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**CANADIAN BROADCAST STANDARDS COUNCIL  
QUEBEC REGIONAL PANEL**

TQS re the *Bleu Nuit* movie *Mission de charme*

(CBSC Decision 03/04-0976)

Decided February 10, 2005

G. Bachand (Chair), T. Rajan (Vice Chair), R. Cohen (*ad hoc*), B. Kenemy,  
G. Moisan, M.-A. Murat

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**THE FACTS**

On February 28, 2004 at midnight, TQS broadcast a film entitled *Mission de charme* as a part of its series *Bleu Nuit*. The film tells the story of Sandra, a young woman seeking a job who ends up finding work as a striptease dancer working for an agency serving private clients. Her new role is undertaken on a semi-confidential basis, in the sense that she hides it from her boyfriend. While there is another plot dimension to the film, the balance of the movie focuses on erotic striptease performances and scenes of explicit sexual activity involving nudity of both men and women. The broadcaster aired a viewer advisory in both oral and visual formats at the start of the film but did not repeat it in either format following any of the commercial breaks.

This film contains erotic scenes and nudity suitable for a mature audience.

TQS also included an “18+ érotisme” ratings icon for 7-8 seconds at the start of the program and following each commercial break.

On March 6, 2004, a complainant sent an e-mail to the CBSC (the full text of this and all other correspondence can be found in the Appendix), which said in principal part:

[Referring to this film and another program which is not dealt with in this decision, the complainant said] I found both of these two programs to be very inappropriate for a local station to air. It is very unethical for a local station like TQS (CFJP) to air them, because they not only promote unsafe sex, but they are also very offensive. Many parents that I know of, had no choice to buy new a television

with parental blocks so that they can permanently block the channel TQS. [...] I don't feel like wasting my money to go buy a new television that has parental blocks because of inappropriate programs airing on one local station (TQS), that I don't want my children to be exposed to. I also don't feel like staying awake all night Saturday until Sunday morning to make sure that my children don't wake up during the middle of the night and go turn the television on and watch TQS. [...]

The broadcaster's Vice President, Communications, replied on March 23. She said in part:

TQS's programming consists of a great number of movies or shows of various genres that are broadcast daily. Each adult programming feature is preceded by a notice to the effect that some scenes to be shown is [*sic*] for an adult audience. While we understand that some scenes in some of these shows could have shocked you, we do carefully select each production screened in adult programming and we remove scenes considered to be immoral and not complying with the ethics of our broadcasting company. Moreover, there is always the appropriate warning indicating the required age for viewing the said show.

The shows aimed at adults are broadcast after 11:00 pm, the time after which it is advisable to broadcast shows addressed to adults. The CBSC has rendered many rulings to that effect.

[The second program] and *Bleu Nuit* are broadcast on TQS and we believe that viewers appreciate those types of shows late on a week night. We are very pleased to be able to offer programming different from that of our competitors, being the only French-language network to show erotic movies of quality, containing no violence or pornographic scenes.

On March 27, the complainant sent another letter declaring her dissatisfaction with the broadcaster's response and, on March 29, she returned her Ruling Request.

## THE DECISION

The Quebec Regional Panel examined the broadcast under the following provisions of the Canadian Association of Broadcasters' (CAB) *Code of Ethics, Voluntary Code Regarding Violence in Television Programming* and *Sex-role Portrayal Code*:

### *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.

### *CAB Code of Ethics*, Clause 11 – Viewer Advisories

To assist consumers in making their viewing choices, when programming includes mature subject matter or scenes with nudity, sexually explicit material, coarse or offensive language, or other material susceptible of offending viewers, broadcasters shall provide a viewer advisory

- (a) at the beginning of, and after every commercial break during the first hour of programming telecast in late viewing hours which contains such material which is intended for adult audiences, or
- (b) at the beginning of, and after every commercial break during programming telecast outside of late viewing hours which contains such material which is not suitable for children.

### *CAB Violence Code*, Article 4.0 – Classification System

#### **Icon Use Protocols**

##### Frequency

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 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.

The CBSC viewed the logger tape of the broadcast in question and reviewed all of the correspondence. The Panel finds that TQS is in breach of Article 4 of the *CAB Violence Code* regarding the length of display of the classification icon and of Clauses 10 and 11 of the *CAB Code of Ethics* regarding viewer advisories.

## Sexual Exploitation

Various CBSC Panels have been called upon to consider the issue of sexual exploitation. In one of the early CBSC decisions dealing with an late-night erotic film, namely, *TQS re Été sensuel* (CBSC Decision 95/96-0233, August 14, 1998), this Panel said that it

takes no issue with the assertion by the complainant that the film in question is an erotic film. The only question, however, which it is called upon to decide here is whether the film is *exploitative*. The other contentions of the complainant which relate to whether this film or other such films are “idiotic” and whether or not the broadcasting of such a film is “disrespectful of people like myself” are *marketing* questions. They relate to the broadcaster’s choice of material to air. If there is no breach of a Code (or, of course the *Broadcasting Act* or Regulations or other laws of the land), the broadcaster is *entitled* to put the film on its airwaves. In a world which has become increasingly oriented toward niche broadcasting, any station or network appreciates that its choices will never appeal to *everyone*. This does not mean that such choices should not be made but only that, in making such choices, the broadcaster knows that only some, but not all, of the public will be pleased. It goes without saying that the broadcaster hopes always to make the correct choices but, where no Code is breached, the viewer is always free to go elsewhere. That is, in the end, the viewer’s only option and it is, from society’s perspective, a fair option, provided that society’s codified values have not been breached.

In the case of *Été sensuel*, the Council finds that there is none of the degradation of either sex which would be characteristic of a film which could be classified as exploitative. Fundamentally, the purpose of the *Sex-Role Portrayal Code* is to prevent “negative or inequitable sex-role portrayal of persons” but not “the depiction of healthy sexuality”. The Council considers that the treatment of sexuality in this film, while perhaps not of the highest cinematic level, is not in breach of the Code.

Then, in one of its leading decisions on such subject matter, namely, *Showcase Television re Bubbles Galore* (CBSC Decision 98/99-1087 et -1133, November 19, 1999), the Ontario Regional Panel, which was there called upon to deal with the issue of exploitation in the context of an erotic film, said:

While it is only accurate to observe that, on a strictly quantitative basis, there may be more nudity of women than men depicted in the program, the Council considers it material to remember that the goal of the movie, as well as the film within the film, has been to portray adult film creation from the point of view of women. The creative point, therefore, is intended to be inherently sensitive, hence unexploitative, from the perspective of gender portrayal. In any case, there is male nudity depicted and, in the context of the film, the Council is not of the view that there is any material imbalance in this respect. Moreover, [...] the creators of *Bubbles Galore* have clearly depicted the female characters in the film as superior to the male characters in both morality and intelligence but not in so inegalitarian a fashion as to unbalance the equation from the other point of view.

More recently, in *TQS re two episodes of the program Sex Shop* (CBSC Decision 03/04-0162 & -0320, April 22, 2004), this Panel arrived at a similar conclusion with respect to erotic programming. It concluded:

On the basis of the foregoing principles, namely, a) that there is a difference between sex and sexual exploitation, b) neither gender was degraded at the expense of the other, and c) the subject matter of the episode relating to the erotic film industry was bound to have an erotic component, the Panel finds no aspect of the content of either of the two episodes of *Sex Shop* in any way problematic in terms of and of the foregoing codified content provisions.

In the present matter, the Quebec Regional Panel considers that the challenged feature film is sexually explicit but not sexually exploitative and that neither gender is degraded vis-à-vis the other. There is no breach of Clause 4 of the *CAB Sex-Role Portrayal Code*.

### **Classification Icons**

Canada's private broadcasters have taken various initiatives in order to put audiences in a position to make informed viewing choices. One of these is to provide classification icons on-screen at the start of the broadcast and at the top of each successive hour. The icon must be the appropriate one and must be present for at least 15 seconds on each mandated occasion. In the case of *Mission de charme*, the rating of 18+ was appropriate but, although TQS ran the icon at the start of the program and following *every commercial break*, which it was not required to do, it only displayed the icon for 7-8 seconds at the beginning and at the top of the second hour. For this reason, the broadcaster has breached one of the technical requirements of Article 4 of the *CAB Violence Code*.

### **Viewer Advisories**

One of the other viewer assistance tools provided by broadcasters is the viewer advisory, which provides more detailed information about the content of the program. Such advisories must be present at the start of a program and following every commercial break during the first hour of any broadcast intended exclusively for adult audiences. In this case, they were not present following the commercial breaks. This constitutes a breach of Clauses 10(b) and 11 of the *CAB Code of Ethics*.

### **Broadcaster Responsiveness**

All private broadcaster members of the CBSC do, by their membership, undertake, among other things, to respond in writing to the persons who take the

time to express their concerns about programming or other broadcast matter. It is the expectation of the CBSC that broadcasters will focus their letters of response on the substance of the complaint registered with them. If the complainant is dissatisfied with the response, he or she fills in a Ruling Request and the Council puts the complaint file into the CBSC's adjudication process. It is, however, the frequent experience of the CBSC that careful, thoughtful broadcaster replies are satisfactory to the complainant. Such an effective broadcaster-complainant dialogue often results in the closure of the file. It is, however, one of the ironies of the process that the only files that proceed to CBSC Panel decisions are those in which the complainant has not been satisfied by the dialogue. While this is, of course, true in the matter at hand, the Panel considers that the broadcaster has fulfilled its membership obligations in this regard on this occasion.

### **An Issue of Timing: Previous CBSC Decisions**

The timing of this broadcast and complaint is material to the CBSC decision regarding the outcome of the present file. In a series of decisions relating to TQS, namely, *TQS re two episodes of the program Sex Shop* (CBSC Decision 03/04-0162 & -0320, April 22, 2004), *TQS re an episode of Loft Story* (CBSC Decision 03/04-0200 & -0242, April 22, 2004) and *TQS re the movie Film de peur* (CBSC Decision 02/03-0940, April 22, 2004), all of which were decided on April 22, 2004 and released to the public on June 10, this Panel found problems with the broadcaster's use of classification icons and viewer advisories. In those decisions, this Panel made the point that TQS had previously breached Code provisions relating to the proper use of advisories and the duration of the classification icon display. In such circumstances, the Panel required TQS

within the thirty days following its receipt of the text of this decision [namely, *TQS re the movie Film de peur* (CBSC decision 02/03-0940, April 22, 2004)], provide the CBSC with concrete indications of the measures which it intends to put in place in order to: a) avoid the recurrence of the display of the classification icon for a duration that does not conform to the codified requirements; and b) ensure that it will include viewer advisories with the required form and frequency in its programming.

It should be added that TQS responded to that CBSC requirement on a full and co-operative basis and there has been every indication since the broadcaster's reply of July 9, 2004 to that CBSC 30-day demand that the company has been in full compliance with the CBSC order of June 10. Given that the broadcast in the file at hand aired more than three months before the June 10 decision, when the broadcaster could not have been aware of the full extent of the concerns, interpretations and requirements of the CBSC, and that it has subsequently put in place the measures to ensure it would be in full compliance, the Quebec Regional Panel does not consider that there is any reason to require the customary broadcast of the announcement of this decision. Accordingly, although the Panel concludes that TQS has breached Article 4 of the *Violence*

Code regarding the length of display of the classification icon and of Clauses 10 and 11 of the *CAB Code of Ethics* regarding viewer advisories, it considers that the broadcaster has: a) taken all necessary steps to announce comparable CBSC decisions in the past; and b) revised its internal systems so as to avoid similar Code breaches in the future. In the circumstances of this decision and the two other comparable decisions of even date involving TQS, namely, *TQS re three episodes of Kama Sutra* (CBSC Decision 03/04-1233, February 10, 2005) and *TQS re the Bleu Nuit movies Le journal de désirs and Hôtel exotica* (CBSC Decision 03/04-1236, February 10, 2005), the Quebec Regional Panel concludes that the broadcaster is not required to broadcast the announcement of this decision.

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

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## ANNEXE

### Dossier du CCNR 03/04-0976 TQS concernant le film de *Bleu Nuit* intitulé « Mission de charme »

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#### La plainte

La lettre suivante en date du 6 mars 2004 a été envoyée au CCNR :

The station is called TQS (CFJP) and the two programs I want to complain about are *SexShop* (Sat. Feb. 28, 2004 @ 24:15) and *Bleu Nuit* (Sat. Feb. 28, 2004 @ 24:45). I found both of these two programs to be very inappropriate for a local station to air. It is very unethical for a local station like TQS (CFJP) to air them, because they not only promote unsafe sex, but they are also very offensive. Many parents that I know of had no choice to buy new a television with parental blocks so that they can permanently block the channel TQS. I always leave my television on either the channel TVA or the channel TELEQUEBEC, but I don't feel like wasting my money to go buy a new television that has parental blocks because of inappropriate programs airing on one local station (TQS), that I don't want my children to be exposed to. I also don't feel like staying awake all night Saturday until Sunday morning to make sure that my children don't wake up during the middle of the night and go turn the television on and watch TQS. Many of the parents that I spoke to agree that the CRTC and the CBSC should consider replacing TQS from the local channel grid, and replacing it with a more family friendly station like CANAL SAVOIR or VRAK TV.

[Le CCNR a traité la plainte concernant l'émission *SexShop* dans un autre dossier.]

#### La réponse du télédiffuseur

La Vice-présidente des Communications a répondu au plaignant le 23 mars avec la lettre qui suit :

We have received your letter concerning *Sex Shop* and *Bleu Nuit* broadcast by TQS, which was forwarded to us by the Canadian Broadcast Standards Council (CBSC). We regret these shows offended you and we have taken note of your comments.

TQS's programming consists of a great number of movies or shows of various genres that are broadcast daily. Each adult programming feature is preceded by a notice to the effect that some scenes to be shown is [*sic*] for an adult audience. While we understand that some scenes in some of these shows could have shocked you, we do carefully select each production screened in adult programming and we remove scenes considered to be immoral and not complying with the ethics of our broadcasting company. Moreover, there is always the appropriate warning indicating the required age for viewing the said show.

The shows aimed at adults are broadcast after 11:00 pm, the time after which it is advisable to broadcast shows addressed to adults. The CBSC has rendered many rulings to that effect.

*Sex Shop* and *Bleu Nuit* are broadcast on TQS and we believe that viewers appreciate those types of shows late on a week night. We are very pleased to be able to offer programming different from that of our competitors, being the only French-language network to show erotic movies of quality, containing no violence or pornographic scenes.

We always appreciate receiving our viewers' comments and we thank you for taking the time to write to us.

### **Correspondance additionnelle**

La plaignante a envoyé le message suivant au CCNR le 27 mars :

I have received a response from TQS (CFJP) concerning the shows *SexShop* and *Bleu Nuit*, and I am not satisfied. It does not seem to me like they even care about the important points that I had made in my complaint. Their response seemed almost automated and even somewhat patronizing, trying to make me believe that they actually care about my complaint. I personally do not believe that they will even bother reviewing the programs *SexShop* and *Bleu Nuit*, and taking into consideration how they are very much offensive and inappropriate for a local station to air.

La plaignante a envoyé son formulaire de Demande de décision le 29 mars.