
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CTV re Poltergeist - The Legacy

(CBSC Decisions 96/97-0017 and 96/97-0030)

Decided May 8, 1997

A. MacKay (Chair), R. Stanbury (Vice-Chair), R. Cohen (*ad hoc*),
P. Fockler, M. Hogarth, M. Ziniak

THE FACTS

At 9 p.m. on September 13, 1996, CTV aired a two-hour pilot (entitled *Poltergeist - The Legacy*) for a new series slated to form part of CTV's fall programming. As the film's title suggests, the movie featured fantastic extra-terrestrial creatures which sought to penetrate and overtake the world of the living. Many of the film's scenes included elements of violence, most of which were concentrated in the last hour.

The Complaints

Four complainants sent similar letters to the CBSC and to CFQC-TV, the CTV affiliate in Saskatoon, Saskatchewan. Two of these letters expressed "utter disgust and extreme concern" regarding the program. Their writers further stated: "I cannot see any good coming from this show and possibly, it could have some very harmful effects." The other two letters included the following assertion: "I feel this program is very evil and should not be shown or made available to children or adults for that matter."

An unrelated complaint was sent by electronic mail to the CRTC on 11 October 1996. It was, in turn, forwarded to the CBSC. The complainant's e-mail reads in part as follows:

This show reaches beyond simple sleaze shock tactics. It dramatically intermingles gory violence, death, satanism, graphic sexuality, bestiality, and pedophilia. I believe its content is

pornographic and dangerous to young and unstable minds. I did not watch the entire movie, but two scenes I did see well illustrate the problem.

In one scene a man is shown having sex with a woman, with little left to the imagination. A young child is awoken [*sic*] by the sounds and enters the room. The man turns into a devil-beast and continues with what is now a violent rape. The man is chased away by two "heroes", and is shot. One of the "heroes" ends up on top of the body, which we are shown is now just a mass of worms.

In another scene a priest is in church, and is approached by a beautiful young woman. She entices him and they begin making love. As the passion escalates the scene is suddenly intercut with the priest now wielding a large knife, and he repeatedly slashes the woman until she is dead. The sequence ends to show that the body in the priest's arms is that of a young boy child.

There were warnings about disturbing content during commercial breaks, but these only serve the broadcaster: it prevents people who should be most concerned about such trash on the public airwaves from ever seeing it; but invites those who are most vulnerable to drink it up. In the homes where the risk is greatest, the parents don't turn their children away or to bed at such messages or hours. If sober or home at all, they park their kids in front of the TV until the children send themselves to bed.

...

I am a strong proponent of free speech and artistic expression. I understand the whole good-versus-evil morality play concept that horror movies are built on, and have enjoyed some such movies myself. The images in this show though may have been fantastic, but they had little air of fantasy to them: they were too well done technically and artistically, and too powerful. Emotionally, they're too warped and too distressing. ...

...

While the larger issue of the role of the media in our community is important, it's not the heart of my current complaint. I think it is sad that this "Poltergeist" show is available to adults, but irresponsible to present it to children as CTV has done (I consider any show offered prior to midnight on a Friday or Saturday night to so qualify). This should not be seen as an issue of censorship, but of distribution; and not of taste, but caring.

The Broadcaster's Response

The Director of Programming and Communications of BBS Saskatchewan responded to the series of letters he had received from the complainants by letter dated September 30, 1996:

I am sensitive to your concerns regarding the content of this particular program. *Poltergeist: The Legacy* is a program placed on our programming schedule by the CTV Television Network. Every effort is being taken to ensure that impressionable young children do not watch this program. The program is scheduled at 10:00 pm on Saturday evenings, the latest possible hour to air a CTV program. Viewer advisories about the program subject matter are presented prior to the start of each episode and following each commercial break. I am unable to remove the program from our schedule, but I will ensure that the programming executives at the CTV Network are aware of your concerns.

The second complaint, which was received by the CBSC, was forwarded to the CTV Network. The Vice-President, Corporate Communications responded to this complaint in a letter dated October 18, 1996:

Poltergeist: The Legacy is a program intended for mature audiences. For that reason we broadcast it at 10:00pm. As you know, the Canadian Broadcast Standards Council, together with Canadian broadcasters have established 9:00pm as the "watershed" hour between family and adult programming, with adult programming only to be telecast after 9:00pm. Because of the mature themes in *Poltergeist*, CTV has scheduled it one hour later than the 9:00pm watershed.

Poltergeist: The Legacy is also preceded by viewer advisories which identify the program as one intended for adults. This gives parents the opportunity to decide whether or not they want their children to watch it. It also gives adults notice that they may want to think about whether it is a program they themselves want to watch. It is also CTV's policy not to run promotional announcements for the program prior to 9:00 pm.

Poltergeist: The Legacy focuses on the confrontation and eradication of evil and as episodic television, finishes each program with the message that good prevails over evil. While the show is an action packed series with special effects and is designed to entertain and stimulate the viewer, creative and production teams are sensitive to many social issues and viewer concerns.

The complainants were unsatisfied with these responses and requested, on October 29 and October 30, respectively, that the CBSC refer the matter to the appropriate Regional Council for adjudication. The CBSC determined that, since the programming originated with the CTV Network's office in Toronto, the matter ought to be referred to the Ontario Regional Council rather than the Prairie Regional Council.

THE DECISION

The CBSC's Ontario Regional Council considered the complaints under clauses 1, 3 and 5 of the Canadian Association of Broadcasters' *Voluntary Code Regarding Violence in Television Programming*. These clauses contain the following provisions:

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).

3.0 Scheduling

- 3.1.1 Programming which contains scenes of violence intended for adult audiences shall not be telecast before the late evening viewing period, defined as 9 pm to 6 am.
- 3.1.2 Accepting that there are older children watching television after 9 pm, broadcasters shall

adhere to the provisions of article 5.1 below (viewer advisories), enabling parents to make an informed decision as to the suitability of the programming for their family members.

...

- 3.2 Promotional material which contains scenes of violence intended for adult audiences shall not be telecast before 9 pm.

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.

Having viewed a tape of the program in question and reviewed all of the correspondence, the Ontario Regional Council finds that the program did not contain gratuitous violence or scenes which sanctioned, promoted or glamorized violence. The Council also finds that, while this program contained scenes of violence intended for adult audiences, the network has respected the scheduling provisions of the Code in this regard.

Gratuitous Violence

It is now an accepted principle that Canadian broadcasters cannot, at *any* time of the day or night, air programming which contains gratuitous violence or which “sanctions, promotes or glamorizes violence”. There has not yet, it must be admitted, been sufficient opportunity for the development of a significant body of decisions fleshing out the meaning of “gratuitous violence”. On the first occasion in which the Council considered the meaning of the term, namely, in *CITY-TV re Silence of the Lambs* (CBSC Decision 94/95-0120, August 18, 1995), the Council stated:

Gratuitous violence is defined by the Code as being “material which does not play an integral role in developing the plot, character or theme of the material as a whole.” Where, in other words, a program includes scenes of violence which are unnecessary to the progress of the story, which do not drive the plot forward, which play no role in the development or definition of the characters and are clearly serving a sensationalistic purpose, that program will be seen to contain gratuitous violence.

Programming which “sanctions, promotes or glamorizes violence” is, with the possible exception of the meaning of “sanctions”, more straightforward. While the Council understands that the verb “sanction” may have several meanings, an ordinary rule of interpretation would give it that meaning which is consistent with its accompanying verbs “promotes or glamorizes” and not a meaning which differs from those. The applicable meaning in the *Oxford English Dictionary*

would be: "2. To permit authoritatively; to authorize; in looser use, to countenance, encourage by express or implied approval." The *O.E.D.* provides a similar definition for "promote": "2. To further the growth, development, progress, or establishment (of anything); to help forward (a process or result); to further, advance, encourage." "Glamorize" is presumably a slang corruption of "glamour" and does not make it to the *O.E.D.* but we all would likely understand from the use of all three verbs *encourage*, if not *glorify*, the use of violence. The CBSC does not expect that *any* use of violence in programming will offend the Code but only that which *encourages* violence in the sense of the quoted phrase.

Subsequent decisions of the Council have refined the application and meaning of the term. In *CTV re Complex of Fear* (CBSC Decision 94/95-0022, August 18, 1995), the movie of the week told the apparently true story of a series of rapes in an apartment complex.

The Regional Council noted four rape scenes in the film. While any scene depicting rape is necessarily awful, the members remarked that no scene lasted more than several seconds, none depicted the actual rape, and none glamourized the rape. In fact, scenes following the rapes depicted the *consequences* of the rape: the shock and despair of the victims as they related the event to the police; the occasional refusal of police to accept the characterization of the event as a rape; victims' self-doubt as to blame for the occurrence; the imputed role of previous victim behaviour as a contributing factor; and so on.

In no way did these scenes encourage or glorify violence against women. While the film dealt with a form of crime that is defined by violence against women, the film itself did not depict gratuitous, or unnecessary, violence against women. In other words, the Council affirmed that a film *about* rape does not necessarily *condone* rape.

In *CIHF-TV (MITV) re an Episode of "Millennium"* (CBSC Decision 96/97-0044, February 14, 1997), the Atlantic Regional Council dealt with a program which contained scenes in which the murderer imagined slaying a stripper and in which the murderer, after cruising for male prostitutes, took a dead body from his car. That body was later shown charred and decapitated. In concluding that there was no Code violation, the Council developed the discussion of gratuitous violence in the following terms:

As in the case of *Silence of the Lambs*, the theme of this episode of *Millennium* involves a psychopathic serial killer and the attempts to put an end to his homicidal activities. While violence is central to the tale being recounted, the underlying saga is that of a former law enforcement official with psychic powers who is attempting to restructure his family life away from threats he and his family had suffered in the "backstory", *i.e.* the time prior to the beginning of the first episode of the series. Such violence as occurs in the episode is central to the plot and character of the principal protagonist. Furthermore, the scenes complained of do not generally show the occurrence of violent acts as much as they do the *results* of the violent acts and, at that, the violence is not overplayed. There is also violent *imagery* and effective editing which give rise to fear, if not terror, on the part of the viewer. These are a part of a genre which is aimed at adult audiences but which does not *per se* fall afoul of the interdiction against gratuitous violence.

In another decision of the Atlantic Regional Council, *CIHF-TV (MITV) re an Episode of "The X-Files"* (CBSC Decision 96/97-0043, February 14, 1997), that Council dealt with the question of whether *off-screen* occurrences could ever be considered scenes of violence or gratuitous violence.

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."

Despite the fact that the violence may have occurred away from the camera's eye, the Council did not conclude that the scenes of the program could thereby be viewed as being free of violence. In the case of *The X-Files*, the Council decided:

The extent to which the scenes show violent acts rather than consequences of acts, or are graphic rather than subtle, may help to determine whether or not they are *gratuitous* in their presentation. They will not, however, escape that characterization solely because they are traces of off-screen occurrences.

...

In both *Silence of the Lambs* and *Millennium*, the programs involved "a psychopathic serial killer and the attempts to put an end to his homicidal activities" and, in both cases, the Regional Councils decided that the violence was integral to the themes involved. In this matter, the episode dealt with the theme of genetics, and the program "genre" was science fiction/suspense. In this context, the subject matter and scenes were relevant and appropriate to the program. While the violence in the program clearly constitutes "scenes of violence intended for adult audiences", the Regional Council concludes that it was not gratuitous. Furthermore, CIHF-TV aired the program at 10:00 p.m., well after the watershed hour; consequently, the Regional Council members agree that the program was scheduled appropriately.

The movie *Poltergeist - The Legacy* contains many scenes with violent elements. In one scene, a woman who had been chased by an evil force was then seen following her transformation into a scarecrow. In another, a man is seen being shot and killed by his son. Some of the more graphic and disturbing scenes include that of another man being shot, eaten by maggots and instantaneously decomposing and that of a priest stabbing a woman (with whom he has previously had a love relationship) who is then transformed into a young boy child. Most of these scenes relate to a common theme, possibly not readily understood by all viewers or, indeed, Regional Council members, namely, that the evil force or poltergeist tries to tempt the protagonists or "heroes" of the program by conjuring up fond memories, which the heroes are ultimately able to resist by what appear to be isolated violent acts. Essentially, *Poltergeist - The Legacy* tells the story of the release of evil incarnate into the world of the living and the fight of one small team of humans against this evil force. The Council is of the view that the violent scenes contained in this program were integral to the development to the plot of the story and therefore not gratuitous. In addition, given that the violence in the movie is perpetrated by or against "evil incarnate", the Council does not consider that there was any glamorization of violence.

The Scheduling Issue

Although the Council concludes that there was no *gratuitous* violence in the program, it has no hesitation in finding that the program contained scenes of violence intended for adult

audiences. It follows that the watershed provision contained in the *Violence Code* must be taken into account. Subsection 3.1.1 of the *Violence Code* 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.” It is undisputed that *Poltergeist - The Legacy* was broadcast after the 9 pm watershed hour, thus rendering the airing of the program in conformity with the scheduling requirements of the *Violence Code*.

Viewer Advisories

CTV provided the Council with two versions of the logger tapes of CTV’s broadcast of the program with a letter advising the CBSC’s Secretariat of the following mishap:

During the feed which goes to our affiliated stations in Ontario, Quebec, the Maritimes and Newfoundland, we experienced a technical problem right at the top of the movie. Because of the problem, the first 30 seconds of the movie did not go to air. The missed portion of the opening included a viewer advisory. Because the East feed contains this technical foul-up, we have included for your reference one copy of our West Feed for the same program on the same night. On that tape you can see that the proper opening with the viewer advisory was telecast west of the Manitoba border.

The advisory, which was broadcast in Western Canada, appeared as an on-screen message and a voice-over of about 30 seconds. It was worded as follows: “Tonight’s movie contains subject matter that may disturb some viewers and is not suitable for children. Viewer discretion is advised.” There were no other advisories in the *first* hour of the program, although there was a full complement of advisories during the *second* hour.

The Ontario Regional Council notes the following points regarding the technical error. First, it appreciates the honesty and collaboration of the broadcaster in respect of the reporting of the inadvertent error. Second, while this decision does not turn on that error in any respect, since the complaints received relate to the Western feed of the show, the Council believes it appropriate to make the following observation regarding an inadvertent error of this type which might arise in a future decision. The wording in Section 5 of the *Violence Code* is mandatory. The language employed is “shall provide”. It follows that the defence of inadvertent error would not be available to a broadcaster even in the face of a “technical problem”. That being said, the Council considers that such a circumstance would generally give rise to a *technical* breach of the Code with respect to which the Council would be unlikely to require an on-air statement by the broadcaster.

The problem which does arise in the version of the program complained of, namely, the *Western* feed of the pilot, relates to the clear absence of advisories following the *initial* advisory at the top of the show. This constitutes a breach of subsection 5.1 of the *Violence Code*. While the Council notes that the majority of the violent scenes were concentrated in the second hour of the program and also notes that viewer advisories were provided for these upcoming scenes, the Council finds that the wording of subsection 5.1 of the *Violence Code* is unequivocal: “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. [emphasis added]”

The rationale underlying the requirement of viewer advisories is found in the background section of the Code, which states that “[...] creative freedom carries with it the responsibility of ensuring [...] that viewers have adequate information about program content to make informed viewing choices based on their personal tastes and standards.” The repetition of viewer advisories *during the course of* the first hour serves as a second, third and fourth chance for viewers to receive important information concerning the program they are considering watching, even where they may tune in late. The Code takes into account that many viewers make their viewing choices *after* the first few minutes of a program, which may result in a viewer missing an initial advisory. The Council is of the view that CTV’s approach to viewer advisories in this case, *i.e.* other than the initial advisory, providing them only in the *second* hour of the program, is insufficient for viewers and in breach of the spirit and wording of the Code.

The Council notes that this is not the first time that CTV has failed to meet the requirements of the provision pertaining to viewer advisories. The following excerpt is taken from the CBSC’s decision in *CTV re Complex of Fear* (CBSC Decision 94/95-0022, August 18, 1995) which pertained to CTV’s movie of the week which related the true story of a rapist living in an apartment complex.

While the scheduling of the film was appropriate, the Regional Council was troubled by the lack of viewer advisories, an omission which CTV had acknowledged in its response to the complainant. “Complex of Fear” clearly contained scenes intended for adult audiences and, as the “Background” section of the Code states, “creative freedom carries with it the responsibility of ensuring ... that viewers have adequate information about program content to make informed viewing choices based on their personal tastes and standards.” The total absence of viewer advisories was a breach of both the principle of the *Code*, expressed in this “Background” section, and of article 5.1 of the *Code*. As a result, the Regional Council decided against CTV on this issue.

With respect to one of the complainant’s contention that viewer advisories “only serve the broadcaster”, the Council notes its comments from its decision in *CIII-TV in re Before It’s Too Late* (CBSC Decision 95/96-0172, October 21, 1996):

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.

The Broadcaster's Response

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 finds that the broadcasters' responses were inadequate for the following reasons. First, it considers that both the network's response, as well as that of the local affiliate, was very much in the nature of a boiler plate letter with respect to the upcoming *Poltergeist* series. Second, both responses referred to the scheduling of the program at 10 pm, whereas these particular complaints concerned the program *pilot* which started at 9 pm. Third, neither response took into account the *specific* concerns expressed by the complainants. In this regard, the broadcasters did not fully meet their responsibilities.

Moreover, fourth, the Council considers that the local affiliate's response was most unhelpful to the complaints resolution process. Though the local CTV affiliate may not be responsible for the content aired during network time, it was responsible for the contact with the viewer in this case. In the Council's view, by stating that it was "unable to remove the program from [its] schedule", the affiliate aggravated rather than attenuated the viewer concerns, as it appeared to leave the complainants without recourse. The Council considers that, where a local affiliate chooses to respond to viewer complaints regarding network programming, rather than to defer to network executives, it cannot use its lack of decision-making authority as a shield.

This having been said, the Council nevertheless considers that the broadcasters' responses were not completely dismissive of the complainants' concerns and is of the view that the aforementioned inadequacies are insufficient to warrant a negative decision on the basis of broadcaster responsiveness.

CONTENT OF BROADCASTER ANNOUNCEMENT OF THE DECISION

The station is required to announce this decision forthwith, in the following terms, during prime time and, within the next thirty days, to provide confirmation of the airing of the statement to

the CBSC and to the complainants who filed Ruling Requests.

The Canadian Broadcast Standards Council has found that CTV has breached the requirement concerning the use of viewer advisories in the industry's *Violence Code*. The Council found that the pilot movie for the series *Poltergeist - The Legacy*, which aired on September 14, 1996, should have contained viewer advisories during the commercial breaks of the first hour of the film indicating that the film contained scenes of violence intended for mature audiences.

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