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

History Television re an episode of the series *Sexual Century*

(CBSC Decision 02/03-1495)

Decided January 30, 2004

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

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**THE FACTS**

On June 25, 2003, at 10:00 pm (in Toronto) the specialty service History Television broadcast an episode of its series *Sexual Century*, a series examining human sexuality in the 20<sup>th</sup> century. The episode in question dealt with the history and commerce of pornography. It included scenes of full nudity, explicit descriptions of sex acts, graphic explanations on the use of sex toys, depictions of X-rated movies and frequent use of coarse language, such as “fuck”, “dick”, etc. The episode carried a PG classification, and there were no viewer advisories provided either at the beginning of the program or coming out of any of the commercial breaks. The episode was received at 7:00 pm in Vancouver and a complainant registered the following concern on June 26. (His e-mail and all other correspondence are reproduced in the Appendix.)

This program, which is clearly Adult content (I served ... on [a provincial] censor board, so I know what I'm talking about) airs at 7:00 PM Pacific time. The program of June 25, 2003 had frequent full nudity, frequent depictions of genitalia and sex toys, graphic descriptions of sex acts, the depiction of X-rated movies being filmed and frequent use, oral and in print, of the word “fuck”. This is clearly in violation of the *CAB Code of Ethics*.

On the same date, the complainant sent a complaint to the CRTC focusing on a slightly different aspect of the episode:

I do not think it is appropriate to broadcast explicit sexual images, including frequent female and some male full frontal nudity, frequent images of genitalia, male and female, and frequent images of the word “Fuck” at 7:00 PM. I realize that this is broadcast at 10:00 in the eastern time zone, but it is only 7:00 here.

That complaint was forwarded to the Council by the Commission and became part of the file. The broadcaster's Senior Publicist responded to the complainant in part as follows:

The documentary series **Sexual Century** chronicles the profound changes that have characterized human sexuality in the 20<sup>th</sup> century. This particular episode uncovers the hidden history of pornography – examining how sex has become a significant economic force in today's society.

It was our intent to portray, as accurately as possible, the widening gap between sexual commerce and human relationships. Our decision to include the adult content was not taken lightly and was based on the realities that exist within the pornography industry.

We are judicious with the content of shows broadcast during hours that children may be watching and are sensitive to the scheduling of programs with adult-oriented content, as required by the *Voluntary Code Regarding Violence in Television Programming*. Canadian private broadcasters, in their Codes, have established 9 p.m. as the "watershed hour" before which no scenes intended exclusively for adult audiences may be shown. The Code also states, however, that to "accommodate the reality of time zone differences [...] these guidelines shall be applied to the time zone in which the signal originates." History Television only has one broadcast feed to serve a national audience, and at its earliest broadcast time, **Sexual Century** airs at 10 p.m. Eastern Times, originating from Toronto.

The complainant did not accept the explanation and provided the following statement of his position on the 17<sup>th</sup>:

I have no personal bias against explicit content; in fact, I [agree with] the change of B.C.'s classification system to accommodate explicit sexual images IN AN ADULT CONTEXT.

Your programming decision to air material as explicit as this particular episode of *Sexual Century* at 7:00 PM in this time zone was wrong, regardless of whether it can be interpreted as permissible under the Code. Broadcasters are not licensed to "take it to the max", as it were, and push boundaries, but to show that they have the maturity and judgement necessary to justify receiving a licence.

This decision on your part was wrong, period, and your justification, which amounts to "nobody said we couldn't" is insulting. I invite the CBSC to view this episode for themselves and make an interpretation of whether you have contravened the spirit rather than the letter of the Code.

On the basis of that response from the complainant, the broadcaster reconsidered the complaint and, on September 26, sent the following e-mail to him.

After receiving your second correspondence we have further reviewed the June 25 broadcast of *Sexual Century: The Merchants of Venus*. We have found that due to an unforeseen administrative error on our part, the broadcast failed to run the scheduled viewer advisories that communicate to parents that the program is unsuitable for viewers under the age of 18.

While your original complaint did not mention our failure to air advisories, we feel they would have provided the necessary safeguard to ensure those under 18 years of age would not have been exposed to the mature themes in this documentary.

Please note History Television is very conscious of the need for viewer advisories as warnings and we take them very seriously. As a result of your complaint, an extensive

review of our program scheduling process has been undertaken to ensure that, in the future, any program requiring advisories will be handled in accordance to [sic] CBSC standards.

While we acknowledge this documentary does contain mature content and needs to be scheduled appropriately, we feel the 10 p.m. ET broadcast was appropriate and did not contravene the Canadian Association of Broadcasters (CAB) Code of Ethics, as we were in compliance with the 9 p.m. "watershed hour" after which scenes intended for adult audiences may be shown.

However, we do accept that by not running the necessary advisories we are in fact in breach of the CAB Code of Ethics and we take full responsibility for this oversight.

Despite the recognition of its error, the complainant felt that his principal concern had not been addressed and he persisted in the following terms on October 12:

I have taken a great deal of time to consider your email. I do not agree that the only error you made was to omit a viewer advisory for that program. I strongly feel that it was inappropriate to broadcast the material at that time of day regardless of any advisory that may have preceded it.

I would like to deal with the rationale concerning the time in the area where the broadcast originated. This is clearly a rule put in place to accommodate the membership of the CBSC, and to me it is a reason why so-called "self-regulation" does not work. If there is a kind of all-purpose excuse available, why use any discretion? No, in my opinion this was an error in judgement, and the material in question should not have been shown at 7:00 PM in any time zone.

## 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.)

### *CAB Code of Ethics* Clause 11 (Television Broadcasting -- 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.

The National Specialty Services Panel read all of the correspondence and viewed a tape of the episode. The Panel concludes that History Television was within its rights to broadcast the challenged episode when it did (see the discussion of this issue below) but it finds that the broadcaster is in breach of Clause 11 for failing to include viewer advisories following each of the commercial breaks during the June 25 broadcast.

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

The Panel has, 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 understanding for the complainants' legitimate concerns but also noted the legitimate compromise enshrined in the broadcaster codes by way of the exception concerning the Watershed to accommodate the so-called time zone conundrum. The present situation is no different. The Panel fully appreciates the wide experience of the complainant in dealing with adult content and his ready recognition of the entitlement of such material to a place on the nation's television screens. His argument is, of course, in essence that persons in *every* Canadian time zone are entitled to the same consideration with respect to the scheduling of such material. 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 one of its previous rulings, namely, *WTN re Sunday Night Sex Show* (CBSC Decision 99/00-0672, January 31, 2001), this Panel considered a complaint that the 8:00 pm (Pacific time) availability of the challenged television call-in show, in which the host, Sue Johanson, answered questions and gave advice on matters relating to human sexuality, was inappropriate. It should be noted that there were no explicit concomitant video selections. Nonetheless, the Panel agreed that the program contained "sexually explicit dialogue and adult-oriented explanatory discussion". It offered the following explanation on the complex aspects of the Watershed-time zone issue:

[T]he Panel [...] understands the conundrum presented by the vast size of Canada. Given the declared goal of the *Broadcasting Act* to provide programming which will be "varied and comprehensive, providing a balance of information, enlightenment and entertainment for

men, women and children of all ages, interests and tastes," it must be recognized that this task is to be achieved across six time zones with a relatively thinly spread population base. Since most of the specialty services have a single feed for the entire country (some, but not many, have two feeds), it necessarily results that only some parts of the country can be happy all of the time in terms of the issue of the hour of broadcast of adult programming. Compromise, balance and fairness are essential components of the solution. An adult program which just respects the Watershed in St. John's will be on at dinnertime in Toronto and during pre-dinner after school hours in Calgary and Vancouver. One which just respects the Watershed in Vancouver will be on after people have gone to bed in Toronto, Halifax and St. John's. One which just respects the Watershed in Toronto finds people awake in the Atlantic Provinces but at dinner in Edmonton and Victoria.

This Panel again addressed the issue of adult programming appearing pre-Watershed in Western time zones in *Bravo! re the documentary film Give Me Your Soul* (CBSC Decision 00/01-1021, January 16, 2002). The NFB documentary film (on a subject similar to that in the matter at hand, namely, the commercial pornography industry) was broadcast from 9:00 pm to 10:30 pm EST, thus airing from an even earlier hour, namely, 6:00 pm, in the complainants' Pacific time zone. The NFB film, which followed an 18-year-old girl's quest to become a porn star, contained numerous scenes including coarse language and/or depicting men and women in various states of undress, or sexual activity. It clearly contained material intended exclusively for adult audiences, but the Panel did not find a breach of the scheduling provision given the exception made for signals originating in a different time zone. It dealt with the issue in the following way:

The Panel has considerable sympathy for the plight of the complainants. They appear to be open-minded regarding the substance of the NFB documentary and concerned solely with the timing of the broadcast. While they appear to actually favour a later Watershed hour (or at least a later hour for the broadcast of this program), the net effect of their request is to keep programming which is clearly post-Watershed in nature from appearing pre-Watershed in their home. While the position is indisputably reasonable on its face, there is no easy solution in the vast Canadian geographical context.

This Panel was called upon to deal with this very problem in the previously cited *WTN re Sunday Night Sex Show* (CBSC Decision 99/00-0672, January 31, 2001). In that decision, the Panel asked rhetorically "If [...] such a program is defined as unsuitable in one part of the country, how can it be suitable in another part of the same country?" The answer of course is that it cannot. It cannot and is not suitable for viewing at dinnertime in either the East or the West. For reasons that have nothing whatsoever to do with suitability, however, it has been deemed to be permissible to broadcast it at an inappropriate hour.

[...]

In the matter at hand, the dilemma for the broadcaster is the same. There is no way to please viewers across the country with a single feed and there is no feasible financial way to force additional feeds on niche broadcasters, which specialty services are by definition. Had that been the solution at the time of granting Specialty Service licences, the Panel expects that Canadians would have had many fewer programming choices.

There has, in other words, been a trade-off, the intention of which would undoubtedly be to benefit the public as a whole. As a result of this policy direction, Canadians have more programming choices than they might otherwise have had. Canadians also have more adult-oriented Canadian choices than they might otherwise have had. There is, however, a cost, which is the need for greater vigilance on the part of parents in the time zones west of the originating time zone. Is that trade-off reasonable? That is not for this Panel to say.

The Panel is faced with a *Violence Code* in which that issue has been definitively resolved. The Code unequivocally provides that, in order to “accommodate the reality of time zone differences, [...] these guidelines shall be applied to the time zone in which the signal originates.”

Since the exception in the *CAB Code of Ethics* (which mirrors that in the *CAB Violence Code* cited in previous decisions) applies to all programming that complies with the Watershed rules in the time zone of origin, that reasoning would apply to the broadcast of the *Sexual Century* under consideration here.

There is not, as one might say in the vernacular, a silver bullet solution to the Canadian time zone conundrum. Moreover, as other program distribution options, such as satellite and the Internet, play a growing role on the level of content availability, there are fewer and fewer ways of imposing scheduling constraints. The responsibility then falls more and more on the parent(s) to formulate effective ways to control program reception choices in their homes.

Broadcasters do, however, make an increasing array of tools available to viewers and the most effective solution, at the end of the day, is likely to reflect a need for action by both broadcasters and audiences, as partners in the viewing process. On the broadcaster side, there are certain considerations that can usefully be taken into account in similar circumstances, some of which have been suggested in the previous decisions made by this Panel (which are cited above). In the WTN decision, for example, the broadcaster had aired the *Sunday Night Sex Show* at 11:00 pm in the Toronto time zone, which had the effect of a later, albeit still Pre-Watershed, broadcast on the West Coast.

In the view of the National Panel, what the broadcaster has chosen to do in this case is to balance all the time zones, as well as anyone could reasonably expect. Rather than just respect the Toronto time zone (and one cannot lose sight of the economic fact that more than 50% of the Canadian population resides in that time zone), WTN has stretched its market by airing the *Sunday Night Sex Show* at 11 p.m. EST, thus remaining post-Watershed in nine of the ten Provinces, albeit barely viewable time-wise in the Atlantic Region. By choosing that hour for its broadcast of the challenged show, it has also placed itself in a post-dinner environment in the one time zone in the country where it is still pre-Watershed, namely, British Columbia, thus providing an easier opportunity for parents to regulate family viewing than in, say, a 6:00 or 7:00 p.m. local time slot.

In other words, the National Specialty Service Panel does not consider that the broadcaster could have made more sensitive choices regarding the nation as a whole and, indeed, the various time zones within the country, bearing in mind the needs and entitlements of viewers from east coast to west coast. The broadcaster also provided information to viewers in the form of advisories which would enable those who did not wish this show to be a part of their viewing choices to avoid it. Nonetheless, the Panel does recognize the seriousness of the complainant's concern. It does not, however, appear to the Panel that the Canadian broadcasting system can offer a more manageable and viable alternative than that provided by this broadcaster on this occasion. By their nature, specialty services do not provide the time zone options of national conventional television networks.

In the Bravo! decision, the Panel dealt with the accommodation of responsibilities issue in the following way:

There are, however, two ways to assist the viewer, not in a legal but in a practical way. Neither will be perfect. First, on the part of viewers. While there is already a duty on viewers to use tools which are provided by broadcasters to assist them in choosing appropriate programming, as the number of digital signals both from within and without Canada proliferates, they will need to become more vigilant and hands-on in determining those signals that will reach their screens. Canadian programming undertakings are required to provide both classification icons and viewer advisories that enable parents to know what is coming. Canada also benefits from V-Chip technology that operates throughout North America (it was invented in Canada by a Canadian, Prof. Tim Collings of Simon Fraser University). What is clearly unfair in the system is that some Canadians may need to become more conversant with these tools than other Canadians; however, the very good news is that there are, at the very least, tools available for the purpose of responsible program selection.

On the broadcaster's part, while not legally required to do anything other than respect the Watershed requirements at the point of origin of the broadcast, broadcasters could be more sensitive to the concerns regarding the availability of their programming in other time zones.

On balance, insofar as the *Sexual Century* episode is concerned, the Panel concludes that the broadcaster has not breached the Code in broadcasting the show at 10:00 pm, Toronto time. In fact, by broadcasting it at that hour, rather than immediately at the point of entitlement, namely, 9:00 pm, History Television has done better for its audience than it might have done if adopting the earlier broadcast hour. It could, of course, in the case of particularly difficult material, have chosen a still later hour, as in the WTN example given above, but consistency of schedule and development of audience do not easily accommodate *ad hoc* changes on an interim basis.

On balance, while it certainly understands the complainant's position, the National Specialty Services Panel does not share the cynicism of his attitude, to the effect that the Watershed exception constitutes "a rule put in place to accommodate the membership of the CBSC, and to me it is a reason why so-called 'self-regulation' does not work." It exists to fulfill far larger national policy goals, including the furnishing of a broad panoply of programming choices to Canadians from coast to coast to coast. The balance between the variety of supply by programming undertakings and the sanctity of home-appropriate reception by audiences is not an easy one to strike. The present system, which relies on audiences playing an active role in their viewing choices by using the many tools provided by broadcasters and the distributors of their signals, constitutes an effective societal compromise.

### **The CRTC on Time Zones**

As discussed at length above, there is a time-zone system in place, which matches the goals of program variety and viewer controls, as constrained by a small market covering a huge geographical area. The rules in the *Violence Code* and the *CAB Code of Ethics* work to encourage broadcasters, on the one hand, to provide television consumers with viewing tools and controls, and viewers, on the other hand, to use them. Those rules, which include the time-zone exception, continue to exist and apply. It should, however, also be noted here 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 and made the following statements in its 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.

In *Policy on violence in television programming*, Public Notice CRTC 1996-36, 14 March 1996, the Commission noted concerns expressed by parties that programs originating in certain time zones were being delivered by satellite to viewers in other time zones at hours that would be considered as inappropriate for their broadcast, based on the programs' content. The Commission encouraged broadcasters whose services are distributed over various time zones to be sensitive to their viewers when scheduling programming.

Currently, the CAB's *Voluntary code regarding violence in television programming* stipulates that programming containing scenes of violence intended for adult audiences may not be broadcast before the late evening viewing period, defined as 9:00 p.m. to 6:00 a.m. and commonly referred to as the "watershed" period. The CAB's *Code of Ethics* contains a similar provision that "sexually explicit material or coarse or offensive language intended for adult audiences" may only be broadcast between 9:00 p.m. and 6:00 a.m. The codes specify that these guidelines apply to the time zone in which the programming originates.

The Commission has received complaints about the availability, outside of the watershed period, of sexually explicit or violent programming intended for adults. Many of these complaints have been about programming distributed in western Canada, but originating in eastern Canada. Some, however, have addressed programming originating in western time zones, but distributed after 6:00 a.m. in eastern time zones. Accordingly, all specialty service licensees were advised in the Notice of Hearing that the Commission would wish to discuss with them the mechanisms and policies that they may have in place to ensure that programming intended for adult audiences and distributed over various time zones is sensitive to viewers' concerns, and respects the watershed period of 9:00 p.m. to 6:00 a.m. in all time zones.

Although some of the 1996 services provide separate eastern and western feeds of their programming, most do not. Many of the licensees that provide only a single feed contended that their programming and scheduling policies are sensitive to viewers' concerns about the airing of violent or sexually explicit program material outside of the watershed period. They further suggested that the effectiveness of these policies is strengthened by the use of such other mechanisms as viewer advisories and the increasing availability of V-chip devices in television receivers. The CAB also argued that these existing approaches are sufficient, and that the costs associated with the ideal solution, i.e., a separate feed for each service in each of six different time zones, would be prohibitive, particularly in light of the relatively few complaints on file and the fact that the matter was not specifically raised as a concern in any intervention to the proceeding.

The Commission wishes to underscore the importance it places on each broadcaster according proper sensitivity to the concerns of its viewers with respect to the scheduling of programming intended for adult audiences, taking into account the time differences between where a program originates and where it is received. The Commission expects licensees to demonstrate responsibility, particularly in responding to any complaint. For the time being, the Commission will not take further measure on this matter. It will, however, monitor the situation, and is prepared to intervene, if warranted, by requiring amendments to applicable codes to ensure that the watershed period is respected regardless of time zone, or by requiring national specialty services to provide time-shifted signals.

## **Viewer Advisories**

One of the ways in which broadcasters can be of help is by the use of viewer advisories. Their presence, when called for, enables viewers to make *informed* choices in their homes. As well, broadcasters have a responsibility to be vigilant in using every tool at their disposal to inform viewers about programming content. Although it realizes that the complainant considers advisories an unsatisfactory tool when weighed against the hour of broadcast, the Panel considers that they have a capital role to play even then. They are, after all, when *tailored to the content of the programming* to which they are appended, a user-friendly and very informative tool. It appears that, in the present case, the broadcaster only realized months later that they ought to have been present on the broadcast. It acknowledged its error and promised to include them “in the future, [on] any program requiring advisories.” Although their absence does constitute a breach of Clause 11 of the *CAB Code of Ethics*, the Panel views positively History Television’s commitment regarding future application of advisories.

## **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 Senior Publicist’s preparation of two letters, one of which recognized and apologized for a broadcaster omission, fulfilled the broadcaster’s obligations in this regard in this instance.

## **ANNOUNCEMENT OF THE DECISION**

History Television 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 within seven days following the release of this decision during the time period in which *Sexual Century* was broadcast; 2) within 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; 3) at that time, to provide the CBSC with that written confirmation and with air check copies of the broadcasts of the two announcements.

The Canadian Broadcast Standards Council has found that History Television breached the viewer advisory provisions of the Canadian Association of Broadcasters’ *Code of Ethics* in its broadcast of an episode of *Sexual Century* on June 25, 2003. By broadcasting the episode, which

contained several instances of nudity, sexual content and coarse language even after the 9:00 pm Watershed without providing information in the form of viewer advisories to the public, History Television has violated the provisions of Clause 11 of the *Code of Ethics*.

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

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**APPENDIX**  
**To**  
***History Television re an episode of Sexual Century (CBSC Decision 02/03-1495, January 30, 2004)***

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**I. The Complaint**

The following complaint dated June 26, 2003 was sent to the CBSC via email:

Subject: Sexual Century on History Television

This program, which is clearly Adult content (I served 14 years on the BC censor board, so I know what I'm talking about) airs at 7:00 PM Pacific time. The program of June 25, 2003 had frequent full nudity, frequent depictions of genitalia and sex toys, graphic descriptions of sex acts, the depiction of X-rated movies being filmed and frequent use, oral and in print, of the word "fuck". This is clearly in violation of the CAB Code of Ethics.

The same person also sent a similar complaint to the CRTC which forwarded it to the CBSC in due course:

History Television, Channel 44 cable in Vancouver

I do not think it is appropriate to broadcast explicit sexual images, including frequent female and some male full frontal nudity, frequent images of genitalia, male and female, and frequent images of the word "Fuck" at 7:00 PM. I realize that this is broadcast at 10:00 in the Eastern time zone, but it is only 7:00 here. I believe the program is called "Sexual Century" or something similar.

Imagine parents encouraging their children to watch History Television as an educational channel and having them exposed to graphic sexual imagery in the early evening.

**II. Broadcaster Response**

The broadcaster responded to the complainant's letter on July 14, 2003 with the following:

Dear xxx,

Thank you for expressing your concern regarding History Television's broadcast of the **Sexual Century: The Merchants of Venus** on June 15 at 10 p.m. ET. We regret that you were offended by the content of this documentary and appreciate your feedback.

History Television endeavours to provide our viewers with intelligent and accurate historic programming. You can be assured that each program aired on History Television is considered very carefully. Before we broadcast a program, our Programming Department screens it to ensure that it is suitable for broadcast and that the historical content is accurate. The determination of suitability also includes ensuring that the broadcast does not contravene the Canadian Association of Broadcasters' "Sex-Role Portrayal Code for Television and

Radio Programming”. The “Broadcast Code for Advertising to Children” or the “Voluntary Code Regarding Violence in Television Programming”.

It is certainly not our intention to offend our viewers. The documentary series **Sexual Century** chronicles the profound changes that have characterized human sexuality in the 20<sup>th</sup> century. This particular episode uncovers the hidden history of pornography – examining how sex has become a significant economic force in today’s society.

It was our intent to portray, as accurately as possible, the widening gap between sexual commerce and human relationships. Our decision to include the adult content was not taken lightly and was based on the realities that exist within the pornography industry.

We are judicious with the content of shows broadcast during hours that children may be watching and are sensitive to the scheduling of programs with adult-oriented content, as required by the Voluntary Code Regarding Violence in Television Programming. Canadian private broadcasters, in their Codes, have established 9 p.m. as the “watershed hour” before which no scenes intended exclusively for adult audiences may be shown. The Code also states, however, that to “accommodate the reality of time zone differences [...] these guidelines shall be applied to the time zone in which the signal originates.” History Television only has one broadcast feed to serve a national audience, and at its earliest broadcast time, **Sexual Century** airs at 10 p.m. Eastern Times, originating from Toronto.

We realize that this program is not suitable to everyone’s tastes but we do want to provide viewers with the option to learn and understand a different aspect of history.

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

### III. ADDITIONAL CORRESPONDENCE

The complainant was unsatisfied with the broadcaster’s response and sent the following e-mail dated July 17, 2003 to the broadcaster:

[name]  
History Television:

Your response does not adequately address my concerns. I am well aware of what constitutes adult content, as I was for 14 years Assistant Director of the B.C. Film Classification Office. I have personally viewed over 10,000 films of all categories of content, including the most explicit sexual imagery. I have no personal bias against explicit content; in fact, I was very supportive of the change of B.C.’s classification system to accommodate explicit sexual images IN AN ADULT CONTEXT.

Your programming decision to air material as explicit as this particular episode of **Sexual Century** at 7:00 PM in this time zone was wrong, regardless of whether it can be interpreted as permissible under the Code. Broadcasters are not licensed to “take it to the max”, as it were, and push boundaries, but to show that they have the maturity and judgement necessary to justify receiving a licence.

This decision on your part was wrong, period, and your justification, which amounts to “nobody said we couldn’t” is insulting. I invite the CBSC to view this episode for themselves

and make an interpretation of whether you have contravened the spirit rather than the letter of the Code.

The broadcaster responded with this email dated September 26, 2003:

Dear xxx,

After receiving your second correspondence we have further reviewed the June 25 broadcast of *Sexual Century: The Merchants of Venus*. We have found that due to an unforeseen administrative error on our part, the broadcast failed to run the scheduled viewer advisories that communicate to parents that the program is unsuitable for viewers under the age of 18.

While your original complaint did not mention our failure to air advisories, we feel they would have provided the necessary safeguard to ensure those under 18 years of age would not have been exposed to the mature themes in this documentary.

Please note History Television is very conscious of the need for viewer advisories as warnings and we take them very seriously. As a result of your complaint, an extensive review of our program scheduling process has been undertaken to ensure that, in the future, any program requiring advisories will be handled in accordance to CBSC standards.

While we acknowledge this documentary does contain mature content and needs to be scheduled appropriately, we feel the 10 p.m. ET broadcast was appropriate and did not contravene the Canadian Association of Broadcasters (CAB) Code of Ethics, as we were in compliance with the 9 p.m. "watershed hour" after which scenes intended for adult audiences may be shown.

However, we do accept that by not running the necessary advisories we are in fact in breach of the CAB Code of Ethics and we take full responsibility for this oversight.

Thank you for taking the time to draw our attention to this matter. I hope that we have addressed your concerns.