in its decision of today's date in *History Television re an episode of the series This Sexual Century* (CBSC Decision 02/03-1495, January 30, 2004), that the CRTC has recently considered the issue of the availability of adult-oriented material outside of the Watershed period in some Canadian time-zones. It made statements on the subject which are cited in full in the History Television decision and which can be found in Public Notice CRTC 2004-2, "Introduction to Broadcasting Decisions CRTC 2004-6 to 2004-27 renewing the licences of 22 specialty services", dated January 21, 2004.

### **Broadcaster Responsiveness**

The requirement that a broadcaster be responsive to the letter of complaint sent by a member of the public is considered by the Adjudicating Panels to be a significant part of the membership requirements of the CBSC. Such responsiveness is an essential part of the dialogue by which the CBSC considers that matters that trouble members of the public sufficiently to compel them to write are often successfully resolved. When accomplished in thorough and sensitive ways, such correspondence is also a way of letting the public know that broadcasters care about their audience's concerns. The Showcase letter provided a lengthy explanation relating to the complaint. That being said, the broadcaster got the hour of broadcast of relevance to the complainant wrong in the first paragraph and did not reflect the true concern of the complainant when concluding that the "sex scenes may have caused you grave concern", when that was not at all the complainant's concern, which was rather the *time of day* at which the scenes were broadcast. Nonetheless, the Panel considers that Showcase Television has, on balance, fulfilled the broadcaster's obligations in this regard in this instance.

*This decision is a public document upon its release by the Canadian Broadcast Standards Council. It may be reported, announced or read by the station against which the complaint had originally been made; however, in the case of a favourable decision, the station is under no obligation to announce the result.*

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**APPENDIX**  
**To**  
**Showcase re an episode of Real Sex (CBSC Decision 02/03-1667, January**  
**30, 2004)**

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**I. The Complaint**

The following complaint dated August 8, 2003 was sent to the CRTC and forwarded to the CBSC in due course:

Subject: Questions regarding possible complaints

I have two possible comments/complaints, but, I do not know if I am in the right area – please let me know.

1. [The first point was an advertising related complaint which has been forwarded to ASC for their action]

[...]

2. I was channel surfing this morning at approximately 7:00 am (Central) and came upon an Adult programme with graphic nudity and sexual discussion (Real Sex) on Showcase (channel 49 in Winnipeg). According to the digital programme guide from Shaw Cable, this programme was scheduled from approx 6:45 to 7:50 am and is considered by them as ADULT and the warnings after the commercials echoed the rating.

I am not a prude and don't have a problem with this type of programming, at the proper time. Channels around Ch 49 are child related, i.e. cartoons, YTV, Teletoon, TreeHouse etc. and kids are up at this time getting ready to go to daycares and the like. What are the parameters (recommended timings) for showing this type of programming? Can this type of programming be kept off the open channels at times when children could be watching TV?

**II. Broadcaster Response**

Showcase's Publicist responded to the complainant's email on August 29, 2003 with the following:

Dear Mr. [H],

We have received a copy of your letter which was forwarded to us by the Canadian Broadcast Standards Council. Showcase appreciates and considers all viewer feedback and we thank you for taking the time to express your concerns about our programming. We regret that you were offended by Showcase's broadcast of Real Sex from 4:45 to 5:45 ET on Friday, August 8.

I would like to take this opportunity to explain Showcase's programming policy. It is our programming mandate at Showcase to offer an alternative to other broadcasters' offerings. One way that we have achieved this distinction is to broadcast high-quality international drama series and world-class films.

Real Sex is a documentary magazine series which explores how couples find sexual stimulation and fulfillment. It is a candid and intriguing look at some of the exciting and novel ways that men and women are re-discovering sex in today's society. The series follows the Showcase Revue (Monday through Thursday) and finishes airing by 6 a.m. ET/PT.

We understand that the sex scenes may have caused you grave concern. Our view is that these scenes must be viewed within the context of the program as a whole. The sex scenes depicted in **Real Sex** are consensual. They help define the emotional relationships of the characters and their experiences.

This program is intended for adult audiences only and Showcase has taken steps to broadcast this series responsibly. Before we decide to broadcast a program, our Programming Department screens it to ensure that it is suitable for broadcast. The determination of suitability includes ensuring that the broadcast would not contravene applicable broadcast laws and industry codes including, but not limited to, the Canadian Association of Broadcasters (CAB) Code of Ethics, the CAB "Sex-Role Portrayal Code for Television and Radio Programming," and the "Voluntary code Regarding Violence in Television Programming".

We are also concerned with the content of shows broadcast during hours when children may be watching. As required by the Voluntary Code Regarding Violence in Television Programming, Showcase is sensitive to the scheduling of programs with violent and other adult-oriented content. Such programming may not be aired prior to 9 p.m., or after 6 a.m. (times refer to point of origin of the broadcast, which is Toronto for Showcase). **Real Sex** always airs between 9 p.m. and 6 a.m. in order to lower the likelihood of younger viewers inadvertently watching the program.

Please note that the Canadian Broadcast Standards Council has set the watershed hour of 9 p.m. to 6 a.m., which means that material not suitable for children may air, with proper advisories, after 9 p.m., and before 6 a.m. ET. Though **Real Sex** finished airing at 7:45 in your time zone, Showcase is complying with CBSC regulations by airing these programs during this time slot.

In addition, Showcase also complies with the new program classification system developed by the Action Group on Violence on Television to give Canadian parents the most advanced control system in the world. This sex-level rating system is used to classify any levels of violence language or sex/nudity in all drama, feature film and children's programming broadcast in Canada. The "18+" icon is shown during our broadcast of **Real Sex** to warn parents that these series contain themes or content elements which might not be suitable for viewers under the age of eighteen. This classification allows parents to use V-chip technology to screen out programs with mature subject matter that they do not wish their children to watch. For more information about this technology, please visit [www.vchipcanada.ca](http://www.vchipcanada.ca).

Finally, in order to assist our viewers in making their viewing choices, we run a viewer advisory before such programs indicating whether they contain scenes that may be offensive to some viewers. A viewer advisory warning of scenes with nudity, sexuality and coarse language is aired before the broadcast of **Real Sex** and after each commercial break.

It is certainly not our intention to offend our viewers but to introduce them to the wealth of quality, unique drama from Canada and around the world. We realize that these series are not suitable for everyone's tastes but we do want to provide viewers with the option to look at alternative lifestyles and stories. We have tried to construct the Showcase schedule to deliver something for everyone, and to permit viewers to make their choices on an informed basis.

Thank you for taking the time to voice your opinion. We do appreciate feedback and hope that this letter has addressed your concerns.

### III. ADDITIONAL CORRESPONDENCE

The complainant was unsatisfied with the broadcaster's response and sent the following e-mail on September 4, 2003 to the CBSC:

I have received the letter, as you advised me, from the broadcaster with regard to my complaint of Aug 08, 2004. Although I do not have a problem with many of the points addressed by Ms. [M], I have some glaring points that I wish to have further adjudicated. Please forward the "RULING REQUEST FORM (see form below at the bottom of your email attachment) TO BE RETURNED IF UNSATISFIED WITH THE BROADCASTER'S REPSONSE" to the appropriate office for their action. I want to amplify the form and my dissatisfaction of the letter and the CBSC with the following two points. Please follow your normal procedures for the disclosure of my surname (if requested) to the media.

Regarding the first paragraph of letter from Ms. [M], she states that the programme was shown from 4:45 to 5:45 a.m. ET, and this would have been translated to show times in Winnipeg of 3:45 to 4:45 a.m. CT and this is false (FACT: Winnipeg is only one hour behind Toronto during the whole year). Instead, my email stated that the programme was from approximately 6:45 to 7:50 a.m. CT – and if the feed was from Toronto (7:45 to 8:50 a.m. ET), this directly contradicts her statements in paragraph six and seven regarding the concern of SHOWCASE and the CBSC standard of "such programming will not be aired prior to 9 p.m. or after 6 a.m....". Are you sure this feed was sent from ET or was it PT (Vancouver – 4:45 to 5:50 a.m. PT)?

Secondly, I wish to bring up the apparent CBSC standard of ADULT programme broadcast times. Although SHOWCASE maybe [sic] legally able to show (appropriate times from the point of origin) this programming at these times, it does not cover the moral issue of discrimination due to the number of time zones in this country and the centralization of programming. All the children in Toronto and Vancouver are looked after by this 'standard', however it is not a Country-wide 'standard' and the broadcaster should ensure that all time zones are treated equally under the 'standard'. Is a child's propensity to negate violence on TV stronger outside of Toronto and Vancouver time zones? I understand that in many cases there are two centres of programming (Toronto and Vancouver), but in this particular case, the broadcaster failed in its duty to ensure that the rest of the world outside of Toronto/Vancouver were also covered by the 'standard'.

My original email did not ever say that I was offended and have grave concerns, I was concerned about the regulations regarding air times for ADULT programming. As I get deeper into the process, I do get offended by people who tell falsehoods, don't the facts straight and/or hide behind 'guidelines and standards'. The only 'grave concern' I have is that the "RIGHT" course of action in this case may not be followed by either organization. Admit the mistake, enact policies to ensure they don't happen again and for the CBSC – change your 'standard' so that the "rights" of all Canadians (in all time zones) can be covered by your watchdog council. Please treat the people in the rest of the Canada as you treat those people in the chosen areas of programming feeds.

Your timely response to this email is appreciated. And please pass on to the broadcaster – do not put words into my email that I did not write nor infer. I have fully disclosed my contact

particulars on the original email, pick up the phone or write me an email if you have questions.

Sincerely,

xxx

p.s. – is the 'standard' for programme times the same for ADULT and 18+? Ms. [M] seems to use the 18+ designation interchangeably. Does the 18+ designation on the programming guide with SHAW Cable fall under the programme schedule "standards"? Shaw Cable designates REAL SEX as ADULT and a programme like Comedy Club 54 on the Comedy Channel (shown at 11 am. and 5:00 p.m. Winnipeg time) as 18+.