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**CANADIAN BROADCAST STANDARDS COUNCIL**  
**NATIONAL CONVENTIONAL TELEVISION PANEL**  
**CTV re an episode of *Criminal Minds* (“Omnivore”)**

(CBSC Decision 08/09-1405)

Decided June 25, 2009

R. Cohen (Chair), A. Cardozo (Vice-Chair, Public), E. Duffy-MacLean,  
M. Hogarth, T. Tatto

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## **THE FACTS**

*Criminal Minds* is an American crime drama series that centres on a division of the Federal Bureau of Investigation (FBI) known as the Behavioral Analysis Unit (BAU). The BAU develops psychological profiles of criminals in order to help solve crimes. The team of “profilers” is led by Aaron “Hotch” Hotchner and, in this episode, included special agents David Rossi, Derek Morgan, Spencer Reid, Jennifer “J.J.” Jareau and Emily Prentiss.

CTV broadcast the episode entitled “Omnivore” on March 18, 2009 from 7:00 to 8:00 pm. The broadcast had a 14+ rating, the icon for which appeared for 15 seconds at the beginning of the episode. It also included the following viewer advisory in both audio and video format at the beginning and coming out of every commercial break:

The following program contains scenes of violence. Viewer discretion is advised.

The plot of “Omnivore” involved the BAU team investigating a series of gruesome murders occurring in Boston. They believed the murders were being committed by a serial killer known as the Boston Reaper who had been active a decade earlier and had ceased his killing spree after making a deal with a member of the Boston police force.

The first murder occurred five minutes into the episode. A young couple, Evan and Nina, were driving along a road at night when their car broke down. Another car pulled over and the male driver offered assistance. The man, who was actually the Reaper, went to his car and, when he returned, he struck Evan in the face with a crowbar, knocking him unconscious. The Reaper then went to the passenger window and told Nina to give him her watch. She complied, pleading, "Please don't hurt us." The Reaper told her he was not going to shoot her and then slashed her throat instead. Evan regained consciousness with blood dripping down his face. The Reaper appeared in front of Evan and said, "Nina's dead". The Reaper then asked Evan, "Are you scared? You should be," and shot him.

The next scene showed the BAU team on an airplane heading for Boston. They were discussing the case and sifting through photographs of dead bodies from the murders committed by the Reaper a decade earlier. The viewer saw the photographs, which showed bodies with lacerations and one with a bullet wound to the head. At a few points later in the episode, the BAU members looked at some of these photographs again, as well as other similar ones, only this time on a large computer screen.

A second murder scene occurred 17 minutes into the program. This time it was an older couple, Arthur and Diane, driving in a car at night. They pulled over to the side of the road when they noticed police lights and sirens behind them. The Reaper, dressed in a police uniform, approached the car and asked Arthur for his licence and registration. Arthur complied, whereupon the Reaper stabbed Arthur in the chest, leaving the blade there. Diane attempted to roll up her window, but the Reaper broke it and pointed a revolver at her. The viewer, from a vantage point outside the car, saw a flash of light inside the car and heard a gunshot.

BAU members Hotch and Rossi arrived at this new crime scene. Hotch looked around inside the car with a flashlight; the light fell on Diane's dead body, with a gunshot hole in her forehead and blood running down her face. They commented on the crimes and some of the clues they had pieced together so far.

Back at the police station, Hotch and Rossi described the profile they had developed so far to the rest of the BAU and the Boston police force that was helping with this case. Hotch explained that the Reaper was an "omnivore" serial killer, which meant he would kill anyone, rather than focussing on a particular type of person, because he enjoyed the power over his victims and the police. They showed the group photographs of a close-up of Diane's face with a gunshot hole in her forehead and blood running down her face; and Nina's body in the car and then a close-up of blood from Nina's murder. They then showed photos from the 1990s murders: a female with her throat slashed with blood around her neck and face; a female sitting up, covered in blood; a female body with blood splatters on it. Hotch stated that, although the Reaper was an omnivore, he did seem to spend more time with young female victims and to prefer

stabbing them because the knife represented a substitute for bodily penetration. Rossi said that the Reaper was likely a hebophile, which, Reid explained, is someone with a sexual preference for teenagers.

Approximately half-way through the episode, the Reaper boarded a city bus. He first asked all the passengers to give him their wallets and jewellery, but then proceeded to shoot everyone on the bus. He shot the driver in the head, causing him to fall against the bus window. From the viewer's point of view outside the bus, one saw the Reaper walking through the bus, firing at the passengers with two revolvers.

In the next scene, Hotch and Rossi were at the scene of the bus murders. Written in blood on the bus windows were "1439", "201", "1488" and "NO DEAL". Hotch and Rossi walked around inside the bus. The bodies were still there, but the viewer could only see a few limp limbs hanging over the seats. Rossi commented: "Six bodies, not including the driver. He put 'em down with the gun or more likely guns. And finished them off with his knife."

The BAU deduced that the numbers on the bus windows were the addresses of three residences of a man named George Foyet. Foyet had apparently escaped one of the Reaper's attacks a decade earlier and had been living in hiding ever since. The BAU surmised that Foyet might be the Reaper's next target, so they split up into pairs to go to each of the addresses. BAU Agent Morgan was with Boston Sergeant O'Mara. O'Mara said he would search the backyard, while Morgan searched inside the darkened house. While Morgan was looking around, pointing his gun and flashlight, the Reaper lurked in the shadows. He suddenly lunged at Morgan and knocked him through a window onto the ground. While he lay on the ground unconscious, the Reaper stood over him, took his FBI identification, and pointed a revolver at his head, ominously threatening, "Wake up, Derek. It's time to die."

When the program resumed following the commercial break, the viewer learned that the Reaper had not killed Morgan. Rather, the paramedics were taking away a body on a gurney which was revealed to be that of O'Mara. There was blood around O'Mara's neck and chin. Hotch, Rossi and Reid were in the kitchen of the house. There was a tremendous amount of blood on the floor leading to the door. Reid commented that the human body holds five quarts of blood and there was a little more than half that on the floor, but no body to be found.

Back at the police station, in reviewing the documents of the case, the BAU looked again at the photos of Foyet's lacerations, in the presence of other crime scene photos on the wall in the background. They suddenly realized that Foyet was actually the Reaper.

Meanwhile, a journalist named Roy Colson, who was writing a book about the Reaper, was meeting with Foyet at one of his residences. Suddenly angered by Colson, Foyet

stabbed the dining room table on which Colson was typing on his laptop computer. Foyet then pulled out a revolver and pointed it at Colson. Colson was stunned to realize that Foyet was the Reaper, and he pleadingly repeated, "This can't be you." Foyet told Colson that he wanted him to write about how Foyet "beat" the police. Foyet kept the gun pointed at Colson. The BAU team sneaked into the house and pointed their weapons at Foyet. Hotch told Foyet, "It's over." Foyet threatened to kill Colson, so Hotch responded by threatening to kill Foyet. Hotch pointed out that Foyet was narcissistic and wanted to be famous, fame which Foyet would not be able to enjoy if he were dead. Foyet dropped his weapon; Morgan arrested him and led him away.

In the next scene, in his prison cell, Foyet repeatedly rubbed his wrist along the metal edge of the bed until it bled. He then sucked the blood from his wrist, and the camera showed blood on his teeth and around his mouth and chin, while he grinned maniacally. Back at the BAU office, Jareau informed the others that Foyet had escaped from prison. She explained that Foyet was found in his cell vomiting blood and convulsing, so that he would be taken to a prison hospital. A search of his house revealed that he had obtained the schematic diagrams of the heating, water and electrical systems of all the prisons and hospitals in Massachusetts, which he used to plan his escape. The episode concluded on that cliff-hanging basis.

A viewer complained to CTV about the broadcast of March 18 and copied the CBSC on her letter, which read as follows (the full text of all correspondence can be found in the Appendix):

I am very disappointed at what I just saw on your network here in Winnipeg at 7:05 pm. I was channel surfing looking for *American Idol* and stopped very briefly on channel 5. There was a very graphic depiction of a man shooting another man in the head, blood all over. The program was *Criminal Minds*. What are you doing showing very adult programming that should only be shown on late night at 7:00 pm? I have a 9-year-old daughter and good thing she was busy practising piano and not watching with me.

CTV responded to the complainant on April 8, in pertinent part as follows:

As per the Canadian Association of Broadcasters' broadcast codes (administered by the CBSC), programming aired outside of the late viewing period of 9:00 pm to 6:00 am shall use viewer advisories at the beginning of and after every commercial break returning to program content to assist the viewer in making their viewing choices for themselves and their families primarily when appropriateness of content is of concern for all audiences. In addition, the *Voluntary Code Regarding Violence on Television Programming* states that violence, if present, must not be gratuitous and must be relevant to the development of character, or to the advancement of the theme or plot.

It is not CTV's intention to offend any of our viewers. That is why we take every opportunity to provide our viewers with information as to the content of the program being viewed.

Understanding that the nature of this program may not be of interest or suitable to all viewers, CTV (CKY-TV) aired this program with a viewer advisory which stated:

"The following program contains scenes of violence. Viewer discretion is advised."

This viewer advisory aired at the top of the show, and following every commercial break returning to the program content.

This program was also rated with an AGVOT classification code of 14+, which aired at the start of the program. As per the guidelines issued by AGVOT (Action Group on Violence on Television), a 14+ rating means that the program contains themes or content elements which might not be suitable for viewers under the age of 14. Parents are also 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. The violence guidelines for this classification also state that the program might contain intense scenes of violence. The violence in this program was not gratuitous and it was relevant to the development of the character and storyline.

As a responsible broadcaster, we are confident in the steps we took to alert our viewers to the nature of this program but we recognize that there are limitations to what an advisory or rating can convey to a viewer and we do apologize that you were offended.

The complainant was not satisfied with that response and wrote back to the CBSC on April 8, signing herself a "concerned parent":

I see they played by the rules. If you don't catch the first few seconds of a show you wouldn't know about it being rated 14+ until the next commercial. That gives a child under 14 the opportunity to see something they shouldn't like: blood, killers, rapists, sex and offensive language. I suggest you change the rating requirements, display the rating on the screen throughout the entire program. That way if you aren't watching during the first few seconds you still know its rating and that it's inappropriate for youngsters. Even at that, it still bothers me that you would allow such programming before 9:00 pm.

## THE DECISION

The National Conventional Television Panel examined the complaint under the following provisions of the Canadian Association of Broadcasters' (CAB) *Violence Code*:

### Article 3.0 – Scheduling

#### 3.1 Programming

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

[...]

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.

## Article 4 – Classification

### **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.

### **18+ - Adults (Intended for viewers 18 years and older)**

#### Descriptive

This classification applies to programming which could contain content elements that would make it unsuitable for viewers under the age of 18.

#### Violence Guidelines

- contains depictions of violence which, while integral to the development of plot, character or themes, are intended for adult viewing, and thus are not suitable for audiences under 18 years of age.

The Panel Adjudicators read all of the correspondence and viewed a recording of CTV's broadcast. The Panel concludes that CTV violated Article 3.0 and 4.0.

## **Scheduling of Violent Content**

Although it has dealt with violent content on television before, the CBSC does not have any sort of *mathematical* formula for determining what type of programming constitutes "intended exclusively for adults". Panels have, however, grappled with the issue and developed criteria that enable them to arrive at an increasingly predictable conclusion. In *CKCO-TV re Kazan* (CBSC Decision 96/97-0226, February 20, 1998), the Ontario Regional Panel set out some of those criteria. Although the level of violence in that particular television movie was not adult, the Panel said: "While it is difficult to propose any cut-and-dried formula to apply in coming to any such conclusion, the Panel does consider that the presence of the combined elements of fear, suspense, gore and

explicitness may help characterize programming containing scenes of violence as *adult*.” [The principle was followed in *TQS re the movie L’inconnu (Never Talk to Strangers)* (CBSC Decision 98/99-0176, June 23, 1999).] Then, in *CJMT-TV (OMNI.2) re episodes of Law & Order: Criminal Intent (“Want”) and Law & Order: Special Victims Unit (“Pure”)* (CBSC Decision 07/08-1441, January 7, 2009), the Ontario Panel expanded the list of criteria such that “the presence, and level of, gore, explicitness, graphic or horrific images, frequency of violence, fear, terror-provoking suspense, and realism will tend toward adulthood determinations.”

Applying the *Law & Order* criteria to the matter at hand, the National Conventional Television Panel finds that the challenged episode of *Criminal Minds* is clearly intended exclusively for adults. The violence is sufficiently frequent; there are no less than twelve individual murders committed, four of individuals in the driver or passenger seats of their cars, seven of persons on a bus, and one off-screen of a police officer. The killings are explicitly depicted, and for those not seen directly, the gory and grisly consequences are graphically displayed. There is tangible fear in the individuals about to meet their end, and short-term terror-provoking suspense in the viewer, awaiting those executions. The Panel concludes that any pre-Watershed broadcast of this episode of *Criminal Minds* breaches the scheduling provision of the *CAB Violence Code*.

Notwithstanding the Panel’s conclusion regarding the violent content of the challenged episode, it should be noted that episodes of television programs that are simultaneously substituted benefit from the exception to the post-Watershed requirement. That is to say, in instances where the Canadian broadcast of an episode of a show runs at the same hour as the original American version, and is substituted for the American signal, it may be aired prior to the Watershed (as provided in Article 3.1.3). It should also be noted that, where this exception applies, the other rules relating to classification and viewer advisories must be respected. In any event, the Panel takes note of the fact that the Canadian version of series *Criminal Minds* is customarily simultaneously substituted for the American version; however, in the case of *this* broadcast (of March 18, 2009) in the market in which the complainant viewed the program, simultaneous substitution did not occur. Consequently, the exception in Article 3.1.3 does not apply to the broadcast of this episode of *Criminal Minds* on March 18, 2009. The broadcast of this episode is in breach of Article 3.1.1.

## **Classification**

The broadcaster chose to classify the episode as 14+. Based on this Panel’s previous decision in *CTV re the Eleventh Hour (“Hard Seven”)* (CBSC Decision 03/04-1738, December 15, 2004), it does not consider that the rating was high enough. The Panel put the matter in the following terms in that decision:

The Panel is conscious of the fact that the language in the AGVOT classification system cannot always provide mathematical precision regarding the options. In the ratings applicable to the present matter, the 14+ descriptor reads “might contain intense scenes of violence”. In other words, the codifiers anticipated that there might be more than one violent scene in a challenged program and that it might be intense. The 18+ descriptor reads “contains depictions of violence which [...] are intended for adult viewing, and thus are not suitable for audiences under 18 years of age.” There is not, in other words, the provision by the codifiers of an adjective or other word to distinguish this descriptor from the 14+ “intense scenes of violence” descriptor. Notwithstanding the absence of guidance from the codifiers, the CBSC has in the past used the word “graphic” to describe violence that, in the view of the adjudicating Panel in question, was a level above “intense”.

[...]

In the episode of the *Eleventh Hour* under consideration, the National Conventional Television Panel does consider that the violence is, in both prison occurrences, brutal and graphic. Parenthetically, given the purpose of classification icons (and viewer advisories), namely, to alert members of the audience to content that they might find offensive, where the content of a program is very close to the line between 14+ and 18+, the decision to go with the more conservative of the ratings choices might generally be considered a more helpful option on the part of the broadcaster. In any event, the graphic nature of the violence, coupled with the frequent use of extremely coarse language, necessitates the use of an 18+ icon in this episode of the *Eleventh Hour*.

As was indicated in the previous section of this decision, the violence in this episode of *Criminal Minds* was frequent, explicit, graphic, and gory. While coarse language was absent here (it was present in *Eleventh Hour*), the level of violence in *Eleventh Hour* would have sufficed to attain the 18+ rating; the violence in *Criminal Minds* was as explicit, but more frequent, more graphic and gorier. Consequently, 18+ would be the more appropriate warning for audiences. If there were any doubt, as noted in the *Eleventh Hour* decision, “given the purpose of classification icons [...], namely, to alert members of the audience to content that they might find offensive, where the content of a program is very close to the line between 14+ and 18+, the decision to go with the more conservative of the ratings choices might generally be considered a more helpful option on the part of the broadcaster.”

### **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 CTV’s Senior Vice President, Program Scheduling was, in this regard, thoughtful and responsive. The Panel considers that CTV has fully met its responsiveness responsibilities of CBSC membership.

## **ANNOUNCEMENT OF THE DECISION**

CTV 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 the episode of *Criminal Minds* entitled "Omnivore" 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 CTV.

The Canadian Broadcast Standards Council has found that CTV violated the Canadian Association of Broadcasters' *Violence Code* in its broadcast of *Criminal Minds* on March 18, 2009 at 7:00 pm. The episode of the crime drama contained scenes of frequent and graphic violence intended exclusively for adult audiences. Such programming must be broadcast after 9:00 pm, as required by Article 3.0 of the Code. The program was rated as 14+. Given the intensity of the violence, it ought to have been classified as 18+. The failure to do so constitutes a breach of Article 4.0 of the *Violence Code*.

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

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## APPENDIX

### CBSC Decision 08/09-1405 CTV re *Criminal Minds* (“Omnivore”)

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#### The Complaint

The CBSC received the following complaint sent to CTV and copied to CBSC on March 19, 2009:

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I won't be watching CTV if that is what I can expect from you.

#### Broadcaster Response

CTV responded to the complainant on April 8:

The Canadian Broadcast Standards Council has forwarded your letter regarding the program *Criminal Minds* which aired on CTV (CKY-TV) on March 18<sup>th</sup>, 2009 to our attention.

Before I address your specific concern, it should be noted that CTV follows the Canadian Association of Broadcasters' (CAB) *Code of Ethics, Equitable Portrayal Code, Voluntary Code Regarding Violence in Television Programming*, and the AGVOT (Action Group on Violence on Television) rating classification system approved by the CRTC and used by Canadian broadcasters. (If you would like to view the CAB codes, you may do so at [www.cbsc.ca](http://www.cbsc.ca)). CTV is a member in good standing of the Canadian Broadcast Standards Council and follows the Council's standards and guidelines.

*Criminal Minds* is a drama about an elite group of profilers who analyze criminal minds in an effort to anticipate their next move before they commit another crime. In this particular episode, a serial killer attacked young couples, and specifically in the scene you viewed, the male driver was hit in the head with a tire iron (thus the blood on his head in the scene you describe) followed by a distant camera view of the gun shot to his head by the assailant.

As per the Canadian Association of Broadcasters' broadcast codes (administered by the CBSC), programming aired outside of the late viewing period of 9:00 pm to 6:00 am shall use viewer advisories at the beginning of and after every commercial break returning to program content to assist the viewer in making their viewing choices for themselves and their families primarily when appropriateness of content is of concern for all audiences. In addition, the *Voluntary Code Regarding Violence on Television Programming* states that violence, if present, must not be gratuitous and must be relevant to the development of character, or to the advancement of the theme or plot.

It is not CTV's intention to offend any of our viewers. That is why we take every opportunity to provide our viewers with information as to the content of the program being viewed.

Understanding that the nature of this program may not be of interest or suitable to all viewers, CTV (CKY-TV) aired this program with a viewer advisory which stated:

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As a responsible broadcaster, we are confident in the steps we took to alert our viewers to the nature of this program but we recognize that there are limitations to what an advisory or rating can convey to a viewer and we do apologize that you were offended.

We hope that we have addressed your concern in regards to this program and thank you again for bringing it to our attention.

## **Additional Correspondence**

The complainant expressed her dissatisfaction with CTV's response on April 8:

I see they played by the rules. If you don't catch the first few seconds of a show you wouldn't know about it being rated 14+ until the next commercial. That gives a child under 14 the opportunity to see something they shouldn't like blood, killers, rapists, sex and offensive language. I suggest you change the rating requirements, display the rating on the screen throughout the entire program. That way if you aren't watching during the first few seconds you still know its rating and that it's inappropriate for youngsters. Even at that, it still bothers me that you would allow such programming before 9:00 pm.