



Broadcasting Decision CRTC 2008-81

Ottawa, 11 April 2008

ARTV inc.
Across Canada

Complaint regarding the broadcast of the feature film *Mourir à tue-tête* by ARTV

*In this decision, the Commission addresses a complaint regarding the broadcast by ARTV inc. during peak viewing hours of the feature film *Mourir à tue-tête*, which contains scenes of explicit violence intended for adult audiences. The Commission concludes that in broadcasting the feature film before 9 p.m., the licensee violated the watershed hour clause of the Canadian Association of Broadcasters' Voluntary Code Regarding Violence in Television Programming, with which it is required to comply as a condition of licence.*

Introduction

1. On 10 April 2007, the Commission received a complaint alleging that ARTV inc. (ARTV) had broadcast *Mourir à tue-tête*, a feature film containing scenes of explicit violence intended for adult audiences, before 9 p.m.
2. *Mourir à tue-tête* is a 1979 National Film Board (NFB) production. The NFB describes the film as a docudrama¹ on rape. Through dramatic and other re-enactments, the film tells the disturbing tale of a woman's brutal rape and the subsequent decline of her physical and mental health, culminating in her suicide. The film also examines different types of violent sexual assault (e.g. war crimes) and the way the legal system and the health care system treat rape and rape victims. Finally, the film includes a personal investigation by the director on why men commit violent sexual assault, on the impact of violent sexual assault on women, and on the emotions she experienced while making the film.

The complaint

3. In a letter dated 10 April 2007, the complainant stated that ARTV had broadcast before 9 p.m. *Mourir à tue-tête*, a feature film containing [translation] "particularly degrading" scenes of rape, and that any child could have accidentally seen this content, which he found "revolting and unacceptable."

¹ A "docudrama" is a combination of documentary, re-enactment and personal stories.

4. In its 9 May 2007 response to the complainant, ARTV indicated that, in its view, it was clear that the film presented a subject that is vividly and crudely engaging. The licensee also stated that the film was a feature-length film that had marked Quebec cinema and that was intended to denounce violence by illustrating the upheaval and distress experienced by the main character.
5. In addition, ARTV confirmed that it broadcast the film at 7:30 p.m. but noted that it met the standards established by the Canadian Broadcast Standards Council (CBSC) regarding the time at which films intended for viewers 13 years of age and older can be broadcast. ARTV stated that it aired the required notifications for the broadcast of such films, i.e., the “13+” icon, at the beginning of the film and after every commercial break, as recommended by the CBSC. ARTV also noted that it broadcasts programming that is intended primarily for adult audiences.
6. In response to ARTV’s letter, the complainant stated that it was unacceptable that such a film should be broadcast during peak viewing hours, regardless of the kind of notification provided, because any child could have seen it. In the complainant’s view, the broadcast of *Mourir à tue-tête* during peak viewing hours lies at the heart of the problem.

Commission’s analysis and determinations

7. The complainant alleged that by broadcasting at 7:30 p.m. the feature film *Mourir à tue-tête*, ARTV ran the risk of accidentally exposing children to explicit scenes of violent sexual assault, despite the warnings aired throughout the film and after each commercial break.
8. ARTV is required, by condition of licence, to comply with clause 3.1.1 of the Canadian Association of Broadcasters’ (CAB’s) *Voluntary code regarding violence in television programming* (the Code), also known as the “watershed hour clause.” This clause states that programming containing scenes of violence intended for adult audiences shall not be broadcast before the late evening viewing period, defined as the period between 9 p.m. to 6 a.m. Clause 3.1.1 is intended to ensure that programs containing scenes of violence intended for adults are not broadcast at times when children² might be watching.
9. The Commission notes that the value of this docudrama is not being called into question; the film clearly addresses the serious social problem of rape. The Commission is not disputing the licensee’s choice or right to air this film but rather its adherence to the watershed hour clause that seeks to limit, to the period between 9 p.m. and 6 a.m, the broadcast of explicit scenes of violence intended for adult audiences, including scenes of violent sexual assault.
10. Having reviewed the complainant’s concerns, the licensee’s response and the content of the program in question, the Commission considered the following issues in making its determinations:

² “Children” refers to persons under the age of 12.

- Was it appropriate for ARTV to rely only on the Régie du cinéma's (the Régie's) classification system to determine when *Mourir à tue-tête* could be broadcast?
- By broadcasting *Mourir à tue-tête* at 7:30 p.m., was ARTV in non-compliance with its condition of licence relating to clause 3.1.1 of the Code?

Use of the Régie's classification system

11. The issue under scrutiny in this case is whether French-language broadcasters can rely solely on the specific rating that the Régie gives a film when determining when a program can be broadcast, or whether broadcasters should rate films themselves using the Régie's classification system.
12. The Commission's approach to violence on television is aimed at protecting children from the adverse effects of television violence while at the same time preserving the freedom of expression of creators and the variety of programming available to adult viewers. This approach was developed to ensure that television viewers and their families have the tools they need to be able to make informed viewing choices. Those tools include classifications via on-screen rating icons, the V-chip and other blocking devices, and program advisories aired before a program starts and at the end of every commercial break. All of these tools must be used in conjunction with the watershed hour clause in order that young children not be exposed to age-inappropriate depictions of violence, including scenes that are explicitly sexual or otherwise inappropriate.
13. In Canada, there is no single system for classifying films for theatre, video release or television. Conventional and specialty English-language services use the classification system of the Action Group on Violence on Television (AGVOT)³ and apply it to English-language broadcasters. Both English- and French-language pay, pay-per-view and video-on-demand services are required to observe the classification given by their respective provincial film classification boards. Programs not rated by a provincial film classification board will be classified using the guidelines of a provincial board or the AGVOT system.
14. As clearly stated in *Policy on Violence in Television Programming*, Public Notice CRTC 1996-36, 14 March 1996, French-language conventional and specialty services are required to use the Régie's system to classify their own television programs. In this respect, all French-language licensees are responsible for evaluating all of the programming they broadcast, and therefore for determining and applying the Régie's classification deemed most appropriate for their viewers. All types of programming must be classified, not just films, even though film is the only type of programming classified by the Régie.

³ On 1 March 2007, the CBSC assumed responsibility for managing the activities formerly managed by AGVOT.

15. The Commission notes, however, that provincial classifications, including those of the Régie, are developed for a movie-going audience, not for television viewers.
16. Consequently, the Commission is of the view that ARTV itself was required to evaluate the content of the feature film *Mourir à tue-tête*, all the while bearing in mind the importance of differentiating between broadcasting a film on television and showing a film in a theatre. The Commission also notes that its intent has never been to allow French-language broadcasters simply to opt for a specific classification given by the Régie to a given film intended for theatre release and apply it to the broadcast of that film on television. As it has previously clarified,⁴ the Commission instead expects licensees to classify their programming themselves using the Régie's classification system as a tool and to take into account their obligations under the *Broadcasting Act*, the *Broadcasting Distribution Regulations* and the Code.

ARTV's compliance with its condition of licence relating to clause 3.1.1 of the Code

17. ARTV is required by condition of licence to comply with the guidelines on television violence set out in the Code.
18. Clause 3.1.1 of the Code, the “watershed hour clause,” states the following:

Programming which contains scenes of violence intended for adult audiences shall not be telecast before the late evening viewing period, defined as 9 p.m. to 6 a.m.
19. The original purpose of this clause was to ensure that programs containing scenes of violence intended for adult audiences would not be broadcast during peak viewing hours when children would likely be watching television.
20. In its response, ARTV used words that describe *Mourir à tue-tête* as a [translation] “vividly and crudely engaging” film intended “to denounce violence by illustrating the upheaval and distress experienced by the main character.”
21. Having viewed the feature film in question, the Commission confirms that *Mourir à tue-tête* is a feature film that contains scenes of violence intended for an adult audience.
22. With respect to ARTV's assertion that its programming in general is intended for an adult audience, it is important to underline that the case of a licensee of a specialty service targeting an adult audience does not, under any circumstances, relieve it from the requirement to comply with the watershed clause. Such services are widely available in the home, increasing the likelihood of accidental viewing by young television viewers.
23. In light of the above, the Commission finds that by broadcasting before 9 p.m. the feature film *Mourir à tue-tête*, ARTV was in non-compliance with clause 3.1.1 of the Code and in so doing, breached its condition of licence relating to that clause of the Code.

⁴ See Commission's letter to TQS, 4 August 2004. <http://www.crtc.gc.ca/archive/eng/letters/2004/lb040804.htm>

Conclusion

24. Given the violence, the scenes of explicit sexual assault and the intentionally disturbing depiction of rape included in *Mourir à tue-tête*, the Commission finds that ARTV should have been more aware of the fact that by broadcasting *Mourir à tue-tête* before 9 p.m., it ran the risk of exposing children to this deliberately disturbing programming.
25. The Commission therefore expects ARTV to ensure that, in the future, programs containing scenes of explicit violence or dealing with other subjects intended for an adult audience are scheduled in accordance with the industry standard for the type of program to be broadcast after 9 p.m., a standard that ARTV is required to meet as a condition of licence. The Commission will review, at the time of its licence renewal, ARTV's compliance with this condition.
26. The Commission reminds broadcasters that they are required to classify their own programming using as a guide the classification system appropriate to the type of service they provide and the language in which they broadcast, i.e., the Régie system for French-language broadcasters and the AGVOT system for broadcasters whose primary language of broadcast is English. They cannot simply rely on film classification systems to determine whether a program is suitable for television broadcast, but rather have a responsibility to ensure that the classification they obtain from those classification systems and assign to their programs are appropriate for television audiences.

Secretary General

This document is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>.