
**CANADIAN BROADCAST STANDARDS COUNCIL
NATIONAL CONVENTIONAL TELEVISION PANEL**

Global re *ReGenesis* (“Baby Bomb”)

(CBSC Decision 04/05-1996)

Decided January 20, 2006

R. Cohen (Chair), S. Gouin (Vice-Chair), B. Culbert, M. Hogarth,
J. Macdonald, C. Murray

THE FACTS

ReGenesis is a dramatic program that focuses on the activities of a fictional organization called NorBAC, which was established to investigate questionable advances in biotechnology. The premiere episode of the program, which follows the personal and professional lives of Chief Scientist Dr. David Sandström and his colleagues, was entitled “Baby Bomb”. In it, the NorBAC team tried to identify and contain a deadly virus that had killed a number of people and appeared to be spreading to Toronto. A sub-plot involved David trying to cope with the unexpected arrival of his teenage daughter, Lilith, who had been living with her mother.

The episode contained scenes of sexual activity, coarse language, as well as violence and injury. A viewer, who had seen the episode broadcast by Global Edmonton (CITV-TV) on August 29, 2005 from 8:00 to 9:00 pm, filed a complaint that same day. She wrote that the nudity and sexual content in the program were inappropriate for broadcast during the early evening, since, at that hour, the program was easily accessible to children. In her brief description (the full text of all correspondence can be found in the Appendix), she wrote:

This is regarding NUDITY on this program too early in the evening; easy access for children. My children had to witness sexual intercourse and nudity on *ReGenesis*.

The one scene that specifically concerned the complainant occurred approximately four minutes into the program. When Lilith entered her father’s

apartment and called out, no-one replied. Lilith then went to the bedroom where she saw, from the back, a naked woman straddling her father in bed. Her reaction: "That is so disturbing." The audience then saw the naked woman's surprised face as she covered her breasts with her hands (although the breasts were not visible to television viewers). David pushed the woman off him and got up to talk to his daughter. There were no other scenes of nudity or sexual activity in the episode.

Although not mentioned by the complainant, the episode also contained a few scenes of violence and injury. In the first, near the beginning of the program, David was struck by a car as he walked across the street. He was shown lying on the ground, with a close-up of his bleeding temple. Given the nature of the program, although there were no other scenes of violence or impact, there were scenes of physical or medical trauma in a medical or scientific context. In one such example, the NorBAC team examined a young male patient suffering from the mysterious virus. The boy had bloody pox marks on his face and, when a nurse turned him over, the viewer saw that his back was covered with blood, which had also pooled on the bed. In another scene, one of the NorBAC officials was visiting the scene of a fire at a diner. She looked on at the body of a dead woman with blood on her forehead as a police officer zipped it into a body bag.

There were also examples of coarse language in the episode. On three occasions, the expression "fucked up" was muted, but in one other instance the word "fuck" was left unmuted. The episode also contained a few unedited utterances of the words "shit" and "bullshit".

The episode was rated 14+ and featured the following viewer advisory at the beginning and coming out of every commercial break:

The following program contains coarse language. Viewer discretion is advised.

Global responded to the complainant on September 21, explaining their programming decisions. They also acknowledged that the viewer advisory did not sufficiently cover all aspects of the program. The relevant portions of their letter are as follows:

In your letter, you refer to nudity and sexual activity in this episode that you found inappropriate. Let me begin by saying that as responsible broadcasters, we are sensitive to the members of our viewing audience, and we apologize if this program has offended you. I assure that it is neither Global's nor the producer's intention to do so.

We recognize that this series may not suit everyone's taste. Under the *Broadcasting Act*, Canadian broadcasters are required to provide a broad spectrum of entertainment and information programming for "men, women and children of all ages, interests and tastes." Television programming is required to be diverse and appealing to a wide variety of audiences and what one viewer might consider an interesting or amusing program might lead another to turn the channel.

We aim to please a wide range of viewers with varied tastes. Global Television adheres to the television rating system created by the Canadian Association of Broadcasters (CAB) and the Action Group on Violence on Television (AGVOT). This public rating system is intended to advise viewers of a program's content in order to allow you the viewer to determine a program's suitability for your own viewing needs. As required, an on-screen key airs for the first fifteen seconds of the program and the matching V-Chip data is encoded into our transmission for the entire duration of the program. This program aired with an AGVOT of 14+ - suitable for viewers 14 years of age and older. Programming within this classification abides by the following guidelines:

"may include scenes of nudity and/or sexual activity within the context of the narrative or theme and/or language that may include strong or frequent use of profanity."

We also aired the following viewer discretion advisory at the beginning of the episode and coming out of each break.

"The following program contains coarse language. Viewer Discretion is advised."

After our review, we realize that the advisory was insufficient. As a result, we have implemented a procedure whereby each episode will be screened and given the appropriate advisory.

You, the viewer, are the valued customer. As such, we strive to ensure you will continue to watch our programming. We appreciate open dialogue with our audience, and thank you for your letter.

The complainant submitted her Ruling Request on September 27 and indicated her dissatisfaction with Global's response. In particular, she emphasized that programs with nudity should only be shown after 9:00 pm.

THE DECISION

The National Conventional Television Panel examined the complaint under the following provisions of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* and the *CAB Voluntary Code Regarding Violence in Television Programming*.

CAB Code of Ethics, Clause 10 - Television Broadcasting (Scheduling)

- a) Programming which contains sexually explicit material or coarse or offensive language intended for adult audiences shall not be telecast before the late viewing period, defined as 9 pm to 6 am. Broadcasters shall refer to the *Voluntary Code Regarding Violence in Television Programming* for provisions relating to the scheduling of programming containing depictions of violence.

CAB Code of Ethics, Clause 11 – Viewer Advisories

To assist consumers in making their viewing choices, when programming includes mature subject matter or scenes with nudity, sexually explicit material, coarse or offensive language, or other material susceptible of offending viewers, broadcasters shall provide a viewer advisory

- a) at the beginning of, and after every commercial break during the first hour of programming telecast in late viewing hours which contains such material which is intended for adult audiences, or
- b) at the beginning of, and after every commercial break during programming telecast outside of late viewing hours which contains such material which is not suitable for children.

Suggested language for suitable viewer advisories is outlined in Appendix A. The suggestions are meant as possible illustrations; broadcasters are encouraged to adopt wording which is likeliest to provide viewers with the most relevant and useful information regarding the programming to which it applies.

CAB Violence Code, Article 3.0 – Scheduling

3.1 Programming

- 3.1.1 Programming which contains scenes of violence intended for adult audiences shall not be telecast before the late evening viewing period, defined as 9 pm to 6 am.

CAB Violence Code, Article 4.0 – Classification, AGVOT's Classification System for English-language Broadcasters

14+ -- Over 14 Years

Descriptive

Programming with this classification contains themes or content elements which might not be suitable for viewers under the age of 14. Parents are strongly cautioned to exercise discretion in permitting viewing by pre-teens and early teens without parent/guardian supervision, as programming with this classification could deal with mature themes and societal issues in a realistic fashion.

Violence Guidelines

- while violence could be one of the dominant elements of the storyline, it must be integral to the development of plot or character.
- might contain intense scenes of violence

Other Content Guidelines

- Language: - could possibly include strong or frequent use of profanity
 Sex/Nudity: - might include scenes of nudity and/or sexual activity within the context of narrative or theme

The National Conventional Television Panel Adjudicators viewed a tape of the program and examined all correspondence. The Panel concludes that the broadcaster is in violation of Clauses 10 and 11 of the *CAB Code of Ethics* but not of Article 3 of the *CAB Violence Code*.

Nudity on Television

The complainant was concerned by both nudity and sexuality, which the Panel will treat separately, as it considers that the issues differ in nature. In a decision that will be discussed again below under the Coarse Language heading, namely, *WTN re the movie Wildcats* (CBSC Decision 00/01-0964, January 16, 2002), there were two scenes involving male and female nudity (in a 4:00 pm broadcast). In one, frontal male nudity was shown as a football team changed in the locker room. In another, a woman was seen lying naked in a bathtub. The National Specialty Services Panel did not find that the nudity was problematic since it was not paired with sexual activity, was relatively brief, and presented in a humorous context.

In an admittedly more extreme example, namely, *TQS re Strip Tease* (CBSC Decision 98/99-0441, February 21, 2000), the theatrical motion picture contained some scenes of strip tease performances during which bare breasts were in plain view. The Quebec Regional Panel did not find that the broadcast of the program at 8:00 pm violated the scheduling provisions the Code. Referring to previous decisions where the Panel had had to deal with sexual content, the Panel stated

that, in the case of the film *Strip Tease*, the showing of the bare breasts of Demi Moore or the other dancers was in no way comparable to the erotic matter in *Été sensuel*, much less that in *L'inconnu*. While acknowledging that the showing of bare breasts on strip tease dancers was intended by the filmmaker to be sexual, the Council considers that the absence of sexual contact or lovemaking in the film rendered it, to all intents and purposes, sufficiently innocent that there would not even be a requirement that its broadcast occur only in a post-watershed time frame. Moreover, by airing the film in a family-viewing period (at 8:00 p.m.) with appropriate advisories and the rating icon [...], the broadcaster had provided sufficient opportunity for those who might prefer not to see the film or not to have it available for their families to make that choice.

In short, it is not the view of the Panel that nudity alone is problematic before the Watershed. The Panel finds no breach of Clause 10 of the *CAB Code of Ethics* on that account.

Sexual Activity and the Watershed

CBSC Panels have established a line of precedents on this issue which are quite clear and, therefore, relatively easy to follow, although not scientific or mathematical in their application. They begin with the principle that there is no

inherent difficulty with the depiction of healthy sexual activity on television. When, therefore, is there a potential problem? The answer to that is dependent on two matters: first, timing; and, second, the nature of the activity depicted.

First, then, the timing issue, the mathematical element. Before the Watershed (9:00 pm – 6:00 am), the CBSC considers that it is inappropriate to show sexual activity that is intended for adult eyes and minds. There is, in the pre-Watershed period, a run of 15 hours (a strong majority of the broadcast day and about 90% of our customary waking hours), during which broadcasters offer their audiences a *safe haven*, namely, a period in which their television viewing can be free of adult-oriented material, whether sexual or otherwise. There may still, in that time frame, be programming that some parents will not wish their families to see (all adults should make the effort to weigh the appropriateness of all kinds of programming for themselves and their children) but it will not be due to its exclusively adult orientation. And even *in* the pre-Watershed period, broadcasters advise their audiences of the nature of what is to come.

That programming which includes sexual content that is more adult in its orientation is, on *that* account, properly run in the post-Watershed broadcast framework. Inappropriate by its nature for the safe haven, it must be shown in a time slot that Canadians know, going in, is likely to include mature themes, whether visual or psychological.

What, then, is the nature of sexual content that is adult-oriented? The issues are explicitness and intensity. In general, CBSC Panels have seen the former criterion as associated in part with the combination of nudity and sexual activity. In *TQS re an episode of the program Faut le voir pour le croire* (CBSC Decision 99/00-0460 and 00/01-0123, August 29, 2000), for example, the sexual activity portrayed

was clearly of a nature intended for adult audiences. The practice of cunnilingus, the love-making in the clandestine circumstances of a parking garage on the hood of a car, the sexual interlude in an elevator, these are all activities which may not be problematic in the context of adult audiences but are entirely inappropriate, as the complainant states, for children.

It was, in other words, explicit. The Quebec Regional Panel addressed a similar situation in *TQS re the program 2000 ans de bogues* (CBSC Decisions 99/00-0116 and -0345, August 29, 2000). The Panel again found the content explicit; it described it as follows:

Among other things, despite the fact that they were run at double speed and digital pixillation had concealed the actors' genitalia, the sexual acts during the pornography segment were excessive. Moreover, in distinct contrast to the film *Strip Tease*, the scenes of nudity in this case are presented in an overwhelmingly erotic context, namely, in one part of the episode, during the making of a pornographic film. In *2000 ans de bogues*, not only are we able to see the actresses' bare breasts, we are also able to see them engaging in explicitly

sexual acts. The Council has no doubt that such scenes belong to the category of programming considered to be “intended for adult audiences”

In *CTV re W-FIVE (Swingers)* (CBSC Decision 99/00-0347, February 14, 2001), the Atlantic Regional Panel considered a complaint about a segment dedicated to the “swinging” lifestyle which appeared at 8:30 pm in Halifax. The sexual issue was a little different. While there was no actual depiction of either intercourse, cunnilingus, fellatio or the equivalent, preliminary steps to such acts were shown. The link was clearly present, despite the absence of consummation.

Here, the bare breasts and buttocks were displayed precisely because they were related to sexual activity. In fact the discussion of that activity by third parties and by the very participants made it clear that this link was intended. [...] The Panel does not consider that it is necessary that the purpose of the show’s producer is to titillate. It suffices that the link between nudity and sexual activity is sufficiently established.

In *Showcase Television re the movie Rats* (CBSC Decision 99/00-0772, August 23, 2001), although there was no nudity, there was explicit sexual activity and the issue of duration was noted.

[I]t is sexual activity and not nudity that drives the “adult” characterization. It is entirely clear that a scene may be sufficiently sexually explicit without nudity that it ought to be accessible to adults to the exclusion of younger family members. The Panel considers that the second love-making scene in *Rats*, which lasted for 1 minute and 25 seconds, falls into that category. It is not merely a romantic encounter or suggestive. It is erotic, actively demonstrative, extended, and climactic. It is inappropriate for airing at 7 pm.

On the other extreme, the Panel refers to *Bravo! re the film The House of the Spirits* (CBSC Decision 00/01-0738, January 16, 2002), which dealt with a dramatic film with more than one scene of sexual activity. In the most significant of these, a nude man and woman were seen through a sheer curtain engaging in sexual activity. The scene lasted a minute and a half. Acknowledging the scene’s “mature cast”, the National Specialty Services Panel determined that neither it nor any of the other (less revealing) scenes were “so extreme as to be classified as viewable by only adult audiences.”

In the matter at hand, the Panel is divided. While there is some nudity, none of it is frontal and neither breasts nor genitalia (male or female) are shown. Wandering through her father’s apartment when no-one had greeted her at the door, David’s teenage daughter happens on her father and his lover in a sexual scene that is 16 seconds long from start to finish, from the first moan and a back view to the expository and concluding dialogue between Lilith, David and his girlfriend. In other words, the sexual component in the scene is fleeting and not intense, being as much denouement as exposition. Nonetheless, the Panel is split on the interpretation. Adjudicators B. Culbert, M. Hogarth and C. Murray would consider that it is sufficiently explicit to constitute post-Watershed material,

while R. Cohen, S. Gouin and J. Macdonald consider that it is sufficiently un-explicit to play pre-Watershed. For the latter Adjudicators, there is a qualitative similarity to the decision in *House of the Spirits*, although quantitatively speaking, the scene in the present file is materially shorter. There being an even split on the issue, there can be no conclusion that the broadcaster has breached Clause 10 of the *CAB Code of Ethics*.

Coarse Language and the Watershed

This issue is far more mathematical. The CBSC Panels have consistently (with but a single exception not pertinent to the matter at hand) concluded that the f-word and its derivatives cannot be broadcast on a pre-Watershed basis. Correspondingly, the retention of one of those words relegates a television broadcast to the post-Watershed period. In a decision quite similar to the matter at hand, namely, *WTN re the movie Wildcats* (CBSC Decision 00/01-0964, January 16, 2002), the movie contained examples of the word “fuck” and a derivative, most of which had been muted. As in that broadcast, in the program under consideration here, three usages were bleeped and a single one remained. The conclusions of the National Specialty Services Panel appertain.

In such circumstances, WTN had two options: either edit all instances of these words or air the film post-Watershed in the originating time zone. On the basis of the broadcaster’s letter and the five instances in which such coarse words were muted, it appeared that the broadcaster had selected the first option. It is not clear, in the circumstances, why the broadcaster had muted out “fuck” and “motherfucker” in some instances but left them in on five other occasions. Whether a purposeful choice or an inadvertence, their inclusion in a film aired prior to the Watershed constitutes a breach of Clause 3.1.1 of the [Code].

The Panel concludes, on this issue unanimously, that Global has breached Clause 10 of the *CAB Code of Ethics* by not bleeping or muting all instances of the f-word in the broadcast of a program before the Watershed.

Violence and the Watershed

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

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

The Classification of this Episode of *ReGenesis*

The Panel finds no error in the application of a rating of 14+ to the challenged program. The rating descriptor provides for the possible inclusion of “strong or frequent use of profanity”; the language certainly did not exceed those parameters. The 14+ descriptor also allowed that the program “might include *scenes* of nudity and/or sexual activity within the context of narrative or theme [emphasis added]”; there was but a *single* very brief scene that included a *suggestion* of nudity (in that no breasts or genitalia were shown) and a short burst of sexual activity. Those definitions were neither exceeded nor even stretched.

Viewer Advisories

Viewer advisories play an important role in informing viewers of what they may expect to encounter in the programs they are about to watch or may be watching. Unlike the abbreviated information included in a ratings icon, which is, in general, tied to an age group and earns its level on the basis of any one of a number of content issues, an advisory *describes* the material that may trouble a viewer. While the description is pithy, it refers to categories of content, which have tended to be: violence, coarse language, sexuality, nudity, and mature themes. There is, however, no *requirement* that it be limited to such matters. If advisories are thought of as a useful and informative tool for audiences, they can be designed to include other categories of information in order to be helpful in ways that any broadcaster knowing its programming can make them. Not always as a breach or non-breach of a codified standard. Just as a visual aid. In the present case, for example, there might have been a way to alert viewers to the rather graphically gory wounds of the virus victims. Moreover, when used on a thoughtful and creative basis, advisories are also more likely to register on the minds of viewers. In the first season of *The Sopranos*, for example, CTV provided the following to-the-point language.

This program is not intended for children. It contains scenes of violence, extremely coarse language and nudity. Some adults may be offended by the content. Viewer discretion is strongly advised.

The specially-tailored advisory anticipated for viewers that children were clearly *not* an appropriate audience. It also advised that even some *adults* could be offended by the content. It alerted one and all to the fact that the language was not merely coarse, it was *extremely* coarse. It was thoughtful. It was focussed. It related accurately to the program. In sum, it was helpful. The CBSC encourages such pertinence in the choice of advisories.

Regrettably, in the broadcast at hand, and returning to the codified rules, Global Television referred only to the presence of coarse language. While the nudity was not full frontal nudity and the sexual element was brief, some viewers, such as the complainant, would have wished such information in the advisory. The failure to include it, readily acknowledged as an inadvertence by the broadcaster, constitutes a breach of Clause 11 of the *CAB Code of Ethics*.

Broadcaster Responsiveness

The requirement that a broadcaster be responsive to a letter of complaint sent by a member of the public is a significant part of the broadcaster's membership obligations in the CBSC. Such responsiveness is an essential part of the dialogue by which the CBSC considers that matters that trouble members of the public sufficiently to compel them to write are often successfully resolved. When accomplished in thorough and sensitive ways, such correspondence is also a means of letting the public know that broadcasters care about their audience's concerns. In the present case, the letter from the Coordinator of Compliance Standards, which included an acknowledgment that the viewer advisory was incomplete and a commitment to put procedures in place to avoid a similar advisory problem, constituted a fulfilment of the broadcaster's membership obligation of responsiveness on this occasion.

ANNOUNCEMENT OF THE DECISION

Global Television is required to: 1) announce the decision, in the following terms, once during prime time within three days following the release of this decision and once more within seven days following the release of this decision during the time period in which *ReGenesis* ("Baby Bomb") was broadcast; 2) within the fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the statement to the complainant who filed the Ruling Request; and 3) at that time, to provide the CBSC with a copy of that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by Global Television.

The Canadian Broadcast Standards Council has found that Global Television has breached the provisions concerning the scheduling of programming intended for adult audiences and the use of viewer advisories in the Canadian Association of Broadcasters *Code of Ethics*. By failing to edit the coarse language in the series *ReGenesis* which was broadcast before the industry-established Watershed hour of 9:00 on August 29, 2005, Global breached Clause 10 of the *CAB Code of Ethics*. By failing to include any reference in its viewer advisories alerting potential viewers to the nudity and sexual content in the episode, Global Television also breached Clause 11 of the Code.

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

APPENDIX

CBSC Decision 04/05-1996 Global re *ReGenesis* ("Baby Bomb")

The Complaint

The following complaint was sent via e-mail to the CRTC on August 29, 2005 and forwarded to the CBSC in due course:

Global t.v.

Monday, August 29, 2005

8:00 P.M - Edmonton, Alberta

Television program *ReGenesis*

This is regarding NUDITY on this program too early in the evening; easy access for children. My children had to witness sexual intercourse and nudity on *ReGenesis*.

Also on the show *Relic Hunter* women's butts flashing in my television in the afternoon while children present.

If nothing is done will take legal action.

Broadcaster's Response

Global responded to the complainant on September 21:

Thank you for expressing your concerns regarding Global Alberta's broadcast of *ReGenesis* on August 29th, 2005.

In your letter, you refer to nudity and sexual activity in this episode that you found inappropriate. Let me begin by saying that as responsible broadcasters, we are sensitive to the members of our viewing audience, and we apologize if this program has offended you. I assure that it is neither Global's nor the producer's intention to do so.

We recognize that this series may not suit everyone's taste. Under the *Broadcasting Act*, Canadian broadcasters are required to provide a broad spectrum of entertainment and information programming for "men, women and children of all ages, interests and tastes." Television programming is required to be diverse and appealing to a wide variety of audiences and what one viewer might consider an interesting or amusing program might lead another to turn the channel.

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to advise viewers of a program's content in order to allow you the viewer to determine a program's suitability for your own viewing needs. As required, an on-screen key airs for the first fifteen seconds of the program and the matching V-Chip data is encoded into our transmission for the entire duration of the program. This program aired with an AGVOT of 14+ - suitable for viewers 14 years of age and older. Programming within this classification abides by the following guidelines:

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We also aired the following viewer discretion advisory at the beginning of the episode and coming out of each break.

"The following program contains coarse language. Viewer Discretion is advised."

After our review, we realize that the advisory was insufficient. As a result, we have implemented a procedure whereby each episode will be screened and give the appropriate advisory.

You, the viewer, are the valued customer. As such, we strive to ensure you will continue to watch our programming. We appreciate open dialogue with our audience, and thank you for your letter.

Additional Correspondence

The complainant submitted her Ruling Request on September 27 with the following note:

Programs with nudity have always been shown later in the evening after 9:00 pm. When did you change this, and why? Do any of you people down east have any regard or respect for children and families? You people are crossing the line; you are turning into pedophiles. Or is that your next goal?

Canwest's response was they try to appeal to all ages and sexes. They say it is under the *Broadcasting Act*. So your law states nudity at any given time. You people are sick. Fix the law!