
CANADIAN BROADCAST STANDARDS COUNCIL

NATIONAL SPECIALTY SERVICES PANEL

BITE TV re the *Conventioneers*

(CBSC Decision 10/11-0627)

Decided July 12, 2011

R. Cohen (National Chair), F. Niemi, D.-Y. Leu, L. Todd

THE FACTS

Specialty service BITE TV broadcast an episode of the *Conventioneers*, a show in which the hosts, Jason Agnew and Matt Chin, explore the trade show circuit and bizarre areas of niche culture. Although the show's principal time slot is Tuesdays at 10:00 pm Eastern time, it repeats several times each day at different hours, most of which range between 8:00 am and 8:30 pm. During the challenged episode, which aired on December 31, 2010 at 4:00 pm (5:30 pm in the complainant's time zone, Newfoundland and Labrador time), the hosts explored the Holiday Entertaining and Décor Show. During this broadcast, Jason and Matt walked around interviewing both buyers and sellers in attendance at the convention. The following advisory was displayed at the beginning of the broadcast in audio and video format, but not coming out of any subsequent commercial breaks:

The word "warning" appeared at the top center of the screen in large purple lettering followed by:

The following program deals with mature subject matter and contains coarse language and is intended for adult audiences.

Viewer discretion is advised.

The show contained many sexual references and several instances of coarse language. A transcript of those elements most pertinent to this decision follows (a more extensive transcript can be found in Appendix A).

In the opening scene, Jason Agnew was seen kneeling next to a decorated Christmas tree attempting to wrap a puppy as a gift. He said (in a calm and cuddly voice): “Get in the box, little puppy, in the box, get in the ... [Then, in an angry tone] get in the goddamn box and stay in the fucking box [vigorous angry laughter].”

A few moments later, Matt Chin (off screen) moved a Nutcracker’s mouth up and down to make it appear as though the figurine was actually talking. The Nutcracker’s voice-over “said”:

This convention sucks. This conventioneer with glasses came up to me, he stuck his thing into my mouth and it didn’t taste very good. He ejaculated in my mouth and he doesn’t eat enough vegetables. It didn’t taste very good. Ahhrrgh. I hate the *Conventioneers*.

Approximately half way through the show, after receiving a massage from the “Mobile Spa” kiosk at the convention, Matt Chin said, “This is awesome and then maybe if we do this at Christmas time, maybe Uncle Jack won’t molest all those kids.”

Matt Chin also interviewed an elderly woman:

Matt Chin: How are you doing?

Woman: Oh, tired.

Matt Chin: Tired? Have uh, have a busy show?

Woman: Oh yeah!

Matt Chin: What have you seen so far?

Woman: Well, I’ve got a beautiful snowman. My granddaughter is in the camera [points towards the camera].

Matt Chin: Oh is she? What does she do?

Woman: Well she makes um [dubbed voice: “pornography”]. She’s into some kind of um [dubbed voice: “adult entertainment”].

Matt Chin: We should hook up! [He looks at the camera and raises his eyebrows].

Closer to the end of the show, a preview of an upcoming segment was shown. A voice-over said, “Still to come on the *Conventioneers*: Santa Matt spreads Christmas joy.” Matt Chin (dressed as Santa from this point on) whispered to a man, “I’ve got those butt-plugs on, on hold all right? Thanks.” Moments later, Matt Chin interviewed a young boy. Some parts of the conversation appeared to have been dubbed; indeed, it

appears to the Panel to be characteristic of this episode that much of the offensive dialogue was laid over original innocuous content.

Matt Chin: Ho! Ho! Ho! [Dubbed in editing] What do you want for Christmas, you little fuck?

Little boy: Uh. I don't know what I want.

Matt Chin: Oh! [Dubbed] You fucking piece of shit.

Matt Chin then interviewed a group of three children (two young boys and one young girl). Again, most of what Matt said in this conversation appeared to be dubbed during the editing process. The following interview took place between Matt and a young girl.

Matt Chin: [Dubbed] Hey, you little cunt, what do you want for Christmas?

Girl: Um, a horse to brush her hair!

Matt Chin: A horse? [Dubbed] You wanna stick a penis in your vagina? Stop running around or I will beat you.

In the next segment, Matt Chin had a conversation with a man and two young boys:

Matt Chin: [Dubbed] How are you doing? Ho! Ho! Ho! Sit there, don't move or we are gonna rape your ass, don't move. Hey, me and your father are going to rape you. Ho! Ho! Ho! Ho!

In the last segment of the episode, Matt Chin interviewed three women, asking a variety of sexually-driven questions. Some of these questions appeared to be dubbed but in some cases it was unclear. The first interview was with a younger woman:

Matt Chin: What would it take for you to tickle my balls?

Woman: I don't know [giggle].

Matt Chin: Is there anything?

Woman: Uh, you can get rid of my debt that'd be great [giggle].

Matt Chin: We'll get rid of him right away and we'll get right to it okay?

Woman: Okay [giggle].

The second interview took place with an elderly woman:

Matt Chin: What would it take for you to do naughty things to me?

Woman: To have the family all together.

Matt Chin: Oh, if we had the family all together would that make you happy?

Woman: Yes it would.

Matt Chin: All right. Well then, that is what we'll do.

The final interview in this segment took place with a younger woman:

Matt Chin: Ho! Ho! Ho! Ho! What would it take for you to jack Santa off?

Woman: Um, a ring. [Laughter]

Matt Chin: A ring? It takes you a ring? Oh well if that's what it takes, I'm, I'm ready to do it for you.

The following complaint about the episode was received on the same day as the broadcast (the full text of all the correspondence can be found in Appendix B):

I am sending this to Sgt. [T] of the RCMP, and asking him to forward to [*sic*] the appropriate contact as I cannot locate one for the RCMP at this moment. I am sending this to CBSC as I believe they are the proper agency. I am sending [*sic*] to Bite TV, but I am not interested in their response, nor their excuse. Today is December 31, 2010. I was watching Bite on New Year's Eve, at 5:30 pm Newfoundland time, a show called the *Conventioneers*, it was their Christmas Special. Near the end of the show, one of the two 'performers' donned a Santa Claus suit and chatted amongst the crowd, and later, the editors replaced some of Santa's lines, as you couldn't see his mouth move. The statements:

1. To a little girl, "What do you want, you cunt?"
2. To a boy, while standing by his dad, "Hey, kid, me and your dad are going to come over and rape you." And there were a couple of others, but I was in a bit of shock and did not catch them.

It's time to stop childish losers from taking over the television, the accepted morays [*sic*] of society, and it's time these boys were taught a lesson. Mocking pedophilia? Mocking raping a child on tv by his parents? This is acceptable?

Surely this is illegal in Canada?

The broadcaster replied to the complainant on January 5, 2011 in pertinent part as follows:

Bite has recently gone through a programming shift to all comedy (in October 2010) and we have made many changes to our overall schedule to reflect this new direction. Upon receipt of your email, we have reviewed the episode in question. This particular episode was produced over five years ago and we recognize that it doesn't represent the strategy or line-up of shows we now air. We, therefore, have decided to pull this episode from our channel. We have also decided to pull the first two seasons of the *Conventioneers* completely from our line-up until we can review each episode independently and decide whether episodes can remain in our programming. We very much appreciate you taking the time to write to us and allow us to reconsider certain content that our viewers and management find not suitable for the channel.

On February 4, the complainant, dissatisfied with the broadcaster's response, sent his Ruling Request, which read in pertinent part as follows:

I am NOT satisfied, but no longer care to follow up. (Were I that parent who's [sic] child was told that the parent was going to rape him, I would SUE the ass off of BITE and the *Conventioneers*, and I would hunt down the 'comedians' and give them a lesson in the definition of social morays [sic].)

It strikes me as odd that all you can do is have them remove the show - why no fine or legal consequences for broadcasting these defamatory and disgusting comments!? I am ashamed to be a Canadian, as we sell the big lie of our 'holiness' while crap like this gets a slap on the wrist.

THE DECISION

The National Specialty Services Panel examined the complaint under the following provisions of the Canadian Association of Broadcasters' (CAB) *Code of Ethics, Equitable Portrayal Code* and *Violence Code*:

CAB Equitable Portrayal Code, Clause 8 – (Exploitation)

- a) Broadcasters shall refrain from the airing of programming that exploits women, men or children.
- b) Broadcasters shall refrain from the sexualization of children in programming.

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

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

[...]

- d) Broadcasters shall take special precautions to advise viewers of the content of programming intended for adult audiences, which is telecast before 9 pm in accordance with Clause 10(c).

(Note: To accommodate the reality of time zone differences, and Canadian distant signal importation, these guidelines shall be applied to the time zone in which the signal originates.)

CAB Code of Ethics, Clause 11 – (Viewer Advisories)

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

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

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

CAB Violence Code, Article 4.0 – Classification

E – Exempt

Descriptive

Exempt programming includes: news, sports, documentaries and other information programming; talk shows, music videos, and variety programming.

Note: exempt programming does not require an icon for on-screen ratings.

14+

Descriptive

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

Violence Guidelines:

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

Other Content Guidelines

Language: could possibly include strong or frequent use of profanity

Sex/Nudity: might include scenes of nudity and/or sexual activity within the context of narrative or theme

18+

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.

Other Content Guidelines

Language: might contain graphic language

Sex/Nudity: might contain explicit portrayals of sex and/or nudity

The Panel Adjudicators read all of the correspondence and watched the challenged broadcast. The Panel concludes that the broadcast did violate each of the foregoing codified standards.

A Preliminary Issue: The After-Dubbing

The Panel was struck by the unusual editing of the broadcast. Rather than bleep, mute or excise controversial content, those words that are the principal concern of the complainant and this Panel were *added* to what may otherwise have been a fairly anodyne and benign broadcast. The fact that such elements were not present during the production of the episode does not, however, affect the Panel's assessment of the program. After all, the broadcast codes have far more to do with the content that is seen (or, in the case of radio, heard) by audiences than with what happens in the production studios. This decision is based on the content of the episode as *aired*.

Sexual Content

Although this was a television program, there were no visual scenes or sequences that could be described as sexual, whether graphic or even subtle. What sexual content there was could only be found in the dialogue, much of which was, as noted above, dubbed over the original dialogue. Moreover, much of that dialogue was sexually suggestive rather than explicit. The brief references in three or four words in each case, to one of the interviewees tickling Santa's balls, to another of the interviewees doing naughty things to Santa, and to the third interviewee jacking Santa off are certainly crude and tasteless but they do not, in the opinion of the Panel, amount to unduly sexually *explicit* content constituting a breach of the standards threshold anticipated in Clause 10 of the *CAB Code of Ethics*. There is, however, one exchange that, in the view of the Panel, does cross over the line: "This conventioner with glasses came up to me, he stuck his thing into my mouth and it didn't taste very good. He ejaculated in my mouth and he doesn't eat enough vegetables. It didn't taste very good." Its

explicitness is not dissimilar from the admittedly lengthier discussions on masturbation in *MTV Canada re an episode of MTV Live ("Self Love")* (CBSC Decision 06/07-0763, May 1, 2007) and on sex games (specifically, the Virtual Sex Machine and the Naughty America on-line sexual game) in *MTV Canada re an episode of MTV Live ("Virtual Sex")* (CBSC Decision 05/06-1459, January 8, 2007). While the monologue of the Nutcracker was less lengthy and collectively less graphic than the spoken lines this Panel judged as unduly sexually explicit in *Bravo! re Love on the Line* (CBSC Decision 00/01-1050, May 3, 2002), the Panel finds the offending line similar to almost any one of the following lines in the Bravo! broadcast:

"I'd caress you all over, take your cock in my hand."

"I like that, yeah." "Come on, come!" "Come on me, all over." "Yes, I'm coming too."
[groans] "Yes, that's good." "I'm all sticky too."

"I'd like you to put your cock in my mouth, so I can feel it in my throat."

"I'm pumping. Keep it up and I'll come."

The Panel concludes that the Nutcracker's words are in breach of Clause 10 of the *CAB Code of Ethics*.

The Panel also considers that *both* the sexually explicit monologue *and* the previously-noted sexually suggestive dialogue constitute content inappropriate for viewing by children (that is, persons under the age of 12). That point is not entirely of relevance in this section, which is related to Clause 10 only, but it is fully pertinent to the discussion of viewer advisories below (the relevant standard dealt with there is Clause 11 of the same Code).

Sexualization of Children

The sexualization of children is a matter of great concern to the Panel. CBSC Panels have set the bar much lower in terms of this type of offensive content. In other words, the threshold of tolerance for content linking sexual content and *children* is low. Examples of previous adjudications found in breach on this basis follow.

In the first of these, namely, *CILQ-FM re The Howard Stern Show* (CBSC Decision 97/98-0487+, February 20, 1998), the Ontario Regional Panel had to consider comments made by the host regarding children's participation in sexual activities. Howard Stern "joked" that he "tried to get it on" with his friend's children at a party. In response to a statistic about the rate of syphilis among babies in New York, he asked rhetorically, "Who are they getting it on with?" and averred, "Nothing better than a good baby". He also joked, "What's the worst thing about having sex with your sister? [...]"

Breaking the crib.” The Panel clearly found a violation of Article 4 of the *Sex-Role Portrayal Code* (now superseded by Clause 8 of the *CAB Equitable Portrayal Code*) and, in so doing, explained:

The Regional Panel has not previously been called upon to assess the content of talk radio programming of a more serious nature than that involving the participation, real or imagined, of children in sexual acts. However permissive the view of society may be toward consensual sex among adults, there is *no* tolerance in civilized societies for child pornography in any form. As the Supreme Court put this point in defining the three categories of pornography in *Butler v. R.*, it explained that “explicit sex that is not violent and neither degrading nor dehumanizing is generally tolerated in our society and will not qualify as the undue exploitation of sex *unless it employs children in its production*. [Emphasis added.]” In this area, the station has itself acknowledged “that extra vigilance is required where children and sexuality are linked, even if in jest.”

In *CFMI-FM re Satirical Sketch* (CBSC Decision 01/02-1062, January 14, 2003), the B.C. Regional Panel dealt with a complaint about a satirical audio sketch. Unrelated comments made by U.S. President George W. Bush were edited together to create a fictional speech for intended humorous effect (in production circumstances not meaningfully different from those encountered in the matter at hand). One portion of the mock speech stated “To all the men and women in our military so far from home, I gave a fourth grade girl. And now every sailor, every soldier, every marine will come.” The Panel concluded that the sketch inappropriately sexualized children:

[T]he Bush satire is a comedic attempt to deal with a subject that is unrelated to children and does not inherently require *any* reference to children to be complete. The references to children in both cases were someone’s concept that sexualizing children is or can be humorous. The BC Regional Panel does not take that position. It considers that neither explicit nor suggestive references to the sexualization of children (under 12) in the flippancy, offhand way evident in this satirical broadcast are acceptable. There is neither reason nor excuse for the inclusion of that reference in the Bush satire. It should have been excised; alternatively the item ought not to have been broadcast. Its broadcast constitutes a breach of Article 4 of the *CAB Sex-Role Portrayal Code*.

In *CFRQ-FM (Q104) re a conversation about a concert* (CBSC Decision 06/07-0310, August 8, 2007), the Atlantic Regional Panel dealt with a complaint from the Women’s Innovative Justice Initiative. Following a concert in Halifax by the Rolling Stones, two male announcers discussed the event on air. One suggested that the other was “excited like a little school-girl”, to which the other replied, “with my budding breasts and my rock-hard nipples.” A representative from the WIJI complained that this comment sexualized children and “objectified girls’ bodies.” The Panel agreed.

In the matter at hand, the parsing of the sentence reveals the problem. One of the commentators, Scott, used the simile “excited like a little school-girl”. The other, J.C. [...], replied, “Like a little school-girl”, encouraging Scott to take an additional step, retorting, “Like a tiny little school-girl.” In the Panel’s view, had they gone no farther, there would have been no issue. “Like a little school-girl” would have been understood in the same way as “like a little school-boy” would have been, namely, with the emphasis on “little”, as in naively excitable, girlishly, boyishly or youngishly thrilled. Indeed, there are many kinds of excitement, most of which have no sexual connotation. A child may be excited

by birthday or holiday presents, getting a new puppy, being at an amusement park, meeting a famous singer or sports personality, and so on.

The dialogue between Scott and J.C. did not, however, end at such an innocuous place. [J.C.] added “[my] budding breasts” and “my rock-hard nipples”. In the view of the Panel, the reference was clearly sexual and, when the reference to “budding” breasts was added to “little school-girl”, the intent to refer to children was unmistakable. In the circumstances, the Panel’s conclusion cannot be otherwise than that the broadcaster unacceptably sexualized children, contrary to the prohibition contained in Article 4 of the *CAB Sex-Role Portrayal Code*.

Most recently, in *CFNY-FM re comments made on the Dean Blundell Show (Justin Bieber fans)* (CBSC Decision 09/10-0333, June 22, 2010), the Ontario Regional Panel dealt with comments made on The Edge’s morning show. The hosts were discussing then 16-year-old pop sensation Justin Bieber, whose clean-cut, teeny-bopper style appealed primarily to pre-teen and teenaged females. According to CFNY-FM’s correspondence and the CBSC’s own verification, Blundell posted a comment on his Twitter webpage expressing dislike for Justin Bieber and implying, in vulgar terms, that Bieber was likely gay. In response, over the following days, Blundell received numerous tweets from Bieber fans who defended the singer and insulted Blundell. Blundell posted further tweets in response to those fans and discussed the situation on air with his co-hosts. His co-hosts told Blundell that they did not “condone” his communications with these Bieber fans because “they’re all twelve”, but they admitted that they found it funny. Blundell mentioned that he had sent a general tweet to everybody that read, “Save your energy for puberty or to fend off your dad tonight while you’re sleepin’.” In response to the one male fan who had written to him (and whom Blundell said looked to be about 12 years old), Blundell stated “He knows deep down he’ll be chuggin’ before he’s 18 [...] if he likes that music.” A listener complained that these comments were inappropriate, particularly because they were directed at minors. The Panel agreed and found a violation of Article 8(b) of the *CAB Equitable Portrayal Code* for the broadcaster’s sexualization of children:

The CBSC has found no justification for allegedly humorous references to children in sexual contexts, including those of the nature of sexual innuendo, double-entendres and inexplicit sexual comments that would not be problematic if the references were to adults (as discussed in the previous section). This is not to say that there cannot be any references to children in a sexual context. News reporting of serious matters, including crimes such as rape and child pornography, and studies relating to youth sexual activities are clearly in the public interest. This would also be true of the serious treatment of the subject in dramatic programming. [...] It is rather the socially valueless humorous cheapening of the sexualization of children that is envisaged in Clause 8 of the *CAB Equitable Portrayal Code*.

Applying the principle established in the foregoing decisions to the matter at hand, the Panel finds the challenged episode in breach of the principle prohibiting the exploitation and sexualization of children. Examples of statements in breach include: the joking reference to the idea that “maybe Uncle Jack won’t molest all those kids”; the reference to the granddaughter making pornography and adult entertainment; the interview

between Matt and a young girl, in which he referred to her as a “little cunt”, and followed by the question “You wanna stick a penis in your vagina?”. Finally, in the dialogue between Matt and the two young boys, the following lines were: “How are you doing? Ho! Ho! Ho! Sit there, don’t move or we are gonna rape your ass, don’t move. Hey, me and your father are going to rape you. Ho! Ho! Ho! Ho!” In addition to finding the preceding examples grossly distasteful, the Panel concludes that they are individually and collectively in breach of Article 8(b) of the *CAB Equitable Portrayal Code*. It should also be remembered that the sexualization of children is not an issue that would benefit from being broadcast at a later hour of the day. It is a proscription that applies to the entire broadcast day and night.

Coarse Language

There is a well-defined position on coarse language that has been established by the CBSC. Consequently, there is no need for the National Specialty Services Panel to review the many cases on this issue. Suffice it to quote a single previous decision of this Panel in *WTN re the movie Wildcats* (CBSC Decision 00/01-0964, January 16, 2002). That movie contained very coarse language, such as “fuck”, “motherfucker”, and other words not germane to the matter at hand in its 4:00 pm time slot on a Sunday afternoon. The broadcaster muted out the words “fuck” and “motherfucker” in some instances but not in others. This Panel found that the unedited usages of the f-word constituted “scenes intended for adult audiences”:

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

In the matter at hand, the National Specialty Services Panel concludes that the three usages of the f-word required broadcast after the start of the Watershed at 9:00 pm. The failure to respect the scheduling requirements of the *CAB Code of Ethics* constitutes a breach of Clause 10 of that Code. The foregoing being said, the Panel notes that this is the first occasion on which a CBSC Panel has been called upon to deal with the broadcast of the word “cunt” on Canadian television (or radio). The Panel considers that the word is as crude, coarse and offensive as those words in the f-word family and that its use on television is as adult as those words. It must, in other words, also be relegated to the post-Watershed time period. Its earlier airing constitutes a breach of the afore-noted Clause 10.

Viewer Advisories

BITE TV aired a single viewer advisory in both audio and video format at the beginning of the episode. It has long since been clear that this is insufficient. Clause 11 of the *CAB Code of Ethics* states that viewer advisories must be aired at the beginning of a program *and after every commercial break* during programming telecast outside of late viewing hours when the broadcast contains material that is not suitable for children. Once again, this issue is so unambiguously defined that the Panel does not consider that it is of value to refer to the many previous CBSC decisions affirming this principle. The Panel simply concludes that BITE TV has breached Clause 11 by its failure to broadcast the viewer advisory following each commercial break during the challenged episode.

There is, however, another issue involving viewer advisories; it relates to the *content* of the warning to viewers. It should be obvious that the purpose of the advisory is not intended to be some vague admonition that the content is “mature” or “inappropriate” when specific, focussed, particular information is available. While there *may* be circumstances where such generic thematically-driven information can be useful to an audience, there are *known* categories of cautions to be divulged. These include violence, coarse language, and sexual content. The rationale for their individualized relevance is clear. Different families may be troubled by different issues. In order for family A, which is concerned about, say, the presence of coarse language (and sensitive broadcasters will appreciate that it is not only the f-word or c-word that fall into that category), the broadcaster must inform them of the presence of such content. Ditto for family B, which is troubled by violence, or family C, which is concerned about sexual content. The idea is always to provide families with the opportunities to make *informed choices*. Advisories ought not to be read as constraints on the broadcaster; they rather *liberate* the broadcaster to air more content of its choice (appropriate to the time of day, to be sure) by telling the audience what is coming and to thereby avoid viewing difficulties appropriate to *their* living rooms.

In a remarkably parallel matter, namely, that considered by this Panel in *The Comedy Network re an episode of Gutterball Alley* (CBSC Decision 01/02-0450 & 01/02-0481, September 13, 2002), a complaint was filed about an unusual game show. Contestants had to perform stunts or answer quizzes in order to win bowling balls that they then threw down a bowling alley to win cash prizes. The majority of the stunts and quizzes had a sexual aspect or component to them. For example, in one game, the contestant had to watch video clips of pornographic movies and then guess what the actor’s next line would be. (The f-word appeared in one of these clips and once more immediately beforehand.) In another, a male contestant had to taste a series of flavoured condoms, which had been placed over dildos, and guess what the flavour was. The stunts were

also interspersed with comedy skits that also generally had sexual themes. As well, at the end of this particular episode, members of the performance art troupe “Puppetry of the Penis” appeared as special guests and were incorporated into a game show stunt. Two men, wearing only capes, manipulated their penises and testicles into various shapes; the contestant had to guess what each form represented. The program aired at 9:30 pm and included a viewer advisory at the beginning of the program only alerting viewers to “mature subject matter” in the coming episode. This Panel concluded that, due to the coarse language (which elevated the characterization of the program to one “intended for adult audiences”), the program required viewer advisories at the beginning and coming out of every commercial break. This Panel also elaborated on the general purpose of and expectations for viewer advisories in the following terms:

Viewer advisories differ slightly from classification issues. They are broader and more descriptive (and have, on the basis of CBSC decisions, been required in the case of programming including scenes of any type intended for adult audiences). They provide people with more than a single “catch-all” basket category for levels of coarse language, violence, nudity and sexual content. In descriptive words, they advise viewers of the kind of content they can anticipate encountering in a program about to be, or currently being, aired. In the matter at hand, the broadcaster is obliged to advise its audience of the coarse language in the program. It has done so only once, at the start of the program, and then only mentioned “mature subject matter”. There was no reference to coarse language at all, nor was there any subsequent viewer advisory coming out of the later commercial breaks.

The Panel finds, in the matter at hand, that the failure to refer in the single viewer advisory that was aired (and putatively in the ones that ought to have been aired) to the sexual content and references discussed above constitutes an additional breach of Clause 11 of the *CAB Code of Ethics*.

Classification Icons

As Article 4 of the *CAB Violence Code* anticipates, there are certain types of programming that are exempt from the requirement to post a ratings icon. In *Classification System for Violence in Television Programming*, 18 June 1997, P.N. CRTC 1997-80, the Public Notice issued by the Canadian Radio-television and Telecommunications Commission (CRTC) that approved the classification system, the Commission stated that “classifications should be applied, at a minimum, to children’s programming (programs intended for children under 12 years of age), drama, ‘reality-shows’ (reality-based dramatic programs), feature films, promotions for any of these programs and advertisements for theatrical releases.” The question for the Specialty Services Panel is whether or not the *Conventioners* falls within one of the exempt categories.

The Quebec Regional Panel had to deal with a quite similar program structure in *TQS re an episode of Scrap Metal* (CBSC Decision 08/09-1711, August 11, 2009). In that decision, the Panel relied entirely on its previous decision in *TQS re an episode of the program Faut le voir pour le croire* (CBSC Decision 99/00-0460, August 29, 2000), in which it had drawn an important distinction between documentary and information programming, which were the only other categories into which *Scrap Metal* could conceivably fall, and reality programming. The Panel quoted from its determination in the *Faut le voir* decision:

As is perfectly clear from the Commission's Public Notices, the establishment of the classification system has a *considerable* amount to do with *children* and what parents may wish their families to see *and* not to see. Moreover, from all of the foregoing, it is clear to the Council that it was the intention of the broadcasters and of the Commission that *all* programming was intended to be classified *except for those types of programming included in the Exempt category*. It remains for the Council to determine whether the programming under consideration in *this* decision falls into any of the types of programming listed in the Exempt category. It concludes that this is *not* the case.

The question turns on what is meant by "documentaries and information programming". The Council has no doubt that it does not include *all* non-dramatic programming. Apart from anything else, the Commission's policy criteria on violence establish that "reality-shows" *are* included in their anticipated list of types of programming *requiring* classification. There is, in other words, a spectrum of reality-based programming running from that which is intended to be exempt, namely, documentaries and information programming, to that which is intended to be rated, namely, reality shows programming. The Council considers that a method of describing this distinction in simple terms would be to say that such non-dramatic programming ranges between enlightening and entertaining. This is not to suggest that enlightening programming cannot be entertaining or that entertaining programming cannot be enlightening. It is only to say that that programming which is *primarily enlightening* is what the broadcasters and the CRTC expected would be exempt and that which is *primarily entertaining* which the broadcasters and the industry expected would be subject to classification.

In the matter at hand, the National Specialty Services Panel readily concludes that the episode of the *Conventioneers* under consideration here was intended as unadulterated entertainment and was subject to the requirement that it be classified in accordance with the AGVOT rating system applied throughout English Canada. As to the level of the rating that would be required, the Panel notes that there were several examples of strongly coarse language (as fully described above) and it considers that the 14+ rating, which allows that the program rated "could possibly include strong or frequent use of profanity" would be the appropriate classification level. While there were no "scenes" of sexual activity, as anticipated by the 14+ rating, the Panel considers that the above-detailed sexual descriptions fall readily into the category of "content elements which might not be suitable for viewers under the age of 14" as provided in the "Descriptive" heading for that classification level. In the circumstances, for both the language and sexual content reasons, the Panel concludes that the absence of a 14+ classification icon at the start of the program constitutes a breach of Article 4 of the *CAB Violence Code*.

Broadcaster Responsiveness

In all CBSC decisions, the Council's Panels assess the broadcaster's responsiveness to the complainant. In the present instance, the Panel notes that the broadcaster's representative candidly and honestly admitted that BITE TV "recognize[d] that it [the challenged episode] doesn't represent the strategy or line-up of shows we now air. We, therefore, have decided to pull this episode from our channel. We have also decided to pull the first two seasons of the *Conventioneers* completely from our line-up until we can review each episode independently and decide whether episodes can remain in our programming." The Panel does not consider that the complainant could have demanded anything more from the broadcaster and the Panel commends BITE TV for its candour and its decision to carefully review every episode of the *Conventioneers* before further broadcast of them. While that cannot, of course, erase the breaches described above on this past occasion, it is undeniable that the broadcaster's response has complied in the most complete possible sense with the CBSC's requirements of membership regarding members' responsibility to respond to complainants. Consequently, the Panel considers that BITE TV has fully met that membership obligation in this instance.

ANNOUNCEMENT OF THE DECISION

BITE TV is required to: 1) announce the decision, in the following terms, once during prime time within three days following the release of this decision and once more within seven days following the release of this decision during the time period in which the *Conventioneers* 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 BITE TV.

The Canadian Broadcast Standards Council has found that BITE TV breached provisions of the Canadian Association of Broadcasters' *Code of Ethics and Equitable Portrayal Code* in its broadcast of an episode of the *Conventioneers* on December 31, 2010. During the course of that episode, there were gratuitous and unnecessary sexual comments made with reference to children. Those comments violated Clause 8(b) of the *Equitable Portrayal Code*, which prohibits the sexualization of children in programming. By broadcasting several instances of coarse language and unduly explicit sexual content intended for adult audiences before the 9:00

pm Watershed hour, BITE TV violated Clause 10 of the *Code of Ethics*. By failing to include any reference to sexual content in the one advisory BITE TV ran at the beginning of the program and by failing to air viewer advisories following each commercial break thereafter, alerting audiences to the coarse language and sexual content in the program, BITE TV has breached Clause 11 of the *Code of Ethics*. By failing to include a 14+ ratings icon at the beginning of the episode BITE TV has also violated the requirements of Article 4 of the *CAB Violence Code*.

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

APPENDIX A

CBSC Decision 10/11-0627 BITE TV re *The Conventioneers*

Transcript and Description

The Conventioneers is a show in which the hosts explore the trade show circuit and bizarre areas of niche culture. At the time of the broadcast Jason Agnew and Matt Chin hosted the show. During the episode in question, the hosts explored the Holiday Entertaining and Décor Show; the location was never mentioned. The following advisory was displayed at the beginning of the show in audio and video format:

The word “warning” appeared at the top center of the screen in large purple lettering followed by:

The following program deals with mature subject matter and contains coarse language and is intended for adult audiences.

Viewer discretion is advised

At 01:06, Jason Agnew (kneeling next to a decorated Christmas tree) attempted to wrap a puppy as a gift in a multicoloured box. He said (in a calm and cuddly voice): “Get in the box, little puppy in the box, get in the ... [In an angry tone] get in the Goddamn box and stay in the fucking box [vigorous angry laughter].”

At 07:20, Matt Chin (off screen) moved a Nutcracker’s mouth up and down to make it appear as though the figurine was actually talking. The Nutcracker’s voice-over “said”:

Nutcracker: This convention sucks. This conventioneer with glasses came up to me, he stuck his thing into my mouth and it didn’t taste very good. He ejaculated in my mouth and he doesn’t eat enough vegetables. It didn’t taste very good. Ahhrrgh. I hate *The Conventioneers*.

At 09:09, following the first commercial break:

Jason Agnew: Welcome back to *The Conventioneers* at the Season’s Holiday Entertaining and Décor show.

Matt Chin: Hold on, hold on hold on: *Holiday*. [Chin emphasizes the first letter of the word].

Jason Agnew: Right!

Matt Chin: Entertaining [Jason interjects: Hun huh] and Décor show? [Chin emphasizes the first letter of the words]

Jason Agnew: Yes.

Matt Chin: HEAD.

Jason Agnew: HEAD. Hey, HEAD! Well, it is the season for giving right little buddy?
[Jason looked down to his midsection].

Matt Chin: No! No! Slowly backs away.

At 12:45, after receiving a massage from the “Mobile Spa” Kiosk at the convention, Matt Chin said “This is awesome and then maybe if we do this at Christmas time, maybe Uncle Jack won’t molest all those kids.”

At 14:10, Matt Chin interviewed an elderly woman:

Matt Chin: How are you doing?

Woman: Oh, tired.

Matt Chin: Tired? Have uh, have a busy show?

Woman: Oh yeah!

Matt Chin: What have you seen so far?

Woman: Well, I’ve got a beautiful snowman. My granddaughter is in the camera
[points towards the camera].

Matt Chin: Oh is she? What does she do?

Woman: Well she makes um [dubbed voice: “pornography”]. She’s into some kind of
um [dubbed voice: “adult entertainment”].

Matt Chin: We should hook up! [He looks at the camera and raises his eyebrows].

At 21:27, a preview of an upcoming segment was shown. A voice-over said “Still to come on *The Conventioneers*: Santa Matt spreads Christmas joy.” Matt Chin (dressed as Santa) whispered to a man “I’ve got those butt-plugs on, on hold all right? Thanks.”

The actual segment began with Chin dressed as Santa Claus and Agnew dressed as Jesus, which represented their interpretation of which persona best embodies Christmas. The following conversation took place when both characters confronted each other:

Matt Chin as Santa Claus: Jesus Christ, what are you doing?

Jason Agnew as Jesus: Nothing much.

Matt Chin as Santa Claus: Dude, why are you dressed like that?

Jason Agnew as Jesus: Matt, I am putting the Christ back in Christmas. It’s my birthday.

Matt Chin as Santa Claus: This is going to offend so many people.

Jason Agnew as Jesus: Amen brother, amen.

At 24:40, Matt (in the Santa outfit) spoke to a man:

Matt Chin: Spreading Christmas cheer!

Man: All right!

Matt Chin: Can I get a Ho! Ho!

Man: Ho! Ho!

Matt Chin: Ho! Ho!

Man: Ho! Ho!

Matt Chin: Ho! Ho! Ho! Ho! Ho! Ho! [Pointing to various areas beyond the camera] Thank you!

Man: You know that little thing we were talking about, [Matt interjects: "Yeah"] like under the tree? [Matt interjects: "Yeah"] I really, [Matt interjects: "I know"] I really, really would appreciate it.

Matt Chin: I know, I've got, I've got those butt-plugs on, on hold all right? Thanks.

At 26:12, Matt Chin, still dressed as Santa, interviewed a little boy. Some parts of the conversation seemed dubbed:

Matt Chin: Ho! Ho! Ho! [Dubbed in editing] What do you want for Christmas, you little fuck?

Little boy: Uh. I don't know what I want.

Matt Chin: Oh! [Dubbed] You fucking piece of shit.

Immediately after the first interview, Matt Chin interviewed a group of three children (two young boys and one young girl). Again, most of what Matt said in this conversation appeared to be dubbed during the editing process. The following interview took place between Matt and a young girl.

Matt Chin: [Dubbed] Hey, you little cunt, what do you want for Christmas?

Girl: Um, a horse to brush her hair!

Matt Chin: A horse? [Dubbed] You wanna stick a penis in your vagina? Stop running around or I will beat you.

In the next segment, Matt Chin had a conversation with a man and two young boys. The conversation took place as Matt stood next to the man (facing the two boys):

Matt Chin: [Dubbed] How are you doing? Ho! Ho! Ho! Sit there, don't move or we are gonna rape your ass, don't move. Hey, me and your father are going to rape you. Ho! Ho! Ho! Ho!

At the end of the episode, Matt Chin interviewed several women, asking a variety of sexually driven questions. Some of these questions appeared to be dubbed but in some cases it was unclear. Still dressed in the Santa Claus costume, Matt interviewed three women before the end of the episode. The first interview took place with a younger woman:

Matt as Santa: What would it take for you to tickle my balls?

Woman: I don't know [giggle].

Matt as Santa: Is there anything?

Woman: Uh, you can get rid of my debt that'd be great [giggle].

Matt as Santa: We'll get rid of him right away and we'll get right to it okay?

Woman: Okay [giggle].

The second interview took place with an elderly woman:

Matt as Santa: What would it take for you to do naughty things to me?

Woman: To have the family all together.

Matt as Santa: Oh, if we had the family all together would that make you happy?

Woman: Yes it would.

Matt as Santa: All right. Well then, that is what we'll do.

The final interview took place with a younger woman:

Matt as Santa: Ho! Ho! Ho! Ho! What would it take for you to jack Santa off?

Woman: Um, a ring. [Laughter]

Matt as Santa: A ring? It takes you a ring? Oh well if that's what it takes, I'm, I'm ready to do it for you.

APPENDIX B

CBSC Decision 10/11-0627 BITE TV re *The Conventioneers*

The Complaint

The CBSC received the following complaint via e-mail on December 31, 2010:

To whom it may concern,

I am sending this to Sgt. [T.] of the RCMP, and asking him to forward to [sic] the appropriate contact as I cannot locate one for the RCMP at this moment. I am sending this to CBSC as I believe they are the proper agency. I am sending [sic] to Bite TV, but I am not interested in their response, nor their excuse. Today is December 31, 2010. I was watching Bite on New Year's Eve, at 5:30 pm Newfoundland time, a show called *The Conventioneers*, it was their Christmas Special. Near the end of the show, one of the two 'performers' donned a Santa Claus suit and chatted amongst the crowd, and later, the editors replaced some of Santa's lines, as you couldn't see his mouth move. The statements:

1. To a little girl, "What do you want, you cunt?"
2. To a boy, while standing by his dad, "Hey kid, me and your dad are going to come over and rape you." And there were a couple of others, but I was in a bit of shock and did not catch them.

It's time to stop childish losers from taking over the television, the accepted morays [sic] of society, and it's time these boys were taught a lesson. Mocking pedophilia? Mocking raping a child on tv by his parents? This is acceptable?

Surely this is illegal in Canada?

Broadcaster Response

The broadcaster wrote to the complainant on January 5, 2011:

Thank you for your email on Dec. 31, 2010.

We do take all viewer concerns and feedback very seriously and review all programs in question. We recognize that comedy is subjective in nature – it presents itself in many forms and formats to appeal to a diverse audience.

All of our programming is equipped with V-Chip information as well as warnings in front of most programming to allow our viewers to make personal choices. All of our carriers also insert their own warnings as well under "Info" in their guides i.e.: V – Violence, L – Language, etc.

Bite has recently gone through a programming shift to all comedy (in October 2010) and we have made many changes to our overall schedule to reflect this new direction. Upon receipt of your email, we have reviewed the episode in question. This particular episode was

produced over five years ago and we recognize that it doesn't represent the strategy or lineup of shows we now air. We, therefore, have decided to pull this episode from our channel. We have also decided to pull the first two seasons of *The Conventioneers* completely from our lineup until we can review each episode independently and decide whether episodes can remain in our programming. We very much appreciate you taking the time to write to us and allow us to reconsider certain content that our viewers and management find not suitable for the channel.

We apologize sincerely if we have offended you and hope you will watch Bite TV in the future and enjoy the award winning programming seen throughout our schedule.

Thank you for your comments.

Additional Correspondence

The complainant wrote back to the CBSC on February 4:

Hi and thanks for your efforts.

I am NOT satisfied, but no longer care to follow up. (Were I that parent who's [sic] child was told that the parent was going to rape him, I would SUE the ass off of BITE and *The Conventioneers*, and I would hunt down the 'comedians' and give them a lesson in the definition of social morays [sic].)

It strikes me as odd that all you can do is have them remove the show – why no fine or legal consequences for broadcasting these defamatory and disgusting comments!? I am ashamed to be a Canadian, as we sell the big lie of our 'holiness' while crap like this gets a slap on the wrist.

L.A.M.E.

Not impressed.

The complainant did send in his Ruling Request on February 22 after the CBSC clarified the complaints procedure:

Is this seriously the only procedure?!

I saw this particular program (which season I have no idea, stated below is that they are pulling two seasons) broadcast today (Feb. 22, 2011), and I see it is in the regular program line up.

Please note that the 'personality' who speaks to the viewer and introduces shows seems to be one of the 'interviewers' on the show in question. I am not certain, but it appears to be the same person.

So what was the penalty, or was there one? To make the culprits spokes persons? And continue the show unquestioned?

This is not simply 'dark humour' – that broadcast is illegal in Canada. To use a person's image in a manipulated and edited format and speak about them as pedophiles with their own children IS NOT ALLOWED IN Canada.

Or is it?

Seriously, I want to know, as it appears nothing happened.