
CANADIAN BROADCAST STANDARDS COUNCIL

ONTARIO REGIONAL PANEL

CHCH-TV (E!) re *E!'s Wildest Spring Break Moments*

(CBSC Decision 08/09-1097 & -1743)

Decided April 1, 2010

H. Hassan (Vice-Chair), R. Cohen (*ad hoc*), J. David, J. Doobay (*ad hoc*),
M. Hamilton, G. Phelan (*ad hoc*)

THE FACTS

E!'s Wildest Spring Break Moments was an hour-long non-fiction program that provided clips of spring break activities around the world. During spring break, many high school, college and university students travel to warm climates to vacation, and, in their parlance, to party. Accordingly, the program included numerous scenes of young men and women in bathing suits or various states of undress drinking alcohol, dancing and participating in different contests, stunts and antics. Many of those contests involved nudity or a sexual theme. There were frequent close-ups of breasts and buttocks, but any actual nudity was pixillated. The program was voiced over by a male narrator who mentioned the location and explained what was happening. The scenes were interspersed with clips of comedians (Gary Anthony Williams, J. Keith van Straaten, Loni Love, Ben Morrison, Natasha Leggero and Sarah Tiana) making humorous or sarcastic comments about the activities being shown on screen.

The Specific Program Content

For example, one minute into the program, there was a clip from a wet t-shirt contest. Women wearing bikini bottoms were given white t-shirts and then hosed down. They

bounced up and down and turned around to be judged as onlookers cheered and jeered. Close-ups of nipples and buttocks in thong bikinis were pixillated. A brief interview with the winner showed her saying she was going to get “buck wild” later. The comedians made the following remarks during the proceedings:

Love: This is like *Project Runway* for hos.

Gary Anthony Williams: I can almost see her, uh, ... That’s why they wet ’em! So you can see oh oh oh!

Tiana: You think that’s hard? Try to make them *not* jiggle.

van Straaten: Yeah, because they love you for you. And your big, wet knockers.

That clip was following by a “sex on the beach” contest in which participants had to mimic sexual positions.

narrator: While Kelly’s getting buck wild, let’s go to the spring break capital of the world, Panama City, Florida, for some fun, games and maybe even a little jail time. Here, freshman Tiffany has entered the simulated sex contest where contestants have one minute to come up with as many sex acts as they can. Sound like fun? It is. ’Til the cops show up.

There was a quick montage of groups of young people wearing bathing suits in different positions.

Interview with Tiffany outside police station: Oh, I got arrested for the sex on the beach contest. I won it, but I got arrested for it.

There were then more scenes of men and women on the beach grinding and groping each other. Some of the women flashed their breasts and genitals, but those were pixillated. The comedians provided further commentary, interspersed with remarks from contestant Tiffany filmed outside the police station.

Love: What is all of this screwin’ on the beach? Can’t we just play volleyball?

Tiffany: I’m in trouble. My friends got pictures of me in handcuffs.

Tiana: I can guarantee she’s going to be in handcuffs more than once on this trip.

Tiffany: I am framing this and hanging this in my room, so everybody can see. [close-up of police arrest form] “Disorderly conduct”. [...] I’m a virgin, actually. Can you believe that? I won and I’m a virgin.

Williams: You’re a virgin? Really? Where?

Love: I’m a virgin too. [winks twice]

Five minutes into the program, there was a scene of women wrestling in oil.

Narrator: Let's slide on over to another spring break destination, Myrtle Beach, South Carolina. Where they serve southern hospitality with a side of girl-on-girl action. Here, Ashley and Maria are preparing to wrestle each other for the title of the "queen of spring break". Before they do, they'll have to be doused in oil.

The viewer then saw two young women in bikini bottoms and short white t-shirts groping each other while a man poured oil on one woman's chest. The two women then wrestled on a mat, with one spanking the other.

van Straaten: Ah, the power spank, as first perfected by Rowdy Roddy Piper.

There was a close-up of one woman's butterfly tattoo, which was located just above her gluteal cleft.

Morrison: Oh look, they've got tramp stamps. The official mark of the hot oil wrestling league.

Love: I think those skinny bitches are fighting 'cause they need a sandwich.

Williams: Hot oil is good for the skin. Bad for the dignity.

Naked Twister was another contest depicted on the program. All private parts of the young male and female participants were pixillated as they played the game which involves placing your hands and feet on different coloured circles on a floor mat. The comedians offered some sexual innuendo:

Morrison: You can see the disease being transmitted ... now.

van Straaten: Mommy, why is my Twister board all sticky?

Another wet t-shirt contest was featured later in the program. This one took place in a bar and two young women in skimpy white t-shirts rubbed their chests together as the announcer chanted "I say 'wet' and you say", with the crowd responding "wild!". The announcer poured a pitcher of water onto the women's breasts. The two women reacted by tearing each others' shirts off and jiggling their breasts for the crowd. One then pulled off the other's bikini bottoms and they grinded up against each other

Another contest required male-female pairs to pop balloons by squeezing them between each other. Each female contestant attempted to pop the balloons by smashing them against her partner's buttocks, sitting on his lap, straddling him while he lay down, etc.

van Straaten: Look, I don't want to alarm anybody, but there's something vaguely sexual about this.

Williams: Somewhere there's a child going "Mama, why do my balloons smell like sunscreen and man butt?"

The program also included a clip from the television program *Blind Date*, in which couples go on dates together. The narrator introduced the segment:

Narrator: Now let's travel across the Pacific Ocean to Hawaii, where the waves are big, the drinks are strong, and the women like to get a little kinky. At least that's the case with Eliza on this spring break episode of *Blind Date*.

The scene followed the couple, Eliza and Tony, as their date took place on a boat. At one point, Eliza asked Tony to spank her with a cat-o'-nine-tails and he complied.

Following that clip, a kissing contest featured fairly tame visual footage of couples kissing passionately, although one woman's breast was exposed as her male partner bent her backwards. The comedians made suggestive comments:

Leggero: So romantic. I mean, one day these two will have a slut of their own.

Morrison: Ah, we got boob. The only way to win is you gotta show some boob. That's how I won. [...] Call me old-fashioned, but I prefer the dry humping contest.

At another point, three young women (whose faces and breasts were pixillated) lifted their bikini tops to flash their breasts to the camera. Comedian J. Keith van Straaten observed:

Hot, annoying. Hot, annoying. My erection has a tension headache this big. [...] This is just what spring break's all about. Deciding who's just not too annoying to [bleep].

Van Straaten had other things to say during a scene of two women wrestling in a "ring" of chocolate pudding:

Not only does this say "We like to look at boobies", it also says "[bleep], you starving people of the world".

He then held up his middle finger on each of his two hands, but this gesture was pixillated.

Another sexual position contest was shown 40 minutes into the program. This one took place in a dance club.

Narrator: Screaming is one way to get attention in a club. Another is to participate in a sexual position contest like these folks in Panama City, Florida. The object of the game? Simulate as many sexual positions as you can in one minute. In order to show you this contest, our legal department made us speed up the footage so we could actually air it on TV. Feel free to hit pause.

That introduction was followed by sped-up footage of groups of young men and women in a variety of positions.

Leggero: Oh, oh, I think that's *Dancing with the Stars*, the porn edition.

van Straaten: I prefer the sexual position where you actually take off your clothes. Which one's that called? Oh right, "sex".

Announcer interviewing couple: Did you guys practise to be in the competition?

Love: What type of practice do you need to [bleep]?

Tiana: Uh, something tells me he's been practising by himself.

Another dance scene showed people dancing outside. A man dressed in a Spiderman costume was grinding-dancing with a young woman. The camera zoomed in on his crotch and comedienne Tiana commented "Something tells me it's more than just his spidey sense that's tingling."

Towards the end of the program, there was footage of an event called the "Stripper Olympics" hosted by talk show host Jerry Springer. Female contestants were required to twirl around a pole, crawl along the stage, and go along a slip-and-slide on their stomachs. Springer interviewed a contestant named Janet:

Springer: And why do you want to be Miss Springer Break 2002?

Janet: 'Cause I want to be a stripper like my best friend Mary Beth! Whoo! [...] And I want to get naked with you, Jerry.

Springer: I love you. Thank you very much.

Springer made comments while the women contestants went through the obstacle course and the comedians made comments while they watched the footage:

Springer: Crawl. Sexy crawl. Sexy crawl. Oh, sexy crawl.

Morrison: This isn't demeaning at all.

van Straaten: Ah, remember when Bruce Jenner won the gold in sexy crawl?

Love: Sexy crawl. Sexy crawl.

Springer: There's a pole trick.

van Straaten: This is more like the stripper special Olympics. She's horrible.

Springer: Makes you want to be a pole. [...] Oh, you got it. Oh.

Leggero: Well, now I know what it sounds like when Jerry Springer is watching porn.

Springer: Oh?! Oh. You animal, you. And off with her top! Oh!

The program was filled with numerous other scenes of women flashing their breasts, wet t-shirt contests, and other events called bikini bull riding, foxy boxing, booty shaking contest and whipped cream wrestling. The comedians took those opportunities to make similar statements to the ones described above (more detailed transcripts can be found in Appendix A).

A few scenes did not involve sexually suggestive material or nudity. For example, in one scene, two dogs wearing visors and sunglasses were shown at an outdoor table slurping beer out of cups. Another clip showed a man performing a fire-breathing stunt. His hair caught on fire and he dunked his head in a swimming pool to douse the flames. The comedians commented on that scene as well:

Williams: Fire and a drunk guy. What could possibly go wrong?

Love: Hasn't your mama told you don't play with fire?

The Complaint

A viewer saw this program broadcast on CHCH-TV (E!) on December 27, 2008 at 1:00 pm and complained that same day directly to the station. It was not until February 18, 2009, however, that the complainant contacted the CBSC to complain about both the broadcast itself and the fact that it had taken E! until January 26 to respond to her. The complainant outlined her concerns as follows (the full text of all correspondence can be found in Appendix B):

On December 27, 2008, I sent an email to CanWest and to E Channel regarding my concerns about airing *E! Channel's Wildest Spring Break Moments* at 1:00 pm in the afternoon. A rating was not indicated, nor was an advisory given. After visiting E! Channel's website, I found out that the program was rated PG. Nearly one month later, on January 26, 2009, I received a response from "Viewer Contact: Global Television and E!" stating that the rating for the program was PG and was therefore allowed to be aired prior to the "watershed hour".

On January 30, 2009, I received another email from "Viewer Contact: Global Television and E!" informing me that *E! Channel's Wildest Spring Break Moments* will likely be scheduled to air in March for Spring Break. In addition to this it was stated that "Viewer Contact has been assured both shows will be screened to ensure inappropriate materials (that shouldn't appear in the day) will be removed in addition to implementing an advisory before and during the show."

On January 31, 2009, I sent another email to Viewer Contact asking for clarification that it was their intent to air the programs once again in the afternoon during March Break. I also asked if they could tell me who was responsible for selecting the rating of the program. As of yet, February 18, 2009, I have not received a response to my last email.

My concern is that these programs have not been rated appropriately and that they will once again be aired before the watershed hour. It is my opinion that these programs contained more than the "limited sexual reference or content" that a PG rating would entail. They included: simulated sex on the beach, women exposing their breasts (images were blurred over), wet t-shirt contests, etc. The episodes also included segments about excessive drinking including giving beer to dogs and drinking alcohol and then igniting it while it was still in the person's mouth.

Since the complaint was about a December 27, 2008 broadcast, and the complainant did not file her official CBSC complaint until February 18, 2009, the CBSC at first informed her that it was too late for it to obtain logger tapes and proceed with her complaint. The complainant responded to the CBSC's initial e-mail on February 24: with the following explanation:

Thank you for your response. You state that, "dialogue between broadcasters and members of their audience is a cornerstone of the CBSC's complaints resolution process. Concerns are often resolved satisfactorily through this dialogue phase". Please note that I did contact E! Channel and CanWest on December 27, 2008 and did not receive a response from CanWest until January 26, 2009. You also state that, "Broadcasters are only required to hold tapes of their programming for 28 days following the broadcast". Since CanWest did not respond to my concerns within the 28 days, I was unable to bring this matter to the CBSC's attention within the required timeframe. My question is: Are broadcasters required to address viewers' concerns within a certain period of time? If not, then it would appear that this is a "loop-hole" that broadcasters can use to their advantage. In other words, it's possible to air questionable programming and then not respond to a viewer's concerns in a timely manner so that the CBSC is unable to formally pursue the complaint and therefore allow broadcasters to maintain that they are a member of the CBSC in good standing.

My other concern is that CanWest intends to air these programs once again in the afternoon during the March Break. I still contend that the PG rating for this program is not correct. Is it possible for the CBSC to view this program before CanWest airs it again to ensure that it is indeed rated correctly and therefore allowed prior to the watershed hour?

Pursuant to that letter, the broadcaster agreed to provide the CBSC with screener copies of the program. Screener copies are the source material that a station receives from a program producer. Unlike official logger files, screener copies do not provide evidence of what the broadcaster may have edited out or inserted, such as commercials, viewer advisories and classification icons. In this case, E! also indicated that it was in the process of implementing a system that would ensure that complaints sent to its Viewer Relations department were responded to promptly.

The station then provided another response to the complainant on March 26, 2009:

We are in receipt of your letter via the CBSC regarding E! Channel's broadcast and rating of *Wildest Spring Break Moments* which originally aired December 27th 2008 at 1:00 pm, and was repeated on March 14th.

In your letter, you expressed concerns over this program not being rated appropriately and that it will once again be aired before the watershed hour.

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 six-level rating system is used to classify any levels of violence, language or sex/nudity in all drama, feature film and children's programming broadcast in Canada. These classifications allow viewers to use V-chip technology, which is built into almost all television sets, to screen out programs with mature subject matter that they do not wish to watch. 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 a matching V-Chip data is encoded into our transmission for the entire duration of the program.

As mentioned in our previous correspondence, this episode of *E!'s Wildest Spring Break Moments* has been rated PG - parental guidance. Programming with this classification may contain themes which might not be suitable for viewers under the age of 8. As well, parents should be aware that there might be elements, such as limited sexual reference or content, which some could consider inappropriate for unsupervised viewing by children in the 8-13 age range. Again, please note that this rating does not restrict the broadcaster from airing the program prior to the "watershed hour" which is 9:00 pm to 6:00 am and usually reserved for adult content.

Our shows are screened and rated by our Programming Department according to viewing suitability. Programming decided the show would air again during the Spring Break with the appropriate advisories.

In order to further assist our viewers in making their viewing choices, we also ran the following viewer advisory at the beginning of the program and after every commercial break:

"The following program contains scenes which may not be suitable for children. Viewer discretion is advised."

There was no nudity, violence, or coarse language that warranted a stronger viewer advisory or a higher AGVOT rating.

We care about our audience and viewer feedback is always welcomed and encouraged, as it helps us to make informed decisions in the future.

We appreciate the time you have taken to contact us and hope we were able to address your concerns. Please note your comments have been passed on to our Programming Department and we hope you continue to enjoy other Global Television programming.

The complainant then filed her Ruling Request on April 3. The complainant indicated her reasons for requesting a CBSC ruling in the following terms:

I still contend that this program was not rated appropriately. For comparison purposes, please note the following link to "Broadcasting Decision CRTC 2008-311" <http://www.crtc.gc.ca/eng/archive/2008/db2008-311.htm>

On November 14, 2008, the CRTC ruled on a similar program, *MuchMusic Spring Break '08*. In this ruling the CRTC stated, "The Commission has previously determined that programming intended for adult audiences is not limited to that containing strictly sexually explicit material or coarse language but also includes programming whose overall theme is clearly unsuitable or unintended for younger viewers."

The ruling also stated, "The Commission considers that the persistence of the themes described above in the one-hour broadcast suggests that the program is not appropriate for children. The program's sole focus is on activities intended for adults, with no other storyline or element that is appropriate for younger audiences. Irrespective of the target audience, the Commission finds that the program is not appropriate for daytime broadcast."

The Commission also stated that they determined that the PG rating assigned to *Spring Break '08* was insufficient.

The ruling also includes the following, "In light of the above, the Commission finds that, in broadcasting *Spring Break '08* before 9 p.m., the licensee did not meet the Canadian broadcasting policy objective, set out in section 3(1)(g) of the Act, that programming be of high standard".

I offer this comparison to defend my position that *E! Channel's Wildest Spring Break Moments* was not rated correctly.

I understand that my initial complaint cannot be followed up on due to the fact that CanWest did not respond to my concerns in a timely manner; however, CanWest did re-broadcast the program on March 14, 2009. I would like to request that the CBSC obtain the logger tapes for the March 14, 2009 broadcast so that they may be viewed and a decision can be made as to whether or not *E! Channel's Wildest Spring Break Moments* was indeed rated correctly.

The complainant wrote to E! again on May 30 and copied the CBSC:

E!'s Wildest Spring Break Moments was aired once again today, Saturday, May 30, 2009 at 1:00 pm with a PG rating and without a viewer advisory. In your letter, dated March 26, 2009, regarding the airing of the program during March Break of this year you stated:

In order to further assist our viewers in making their viewing choices, we also ran the following viewer advisory at the beginning of the program and after every commercial break:

"The following program contains scenes which may not be suitable for children. Viewer discretion is advised."

The program which aired today, however, did not carry a viewer advisory. I question CanWest's programming department's decision to air this program again, especially since it is my understanding that the CBSC Secretariat is reviewing my original complaint regarding the airing of this program before the watershed hour.

The CBSC had E! retain the official loggers for the May 30 broadcast and the station responded to the complainant on June 19:

We are in receipt of your email to the CBSC regarding the content of E! Network's broadcast of *E!'s Wildest Spring Break Moments* which aired on CHCH-TV, at 1:00 pm, Saturday May 30, 2009.

In your letter, you expressed concerns regarding inappropriate content aired without the proper advisory.

After reviewing this episode, we found the AGVOT (Action Group on Violence on Television) rating and viewer advisory had not been inserted due to human error. We sincerely apologize for this omission as we are trying very hard to make sure that no details are missed.

Unfortunately, due to a serious economic decline in the conventional broadcasting sector as well as Canwest's precarious financial position (I'm sure you've heard about this in the

news), we have staff shortages. That said, the omission of the AGVOT rating and viewer advisory was a mistake on our part and our programming department met with our scheduling department to put a process in place to ensure that this type of error does not occur again.

We again apologize for the error and appreciate you bringing this matter to our attention.

In her May 30 letter, the complainant indicated that the broadcast of the program on that date did not include viewer advisories. In its June 19 response, E! stated that both the advisory and the AGVOT rating had not been inserted due to human error. E! was mistaken about this latter point because, as revealed by the logger recordings, a PG rating did appear at the beginning of the program for 21 seconds. The station was correct, however, in saying that there had been no viewer advisory at any point during the broadcast.

THE DECISION

The CBSC's Ontario Regional Panel examined the complaints under the following provisions of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* and *Violence Code*:

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 *CAB Violence Code* 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.

CAB Violence Code, Article 4.0 - Classification

AGVOT's Classification System for English-Language Broadcasters

PG – Parental GuidanceDescriptive

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.

[...]

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 YearsDescriptive

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.

[...]

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

CAB Violence Code, Article 9.0 – Violence against Animals

9.1 Broadcasters shall not telecast programming which sanctions, promotes or glamorizes violence against animals.

The Panel Adjudicators read all of the correspondence and reviewed a recording of the challenged material. The Panel concludes that CHCH-TV's December 27, 2008 and May 30, 2009 broadcasts of *E!'s Wildest Spring Break Moments* violated Clause 10,

and that the May 30, 2009 broadcast of the program also violated Clause 11 of that Code, as well as Article 4.0 of the *CAB Violence Code*, but not Article 9.0 of the *CAB Violence Code*.

A Preliminary Matter: The Relevant Broadcast Dates

The complainant's original objection was about the December 27, 2008 broadcast of this program. Although she had initially contacted the broadcaster expeditiously, she did not ultimately file her complaint with the CBSC until February 18, with the result that the official logger files of the program had already been recycled. On an entirely collaborative and helpful basis, E! agreed to provide the CBSC with screener copies of the December 27 program in lieu of the official logger files, since these were no longer accessible. (The nature and function of screener copies has been provided above.)

For this challenged broadcast, the CBSC had no actual evidence about what advisories and classification rating were or were not broadcast. This is not necessarily fatal to the CBSC's ability to adjudicate a file, but there was a complicating factual element. The complainant first argued that the broadcast did not contain a classification icon or any viewer advisories, but E!'s letter claimed that a PG rating and an advisory were present at the required moments. While the complainant accepted this assertion for purposes of this adjudication, while continuing to argue that PG was too low a rating and that the program should not have aired at 1:00 pm, another later broadcast date (May 30, 2009) for which all the information was available easily enabled the CBSC to adjudicate the matter.

Parenthetically, the complainant mentioned in her initial complaint that she had been informed by E! that it *intended* to re-broadcast the program sometime during March 2009. By the time E! provided its official response to the complaint on March 26, the station was able to confirm that it had indeed re-broadcast the program on March 14. The complainant noted this in her Ruling Request, but it appeared that she had not actually seen that broadcast herself, so the CBSC did not request the loggers for it.

In the end, the present adjudication treats both the December 2008 and the May 2009 broadcasts with respect to the sexual content issue (which did not change) and with respect to the scheduling issue (which was admitted and agreed) but, with respect to the issues of classification icons and the viewer advisories, it is limited to the broadcast of May 30, 2009.

Scheduling of Sexual Content

The complainant's primary concern was the sexual content of the program. The Panel readily understands her viewpoint. It is true that CBSC Panels have frequently determined that nudity alone may be broadcast at any time of day, provided that it is not implicated in overt sexual activity. It is also true that Panels have ruled that sexual innuendo, double entendres and mild sexual content may be aired at any time of day. On the other hand, Panels have consistently held that explicit sexuality and detailed discussions of sexual acts are considered "intended exclusively for adults" and may only be broadcast during the Watershed period of 9:00 pm to 6:00 am.

The foregoing being said, the Ontario Regional Panel recognizes that there is no CBSC precedent precisely applicable to the matter at hand. It is, however, the conclusion of the Panel that almost every segment of the hour-long program was aggressively suggestive of sexual activity and that, *collectively*, the impression inevitably left on viewers is raucous, libidinous, relationship-less sexual coupling. The Panel finds no inherent problem with the broadcast of such programming; its question is only *when* it may be aired. The Panel finds that the constant barrage of the sexual message renders it utterly inappropriate for a pre-Watershed broadcast. While the Panel is unsure of the *adulthood* of the likely audience, it considers that the program is, in the sense of the *CAB Code of Ethics*, exclusively intended for an adult audience. Consequently, the broadcasts of the program at 1:00 pm on December 27 and then again on May 30 are in contravention of Clause 10 of the *CAB Code of Ethics*.

The Panel wishes to make clear that the pixillation of genitalia during the program did not diminish the explicitness of the sexual content. Indeed, nudity is not the issue. As noted above, CBSC Panels have long held the view that nudity without related sexual context is not a problem. [See, for example, *CHRO-TV re Dead Man's Gun ("The Mesmerizer")* (CBSC Decision 97/98-1208, February 3, 1999), *Showcase Television re the movie Destiny to Order* (CBSC Decision 00/01-0715, January 16, 2002), *WTN re the movie Wildcats* (CBSC Decision 00/01-0964, January 16, 2002), *Bravo! re the film Chippendales & the Ladies* (CBSC Decision 01/02-379, September 13, 2002), and even *TQS re Strip Tease* (CBSC Decision 98/99-0441, February 21, 2000).] Since nipples would not be the problem, their pixillation is of no assistance in defending the scheduling of the broadcast. The breach is in the consistent sexual content at 1:00 pm, which is neither helped nor hindered by the pixillated visuals.

The Panel also notes the decision of the Canadian Radio-television and Telecommunications Commission (CRTC) in *Complaints regarding the broadcast prior to the watershed hour by MuchMusic of Spring Break '08, a promotional spot for that program and an interview aired on Much on Demand*, Broadcasting Decision CRTC 2008-311 (14 November 2008). The program reviewed by the Commission is similar in purpose, structure and approach to that considered by the CBSC in the file at hand.

There, as here, the conclusions of the reviewing body were similar; the CRTC put that review in the following terms:

[T]he Commission's review of the broadcast found that the program contains no narrative or theme beyond the depiction and promotion of juvenile, sexualized or alcohol-fuelled behaviour. [...] The Commission considers that the persistence of the themes described above in the one-hour broadcast suggests that the program is not appropriate for children. The program's sole focus is on activities intended for adults, with no other storyline or element that is appropriate for younger audiences. Irrespective of the target audience, the Commission finds that the program is not appropriate for daytime broadcast.

The conclusions of the Ontario Panel are entirely consistent with those reached by the CRTC in similar circumstances.

Viewer Advisories

In her subsequent letter of May 30, 2009, the complainant noted that no viewer advisory was present. In its June 19 response to that complaint, E! acknowledged that both the advisory and the AGVOT rating had not been inserted due, they explained, to human error. Curiously, E! was actually mistaken about this, because a PG rating *did* appear at the beginning of the program for 21 seconds. The broadcaster was, however, correct that there was no viewer advisory at the start or at any point thereafter during the broadcast.

The broadcaster's obligation to provide viewer advisories, when these are required, is not one of best efforts. The obligation is one of result. An inadvertent omission, or even one resulting from financial pressures and concomitant reductions of staff, are of no assistance to the broadcaster. Where the obligation lies, it must be respected. Period. The question is only whether or not the obligation lies. Given the exclusively adult nature of the programming, an advisory was required at the start of the program and following each commercial break. None was supplied. Accordingly, the broadcaster has breached the proscriptions of Clause 11 of the *CAB Code of Ethics*.

Classification

Another of the complainant's primary concerns was the PG rating supplied by the broadcaster (despite its having forgotten that the icon was included as prescribed by the Code). She found it too low, and whether it was or was not is the issue for the Panel to consider. Although there is no mathematical formula for determining what type of content constitutes PG, on the one hand, and the amount and type of content that will move a program into the 14+ (or even 18+) category, there are Panel precedents on

which the Ontario Panel can rely. In *CHRO-TV re Dead Man's Gun ("The Mesmerizer")* (CBSC Decision 97/98-1208, February 3, 1999), there was brief nudity and this Panel explained its view of the possible ratings criteria in the following terms:

The sex/nudity guidelines for a "PG" rating are that the program "could possibly contain brief scenes of nudity" and "might have limited and discreet sexual references or content when appropriate to the storyline or theme". The Council considers that the female upper-body nudity included in this program was indeed very brief and the absence of any depictions of actual sexual activity constitutes sufficiently "discreet" sexual content to justify this rating. Moreover, the appropriateness of the "PG" rating becomes even clearer when one compares the "PG" guidelines relating to sex and nudity to the parallel guidelines for the "14+" and "18+" ratings. In comparison to the PG descriptor contained above, the guidelines provide that programming rated as "14+" "might include scenes of nudity and/or sexual activity within the context of narrative or theme" while programming intended for viewers 18 years and older (18+) "might contain explicit portrayals of sex and/or nudity".

Bravo! re the film Chippendales & the Ladies (CBSC Decision 01/02-0379, September 13, 2002) involved a documentary about the male strip-tease act, the Chippendales. The film included interviews with the male dancers and the women who attend their shows, as well as some scenes of performances involving provocative dancing, bare buttocks and men in G-strings. It was rated 14+, which the Panel considered would have been the correct one for this program.

In *CITY-TV re Blind Date* (CBSC Decision 02/03-0570 & -0631, May 2, 2003), this Panel dealt with a complaint about a reality dating program that followed couples on blind dates. The Panel viewed four episodes of the program which had been broadcast at 5:30 pm and rated PG. Discussions and activities between participants often contained strong sexual innuendo and sexually suggestive content, such as a man saying that the perks of living in a fraternity house were "partying and getting laid", a man eating at cherry out of a woman's cleavage and women and men in skimpy clothing kissing passionately. The Panel concluded that the program was not so sexually explicit as to warrant a post-Watershed time slot only, but that, with respect to classification, the Panel found that 14+ would have been more appropriate than PG.

The point about the two foregoing precedents is that both Panels would have required a 14+ icon, rather than a PG rating, and that, in the view of this Panel, the content in the matter at hand is similar. The Panel concludes that the proper rating would have been 14+ and that, by rating the program only as PG, the broadcaster has breached the provisions of Article 4 of the *CAB Violence Code*. The Panel also notes that the CRTC reached a similar conclusion in its *MuchMusic Spring Break '08* decision. There, too, the program considered by the CRTC had been rated PG by the broadcaster. On this issue, the Commission concluded similarly:

In the Commission's view, the program's content is more consistent with the "strong or frequent use of profanity" and "scenes of nudity and/or sexual activity within the context of narrative or theme" permitted by a 14+ rating. The Commission does not consider that

a PG rating, which allows for “infrequent and mild profanity,” “mildly suggestive language,” “brief scenes of nudity,” and “limited and discreet sexual references or content when appropriate to the storyline or theme,” is accurate or appropriate for this broadcast. The Commission therefore determines that the PG rating assigned to this program was insufficient.

Other Dubious Antics

The complainant also complained that the program included segments about excessive drinking, giving beer to dogs, and igniting alcohol while it was still in the drinker’s mouth. The Panel readily acknowledges that none of these constitutes good practice. That does not, however, mean that the broadcast of such antics amounts to a breach of any codified standard. Animal-lovers may have some concern about dressing dogs in sunglasses and visors, much less giving them beer to drink. The Panel does not consider any of these antics violent or life-threatening to animals; arguably, the innocent animals come off better than some of their on-screen human “colleagues”. Inappropriate, perhaps; anthropomorphizing, undoubtedly, but not remotely violent in the sense of Article 9 of the *CAB Violence Code*. As to the human practices of excessive drinking and fire-blowing, the Panel sees only implications of poor taste. This was not a case that went nearly as far, in terms of the outlandishness of the activities, as the broadcast dealt with in *Global re an episode of fatbluesky* (CBSC Decision 05/06-1611, January 8, 2007), where the National Conventional Television Panel said:

[T]he Panel considers that his outlandish and illegal antics driving a boat while drinking are utterly inappropriate for a non-adult audience. That neither the producers nor programmers viewed Joe’s behaviour as problematic is evident in the fact that he was seen grinning and smirking each time he took a sip of his alcoholic beverage. [...] While, arguably, the practice of drinking while driving is hardly a model for adults either, the Panel appreciates that adults have powers of discernment, which younger individuals may not. What would disarm the youthful viewers still more is the trivialization of Joe’s boating practices. All things considered, the Panel views the boating display in this episode of *fatbluesky* as an exclusively adult theme [...]

In conclusion, this Panel considers that the antics are no more than in poor taste; they breach no codified standards.

Re-Broadcast of Challenged Programming Pending a CBSC Decision

The complainant doubted the appropriateness of the station’s decision to re-broadcast the program in May when it knew the CBSC was investigating the scheduling of the December broadcast. The CBSC has dealt twice before with a similar re-broadcast of a program prior to the release of a CBSC decision on the matter. In *History Television re the documentary film Argentina’s Dirty War* (CBSC Decision 00/01-0944, May 3, 2002),

the documentary about military rule in Argentina during the 20th century on June 18, 2001 was first broadcast at 9:00 pm. After the CBSC received a letter from a complainant who was concerned about the descriptions and re-enactments of torture methods, the documentary was re-broadcast on November 26, 2001 at 8:00 pm. The National Specialty Services Panel found the 8:00 pm broadcast in breach for airing pre-Watershed, but made the following general statement about re-broadcasts of programming pending adjudication:

While there is no CBSC requirement that a program awaiting adjudication not be rebroadcast, the Panel does appreciate the sensitivity of a broadcaster that decides to await the Panel's conclusions. There may occasionally be financial exigencies relating to the term of a licence or other matters that militate against a wait that is too lengthy, and this should be borne in mind by any complainant as counterpoint. Moreover, it goes without saying, since CBSC decisions can go either way, those involved on either side of a complaint should be sensitive to the overall fairness involved in a rebroadcasting decision. After all, the existence of a complaint is no more decisive as to the issue of Code compliance, on the one hand, than the initial decision of a broadcaster to air the program, on the other.

In the second such instance, namely, *CKCK-TV re an advertisement for "The Wolf" radio station* (CBSC Decision 02/03-0609, 641, and-753, December 15, 2003), the Prairie Regional Panel dealt with an advertisement for a radio station, which was still being broadcast while the complaint was in the CBSC process. The Panel provided more extensive explanations for the CBSC's policy in this regard, noting in particular some of the potential consequences that could occur if a complaint automatically prevented a re-broadcast pending a CBSC decision.

There are, from time to time, segments which include an advertisement, a song, a canned gag or other programming that a broadcaster may consider, on receipt of a complaint, so egregious that it will readily accede to its removal immediately. In other cases, though, the station may not consider that the challenged material is even in violation of a codified standard. In yet other circumstances, the broadcaster may simply be unsure of the outcome of a forthcoming adjudication and may choose to await that outcome before making such a choice. In either of the two latter cases, the station will be unwilling to remove the challenged programming or advertising.

It is the view of the Panel that this is a fair approach for a broadcaster to adopt. It is, after all, a broad democratic principle that there is no assumption of guilt or responsibility without a finding from a relevant body. Moreover, it necessarily takes time to deal thoroughly and fairly with complaints from start to finish, that is to say, through the adjudication process. If the process were flip or casual in nature, tossed off arbitrarily on the basis of a "it feels like this should be the answer" approach, then speed might be possible. The cost to process credibility would, however, be such that the system would not be worthwhile having. The compromise between speed and reasoned objectivity is the process in place. It avoids before-the-fact decisions, which smack of the unacceptable principle of censorship, and excessively hasty decisions, which leave no taste of thoughtful reasoning, and permits the establishment of evergreen principles that extend far into the future, well beyond the matter dealt with in each instance.

It is also pertinent to observe that, while CBSC Panels frequently agree with the complaints made by members of the public, it is certainly not always the case that they

do. If a broadcaster were required, by the mere deposit of a complaint, to remove a commercial or other programming component from the airwaves, this would provide any member of the public, including some who might not be as well-intentioned as others, with a kind of injunctive authority, which could be exercised at will.

The Ontario Panel adopts the reasoning of the National Specialty Services and Prairie Panels in the two foregoing decisions and finds that CHCH-TV breached no codified standard or CBSC membership obligation in re-broadcasting *E!'s Wildest Spring Break Moments* prior to the adjudication of this matter.

Broadcaster Responsiveness

In all CBSC decisions, the Council's Panels assess the broadcaster's responsiveness to the complainant. In the present instance, the Panel finds that the response of the broadcaster's Viewer Relations Co-ordinator was, in this regard, thoughtful and responsive. Moreover, there was an attempt to correct the situation that arose because of the prolonged dialogue that began following the first broadcast of the program, in the sense that the broadcaster furnished screener tapes when the original loggers had been destroyed. The Panel considers that the broadcaster has fully met its responsiveness responsibilities of CBSC membership.

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 *E!'s Wildest Spring Break Moments* was broadcast, but not on the same day as the first mandated announcement; 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, when it was owned by Canwest, breached the Canadian Association of Broadcasters' *Code of Ethics* and *Violence Code* in its broadcast of *E!'s Wildest Spring Break Moments*. The program aired at 1:00 pm in December 2008 and May 2009. The two afternoon broadcasts contained sexual scenes that were intended for adult audiences. CHCH-TV breached Clause 10 of the *CAB Code of Ethics*, which requires that such content only be aired after 9:00 pm. For its failure to include any viewer

advisories, CHCH-TV breached Clause 11 of the *CAB Code of Ethics*, and its failure to classify the program as 14+ was in breach of Article 4 of the *Violence Code*.

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

APPENDIX A

CBSC Decision 08/09-1097 & -1743 CHCH-TV (E!) re *E!'s Wildest Spring Break Moments*

E!'s Wildest Spring Break Moments was a reality/information program that provided clips of spring break activities around the world. During spring break, many high school, university and college students travel to warm climates to party. The program contained numerous scenes of young men and women in bathing suits or various states of undress drinking alcohol, dancing and participating in different contests, stunts and antics. Many of those contests involved nudity or a sexual theme. There were frequent close-ups of breasts and buttocks, but any actual nudity was pixillated. The program was narrated by a male narrator who mentioned the location and explained what was happening. The scenes were interspersed with clips of comedians making humorous or sarcastic comments about the activities being shown on screen. Those comedians were Gary Anthony Williams, J. Keith van Straaten, Loni Love, Ben Morrison, Natasha Leggero and Sarah Tiana.

The program aired on CHCH-TV (E!) on December 27, 2008 and May 30, 2009 at 1:00 pm. The May 30 episode carried a PG icon and no viewer advisory. Descriptions and transcripts of the most relevant scenes are as follows:

13:01:33-13:03:13 Wet T-Shirt Contest

Poolside: women wearing bikini bottoms are given white t-shirts and get hosed down; they bounce up and down and turn around to be judged as onlookers cheer and jeer; close-ups of nipples and buttocks in thong bikinis (pixillated); interview with winner who says she is going to get "buck wild" later.

Love: This is like *Project Runway* for hos.

Gary Anthony Williams: I can almost see her, uh, ... That's why they wet 'em! So you can see oh oh oh!

Tiana: You think that's hard? Try to make them *not* jiggle.

van Straaten: Yeah, because they love you for you. And your big, wet knockers.

13:03:14-04:16 Sex on the Beach Contest

narrator: While Kelly's getting buck wild, let's go to the spring break capital of the world, Panama City, Florida, for some fun, games and maybe even a little jail time. Here, freshman Tiffany has entered the simulated sex contest where contestants have one minute to come up with as many sex acts as they can. Sound like fun? It is. 'Til the cops show up.

[quick montage of groups of young people wearing bathing suits in different positions]

interview with Tiffany outside police station: Oh, I got arrested for the sex on the beach contest. I won it, but I got arrested for it.

[scenes of men and women on beach grinding & groping each other, exposing women's breasts & genitals (pixillated)]

Love: What is all of this screwin' on the beach? Can't we just play volleyball?

Tiffany: I'm in trouble. My friends got pictures of me in handcuffs.

Tiana: I can guarantee she's going to be in handcuffs more than once on this trip.

Tiffany: I am framing this and hanging this in my room, so everybody can see. [close-up of police arrest form] "Disorderly conduct". [...] I'm a virgin, actually. Can you believe that? I won and I'm a virgin.

Williams: You're a virgin? Really? Where?

Love: I'm a virgin too. [winks twice]

13:05:05-13:05:12 Slip & Slide Bowling

Contestants slide along mat, into large inflatable beer bottles; two men bang into each other and then one is hugging the other from behind.

Love: Are we having a *Brokeback* moment right now?

13:05:16-13:06:23 Oil Wrestling

narrator: Let's slide on over to another spring break destination, Myrtle Beach, South Carolina. Where they serve southern hospitality with a side of girl-on-girl action. Here, Ashley and Maria are preparing to wrestle each other for the title of the "queen of spring break". Before they do, they'll have to be doused in oil.

[two young women in bikini bottoms & short white t-shirts groping themselves; a man pours oil on one woman's chest; the two women wrestle on a mat; one spansks the other]

van Straaten: Ah, the power spank, as first perfected by Rowdy Roddy Piper.

[close-up of one woman's butterfly tattoo, which is located just above her butt crack]

Morrison: Oh look, they've got tramp stamps. The official mark of the hot oil wrestling league.

Love: I think those skinny bitches are fighting 'cause they need a sandwich.

Williams: Hot oil is good for the skin. Bad for the dignity.

13:06:23-13:07:19 Naked Twister

narrator: If you think hot bodies are getting tangled up in Myrtle Beach, then you haven't spent spring break in Montego Bay, Jamaica. Here, they like their rum spicy and their Twister naked.

[group of young men and women naked, playing Twister (all private parts pixillated)]

Morrison: You can see the disease being transmitted ... now.

van Straaten: Mommy, why is my Twister board all sticky?

13:09:31-13:10:28 Wet T-Shirt Contest

In a bar: two young women in skimpy white t-shirts; they rub their chests together; announcer chants "I say 'wet' and you say", crowd responds "wild!"; announcer pours pitcher of water onto their breasts; the two women then tear each others' shirts off and jiggle their breasts for the crowd; one then pulls the other's bikini bottoms off and they grind against each other.]

Tiana: In college, I think this is considered experimenting.

Love: I say "white", you say "trash".

Tiana: You say "red", I say "neck".

13:10:40-13:11:17 Naked Bungee Jumping

Naked women (pixillated) sitting as man ties their ankles with bungee cord; man holding woman on platform

Leggero: There's a fine line between proper support and inappropriate touching.

One woman jumps and hair dips into water below.

Williams: How much drunk naked girl puke is she dunkin' her hair in?

13:11:20-13:12:23 Balloon Popping Contest

Male-female pairs have to pop balloons by smushing them between each other; contestants attempt to pop balloons by smashing against partner's buttocks, sitting on his lap, straddling him while he lies down, etc.

van Straaten: Look, I don't want to alarm anybody, but there's something vaguely sexual about this.

Williams: Somewhere there's a child going "Mama, why do my balloons smell like sunscreen and man butt?"

13:12:24-13:13:21 *Blind Date* episode

narrator: Now let's travel across the Pacific Ocean to Hawaii, where the waves are big, the drinks are strong, and the women like to get a little kinky. At least that's the case with Eliza on this spring break episode of *Blind Date*.

[scene of boat with caption "Next Stop: Hawaii Sex-O"]

narrator: Here, she has a little naughty fun with her date, Tony.

[scene of Eliza & Tony on boat]

Eliza: You're sexy.

Tony: Sexy?

Eliza: Mm hm.

[caption on screen: "Blunt Guy Says: Will you two get naked already?"]

Tony: Like in a sexy kind of way?

Eliza: Yeah, handsome.

Tony: Why, thank you.

Eliza: Handsome and sexy. Would you spank me?

Tony: Like cat-o'-nine-tails?

Eliza: Am I a bad girl?

[Tony spanking Eliza with object; bull's eye icon over Eliza's butt; clip repeated numerous times]

Eliza: [giggling] Oh, ow! [Tony laughs]

Morrison: Something tells me that guy's going to be spanking it after the date as well.

13:13:22-13:14:15 Kissing Contest

narrator: Spanking may be the way to a girl's heart, but sometimes it's better to start with a simple kiss.

[couples kiss passionately]

Leggero: So romantic. I mean, one day these two will have a slut of their own.

[man bends woman backwards and her breast is exposed]

Morrison: Ah, we got boob. The only way to win is you gotta show some boob. That's how I won. [...] Call me old-fashioned, but I prefer the dry humping contest.

13:17:04-13:17:58 Booty Shaking Contest

Women wiggle their buttocks & breasts for a crowd; one woman smacks her own buttocks.

Leggero: I believe that's known as the stripper smack.

Love: Look at the ass cam. Tight ass.

13:18:04-13:18:39

Three young women (faces & breasts pixillated) lifting bikini tops to flash breasts to camera.

van Straaten: Hot, annoying. Hot, annoying. My erection has a tension headache this big. [...] This is just what spring break's all about. Deciding who's just not too annoying to [bleep].

13:18:45-13:19:43 Drinking Dogs

Two dogs wearing sunglasses & hats slurping beer out of cups at a table.

Love: One dog got so drunk, he [bleep] a cat.

13:19:46-13:20:44 Bumper Cars

narrator: Remember, if you're drinking, please don't drive. However, if you find yourself at South Padre Island at a bumper car fun park, feel free to take off your top and enjoy the ride.

[women topless in bumper cars; close-ups of their breasts]

Williams: Naked women drivers. Huh! [rolls his eyes]

Tiana: You need to be at least a C cup to get on this ride.

13:20:55-13:21:14

narrator: It's here where we see the lovely Julie who never even made it out of her hotel room.

[blonde woman naked standing on balcony of hotel; group of men trying to take photos]

Love: Is the naked chick a bellhop?

13:22:30-13:23:23 Fire-Breathing Stunt

narrator: You've seen sexy wet t-shirt contests and hot girls wrestling in everything from margaritas to oil. But just how do you get one of these spring break hotties back to your hotel room? Well, don't ask these next guys. The only thing they can score is low on their final exams.

[man performing fire-breathing stunt; it appears that man's hair catches on fire so he dunks head in pool]

Williams: Fire and a drunk guy. What could possibly go wrong?

Love: Hasn't your mama told you don't play with fire?

13:23:32-13:23:54

Man snorting something off woman's stomach; then he drinks a shooter and she squeezes lime into his eye.

Morrison: Snort it, shoot it, regret it.

Love: To top it off, he stuck a jalapeno up his [bleep].

13:24:13-13:24:25

Two young men stand on Siegfried & Roy statues in Las Vegas; one pulls down his pants to moon the crowd.

Morrison: Siegfried, Roy and naked man ass. No real shocker there.

Tiana: Now that's an ass hat [close-up of man's buttocks]

13:24:25-13:25:46 Bikini Bull Riding

narrator: Okay, enough of these knuckleheads. It's time to get back to more naked, hot girls.

[various women ride a mechanical bull while wearing bikinis; one woman grabs her own breasts]

van Straaten: In this contest, your top has to stay on for eight seconds.

[women flash their breasts to crowd]

13:25:48-13:26:07

narrator: Coming up, it's time for chocolate pudding spring break style. More wet and wild fun [close-ups of women in white t-shirts having water poured on them]. And later, topless women, topless women and even more topless women.

[clips of topless women]

13:29:51-13:30:55 Wet T-Shirt Contest

Two women in skimpy white t-shirts; announcer pours pitcher of water on them; the two women start kissing.

van Straaten: These women are judged on three key components: poise, grace and areola.

13:31:26-13:31:55 Chocolate Pudding Wrestling

Two women in “ring” of chocolate pudding wrestle.

van Straaten: Not only does this say “We like to look at boobies”, it also says “[bleep], you starving people of the world”. [holds up middle finger on both hands, but pixillated]

13:33:06-13:33:47 Foxy Boxing

Women in skimpy white t-shirts get oil or water poured on them & then boxed each other.

van Straaten: Come on, Rock. Aim for the boob in the middle.

13:33:47-13:34:50 Wet T-Shirt Contest

narrator: It's time to put down the boxing gloves and remember the real reason we love spring break: wet t-shirts.

[women getting hosed down or buckets of water dumped on them; one woman is using crutches & has ankle in a cast.]

Morrison: The doctor said to keep the cast dry. Unless of course you could win a hundred bucks by showing her boobs.

13:39:47-13:41:00 Sexual Position Contest

narrator: Screaming is one way to get attention in a club. Another is to participate in a sexual position contest like these folks in Panama City, Florida. The object of the game? Simulate as many sexual positions as you can in one minute. In order to show you this contest, our legal department made us speed up the footage so we could actually air it on TV. Feel free to hit pause.

[speeded up footage of groups of young men & women in a variety of positions]

Leggero: Oh, oh, I think that's *Dancing with the Stars*, the porn edition.

van Straaten: I prefer the sexual position where you actually take off your clothes. Which one's that called? Oh right, “sex”.

announcer interviewing couple: Did you guys practise to be in the competition?

Love: What type of practice do you need to [bleep]?

Tiana: Uh, something tells me he's been practising by himself.

13:41:59

interview with man wearing bikini

Tiana: At least he can say he got into some girl's panties.

13:42:55-13:43:24 Spiderman

Man in Spiderman suit grinding-dancing with woman; close-up of his crotch.

Tiana: Something tells me it's more than just his spidey sense that's tingling.

13:43:26

narrator: Okay, enough of the guys already. Let's get back to the real reason you're watching: Hot women and cold drinks.

13:44:44-13:44:58

narrator: And later, what spring break is all about: flashing, flashing and flashing.

[multiple scenes of women flashing breasts]

13:48:18-13:49:06 Bikini Contest

[Women in bikinis getting sprayed with water.]

van Straaten: I really hope that's water.

13:50:28-13:51:13 Whipped Cream Wrestling

groups of women wearing bikinis wrestling in whipped cream; one straddles another and bounces up & down

Tiana: Oh, that's a very technical move. It's called regret.

13:51:29-13:52:33 Booty-Shaking Contest

[women jiggle their butts, and dance and grind against each other]

Morrison: Warning, this clip will sexually frustrate you.

van Straaten: Oh, oh my. You can actually see her bosoms through the wet, sheer shirt. Someone should really tell the poor dear.

Williams: Mentally, I don't get you. Down here, I understand.

13:56:29-13:58:24 Jerry Springer Stripper Olympics

Springer interviews contestant Janet

Springer: And why do you want to be Miss Springer Break 2002?

Janet: 'Cause I want to be a stripper like my best friend Mary Beth! Whoo! [...] And I want to get naked with you, Jerry.

Springer: I love you. Thank you very much.

[contestants twirl around pole, crawl along stage; go along slip & slide on their stomachs]

Springer: Crawl. Sexy crawl. Sexy crawl. Oh, sexy crawl.

Morrison: This isn't demeaning at all.

van Straaten: Ah, remember when Bruce Jenner won the gold in sexy crawl?

Love: Sexy crawl. Sexy crawl.

Springer: There's a pole trick.

van Straaten: This is more like the stripper special Olympics. She's horrible.

Springer: Makes you want to be a pole. [...] Oh, you got it. Oh.

Leggero: Well, now I know what it sounds like when Jerry Springer is watching porn.

Springer: Oh?! Oh. You animal, you. And off with her top! Oh!

13:58:26-13:59:39

narrator: It's time to leave Jamaica and close the show. What better way than to take a round-the-world trip to celebrate one of the finest spring break traditions of modern times: The boob flash. Let's toast those crazy young women who bring a smile to our face. With a simple move of the bikini top and a shout of "whoop hoo"!

[series of clips of women flashing their breasts]

Tiana: Slow motion really brings home the dignity, doesn't it?

Leggero: That's what's known in the business as a happy ending. Good night, everybody.

APPENDIX B

CBSC Decision 08/09-1097 & -1743 CHCH-TV (E!) re *E!'s Wildest Spring Break Moments*

The Complaint

The CBSC received the following complaint via its webform on February 18, 2009:

station: CanWest /E! Channel
program: *E! Channel's Wildest Spring Break Moments*
date: December 27, 2008
time: 1:00 pm
concern: Copy of email sent to CRTC on February 18, 2009

On December 27, 2008, I sent an email to CanWest and to E Channel regarding my concerns about airing *E! Channel's Wildest Spring Break Moments* at 1:00 pm in the afternoon. A rating was not indicated, nor was an advisory given. After visiting E! Channel's website, I found out that the program was rated PG. Nearly one month later, on January 26, 2009, I received a response from "Viewer Contact: Global Television and E!" stating that the rating for the program was PG and was therefore allowed to be aired prior to the "watershed hour".

On January 30, 2009, I received another email from "Viewer Contact: Global Television and E!" informing me that *E! Channel's Wildest Spring Break Moments* will likely be scheduled to air in March for Spring Break. In addition to this it was stated that "Viewer Contact has been assured both shows will be screened to ensure inappropriate materials (that shouldn't appear in the day) will be removed in addition to implementing an advisory before and during the show."

On January 31, 2009, I sent another email to Viewer Contact asking for clarification that it was their intent to air the programs once again in the afternoon during March Break. I also asked if they could tell me who was responsible for selecting the rating of the program. As of yet, February 18, 2009, I have not received a response to my last email.

My concern is that these programs have not been rated appropriately and that they will once again be aired before the watershed hour. It is my opinion that these programs contained more than the "limited sexual reference or content" that a PG rating would entail. They included: simulated sex on the beach, women exposing their breasts (images were blurred over), wet t-shirt contests, etc. The episodes also included segments about excessive drinking including giving beer to dogs and drinking alcohol and then igniting it while it was still in the person's mouth.

Please find attached my email correspondence with Global Television and E! Channel.

Although the complainant indicated that she had attached her correspondence with E!, it was not attached.

Since the complaint was about a December 27, 2008 broadcast, and the complainant did not file her official CBSC complaint until February 18, 2009, the CBSC at first informed her that it was too late for it to obtain logger tapes and proceed with her complaint. The complainant responded to the CBSC's initial e-mail on February 24:

Thank you for your response. You state that, "dialogue between broadcasters and members of their audience is a cornerstone of the CBSC's complaints resolution process. Concerns are often resolved satisfactorily through this dialogue phase". Please note that I did contact E! Channel and CanWest on December 27, 2008 and did not receive a response from CanWest until January 26, 2009. You also state that, "Broadcasters are only required to hold tapes of their programming for 28 days following the broadcast". Since CanWest did not respond to my concerns within the 28 days, I was unable to bring this matter to the CBSC's attention within the required timeframe. My question is: Are broadcasters required to address viewers' concerns within a certain period of time? If not, then it would appear that this is a "loop-hole" that broadcasters can use to their advantage. In other words, it's possible to air questionable programming and then not respond to a viewer's concerns in a timely manner so that the CBSC is unable to formally pursue the complaint and therefore allow broadcasters to maintain that they are a member of the CBSC in good standing.

My other concern is that CanWest intends to air these programs once again in the afternoon during the March Break. I still contend that the PG rating for this program is not correct. Is it possible for the CBSC to view this program before CanWest airs it again to ensure that it is indeed rated correctly and therefore allowed prior to the watershed hour?

Your response is greatly appreciated.

The broadcaster acknowledged that the complainant had a valid point about contacting the broadcaster in December and so agreed to provide the CBSC with copies of the program (though it no longer had the official loggers of the actual broadcast) so it could proceed with the complaint.

Broadcaster Response

E! provided its official response to the complainant on March 26:

We are in receipt of your letter via the CBSC regarding E! Channel's broadcast and rating of *Wildest Spring Break Moments* which originally aired December 27th 2008 at 1:00 pm, and was repeated on March 14th.

In your letter, you expressed concerns over this program not being rated appropriately and that it will once again be aired before the watershed hour.

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 six-level rating system is used to classify any levels of violence, language or sex/nudity in all drama, feature film and children's programming broadcast in Canada. These classifications allow viewers to use V-chip technology, which is built into almost all

television sets, to screen out programs with mature subject matter that they do not wish to watch. 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 a matching V-Chip data is encoded into our transmission for the entire duration of the program.

As mentioned in our previous correspondence, this episode of *E!'s Wildest Spring Break Moments* has been rated PG - parental guidance. Programming with this classification may contain themes which might not be suitable for viewers under the age of 8. As well, parents should be aware that there might be elements, such as limited sexual reference or content, which some could consider inappropriate for unsupervised viewing by children in the 8-13 age range. Again, please note that this rating does not restrict the broadcaster from airing the program prior to the "watershed hour" which is 9:00 pm to 6:00 am and usually reserved for adult content.

Our shows are screened and rated by our Programming Department according to viewing suitability. Programming decided the show would air again during the Spring Break with the appropriate advisories.

In order to further assist our viewers in making their viewing choices, we also ran the following viewer advisory at the beginning of the program and after every commercial break:

"The following program contains scenes which may not be suitable for children. Viewer discretion is advised."

There was no nudity, violence, or coarse language that warranted a stronger viewer advisory or a higher AGVOT rating.

We care about our audience and viewer feedback is always welcomed and encouraged, as it helps us to make informed decisions in the future.

We appreciate the time you have taken to contact us and hope we were able to address your concerns. Please note your comments have been passed on to our Programming Department and we hope you continue to enjoy other Global Television programming.

Additional Correspondence

The complainant filed her Ruling Request on April 3:

On December 27, 2008, I contacted E! Channel and CanWest regarding my concerns about the airing of the program *E! Channel's Wildest Spring Break Moments*. My concerns included the following: 1) The content of the program, 2) The fact that there was no rating aired with the program (I had to visit E! Channel's website to find out what rating the program had been given) 3) That this program was not rated correctly. I did not receive a response from CanWest until January 26, 2009. After finding the response to be unsatisfactory I contacted the CBSC and was informed by [the] Correspondence Coordinator for the CBSC, that my complaint was made too late for the CBSC to secure the logger tape of the broadcast and because of this they would be unable to formally pursue my complaint. I responded to [the CBSC]'s email by asking the question, "Are broadcasters required to address viewers' concerns within a certain period of time?" I went on to point out, "If not, then it would appear that this is a "loop-hole" that broadcasters can use to their advantage. In other words, it is possible to air questionable programming and then not respond to a

viewer's concerns in a timely manner so that the CBSC is unable to formally pursue the complaint and therefore allow broadcasters to maintain that they are a member of the CBSC in good standing."

I received a response from [the CBSC] on March 6, 2009 informing me that the CBSC had contacted CHCH-TV and had asked them to respond officially to the concerns that I had raised.

On March 26, 2009, I received a response from [the] Viewer Relations Coordinator for Global Television and E!, stating that CanWest's position was that the program was indeed rated correctly and that CanWest's Programming Department decided the show would air again during the Spring Break (March 14, 2009) this time with the appropriate advisories. [E!'s Viewer Relations Coordinator], in her response, defends the PG rating of the program by stating, "There was no nudity, violence, or coarse language that warranted a stronger viewer advisory or a higher AGVOT rating".

I still contend that this program was not rated appropriately. For comparison purposes, please note the following link to "Broadcasting Decision CRTC 2008-311" <http://www.crtc.gc.ca/eng/archive/2008/db2008-311.htm>

On November 14, 2008, the CRTC ruled on a similar program, "MuchMusic Spring Break '08". In this ruling the CRTC stated, "The Commission has previously determined that programming intended for adult audiences is not limited to that containing strictly sexually explicit material or coarse language but also includes programming whose overall theme is clearly unsuitable or unintended for younger viewers."

The ruling also stated, "The Commission considers that the persistence of the themes described above in the one-hour broadcast suggests that the program is not appropriate for children. The program's sole focus is on activities intended for adults, with no other storyline or element that is appropriate for younger audiences. Irrespective of the target audience, the Commission finds that the program is not appropriate for daytime broadcast."

The Commission also stated that they determined that the PG rating assigned to Spring Break '08 was insufficient.

The ruling also includes the following, "In light of the above, the Commission finds that, in broadcasting Spring Break '08 before 9 p.m., the licensee did not meet the Canadian broadcasting policy objective, set out in section 3(1)(g) of the Act, that programming be of high standard".

I offer this comparison to defend my position that *E! Channel's Wildest Spring Break Moments* was not rated correctly.

I understand that my initial complaint cannot be followed up on due to the fact that CanWest did not respond to my concerns in a timely manner; however, CanWest did re-broadcast the program on March 14, 2009. I would like to request that the CBSC obtain the logger tapes for the March 14, 2009 broadcast so that they may be viewed and a decision can be made as to whether or not *E! Channel's Wildest Spring Break Moments* was indeed rated correctly.

The CBSC acknowledged receipt of the Ruling Request and the complainant wrote back again:

Thank you for your response. [apologizes for getting CBSC Communications Coordinator's name wrong].

Secondly, for clarification purposes can you tell me if my request for ruling automatically means that the logger tapes will be requested for the program in question? Or do I need to make a second complaint regarding specifically the re-broadcast of the program in order for the CBSC to obtain the logger tapes?

The CBSC informed the complainant that she did not need to make a second complaint about the March 14 broadcast because it already had copies of the program pursuant to her initial complaint. The CBSC did not, however, order the official loggers of the March 14 episode.

The complainant wrote to E! again on May 30 and copied the CBSC:

E!'s Wildest Spring Break Moments was aired once again today, Saturday, May 30, 2009 at 1:00 pm with a PG rating and without a viewer advisory. In your letter, dated March 26, 2009, regarding the airing of the program during March Break of this year you stated:

In order to further assist our viewers in making their viewing choices, we also ran the following viewer advisory at the beginning of the program and after every commercial break:

"The following program contains scenes which may not be suitable for children. Viewer discretion is advised."

The program which aired today, however, did not carry a viewer advisory. I question CanWest's programming department's decision to air this program again, especially since it is my understanding that the CBSC Secretariat is reviewing my original complaint regarding the airing of this program before the watershed hour.

Please be advised that I will be contacting the CBSC to determine if it is necessary to lodge a separate complaint regarding today's broadcast.

The CBSC had E! retain the official loggers for the May 30 broadcast and the station responded to the complainant on June 19:

We are in receipt of your email to the CBSC regarding the content of E! Network's broadcast of *E!'s Wildest Spring Break Moments* which aired on CHCH-TV, at 1:00 pm, Saturday May 30, 2009.

In your letter, you expressed concerns regarding inappropriate content aired without the proper advisory.

After reviewing this episode, we found the AGVOT (Action Group on Violence on Television) rating and viewer advisory had not been inserted due to human error. We sincerely apologize for this omission as we are trying very hard to make sure that no details are missed.

Unfortunately, due to a serious economic decline in the conventional broadcasting sector as well as Canwest's precarious financial position (I'm sure you've heard about this in the news), we have staff shortages. That said, the omission of the AGVOT rating and viewer

advisory was a mistake on our part and our programming department met with our scheduling department to put a process in place to ensure that this type of error does not occur again.

We again apologize for the error and appreciate you bringing this matter to our attention.