
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CITY-TV re *Fashion Television* (Adult Film Stars Photo Shoot)

(CBSC Decision 97/98-1261)

Decided June 17, 1999

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THE FACTS

On August 8, 1998, CITY-TV's *Fashion Television*, which airs at 6:30 p.m. in Toronto, included a segment about a fashion photo shoot featuring three female "adult film stars". The two-and-half-minute report was about an upcoming feature in an L.A. fashion magazine exposing links between the fashion and pornography industries. The segment included scenes of the photo shoot with the porn stars, who were photographed both nude and in high fashion clothing, as well as clips from interviews with each of the women. The scenes of nudity were *very* brief, *much* more time having been allocated in the report to the scenes of the porn stars in high fashion clothing, commenting on how strange it felt to be working with clothes on. Where nudity was shown, the models were seen from afar or were strategically partially obscured by the photographer and his equipment.

The Letter of Complaint

On August 11, a viewer wrote the following letter to the owners of the station, the Secretary General of the CRTC and the Senior Vice-President of Alberto-Culver:

Congratulations, City TV! In one segment of *Fashion Television*, broadcast on Saturday August 8, you have managed to legitimise pornography, denigrate women, vilify healthy human sexuality and outrage your audience - all at a time when young children are around and quite possibly watching your show. Exactly what was your point in showing completely naked (women only) porn "stars" getting ready to "pose" for purely prurient reasons?

How on earth did such content escape the notice of the CRTC, not once but twice, as I found out that this "program" was a re-run? And what will the CRTC do to assure the viewing public

that such blatant, disgusting, offensive, sexist, pornographic, sensationalist material is not broadcast in future?

For my part, I will not be purchasing any more Alberto-Culver products, not even my favourite V05 conditioner or Alberto mousse. Apparently, to the producers of this "show", morality is of no concern, so the consumer has no recourse but to hit where it hurts - the wallet.

A copy of the complaint was in due course forwarded to the CBSC.

The Broadcaster's Response

The Program Director of CITY-TV responded to the complaint on September 2, 1998 with the following:

I am writing in response to your letter to the CRTC, a copy of which has been forwarded to us by the CBSC.

Fashion Television (FT) has been airing on Citytv at 6:30pm since 1986 and is one of Canada's most successfully syndicated shows appearing in more than 120 countries around the world not to mention nominated for numerous awards. It is not simply a show about models. It may be your perception that it exploits women but it is certainly not its intent. We report on fashion shows and fashion shoots or layouts as they happen and we do not equate nudity with pornography or degradation. Fashion and photography to our mind are art and we would no more condemn designers and photographers and their stylists than we would any other artist who chooses to represent the human form.

It would be a disservice to the models and photographers to assume that they are not aware of their roles both in society and on the runway. The fashion and photography shows we report on are artistic expressions of the human form, not sexist and may we suggest that most of our urban skewing adult audience believes the same.

A show about style is also about changing stereotypes which is what this story was all about. The item was about one aspect of fashion and one magazine's opinion on how fashion and sex relate. *Black Book* is a legitimate L.A. magazine and we report on new magazines and new points of view all the time. This was just one of those views. It did not "legitimize pornography" or "denigrate women" as you suggest. Nor have we "outrag(ed)" our audience, since yours is the only letter or call of complaint.

There is nothing pornographic or exploitative about FT. Pornography implies the exploitation of the weak by the strong in an obscene or prurient context. These elements are utterly absent in our material. We have, in fact, done many stories on the power of women and ultimately believing in your inner self. FT has never purported that the outside image of clothes and makeup is the most important part of anyone's self worth. We have had on feminists such as Gloria Steinem and Naomi Wolfe discussing this and other topics. Their views on feminism did not seem to clash with their concept of fashion - confident women who are cognizant of their self worth despite fashion and because of it. We have run stories, for example, on super model Gabrielle Reese who discussed the importance of self-esteem based on intelligence, education etc. Another former model, Matouchka, revealed how she dealt with her breast cancer and the industry's reaction to her after a mastectomy.

I reviewed the report in question with the supervising producer of the show. We agree one scene in the story that contains nudity does not belong and is superfluous to the subject matter. We will be removing that scene from all future broadcasts of this episode.

I am sorry you find this program disturbing and apologize that we inadvertently offended you. I hope I have been able to explain our position and allay your concerns both with the above letter and the direct action we are taking in response to your note.

The complainant was unsatisfied with the broadcaster's response and requested, on September 16, that the CBSC refer the matter to the appropriate Regional Council for adjudication.

THE DECISION

The CBSC's Ontario Regional Council considered the complaint under the *Code of Ethics* of the Canadian Association of Broadcasters (CAB), the *Violence Code* and the *Sex-Role Portrayal Code*. The relevant clauses of those Codes read as follows:

CAB Code of Ethics, Clause 15 (Sex-Role Stereotyping)

Recognizing that every person has a right to full and equal recognition and to enjoy certain fundamental rights and freedoms, broadcasters shall endeavour to ensure, to the best of their ability, that their programming contains no abusive or discriminatory material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, sex, marital status or physical or mental handicap.

Sex-Role Portrayal Code, Clause 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.

Guidance: "Sex-ploitation" through dress is one area in which the sexes have traditionally differed, with more women portrayed in scant clothing and alluring postures.

Violence Code, Clause 3 (Programming)

- 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.
- 3.1.2 Accepting that there are older children watching television after 9 pm, broadcasters shall adhere to the provisions of article 5.1 below (viewer advisories), enabling parents to make an informed decision as to the suitability of the programming for their family members.
- 3.1.3 In order to provide viewers with the benefit of Canadian program classification and viewer advisories not available on foreign distant signals, broadcasters who have

CRTC-permitted substitution rights over programming which is imported into their markets before the late evening viewing period, may employ substitution, notwithstanding article 3.1.1.

- 3.1.4 Broadcasters shall exercise discretion in employing substitution in accordance with article 3.1.3 and shall at no time avail themselves of substitution rights over programming which contains gratuitous violence in any form or which sanctions, promotes or glamourizes violence.
- 3.1.5 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 article 3.1.3.

(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.)

- 3.2 Promotional material which contains scenes of violence intended for adult audiences shall not be telecast before 9 pm.
- 3.3 Advertisements which contain scenes of violence intended for adult audiences, such as those for theatrically presented feature films, shall not be telecast before 9 pm.

Violence Code, Clause 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.
- 5.2 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.

Violence Code, Clause 6 (News and Public Affairs Programming), in pertinent part:

- 6.3 Broadcasters shall advise viewers in advance of showing scenes of extra-ordinary violence, or graphic reporting on delicate subject matter such as sexual assault or court action related to sexual crimes, particularly during afternoon or early evening newscasts and updates when children could be viewing.

A Bit of History

This is not the first time the Council has had to deal with complaints regarding *Fashion Television*. In *CITY-TV re Fashion Television* (CBSC Decision 93/94-0021, February 15, 1994), a viewer was offended by the exposure of women's breasts as a part of the fashion report. The Council concluded that this was not *per se* a breach of the Code.

The program was typical of depictions of international fashion shows, validity portraying fashion news. The fact that CITY-TV aired a story on the place of women's breasts in today's fashion was not exploitative. ... The Council felt that the concern of the complainant may be

with what the international fashion designers are doing, but Council's view was that the reporting of those design trends did not exploit women or present a negative or degrading portrayal of women. As a result, the program did not constitute a breach of the Code.

In *CITY-TV re Fashion Television* (CBSC Decision 93/94-0176, June 22, 1994), the complainant accused a different episode of *Fashion Television* of being a form of pornography. The Council disagreed with this accusation.

All members present agreed that CITY-TV's Fashion Television was entertainment which highlighted the fashion industry in a manner similar to other programming on the same subject. They felt it did not exploit women or present a negative or degrading portrayal of them. ... The Regional Council members further noted that the complainant's concern was really the fashion industry in general, a concern which the station cannot be expected to address.

In *CITY-TV re Fashion Television* (CBSC Decision 94/95-0089, March 26, 1996), the Ontario Regional Council was once again called upon to deal with the combined issues of nudity, art and fashion. The *Fashion Television* episode in question showed, among other matters, the work of a leading make-up artist and the photographic career of a former model, occasioned by the publication of a book of her photographs of other models. The latter segment included a half dozen photographs from the book which showed some female nudity, including a full frontal shot, and one photo of two female models kissing. A viewer felt that it was highly inappropriate for such sexually explicit material to be shown on television. The Council disagreed.

Furthermore, the Council does not consider that the showing of partially clothed or even naked models is equivalent to pornography or sexual explicitness. Without getting into fine legal definitions, the Regional Council considers it sufficient to observe that the *Oxford English Dictionary* defines pornography as "Description of the life, manners, etc., of prostitutes and their patrons; hence the expression or suggestion of obscene or unchaste subjects in literature or art." There is, in other words, an element of obscenity or prurience required to elevate mere corporal images to the level of pornography. That element is utterly absent in the material complained of.

While the Council notes the irony of its previous reliance on the *Oxford English Dictionary* definition of pornography in light of this complaint about a segment involving "porn stars", it also wishes to point out that, since then, whenever it has been appropriate to consider the definition of pornography, it has referred to the Supreme Court of Canada's decision in *R. v. Butler* for guidance. In that decision, the court defined three categories of pornography when it stated that "explicit sex that is not violent and neither degrading nor dehumanizing is generally tolerated in our society and will not qualify as the undue exploitation of sex unless it employs children in its production."

In any event, pornography in the public law sense is not the issue here; rather, the issues to be considered by the Council in relation to this complaint are whether the *Fashion Television* segment in question was exploitative or presented a negative or degrading view of women such that it should not have been aired at all or whether the segment included a

degree of sexual explicitness inappropriate for its scheduling and the manner in which it was presented.

The Content of the Segment

On the basis of its experience with numerous episodes of *Fashion Television* evaluated by it in the past or even the present episode, the Ontario Regional Council agrees with the broadcaster's contention that *Fashion Television* reports on "fashion news". In this regard, the Council's decision in *CTV re News Item (Topless in Public)* (CBSC Decision 96/97-0235 and 0242, February 20, 1998) is relevant. In that decision, the Council dealt with complaints about news reports on the controversy surrounding women exposing their breasts in public. The reports included scenes of topless women or women in bathing suits. One complainant had described CTV News' coverage of the controversial issue as "one of the most pornographic, dehumanizing, degrading and exploitative media coverages of women that I have seen." The Council stated that it:

has no hesitation in finding that the coverage of the topless issue by CTV was entirely justified. This issue, like many others in the news, was controversial, but it was also Canadian, relevant to other Canadians (whichever side of the substantive issue they might favour) and entitled to coverage, including the expected *visual* component. Moreover, the Council can find *nothing* in the CTV coverage itself which can be described, to use the words of the complaints, as degrading, dehumanizing, exploitative or devaluing. Moreover, there is certainly nothing in the coverage which implies that the Jacob behaviour or that of any of the other persons taking advantage of the Court ruling was normative. As to the acknowledgment of a woman's breasts as sexual, it would be hard to argue the contrary position. It is perhaps for this reason that, in ordinary social situations, breasts, like male and female genitalia, are generally clothed. There is nothing in CTV's coverage which *creates* any of the circumstances described by the complainants. To the contrary, the network's coverage was, in the view of the Council, tasteful, conservative, *unexploitative* and fair.

In yet another decision which dealt with a complaint about the broadcast of alleged "soft-porn" during early evening hours, namely *CHCH-TV re an episode of Baywatch* (CBSC Decision 94/95-0045, August 23, 1995), the Council concluded that the depiction of men and women in bathing suits on a beach did not amount to "sex-ploitation".

Baywatch is set on a beach and focuses on the lifeguards who work on this beach. Accordingly, it is reasonable to expect that characters depicted in this program will often be seen in swimming attire, *i.e.* bathing suits. The Council does not consider that it is stretching the point to suggest that the producers of the program have chosen this setting in the belief that young persons in bathing suits may be likely to attract audience attention. This, however, is the prerogative of producers, who are entitled to look for formulas to create commercially successful television programming. The only issue for the CBSC is to determine whether or not the choice in any particular case "crosses the line" and breaches one of the Codes administered by the CBSC.

In this case, the Council agrees with the broadcaster that "the parts of the anatomy that are exposed when wearing a bathing suit cannot reasonably be described as 'private parts'." Unless and until genitalia become *publicly* exposed, these anatomical parts remain *private*.

The Council acknowledges that the taste and viewing habits in some, if not many, homes would lead parents to wish to avoid programs such as *Baywatch* but the view of the Council is not that such programming is so inherently unacceptable as not to be entitled to be shown on television. In this connection, the CBSC generally considers that the depiction of men and women in bathing suits does not in and of itself constitute exploitation in violation of the *Sex-Role Portrayal Code*, or “soft-porn” as contended by the complainant. The Council does not consider that the mere showing of partially *clothed* persons can, by any reasonable definition, be said to be equivalent to pornography, whether hard or soft.

In accordance with its previous jurisprudence, the Council does not find that the content of the broadcast of *Fashion Television* in question was in any way exploitative of or degrading to women.

Scheduling

In addition to her general concerns relating to the substance of the show, the complainant expressed concern over the show’s scheduling. In this regard, the Council considers it appropriate to make some general comments regarding the “watershed” hour, set at 9:00 p.m. in the *Violence Code*. In *CITY-TV re Ed the Sock* (CBSC Decision 9495-0100, August 23, 1995), the CBSC had its first opportunity to examine issues of principle relating to the watershed hour. The Ontario Regional Council there observed, among other things, that

In its literal sense, [the watershed], of course, denotes the line separating waters flowing into different rivers or river basins. Popularly, the term has been applied to threshold issues but the literal meaning of the word gives the best visual sense of programming falling on one side or the other of a defined line, in this case a time line. Programming seen as suitable for children and families falls on the early side of the line; programming targeted primarily for adults falls on the late side of the line. It should be noted that the definition of that time line varies from country to country, from 8:30 p.m. in New Zealand to 10:30 p.m. in France. (Great Britain, Finland, South Africa and Australia all share the Canadian choice of 9:00 p.m. as the watershed.)

In Canada, the watershed was developed as a principal component of the 1993 *Violence Code*, establishing the hour *before which* no violent programming intended for adult audiences would be shown. Despite the establishment of the watershed for *that* purpose, the Council has reason to believe that broadcasters regularly consider this hour as a rough threshold for *other* types of adult programming. ...

In *CFMT-TV re an Episode of “The Simpsons”* (CBSC Decision 94/95-0082, August 18, 1995), the Ontario Regional Council elaborated on the significance of the watershed hour and the tendency for broadcasters to apply it not only to programming containing violent material intended for adult audiences but also programming containing other kinds of material deemed by the broadcaster to be more suitable for mature viewers.

There has been a tendency, since the introduction of the 9:00 pm watershed hour for everyone to treat that moment as the Great Divide. The community has tended to consider that *all* post-watershed programming falls into the “adults only” category and that *all* pre-

watershed programming falls into the “suitable for *everyone*, including *young* children” category. Neither generalization is wholly accurate.

... material broadcast in the early evening falls within “the rich broadcasting fare” mentioned above and should be vetted by parents as to its suitability in *their* homes.

In this case, the Council does not, in any event, find that any of the descriptions or scenes in the episode of *Fashion Television* in question fall within the category of programming “intended for adult audiences” thereby triggering the application of the scheduling provisions of the *Violence Code* (which are also generally used by broadcasters and the CBSC for all types of adult programming).

Viewer Advisories

As with the scheduling provisions in the *Violence Code*, the provisions relating to viewer advisories in that Code have also been generally applied not only to *violent* content but also to other adult content. Under the *Violence Code*, there are three instances in which some type of warning to viewers is required. These were explained in *CIII-TV re Before It's Too Late* (CBSC Decision 95/96-0172, October 21, 1996). In that case, the broadcaster had aired a program sponsored and produced by World Wildlife Fund Canada (WWF) which, according to the complainant, contained “grotesque scenes” which “depicted scenes of tortured animals, describing the details of torture”. The Council concluded that while Clause 5 of the *Violence Code* did not apply, Clause 6 did:

Basically, viewer advisories are required to be aired in one of the three following circumstances. The first of these, envisaged in Article 5.1, requires 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* [emphasis added].” The second, anticipated in Article 5.2, requires that “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 third circumstance arises in the area of news and public affairs programming. Article 6.3 provides that “Broadcasters shall advise viewers in advance of showing scenes of *extra-ordinary violence* ... particularly during *afternoon or early evening newscasts and updates* when children could be viewing [emphasis added].”

It is clear that *Before It's Too Late* is not the type of programming envisaged in Article 5.1, which is post-watershed and intended for adult audiences. The question then is whether an advisory would have been required pursuant to the terms of Article 5.2. While it is obvious that the WWF program fits the anticipated time-frame, the Council does not believe that it applies to the present case. While the *Violence Code* has only been in effect since January 1, 1994, and will have the opportunity to be interpreted in more detail over the years, Article 5.2 has, in the past two and a half years, been viewed as being reserved for programming of a *dramatic* nature. While there may at some time be circumstances in which the CBSC will see fit to extend the provisions of Article 5.2 beyond dramatic programming, the Ontario Regional Council does not believe that this is the matter in which it ought to do so as Article 6.3 contains a separate provision dealing with viewer advisories under the heading “News And Public Affairs Programming”.

Similarly, the Council considers that Clause 6 of the *Violence Code* is the appropriate provision to be considered in this case. This provision states that “Broadcasters *shall advise viewers in advance* of showing scenes of extra-ordinary violence, or graphic reporting on delicate subject matter such as sexual assault or court action related to sexual crimes [emphasis added]”. This provision is to be contrasted with Clause 5 which requires that “Broadcasters shall provide a viewer advisory ...” which has come to have set language and often a set format.

In this case, no stand-alone “advisory” was provided or would even have been required pursuant to the Code since, in the view of the Council, the brief scenes of nudity did not amount to “*graphic* reporting on delicate subject matter [emphasis added]”, as required by Clause 6; however, the Council considers that the broadcaster, thoughtfully, *did* provide sufficient warning and reaction time for viewers to make an informed choice as to whether they wished to continue to watch the program. The Council notes that the report was constructed in such a way as to minimize viewership by those who might be offended by the subject matter and associated scenes. The report began with the following introductions by each of the models dressed in “street attire”:

First model: I’m Janine Lindemulder and I think you would know me from my adult films.

Second model: I’m Jenna Jameson and I’ve done very many adult films.

Third model: My name is Julie Ashton and I’m an adult film star. I’ve never done anything like this before, so it’s exciting.

The report then continued with the following voice-over by the reporter while scenes of the “high fashion” part of the photo shoot were shown:

Reporter: In terms of getting excited, you’d figure that most porn stars would have already done just about everything there is to do. But that’s exactly the kind of stereotype Black Book magazine set out to squash recently when they set up a high fashion photo shoot using three of the biggest stars in the adult film world as their fashion models.

The first scenes of nudity occur more than 1 minute 40 seconds into the report, providing ample time for viewers to exercise their freedom to choose what is palatable to them via remote control dial-out or the on/off switch.

The CBSC’s Mandate

In light of the complainant’s query as to “how on earth did such content escape the notice of the CRTC”, the Council considers it appropriate to note that its mandate, similarly to the CRTC’s, does not include the monitoring of programming *prior to broadcast*. In *CILQ-FM re the Howard Stern Show* (CBSC Decision 97/98-0487, 488, 504 and 535, February 20, 1998), the Council took the opportunity to explain aspects of its role in the application of broadcast standards. It stated:

It is neither the role nor duty of the Canadian Broadcast Standards Council to tell Canadians what they can or cannot see and hear on their radios and television sets. In the aftermath of the first Stern decision, those who have in various fora accused the Council of attempting to act as a censor, have missed the point of the Council's *raison d'être*.

The CBSC has been assigned the responsibility to assess, on the basis of complaints by the public, whether its member radio and television stations have in fact adhered to the standards and practices which the broadcasters themselves have adopted as acceptable codes of conduct. Whether or not CBSC decisions, either in favour of, or against its broadcast members, are unpopular with the industry or the general public is not at issue.

The CBSC's mandate is one of *responsiveness* to public complaints and not censorship by way of anticipation of potential Code breaches. In the event of the expression of concern by one or more members of the public, the CBSC will become involved in the resolution of a complaint; however, it will always await such a complaint before becoming involved in a programming issue. In that sense, therefore, members of the public should be aware that *all* programming *will* escape the notice of the CBSC (or the CRTC, which operates on the same basis) unless and until it becomes the subject of a written complaint. Canadian society is, on balance, far better served that way.

Broadcaster Responsiveness

In addition to assessing the relevance of the Codes to the complaint, the CBSC always assesses the *responsiveness* of the broadcaster to the substance of the complaint. In this case, the Council considers that the broadcaster's response addressed fully and fairly all the issues raised by the complainant. Consequently, the broadcaster has not breached the Council's standard of responsiveness. Nothing more is required.

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.