
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CIII-TV (Global Television) re *Before It's Too Late*

(CBSC Decision 95/96-0172)

Decided October 21, 1996

A. MacKay (Chair), R. Stanbury (Vice-Chair), P. Fockler, T. Gupta,
M. Hogarth, M. Ziniak

THE FACTS

Between 9:00 and 10:00 a.m. on April 8, 1996, CIII-TV (Global Television Network) aired a program sponsored and produced by World Wildlife Fund Canada (WWF) entitled *Before It's Too Late*. This program, which told the story of "wildlife struggling to survive in a hostile world", sought to increase public awareness regarding the endangerment of various animal species and solicited funds to further the cause of wildlife preservation.

The hour-long program was comprised of numerous short segments which each featured the plight of a particularly vulnerable species. Each segment was introduced by the hosts of the program, two prominent television actors, who reminded viewers that, by becoming a member of WWF's "rescue team", they could make a difference. The segments generally contained video footage of animals living in the wild, along with an explanation, either narrated or portrayed, of the degree of endangerment they face.

The program told the stories of species being hunted by poachers to near extinction, of species having to consistently re-locate due to ever-increasing human encroachment on wildlife areas and of species being poisoned by pesticides and other contaminants in the environment. These stories were accompanied by clips of interviews with scientists and other experts or spokespersons, as well as by some video footage of the species' destruction, including scenes depicting carcasses of bears, tigers, birds, turtles, rhinoceroses and whales. In two segments, a bear and a tiger were seen being shot and

killed.

The Complaint

On April 10, 1996, the complainant wrote to the Canadian Radio-television and Telecommunications Commission (CRTC). This letter was, in turn, forwarded to the CBSC. The pertinent portion of the letter of complaint was as follows:

On the morning of Monday, April 8, [Global TV] presented a program from World Wildlife Fund which depicted scenes of tortured animals, describing the details of torture and listed a phone number to solicit viewer assistance. My seven year old son, who chanced across this program while changing channels, was most horrified by these grotesque scenes. He was even so upset as to call the number shown to ask if he could help these poor animals, only to be placed on hold.

The Broadcaster's Response and Subsequent Correspondence

The CBSC forwarded a copy of the complaint to its member station CIII-TV (better known to the public as Global Television Network), whose President responded in a letter dated May 1, 1996. In that letter, he stated that

The Global Television Network often schedules programming produced by organizations such as World Wildlife Foundation whose purpose and intent is to provide responsible and accurate information to viewers about the environment. The Global Television Network is also pleased to take a leadership role in children's programming, offering more children's programming than any other Canadian broadcaster. You will therefore understand and, we hope, appreciate our very sincere regret that in this particular instance a program produced by World Wildlife Foundation of Canada caused you as a parent such concern for your son.

I have taken the liberty of raising your concerns with WWF. We have begun a dialogue with them as to how one might reconcile their valid needs and objectives, namely to provide the viewing public with information about environmental practices which they as an organization strongly condemn and wish to see halted, with legitimate concerns about causing serious distress to viewers, in particular to young children.

As part of those initial discussions, we have raised the issue as to how one might provide information to viewers or, as in the case you have raised, parents or guardians of young children, to alert them in advance to programming which might be distressing or inappropriate. We are currently considering the option of providing a cautionary information statement for viewers before the program begins. This dialogue with WWF will continue as we seek a solution which will recognize the merits and conflicting needs of legitimate concerns.

The complainant was unsatisfied with this response and requested, on May 12, 1996, that the CBSC refer the matter to the appropriate Regional Council for adjudication. She also responded to the station's suggestion that viewer advisories may be an appropriate solution to this conflict of important programming objectives with concerns for viewer

sensibilities. In her letter of May 7, 1996 she wrote

While I appreciate your attempts to change this situation, a warning at the beginning of the program would not have deterred my son. Let me reiterate that my son was alone at the time and would have probably not understood the true meaning of the warning. On a normal weekday morning, how many young viewers are of an age to be able to truly understand the message in the warning. Pre-scholars will easily be affected, however, by the graphic images presented.

THE DECISION

The CBSC's Ontario Regional Council considered the complaint under sections 1 and 6 of the Canadian Association of Broadcasters' *Voluntary Code Regarding Violence in Television Programming*. The relevant portions of those sections read as follows:

1.0 CONTENT

1.1 Canadian broadcasters shall not air programming which:

- X contains gratuitous violence in any form*
- X 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).

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.

6.0 NEWS AND PUBLIC AFFAIRS PROGRAMMING

6.1 Broadcasters shall use appropriate editorial judgment in the reporting of, and the pictorial representation of violence, aggression or destruction within their news and public affairs programming.

...

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

6.4 Broadcasters shall employ discretion in the use of explicit or graphic language related to stories of destruction, accidents or sexual violence, which could disturb children and their families.

Having viewed a tape of the program in question and reviewed all of the correspondence, the Ontario Regional Council considers that the program does not violate the provisions of the CAB's *Violence Code*.

The Content of the Program

The Council assumes that the stories told and the tone of the hosts provoked a very strong emotional response from viewers, both young and old. Indeed, that was undoubtedly WWF's intent in creating the program - to shake viewers out of complacency on the issue of wildlife preservation. Accordingly, the Council has no reason, for the purposes of this decision, to dispute the complainant's statement that this program was extremely upsetting to her 7-year old son. That, however, is not conclusive. A program may well be upsetting without violating the provisions of any of the private broadcaster Codes.

Distress over what one has seen on television or heard on the radio can be caused by the subject matter (the story told) or by the *treatment given to the subject matter* (*how* the story is told). A poignant story may be upsetting without bringing Canada's broadcast standards into play. The segment in *Before It's Too Late* featuring polar bear poisoning is a case in point. In it, the narrator explains that polar bear cubs are being poisoned by their mother's milk due to pesticides and other contaminants which have made their way North. Although that segment contained no scenes of overt violence or any other content which would raise broadcast standards issues, the Council can readily assume that sadness of *this* story would be upsetting to many viewers. In the absence, however, of special circumstances, which do not arise here, the CBSC will have no reason to call into question the broadcaster's choice of subject matter.

In general, broadcast standards have more to do with questions relating to the *treatment* of a subject than with the choice of the subject matter itself. *Treatment* refers to the broadcaster's responsibility to exercise good judgment on *how* a story will be told. As the Ontario Regional Council stated in *CTV re Canada AM (Airborne Hazing)* (CBSC Decision 94/95-0159, March 12, 1996) with respect to the *Violence Code*:

The Code recognizes that society has a right, if not an obligation, to have presented to it the reality of the news, however unpleasant or even intolerable that news may be from time to time.

...

Almost every story which must be told will require editorial judgment as to *how* it will be told. Nor will every story requiring such judgment ultimately come to the CBSC's attention. Such rare occurrences will generally be those which, in their edited form, still attract viewer attention by reason of their frightening, violent, graphic or other unpleasant characteristics. In each such case, the broadcaster must temper the public's need to know with the measure of how *much* needs to be known so as not to exceed the bounds provided in the *Violence Code*.

The Council notes that poor, sensationalized or otherwise irresponsible treatment of a story by a broadcaster can make an otherwise neutral story upsetting to viewers *and* result in a Code breach. The converse of this principle, however, is rarely true. Good, even careful and thoughtful, treatment of an an upsetting story by a broadcaster is unlikely to make the story any less upsetting; however, such responsible treatment of an upsetting or disturbing subject will, in almost any circumstances, not be viewed by the CBSC as a Code breach. Accordingly, where the CBSC is faced with complaints concerning programs which have the inherent potential of causing distress (where the story is upsetting no matter how it is told), the Council must look beyond the inherent subject matter of the story told to see whether the treatment by the broadcaster was responsible. The successful adherence to Canadian broadcast standards lies not so much in the answer to the the question “Was this program upsetting?” as it does, even where the answer is “Yes”, in the answer to the follow-up question “*Why* was this program upsetting?”.

With respect to the stories told in *Before It's Too Late*, the Council finds that any distress felt by viewers stems in greater part from the inherent nature of the subject matter than from the violation of the *Violence Code*. While it is undeniable that the program contained *some* scenes of violence and many brief scenes depicting the *results* of violence, the Council does not find that these scenes resulted in any breach of the Code. In reaching this conclusion, the Council wishes to underscore the recognition by the *Violence Code* television is not meant to be so sanitized that *all* depictions of violence disappear from the medium.

The Code seeks rather to balance the need to provide *some* protection to the viewing public, especially children, from the harmful effects of television violence while at the same time respecting society's valued right to know. To achieve this balance, the Code conciliates freedom of expression with societal concerns regarding television violence by providing *strict* guidelines for the use of violence in *children's* programming and by prohibiting in *other* programming only that violence which is *gratuitous* or which *sanctions, promotes or glamorizes* violence. The Council has no hesitation in concluding that neither gratuitous violence nor any scenes glamorizing violence were contained in the program in question.

In addition to the prohibitions mentioned above, the *Violence Code* provides descriptions of circumstances in which the editorial judgment of the broadcaster must be exercised and where the CBSC may be called upon to evaluate that broadcaster discretion. In one such case, Article 6.4 states that the “broadcasters shall employ discretion in the use of explicit or graphic language related to stories destruction...which could disturb children and their families.” The Ontario Regional Council has previously dealt with this very point in circumstances relating to animal welfare in its decision in *CHCH-TV re the Ricki Lake Show* (CBSC Decision 95/96-0105, April 30, 1996).

Members of the Regional Council agree that the animal abuse described on the Ricki Lake Show segment in question was particularly unpleasant and discomfiting... This is not, however, the question which the Council must answer. It is rather the matter of the nature,

perspective and extent of the coverage of the issue by the broadcaster. In this respect, there is no doubt but that our society demands that both pleasant *and* unpleasant matters be dealt with by the media. It follows that broadcasters must be the purveyors of both and must constantly be called upon to exercise judgment in what they choose to air. They often face conflicting principles and must walk a very fine line, particularly in the area of news and public affairs programming, in order to satisfy Code standards.

As the CAB *Violence Code* provides, in dealing with these issues in general, broadcasters "shall use appropriate editorial judgment in the reporting of, and the pictorial representation of violence." Thereafter, the application of this general principle to specific cases encounters two apparently conflicting principles. Broadcasters are, on the one hand, advised to use "caution ... in the selection of, and repetition of, video which depicts violence" and yet, on the other hand, are required by the Code "not to sanitize the reality of the human condition." There is established, in other words, in the area of broadcast standards, a balance between the public's need to know and the way in which the knowledge should be conveyed. The issue is ultimately one of reasonableness of treatment.

The Council finds that WWF made reasonable use of the video footage depicting violence and otherwise treated reasonably the issue of wildlife extinction. In the circumstances, the Regional Council finds that Global Television is not either in breach of this provision of the *Violence Code*.

The Scheduling Issue

In order to deal with the content of television programming which may contain scenes of violence, the Code does not only deal with the broadcaster's *treatment* of subject matter; its proscriptions extend both to the scheduling of such material and viewer advisories, that is, the information provided to viewers to enable them to make informed choices about what they will choose to watch.

Before dealing with the questions of scheduling and advisories, the Regional Council considers this an appropriate point at which to recall that Canadian broadcasters are *required* to offer a diversity of programming to meet the needs and desires of all Canadian men, women and children. The *Broadcasting Act* provides that, as part of the broadcasting policy for Canada

(i) the programming provided by the Canadian broadcasting system should

(i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes.

The Council notes that specialty programming services play an important role, service by service, in the provision of diverse programming to Canadian audiences. However, the Council also notes the CRTC's statement in Public Notice CRTC 1995-48: "Introduction to Decisions Renewing the Licences of Privately-owned English-language Stations":

The Commission recognizes that it is essential for local stations to present themselves as distinct from other services in order to remain competitive in a broadcasting environment that includes an increasing number of viewing options. Further, because of the wide availability of new Canadian specialty services that offer programming in the under-represented categories of drama, variety, documentaries and children's programming, it is no longer necessary for each conventional station to schedule programming from all of these categories. However, given that 23% of Canadian households either do not have access to cable or choose not to subscribe, the Commission considers that conventional local stations in any given market should continue to provide a diversity of programming, in particular, Canadian information and entertainment programming.

Where the subject matter is inappropriate for children and broadcast at a time when children are likely to be listening or watching, the scheduling (when and to whom the story is told) becomes a question of concern for the CBSC. The requirements of the *Violence Code* include a watershed hour for television before which certain programs may *not* be aired. Section 3.1.1 states that "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." As the language indicates, the application of this provision is restricted to programming containing such scenes of violence as will be considered to be "intended for adult audiences". In *CFMT-TV re an Episode of "The Simpsons"* (CBSC Decision 94/95-0082, August 18, 1995) the Council made the following comments regarding the significance of 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 "adults only" category and that *all* pre-watershed programming falls into the "suitable for *everyone*, including *young* children" category. Neither generalization is wholly accurate.

The Council does not find that any of the scenes in *Before It's Too Late* could be described as being "intended for adult audiences", which is the sole circumstance which would trigger this provision of the *Violence Code* thereby requiring that the program be aired only after the watershed hour.

An Admonition

The Council notes that the program aired on a weekday morning, a time during which most children would be attending school; however, the particular weekday morning happened to be during a school holiday, thereby changing the demographics of the potential viewing audience. While it is generally known that broadcasters take into account the shifts in audience demographics which occur due to *statutory* holidays, the Council notes that not all school holidays coincide with statutory holidays. While the Council makes no assumption that there was any broadcaster carelessness in this case, it wishes to remind broadcasters generally of the desirability to be sensitive to the scheduling of programs during school holidays.

Viewer Advisories

As noted above, in the first paragraph under “The Scheduling Issue”, the *Violence Code* requires advisories in certain circumstances to provide information which will “assist consumers in making their viewing choices,” according to Article 5.1. While the Council notes that no formal viewer advisories were given by the station prior to the broadcast of this program, the essence of this part of the decision is to determine whether their absence constituted a breach on the part of the broadcaster.

Basically, viewer advisories are required to be aired in one of the three following circumstances. The first of these, envisaged in Article 5.1, requires a viewer advisory “at the beginning of, and during the first hour of programming telecast in *late evening hours* which contains scenes of violence *intended for adult audiences* [emphasis added].” The second, anticipated in Article 5.2, requires that “Broadcasters shall provide a viewer advisory at the beginning of, and during programming telecast *outside of late evening hours*, which contains scenes of violence *not suitable for children*.” The third circumstance arises in the area of news and public affairs programming. Article 6.3 provides that “Broadcasters shall advise viewers in advance of showing scenes of *extra-ordinary violence* ... particularly during *afternoon or early evening newscasts and updates* when children could be viewing [emphasis added].”

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

In applying the principle respecting public affairs programming, the Council does not find that any of the segments in *Before It's Too Late* breached the provisions of the *Violence Code* relating to viewer advisories since, in its view, none of the segments showed “scenes of extra-ordinary violence”. The Council has earlier acknowledged that there were scenes which may have been distressing to a young person; however, none was so violent as to fall into the foregoing category. Moreover, in the introduction to the segment in which video footage showing a tiger being shot and killed and another tiger caught in a snare, the spokesperson stated before the fact that “If you like cats and wild animals, you may not want to watch. What you are about to see shocked me.”

The Council is of the view that this oral advice to viewers conforms to the principle set out in *CTV re Canada AM (Airborne Hazing)* (CBSC Decision 94/95-0159, March 12, 1996). In that decision, which related to the use of a lengthy video segment showing the subsequently disbanded Airborne Regiment's hazing practices, the Council noted that the newscaster, in her tone, visual cues and words, made it "apparent from the end of the first sentence that the news item would be unpleasant." Overall, in that *CTV* decision, the Council considered that

The Code recognizes that society has a right, if not an obligation to have presented *to it* the reality of the news, however unpleasant or even intolerable that news may be from time to time. ... In each such case, the broadcaster must temper the public's need to know with the measure of how *much* needs to be known so as not to exceed the bounds provided in the *Violence Code*.

In that case, the Council considered that the oral advisory of the news-reader was sufficient. In this case, the Council does not consider that the violence was so "extraordinary", in the words of the Code, that an advisory was even *required* by Article 6.3 and, in the one segment noted above, a narrator's warning was provided. This does not mean, however, that a broadcaster may not *choose*, of its own volition, or in response to a viewer complaint, to add advisories, as Global's president opted to consider in the future broadcast of WWF-produced shows. It only means that the failure to do so will not necessarily amount to a breach of the Code.

Some Further Thoughts Regarding Viewer Advisories

The Council notes the complainant's contention that viewer advisories, in any event, would have been ineffective to prevent her son from watching the broadcast in question. While the Council has determined that viewer advisories by the broadcaster were not required in this instance, it takes this opportunity to review the role of viewer advisories and to reiterate some fundamental principles which underlie the Canadian policy respecting violence on television.

As noted in the concluding point of the background principles of the *Violence Code*, the Code creates a pact between the broadcasters and their viewers:

Through their programming, production and scheduling practices, the development of a program classification system, and the use of viewer advisories, Canada's private broadcasters undertake to play their part to protect our children and to use discretion in addressing the sensitivities of their viewers. In return, viewers, using the programming information provided to them, accept responsibility for their viewing behaviour and for that of their children.

These same background principles also examine the role reserved for parents in the case of their family's viewing practices. Point 14 of the principles provides that "It is the responsibility of parents to be actively involved in the viewing choices of their children."

The purposes of the *Violence Code* are varied. They include, first and foremost, the protection of children but the Code also recognizes that programming must also cater to adult viewers. Where required, viewer advisories play an informing role for parents, indeed for viewers in general; however, parents need to play an active role in determining what is appropriate programming for their families, even in those circumstances where viewer advisories may not be required.

BROADCASTER RESPONSIVENESS

In addition to assessing the relevance of the Codes to the complaint, the CBSC always assesses the responsiveness of the broadcaster to the substance of the complaint. It is a responsibility of membership in the CBSC to be responsive to audience complaints. In this case, the Council notes that the broadcaster not only addressed the complainant's concerns, but also undertook steps to find a compromise between two conflicting needs. The Council finds that the broadcaster's response in this case was commendable. Accordingly, the station did not breach the Council's standard of responsiveness.

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.