



Canadian Broadcast Standards Council  
Conseil canadien des normes de la radiotélévision

# 1999 / 2000 Annual Report

**“Encouraging Excellence in Broadcasting”**

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## Message From The National Chair

As has traditionally been the case, the annual body of decisions rendered by the CBSC rises to the top of the agenda in my annual Message. That should not be surprising since, at this youthful point in the Council's life, nine years, there remains much definition and shaping to do in complementing the standards created by Canada's private broadcasters. Each year, though, a new aspect of that defining process shows itself.

### ***Recent Decisions of Substance***

On the substantive side, the matters dealt with will as usual be digested in the body of this Annual Report; however, it would be remiss of me not to highlight at least a couple of the significant issues dealt with this past year and, as important as the substance, our incorporation of all of the decisions since the creation of the CBSC set of *Annotated Codes* in a newly revised and updated set of *Annotated Codes*, which will hereinafter be available on a loose-leaf subscription basis.

For almost the first time, the CBSC was called upon to deal with contests on the airwaves. In one case, the complaint related to the morality of a station hosting a contest in which a couple apparently met and committed to marriage on radio and, in another, the letter dealt with concerns over a context which led to a, brrrr, early springtime Lady Godiva-like nude bicycle ride through the streets of downtown Winnipeg. Nudity was also an issue in at least two televised films, namely, *Bubbles Galore* and *Strip Tease*, as well as in the promo for the television program, *SexTV*. One could reasonably conclude that the Council has demonstrated tolerance with respect to simple nudity, in the absence of complicating factors.

Thus, while nudity *per se* was not a problem, the rather rough erotic love-making which was a part of the feature film *L'Inconnu (Never Talk to Strangers)* was one such complicating factor due to its airing *prior* to the well-established Watershed hour of 9 pm. In the five years since the introduction of the *Violence Code*, broadcasters have solidly established their practice of applying the Watershed to programming containing any material "intended for adult audiences", whether its adult nature related to violent, sexual, language or thematic issues and the Council's decision in *TQS re L'Inconnu* was merely the first to formally incarnate that principle.

Although violence is less a problem on Canadian stations than on those emanating from the United States and accessible in Canada via cable and other delivery systems, the CBSC Regional Councils were called upon to review such questions in the weekly series *Kevin Spencer*, *Jerry Springer* and *Coroner*, and the previously mentioned films *L'Inconnu* and *Bubbles Galore*, as well as the Jean-Claude Van Damme film *Double Team*. In two of these, first, *CIHF-TV and CKMI-TV re the Jerry Springer Show* and then *CTV re Kevin Spencer*, the CBSC looked at the important, but often overlooked, issue of glamorized or glorified violence. In the *Jerry Springer* decision, the Councils considered that "it is perfectly clear that the violent reaction of the invitees is anticipated by the host, sanctioned as an occurrence, and encouraged and even promoted by both the host and his audience.," the whole contrary to the provisions disallowing glamorized violence at any time. In *Kevin Spencer*, the Council was "concerned by the extensive use of violence as the basis for humour." It found that the show in effect sanctioned violence "by turning excessive, graphic and gory depictions of violence into a source of humour."

In terms of impact, though, no decision evoked more reaction than that relating to the Laura Schlessinger radio show comments relating to the gay and lesbian communities. The complaints related to a range of statements made by the host, which were considered by the Atlantic and Ontario Regional Councils under the Human Rights provision of the *CAB Code of Ethics*. Some of these were found to be abusively discriminatory on the basis of sexual orientation and some, in the Councils Decision Statistics

Once again, the number of decisions was high, indicating that the Council's view on content issues is frequently sought. In all, the CBSC rendered 80 decisions, of which, for the first time, the summary variety outnumbered the customary formal variety. The Council actually released 31 of the latter type during the

course of the year; however, as a part of the streamlining of the process, 49 were Summary Decisions, which dealt, in almost every instance, with matters in which the Council's jurisprudence had already been clearly established in the past.

### **Complaints**

While, in each of the last two fiscal years, complaint files opened amounted to around 1,200, the 810 opened this year do not really suggest any significant decrease since there were no concentrations of program complaints as there had been in the last two years. No *Howard Stern*. No *Dieu Reçoit*. Just many complaints (from 2,103 individuals) on many different programs. Important statistical analyses can be found in Part 3 of this Report; however, it is worth signalling here that, for the first time, the largest number of complaints received came *directly* to the Council, rather than via the CRTC or other sources. Moreover, of those coming directly to the Council, the vast majority (68%), arrived electronically.

### **The Breadth of the Council's Work**

The work of the CBSC is, however, much more than just its decisions. It involves communication with the public about a valuable process. An interviewer recently asked me whether people realized just how much power they had to influence the content of their radio and television programming. The question reminded me of the *Maclean's* coverage of the *Mighty Morphin Power Rangers* decision of more than five years ago; the title of their coverage: "Power to the People". This power is not, however, just built on decisions. It flows from the Secretariat's constant communication with the public. As a part of the CBSC's policy, we respond to all queries, whether they are complaints or general inquiries. We take the opportunity to tell people about the Council and the process established by the broadcasters to ensure that the people know the value of raising their concerns directly with their local broadcasters and then, where necessary or useful, with us.

Over the years, and the current year was no exception, the Secretariat has sent out thousands of letters by ordinary mail and, more recently, electronically, to advise people how to make their voices heard. What is more, the Council does not shy away from responding to critics. It is our experience that we received either a small or, occasionally, medium to large tide of correspondence complaining about a show, which is from time to time followed by a significant backwash of correspondence critical of the Council's decision, whichever way it has gone. (Parenthetically, as noted above but worth repeating, the Council has *never* received as much positive support for a decision as that which flowed following the Laura Schlessinger ruling.) The Council responds to all such correspondence, wherever possible tailoring the reply to the letter which we have received. And to these, I should point out, we regularly receive further appreciative responses from the recipients.

The point is that the entire process underscores the value of communication, whether to the broadcaster in the first place or from it at the next stage, or to and from the CBSC itself. The *immense* effort of the CBSC's staff ensures that, over time, more and more members of the public learn that they have a voice in the broadcasting process.

### **The Extent of the Council's Outreach**

As a part of that outreach, we try to respond favourably to inquiries for interviews, whether on-air or in the print media, and to invitations to address college and university classes. There is no better time to inform the young people who will go on in the industry or related fields. This past year, I lectured at Loyalist College in Belleville, Ryerson Polytechnic University in Toronto, Simon Fraser University in Burnaby, and twice in the journalism program at the University of Ottawa (both on the English and French sides).

I also had the opportunity to attend and participate in many conferences. In addition to my annual attendance at the CAB Convention, held this past year in Montreal, I was able, for the first time, to attend most of the regional broadcaster conventions and to report on the CBSC's activities to each of them. Thus, I joined the British Columbia broadcasters at the BCAB in Kelowna, the Prairie broadcasters at the

WAB in Kananaskis and the Atlantic broadcasters at the AAB in Fredericton. I also spoke at the RTNDA's Western conference in Saskatoon, as well as the CRARR (Centre de recherche-action sur les relations raciales) in Montreal and attended the Organization of News Ombudsmen's annual international conference in Montreal and the reunion meeting of the Regulated Industries Program in Ottawa.

The Executive Director and I also met in Montreal with MP Bernard Bigras to set the record straight regarding his proposed legislation relating to the *Violence Code*, the substance of which he did not realize was already effectively included in our process.

### **Media Contact**

It is also remarkable that the written and electronic media have gotten to know the work of the CBSC so well that we are now readily called on to comment on broadcast content issues beyond the nature and effect of the decisions themselves. In this context, I have been called upon for interviews with print correspondents from the *Globe & Mail*, the *National Post*, the *London Free Press*, the *Ottawa Citizen*, *The Gazette* (Montreal), the *Journal de Montréal*, *The Report* (a BC magazine), the *Victoria Times*, the *TV Times* and the *Interior News* (Smithers), as well as the *Washington Post*, *Newsday* and the *Hollywood Reporter* in the United States and *Scotland on Sunday* and radio or television programs on CIQC (Montreal), CJOB (Winnipeg), CFPL (London), CHQR-FM (Calgary), SRC (*Midi Quinze*), CBC (*Definitely Not the Opera*), CJSR, CBC in Quebec City, Winnipeg, Ottawa, Calgary, Prince Rupert, Whitehorse, Vancouver, Victoria and Charlottetown, as well as Public Radio (Boston).

### **The National Council**

As anticipated in last year's Annual Report, the National Council has now been established, although only endowed with a Specialty Service panel. As of this date, no Conventional Broadcaster panel has been created. While no meetings have yet been held, the Council is endowed with a membership of great strength.

### **The CBSC on the Internet**

I have frequently noted in this Message what an important role the CBSC web site plays for the dissemination of information about the Council. It permits a compact infrastructure to have an expansive relationship with a world of inquirers regarding the Codes, processes and decisions of the CBSC. This year, for the first time, the web site operated at a level in excess of one million "hits" per annum. The average monthly rate leapt from 59,000 to 96,000 "hits", a 60% gain. On a monthly basis, users are also downloading more than 800 megabytes of information, which is more than double last year's experience. And, as noted above, the greatest avenue of complaints was actually a boulevard; 43% of all files opened and 68% of those arriving directly in our hands came via the web site.

In the six months of this past year for which origin of client information was maintained by our web site's host (they have, regrettably, ceased providing that fascinating information), visitors arrived from more than 51 countries each month and, in the past fiscal year, they visited from twelve different countries for the very first time, raising the nationality of visitors to a total of 112 countries over the four years that the CBSC web site has been in operation. It is of interest that there has probably not been a month in which the web site has not been frequented by persons from each of the G7 countries, as well as Australia, Hong Kong, Ireland, Israel, Malaysia, Mexico, New Zealand, Norway, Saudi Arabia, Singapore, Spain, Switzerland and the United Arab Emirates, to name some of the other diverse and far-flung nations of origin.

### **Acknowledgments**

The organization and primary responsibility for the movement of what amounts to, figuratively speaking, mountains of paper on an efficient and timely basis, documented and electronically tabulated, has been in

the able hands of Ann Mainville-Neeson, our Executive Director. Her presence will be missed for most of the coming year as those hands are filled with baby and neo-natal accoutrements.

Ultimate responsibility for the credibility and strength of the CBSC depends on the volunteer Council members, both from the public and industry sides. They take their work seriously. They are conscientious. They are aware of the weight their conclusions carry in Canada and beyond. We at the CBSC Secretariat are grateful as all who benefit from their decisions should be.

RONALD I. COHEN  
National Chair

## 2. Overview of Decisions Released in 99/00

The CBSC released a total of 31 Council decisions this year: 29 of these were substantive while two were procedural decisions in which Regional Councils found CKNW-AM (Vancouver) and CITS-TV (Ontario) in violation of the CBSC's membership requirements by failing to provide logger tapes for adjudication when requested.

With respect to the substantive decisions, concerns relating to Ethics and Human Rights and Violence were the most prevalent, by far obscuring the traditionally largest category, News and Public Affairs. Citizens were concerned with negative stereotyping as well as with the amount and scheduling of violence on television.

The CBSC decision which attracted the most media and public attention this year was the joint decision of the Ontario and Atlantic Regional Councils regarding the *Dr. Laura Schlessinger Show*, summarized under the heading "Controversial Opinions" in the Ethics and Human Rights section. The decision was reported widely across Canada, as well as in the United States. Moreover, nearly 600 people wrote to the CBSC to either register their pleasure or displeasure with the Councils' decision.

### ETHICS AND HUMAN RIGHTS

This year, Canadians expressed concern over various forms of broadcast discrimination, both serious and humorous. In addition, the Council was once again called upon to deal with a rarely considered aspect of broadcasting ethics, namely the appropriateness of certain radio contests.

#### Holy Controversy

Religious convictions were at the root of two complaints, one regarding a satirical television program and one concerning a serious comment that a specific religious group is "the scum of the earth". Lessons learned: you can poke fun at traditional religious practices, but you cannot bludgeon anyone's religious convictions with harsh words.

#### **What's the Cover Charge at the Pearly Gates?**

The CBSC had its first opportunity to deal with numerous *pre-emptive* complaints following media reports about the debut of the religious satire *Dieu reçoit* on TQS. The CBSC initially informed the complainants that it, like any body, governmental or private, cannot intervene *in anticipation* of a broadcast; however, complaints also poured in *following* the show's first broadcast from various church groups, religious organizations and private citizens which were, of course, dealt with by the CBSC. In all, over 14,000 persons, either individually or collectively, voiced their opposition to the show, creating a record for the most complaints received by the CBSC about a single program (as reported in last year's Annual Report).

The program, a comedy with a religious satirical theme, is set in "Heaven", where a bouncer stands guard at the Pearly Gates and a busy receptionist takes messages for "God" who is depicted as a scrawny-looking administrator with glasses and a mustache. It pokes fun at religious traditions and tenets in general and the Catholic religion in particular. The following exchange between God and an angel typifies the show's humour:

**Ange:** Ah, Dieu, votre fils Jésus, il est complètement soûl!

**Dieu:** Encore!

**Ange:** C'est pas de sa faute. Chaque fois qu'il boit de l'eau, ça se change en vin.

**Dieu:** Mais il peut boire du lait.

**Ange:** Ça se change en Bailey's.

The Quebec Regional Council found no breach of the human rights provision of the *CAB Code of Ethics*. While admitting that the show's humour is "undeniably irreverent, certainly impious and arguably, at times, in bad taste," the Council did not consider that it was "at any time, bitter, nasty, disdainful or hateful about Catholicism and certainly *never* about individuals on the basis of their religion."

In response to certain comments made by complainants that the Catholic faith was the victim of unfair treatment by the CBSC, the Council stated:

Any careful review of the jurisprudence of the Canadian Broadcast Standards Council will immediately reveal that it has been as substantively protective of any religious, ethnic, linguistic, national or cultural group as any other or, when appropriate in the other direction, as willing to permit justifiable (that is, non-abusive) discriminatory comment regarding any religious, ethnic, linguistic, national or cultural group as any other. The CBSC's issues are always treated at the underlying macro level and not at a micro level associated with any religious, ethnic, linguistic, national or cultural group.

### **Who's the Scum of the Earth?**

A listener of CKNW-AM in Vancouver complained of the statement that "Born Again Christians are the scum of the earth" made by a radio talk show host. While the complainant had not heard the statement in its original context (he had only heard *of* it), he did hear the *repetition* of the comment by the host when questioned about it on-air a month later. Indeed, while discussing an entirely different topic with a guest on his show, a caller questioned the host regarding his statement of some time ago. The following exchange ensued:

**Caller:** I was just wondering if you were the person who said that Born-again Christians were the scum of the earth or do I have the wrong person.

**Guest:** You've got the wrong person.

**Host:** Sorry, he's talking to me.

**Guest:** Oh, okay.

**Host:** Yeah, you've got the right person but you're on the wrong topic. I did say that. I said it on air and I said it more than once.

The B.C. Regional Council, while expressing concern with the absence of the context in which the statements were originally made, stated that it "considers itself in much the same position as would be the occasional listener who may not have heard the [original] broadcast(s)." In comparing the host's statement to comments made by another radio show host on a show which was the subject of a previous decision, the Council had no difficulty finding that it constituted abusively discriminatory comment based on religious conviction.

### **Controversial Opinions**

Two CBSC decisions this year dealt with discussions of Native land claims or the portrayal of Canada's First Nations in general. In another decision, a talk show host's opinion on normalcy and sexual deviancy was considered abusively discriminatory.

## Parenting Nations

A broadcast of a morning talk show on CFUN-AM (Vancouver), in which the host discussed the Native land claims issue, sparked a complaint from a listener upset with the host's "racist statements". During the broadcast in question, the host made the following remarks, among others:

We've created a dependent child in the aboriginals and an abhorrent child and it's absolute madness. It's the same as if you were a parent and you'd spoiled rotten one kid as opposed to the others and that kid just kept doing the bad things. And you kept rewarding them for it. That's what we've done with our aboriginal population out of some ill placed guilt about something that our forefathers did in the explorations and in their settlement of this land.

The B.C. Regional Council found no violation of the *CAB Code of Ethics'* human rights provision, underscoring the fundamentally *political* nature of the lands claim issue. While uncomfortable with some of the statements made by the host during her discussion of the issue, the Council found that "these statements were mitigated throughout the entire discussion and thus did not breach the human rights provision of the Code." The Council noted that

the overall effect of the discriminatory comments was tempered by such inclusive references as "our aboriginal brothers and sisters" which served to defuse the we/them polemic of the discussion and the acknowledgment that the land claims create a "complex situation" which "you and I couldn't deal with ... either".

The Council concluded that "although... the native land claims issue is a highly controversial one and one on which the expression of opinion will often be divisive; discussion on the issue cannot, nor should it, be avoided. Silence on controversial issues is never in the public interest."

## Protesting the Protest Polemics

CJOB-AM's (Winnipeg) news coverage of a demonstration at the Manitoba Legislature by First Nations Peoples and subsequent discussions on two of the station's talk shows elicited a lengthy complaint from the Grand Chief of the Assembly of Manitoba Chiefs. Allegations ranged from the mischaracterization of the involvement of the First Nations Chiefs in the "storming of the legislature" and the use of pepper spray to the hateful nature of comments concerning Native governing of reserves.

The Prairie Regional Council dealt with most of the allegations individually but concluded on the whole that they were generally "exaggerated, isolated and overstated in the complaint." While the Council did not find any Code breach, it did, however, note that, on certain occasions, one of the station's news reporters deviated from strictly reporting the news by giving her personal opinion without so identifying it. The Council stated that "[a]part from the small lapses noted above between news reporting and the expression of opinion (which do not go to the allegations of human rights violations), the reporter's statements relating to the motivation and instigation of the disturbance do not appear to be improper."

## Aberrant, Abnormal and Abusively Discriminatory

In the CBSC's most controversial decision of the year, the Ontario and Atlantic Regional Councils dealt with various broadcasts of the *Dr. Laura Schlessinger Show* on CFYI-AM in Toronto and CJCH-AM in Halifax following complaints concerning the host's comments regarding gays and lesbians. The CBSC received several complaints, one of which stated:

The "Dr. Laura" program contains regularly made abusive and discriminatory comments about gays and lesbians, ranging from frequent characterization of sexual behaviour as "deviant", to implied and explicit comments linking homosexuality to paedophilia, to describing children being raised by lesbian parents as "victims", to frequent comments of a gay "agenda" to, among other things, get access to children for propaganda purposes in schools.

While the Ontario and Atlantic Regional Councils jointly concluded that most of the host's comments did not breach the human rights provision of the *CAB Code of Ethics*, they found that her consistent characterization of the sexuality of gays and lesbians as "abnormal", "aberrant", "deviant", "disordered", "dysfunctional", "an error" and her generalized statements that pædophilia "has to do with being gay" and is more common among members of the gay community than the heterosexual community, were abusively discriminatory contrary to Clause 2 of the *Code of Ethics* and constituted an improper expression of opinion contrary to Clause 6 of that Code.

The Councils indicated that the "cumulative effect and the admittedly pejorative perspective of the host" led to the finding of a Code violation. The Councils stated:

The host's perspective is clear and unambiguous. Whether the terms she uses are "abnormal", "aberrant", "dysfunctional", "disordered", "deviant", "an error" or the like, her terminology is *clearly* pejorative. She is unhesitatingly critical, negative and unambiguous and her words are as critical and unrelenting as she can make them. In the end, she is utterly rigid about a *fundamental* issue which goes to the *nature*, the *essence* of gays and lesbians. It is the view of the Councils that the host's argument that she can "surgically" separate the individual persons from their *inherent* characteristics so as to entitle her to make comments about the *sexuality* which have no effect on the *person* is fatuous and unsustainable. As the Supreme Court has said, where an identifiable group of persons is "defined by an innate or unchangeable characteristic", it *will* be protected by the human rights provision of the broadcasters' *Code of Ethics* in Canada just as all Canadians are protected by the *Canadian Charter of Rights and Freedoms*. The sexual practices of gays and lesbians are as much a part of their being as the colour of one's skin or the gender, religion, age or ethnicity of an individual. To use such brutal language as she does about such an essential characteristic flies in the face of Canadian provisions relating to human rights.

The Councils further noted that "this was the fourth occasion on which the CBSC has had to consider the prospect of recurrent breaches by a radio or television program." In this regard, the Councils stated:

It is clear that, in the case at hand, the broadcasters must equally find a way of ensuring, as broadcasters have successfully done in the past, that this show not continue to make abusively discriminatory comments on the basis of sexual orientation.

### **Hurtful Humour**

Once again this year, the CBSC was called upon to further expound upon the application of the *CAB Code of Ethics*' human rights provision as it relates to humorous discourse and parodies.

### **Settling Accounts with Talk Show Hosts**

During an episode of a Montreal morning show broadcast on CKVL-AM, the hosts discussed the then recent murder of a black man by a Hindu. Jokingly, one of the host described the murder as comparable to a settling of accounts between biker gangs, (as in, "it's no problem, as long as they kill each other, it does not affect us.") A listener complained that the comments showed "a lack of respect for cultural communities" and constituted "an incitement to racial intolerance."

The Quebec Regional Council agreed with the complainant and found the comments abusively discriminatory contrary to the human rights provision of the *CAB Code of Ethics*, stating that the hosts' comments were "cheap shots" that "intended to make fun, and take advantage, of the relatively powerless position of the minorities in question." The Council stated:

The comments in this case are somewhat more subtle than usual as they involve the necessary intermediate step of comparing ethnic minorities to a societally "undesirable" group of biker gangs (motards), known mostly for their participation in criminal and violent activities. This Council finds this comparison particularly problematic. In the Council's view, while the hosts' off-the-cuff quasi-comedic

presentation of the facts surrounding the murder was extremely tasteless, the comparison of this murder to a settling of accounts between biker gangs was both derogatory and abusive. By making this comparison, the hosts achieved two results: they minimized the value of ethnic persons in society, taking them down to the level of bikers/criminals and may even have left the implication that ethnic groups, like bikers/criminals, are more prone to the commission of such violent acts.

With respect to the defence raised by the broadcaster that the comments were not *intended* to be hurtful, the Council rejected the so-called "comedic defence", stating that "[a]bsent some clear intention to the contrary, the Council assumes *good* intention and the desire to make people laugh", but "[w]here that result is achieved at the expense of an identifiable group which is being abusively targeted, the comment will be in breach despite the contrary intention of the host."

### **What's for Dinner?**

CJKR-FM's Winnipeg morning show ruffled a few feathers with its comments and parody song relating to a historical action taken by the Chinese government to eliminate all domestic animals. According to the parody, Chinese restaurants could be serving cat rather than chicken, beef, fish or pork. A listener complained that the broadcast was "culturally insensitive and also served to dehumanize and perpetuate stereotypes."

The Prairie Regional Council disagreed. It found that the combination of the host's comments and the song lyrics were not a "commentary on the Chinese people at all," but rather "constitute a commentary in small part on the Chinese Government and in larger part on Chinese restaurateurs," neither of which is protected by the human rights provision of the *CAB Code of Ethics*. In the Council's view

The foregoing "humorous" suggestion may be outrageous or in bad taste. If the latter, it is, as the Council has often said, simply a choice for the listener with the on/off switch. If the former, though, the Council notes that there is no protection granted under the human rights provision of the Code for a *profession or an occupation* and being a Chinese restaurateur, or any other type of business person of any other ethnic origin, will not entitle one to protection any more than being a policeman did in the case of *CKLZ-FM re Announcer Comments* (CBSC Decision 94/95-0113, December 18, 1996).

### **ARetarded" Conversations**

The *Howard Stern Show* prompted two separate complaints from one listener concerning the program's use of the term "retard". In the first case, the Ontario Regional Council found that the use of the term by a belly dancer to describe the man who had taken her virginity at the age of 15 and then by Stern to state that most "retards" listen to his show and that he is the "King of Retards", was not abusively discriminatory. The Council noted, referring to a previous decision, that

the usage of the word "retard" in this case is even further removed from a breach of the Code because it is not even conveying the meaning of mental deficiency. Its use in this case, by both the belly dancer and by Howard Stern, refers to the street level colloquial meaning which the word now carries. The word is now sometimes used interchangeably with such other insults as "jerk", "idiot" and "creep". ...

In the end, while the Council deplores the crude, offensive, infantile and irresponsible terminology used by the host and, on a general societal level, deplores the fact that a word such as "retard" has developed into such a "street term", the Council must conclude that the only issue raised in this case is one of taste, something the Council has always held should be left for listeners to decide via the on/off switch.

In the second case, however, the Council did find that the host and his staff had targeted developmentally challenged persons. In that case, the Ontario Regional Council had "no hesitation" in concluding that the host and his cohorts had "made fun of the protected group" and had thus breached Clause 2 of the *CAB Code of Ethics*. In contrast to the Council's two previous decisions regarding the show's treatment of similar subject matter, the Council stated:

The theme of the segment was, baldly, that "a retarded home" will diminish surrounding property values, that "retarded" persons do cruel things to animals, that "retarded" persons are more prone to commit rape and do socially unacceptable things in public and so on. The on-air staff also casually, and ignorantly, endow "retarded" persons with schizophrenic symptoms and one of the callers made audible fun of mentally challenged persons, which only gave rise to bemused reaction on the part of the show's staff. It is apparently the view of Stern and his sycophants that this is nothing short of hilarious, a perspective not shared by decent-minded individuals.

...

The Council finds that the host has made fun of a protected group, indeed, has gone so far as to *ridicule* the group itself on the basis of their challenged status. It is a cruel use of the position he occupies at the public microphone. The comments create an atmosphere of intolerance. If any part of the audience buys into the expressed sentiment, it represents a loss to all of society. Desensitization of the public is a large price to pay for uninformed, abusively discriminatory comment.

### **Cooking Show in Hot Water**

A broadcast of the Cantonese cooking show "Gwai Lo Cooking" on CFMT-TV prompted a viewer to complain that the program's title was abusively discriminatory, marking the CBSC's first occasion to determine whether a program *title* itself could be in breach of the human rights provision of the *CAB Code of Ethics*. The term "gwai lo", a Cantonese expression which translates as "foreign devil" or "ghostly fellow", continues to be used by some Chinese to refer to "pale-skinned Westerners".

The Ontario Regional Council had to determine "whether, on the spectrum of discriminatory terminology, the expression's *quality* is inherently abusive or whether it is only subject to being rendered abusive by specific usage and context." It did not conclude that the expression was inherently abusively discriminatory. Despite the Council's finding that the expression discriminates by referring to "a specific group characterized by race and skin colour", it decided that "gwai lo" has taken on a more benign meaning, akin to such North American nicknames as "Canuck" or "Yankee":

While historically, "gwai lo" may have been used by Chinese people as a derogatory remark concerning foreigners, particularly Caucasian Westerners, the persons consulted by the Council indicate that it has since lost much of its derogatory overtone. The Council finds that the expression has also lost most of its religious meaning, so that "foreign devil" no longer carries the theological significance it once did. Based on its research, the Council understands that the expression has gone from being considered offensive to, at worst, merely "impolite". In the circumstances, the Council does not conclude that the expression is *inherently* abusively discriminatory.

The Council further found that the context in which the expression is used in this case does not either render the term abusively discriminatory. In the Council's view, the use of the title by the Caucasian host to describe *himself* "has the effect of diminishing the discriminatory aspect of the expression." The Council concluded that "[b]y using the expression as he does, the host transforms it from one of we/them polemic to one of self-identification and *inclusion*."

### **From an On-Air Courtship and Wedding to Nude Bicycle Riding: New Frontiers in Radio**

While the *CAB Code of Ethics* is best known for its human rights provision (discussed at length above), there are many other provisions in that Code that are rarely applied. This year, the CBSC had the opportunity to deal with one of these lesser known provisions twice when it received two complaints about radio contests.

### Just Married...on the Radio!

A listener of CITI-FM in Winnipeg thought the broadcast of an on-air wedding of a woman to a complete stranger was "a mockery of a centuries old tradition - one that both Christians and non-Christians hold sacred." The radio contest had as a theme "What Would You Do to Win a Trip for Two [to Banff]?". When a woman volunteered to marry a complete stranger on air, the station broadcast short interviews of five eligible bachelors and, ultimately, the wedding ceremony to the selected "interviewee".

The Prairie Regional Council did not find the contest in breach of the *CAB Code of Ethics*, stating that it "does not see how, in a modern secular society, it can take the position that the on-air marriage, even if between two complete strangers ... can be understood to be in breach of the Code." The Council stated:

There may be *offence* to some, but, in an age where irreverence has, to others, become reverent, the field markers have moved. Moreover, they will continue to do so over time. In this case, *at this time*, the Prairie Regional Council considers that public order is not so disturbed or inconvenienced by this contest that it can find a breach of the Code. It may be that, as a result of the concerns expressed by the petitioners, this station and others may be reluctant to conduct another similar contest. That must, however, be their choice for no Code breach will ensue.

### Lady Godiva on a Bicycle

#### ( Downtown Winnipeg in March?)

On a chilly day in March, a radio contest promoted by CJKR-FM had a young woman riding her bicycle in the nude on Winnipeg's Main street at rush hour. A listener complained that "it is completely tasteless and morally wrong to pay someone to do an embarrassing stunt such as the one performed by this woman" and that the station "treated women as sexual objects" by promoting this contest.

The following dialogue between the "on-the-spot reporter" and the in-studio hosts occurred during the event itself:

**Host 1:** It is 10 to 8, I think we're just about ready to do Leigh M [the cyclist].

**Host 2:** We sure are.

**Host 1:** So to speak. [Both laughing] I was ready at 6:00 this morning to do that. [Laughing].

...

**Host 1:** Now Leigh's going to ... Has Leigh got her clothes off yet?

**Chuck:** Leigh's got her clothes off. Sweet Jesus!

**Host 1:** I know, I know. Man I wish I was there, damn it.

...

**Chuck:** I'm biking right beside her.

**Host 1:** How does she look?

**Chuck:** Right now? Hold on, I'm done. [Laughing]

...

**Chuck:** Well, we are approaching a red light so we're going to pull up beside some cars right now.

**Host 2:** You have her sit straight up on that saddle, buddy, when you stop. [Laughter]

The Prairie Regional Council found that the contest breached Clause 11 of the *CAB Code of Ethics*, the provision dealing with radio contests and promotions. The Council stated:

It is perfectly obvious to the Council that a nude woman (or, the Council assumes, a nude man) cycling down the principal avenue of one of the nation's largest cities could *reasonably* be expected to constitute a distraction for *drivers*. This is precisely what the codifiers must have had in mind when they drafted a provision which stated that particular care should be taken to ensure that they [contests] are not likely to give rise to a public inconvenience or disturbance.

It does not require great imagination to understand that such a distraction on a major thoroughfare would in fact cause that very public inconvenience or disturbance which was envisaged by the codifiers. It would not, in the circumstances, even be unreasonable to be concerned about the prospect of an accident intervening.

Moreover, while the Council noted that the "concept itself of the stunt" appeared to be an "equal opportunity" one, since the "offer by the station was for *anyone* who would ride a bicycle in the stated location in the nude," the Council found that the way the contest *unfolded* was in violation of Clause 4 of the *Sex-Role Portrayal Code*, which provides that "camera focus on areas of the body and similar modes of portrayal should not be degrading to either sex." It stated:

This is clearly a case in which [the hosts] *were* focussing on Leigh M's state of undress and making comments degrading to her as a woman. The focus of the stunt, which, as the Council has noted above, ought not to have taken place on a public street at all, could simply have been that someone was doing this bicycle ride, naked, at a rather inclement time of year, that people were reacting, that horns were honking, that the police had he Council dealt with two complaints concerning Showcase Television's broadcast of the provocative Canadian film *Bubbles Galore*. Viewers complained of the "graphic sexual content" of the movie which depicts a former "porn star" becoming the producer of an adult film made for women by a woman.

The Ontario Regional Council had no difficulty in concluding that the movie contained no exploitation on the basis of gender:

While it is only accurate to observe that, on a strictly quantitative basis, there may be more nudity of women than men depicted in the program, the Council considers it material to remember that the goal of the movie, as well as the film within the film, has been to portray adult film creation from the point of view of women. The creative point, therefore, is intended to be inherently sensitive, hence unexploitative, from the perspective of gender portrayal. In any case, there is male nudity depicted and, in the context of the film, the Council is not of the view that there is any material imbalance in this respect. Moreover, ...the creators of *Bubbles Galore* have clearly depicted the female characters of the film as superior to the male characters in both morality and intelligence but not in so inegalitarian a fashion as to unbalance the equation from the other point of view.

While the Council did not consider the film guilty of negative sex-role portrayal, it was concerned by a rape scene included near the end of the movie. Ultimately finding no violation of Clause 7 of the *Violence Code*, which deals with violence against women, the Council stated:

[I]n some senses, the scene is as removed from a realistic depiction of a rape as one could imagine. During the scene, as an apparent dramatic contrivance of the film's creator, Vivian remains ... detached, unmoved, apparently unconcerned by the rape which is taking place. It is almost as though she has

occupied a superior psychological position, asserting to the perpetrator that, "to the extent that you wish, by this act, to assert your control over me, you have failed. I am unaffected by what you are doing." ... While there is no denying the despicable and criminal nature of the act, in the context of the "duelling" individuals, psychologically speaking, the Council considers that Vivian has had the upper hand. ... In some senses there is no violence intended to be seen as real, much less glamorized. This scene, while an unenviable component of an unenviable film, does not amount to a breach of the *Violence Code*.

### **"I'm Dumping My Lover!"**

On an episode of *The Jerry Springer Show* broadcast by CFMT-TV, the topic of the day included a man's fetish of vomiting on his partner during intercourse. A complainant wrote that he found "this particular segment to be disgusting, repulsive, degrading and dehumanizing."

The Ontario Regional Council considered the complaint under Clause 4 of the *CAB Sex-Role Portrayal Code*, but found no Code breach. The Council stated that "[t]he demeaning nature of the acts and words of the participants is equally administered, from a gender and sexual orientation perspective and any resulting harm is largely, if not wholly, self-inflicted."

## **VIOLENCE**

This year, violence on television was the most pervasive complaint faced by the CBSC's Regional Councils. While most decisions dealt with viewer advisories, scheduling and classification issues, the CBSC also considered, for the first time, the second part of Clause 1 of the Code which prohibits the sanctioning, promoting or glamorizing of violence.

### **Sanctioning, Promoting or Glamorizing Violence on Canadian Television**

While some scenes of violence may require specific scheduling, viewer advisories or ratings, there are certain types of violence which are simply not permitted on Canadian television, regardless of the precautionary measures taken by the broadcaster to ensure a consenting, adult audience. These "strict prohibitions" include scenes of violence which are gratuitous, or which sanction, promote or glamorize violence. The CBSC dealt with the latter category in two separate decisions this year, one concerning a "hands-on" talk show and another concerning a "dysfunctional" cartoon.

### **Spring-ing into action**

In the CBSC's first decision regarding the well-known *Jerry Springer Show*, broadcast by CIHF-TV in Nova Scotia and by CKMI-TV in Quebec, the Quebec and Atlantic Regional Councils dealt with complaints from viewers that the talk show's content "sends the wrong message to our kids and depicts the violent traits that are picked up by young people." Generally, the show deals with relationships in which bizarre personal issues are resolved (or worsened). The segments viewed by the Councils were characterized by physical fighting, coarse language (bleeped) and nudity (blurred out).

The Atlantic and Quebec Regional Councils, in a joint decision taken at separate meetings, considered the concerns over the *subject material* and did not find a breach. They stated:

Indeed, to the extent that the Councils are troubled by the subject matter, it results primarily from their concern that the broadcasting of such aberrant behaviour as generally characterizes the show has the effect of desensitizing the viewers (of any age) to the disregard of normative social behaviour.

This was not considered to be sufficient to constitute a Code breach although the Councils regretted that such "programming ... is aired at a time of day when children could be *expected* to be watching. "

The Councils did find a breach of the *Violence Code*, though, stating that they had strong concerns over the "*treatment of violence* by the Springer Show."

In each of the episodes viewed for the purpose of this decision, it is perfectly clear that the violent reaction of the invitees is anticipated by the host, sanctioned as an occurrence, and encouraged and even promoted by both the host and his audience. If it were otherwise, the bouncers would *prevent* the happening. They do not, nor are they encouraged to. The dialogue between the host and the guests is meant to wind the practitioners of weird social arts to the breaking point and to set them at each other's "throats" or other accessible parts of their bodies.

The Councils concluded that the *Jerry Springer Show* episodes in question "sanctioned, promoted violence".

As to the possibility of recurrent breaches, the Councils stated that "whether with respect to reruns or future shows, the Canadian private broadcasters must ... find a way over the course of the next 30 days to ensure that their future broadcasts not include those violent elements of the episodes which would otherwise be in breach of the Code."

### **Opposing Traditional Family Values**

A viewer of CTV's adult animated series, *Kevin Spencer*, complained that the show is "[a] sick attempt to pass off as humour a family portrayal including sex, abuse, sodomy and drunkenness." More specifically, the complainant claimed that the program is degrading to men, women and children. The broadcaster stated that "this series emphasizes/exaggerates every stereotypical negative influence that can potentially affect society."

The Prairie Regional Council began by finding that, although it is animated, the show is not children's fare. The Council noted that it is presented late at night, rated "14+" and preceded by a viewer advisory indicating that "the .. program ... is intended for mature, adult viewers and is not suitable for young viewers." While the Council stated that it considered that "*Kevin Spencer* is replete with examples of bad taste and anti-social behaviour, it does not, *in this respect*, violate any broadcaster Code."

The Council was however, troubled by the violent content of the show. While the Council did not find that the violence was gratuitous given the dark theme of the show, it did find that the show had the effect of sanctioning, promoting or glamorizing violence. It stated:

The Council agrees with the broadcaster's contention that the program is satire and that the "[u]nrealistic animated violence is part of how the show creates its dark or anti-establishment feel." The Council notes that there are many other examples of criminal and anti-social behaviour salted through the show. While the Council understands that the program is satirical and that it "emphasizes/exaggerates every stereotypical negative influence that can potentially affect society," it is concerned by the extensive use of violence *as the basis for humour*.

In the Council's view, scenes such as those involving the theft and subsequent use as a plaything of a severed human head taken from an accident site, the graphic display of Kevin's head in a pool of blood and the display of bloody body parts strewn all over the street, when taken in a *comedic* context such as this one, have the effect of sanctioning, promoting or glamorizing violence contrary to Clause 1 of the *Violence Code*. The Council realizes that the characters and circumstances in *Kevin Spencer* are unappealing, unendearing and unlikely to be viewed as anything more than the opposite of role models; however, that is not the point here. The Council does not find that it is through the use of role models that *Kevin Spencer* sanctions violence; rather it finds that it does so by turning excessive, graphic and gory depictions of violence into a source of humour.

With respect to the sex-role portrayal issue raised by the complainant, namely that the show was "degrading to men, women and children," the Council did not find any Code violation. In the Council's

view, "[g]iven that the negative and degrading commentary in *Kevin Spencer* is so equally administered as to be rendered virtually gender neutral, the Council does not consider it to fall afoul of the *Sex-Role Portrayal Code*."

### **From Dusk Till Dawn - Scheduling in the 21<sup>st</sup> Century**

This year saw an increase in the number of decisions relating to the scheduling of programming. For the first time, the CBSC considered the scheduling provision relating to advertising and promotional material, as well as the scheduling provision as it applies to programming.

#### **Promos and Ads, Not for Young Lads**

The broadcast of commercials for an "extreme fighting" tournament, a science fiction feature film entitled *Virus*, as well as a promotion for the upcoming broadcast of the movie *Rob Roy* during two early morning children's programs on TQS sparked a complaint from a concerned parent who felt that the ads were too violent for their time of broadcast.

The Quebec Regional Council agreed. In its first opportunity to consider Articles 3.2 and 3.3 of the *Violence Code*, which deal with the scheduling of promotional material and advertisements, the Council noted that "the scheduling requirement is clear: >material which contains scenes of violence intended for adult audiences shall not be telecast before 9 p.m.'@ The Council had "no hesitation" in concluding that the commercials for *Virus* and *Rob Roy* contained "scenes of violence intended for adult audiences" and thus fell afoul of the scheduling provision.

The advertisement for the extreme fighting tournament escaped a finding of breach on the strict scheduling issue but was included in a finding of breach of Article 2 of the *Violence Code* which deals with children's programming. The Council noted that the Code states that children's programming "shall not contain realistic scenes of violence which create the impression that violence is the preferred way, or the only method to resolve conflict between individuals." The Council stated:

Broadcasters were unquestionably concerned about the welfare of children when they took the step of adopting this Code and this case clearly goes beyond the mere question of the inviolability of the Watershed hour. As a question of fact, the three alleged transgressions by the broadcaster occurred in the context of programs *aimed at children*. If ever a case of greater vigilance was merited, it is in the case of *such* programming.

#### ***Never Talk to Strangers ... At Least Not Before 9 pm***

A broadcast by TQS of the psychological thriller movie *Never Talk to Strangers* which tells the story of a woman psychiatrist who becomes intimately involved with a mysterious stranger spawned two complaints about the "very erotic scenes intended for adult audiences" and scenes of "violence against women". These scenes included various threats directed at the psychiatrist, such as the delivery of her mutilated cat in pieces in a box and her near electrocution when an electric heater was rigged to fall in her bathtub.

The Quebec Regional Council agreed with the complainant that the movie contained "scenes of violence and sexuality intended for adult audiences." The Council stated:

[T]he Council has no hesitation in concluding that the combined elements of fear, suspense, gore and explicitness, referred to in the *Kazan* decision, are present in at least the scenes showing the mutilated cat, the bloody writing on the wall and the final showdown where the psychiatrist kills her father and her lover. The Council considers that the presence of these elements, in combination with the overall suspenseful and frightening nature of the movie, renders the aforementioned scenes as "intended for adult audiences".

The Council also considers that some of the erotic scenes, in particular the very first sex scene which depicts "rough" lovemaking, come within the purview of what would generally be considered as material "intended for adult audiences".

By broadcasting the movie in the early evening, the Council found TQS to be "in violation of Clause 3.1 of the *Violence Code* which states that >programming which contains scenes of violence intended for adult audiences shall not be telecast before the late evening viewing period, defined as 9 p.m. to 6 a.m."

The Council further found that TQS had breached the *Violence Code* provision relating to viewer advisories. A viewer advisory in both visual and audio format had preceded the film but then had scrolled only once along the bottom of the screen, shortly after the third commercial break. Such provision of advisories does not fulfil the requirements of Clause 5.2 of the *Violence Code* which states that "broadcasters shall provide a viewer advisory *at the beginning of, and during* programming telecast outside of late evening hours, which contains scenes of violence not suitable for children. [Emphasis added.]"

With respect to the issue of violence against women, the Quebec Regional Council found no violation, stating that "[w]hile the Council acknowledges that the movie is about a woman who is threatened by a mysterious stalker, the Council can hardly fail to note that it is only the *men* in the movie who suffer any bodily harm and, moreover, this harm is inflicted by *the female protagonist herself*."

### **Too Sexy for 7 pm?**

A promo for the late night sex show *SexTV* broadcast on CITY-TV at 7:15 pm sparked a viewer to complain that the promo "is morally wrong, degrading to women, and harmful for children to see and think about how often their fathers, uncles, grandfathers think about sex." The promo began with the message "The average male has a sexual thought every 8 seconds," followed by a scene in which the camera panned over the body of a nude woman, lying sideways, facing the camera, with her legs and arms discreetly covering her breasts and genitalia and ending with the message "But who is counting?"

The Ontario Regional Council found that, despite the fact that the program being promoted was one which airs in a post-Watershed time frame, the promo did not violate the scheduling provision of the *Violence Code* by being aired in the early evening. It stated:

The Council wishes, first of all, to make it absolutely clear that a show which can itself only air in a post-Watershed time frame, namely, after 9:00 p.m. in the originating time zone, *can* be promoted prior to the Watershed. While there is, it goes without saying, an evaluation to be made of the content of the promo itself, the fundamental entitlement to promote the post-Watershed program itself is beyond contestation

The Council then considered whether the promo itself was "intended for an adult audience."

While the broadcaster acknowledges that it had separate promos, one which was pre-Watershed in orientation and the other post-Watershed, and that the one which played at 7:15 pm was run during *Seinfeld* in error, the Council does not conclude that CITY-TV was thus *in breach of the Code*. It was, *from the broadcaster's perspective* "intended for [their] adult audience"; the Council's interpretation of those words, though, must be more rigorous than that of the broadcaster since it is upon the Council that the mandate to interpret and apply the Code rests. It is those words, "intended for an adult audience", which set out the test under which the Council evaluates the scheduling of all programming pursuant to Clause 3 of the *Violence Code*. In the Council's view, to fall afoul the scheduling provision of the *Violence Code*, the challenged programming must not merely be "attractive" *mainly* to adults, it must be intended for an adult audience *to the exclusion of a non-adult audience*.

...

[T]he Council finds no breach in the present matter. It does, however, agree with both the broadcaster and the complainant that it would be more appropriate *not* to run such promos at a time when children could be expected to be watching.

The Council also found no breach of the *Sex-Role Portrayal Code*. With respect to the complainant's allegation that the promo degraded men, the Council stated:

The Council does not so conclude. On balance, the Council considers that it would be unreasonable to conclude that the promo suggests that there is no other side to men than their sex drive. Moreover, the promo is obviously tongue-in-cheek and attempting to solicit the interest of the viewer to plumb the male sex drive and other "mysteries" of the sexual world.

With respect to the portrayal of women, the Council did not find that "either the individual woman, or women in general, were demeaned by the promo." It stated that:

The Council notes that the promo did not involve any overly gratuitous use of the naked woman; the artistically and discreetly photographed individual was relevant to both the nature of the program underlying the 30-second promotional spot and the attention-grabbing message of the promo itself. While the Council notes that the advertisement perpetuates to some extent the stereotype of the woman as sexual object, it also notes that many elements of the depiction of the woman in the promo, such as the strong eye contact of the woman with the camera (and thus the viewer), go a long way to attenuating the objectification of the woman as a sexual play-thing.

#### **Teasing Television Viewers at 7:30pm**

A broadcast of a dubbed version of the theatrical motion picture *Strip Tease* on TQS sparked a viewer to complain that "[t]he law does not permit children to gain access to strip clubs and yet it seems logical for TQS to bring movies (erotic presentations) about strip tease dancers into our homes."

The film in question depicts a single mother who becomes a strip-tease dancer to make ends meet. During a few of her performances, her bare breasts as well as those of her colleagues are in plain view. However, there are no scenes involving any sexual contact throughout the movie.

After reviewing the CBSC's jurisprudence on the issue of bare breasts and the Watershed hour, the Quebec Regional Council found no Code breach. In the Council's view,

While acknowledging that the showing of bare breasts on strip tease dancers was intended by the filmmaker to be sexual, the Council considers that the absence of sexual contact or lovemaking in the film rendered it, to all intents and purposes, sufficiently innocent that there would not even be a requirement that its broadcast occur only in a post-Watershed time frame.

The Council reiterated its position in an earlier decision that "the 9 p.m. Watershed hour can be expected to apply to erotic scenes as well as violence." It added that, in this case, no Watershed problems had been presented and that "by airing the film... with appropriate advisories and the rating icon established by the *Régie du cinéma du Québec*, the broadcaster had provided sufficient opportunity for those who might prefer not to see the film or not to have it available for their families to make that choice."

#### **Double Team, Double Violence?**

The 8 pm broadcast of the movie *Double Team* on CHMI-TV in Winnipeg resulted in a viewer complaint that the movie depicted "cold blooded murder" and the "wanton mass murder of children".

While the Prairie Regional Council did not find that the movie contained any gratuitous violence, it did find that the movie was "replete with fighting, explosions and gunfire." The Council found that the nature and

extent of the violence included in the film was intended for adult audiences and thus did not belong in a pre-Watershed period on television."

The Council also disagreed with the broadcaster's choice of the PG rating. It stated:

Of the possible ratings for this film, namely, PG, 14+ and 18+, the broadcaster has selected the one clearly incorrect choice. First, in the category description for the PG rating, it is stated: "This programming, *while intended for a general audience*, may not be suitable for younger children (under the age of 8). [Emphasis added.]" Second, under the Violence Guidelines, it is provided that "any depiction of conflict and/or aggression will be moderate and limited" and that "any such depictions should not be pervasive." In the view of the Council, and apparently the broadcaster based on its own advisory, the film is decidedly *not intended* for a general audience. It is intended for an adult audience. Moreover, the violence in the film cannot possibly be described as "moderate and start of the film and coming out of the first, third and fifth commercial breaks. It was not present coming out of the second and fourth commercial breaks. Consequently, the broadcaster has breached the provisions of Article 5.2 of the *Violence Code*.

It is, of course, ironic that, by broadcasting the show on a pre-Watershed basis, CHMI-TV created a heavier burden on itself with respect to advisories than would have been the case if the program had been aired in the proper time slot. It means, in effect, that, instead of being subject to the provisions of Article 5.1, which require that the advisory air after each commercial break *during the first hour* of the program, by airing it, inappropriately, prior to the Watershed, viewer advisories are required *coming out of every commercial break during the entire program*.

### **Advising the Viewers**

The *Violence Code* provides for many "warning signals" to be provided to parents and viewers with respect to upcoming programming. In addition to the Watershed, discussed above, other "warning" signals include viewer advisories and the classification icon. These provisions were discussed in two decisions, one concerning a Sunday-afternoon fantasy action-adventure program and the other concerning an early evening docu-drama.

### **Sunday Afternoons with Chicks and Goons**

Episodes of *Hercules: The Legendary Journeys* and *Xena: Warrior Princess*, broadcast on CFPL-TV (London), prompted one viewer to complain about the violence and alleged "porn images" and "S&M" contained in both shows. Since both programs are tongue-in-cheek fantasy action adventures, the Council considered both programs together.

The Ontario Regional Council did not find that the shows contained "porn images" and "S&M", as alleged by the complainant, although it did find that many scenes "contained ... sexual innuendo and suggested sexual activity." In finding no Code breach on this issue, the Council held that "the sex in these programs was more suggestive than explicit."

Furthermore, while the Council was not opposed to the Sunday afternoon scheduling and PG rating of the programs, although both fantasy programs contained many scenes of violence, the Council noted that "the fighting is portrayed as more acrobatic than violent in these shows and the results of the violence are more suggestive than graphic."

As for the requirement to air viewer advisories, the Council found that *Xena* depicted violence in a "slightly more realistic" fashion than *Hercules* and that, as a result, the show contained "scenes of violence not suitable for children". The broadcaster was thus required to include viewer advisories to that effect when broadcasting the program in a pre-Watershed time-slot. By failing to do so, the Council found the broadcaster in breach of Clause 5.2 of the *Violence Code*.

### **An Inquest into Classification**

An episode of the docu-drama *Coroner* broadcast by TQS, which dramatizes allegedly real case files of a city coroner, sparked a complaint from a viewer upset with the program's depiction of sado-masochistic practices. In the episode viewed by the Quebec Regional Council, a short re-enactment of a S&M practice was depicted. A woman wearing a leather corset and fish-net stockings was shown tying up a man, putting a noose around his throat and pulling on the other end of the cord in order to heighten his sexual pleasure. Ultimately, the strangulation led to the man's death and an inquiry by the Coroner. The rest of the half-hour episode consisted of interviews with police, sex-therapists and psychiatrists, among others.

The Quebec Regional Council found no problem with the content of the program, concluding that the "violent and sexual component of the episode was *suggested* rather than manifest or blatant."

With respect to the classification issue, the Council found the broadcaster in violation for failing to classify the program in accordance with the *Violence Code* and to include the appropriate rating icon:

This episode ... falls within that genre of programming sometimes referred to as "reality" programming. As to its presentation, it is primarily a *dramatic* recreation of a story declared to emanate from the real files of a coroner's office. It is also undeniable that there is documentary content in the form of interviews with professionals on aspects of the case in question but these do not change the fundamentally dramatic character of the programming and the requirement that it be classified. By not including a rating, the broadcaster has breached the requirements of the *Violence Code* and the classification system adopted pursuant to Clause 4.1 thereof.

## NEWS AND PUBLIC AFFAIRS

### PROGRAMMING

While many of "public affairs" programming concerns related to human rights issues and thus were reported above in the Ethics and Human Rights section, the CBSC also dealt with many other issues more closely related to "journalistic" ethics. These complaints were considered by the CBSC's Regional Councils in light of the RTNDA *Code of (Journalistic) Ethics* and Clause 6 of the CAB *Code of Ethics*.

#### Visually Stunning

The CBSC dealt with three complaints regarding the *visual* component of news this year. These complaints raised a variety of concerns, including the use of inappropriate graphic images, invasion of privacy and the ethics of interviewing children.

#### **Kiddie Porn in the News**

BCTV's (CHAN-TV in Vancouver) news report on the controversial B.C. court decision declaring unconstitutional the legislation relating to the possession of child pornography included pictures of a young girl in fish-net stockings, a young girl in her underwear and the bare legs of another young girl in a ballerina pose. A viewer complained that "showing even edited pictures on a newscast of child pornography is only a further exploitation of the crime that is committed against these children."

The B.C. Regional Council found no breach of any of the Codes administered by the CBSC. While the Council stated that it "understands the discomfort of the complainant in viewing *any* depiction of child pornography," it agreed with the broadcaster's use of the photographs.

After all, the goal of the broadcaster, the Council assumes, was not merely to report a *very* controversial story but to *underscore* the awful result of the judicial determination to authorize the possession of child pornography. Could it have accomplished its goal by simply *telling* the story and interviewing the accused? Probably. It could not, however, have succeeded in conveying the sense of public disgust with the practice *without* adding a visual element. And it does seem to the Council that the broadcaster's

choices were tame, albeit unpleasant. There were undoubtedly far more explicit pictures available which would have brought the result to another utterly unacceptable level.

### **No Privacy for the Premier**

In another decision, a viewer complained of BCTV's (CHAN-TV in Vancouver) news report of the investigation and the filming of the RCMP service of a warrant at the home of then B.C. Premier Glen Clark. The news item was facilitated by the use of a long lens (which was itself in plain view on the street) showing police and other figures, including the Premier, milling about in a lighted kitchen window. The complainant stated that the filmed report had invaded the Premier's privacy and had been biased against him.

The B.C. Regional Council disagreed with the complainant on both counts. On the issue of privacy, the Council stated that "[t]he issuance of a search warrant pursuant to the judicial authority of the province and its execution by law enforcement officials at the home of the Premier are events of importance to the public and any broadcaster aware of such events might well be seen as irresponsible in not bringing them to the attention of the public."

As to the allegation of bias in the report, the Council stated:

In connection with the news report, the complainant asks ... rhetorically, whether BCTV or the reporter have "been elected as the official opposition". While the *technical* answer to this question is "of course not", the role of the press is "to inform the public in an accurate, comprehensive and balanced matter about events of importance," according to the fundamental principle established in Article 1 of the *RTNDA Code of (Journalistic) Ethics*. The preamble to that Code "recogniz[es] the importance to a democracy of an informed public." Thus, it might be said that the press is, in a sense, everyone's official opposition. It is the duty of the press to bring to the light of day those matters of public concern which a well-informed public will want to know. That is all that BCTV did in this case. Furthermore, in the context of balance, the report was *constant* in its presentation of the position of the minister responsible for gaming Mike Farnworth that *he* and not the Premier made the decision to approve the casino licence of the North Burnaby establishment. Thereafter, a large portion of the report focussed on the Premier's lawyer, who had the floor essentially to himself in his condemnation of what he characterized as "the gossip mongering and unsubstantiated rumour that's floating around here."

In the view of the Council, the broadcaster did everything necessary to give the Premier and his spokespersons fair due. Short of not reporting the matter at all, which would have been a dereliction of the broadcaster's own duty to the public, the Council cannot agree with the substance of the complainant's perspective.

### **Respecting the Dignity of Victims and their Families**

A CTV National News report on the sentencing of Charles Ng, the notorious serial killer found guilty of the 1984 and 1985 murders of 11 individuals, included a video clip of about seven seconds in length which showed either Ng or his accomplice beginning to cut the blouse of one of the female victims who was at that moment tied helplessly to a chair. A viewer complained that the inclusion of the video clip not only violated the rights of families of murder victims, but the rights of viewers that "should not expect, or be prepared, to be subjected to those kinds of images."

The Ontario Regional Council found that the video segment used in the news report constituted an "unnecessary pictorial representation of violence and aggression." It stated:

In the first place, the CTV story had to do with the *sentencing* of one of the two murderers, not with any question of the actual commission of the crimes. If it *might* have had relevance and purpose in telling the story of the criminal activities themselves (and while the Council does not so conclude in the context of *that* story), it does readily find that the inclusion of the footage in *this* story was irrelevant.

While the inclusion of unnecessary footage is generally a point of little more than the efficacy of the story being told or an evaluation of the quality of the editing of the piece, the potential inconsequential nature of the evaluation disappears when the material is violent and aggressive. In such a case, Article 6.1 of the *Violence Code* calls for the use of "appropriate editorial judgment" in the selection of the pictorial representation.

The Council concluded that "the cutting off of a *real* victim's clothes in *anticipation* of the awful crimes which were to follow (feared, no doubt, by the victim but known after the fact by the television audience) constituted an act of terrifying violence, exceeding the limits of the term "

The complainant alleged that the "testing" referred to in the report was in fact only a "classroom demonstration" and that the claim that the "test" was observed by the Fire Marshall's office was also erroneous.

While the Ontario Regional Council did not find that the report breached broadcast standards, it was sufficiently uncomfortable with it to call it "an example of on-the-edge journalism." The Council stated:

In the first place, the Council does not find that the report was anything like irreproachably accurate, which it ought to have been. The inclusion of the declarative words such as "observed by the Ontario Fire Marshall's office" is a case in point. That the Seneca professor who conducted the test *also works* for the Ontario Fire Marshall's office is hardly sufficient to support the claim that the Fire Marshall's *office* was in any way *officially* involved, which is *precisely* the implication of the language used in the newscast. It was likely included to add credibility to the story when, on that point, the Council is unsure as to whether such a conclusion was merited.

Similarly, the Council questions whether the scientifically dependable sense of the phrase "weeks of testing" fairly or accurately describes the so-called "new study" the results of which were reported by CTV. The Council notes that, in a similar but not congruent case concerning a report on the potential dangers of indoor playgrounds at fast food restaurants in the Edmonton area, namely, *CFRN-TV re Eyewitness News* (CBSC Decision 96/97-0149, December 16, 1997), the Prairie Regional Council did not find the news report sensationalized because of the extent of the broadcaster's disclosure of the relatively unscientific nature of the testing ...

No such description or disclosure of the method of conducting the tests was given to CTV's audience by this report. The viewers were given no *solid* information relating to the *nature* of the testing on the basis of which they might be able to form a judgment regarding its unimpeachability. This contrasts with the CFRN situation, in which the Edmonton audience was informed of the relatively unscientific nature of the study. That, too, is a legitimate form of disclosure which permits a thinking audience to draw reasonable conclusions on the basis of the information proffered, an evaluative opportunity which CTV@ and "neutron bombs" were not intended to advocate violence.

With respect to the broadcaster's choice to interview a convicted criminal, the Council found no breach, stating that "[w]hile it would be wise for broadcasters to be cautious in their provision of a platform to a criminal who might wish to profit financially, psychologically or otherwise from his crime or to exploit the public, in the absence of the breach of a specific Code provision, it is up to the broadcaster alone to make such an interviewee choice."

### **In the Best Interest of the Children**

A BCTV (CHAN-TV in Vancouver) news report had the B.C. Director of Child Protection up-in-arms. The report on the removal of two foster children, aged 10 and 12, from their home by the Ministry of Children and Families against their will and that of their foster parents prompted a complaint from the Director that the report was "one-sided" and violated "the children's privacy rights".

The Council did not find that the report breached broadcast standards and stated the following regarding the issue of interviewing children:

In the case at hand, the Council is of the view that the children were neither coerced nor misled. To the contrary, there is every indication that the children *would have wished* that their point of view *be* a part of the story. Had it not been, there is every reason to believe that the credibility of the report would have been diminished. It was of the essence of the story that the public know that this was not merely the expression of the clash of consents of the adults yearning to retain the children in foster care and those wishing to remove them from such care. It was, after all, the story of the children and *their* clear desire to remain with their parents. No-one could bear better witness to *that* story than the children themselves. The Council finds that their consent was validly and appropriately obtained.

### 3. Summary of Complaints

#### 1. Overview

In 1999/2000, 2,103 persons lodged formal complaints with the CBSC. Some of these did so by signing a petition for which only one file was opened. The total number of files opened by the CBSC in 1999/2000 was 810.

- Of these 810 files, the CBSC actually handled 620 or 76.5%, since 45 files were referred to Advertising Standards Canada (ASC), 17 to the Cable Television Standards Council (CTSC), 124 to the Canadian Radio-television and Telecommunications Commission (CRTC) (of these 124 files, 76 related to non-member broadcasters and 48 dealt with issues which did not come within the parameters of the Codes administered by the CBSC, such as issues relating to Canadian content and simultaneous substitution). Four files were referred to other agencies or government departments such as Industry Canada.
- The CBSC, nonetheless, responded to all the complaints including those sent elsewhere for ultimate resolution. In the case of petitions,

however, the CBSC responded to only one appointed spokesperson for each group of signatories.

- For the first time, the CBSC received more complaints *directly* than from any other source of referral; 516 complaints (63.7% of the total files opened in 1999/2000) were received directly. The majority of these complaints came to the CBSC via email, accounting for 351 files (43.3% of the total files opened in 1999/2000); snail mail followed with 131 complaints (16.2%), then fax at 34 (4.2%). The CRTC referred 283 complaints to the CBSC in 1999/2000, accounting for 34.9% of the total files opened this year. A total of 11 other complaints were referred to the CBSC from such other agencies as ASC, the CAB or the CTSC.

#### 2. Region

Of the 620 complaint files handled by the CBSC, the majority dealt with Ontario broadcasters, followed by broadcasters in the Quebec region.

	Region of Complaint				
	Region	Radio	Television	Not applicable	Total
Atlantic	6	10	1	17	
Quebec	27	100	0	127	
Ontario	98	102	4	204	
Prairie	35	43	1	79	
B.C.	39	39	1	79	
National	0	74	0	74	
Non-determined	10	19	11	40	
<b>TOTAL</b>	<b>215</b>	<b>387</b>	<b>18</b>	<b>620</b>	

#### 3. Radio and Television Complaints

Of the 620 complaint files handled by the CBSC,

- 215 dealt with radio programming (34.7%);
- 387 dealt with television programming (62.4%);
- 18 dealt with general concerns about broadcasting or could not otherwise be categorized (2.9%).

#### **4. Language of Program**

Of the 620 complaint files handled by the CBSC,

- 470 dealt with English-language programming (75.8%);
- 116 dealt with French-language programming (18.7%);
- 9 dealt with foreign-language programming (1.5%).
- 25 did not provide enough information to be language classified (4.0%).

Language of Program									
Language	Radio		Television		N/D		Total		
	#	%	#	%	#	%	#	%	
English	191	88.8	278	71.9	1	5.5	470	75.8	
French	20	9.3	95	24.5	1	5.5	116	18.7	
Foreign	3	0.5	6	1.5	0	0	9	1.5	
Not Specified	1	1.4	8	2.1	16	89.0	25	4.0	
<b>TOTAL</b>	<b>215</b>	<b>100</b>	<b>387</b>	<b>100</b>	<b>18</b>	<b>100</b>	<b>620</b>	<b>100</b>	

#### **5. Source of Program**

Of the 620 complaint files handled by the CBSC,

- 379 dealt with Canadian programming (61.1%);
- 176 dealt with foreign programming (28.4%);
- 65 could not be so classified (10.5%).

Source of Program									
	Radio		Television		N/D		Total		
Source	#	%	#	%	#	%	#	%	
Canadian	169	78.6	209	54.0	1	5.5	379	61.1	
Foreign	39	18.2	135	34.9	2	11.1	176	28.4	
Undetermined	7	3.2	43	11.1	15	83.4	65	10.5	
<b>TOTAL</b>	<b>215</b>	<b>100</b>	<b>387</b>	<b>100</b>	<b>18</b>	<b>100</b>	<b>620</b>	<b>100</b>	

### 6. Type of Program - Radio

This year, the CBSC began classifying the type of programming in a non-exclusive manner, *i.e.* allowing for a program to be classified under more than one category. It also added several new categories (especially for television) such as "animation" and "game show". While providing additional information to readers, it has rendered the provision of statistical information more complex (see the notes below).

Of the 215 radio complaints,

- the majority (109 files) dealt with open line/informal discourse programming (50.7% of radio complaints);
- 25 dealt with music (11.6% of radio complaints).

Type of Program - Radio				
Type of Program	# of Radio Complaints	% of Radio Complaints	% of all Complaints	
Advertising	11	5.1	1.8	
Children's	1	0.5	0.2	
Comedy	13	6.0	2.1	
Contests and Promos	10	4.6	1.6	
Education (human interest)	18	8.4	2.9	
Music	25	11.6	4.0	
News	13	6.0	2.1	
Open line/informal discourse	109	50.7	17.6	
Public affairs	19	8.8	3.1	
Religious	5	2.3	0.8	
Sports	1	0.5	0.2	
Undetermined	7	3.3	1.1	
<b>TOTAL</b>	<b>232<sup>(1)</sup></b>	<b>-<sup>(2)</sup></b>	<b>-<sup>(3)</sup></b>	

## Notes:

(1) The total number of complaint files concerning radio programming was 215 in 1999/2000. Due to the CBSC new non-exclusive categorization of programming, described above, which results in some duplication, the total number of complaints in the "Type of Program" chart above (232) is higher than the actual number of radio complaints received.

(2) The percentage which each program category is, nevertheless, calculated on the basis of the actual number of complaint files concerning radio programming (215) and, if given, the total number of the percentages would, of course, be greater than 100% for the reasons explained in note 1 above.

(3) The percentage is based on the total number of complaint files handled by the CBSC (620). Accordingly, if given, the total of the percentages as a function of the total number of radio and TV complaints would also, of course, be greater than 100% for the reasons explained in note 1 above.

### 7. Type of Program - Television

This year, the CBSC began classifying the type of programming in a non-exclusive manner, *i.e.* allowing for a program to be classified under more than one category. It also added several new categories such as "animation" and "game show". While providing additional information to readers, it has rendered the provision of statistical information more complex (see the notes below).

In 1999/2000, no one type of programming accounted for a majority of the complaints of the 387 television complaints.

- News and dramatic programming tied at 70 complaints (18.1% of television complaints);
- 52 complaints dealt with comedy programming (13.4% of television complaints).

Type of Program - Television				
Type of Program	# of TV Complaints	% of TV Complaints	% of all Complaints	
Advertising	35	9.0	5.6	
Animation	24	6.2	3.9	
Children's programming	15	3.9	2.4	
Comedy	52	13.4	8.4	
Drama	70	18.1	11.3	
Education (Human Interest)	36	9.3	5.8	
Game Show	10	2.6	1.6	
Informal Discourse/Conversation	22	5.7	3.5	
Feature Film	33	8.5	5.3	
Music	2	0.5	0.3	
News	70	18.1	11.2	
Open-Line	9	2.3	1.5	
Promotional Material	10	2.6	1.6	

	Public affairs	23	5.9	3.7	
	Religious	7	1.8	1.1	
	Science Fiction	2	0.5	0.3	
	Sports	20	5.2	3.2	
	Undetermined	25	6.5	4.0	
	<b>TOTAL</b>	<b>465<sup>(1)</sup></b>	<b>--<sup>(2)</sup></b>	<b>--<sup>(3)</sup></b>	

Note:

(1) The total number of complaints concerning television programming was 387 in 1999/2000. See the corollary note on the previous page for more information.

(2) See the corollary note on previous page.

(3) See the corollary note on previous page.

### **8. Codes and Clauses**

Often, a complaint will relate to more than one code or clause. Thus, the number of complaints considered under the codes and clauses can be expected to exceed the number of letters received by the CBSC.

#### **CAB Code of Ethics**

In 1999/2000, 367 complaints handled by the CBSC raised at least one issue to be considered under the *CAB Code of Ethics*. The majority of complaints raised at least two. Most of the complaints which involved a human rights issue often included a component of proper presentation of opinion, comment or editorial (also used for dramatic programming).

	<b>CAB Code of Ethics Clause</b>	<b>Radio #</b>	<b>TV #</b>	<b>Total #</b>	
	Human rights	73	35	108	
	News	14	33	47	
	Advertising	5	14	19	
	Controversial public issues	4	20	24	
	Children's programming	0	6	6	
	Contests & Promotions	2	0	2	
	Presentation of Opinion & Comment	95	55	150	
	Sex-role stereotyping	2	3	5	
	Religious programming	0	6	6	
	<b>TOTAL</b>	<b>195</b>	<b>172</b>	<b>367</b>	

*CAB Sex-Role Portrayal Code*

128 complaints handled by the CBSC 1999/2000 raised at least one issue under the *CAB Sex-Role Portrayal Code*. The overwhelming majority of complaints considered under this Code related to issues of sexual explicitness on television which was stated to be degrading, mostly, but not exclusively, to women.

	<b>Sex-Role Portrayal Code Clause</b>	<b>Radio #</b>	<b>TV #</b>	<b>Total #</b>	
	Exploitation	62	63	125	
	Diversity	1	2	3	
	Changing interaction	0	0	0	
	Demographic Spectrum	0	0	0	
	<b>TOTAL</b>	<b>63</b>	<b>65</b>	<b>128</b>	

**RTNDA Code of (Journalistic) Ethics**

In 1999/2000, 92 complaints handled by the CBSC were considered under the *RTNDA Code of (Journalistic) Ethics*. The majority of these concerns related to television programming.

	<b>RTNDA Code of (Journalistic) Ethics Clause</b>	<b>Radio #</b>	<b>TV #</b>	<b>Total #</b>	
	Distortion	4	6	10	
	Sensationalism	2	19	21	
	Irrelevant information	0	0	0	
	Respect for privacy/dignity	2	3	5	
	Accuracy	9	7	16	
	Errors	0	0	0	
	Balance/comprehensiveness	5	22	27	
	Conflict of Interest	0	0	0	
	Politeness of journalists	1	3	4	
	Reporting on criminal activities	0	1	1	
	Improper comment or editorial	0	8	8	
	<b>TOTAL</b>	<b>23</b>	<b>69</b>	<b>92</b>	

**CAB Voluntary Code Regarding Violence in Television Programming**

143 complaints handled by the CBSC in 1999/2000 raised at least one issue to be considered under the *CAB Violence Code*. Most of the complaints considered under this code related to the scheduling of programs (before or after the "watershed" hour of 9 p.m.). Concerns over program content were also important this year.

	<b>TV Violence Code Clause</b>	<b>TV #</b>	
	Gratuitous or glamorized violence	39	
	Children's programming	7	
	Scheduling of programming	68	
	Scheduling of promotional material & ads	7	
	Classification	1	
	Viewer Advisories	2	
	News	3	
	Violence in sports	0	
	Violence against animals	5	
	Violence against women	5	
	Violence against specific groups	6	
	<b>TOTAL</b>	<b>143</b>	

#### General Complaints

In addition, the CBSC handled 236 complaints of a general nature which could not engage its formal complaints resolution process (and thus for which Code provisions were not examined). Some of these complaints raised more than one issue and thus the total at the bottom of the chart below is greater than the actual number of general complaints.

	<b>General Complaints</b>	<b>Radio &amp; TV #</b>	
	Advertising	7	
	Children's Issues (other than categorized below)	4	
	Human rights	46	
	News and public information	37	
	Offensive language	33	
	Offensive humour	15	
	Program selection	27	
	Religious / Blasphemous Content	10	
	Sexual content	46	
	Sports	5	

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	Station logos	2	
	TV violence	32	
	<b>TOTAL</b>	<b>264</b>	

### Status of Complaints at Year End

Of the 620 files handled by the CBSC, 384 were code relevant and specific complaints, meaning that they (a) provided sufficient information concerning the broadcast in question to enable follow-up by the CBSC and (b) related to a code provision administered by the CBSC. The remaining 236 complaints were considered "general" and thus the files were closed by the CBSC immediately following its response to the complainant.

Of the 384 "code relevant and specific" complaints, 202 (52.6%) of these will not require Regional Council adjudication as they were resolved at the level of broadcaster and complainant communication; 29 complaints (7.6%) have been resolved through the release of decisions of the various Regional Councils and the CBSC Secretariat; 99 complaints (25.8%) have yet to complete the dialogue process with the broadcaster. The 54 remaining complaints are at various stages in the complaints review process.