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**CANADIAN BROADCAST STANDARDS COUNCIL  
NATIONAL SPECIALTY SERVICES PANEL**

Showcase Television re the movie *Destiny to Order*

(CBSC Decision 00/01-0715)

Decided January 16, 2002

R. Cohen (Chair), S. Crawford (Vice Chair), P. O'Neill (Vice Chair),  
E. Duffy-MacLean and H. Pawley

Since R. Cugini, who customarily sits on this Panel, is employed by the corporate group that also owns the broadcaster in question, she did not participate in the resolution of this matter.

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**THE FACTS**

On February 20, 2001, the specialty service Showcase Television aired the movie *Destiny to Order* beginning at 2:00 pm (and ending at about 3:30 pm) EST. This fantasy feature film follows the life of fictional crime novelist J.D. Baird who is writing a work about a motorcycle gang. It is of the essence of this fantasy movie that Baird's own imaginary characters and plot occasionally become reality. As the plot of the film evolves and Baird's fictional characters come to life, the author must constantly fight to regain control of the plot which is being re-written by Baird's own fictional gang member Kenrick. Baird's troubles are further complicated by his love interest in Thalia, one of the female characters in his book.

As would not be surprising in a movie centred on the life of a motorcycle gang, the film contains frequent coarse language. Approximately three minutes into the movie, words such as "fuck", "fucker", "shit" and "asshole" begin to be used (they are repeated numerous times throughout the movie). There is also some nudity in the film when, approximately one hour into the movie, the characters enter an exotic dance bar. The breasts and buttocks of female dancers are seen in the background of a scene that lasts approximately four minutes.

The film also contains scenes with violence. The first such scene, presented just three minutes into the movie, depicts a biker whose throat is slit. In the second violent scene, which does not appear until much later (approximately one hour and seven minutes into the movie), Baird and Kenrick fight before Kenrick is (apparently) killed by Thalia, who strangles him with a coat hanger. (Since the film is a fantasy, characters are not restricted by their own mortality and, later in the movie, Kenrick reappears, alive and well.) In a final “showdown” scene near the end of the movie, Baird escapes a near fiery death at the stake only to be shot in the head by Kenrick who is in turn shot by Thalia. (Ultimately, the fantastic plot results in Baird’s returning to life, thinking the whole thing was a dream; the fictional characters are also shown alive and well.)

The CBSC has limited information concerning the use of advisories during the film. While the CBSC had requested that the broadcaster provide *logger* tapes for the purposes of review and Panel adjudication, Showcase provided only *screener* tapes of the program in question. While *logger* tapes are the precise record of what was actually broadcast (including advertisements, news breaks, classification icons and viewer advisories), *screener* tapes are merely a copy of the program on the basis of which the broadcaster has made edits (if any), including the insertion of breaks for commercials. Accordingly in this case, the CBSC did not have all appropriate information concerning the use of viewer advisories and classification icons but neither of these appear to have been an issue for the complainant whose concerns lay mostly with the scheduling of the movie. Moreover, it is uncontradicted that the broadcaster indicated in its response that “During our broadcast of *Destiny to Order*, the following advisory was displayed at the beginning of and throughout the broadcast of the movie: >The following program contains scenes with violence, nudity and coarse language. Viewer discretion is advised.”

The CBSC received a complaint, dated March 1, about the broadcast of this movie. The complainant wrote in part (the full text of the complaint can be found in the Appendix to this decision):

This “movie” was televised in the early afternoon without any “viewers discretion” [*sic*]. Regardless of any excuse saying - We Forgot - a [*sic*] Oversight - an Error - such a movie should not have been televised at such a time. It must have been relished [*sic*] for those living in a Fuck Up [*sic*] World. Please excuse my language but I’m sure you catch my meaning ... It’s a waste of someone’s intelligence (even my little intelligence) to have to criticize this so-called movie and its contents. I’m certain no well informed sponsor would want their name associated with such trash. Also; I would be lead [*sic*] to question: what age group - what working class - what future generation (childrens [*sic*] or students) was targeted to be reached by the sponsors with this vulgarity. I would say they lost their advertising money, their objectives and sadly; customers and future customers. Please be advised, I will be sending each H.Q. Sponsors [*sic*] a copy of this same letter. It’s about time they open up their eyes and ears and take notice and make a stand and a real statement by their actions.

The broadcaster responded to the complainant’s letter on April 11, in part, as follows (the full text of letter can be found in Appendix):

I would like to take this opportunity to explain Showcase's programming policy. It is our programming mandate at Showcase to offer an alternative to other broadcasters' offerings. One way we have achieved this distinction is to broadcast high-quality international drama series and world-class movies. The decision to air *Destiny to Order* is consistent with Showcase's mandate to be the number one destination for critically acclaimed programming from around the world.

Produced in 1990, this Canadian comedy stars Michael Ironside as a young writer whose life goes haywire when the characters in the novel he is writing come to life and involve him in their schemes.

While Showcase is proud to broadcast a wide range of films, it is our policy to carefully consider each film that is aired on the network. Before we decide to broadcast a film, our Programming Department screens it to ensure that it is suitable for broadcast. The determination of suitability includes ensuring that the broadcast would not contravene the Canadian Association of Broadcasters (CAB) Code of Ethics, the CAB *Sex-Role Portrayal Code for Television and Radio Programming*, and the *Voluntary Code Regarding Violence in Television Programming*.

We regret that you were offended by the coarse language used in this film, however the network did run a viewer advisory during the broadcast of this movie. In order to assist our viewers in making their viewing choices, we always run a viewer advisory before such programs indicating whether they contain scenes of violence, nudity and/or coarse language. If appropriate, a "viewer discretion is advised" advisory is shown before the broadcast begins and after each commercial break. During our broadcast of *Destiny to Order*, the following advisory was displayed at the beginning of and throughout the broadcast of the movie: "The following program contains scenes with violence, nudity and coarse language. Viewer discretion is advised."

It is certainly not our intention to offend our viewers but to introduce them to the wealth of unique quality dramas from Canada and around the world. Not all shows will suit all tastes, but we have tried to construct the Showcase schedule to deliver something for everyone.

On May 1, the complainant, dissatisfied with the broadcaster's response, filed his Ruling Request with the CBSC, accompanied by the following brief note:

Please note with simply my intelligence as that of a child, I would see and understand that this movie was simply not of high-quality nor suitable for broadcast.

If this movie and contents is the norm and this movie portrays us as such, then we have a problem.

## THE DECISION

The National Specialty Services Panel Adjudicators considered the complaint under the following provisions of the Canadian Association of Broadcasters' (CAB) *Violence Code*.

### *CAB Violence Code, Article 3 (Scheduling)*

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

### *CAB Violence Code, Article 5 (Viewer Advisories)*

- 5.2 Broadcasters shall provide a viewer advisory at the beginning of, and during programming telecast outside of late evening hours, which contains scenes of violence not suitable for children.

The Adjudicators viewed the screener copy of the broadcast in question and reviewed all of the correspondence. It is the Panel's view that the film contained "scenes intended for adult audiences", thus requiring that it be aired after the Watershed hour of 9:00 pm.

### **A Preliminary Matter: The Provision of Logger Tapes**

When, as is customary following its review of the file, the CBSC requested the logger tapes of the broadcast in question, Showcase informed the CBSC that it was unable to locate the official logger tapes it was supposed to have kept of the broadcast, due, they explained, to the company's relocation into new office space. While the failure to produce logger tapes would customarily constitute a breach of CBSC member obligations, the provision of screener copies of a movie instead of the required logger tapes has not, in the view of the Panel, constituted a breach of member obligations in certain circumstances. In its decision *Bravo! re the documentary film Give Me Your Soul* (CBSC Decision 00/01-1021, January 16, 2002), this Panel has explained this distinction:

The obligation of all broadcasters is to supply the CBSC with logger tapes, when requested to retain programming upon receipt of a viewer complaint. In this case the broadcaster supplied screener tapes. The difference between the two relates to the obligation under Section 7(4)(a) of the *Specialty Services Regulations, 1990* (and all corresponding regulations for radio and television broadcasters) to "retain a clear and intelligible audiovisual recording of all of its programming [...] for a period of four weeks after the date of the distribution." That tape is a logger tape. It shows *everything* that has *actually* been broadcast, together with a time code indicating at precisely what hour, minute and second every element of the broadcast has occurred. It includes the programs themselves, as well as all interstitial elements, including advertisements, promos, viewer advisories, and such other elements as classification ratings. The screener tape is merely the record of the actual program which is then used for broadcast purposes. It does not show the entire program as actually aired. It is, so to speak, the *pre*-broadcast rather than the *post*-broadcast record. It is the logger tape which contains all the broadcast elements that the CBSC needs in order to adjudicate properly and it is, moreover, the logger tape that broadcast licensees are required by law and by condition of membership in the CBSC to retain.

The supply of a screener tape, technically speaking, constitutes a breach of CBSC requirements. In this case, however, upon inquiry, the Panel was informed that the broadcaster inadvertently supplied the incorrect version of the program and, as it happened, the supplementary information contained on the logger tape was not at issue on this

occasion. The CBSC has also been advised that, in all matters arising hereinafter, Bravo! will be supplying logger tapes as required.

Similarly, in *this instance*, where the classification and viewer advisory issues were not ultimately material (as explained below) and the broadcaster's error appears to have been both inadvertent and immaterial, the Panel does not find Showcase in breach on this account. It does expect that, on all future occasions, Showcase will supply the correct tapes.

### **Scenes Intended for Adult Audiences**

While the scheduling provision of the *CAB Violence Code* makes specific mention of violence only, it has long been the CBSC's practice to apply the Watershed scheduling requirement to other scenes that could be considered "intended for adult audiences", such as those containing coarse language and sexual explicitness. A review of the CBSC's decisions on this issue can be found in *WTN re Sunday Night Sex Show* (CBSC Decision 99/00-0672, January 31, 2001).

### **Coarse or Offensive Language**

The CBSC has been called upon to deal with complaints relating to coarse or offensive language on numerous occasions. For an extended period of time, the various Panels facing such challenged programming decided in favour of the broadcasters. As the Ontario Regional Panel said in *CIOX-FM re the songs "Livin' It Up" by Limp Bizkit and "Outside" by Aaron Lewis and Fred Durst* (CBSC Decision 00/01-0670, June 28, 2001),

In every case, the Panel either decided that the language was relatively innocuous, not amounting to more than a matter of taste (and should be turned off by the viewer or listener), or that, since the broadcast hour was unspecified, the Panel could not determine whether the question of the suitability of the program for children could be ascertained.

Then, for the first time, the CBSC was called upon to deal with coarse language in the context of song lyrics played at times of the day when children could be expected to be listening. In *CIOX-FM re the songs "Livin' It Up" by Limp Bizkit and "Outside" by Aaron Lewis and Fred Durst* (CBSC Decision 00/01-0670, June 28, 2001), the Ontario Regional Panel decided that the broadcast of songs containing the word "fuck" and its derivatives was in breach of the *CAB Code of Ethics*. The Panel also noted that other English-speaking countries have determined that "fuck" is ranked as one of the most offensive words in public opinion polls. It made the following comments on the two songs examined in that case:

In the case of the song lyrics in "Livin' It Up", the Panel finds that the *repeated* use of the coarse and offensive language "fucker", "fuck" and "motherfucker" constitutes a breach of the

*CAB Code of Ethics* when broadcast at hours when children could reasonably be expected to be listening.

[...]

While, in the song “Outside”, the inappropriate word, “motherfuckin’”, was used only once, as a live interjection by the singer at the time of the Biloxi concert, the Panel considers that its use was utterly gratuitous and broadcast at an hour when children could reasonably be expected to be listening. Moreover, given its placement in the song, it could very easily have been excised without effect by the broadcaster.

While the above-noted decision involved song lyrics, the CBSC has also dealt with offensive language in movies and television series. In *CJOH-TV re “White Men Can’t Jump”* (CBSC Decision 94/95-0060, March 12, 1996), the Ontario Regional Panel observed that the film was “replete with epithets and very coarse street language.” The Ontario Panel observed:

The Council is entirely in agreement with the complainant that the language is coarse, even incessantly so for at least the first half hour of the film. The Council is equally of the view that the language used is that of the streets of California portrayed in the motion picture. [...]

While it [the language in *CFRA-AM re Steve Madely* (CBSC Decision 93/94-0295, November 15, 1994)] is not the same language which was used in this film, the Council considers that the same principles are applicable and that it cannot interfere with the broadcaster’s choice to air the film. The Council also adopts the conclusion of the Ontario Regional Council in the *Madely* decision, namely, “While good taste and judgment might have dictated the non-use of the expression on the public airwaves, it was not a sanctionable usage.”

More recently, in *CTV re The Sopranos* (CBSC Decision 00/01-0130+, March 8, 2001), the language used by the mobster characters in the series was of a similar genre. It was, as this Panel said, “exceedingly coarse”.

Moreover, it is constantly present in the dialogue among the Cosa Nostra members. There are few sentences in which one or another of the “forbidden” words, four-letter and otherwise, is not present. Religious epithets are also used.

Since both *White Men Can’t Jump* and *The Sopranos* ran post-Watershed, it was unnecessary to determine whether the language was intended for adult audiences. In the case of *Destiny to Order*, however, the Panel must consider the “adulthood” of the language; here the Panel is called upon to consider a movie replete with very coarse language, including the use of words or expressions such as “fuck”, “fucker”, “I’ll blow your fucking balls off”, “asshole”, “shit”, “son of a bitch”, etc. in a pre-Watershed time period. At the same time, the National Specialty Services Panel considers it useful to observe that, were it called upon to characterize the severity and frequency of the coarse words and expressions in *White Men Can’t Jump* and *The Sopranos*, it would find that, in both cases, the language would be “intended for adult audiences” and entirely inappropriate for broadcast in a pre-Watershed context. Similarly, in *Destiny to Order* the Panel finds that the coarse language was “intended for adult audiences” and equally inappropriate for

broadcast in a pre-Watershed context. Its broadcast at 2:00 pm was in breach of Article 3.1.1 (Scheduling) of the *CAB Violence Code*.

## **Violence**

The Panel considers the scenes of violence described above as relevant to the development of the plot. None of those scenes was, therefore, gratuitous or problematic in terms of its presence in the film. That being said, the Panel does find that the violence was graphic and explicit and, consequently, intended for adult audiences (the effect of which is that it should have been broadcast only in a post-Watershed environment). Moreover, in light of the fact that the movie was broadcast in a pre-Watershed time slot, the Panel was concerned about the fantasy aspect of the film, namely, the revitalization of apparently murdered characters, who reappear alive and unscathed. The viewer is offered no real explanation for these resurrections. Thus, in addition to the nature of the violent depictions, the Panel considered that, while adult viewers could reasonably be expected to understand the irony of the fantasy, the depiction of violence without consequences was problematic for broadcast at a time which was not merely pre-Watershed but at an early enough hour that children could be expected to be watching. The scheduling of *Destiny to Order*, a film with violent content of the nature described prior to 9:00 pm constitutes a breach of Article 3.1.1 (Scheduling) of the *CAB Violence Code*.

## **BROADCASTER RESPONSIVENESS**

Broadcaster responsiveness is always an issue considered in CBSC adjudications. The CBSC considers that the dialogue between broadcasters and complainants is an extremely positive component of the self-regulatory process; it is in fact a membership responsibility of all CBSC broadcaster members. In this case, the Panel considers that the broadcaster has adequately addressed the complainant's concerns, despite the fact that the response did not satisfy the complainant. Nothing more is required in this regard.

## **CONTENT OF THE ANNOUNCEMENT OF THE DECISION**

Showcase is required to: 1) announce this 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 movie *Destiny to Order* had been broadcast; 2) within the fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the announcements to the complainant who filed the Ruling Request; and 3) to provide the CBSC with that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by Showcase.

The Canadian Broadcast Standards Council has found that Showcase has breached the scheduling provision of the Canadian Association of Broadcasters' *Violence Code* in its broadcast of the movie *Destiny to Order* on February 20, 2001. By broadcasting the film, which contained coarse language and graphic violence, at 2:00 pm, Showcase violated the provision of the *CAB 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 pm to 6 am."

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



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## APPENDIX

### Complaint File 00/01-0715 Showcase re the movie *Destiny to Order*

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#### I. The Complaint

The following complaint dated March 1, 2001 was sent to the CBSC (along with clippings from the complainant's television guide showing the program's time and channel) :

This complaint as per discussion Feb. 23, 2001 with Mr. R. Cohen "National Chair".

I write this letter knowing it won't amount to changing this world of filth. It may not cause much of a stir in some minds. My time is important. After a week of seeing these notes on my desk, I thought it will give me a feeling of satisfaction; writing and then receiving an answer and reply from you.

This "movie" was televised in the early afternoon without any "viewers discretion". Regardless of any excuse saying – We Forgot – a [sic] Oversight – an Error – such a movie should not have been televised at such a time. It must have been relished for those living in a Fuck Up World. Please excuse my language but I'm sure you catch my meaning ... It's a waste of someone's intelligence (even my little intelligence) to have to criticize this so called movie and its contents. I'm certain no well informed sponcer [sic], would want their name associated with such trash. Also; I would be lead to question: what age group – what working class – what future generation (childrens [sic] or students) was targeted to be reached by the sponcers [sic] with this vulgarity. I would say they lost their advertising money, their objectives and sadly; customers and future customers. Please be advised, I will be sending each H.Q. Sponcers [sic], a copy of this same letter. It's about time they open up their eyes and ears and take notice and make a stand and a real statement by their actions.

Mr. Cohen as per our discussion, I had spoken to Rogers Cable. First a new employee (salesman, first day on the job) so said, then a reply from his supervisor saying "We have no control, on specialty chanel [sic].

I, the same day, received a call from [a representative] of the C.R.T.C. We receive many, many such complaints. I emphasized to her, that I was neither a prude, a senior (outdated) or a shut in (not a part of this new era of T.V.).

Please understand. I'm your basic person, the one who butters his bread with Becel Margarine; who has two daughters who buy Nivea Products. My son, one day may buy a Suburu [sic]. My wife and her friends never miss "Health Watch television, and we as a family choose "Shoppers" as our pharmacie [sic]. Imagin [sic] these are all sponcers [sic] who advertised during this sour of a movie.

Body Smarts candy was also a sponcer [sic], but I don't see how they intended to reach my teenagers and their friends.

How can sponcer's [sic] who stand by their names and profess and promote ...

Good Health (mental or physical) Good Nutrients, Good Appearance, claim to be the Best and Better than [sic] their competition and still be seen and heard [sic] alongside all this vulgarity and profanity.

Don't tell us you have no control over the stations, who you pay and who represents [sic] you by their programming.

It's up to you the Sponcer [sic], to Pull the Plug.

Enough said ...

\* movie - Feb-20-2001 - tuesday 2.00 pm afternoon  
channel [sic]-42 - Destiny to Order

[The complainant also mentioned a program that aired on the Fox network. Fox originates in the United States and thus does not come within the CBSC's jurisdiction.]

\* If your [sic] a lady do not read the contents of programs.

Contents

Movie - Destiny to Order ch-42

Don't F\*\*ith me (5 times within 2 minutes)

I'll cut your Fu\*\*en Balls off

Rip your F\*\*\*\*\* Face Off.

F\*\*\* you bitch - Eat my testicles

He ain't F\*\*\*\*\*g her now.

F\*\*\* you Mister - Fu\*\*\*\*\* Disk

Jesus Christ (2 times)

F\*\*ing Dead

What the F\*\*\* is this

F\*\*\*

thank God

Jesus

Ass Hole

F\*\*\* with Him

Bottle of broken beer in mouth

Lap dancing-nudity total

Who the F\*\*\* are you

For Gods sake

Shit (5 times 1 minute)

[The complainant then provides a similar list of offensive language from the program that aired on Fox.]

Mr. Cohen,

Please look into this kind of situation. Look around this world and you'll notice were [sic] in the process of sinking.

It's a good thing there were no small children in the house at the time of this incident.

I've been all over Canada and parts of Europe. I've seen everything. Our future generation need [sic] Protection and Leaders.

## II. Broadcaster Response

The broadcaster responded to the complainant's letter on April 11, 2001 with the following:

We are in receipt of your letter to the CRTC, which was forwarded to us by the Canadian Broadcast Standards Council. We regret that you were offended by the movie ***Destiny to Order*** which aired on Showcase February 20.

I would like to take this opportunity to explain Showcase's programming policy. It is our programming mandate at Showcase to offer an alternative to other broadcasters' offerings. One way we have achieved this distinction is to broadcast high-quality international drama series and world-class movies. The decision to air ***Destiny to Order*** is consistent with Showcase's mandate to be the number one destination for critically acclaimed programming from around the world.

Produced in 1990, this Canadian comedy stars Michael Ironside as a young writer whose life goes haywire when the characters in the novel he is writing come to life and involve him in their schemes.

While Showcase is proud to broadcast a wide range of films, it is our policy to carefully consider each film that is aired on the network. Before we decide to broadcast a film, our Programming Department screens it to ensure that it is suitable for broadcast. The determination of suitability includes ensuring that the broadcast would not contravene the Canadian Association of Broadcasters (CAB) Code of Ethics, the CAB "Sex-Role Portrayal Code for Television and Radio Programming", and the "Voluntary Code Regarding Violence in Television Programming."

We regret that you were offended by the coarse language used in this film, however the network did run a viewer advisory during the broadcast of this movie. In order to assist our viewers in making their viewing choices, we always run a viewer advisory before such programs indicating whether they contain scenes of violence, nudity and/or coarse language. If appropriate, a "viewer discretion is advised" advisory is shown before the broadcast begins and after each commercial break. During our broadcast of ***Destiny to Order***, the following advisory was displayed at the beginning of and throughout the broadcast of the movie: "The following program contains scenes with violence, nudity and coarse language. Viewer discretion is advised."

It is certainly not our intention to offend our viewers but to introduce them to the wealth of unique quality dramas from Canada and around the world. Not all shows will suit all tastes, but we have tried to construct the Showcase schedule to deliver something for everyone.

Thank you for taking the time to voice your opinion. We do appreciate feedback and hope that this letter has addressed some of your concerns.

### III. Additional Correspondence

The complainant was unsatisfied with the broadcaster's response and attached the following letter to his Ruling Request dated May 1, 2001:

Please note the absurdity -

1. We have achieved a distinction to broadcast high quality international drama.
2. to broadcast critically acclaimed [*sic*] programming from around the world.
3. We (Alliace [*sic*]) screen it (movie) to ensure it is suitable for broadcast.
4. We did run a viewer advisory during broadcast throughout the movie.

Please note with simply my intelligence as that of a child, I would see and understand that this movie was simply not of high-quality nor suitable for broadcast.

If this movie and contents is the norm and this movie portrays us as such, then we have a problem.

A problem in our Society and one in the organization (CBSC). You are not representing us: as what moral and upstanding citizen, and the average individual needs. I saw the law, but I do not agree with your codes persay [*sic*]. If your [*sic*] going to promote d'excellence and wish to teach someone what is the opposite of your creed, then please sit down and watch - Destiny to Order.