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## CANADIAN BROADCAST STANDARDS COUNCIL

### ONTARIO REGIONAL PANEL

#### CJMT-TV (OMNI.2) re episodes of *Law & Order: Criminal Intent* (“Want”) and *Law & Order: Special Victims Unit* (“Pure”)

(CBSC Decision 07/08-1441)

Decided January 7, 2009

R. Cohen (Chair, *ad hoc*), B. Bodnarchuk, J. David, R. Deverell (*ad hoc*), L. Levinson

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### THE FACTS

*Law & Order: Criminal Intent* and *Law & Order: Special Victims Unit* are both spin-offs of the original *Law & Order* crime drama series. In *Criminal Intent*, the police officers investigate high profile cases which usually involve murders, while *Special Victims Unit* focuses exclusively on sex-related crimes. Although both programs rarely feature scenes of violent acts actually being committed, the viewer frequently sees the results of violence, in the form of dead bodies or injured victims, and investigators discussing details of the crimes.

The CBSC received a complaint dated March 21, 2008 about the back-to-back broadcast of that day’s episodes of the two programs on OMNI.2 (CJMT-TV, Toronto) from 6:00 pm to 8:00 pm. The complainant outlined her concerns as follows (the full text of all correspondence can be found in the Appendix):

Both programs contained graphic violence and depictions of severely injured and dead people. The stories were only for adult audiences. The warning was that young children should only watch with parental supervision. It is completely irresponsible and reprehensible to show such programs while children of all ages are likely to watch i.e. during the dinner hour. TV stations should demonstrate some concern for the welfare of children and if they don't, their licence should be suspended until they behave responsibly. We should not forget that children learn from TV; it is not merely

entertainment. Do we really want to teach our children about all the ways in which they can learn to be evil?

As mentioned by the complainant, each episode contained a viewer advisory at the beginning and coming out of every commercial break:

The following program may contain scenes of mature subject matter which may not be suitable for younger children. Parental discretion is advised.

In addition, both episodes were rated 14+.

The first, at 6:00 pm, was an episode of *Criminal Intent* entitled "Want". The detective team of Goren and Eames investigated the case of a murdered stripper whose body was found in a wooded area with a gash in her temple and a severe leg wound. The audience saw the body at the wooded site and later on an autopsy table. The detectives discussed the state of the body, noting that no semen was found on it and that the calf muscle had been cut out after her death. Later in the episode, another woman survived an attack. Suspecting that the two cases might be related, Goren and Eames visited the second woman in the hospital. She was bloodied and bruised and unable to communicate. The doctor informed them that she had had a hole drilled into her skull and hot water poured onto her brain. Detective Eames commented that the assault was a "homemade lobotomy".

On the basis of reasoning not relevant to recount in detail here, the detectives concluded that their prime suspect was an extremely shy man named John Tagman, who worked at a local chocolate shop. They searched his apartment and found a drill and non-violent pornographic DVDs. In order to trap their suspect, Detective Goren attempted to befriend him. In their follow-up investigation, the detectives eventually found a calf muscle wrapped in plastic at the bottom of a freezer located in a convenience store across the street from Tagman's apartment. At the police station, they discussed the state of the calf muscle, noting that it had been cleaned. They surmised that the suspect had likely eaten part of it. Having eventually gotten Tagman into custody, they showed him photos of the first woman's body and described the physical state of the other young woman at the hospital. He confessed to the murders. The detectives later learned that Tagman was murdered in jail.

The *Special Victims Unit* episode, entitled "Pure", began at 7:00 pm with a mother receiving a sinister telephone message from a male caller saying that sex with her daughter had been the best he ever had, especially when she screamed "mommy". The program cut to a teenaged girl with duct tape over her mouth and her wrists tied to a bed. Following the mother's press conference pleading for the safe return of her daughter Kaley, a man named Sebastian Ballantine, who claimed to be a psychic, came to the police station offering to help. The officers dismissed his claims, but, undaunted, he remained at the police station, where he met a young nun, Sister Peg, who was there helping a prostitute. The detectives learned from Kaley's ex-boyfriend that she

was auctioning off her virginity online. Later, they found her dead body, naked but covered with a blanket. The police learned that Sebastian Ballantine was really Henry Palaver, a man who had been convicted of sexual assault in Canada, and whose practice had been preying on virgins. Sister Peg disappeared and they feared she had been kidnapped because she was a virgin. The police deduced that Palaver was guilty and that his wife, Carly, was an accomplice. Palaver explained that he enjoyed raping virgins because “The expression on a girl’s face her first time is incomparable. [...] Shock, confusion, panic, fear and always a soupçon of pain.” The police found Sister Peg alive in a warehouse, tied up, but with a bloodied head. Back at the police station, they showed Palaver’s wife a photo of a dead woman with a foetus cut out of her and accused Carly of killing the woman to steal the baby. Carly explained that she did it only to create a “normal” family for her and her husband. Palaver was put behind bars and, as the police led Carly past him, he choked her against the bars and called her names until the police pulled her away.

The broadcaster responded to the complainant’s concerns about these two episodes in a letter dated April 28:

Both *Law & Order: Criminal Intent (CI)* and *Law & Order: Special Victims Unit (SVU)* are programs that examine the criminal justice system. The titles are indicative of the content of the programs: the law is portrayed as something that protects people and should be obeyed. The basic focus of each program is on the people who choose to break the law and the resulting consequences.

We have reviewed the logger tape of the programs in question and, while we agree that there were scenes which depict injured and dead people, are of the view that both programs dealt primarily with the police investigation and subsequent adjudication of the offences that occurred. Specifically, while there were scenes depicting a dead body in CI, namely when the victim was discovered and later in the autopsy room, these scenes did not depict any overt or graphic acts of violence. The remainder, and majority, of the episode focused on the police and prosecutors in their collective attempt to solve and prosecute the crime.

The same is true for the episode of SVU included in your complaint. Our review of the logger showed that there was a scene involving a dead body, and one where a victim was found bloody but alive. Similar to the episode of CI, no overt or graphic acts of violence were shown. Rather, there were a few scenes where the victim was shown briefly as a result of a violent act committed off-screen. The remainder of the episode chronicled the police and prosecutors in their efforts to solve the crime and deliver justice.

It is our view that the above-noted programs, while containing serious subject matter, are not intended exclusively for adult audiences. While the seriousness of the subject matter is portrayed and discussed, it is not presented in a gratuitous manner nor is it glamorized. Moreover, given the seriousness of the subject matter, we took what we believe were the necessary precautions to ensure that our viewers were given the appropriate tools to make informed decisions and exercise their discretion.

For example, a program rating of 14+ was aired at the beginning and during each episode of CI and SVU. [...] In our opinion, this description fits the content and the context of the criminal investigations and prosecutions depicted in CI and SVU. The

main storyline for both these programs is not about the violent aspect of the crime, but rather the investigation and prosecution of the crime. Consequently, both programs contained relevant viewer advisories at the beginning of the program and during each commercial break to provide viewers with the requisite information to make their viewing choices.

[...]

Accordingly, it is our view that given the violent aspects in both programs were minimal and integral to the development of the plot, and that appropriate viewer advisories and program classifications were used to inform viewers of the nature of the content, we do not believe we have violated any of the articles in the *Violence Code*.

The complainant wrote back to the broadcaster on May 9:

I understand that your job is to ensure that programs meet the *Violence Code*. But it does seem to me, with the greatest respect, that your interpretation of the Code is narrow and technical. You appear to suggest that it is acceptable to air programs with violence and intended for adult audiences before 9 p.m. as long as a viewer advisory is telecast, which it was in this case.

However, the *Violence Code* reads as follows:

#### 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. (*italics mine*).

Subsequently, in paragraph 5, dealing with viewer advisories, the following is stated:

### 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.

##### 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.

It appears to suggest that for those broadcasters who ignore 3.1.1, they must at least present an advisory. But that does not change the obligation to abide by 3.1.1. I suggest that 5.2 contradicts the provision in paragraph 3.1.1 and I would submit that 3.1.1 takes precedence over paragraph 5. Moreover, it is clear that the intent and spirit of 3.1.1 is to protect children and act in their best interests.

You state that the intention of the programs is to portray the law as something that protects people and should be obeyed or there are consequences. You appear to assume that children will understand the programs in the way they are intended. This is unrealistic. Children jump to all sorts of conclusions when they do not understand what is happening and why it is happening, and often treat television as a source of education (whether intended or not). Do we really want *Law & Order* to be a training film for children? I think not.

[...]

As an adult, I often enjoy the *Law & Order* series, but I do think children should be protected from it, and that means that a responsible and ethical broadcaster should pick a much later hour to show the programs.

The complainant then filed her Ruling Request with the CBSC on May 12.

## THE DECISION

The Ontario Regional Panel examined the complaint under the following provisions of the Canadian Association of Broadcasters' (CAB) *Violence Code*.

### *CAB Violence Code*, Article 3.0 - Scheduling

#### 3.1 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.

### *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.

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 [defined in Article 2 of the Code as “persons under 12 years of age”].

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

#### AGVOT Classification System for English-Language Broadcasters

#### **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+ - 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

The Panel Adjudicators reviewed all of the correspondence and watched a recording of the broadcasts. The Panel concludes that the station did not violate any of the aforementioned Code provisions.

### **The Subtleties of Program Suitability**

To the extent that there can be said to be a “simple” rule in this area, it is that which is laid down in Article 3.1.1 of the *CAB Violence Code*, namely, that programming containing scenes of violence *intended for adult audiences* shall not be broadcast before the Watershed, that is, the late evening viewing period, which runs from 9:00 pm to 6:00 am. The application of that rule is not, however, simple, for the CBSC does not have any sort of mathematical formula for determining what type of content renders programming intended *exclusively* for adults. A lengthy explanation, complete with

references to earlier CBSC decisions, of how such difficult determinations are made, follows. Even when such determinations are made, the Panel hastens to point out that the conclusion that a program may be permitted to play before 9:00 pm *does not mean* that it will be *suitable* for children under 12.

The bottom line is that the pre- versus post- 9:00 pm decision is the responsibility of the broadcaster, but once a program is properly situated in one of those categories, suitability issues become the responsibility of the parents. The role of broadcasters in assisting parents to draw such suitability conclusions as are appropriate for their own families goes further. Licensees have to provide parents with informational tools, such as viewer advisories and on-screen and encoded ratings, which will permit them to make informed choices. And those choices are likely to differ from home to home; such familial choices are, after all, very individualized matters.

### **How to Determine the “Adulthood” of the Content**

In the matter at hand, everything turns on the “adulthood” of the content, and there is not, as noted above, any mathematical formula for determining that issue. Over time, however, the CBSC has had many occasions to assess that issue. In those decisions, the Panels have explained the criteria that will factor into that determination. There need not be one single scene of an actual violent act that pushes a program into a certain category; graphic discussions of violent acts and/or the cumulation of disturbing themes could render a program “intended exclusively for adults”. A review of some of those precedents will be very instructive.

#### Off-screen violence

To begin, the Panel notes that off-screen violence is not exempt from the following rules relating to television violence or the hour at which it may be broadcast. The Atlantic Regional Panel dealt with that issue in *CIHF-TV (MITV) re an episode of The X-Files* (CBSC Decision 96/97-0043, February 14, 1997), where the Panel examined an episode of the drama series about paranormal investigations.

The members of the Atlantic Regional Council consider that certain scenes in the program were graphic and occasionally left a gory record of what had occurred off-camera. It was the contention of MITV’s Program Director that “The acts [of violence] were implied through plot development, camera angles, editing, lighting and special effects techniques.” While the Atlantic Regional Council does not expect that the Program Manager was, by putting the matter that way, implying that the program was not violent because the acts did not take place *on camera*, it considers that it is appropriate to clarify this issue. It is the Panel’s view that scenes which do not depict violent *actions* may, nonetheless, constitute “violence” within the meaning of the *Violence Code*.

### Non-exclusively adult violent content

In *CFCF-TV re Matrix* (CBSC Decision 93/94-0166, December 6, 1995), the Quebec Regional Panel dealt with a complaint about an episode of the action series inspired by the popular feature film of the same name. The Panel considered that there was no graphic violent element, so the program was suitable pre-Watershed fare.

[T]he episode in question was undoubtedly an action-oriented segment but it did not contain elements which could have been described as “scenes of violence intended for adult audiences”, [...]. There were elements of both action and suspense but the one scene which included *any* violence involved an individual being struck by a car. In the circumstances, the Panel is of the view that the program does not meet the content requirement which would have resulted in the application of Article 3.1.1, thereby necessitating the airing of the program after 9:00 p.m.

*CKCO-TV re Kazan* (CBSC Decision 96/97-0226, February 20, 1998) concerned a Sunday matinee movie which told the story of a canine, part dog/part wolf, named Kazan whose challenge was to decide whether he belonged in the wilderness or in the company of humans. The movie included scenes depicting the strangulation of a man as well as the beating, shooting and near drowning of Kazan. The Ontario Regional Panel found that none of these scenes of violence could be described as “intended for adult audiences”, and it introduced some criteria for making that determination.

The Panel does not consider that the scenes of violence contained in *Kazan* are of such a nature as to be intended for adult audiences only, although they contain more violent elements than do the scenes contained in [...] the episode of *Matrix* considered by the Panel. While it is difficult to propose any cut-and-dried formula to apply in coming to any such conclusion, the Panel does consider that the presence of the combined elements of fear, suspense, gore and explicitness may help characterize programming containing scenes of violence as *adult*. The Panel notes that the scenes of violence in the movie *Kazan* were short and often obscured to limit their scariness. The Panel finds that, overall, the movie was very tame; in the Panel’s view, the few scenes of violence do not negate this characterization. Given the viewer advisories which preceded the broadcast of the movie and were repeated during the first commercial break, the Panel is comfortable with CKCO-TV’s scheduling of the movie *Kazan* at 1 p.m.

In *Bravo! re the film The House of the Spirits* (CBSC Decision 00/01-0738, January 16, 2002), the National Specialty Services Panel determined that neither the scenes of sexual activity nor those of violence in the film constituted “scenes intended for adult audiences”. It elaborated on the interpretation of that phrase:

The scene which most disconcerted the complainant was the rape scene 18 minutes into the program. While, as CBSC Panels have previously acknowledged, all rapes are, by their nature, acts of violence, this alone does not make them unsusceptible of broadcast. In the challenged scene, which is very short and extremely material to the development of the plot of the Allende story, the viewer sees only the start of the assault by Esteban and the blank resigned stare on Pancha’s face. Indeed, the scene is not at all explicit or graphic. It is, of course, suggestive but it is clear, on the basis of its brevity and detachment from explicitness, that, for the filmmakers, it amounts to little more than a



story point. While by definition, it is an act of violence, it is neither erotic nor graphic enough to constitute a scene reserved for broadcast during adult viewing time.

[...]

Apart from the rape scene, there is no other scene in the film that the Panel considers so extreme as to be classified as viewable *only by adult audiences*, the criterion which requires a post-Watershed broadcast. There are other scenes in the film that have a mature cast to them, such as the torture of Blanca and the whipping of Pedro, but the Panel finds these disturbing rather than graphic.

In *Showcase Television re the movie Police 10-07* (CBSC Decision 00/01-0613, January 16, 2002), the National Specialty Services Panel dealt with a complaint about a movie concerning the serial killing of homosexual men by a method known as auto-erotic strangulation which aired at 7:00 pm. It contained some threatening scenes, some scenes involving violent activity and other scenes showing the results of off-screen violence. The Panel “concluded that the film contained mature themes; however it did not consider that the scenes of violence and its effects were sufficiently numerous or graphic to require that the film only be broadcast after 9:00 pm.” It also made the point noted above that not all broadcasting fare airing before 9:00 pm is appropriate for all audience age groups.

In *VRAK.TV re Charmed (“Dead Man Dating”)* (CBSC Decision 02/03-0365, July 17, 2003), the Quebec Regional Panel dealt with a complaint regarding an episode of the dramatic series about three good witches which aired from 7:00-8:00 pm. It began with a scene in which a young man in an alley was surrounded by a gang which shot him. No blood or wounds were visible, but they doused his corpse in gasoline and set it afire. Later in the episode, the characters encountered a supernatural villain who had sinister glowing eyes and a horned mask. Toward the end of the episode, the young man’s murderer was thrown down stairs by a witch’s powers of telekinesis, he was then shot dead by police officers, and his ghost was pierced by the lance of the horned spectre. A sub-plot also included a scene in which one of the main characters envisioned a man being struck by a car. A viewer complained that this episode contained unnecessary violence which was inappropriate for children. The Panel found that the episode required viewer advisories coming out of commercial breaks, but did not find its scheduling problematic.

[T]he content is far from being exclusively intended for adult audiences (and was thus susceptible of being broadcast prior to the Watershed hour of 9:00 pm). That it might have been somewhat shocking for young viewers does not force it into a post-9:00 pm time slot.

In *Global re ReGenesis (“Baby Bomb”)* (CBSC Decision 04/05-1996, January 20, 2006), the National Conventional Television Panel dealt with an episode of a dramatic program that focussed on the activities of a fictional organization established to investigate questionable advances in biotechnology. The episode aired at 8:00 pm and contained a

few scenes of injury and gore. One scene showed a man crossing the street being struck by a car, following which his bleeding temple was shown in close-up. The episode also included scenes showing the results of disease or injury, such as bloody pox marks on a boy's back and a dead body being zipped into a body bag. The Panel concluded that those scenes did not necessitate a post-Watershed time slot.

The Panel does not consider that the violence present in the episode was at all problematic. In fact, there was no person-inflicted or intentional violence of the type generally contemplated by the *Violence Code* and the CBSC Panels. There was an automobile-pedestrian accident and a bleeding temple on the distracted protagonist, who had been struck by the vehicle. In *CFCF-TV re Matrix* (CBSC Decision 93/94-0166, December 6, 1995), there were elements of both action and suspense but the only "violence" also involved a car-pedestrian collision. That alone did not force the program into a post-9:00 pm time slot. Nor, in the view of the Panel does it do so in the present instance.

In *ReGenesis*, there were also depictions of the *results* of the virus. This phenomenon paralleled, in some senses, the circumstances in *CIHF-TV (MITV) re an episode of The X-Files* (CBSC Decision 96/97-0043, February 14, 1997), in which there were on-screen manifestations of off-screen activity. In the *X-Files* decision, the Atlantic Regional Panel noted that "certain scenes in the program were graphic and occasionally left a gory record of what had occurred off-camera" but it found that there was no breach of the *CAB Violence Code* on that occasion. In the present matter, the graphic manifestations were not even the result of violence as the Panel understands that term. In the circumstances, it does not consider that they amount to a breach of the *CAB Violence Code*.

### Exclusively adult violent content

There are other examples of programming in which Panels decided that the content was exclusively intended for adult audiences. In *TQS re the movie L'inconnu (Never Talk to Strangers)* (CBSC Decision 98/99-0176, June 23, 1999), the Quebec Regional Panel found TQS' broadcast of the feature film at 7:30 pm in breach of the scheduling provision of the *Violence Code*. The Panel found that some of the scenes depicting violence, as well as some depicting sexuality, were intended for adult audiences:

In this case, the Panel has no hesitation in concluding that the combined elements of fear, suspense, gore and explicitness, referred to in the *Kazan* decision, are present in at least the scenes showing the mutilated cat, the bloody writing on the wall and the final showdown where the psychiatrist kills her father and her lover. The Panel considers that the presence of these elements, in combination with the overall suspenseful and frightening nature of the movie, renders the aforementioned scenes as "intended for adult audiences".

In *CTV re The Sopranos* (CBSC Decision 00/01-0130+, March 8, 2001), the National Conventional Television Panel examined this dramatic series about a New Jersey Cosa Nostra family. Along with nudity, sexual activity and coarse language, the program contained scenes of blatantly violent acts (not described here, but which can be found in the referenced decision) obviously intended for adult audiences. Since, however, the program was aired at 10:00 pm, the Panel did not find the post-Watershed time-slot problematic.

In *Showcase Television re the movie Destiny to Order* (CBSC Decision 00/01-0715, January 16, 2002), the National Specialty Services Panel examined this fantasy feature film which aired at 2:00 pm. It found that the violence and coarse language in the movie constituted scenes intended for adult audiences and thus should have aired after 9:00 pm. With respect to the violence, the Panel stated:

The Panel considers the scenes of violence [were] graphic and explicit and, consequently, intended for adult audiences (the effect of which is that it should have been broadcast only in a post-Watershed environment). Moreover, in light of the fact that the movie was broadcast in a pre-Watershed time slot, the Panel was concerned about the fantasy aspect of the film, namely, the revitalization of apparently murdered characters, who reappear alive and unscathed. The viewer is offered no real explanation for these resurrections. Thus, in addition to the nature of the violent depictions, the Panel considered that, while adult viewers could reasonably be expected to understand the irony of the fantasy, the depiction of violence without consequences was problematic for broadcast at a time which was not merely pre-Watershed but at an early enough hour that children could be expected to be watching. The scheduling of *Destiny to Order*, a film with violent content of the nature described prior to 9:00 pm constitutes a breach of Article 3.1.1 (Scheduling) of the *CAB Violence Code*.

*CHCH-TV re NCIS ("Mind Games")* (CBSC Decision 05/06-0479, December 15, 2005) dealt with an episode of a crime action drama program focussed on a serial killer. It included scenes that showed photographs of women who had had their tongues cut out, a heart carved into their bare backs and their bodies suspended from trees. There were also some scenes in which a fresh body was discovered, as well as a scene in which a female NCIS agent confronted a male attacker. The program was broadcast at 8:00 pm. A viewer complained that the violent scenes were inappropriate for that time slot. The Ontario Regional Panel agreed that the scenes did constitute post-Watershed material. The Panel made the following comments on the nature of the violence:

In this case, [the Panel] considers that the combination of a container of amputated tongues, the pictures of the women's faces whence they had come, the freshly killed woman, and the signs of torture were sufficiently graphic and disturbing that the episode of *NCIS* ought, in normal circumstances to be relegated to broadcast in a post-Watershed environment.

In *Global re 24 (Season 6, Episode "1:00-2:00 pm")* (CBSC Decision 06/07-0713, November 29, 2007), the National Conventional Television Panel examined a complaint about *24*, the dramatic action program about the fictional Counter Terrorism Unit (CTU) of the United States Government. Each episode took place within a single hour of a day, as CTU agents tried to thwart terrorist activities. The challenged episode was broadcast from 8:00 to 9:00 pm. In it, a terrorist group had kidnapped a CTU agent who had the computer programming expertise necessary to activate their nuclear bombs. When the agent refused to help, the leader of the group tortured him with a drill until he capitulated. There were also two other scenes in which individuals were shot dead, as well as a chaotic scene of gunfire and explosions when the CTU team burst into the terrorists' hideaway. A viewer complained that the scenes were too violent for

conventional television and should not have been aired at 8:00 pm. The National Conventional Television Panel agreed that the scenes were intended exclusively for adults.

#### The “adulthood” criteria emerging from the foregoing precedents

While it is clear from all the programming examples cited above (and these do not exhaust the CBSC precedents), that no precise definition can be found, criteria do emerge from the precedents. On the one hand, the presence, and level of, gore, explicitness, graphic or horrific images, frequency of violence, fear, terror-provoking suspense, and realism will tend toward adulthood determinations. It follows that violence that, while present, is tame, merely suggestive, even somewhat disturbing or threatening, marked by infrequency or brevity, is unlikely to be understood by Panels as exclusively intended for adult audiences. It is in this context that off-screen acts of violence will, in some senses, require a higher level of graphic, gory, explicit, horrific, realistic imaging and frequency to attain the “adulthood” required by certain of the above-cited provisions of the *CAB Violence Code*.

#### The matter at hand

While the Panel acknowledges that the episodes contained disturbing themes, it does not consider that there are sufficient on-screen violent acts or visual consequences of off-screen violent acts that would drive the programs into the adulthood camp. In the first episode, there was *discussion* of the “homemade lobotomy” and the suspicion that the state of the refrigerated calf muscle may have reflected a symbolic or ritualistic cannibalistic act. Otherwise, there was no on-screen violence, only the brief view of a murder victim and a corresponding scene with another live victim in her hospital bed. Although it is true that there was conversational speculation as to the unusual causation of the victims’ injuries, those discussions and the scenes of one live and one deceased victim are, in the Panel’s view, not sufficiently violent as to be destined for adult viewing only.

In the second challenged program, there was another discovery of a body and another rescue of an assaulted but still living victim. In addition to that, there was a photograph of a mutilated woman shown to one of the offenders, and some dialogue about the violent nature of the crimes. There was not, in this case, any more adult-directed violence than in the previously discussed program.

The foregoing being said, the Panel is concerned that programs so unsuitable for younger children were shown so early in the evening. Since, technically speaking, all pre-Watershed hours, whether 8:00 pm, 6:00 pm or 3:00 pm are equal, the Panel appreciates that broadcasters are free to air programming at *any* pre-9:00 pm hour when it does not include adult content. It does, however, consider that particularly

unsuitable material would have been more palatable closer to the 9:00 pm threshold than 6:00 and 7:00 pm.

### **Classification Level**

Both episodes were rated 14+. Given their analysis of the content in the previous section, and the fact that 14+ programming “might contain intense scenes of violence,” the Panel considers that the less-than-intense violent content justifies this rating. This would be in keeping with its earlier decisions regarding 14+ ratings in *Showcase Television re the movie Police 10-07* (CBSC Decision 00/01-0613, January 16, 2002), *Global re ReGenesis (“Baby Bomb”)* (CBSC Decision 04/05-1996, January 20, 2006), *CHCH-TV re NCIS (“Mind Games”)* (CBSC Decision 05/06-0479, December 15, 2005), and *Global re 24 (Season 6, Episode “1:00-2:00 pm”)* (CBSC Decision 06/07-0713, November 29, 2007). It would add the following reminder provided in the *NCIS* decision for the benefit of the public:

The goal of classification is to provide an indication of the intended audience age group for the program based on the categories established by the Action Group on Violence on Television (AGVOT). The rating, however, serves only as a guideline. While it includes an age reference, it does not mean that the program it accompanies will automatically be considered appropriate for all persons in that age group in all families. A 14+ rating, for example, does not mean that the program is suitable for *all* 14-year olds; viewers must still make their own decisions about the suitability of subject matter for their own households.

### **Broadcaster Responsiveness**

In every CBSC decision, the adjudicating Panel assesses the broadcaster's responsiveness to the complainant. It goes without saying that the broadcaster is not under any obligation to agree with the position taken by the complainant, but every broadcaster is obliged, by virtue of its membership in the CBSC, to respond to the complainant in a thoughtful, timely and thorough manner. The response of the broadcaster's Vice President of Regulatory Affairs was pointed, specific, thorough and respectful. The Panel considers that OMNI.2 has met all of its responsiveness obligations as a CBSC member. Nothing further is required in this respect on this occasion.

*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.*

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## APPENDIX

### CBSC Decision 07/08-1441 CJMT-TV (OMNI.2) re episodes of *Law & Order: Criminal Intent* (“Want”) and *Law & Order: Special Victims Unit* (“Pure”)

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#### The Complaint

The following complaint of March 21, 2008 was sent to the CRTC and forwarded to the CBSC in due course:

Omni Toronto March 21/08 from 6 pm to 8 pm. From 6 to 7 pm *Law & Order: Criminal Intent* was on. From 7 to 8 *Law & Order: SVU*. Both programs contained graphic violence and depictions of severely injured and dead people. The stories were only for adult audiences. The warning was that young children should only watch with parental supervision. It is completely irresponsible and reprehensible to show such programs while children of all ages are likely to watch i.e. during the dinner hour. TV stations should demonstrate some concern for the welfare of children and if they don't, their licence should be suspended until they behave responsibly. We should not forget that children learn from TV; it is not merely entertainment. Do we really want to teach our children about all the ways in which they can learn to be evil?

#### Broadcaster Response

The station responded on April 28:

We have received your complaint to the Canadian Radio-television and Telecommunications Commission (CRTC) regarding the March 21, 2008 broadcast of *Law & Order: Criminal Intent* and *Law & Order: Special Victims Unit* on our Toronto television station CJMT-TV Toronto between 6 pm and 8 pm. The CRTC forwarded your complaint to the Canadian Broadcast Standards Council (CBSC) who sent it to us.

The CBSC is an independent organization created to administer codes and standards proposed by the Canadian Association of Broadcasters (CAB) and approved by the CRTC. CJMT-TV, or OMNI.2 as it is known on the air, is owned and operated by Rogers Broadcasting. We are a member in good standing with the CBSC, and we welcome the opportunity to respond directly to your concerns.

As a member of the CBSC, OMNI.2 is subject to the *Voluntary Code regarding Violence in Television Programming* (Violence Code). Article 1 of the *Violence Code* states that broadcasters shall not air programming which contains gratuitous violence in any form, or which sanctions, promotes or glamorizes violence.

The *Violence Code* also sets out measures to protect children from scenes of violence. These measures include:

- Article 3.1.1 states that programming containing scenes of violence intended for adult audiences shall not be telecast before 9 pm;

- Article 4.0 provides an age-suitable classification system for television programs; and
- Article 5.2 requires broadcasters to provide viewer advisories at the beginning and during programming broadcast before 9 pm which may contain scenes of violence not suitable for children.

In your complaint, you stated the following:

[b]oth programs contained graphic violence and depictions of severely injured and dead people. The stories were only for adult audiences. The warning was that young children should only watch with parental supervision. It is completely irresponsible and reprehensible to show such programs while children of all ages are likely watch i.e. during the dinner hour.

Both *Law & Order: Criminal Intent* (CI) and *Law & Order: Special Victims Unit* (SVU) are programs that examine the criminal justice system. The titles are indicative of the content of the programs: the law is portrayed as something that protects people and should be obeyed. The basic focus of each program is on the people who choose to break the law and the resulting consequences.

We have reviewed the logger tape of the programs in question and, while we agree that there were scenes which depict injured and dead people, are of the view that both programs dealt primarily with the police investigation and subsequent adjudication of the offences that occurred. Specifically, while there were scenes depicting a dead body in CI, namely when the victim was discovered and later in the autopsy room, these scenes did not depict any overt or graphic acts of violence. The remainder, and majority, of the episode focused on the police and prosecutors in their collective attempt to solve and prosecute the crime.

The same is true for the episode of SVU included in your complaint. Our review of the logger showed that there was a scene involving a dead body, and one where a victim was found bloody but alive. Similar to the episode of CI, no overt or graphic acts of violence were shown. Rather, there were a few scenes where the victim was shown briefly as a result of a violent act committed off-screen. The remainder of the episode chronicled the police and prosecutors in their efforts to solve the crime and deliver justice.

It is our view that the above-noted programs, while containing serious subject matter, are not intended exclusively for adult audiences. While the seriousness of the subject matter is portrayed and discussed, it is not presented in a gratuitous manner nor is it glamorized. Moreover, given the seriousness of the subject matter, we took what we believe were the necessary precautions to ensure that our viewers were given the appropriate tools to make informed decisions and exercise their discretion.

For example, a program rating of 14+ was aired at the beginning and during each episode of CI and SVU. 14+ programming is considered to contain "themes or content elements which might not be suitable for viewers under the age of 14 ... programming with this classification could deal with mature themes and societal issues in a realistic fashion". Moreover, the "Violence Guideline" for determining a 14+ program rating states that "... while violence could be one of the dominant elements of the storyline, it must be integral to the development of the plot or character."

In our opinion, this description fits the content and the context of the criminal investigations and prosecutions depicted in CI and SVU. The main storyline for both these programs is not



about the violent aspect of the crime, but rather the investigation and prosecution of the crime. Consequently, both programs contained relevant viewer advisories at the beginning of the program and during each commercial break to provide viewers with the requisite information to make their viewing choices.

In *CFMT-TV re The Simpsons* (Decision 94/95-0082) the CBSC Ontario Regional Council discussed the issue of scheduling and broadcaster responsibility regarding the watershed hour:

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.

[...]

This practice ought not to lead the Canadian public to conclude that *any* programming aired *before* 9 pm is, *by that fact alone*, suitable for *all* members of their families, whatever their age. That would be true of programming intended for young children (below 12 years of age), which airs in a different time slot, but 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.

Accordingly, it is our view that given the violent aspects in both programs were minimal and integral to the development of the plot, and that appropriate viewer advisories and program classifications were used to inform viewers of the nature of the content, we do not believe we have violated any of the articles in the *Violence Code*.

However, regardless of our opinion, it is clear from the tone and content of your email that we have offended you with our programming, and for that we certainly do apologize.

Thank you for taking the time to express your thoughts about the programs aired on our station. We have shared your views with our Program Director for CJMT-TV.

## **Additional Correspondence**

The complainant wrote back to the station on May 9:

Thank you for your letter dated April 28, 2008, responding to my complaint to the CRTC and the Canadian Broadcast Standards Council. I appreciate the thoroughness and thoughtfulness of your response.

I understand that your job is to ensure that programs meet the *Voluntary Code Regarding Violence in Television Programming* (Violence Code). But it does seem to me, with the greatest respect, that your interpretation of the Code is narrow and technical. You appear to suggest that it is acceptable to air programs with violence and intended for adult audiences before 9 p.m. as long as a viewer advisory is telecast, which it was in this case.

However, the *Violence Code* reads as follows:

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. (*italics mine*).

Subsequently, in paragraph 5, dealing with viewer advisories, the following is stated:

**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.

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.

It appears to suggest that for those broadcasters who ignore 3.1.1, they must at least present an advisory. But that does not change the obligation to abide by 3.1.1. I suggest that 5.2 contradicts the provision in paragraph 3.1.1 and I would submit that 3.1.1 takes precedence over paragraph 5. Moreover, it is clear that the intent and spirit of 3.1.1 is to protect children and act in their best interests.

You state that the intention of the programs is to portray the law as something that protects people and should be obeyed or there are consequences. You appear to assume that children will understand the programs in the way they are intended. This is unrealistic. Children jump to all sorts of conclusions when they do not understand what is happening and why it is happening, and often treat television as a source of education (whether intended or not). Do we really want *Law & Order* to be a training film for children? I think not.

In this regard, I remind you that Rogers TV is also bound by the *CAB Code of Ethics*. While clause 4 of the Code deals with children's programs, its goal should also apply to adult programs to which children are exposed.

4 (1) Recognizing that programs designed specifically for children reach impressionable minds and influence social attitudes and aptitudes, it shall be the responsibility of the broadcaster to provide the closest possible supervision in the selection and control of material, characterizations and plot.

As an adult, I often enjoy the *Law & Order* series, but I do think children should be protected from it, and that means that a responsible and ethical broadcaster should pick a much later hour to show the programs.

Thank you for your consideration of my views.

The complainant then filed her Ruling Request with the CBSC on May 12. She used

the online Ruling Request form and pasted a copy of the above letter into that form. She also added the sentence "I trust that the CBSC and CRTC will take my concerns seriously."