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**CANADIAN BROADCAST STANDARDS COUNCIL  
NATIONAL CONVENTIONAL TELEVISION PANEL**

CTV re the *Eleventh Hour* (“Hard Seven”)

(CBSC Decision 03/04-1738)

Decided December 15, 2004

R. Cohen (Chair), H. Pawley (Vice-Chair), P. Hebden, M. Hogarth, E. Holmes

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**THE FACTS**

On June 19, 2004 at 10:00 pm, CTV broadcast an episode of *The Eleventh Hour*, a dramatic series about investigative journalists. This episode contained scenes of violence and coarse language.

There were two separate plotlines. The first involved the suicide of a gambler, while the second centred on the investigation of inhumane prison conditions. The opening scenes shifted back and forth between the two storylines. In one scene, after losing a jackpot, a man at a casino hanged himself with his tie in the washroom. His body dangled there until a security guard discovered it. In the other scenario, a man in a prison was first beaten up and then stumbled out of his cell with his face covered in blood.

As the episode unfolded, an investigative journalist interviewed a prisoner for his story. In an off-the-record conversation, the prisoner described how he had been raped in prison by another inmate. At that point, the story cut to flashbacks of this prison rape. The victim had been held by two inmates and beaten, while a third inmate stood behind him undoing the lower part of his jumpsuit. A cloth was stuffed into the victim’s mouth. The third inmate spit into his hand, reached down and anally raped the victim who screamed out in pain. This flashback lasted approximately 24 seconds. Towards the end of the episode, the rape victim was shown walking down the corridor of the prison,

with a gun hidden in the back of his pants. He walked up to the inmate who had raped him and shot him several times. The inmate collapsed onto the floor covered in blood.

In addition to the scenes of violence, the episode included 17 instances of the f-word and its derivatives. It was rated 14+ and contained the following viewer advisory at the beginning and coming out of every commercial break:

The following program contains scenes of violence and coarse language. Viewer discretion is advised.

The CRTC received a complaint dated June 21, 2004 and forwarded it to the CBSC in due course. The complaint read as follows (the full text of all correspondence can be found in the Appendix to this decision):

CTV Television. Television series, *The Eleventh Hour*, Saturday, June 18: Dennis' story on prison conditions. The re-enactment of a prison gang rape or sodomizing of a new prisoner ... graphic, abhorrent, brutal and disgusting. The f-word was used repeatedly ... something the CRTC disciplined CTV about when stage entertainer Bono received an award and used the f-word and this was predictable from this performer and was not bleeped by the network ... a formal apology was broadcast in prime time soon after ... [*sic*, in fact, the performer was Eminem, not Bono, and the body that resolved that matter was the CBSC, not the CRTC] Is this episode of this particular program any different? Yes! It was worse as it was not an isolated word but a whole scene readily available to anyone during prime time. Shameful!

CTV's Senior Vice-President, Program Planning and Promotion responded to the complainant on July 16 with the following letter (in part):

CTV fully understands that this particular episode was hard hitting and dealt with an issue that not all viewers would be comfortable watching. It was for this reason that we took care to air the episode at 10:00 pm, an hour past the watershed hour of 9:00 pm. We also coded the program as 14+ and ran a strong viewer discretion warning before the program and before each segment of the show. This was provided to give viewers time to decide if they wish to continue viewing the program.

It was not our intention to offend our viewers and we apologize to you if that was the case. At CTV we attempt to provide a wide variety of programming and we understand that not all of it will be of interest to all of our viewers but we hope that over the course of our broadcast week we are able to offer a selection of programming that allows viewers of different tastes to be entertained and informed.

CTV is a member of the CBSC and follows the Council's standards and practices.

The complainant filed his Ruling Request along with a copy of a letter he had sent to CTV dated July 27:

It saddens me that my specific complaint about the episode in question is justified as an ethical intent to communicate to me or to entertain me, the viewer, with the notion or the need to be "hard hitting". [...] So the episode in question, which contains the enactment

of violent homosexual sex/rape, [...] is justified from your company's standpoint because it is "hard hitting".

I do not subscribe to cable television, so me and my family have been spared a certain degree of this form of "hard hitting" entertainment. *The Sopranos* is one example of explicit sex combined with violence with criminal behaviour in a very raw form (I watched this in a rental format and regretted it right away). That does not come into my home. It is unwelcome.

After lodging my complaint, I watched part of an episode of *Nip/Tuck* that I do not normally pay any attention to. Again, nudity and impossibly bizarre sexual behaviour together with interpersonal relationships in and outside the fictional family is akin to the material produced in the adult film industry. (I know that good drama uses as its platform the dysfunctional/ alcoholic or addiction-based model story line).

If any family member or I choose to watch the kind of entertainment I take umbrage with, we will make a conscious effort to do so. This means I know what my kids are watching and where. That may be a video rental or by connecting to cable. However, television, like a toaster, is a fixture in most homes. As such, I hope that we, the viewers, can be informed or entertained without being caught by "hard hitting" portrayals of human behaviour without being shocked by "hard hitters".

So it is my intention to let the CBSC have a look at this episode and other production [sic] rated 14+ or 18+ that is directed into our homes particularly on the airwaves as separate from cable, etc.

The broadcaster informed the CBSC that the actual date of broadcast was June 19, not June 18 as stated in the complainant's initial letter.

## THE DECISION

The CBSC National Conventional Television Panel considered the complaint under the following provisions of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* and *Voluntary Code Regarding Violence in Television Programming*, including the Classification System developed by the Action Group on Violence on Television (AGVOT):

### *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.

[...]

Suggested language for suitable viewer advisories is outlined in Appendix A [to the Code]. The suggestions are meant as possible illustrations; broadcasters are encouraged to adopt wording which is likeliest to provide viewers with the most relevant and useful information regarding the programming to which it applies.

### *CAB Violence Code, Article 1.0 (Content)*

1.1 Canadian broadcasters shall not air programming which:

- contains gratuitous violence in any form\*
- sanctions, promotes or glamorizes violence

(\*“Gratuitous” means material which does not play an integral role in developing the plot, character or theme of the material as a whole.)

### *CAB Violence Code, Article 4.0 (AGVOT Classification System)*

#### **14+ (Over 14 Years)**

##### Descriptive

Programming with this classification contains themes or content elements which might not be suitable for viewers under the age of 14. Parents are strongly cautioned to exercise discretion in permitting viewing by pre-teens and early teens without parent/guardian supervision, as programming with this classification could deal with mature themes and societal issues in a realistic fashion.

##### Violence Guidelines

- while violence could be one of the dominant elements of the storyline, it must be integral to the development of plot or character.
- might contain intense scenes of violence

##### Other Content Guidelines

Language: could possibly include strong or frequent use of profanity  
Sex/Nudity: might include scenes of nudity and/or sexual activity within the context of narrative or theme

#### **18+ Adults (Intended for viewers 18 years and older)**

##### Descriptive

This classification applies to programming which could contain content elements that would make it unsuitable for viewers under the age of 18.

##### Violence Guidelines

- contains depictions of violence which, while integral to the development of plot, character or themes, are intended for adult viewing, and thus are not suitable for audiences under 18 years of age.

##### Other Content Guidelines

Language: might contain graphic language  
Sex/Nudity: might contain explicit portrayals of sex and/or nudity

*CAB Violence Code, Article 5.0 (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.

The National Conventional Television Panel reviewed a tape of the broadcast in question and examined all correspondence. It concludes that, with the exception of the choice of the rating for the episode, the broadcast of the episode of the *Eleventh Hour* breached none of the above Code provisions.

**Gratuitous Violence**

While the complainant has not used the word “gratuitous”, the use of the adjectives “graphic, abhorrent, brutal and disgusting” suggests that an examination of this issue would be apt. Whether violence is or is not gratuitous of course depends on an appreciation of the plot and character development in each program. In the matter at hand, as in the case of this Panel’s decision in *CTV re The Sopranos* (CBSC Decision 00/01-0130+, March 8, 2001), the Panel finds that neither “act of violence [...] was dramatically unsubstantiated. In other words, [each] such act was contextual and had a clear role in the advancement of the plot or was ‘justified’ (not, of course, in a societal *legal* context)” in the “rules” of prison conduct. This Panel also rendered a decision in *CTV re the Sopranos (Season 2)* (CBSC Decision 01/02-0104+, May 9, 2002), and found there that the violent scenes were relevant to the plot and thus not in breach of Article 1.0. Similarly, in *CITY-TV re Silence of the Lambs* (CBSC Decision 94/95-0120, August 18, 1995), where the story was of an even more consistently violent nature, the Ontario Regional Panel decided:

Although the viewer learns of murders which have *previously* been committed, the only homicides *seen* to occur *during* the film are those connected with the escape of Lecter from custody. There is also a kidnapping and, ultimately, the shooting of Buffalo Bill by S/Agent Starling. The Council did not consider that the film was afflicted by considerable violence. It also viewed the violence present as integral to the development of plot and character.

In the episode under consideration here, the Panel finds that the scene involving the suicide and the two scenes of prison violence were integral to the development of plot and character. As in the two seasons of the *Sopranos*, the acts of violence were relatively infrequent and contextual to both of the storylines. They were not, in that material sense, gratuitous.

## The Nature of the Violence

The Panel agrees with the complainant that the scenes of violence were both graphic and brutal. The question is what the consequences of such violence are in terms of programming. The reality of the Canadian broadcasting system is that violence that is determined to be either gratuitous or glamorized cannot be broadcast at any time of the day on conventional channels or specialty services. Programming including all other types of violence may be aired on such channels or services. Such programs are, however, distinguished by their relegation to the appropriate time of day. They are either intended exclusively for adults, in which case they must be broadcast after 9:00 pm and before 6:00 am, or they are not, in which case they may be played at any time of day. In either case, they must be rated and garbed in viewer advisories as a part of the private broadcasters' obligation to give audiences the tools that would permit them to make informed choices about programming they may wish to avoid. It follows that programming with scenes of violence that are not prohibited (by reason of their gratuitous or glamorized nature) are permissible. They may not be permissible *before* the beginning of the Watershed hour but they will, even if graphic and brutal, be permissible *after* 9:00 pm. The broadcast of the challenged episode of the *Eleventh Hour* does not breach Article 1 of the *CAB Violence Code*.

## The Broadcaster's Classification Choice

There is, however, another circumstance in which the graphic or brutal nature of the violence is relevant to broadcast issues and that is with respect to classification. The Panel is conscious of the fact that the language in the AGVOT classification system cannot always provide mathematical precision regarding the options. In the ratings applicable to the present matter, the 14+ descriptor reads "might contain intense scenes of violence". In other words, the codifiers anticipated that there might be more than one violent scene in a challenged program and that it might be intense. The 18+ descriptor reads "contains depictions of violence which [...] are intended for adult viewing, and thus are not suitable for audiences under 18 years of age." There is not, in other words, the provision by the codifiers of an adjective or other word to distinguish this descriptor from the 14+ "intense scenes of violence" descriptor. Notwithstanding the absence of guidance from the codifiers, the CBSC has in the past used the word "graphic" to describe violence that, in the view of the adjudicating Panel in question, was a level above "intense". Although in *CTV re The Sopranos* (CBSC Decision 00/01-0130+, March 8, 2001), this Panel was not called upon to consider the appropriateness of the rating (CTV had already applied an 18+ rating to the program), it made the following observations about the violence in the series:

While there is an undercurrent of the *threat* of violence, the quantity of on-screen violence in each episode is not significant. Of each 60+ minute show, there are not more than two scenes of violent action. That being said, when it occurs, the violent action tends to be

graphic. Graphic true, perhaps because it is realistic in its presentation, but not excessive, and always contextual. [...]

[...]

While recognizing the occasional graphic brutality of the violent acts, the Panel considers that the violence is relatively infrequent, playing a smaller role in the story-telling than some complainants suggest.

In the episode of the *Eleventh Hour* under consideration, the National Conventional Television Panel does consider that the violence is, in both prison occurrences, brutal and graphic. Parenthetically, given the purpose of classification icons (and viewer advisories), namely, to alert members of the audience to content that they might find offensive, where the content of a program is very close to the line between 14+ and 18+, the decision to go with the more conservative of the ratings choices might generally be considered a more helpful option on the part of the broadcaster. In any event, the graphic nature of the violence, coupled with the frequent use of extremely coarse language, necessitates the use of an 18+ icon in this episode of the *Eleventh Hour*.

### **The Choice of Viewer Advisory**

In the case of the *Sopranos*, this Panel found that CTV chose a particularly excellent and thoughtful viewer advisory, one tailored to the series. It read:

This program is not intended for children. It contains scenes of violence, extremely coarse language and nudity. Some adults may be offended by the content. Viewer discretion is strongly advised.

Of this choice by the broadcaster, this Panel said:

In addition to telling viewers *what* is in the programming, the broadcaster has adverbially underscored both the coarseness of the dialogue and the advisability of discretion in making this viewing choice. It has also made it laudably clear that the program is not only *not* intended for children but that some *adults* may be offended by the content.

In the case of this episode of the *Eleventh Hour*, CTV used the following wording:

The following program contains scenes of violence and coarse language. Viewer discretion is advised.

The Panel finds the viewer advisory adequate and not in breach of the viewer advisory requirements in the present instance.

## **Broadcaster Responsiveness**

In all CBSC decisions, the Council's Panels assess the broadcaster's responsiveness to the complainant. In the present instance, the Panel finds that the response of CTV's Senior Vice-President, Program Planning and Promotion was, in this regard, thoughtful and responsive. The Panel considers that CTV has fully met its responsiveness responsibilities of CBSC membership.

## **CONTENT OF THE ANNOUNCEMENT OF THE DECISION**

CTV 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 more within seven days following the release of this decision during the time period in which the *Eleventh Hour* was broadcast; 2) within the 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 Requests; and 3) to provide the CBSC with that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by CTV.

The Canadian Broadcast Standards Council has found that, in its broadcast of an episode of the *Eleventh Hour* on June 19, 2004, CTV breached the provision in the Canadian Association of Broadcasters *Violence Code* relating to the display of classification icons. By choosing a 14+ rather than an 18+ rating for an episode of the program with scenes of graphic violence and considerable coarse language, CTV has breached the classification requirements established in Article 4 of the *Violence Code*.

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



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## APPENDIX

### CBSC File 03/04-1738 CTV re *The Eleventh Hour* (“Hard Seven”)

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#### The Complaint

The following complaint dated June 21, 2004 was sent to the CRTC and forwarded to the CBSC in due course:

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#### Broadcaster Response

CTV's Vice-President, Program Planning & Promotion responded to the complainant's letter on July 16 with the following:

The Canadian Broadcast Standards Council has forwarded your concerns regarding the *Eleventh Hour* broadcast on June 19, 2004.

CTV fully understands that this particular episode was hard hitting and dealt with an issue that not all viewers would be comfortable watching. It was for this reason that we took care to air the episode at 10:00 pm, an hour past the watershed hour of 9:00 pm. We also coded the program as 14+ and ran a strong viewer discretion warning before the program and before each segment of the show. This was provided to give viewers time to decide if they wish to continue viewing the program.

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CTV is a member of the CBSC and follows the Council's standards and practices.

## Additional Correspondence

The complainant filed his Ruling Request along with a copy of a letter he had sent to CTV dated July 27:

It saddens me that my specific complaint about the episode in question is justified as an ethical intent to communicate to me or to entertain me, the viewer, with the notion or the need to be "hard hitting". In the letter I received from the CBSC dated July 15, 2004, I find that the matter falls into the zone known as four industry codes. So the episode in question, which contains the enactment of violent homosexual sex/rape and that, [sic] is justified from your company's standpoint because it is "hard hitting".

I do not subscribe to cable television, so me and my family have been spared a certain degree of this form of "hard hitting" entertainment. *The Sopranos* is one example of explicit sex combined with violence with criminal behaviour in a very raw form (I watched this in a rental format and regretted it right away). That does not come into my home. It is unwelcome.

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So it is my intention to let the CBSC have a look at this episode and other production [sic] rated 14+ or 18+ that is directed into our homes particularly on the airwaves as separate from cable, etc.

I will copy this letter to the CBSC and let them sort this out as I am not in support of the reason or purpose of this kind of graphic and disturbing entertainment.

Thank you for taking the time to contact me.