
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL PANEL**

CHCH-TV re *NCIS* (“Mind Games”)

(CBSC Decision 05/06-0479)

Decided December 15, 2005

M. Ziniak (Vice-Chair), B. Bodnarchuk, R. Cohen (*ad hoc*), M. Hogarth (*ad hoc*),
M. Oldfield, C. Reyes

THE FACTS

NCIS is a crime action drama program that centres around the activities of the Naval Criminal Investigative Service. The episode entitled “Mind Games” was broadcast by CHCH-TV (CH, Hamilton) on October 4, 2005 from 8:00 to 9:00 pm. (It was at the same time being broadcast by the American network, CBS, in the United States. The Canadian version, complete with Canadian advertising and other interstitial material, was, however, substituted for the American signal on the local CBS affiliates in Canada.)

The plot of the episode focussed on a serial killer named Kyle Boone. Dialogue between characters during the episode revealed the backstory: Boone was a serial killer who had tortured and murdered at least 22 women. Boone had been sent to prison for his crimes years before, after having been caught and arrested by NCIS Special Agent Jethro Gibbs. Boone was to be executed in three days, but was now promising to reveal the location of the bodies (which had never been found) if he could speak to Agent Gibbs again. The action of the episode centred on Gibbs’ interviews with Boone and the NCIS team’s attempts to locate the bodies.

The episode contained a number of scenes in which the characters discussed the violence committed by Boone; others showed the results of Boone’s actions. For example, the first scene of the episode showed a police team escorting Boone to a barn. An officer climbed down a ladder from a hayloft with a jar in his

hands. He dropped the jar and its contents scattered on the ground. A close-up revealed the contents to be a number of human tongues.

Later in the episode, the NCIS team went to the house of the Boone family farm and found a scrapbook in the chimney. When they opened the scrapbook, they (and the viewer) saw photographs of Boone's victims. The female victims were shown bleeding from the mouth, beaten and tied up. Some of the women had their mouths open as if they were screaming. One photograph was a close-up that depicted a heart carved into a woman's back. Some of the photographs were shown again, on three separate occasions, later in the episode. The first occurred when the forensics experts examined them to determine where they had been taken. The second and third instances were flashbacks of separate scenes in which the photographs were flashed on screen as the NCIS team investigated a wooded area where they had found a fresh body.

That scene occurred approximately 40 minutes into the episode. In it, a woman's body was shown with her hands tied to a tree over her head. There was a close-up of her bare back with a heart carved into it. There were also close-ups of her hands, face and back shown while the agents were taking photographs for evidence.

During the last ten minutes of the episode, one of the female NCIS agents, Cassidy, wandered off alone to use her cell phone. She was then hit over the head from behind by an unseen assailant and was next shown in a car trunk with the side of her head bleeding, her hands tied behind her back and her mouth taped closed. A few moments later, when the trunk was opened, Cassidy saw that she was at the Boone farm with Boone's lawyer O'Neill. While the lawyer dragged Cassidy along the ground, he explained that he had sought out Boone as his client so that he could learn how to commit similar crimes. In a series of steps, he circled Cassidy, who was lying on the ground, threatening her with a metal chain and taking photographs of her; he kicked her and tore open her shirt to reveal her bra; he examined a set of large knives laid out on a table; and he then attempted to stab her. She managed to roll away so that the knife only nicked her arm; she then stood up and prepared to fight O'Neill.

The broadcast contained the following viewer advisory in audio and video format at the beginning and coming out of every commercial break:

Due to some graphic and mature adult content parental discretion is advised.

A PG icon appeared at the beginning of the program for 17 seconds.

The CBSC received a complaint dated October 4 from a viewer who was concerned about the above-mentioned scenes. She wrote the following (the full text of all correspondence can be found in the Appendix):

The violence towards women portrayed during family viewing time was pornographic showing women who were beaten, carved up, strung up to trees, tongues cut out, tortured and left to rot. This unconscionable [*sic*] programming is surely unnecessary particularly at the 8 o'clock time slot when young children may see it.

Do we have regulators pre-viewing this type of program? Why is this stereotypical women [*sic*] as victims of abuse tolerated? This is not entertainment but a frightening display of violence that I don't want my granddaughters to suffer from seeing.

After receiving the CBSC's initial response, the complainant sent the following note reiterating her objection to the broadcast:

Thank you for updating me on the process of accessing programming that I found sexually offensive and violent towards women, particularly at 8 pm which is an hour that young children might watch [*sic*].

The broadcaster responded to the complainant on October 21 with the following explanation of its programming decision:

As responsible broadcasters, we try to be sensitive to the members of our viewing audience, and we apologize if this program has offended you. I assure you that it is neither Global's nor the producer's intention to do so.

Under the *Broadcasting Act*, 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 range of audiences. As a result, what one viewer might consider an interesting or informative program might lead another to turn the channel.

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 and desires. 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 is rated "PG" – "Parental Guidance" as per the CAB's AGVOT rating guidelines.

We agree that this particular episode was more graphic than the regular weekly episodes of this program, and we were alerted to this fact before the program went to air. As a result, and in accordance with the *Code of Ethics*, we aired the following visual and verbal viewer advisory at the top of the show and coming out of every commercial break to assist our viewers in making informed decisions:

"Due to some graphic and mature adult content parental discretion is advised."

With this in mind, we felt that the graphic scenes were integral to the storyline and in keeping with the realistic elements of the show, which was about a convicted serial killer and locating the bodies of his victims. That being said, we

aired the program with the appropriate viewer advisories and AGVOT rating. Therefore, we do not feel the program contravened any regulations or guidelines.

The complainant submitted her Ruling Request on November 1 with the following additional comments:

Although CanWest aired an advisory before this program and stated that this alert was particularly necessary because the episode was more graphic than regular weekly programs, I still feel that the 8 pm broadcast left too many possibilities that minor children might be exposed to this violence and sex-role stereotyping. Showing women carved up and strung from trees with their tongues cut out is definitely not programming I want my grandchildren to accidentally [*sic*] see. Networks should protect the innocent.

Although the network claims to have monitored this program, is it not true that to change it would have cost them millions of dollars in revenue and in fact the content of this program was made in the United States and not in Canada? This seems to be true.

The evidence of this reality of broadcasting in Canada especially in network offerings that are simulcast from U.S. originating networks makes it virtually impossible for the network to stop or alter any such programs. Is there any examples [*sic*] where this circumstance is not true? Are our children to suffer from this broadcast and business decision?

THE DECISION

The Ontario Regional Panel examined the complaint under the following provisions of the Canadian Association of Broadcasters' (CAB) *Voluntary Code regarding Violence in Television Programming*.

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.

[...]

3.1.3 In order to provide viewers with the benefit of Canadian program classification and viewer advisories not available on foreign distant signals, broadcasters who have CRTC-permitted substitution rights over programming which is imported into their markets before the late evening viewing period, may employ substitution, notwithstanding article 3.1.1.

3.1.4 Broadcasters shall exercise discretion in employing substitution in accordance with article 3.1.3 and shall at no time avail themselves of substitution rights over programming which contains gratuitous violence in any form or which sanctions, promotes or glamorizes [*sic*] violence.

- 3.1.5 Broadcasters shall take special precautions to advise viewers of the content of programming intended for adult audiences which is telecast before 9 pm in accordance with article 3.1.3.

Article 4.0 – Classification

AGVOT System for English-language Broadcasters

PG – PARENTAL GUIDANCE

Descriptive

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.

Programming within this classification might address controversial themes or issues. Cognizant that pre-teens and early teens could be part of this viewing group, particular care must be taken not to encourage imitational behaviour, and consequences of violent actions shall not be minimized.

Violence Guidelines

- 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.

Other Content Guidelines

- Language: - might contain infrequent and mild profanity
 - might contain mildly suggestive language
- Sex/Nudity: - could possibly contain brief scenes of nudity
 - might have limited and discreet sexual references or content when appropriate to the storyline or theme

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

Article 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.
- 5.3 Suggested language for suitable viewer advisories is outlined in Appendix A.

Article 7.0 – Violence against Women

- 7.1 Broadcasters shall not telecast programming which sanctions, promotes or glamorizes any aspect of violence against women.
- 7.2 Broadcasters shall ensure that women are not depicted as victims of violence unless the violence is integral to the story being told. Broadcasters shall be particularly sensitive not to perpetuate the link between women in a sexual context and women as victims of violence.

The Ontario Regional Panel Adjudicators viewed a tape of the challenged episode and examined all of the correspondence. The Panel concludes that the broadcast was in violation of Articles 4 and 5 of the *CAB Violence Code* but that it did not violate Articles 3 or 7 of that Code.

Violence against Women

It is to be expected that programming with violent content will involve both women and men as victims. There is, however, a Code article (Article 7) focussing on violence against women. In that article, the limit to the nature of such violence, in the case of women as victims, is that such programming may not sanction, promote or glamorize any aspect of that violence. It is also provided there that broadcasters must ensure that women are not depicted as victims of violence unless the violence is integral to the story being told. Since those provisions are mirrored in the equivalent generically applicable provisions found in Article 1 of the *CAB Violence Code*, which apply to both women and men, *those* provisions hardly seem necessary to include in Article 7 for the sole benefit of protecting women. That being said, Article 7 does include the additional important requirement that care must be taken to not perpetuate the link between women in a sexual context and women as victims of violence.

In the matter at hand, since there is no issue of sex and violence, the Panel need only consider the questions of gratuitous violence, on the one hand, and glamorized violence, on the other. As to the first, it is clear that the violence is

material, indeed central, to the plot development. Most of it was historical, related to the earlier killings that brought Kyle Boone to several days before his scheduled execution. The fresh murder was the clue to the fact that someone other than the prisoner was involved in a similar pattern of killing and the attack on agent Cassidy brought the matter close to home. That the victims were all women tied the serial killings to a theme but that fact is not material in terms of the Code.

As to the issue of glamorization, the Panel does not find a breach. It considers that the murders past and present were depicted as horrible acts and their perpetrators as evil, wicked, and aberrant. There was not a smidgen of acceptance of the crimes on any level. In short, the Panel finds no breach of Article 7 of the *CAB Violence Code* in the broadcast of this program.

Scheduling

The scheduling issue is more complicated. At the first level, the Panel must consider the adult nature of the violence. In this case, it considers that the combination of a container of amputated tongues, the pictures of the women's faces whence they had come, the freshly killed woman, and the signs of torture were sufficiently graphic and disturbing that the episode of *NCIS* ought, in normal circumstances to be relegated to broadcast in a post-Watershed environment.

The circumstances of the challenged program are not, however, normal. As anticipated by the complainant in the letter accompanying her Ruling Request, this episode was simulcast by the broadcaster. In other words, the Canadian broadcast signal for *NCIS* not only aired on CHCH-TV but it was also substituted for the American signal on the American channel over which it was scheduled to run at the same hour. In the result, the article in the *CAB Violence Code* establishing the Watershed as the hour after which programming which contains scenes of violence intended for adult audiences (Article 3.1.1) must play does not apply. It is provided in Article 3.1.3 that "broadcasters who have CRTC-permitted substitution rights over programming which is imported into their markets before the late evening viewing period, may employ substitution, notwithstanding Article 3.1.1." In other words, there is an exception to the restrictive rule in Article 3.1.1. It provides that programming that would otherwise be forced into a post-9:00 pm time slot is entitled to run *before* 9:00 pm when it is simulcast, as was the case here. The effect of the application of this rule is that CHCH-TV did *not* violate the scheduling provision of the *CAB Violence Code* in broadcasting it before the Watershed.

It should be noted that, far from opening a door to contentious programming, Article 3.1.5 requires broadcasters to take "special precautions to advise viewers of the content of programming intended for adult audiences." Were that provision *not* present in the *CAB Violence Code*, the pre-Watershed broadcast of

programming with elements of violence destined for adult audiences would be accessible in Canada on an American channel (not subject to the *CAB Violence Code*) *without* any Canadian ratings icons or viewer advisories provided to assist viewers in making informed choices for them and their families. Article 3.1.5 at least ensures that the Canadian signal, with such information, is the *only* version of the program available to Canadian families.

Classification

Classification is a separate issue, one not linked with mathematical precision to the Watershed issue. The goal of classification is to provide an indication of the intended audience age group for the program based on the categories established by the Action Group on Violence on Television (AGVOT). The rating, however, serves only as a guideline. While it includes an age reference, it does not mean that the program it accompanies will automatically be considered appropriate for all persons in that age group in all families. A 14+ rating, for example, does not mean that the program is suitable for *all* 14-year olds; viewers must still make their own decisions about the suitability of subject matter for their own households. In any event, the CBSC will consider the actual rating applied by the broadcaster in circumstances such as the challenged program under consideration.

In the matter at hand, the Panel considers that the PG choice was too conservative. The violence in the program was not, as the PG descriptor anticipates, both “limited and moderate”; while it was not pervasive, it exceeded “limited” by a little and “moderate” by more. It fell, in the view of the Panel, below but closer to the descriptor in the 14+ definition, “intense”.

While the *categories* represent a smooth transition on a continuum from any one level to that above it, the *descriptors* that move from one rating definition to the next do not represent such a smooth, gap-less flow. They are, after all, *words* and are unlikely to be linked as tightly as the categories themselves. The effect of that transition is that the content encountered may not fall snugly within either the category below or that above. When that occurs, and the broadcaster applying the rating concludes that the content exceeds the lower definition, it has no choice but to apply the higher rating, even when the higher *definition* is not attained. The viewer will not otherwise be protected in his or her viewing information and alerts.

In the present circumstances, therefore, the Panel concludes that the violence exceeded the “limited and moderate” level, with the result that the higher 14+ icon ought to have been the one displayed. It follows that CHCH-TV has breached the classification requirement of the *CAB Violence Code* by applying a PG rating to the challenged episode.

Viewer Advisories

Viewer advisories differ from classification icons. They are not, like the latter, a form of shorthand; they do not require extrapolation by the audience. They describe in specific words the nature of the content in the programming, at a minimum alerting viewers to the presence of violence, coarse language, sexuality, nudity, or mature themes. The goal in including such content alerts is to permit the audience to make informed viewing choices about the programs that should or should not come into their homes. In *Comedy Network re an episode of Gutterball Alley* (CBSC Decision 01/02-0450 & 01/02-0481, September 13, 2002), the Comedy Network merely alerted viewers to "mature subject matter," and did not specifically mention the coarse language included in the episode. The Panel stated that viewer advisories must

provide people with more than a single "catch-all" basket category for levels of coarse language, violence, nudity and sexual content. In descriptive words, they advise viewers of the kind of content they can anticipate encountering in a program about to be, or currently being, aired. In the matter at hand, the broadcaster is obliged to advise its audience of the coarse language in the program.

In the matter at hand, the application of the generic information, "some graphic and mature adult content", is insufficient. Those words could appertain to any of sexuality, coarse language or violence; they are, consequently, insufficiently descriptive. The failure to include any reference to the violent content of the program constitutes a breach of Article 5 of the *CAB Violence Code*.

Broadcaster Responsiveness

The CBSC always assesses the broadcaster's responsiveness to the complainant, which is, after all, a responsibility of membership in the Council. It expects that response to be thoughtful and focussed on the substance of the complaint. In the matter at hand, the Panel considers that the response of the parent company's Coordinator of Compliance Standards clearly reflected her review of the content of the challenged episode. It acknowledged content that was beyond the customary levels for the show and indicated that, in the corporation's view, the appropriate steps had been taken to deal with the episode. That the complainant disagreed is what necessarily occurs on each occasion that a matter finds its way to a Panel for adjudication; it is a defined step in the process. That this Panel disagreed with the broadcaster's "cure" does not mean that CHCH-TV has in any way failed in its obligation of responsiveness. It has not. The response of the parent company's Coordinator of Compliance Standards was, in the Panel's view, thoughtful and fulfilled the CHCH-TV's obligation of responsiveness on this occasion.

ANNOUNCEMENT OF THE DECISION

CHCH-TV 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 *NCIS* (“Mind Games”) was broadcast; 2) within the fourteen days following the broadcasts 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 CHCH-TV.

The Canadian Broadcast Standards Council has found that CHCH-TV violated provisions of the Canadian Association of Broadcasters’ *Violence Code* in its broadcast of the *NCIS* episode “Mind Games” on October 4, 2005 at 8:00 pm. Because the violent content was more than “limited and moderate”, by rating the episode PG when CHCH should have rated it 14+, CHCH breached Article 4 of the *Violence Code*. By failing to mention the violent content in its viewer advisories, CHCH also violated Article 5 of that Code.

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

APPENDIX

CBSC Decision 05/06-0479 CHCH-TV re *NCIS* (“Mind Games”)

The Complaint

The following complaint was sent to the CRTC on October 4, 2005 and forwarded to the CBSC in due course:

Global Television - CH Hamilton, Program *NCIS*, viewed 8pm - 9pm, Tuesday October 4/05

The violence towards women portrayed during family viewing time was pornographic showing women who were beaten, carved up, strung up to trees, tongues cut out, tortured and left to rot. This unconscionable [*sic*] programming is surely unnecessary particularly at the 8 o'clock time slot when young children may see it.

Do we have regulators pre-viewing this type of program? Why is this stereotypical women [*sic*] as victims of abuse tolerated? This is not entertainment but a frightening display of violence that I don't want my granddaughters to suffer from seeing.

In response to the CBSC's standard letter acknowledging receipt of the complaint and explaining the CBSC's process, the complainant wrote the following:

Thank you for updating me on the process of accessing programming that I found sexually offensive and violent towards women, particularly at 8 pm which is an hour that young children might watch [*sic*].

Broadcaster's Response

The station responded to the complainant on October 21 with the following:

Thank you for your letter expressing your concerns regarding CH's broadcast of the program *NCIS* on October 4, 2005. As responsible broadcasters, we try to be sensitive to the members of our viewing audience, and we apologize if this program has offended you. I assure you that it is neither Global's nor the producer's intention to do so.

Under the *Broadcasting Act*, 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 range of audiences. As a result, what one viewer might consider an interesting or informative program might lead another to turn the channel.

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order to allow you the viewer to determine a program's suitability for your own viewing needs and desires. 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 is rated "PG" – "Parental Guidance" as per the CAB 's AGVOT rating guidelines.

We agree that this particular episode was more graphic than the regular weekly episodes of this program, and we were alerted to this fact before the program went to air. As a result, and in accordance with the *Code of Ethics*, we aired the following visual and verbal viewer advisory at the top of the show and coming out of every commercial break to assist our viewers in making informed decisions:

"Due to some graphic and mature adult content parental discretion is advised."

With this in mind, we felt that the graphic scenes were integral to the storyline and in keeping with the realistic elements of the show, which was about a convicted serial killer and locating the bodies of his victims. That being said, we aired the program with the appropriate viewer advisories and AGVOT rating. Therefore, we do not feel the program contravened any regulations or guidelines.

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 November 1 with the following note:

Although CanWest aired an advisory before this program and stated that this alert was particularly necessary because the episode was more graphic than regular weekly programs, I still feel that the 8 pm broadcast left too many possibilities that minor children might be exposed to this violence and sex-role stereotyping. Showing women carved up and stung from trees with their tongues cut out is definitely not programming I want my grandchildren to accidentally [*sic*] see. Networks should protect the innocent.

Although the network claims to have monitored this program, is it not true that to change it would have cost them millions of dollars in revenue and in fact the content of this program was made in the United States and not in Canada? This seems to be true.

The evidence of this reality of broadcasting in Canada especially in network offerings that are simulcast from U.S. originating networks makes it virtually impossible for the network to stop or alter any such programs. Is there any examples where this circumstance is not true? Are our children to suffer from this broadcast and business decision?