
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

CFPL-TV re episodes of *Hercules: The Legendary Journeys*
and *Xena: Warrior Princess*

(CBSC Decision 98/99-0306)

Decided June 17, 1999

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

THE FACTS

On February 7, 1999, beginning at 4 pm, CFPL-TV (London) aired back-to-back episodes of *Hercules: The Legendary Journeys* and *Xena: Warrior Princess*, both of which are tongue-in-cheek action-packed fantasy shows, loosely based in Greek mythology. In the particular episode of *Hercules* viewed by the Council, the legendary hero travels to a parallel universe where he meets his "evil" twin. The twin is in love with "The Empress", a provocatively dressed, ruthless and impetuous woman who likes to feel her power and who harbours a desire to conquer the world. The twin is stabbed early on in the episode, leaving the real Hercules to take his place and attempt to set things right. His efforts to do so force him to take on Aries, the God of War, in battle, to escape from a large dragon snake and to fight the Empress herself.

Not surprisingly, there are many scenes depicting violent acts in the program, but most of these are presented as acrobatic and often as humourous moments. On the few occasions in which any blood is shown, the scenes do not include the actual infliction of the wound or the physical wound itself, but rather blood on peripheral objects to suggest the wound. Examples include the filming of "blood" on a rock next to which lies the unconscious twin and, later in the show, the knife which killed the evil twin is shown covered in blood. In addition to scenes including elements of violence, there are other scenes with obvious sexual overtones and some which merely suggest sexual activity. While these scenes are often provocative, they are not graphic.

In the episode of *Xena* viewed by the Council, Xena and her friend Gabrielle travel to an unknown place which at first impression appears to be "heaven on earth". It turns out to be quite the contrary, however, as Xena discovers that "Aidan", the guardian of this peaceful world, is "sapping the goodness" from her friend Gabrielle. The unstable nature of this heaven brings out Xena's "dark side" which she struggles to suppress. As Xena's dark side emerges, old wounds reappear, her appearance changes and she has visions of Gabrielle dead. Xena must fight the powerful Aidan to free her friend and regain her old self. There are fewer fighting scenes in *Xena* than in *Hercules* but the violence depicted in *Xena* is slightly more realistic and some scenes which depict the aftermath of violence, whether actual or in flashbacks, could be characterized as disturbing to young children.

Both programs were rated PG by the broadcaster.

The Letter of Complaint

On February 8, a viewer wrote to CFPL-TV stating that:

In our daily routine TV has become quite an issue of discussion over the last number of months, resulting in our acquiring a new wing-ding TV with VCR built in and rabbit-ear antennae. But with crystal clear colour it becomes clear to me just how shoddy the programming is in this fair city. Your station, being of the venerable Blackburn Vintage with host GM Fair-thee-well fellow, Bill Brady and all, bears singular responsibility for presenting good, fair, wholesome news, and family viewing, and I might add, timely community news events, which you do so very very well.

Now let's take yesterday, Sunday, as an example! My son and I watched first *Hercules*, and then *Xena*, running from approximately 4 pm to well past 6 pm conflicting directly with the 'wholesome' Disney hour. The usual, ups and downs of family life, boy and dad (Chevy Chase out camping, parodying Indian Tribal customs, head dresses Tomahawk et al.). Then my boy, remote in hand, flips to Xena. Contrast!! I have summarized this as well as I could, and I was not able to capture it perfectly:

HERCULES: warrior tough guy with Empress queen all in short short crimson, thick lips & made up. Lying in bed, tongue... Rolling with sweaty swarthy god friend of Herc, Venus??, but still under covers, panting and saying again, again. She (wore) only the barest of crimson body corset, down to hip bone only. Then in quick succession, 1/2 second shot of crotch from feet upward. Nothing but thighs and a dark V to be seen. Then a shot from behind, low between her ankles, bearded guy on the floor with Viking cap, looking up into... More panting. Then a sword, then back to cool hand Herc "I always consider this to the cross-roads of my life". In castle passageways. Sparks fly. Somebody teleports through wall, lands on back, (not Herc always on his feet)... On and [on] it goes!!

Then comes XENA: Big come-on first. No credits, no information only cool hand Lukes!! Horse mounted no saddle, and Gabrielle, her girl in tow!

Xena, warrior princess, with companion Gabrielle, visit a meditation guru in 'Tibetan castle with circular stone window opening on snow capped peak'. He muses and ruses about inner strength, the world in palm of your hand and 'Poof' there it telematerializes... Next a scene in the grass, Xena's companion and she awakens, round thigh, a head, then toes, then armour

and shields and leather. (A perfect 69?) Awakening normal conversation. Next scene a gash high in the thigh blood, no puss, she sews herself up, no sound only grim determination. Gabrielle winces and looks on... Then a drop of blood on the foot sole. Grim conversation... Next to a warm mineral bath, just the two women, a gentle shoulder massage while they plot war strategy. Next: The Guru intones "Will you stay the night?" "I guess we could" from hesitant Gabrielle. Soon back to blood it goes back and forth. Then suddenly an enormous burst of flame from Xena's mouth, huge conflagration, "Take that you..." Auschwitz? Quickly next a tunnel of death with no light as consolation. (At least Herc's tunnel has light). A fading scream, a throw, a low mean moan (not miss a beat, what a great treat. With horses and violence and leather and thighs.

Then suddenly it hits me: "What is going on here? These programs are insidious"!! Greek myths, as you know, are violent, very very violent. But S&M for kids? On Prime Sunday afternoon children's time... Do I need to elaborate further? Ok I will!

...

Clash! Spinning clashing circular knives, crash of swords, not even groan but oh what a moan, then on her feet and away on high and off with his head and high in the sky. Another splash, and thundering chill and my oh my... Why oh why? Children's stuff? My Ass!!

...

Flash back time: Turquoise lightning blitz! A mummied [sic] woman lies on the ground. Bound and gagged, one second. A while later repeat. This time a wounded ankle. Flash to the hammer held high in the sky, just about to strike on a spike pressed into the ankle, raw flesh!! 1 second long. (Porn Images Here!!)

One hour later after son's bedtime: I come upstairs my son, after going to bed, but now in our room in a sleeping bag by our bedside, is being cradled in my wife's comforting arms, sobbing: "Mommy I just want to die. I just want to die... Just take a knife and put through me (meaning my heart) so I can die." Both are sobbing, clutching each other. Then wife says, almost desperately:

"Honey I couldn't live without you. I couldn't."

"No. Mommy, I want to die." Says my son

"No, I mean that, honey, I couldn't I really couldn't live without you."

Silence.

The Broadcaster's Response

The Program and Promotion Manager at CFPL replied to the complainant on March 2, 1999 with the following:

I am writing in reponse to your letter of February 8 ... regarding your concerns about two programs we aired on Sunday, February 7, 1999 at 4pm and 5pm, Hercules and Xena, respectively. I am also in receipt of notification from the CRTC and CBSC that they too are in possession of this same correspondance.

As we discussed in some detail during our face to face meeting, on Monday, February 8, 1999, The New PL takes the issues surrounding violence and sexuality on television very seriously. Our expressed mandate is to provide a broad cross-section of programming

material specifically catering to the viewing wishes of the residents of Southwestern Ontario. In our selection process, we strictly adhere to the CAB Voluntary Code Regarding Violence in Television Programming and the CAB Sex Role Portrayal Code, guidelines recognized by both the CRTC and the CBSC. Using these national codes as our base, however, we scrutinize our programming further to take into consideration the unique sensitivities of our broadcast region to ensure that every effort is made to deliver the best possible service to our viewers. In addition, we also support the Canadian program classification system prepared by the Action Group on Violence on Television (AGVOT). Our program philosophy combines recognition of community sensitivities with providing viewers a clear advance understanding of program content. We are confident that sharing the responsibility for program content with the community, by allowing individuals to make informed choices, will lead to us successfully fulfilling our mandate. Your raising these concerns with us is also part of this same process.

If I may sum up your letter, you feel strongly that *Hercules* and *Xena* are too violent and sexually explicit to be aired in the afternoon. You go as far as to say these programs are specifically directed at young children and pose the rhetorical question, "S&M for kids?" In fact, it is our assertion that both these programs are meant for an audience consisting primarily of older children, teens and adults. For this reason, we schedule them in late afternoon, when this target group is available, as opposed to earlier in the day. *Hercules* and *Xena* merge storylines and characters from mythology, history and present day actuality to create clearly fictional action/adventure programming. We provide a PG AGVOT rating at the beginning of each program (during the first fifteen to twenty seconds) indicating parental guidance should be exercised because they do contain some conflict, aggression and inferred sexuality, and also because the complexity of the themes and storylines may possibly confuse young viewers and require interpretation. The definition of the PG AGVOT is quoted herein:

"This programming, while intended for a general audience, may not be suitable for younger children (under the age of 8). Parents/guardians should be aware that there might be content elements which some could consider inappropriate for unsupervised viewing by children in the 8-13 age range." The guidelines go on to state: "Any depiction of conflict and/or aggression will be limited and moderate; it might include physical, fantasy, or supernatural violence. Any such depictions should not be pervasive, and must be justified within the context of theme, storyline or character development."

Recognizing the content in these two programs, and with this advisory in place, both *Hercules* and *Xena* are appropriate for airplay late Sunday afternoon, a prime family viewing period. I have screened the two episodes you have specifically identified and find the content consistent with those aired previously. The programs are produced with very high standards, both in the writing and production, which is reflected in the over eighty thousand viewers that watch the shows, each week. While I respect your personal objections to *Hercules* and *Xena*, we feel the handful of complaints received to date does not justify denying this substantial audience the opportunity to watch the shows at a time they find convenient.

As you can see by my response, we strongly endorse and promote the monitoring of children's viewing habits by parents and guardians. In your letter you indicate you viewed both these programs with your son and I commend you for this effort. To assist you in future viewing, I have enclosed an excerpt from the Broadcaster's AGVOT Manual that may assist you in the interpretation of ratings you are seeing on Canadian English-Language television programming services. You have also indicated your desire to pursue studies on the issues of overt violence and sexuality in society. During our discussion, I informed you of our support of media literacy and suggested you might, as a starting point, contact two independent

organizations we provide funding to, the Jesuit Communications Project and the Association for Media Literacy of Ontario. I understand from Father John Pungente, who heads up the JCP, that you have been in touch with him and he has been of some assistance.

Mr. ..., I trust I have clearly conveyed our rationale for airing these two programs on The New PL. I also hope you have been convinced of our commitment to provide programming which reflects this community's standards of acceptability and accessibility. We heavily promote ourselves as being responsive to viewers and are firm in the belief that listening to concerns such as yours can only lead to continual improvement in programming. Thank you for taking time to raise this matter with us. If you require clarification or wish to discuss it further, please feel free to write me.

The Ruling Request and Additional Correspondence

The complainant was unsatisfied with the broadcaster's response and requested, on March 15, that the CBSC refer the matter to the appropriate Regional Council for adjudication. He also sent in petitions supporting his complaint. In response, numerous pieces of correspondence from viewers supporting the broadcaster's position were sent in by CFPL-TV.

While the Council recognizes the polemic created by this complaint and its write-up in *The London Free Press*, the Council wishes to affirm that the mandate of the CBSC does not involve the question of counting heads. A single complainant is entitled to have his or her serious and fresh concern adjudicated. The outcome will be assessed on the merits of the complaint, not on the basis of the number of voices complaining. One would be as entitled to expect that hundreds of complainants on an issue will not render a broadcaster *wrong* on the basis of numbers alone. The opposite proposition would render CBSC decisions sophisticated *polls*. That would, of course, have the effect of rendering the standards established in the Codes valueless.

There is, moreover, significant danger to a genuinely free and democratic society in solely counting heads to arrive at decisions of right and wrong. To make decisions on that basis would always put minorities at risk. One of the principal purposes of the *Charter of Rights and Freedoms* is to ensure that no Canadian will be dealt with in disregard of his or her rights. Thus, the rights of individuals are established on the basis of *principle* and not numbers. The broadcaster Codes have been created to operate on the same basis.

THE DECISION

The CBSC's Ontario Regional Council considered the complaint under the *Voluntary Code Regarding Violence in Television Programming* and the *Sex-Role Portrayal Code for Radio and Television Programming*. The relevant clauses of those Codes read as follows:

Violence Code, Clause 1 (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).

Violence Code, Clause 3 (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.

Violence Code, Clause 4 (Classification)

Canadian broadcasters are in the process of co-operatively developing with other segments of the industry, a viewer-friendly classification system, which will provide guidelines on content and the intended audience for programming.

Once complete, the classification system shall complement this Voluntary Code. As it is recognized that a classification system will have a bearing on program scheduling, the provisions of article 3.0 above shall be reviewed at that time.

Violence Code, Clause 5 (Viewer Advisories)

- 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.

Sex-Role Portrayal Code, Clause 4 (Exploitation)

Television and radio programming shall refrain from the exploitation of women, men and children. Negative or degrading comments on the role and nature of women, men or children in society shall be avoided. Modes of dress, camera focus on areas of the body and similar modes of portrayal should not be degrading to either sex. The sexualization of children through dress or behaviour is not acceptable.

Guidance: "Sex-ploitation" through dress is one area in which the sexes have traditionally differed, with more women portrayed in scant clothing and alluring postures.

The Ontario Regional Council members viewed tapes of the programs in question and reviewed all of the correspondence. While the Council considers that the scheduling and rating of the programs were appropriate and in accordance with the requirements of the *Violence Code*, it finds that the programs contained scenes of violence not suitable for children. The broadcaster was thus required to include viewer advisories to that effect. By

failing to provide such advisories, the broadcaster breached Clause 5.2 of the *Violence Code*.

The Content of the Programs

Hercules and *Xena* are action/adventure fantasy programs which have a common theme: the fight against Evil (whatever form that may take in each episode). Not surprisingly, given the theme, the programs contain many scenes of fighting and all out battles. The Council notes, however, that, generally, the fighting is portrayed as more acrobatic than violent in these shows and the results of the violence are more suggested than graphic.

Contrary to the complainant's apparent position, the Council does not consider these programs to constitute children's programming. This is supported by the fact that the programs were assigned a PG rating by the broadcaster. Accordingly, by indicating that these programs are not intended for a broad general audience, the broadcaster effectively puts parents on guard "that there might be content elements which some would consider inappropriate for unsupervised viewing by children in the 8-13 age range." Incidentally, even though it was not raised in the complaint, the Council considers that the PG rating is the appropriate rating for these programs. The violence guidelines for that rating indicated that the program "might include physical, fantasy or supernatural violence" and this accurately describes the type of violence contained in *Hercules* and *Xena*.

In addition to concerns regarding the violent content of the programs, the complainant also took issue with the sexual content of the programs. While the Council did not find that the programs contained "Porn Images" and "S&M" as alleged by the complainant, it did find that many scenes were sexually charged, that is to say contained what for teens and adults was sexual innuendo and suggested sexual activity. But, as indicated above, the Council notes that the sex in these programs was more suggestive than explicit.

The Scheduling Issue

By concluding that the scenes of violence were adequately covered by the PG rating, the Council also effectively concludes that none of the scenes of violence were "intended for adult audiences" thereby triggering the scheduling provision of the Code. In *CKCO-TV re Kazan* (CBSC Decision 96/97-0226, February 20, 1998), the Ontario Regional Council laid down some criteria which may be helpful in determining whether scenes of violence are "intended for adult audiences". That decision concerned a Sunday matinee movie which told the story of a canine (part dog/part wolf) named Kazan whose personal 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 himself. While the complaint principally related to the issue of cruelty to animals, the Ontario Regional Council considered the full gamut of the violence in

the film in order to determine whether those scenes of violence could be described as “intended for adult audiences”. The Council concluded that they were not.

The Council 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 *Before It's Too Late* and in the episode of *Matrix* considered by the Council. While it is difficult to propose any cut-and-dried formula to apply in coming to any such conclusion, the Council 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 Council notes that the scenes of violence in the movie *Kazan* were short and often obscured to limit their scariness. The Council finds that, overall, the movie was very tame; in the Council'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 Council is comfortable with CKCO-TV's scheduling of the movie *Kazan* at 1 p.m.

In *TQS re the movie L'inconnu* (CBSC Decision 98/99-0176, June 23, 1999), the Council had no hesitation in concluding that the combined elements of fear, suspense, gore and explicitness, referred to in the *Kazan* decision, were present in some of the scenes included in a movie about a woman psychiatrist who becomes intimately involved with a mysterious stranger and that the presence of these elements, in combination with the overall suspenseful and frightening nature of the movie, rendered the scenes as “intended for adult audiences”. It further stated with respect to the sexual content of the movie:

The Council also considers that some of the erotic scenes, in particular the very first sex scene which depicts “rough” lovemaking, come within the purview of what would generally be considered as material “intended for adult audiences”. In *CITY-TV re Ed the Sock* (CBSC Decision 94/95-0100, August 23, 1995) and in *CFMT-TV re an Episode of “The Simpsons”* (CBSC Decision 94/95-0082, August 18, 1995), among others, the CBSC has noted that broadcasters have tended, over the five years in which they have been adhering to the *CAB Violence Code*, to apply the watershed hour principle not only to programming containing *violent* material but also to programming containing other kinds of material deemed by the broadcaster itself to be more suitable for mature audiences. The same can also be said in regard to the provision of viewer advisories and classification issues.

The Council concluded in that decision that

the movie should not have been broadcast in a pre-watershed time period. Accordingly, the Council concludes that the broadcaster is in violation of Clause 3.1 of the *Violence Code* which 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.”

The Council does not find that any of the scenes, whether violent or sexual, included in *Hercules* and *Xena* can be characterized as having been “intended for adult audiences” and therefore requiring that the programs not be shown prior to 9 pm, the watershed hour set out in Clause 3 of the *Violence Code*.

With respect to the complainant's contention that late weekend afternoons are prime children's viewing times, the Council notes, as it did in *CFMT-TV re an Episode of "The Simpsons"* (CBSC Decision 94/95-0082, August 18, 1995), that material broadcast outside of the late viewing hours falls within "the rich broadcasting fare" and "should be vetted by parents as to its suitability in their homes."

Viewer Advisories

While the Council has concluded above that the scheduling of the programs in question by the broadcaster was appropriate and in accordance with the requirements of the *Violence Code*, the matter does not end there for it must apply a different test to the issue of whether viewer advisories should have been provided. The test for determining whether advisories are required differs depending on whether the program in question was broadcast in a pre- or post-watershed environment. In the post-watershed environment, the test is the same as described above, i.e. whether the program contained scenes of violence intended for adult audiences." In the pre-watershed environment, however, the threshold for requiring viewer advisories is much lower; a program must merely contain "scenes of violence not suitable for children."

Only three decisions so far have dealt with Clause 5.2. In the first of these three, namely *CIII-TV (Global Television) re Before It's Too Late* (CBSC Decision 95/96-0172, October 21, 1996), the Council dealt with a program sponsored and produced by World Wildlife Fund Canada (WWF) which, according to the complainant, contained "grotesque scenes" which "depicted scenes of tortured animals, describing the details of torture". The Council distinguished the various provisions in the *Violence Code* relating to viewer advisories and warnings (such as would be included in news and public affairs programming containing scenes of violence) concluded that, although the program was broadcast pre-watershed, Clause 5.2 did not apply in this case.

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 *TQS re the movie L'inconnu* (CBSC Decision 98/99-0176, June 23, 1999), the Council concluded that TQS had violated clause 5.2 of the *Violence Code* by broadcasting a psychological suspense/thriller about a woman psychiatrist who becomes intimately involved with a mysterious stranger at 7:30 pm without providing sufficient viewer

advisories as to the movie's content. In that case, though, the Quebec Regional Council did not have to determine whether the program was "unsuitable for children" given that it had already concluded that indirectly by determining that the movie contained scenes of violence and sexuality intended for adult audiences, the higher threshold established in the *Violence Code* for scheduling requirements and the presentation of advisories for programming broadcast after the watershed hour.

The most relevant decision here is *TQS re an episode of Coroner* (CBSC Decision 98/99-0162, June 23, 1999) in which the Quebec Regional Council dealt with an episode of *Coroner*, a program which allegedly dramatises real case files of a city coroner. The episode in question, which was broadcast at 7:30 p.m., dealt with the death of a man who was involved in sado-masochistic practices. The Council applied the "unsuitable for children" test and concluded that an advisory as to the content of the program was not necessary in that case. It stated:

While the broadcaster did not provide any information as to the violent or sexual content of the *Coroner* episode in question, the Council notes that, in the circumstances, it was not required to do so. In the Council's view, the violent and sexual component of the episode was *suggested* rather than manifest or blatant and that, consequently, the broadcast in question did not trigger the application of Clause 5.2 of the *Violence Code*, which requires that "broadcasters ... 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".

In this case, the Council finds that some of the scenes of violence contained in *Xena: Warrior Princess*, especially the scenes of Xena stitching up a large wound on her leg, of the "visions" of Gabrielle's death and of the people on crosses, or Xena's battle with Aidan and his rapid decomposition when pierced by Xena's sword, were unsuitable for children and a viewer advisory should have been provided to that effect. By failing to provide any advisories, CFPL-TV has breached Clause 5.2 of the *Violence Code*.

The Council does not find that any of the scenes in *Hercules* trigger the application of Clause 5.2.

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 considers that the broadcaster's response addressed at considerable length and with much thoughtfulness all of the issues raised by the complainant. Moreover, the broadcaster had arranged a face-to-face meeting to canvass the complainant's concerns. Consequently, the broadcaster has amply satisfied the Council's standard of responsiveness. Nothing more is required.

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 complainants who filed a Ruling Request.

The Canadian Broadcast Standards Council has found that CFPL-TV has breached a provision of the Canadian Association of Broadcaster's *Violence Code* in its broadcast of the program *Xena: Warrior Princess* on February 7, 1999. In the Council's view, the episode contained scenes of violence unsuitable for children, which necessitated the inclusion of a viewer advisory to that effect. By failing to include such an advisory, CFPL-TV has breached the requirement set out in Clause 5.2 of the *Violence Code*.

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