CANADIAN BROADCAST STANDARDS COUNCIL ONTARIO REGIONAL COUNCIL

CITY-TV re an episode of *Hard Copy*

(CBSC Decision 96/97-0055)

Decided May 8, 1997

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

THE FACTS

Hard Copy is an American public affairs program which is broadcast in Toronto by CITY-TV each weekday at 7 pm. On CITY-TV's November 11, 1996 broadcast of the show, Hard Copy included the story of a nanny who had allegedly abused the child with whose care she had been entrusted. A video evidencing the abuse was made available to the Hard Copy reporter by the child's parents who had placed a surveillance camera in their home. The resulting video footage contained scenes in which their two-year old child was hit, thrown down, spanked and bounced up and down by the nanny. The video was shown by Hard Copy first as a "teaser" for the story at the beginning of the program and then, in whole or in part, an additional 9 times during the course of the report, which lasted 3 minutes and 4 seconds. No viewer advisory preceded the report or the airing of the video.

The Complaint

The complainant wrote to the CBSC on November 13, 1996. In her letter, she stated:

I found it distressing to see the video of the child being abused but it was more disturbing that the clip was shown over and over again. The rest of the story was about how the nanny had been charged with beating the child but was now caring for another child, a 3 year old girl!

I think it is profoundly offensive that the victim of the attack was a secondary character to the abusive nanny in the story, and that pictures of the attack on the child were so relentlessly repeated. I think it devalued the child as a victim and that repeatedly playing the scene amounts to child pornography.

I believe broadcasters are responsible for the material they air and that City TV is responsible for showing a real-life violent attack on an undefended 2 year old during prime time programming.

The Broadcaster's Response

In a letter dated December 27, 1996, the Program Director of CITY-TV wrote the following:

I reviewed the tape of the program "Hard Copy" as soon as we received your letter. While I understand how you may have been offended by the video used in this story, I think it is important to look at it in context of the report. As you noted, this was a story of an abusive nanny who was videotaped by her employers who obviously allowed "Hard Copy" access to the tape. Perhaps in their zeal to expose this 'crime', the program may be guilty of having overstated their disgust and horror by showing the truly offensive behaviour of the accused nanny. In news stories, it is often a judgment call as to how to use videotaped pictures of a crime. The intent and the responsibility of the producers is to, as much as possible, provide a balanced report - by showing the nanny's story juxtaposed with the reality of her behaviour. The tape was the child's story and having listened to the report a number of times, I would reject your claim that the victim's story was neglected - it would be exploitive [sic] to try and interview such a young child or to expose a lot of private details concerning him. His case was made by the mother's statements and by the interviewer's summary that the accused was found fit to stand trial and her claim of incompetency rejected by the court.

Although I do not agree with your evaluation, I do see how this footage may have inadvertently offended you and for this I apologize. I will, of course, pass your letter on to the producers of "Hard Copy" who should be made aware of their choices.

The complainant was unsatisfied with this response and requested that the matter be referred to the Ontario Regional Council for adjudication. She also responded to the broadcaster in a letter dated February 1, 1997, which included the following passage:

As you say "it is often a judgment call as to how to use videotaped pictures of a crime". In this case, I am not questioning whether the victim's story was presented in a balanced fashion or not on "Hard Copy", I am questioning the judgement of Citytv programming to show scenes of child abuse at all. I appreciate you passing on my concerns to the producers of "Hard Copy" but in my opinion Citytv is responsible for programming choices no matter where the program originated.

THE DECISION

The CBSC's Ontario Regional Council considered the complaint under the Canadian Association of Broadcasters (CAB)'s *Voluntary Code Regarding Violence in Television Programming* as well as the Radio Television News Directors Association (RTNDA) *Code of Ethics*. The pertinent clauses read as follows:

Article 1.1, Violence Code

- 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).

Article 6, Violence Code

- 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.
- 6.2 Caution shall be used in the selection of, and repetition of, video which depicts violence.
- 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.
- 6.5 Broadcasters shall exercise particular judgment during live coverage of domestic terrorist events or civil disorders, to ensure news coverage does not become a factor in inciting additional violence.
- 6.6 While broadcasters shall not exaggerate or exploit situations of aggression, conflict or confrontation, equal care shall be taken not to sanitize the reality of the human condition.
- 6.7 Broadcasters shall refer to *The Code of Ethics* of the Radio-Television News Directors Association of Canada (RTNDA) for guidance regarding broadcast journalism in general.

Article 3, RTNDA Code of Ethics

Broadcast journalists will not sensationalize news items and will resist pressures, whether from inside or outside the broadcasting industry, to do so. They will in no way distort the news. Broadcast journalists will not edit taped interviews to distort the meaning, intent, or actual words of the interviewee.

The members of the Ontario Regional Council viewed a tape of the program in question and reviewed all of the correspondence relating to this matter. For the reasons given below, the Regional Council considers that the broadcaster is in breach of certain provisions of the *Violence Code* and the *RTNDA Code of Ethics*.

The Violence Depicted in the Video Segment

The *Hard Copy* report in question was about child abuse, more specifically about the story of a nanny who had been ordered to stand trial for the abuse she allegedly inflicted on a child entrusted in her care. Given the nature of the story, it was reasonable to expect that the program would contain scenes substantiating the abuse and likely including elements of violence. Herein lay the first contentious issue since it was contended by the complainant that video footage depicting an assault on a young child should not have been shown at all.

Given that the *first* applicable principle for the CBSC in such matters is that of freedom of expression, a conclusion contrary to that principle depends on the allegedly offending material failing one of the prohibitory provisions of the *Violence Code*. These are limited in number, particularly where the programming in question is not directed to children (defined as persons under 12). For the complainant's assertion to succeed in this case, the segment would either have to contain *gratuitous violence* or scenes which *sanction*, *promote or glamorize violence* (both prohibited by Article 1 of the *Violence Code*), on the one hand, or fall within the purview of material which is deemed inappropriate for broadcast in news and public affairs programming, on the other.

1. Gratuitous or Glamorized Violence

The meaning of gratuitous or glamorized violence was first dealt with by the CBSC in *CITY-TV re Silence of the Lambs* (CBSC Decision 94/95-0120, August 18, 1995). In that decision, 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.

As in *Silence of the Lambs*, the Council finds that the violence depicted in the video footage contained in the *Hard Copy* report was integral to *Hard Copy*'s reporting of the abusive nanny story. While, as will be seen below, the Council does not agree with the *extent* of its usage, it takes no issue with the use of the material *at all*. In other words, the CBSC does not find that the presence of the video footage was gratuitous. The Council also finds that there was clearly no glorification or glamorization of the violence depicted. The report manifested no sympathy for the actions of the allegedly abusive nanny. It focussed on the upcoming trial of the nanny and on the outrage of the community at the fact that she was being allowed to care for another young child pending her trial. Thus, on both issues, the Council finds that the violence shown in the *Hard Copy* report in question did not offend Article 1 of the *Violence Code*.

2. Violent Content in News and Public Affairs Programming

The second issue to be considered by the Council in determining whether the broadcaster acted within the parameters prescribed by the Code in airing the Hard Copy report relates to the use of discretion and appropriate editorial judgment in its public affairs programming. It is the several paragraphs of Article 6 of the Code which deal with violent content in news and public affairs programming. In the first, Article 6.1, it is generally provided that broadcasters "shall use appropriate editorial judgment in the reporting of, and the pictorial representation of, violence." An example of that "appropriate editorial judgment" is provided in Article 6.2, which stipulates that "Caution shall be used in the selection of, and repetition of, video which depicts violence." Underscoring one of the Code's fundamental concerns, namely, attention to the needs of children, Articles 6.3 and 6.4 also introduce scheduling as a consideration in the exercise of that discretion and editorial judgment. They state, respectively, 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" and "shall employ discretion in the use of explicit or graphic language..., which could disturb children and their families." [Emphasis added in all the Code citations in this paragraph.]

The foregoing restrictive or prohibitory guidelines are tempered, however, by the basic principle laid down in Article 6.6: "While broadcasters shall not exaggerate or exploit situations of aggression, conflict or confrontation, equal care shall be taken not to sanitize the reality of the human condition". [Emphasis added.] As the Ontario Regional Council stated in CTV re Canada-AM (Airborne Hazing) (CBSC Decision 94/95-0159, March 12, 1996),

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.

This does not, however, open the floodgates to *every* bit of reality which could be defined as news or every bit of every story which *ought* to be brought to the attention of the Canadian public. Elements of editorial judgment must be exercised on many levels. Since, in the first place, there are innumerable stories competing for the time available in any newscast, a story ought to be reported for reasons "beyond simply engaging the audience's attention"...

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*.

There can be no doubt that the reporting of child abuse, just like the reporting of other crimes and issues of general concern, is in the public interest and broadcasters should not be reluctant to deal with this and other controversial subjects for fear that the simple broaching of them may result in a breach of broadcast standards. The Council, therefore, rejects the complainant's contention in "questioning the judgment of Citytv programming to show scenes of child abuse at all". The Council finds that, in this case, the violence contained in the video footage broadcast as part of a *Hard Copy* report does not fall in the category of material which should not be shown at all in news and public affairs programming.

Excessive Repetition of the Video Segment

While the Council does not find the content of the video segment was such that it should not have been shown at all, it does find that the repetition of the video segment, in whole or in part, on 9 separate occasions throughout the report was disproportionate to its relevance in presenting the story. No new information was conveyed in the repetition of the video and no new perspective was provided to the story by the repeated use of the disturbing pictures generated by the hidden surveillance camera.

The issue of repetition of violent material is specifically addressed in clause 6.2 of the *Code* which states that "caution shall be used in the selection of, and *repetition of*, video which depicts violence." [Emphasis added.] The Council finds that CITY-TV failed to meet this standard in broadcasting this segment of *Hard Copy*. Moreover, the cumulative effect of the excessive repetition of the video was to distort and sensationalize the story, contrary also to the provisions of Article 3 of the *RTNDA Code of Ethics*. In this regard, the Council notes the particular relevance of the following quote taken from the CRTC's *Policy on Violence in Television Programming* (Public Notice CRTC 1996-36, 14 March 1996):

The Commission notes the concern expressed by members of the public about the depiction of violent incidents in early evening newscasts. However, given the importance of freedom of expression in the reporting of news, the Commission will not expect news stories to be rated. The Commission is confident that the Radio-Television News Directors Association's (RTNDA) Code of Ethics, the journalistic guidelines of individual broadcasters and the provisions in the CAB code on violence regarding the reporting of violence within news and

public affairs programming will ensure that violence is depicted with sensitivity, with respect for the audience, and without exploitation, exaggeration or sensationalism. The Commission also supports the measures undertaken by broadcasters to advise viewers when graphic news stories are presented. [Emphasis added.]

In CTV re News Report (Police Shooting) (CBSC Decision 94/95-0213, March 26, 1996), the Council had to deal with the presentation of video footage which showed a woman getting out of her van and being shot by California police. The Council found that CTV had sensationalized a news story by providing a "totally unnecessary pictorial representation of violence". The Council stated:

There was no fundamental relevance of this American story to Canadian viewers, nor was there *any* attempt made to establish such a link. In general terms, there was no editorial context given for the piece, for viewers in any country. Furthermore, except for the moment of the shooting, no story was even told. There had been no information on the reasons for the shooting and no details on whether the woman in question had been armed. There was neither introduction nor follow-up. The Council believes that the airing of the news item simply turned on the *availability* of the video component.

In consequence, the Council considers that the running of the news item in question constituted a totally unnecessary "pictorial representation of violence", contrary to the CAB Violence Code.

In this case, the Council also finds that the broadcaster exploited the violent video footage contained in the *Hard Copy* report. In the CTV case, the sensationalization resulted from the utter lack of necessity of even a *single* showing of the video footage. In the *Hard Copy* case, the sensationalization stems from the excessive *repetition* of the video footage.

Viewer Advisories

As is the case for the news and public affairs scheduling issues, Article 6 contains its own provision respecting viewer advisories. The Council has previously explained the general framework surrounding a broadcaster's obligation to air viewer advisories in *CIII-TV re Before It's Too Late* (CBSC Decision 95/96-0172, October 21, 1996). In that decision, the Council stated the following:

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]."

Hard Copy is a public affairs program which is broadcast at 7 pm. Accordingly, it is Article 6.3 which applies. As noted above, it provides that

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. [Emphasis added.]

In the Council's view, the subject of child abuse would be included in the non-exhaustive list of delicate subject matter contemplated in Article 6.3. Seeing violence inflicted on a child by an adult would, in the Council's view, be as traumatizing to a viewing child as stories of sexual assault or court action related to sexual crimes which are specifically stated as examples of "delicate subject matter" requiring viewer advisories. By not providing the advisory, the broadcaster has breached Article 6.3 of the Code.

The Perception of the Victim as a Secondary Character

The complainant also stated that she found it "profoundly offensive that the victim of the attack was a secondary character to the abusive nanny in the story". In her view, this "devalued the child as a victim". While the Council is sympathetic to the complainant's concern and considers it an unfortunate reflection of society that the media often pay more attention to criminals than to victims, it does not consider that there is any breach of any Code in so doing. The CBSC has frequently decided that it is up to the broadcaster to choose the story it will tell or the "angle" from which it will present a story. Once that choice is made, however, the broadcaster must fall within the parameters of the *RTNDA Code of (Journalistic) Ethics*, the *CAB Code of Ethics* and the *Violence Code* in the way it presents the story but the role and importance of the victim does not generally fall within those parameters.

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. In this case, the Council finds that the broadcaster's response was satisfactory. The Program Director of CITY-TV addressed all of the points raised by the complainant and, while it was in disagreement with the complainant, the response was courteous and understanding.

The broadcaster also indicated in its response that it would pass on the complainant's letter to the producers of *Hard Copy*, because it felt that they "should be made aware of their choices". In the Council's view, CITY-TV's undertaking to forward the complaint to *Hard Copy*'s producers was made in addition to its own response with respect to its programming. The Council does not find that the broadcaster was attempting to abdicate its responsibility to address concerns raised about programming on its station in stating

that it would pass on the complainant's letter to the producers of *Hard Copy*. Accordingly, nothing more is required of the broadcaster in this regard.

CONTENT OF THE BROADCASTER ANNOUNCEMENT

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 complainant who filed a Ruling Request.

The Canadian Broadcast Standards Council has found that CITY-TV breached provisions of the Canadian Association of Broadcasters' *Violence Code* and the Radio Television News Directors Association's *Code of (Journalistic) Ethics* in its broadcast of the program *Hard Copy* on November 11, 1996. The repetition of a video clip showing a 2-year old child being abused on 9 occasions in a 3-minute segment had the effect of sensationalizing the story in breach of the *RTNDA Code of Ethics* and the *Violence Code*. The nature of the content presented in this episode of *Hard Copy* and the early evening scheduling of the program warranted the use of a viewer advisory, which was not provided, contrary to the provisions of the *Violence Code*.

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