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

Bravo! re the movie *Perfect Timing*

(CBSC Decision 03/04-1719)

Decided December 15, 2004

R. Cohen (Chair), H. Pawley (Vice-Chair), R. Cugini, M. Harris and M. Hogarth

THE FACTS

The film *Perfect Timing* aired on the specialty service Bravo! on May 12, 2004 at 2:00 pm. The movie, which tells the story of “Charlotte”, a nice girl who is trying to help two brothers raise the money they need to keep their loft (their nest for sexual adventures) is a sex comedy that has many shots of frontal nudity of both men and women in a sexual context. There were also numerous uses of the f-word and its derivatives during the course of the program.

The broadcaster provided an advisory in both oral and visual formats at the beginning of the movie and after each commercial break. It stated:

This program contains scenes of nudity, coarse language and mature subject matter. Viewer discretion is advised.

It also had a classification icon of 18+, which appeared at the beginning of the movie and at the top of the second hour. Each display of the icon lasted 10-11 seconds.

A viewer sent a letter dated June 9, 2004 to the CBSC. It included references to other programming content relating to other broadcasters, which are not pertinent to this decision. The full text of those parts of this letter that are pertinent to the feature film *Perfect Timing* as well as all other correspondence are included in the Appendix.

I am writing to express concerns at two ideological ends of the broadcasting spectrum, with regards to recent TV broadcasts on Bravo [...]

[...]

My first real concern is with Bravo's broadcast of the ironically titled "Perfect Timing", an admittedly good natured soft core sex romp aired May 12, 2004 at 2:00 PM. I have let it slide on most of the seven or eight occasions in the last 18 months when the f-word was broadcast during daytime movies, only to have this happen. I have cautioned Bravo about CBSC policy before & I find their claim of a mistake on this occasion hard to believe given that the film aired with appropriate V-chip ratings & viewer advisories.

The broadcaster's Director of Programming responded to the complainant on the same day. She said in part:

I am entirely in agreement with you that the film as broadcast was inappropriate for afternoon viewing. We would never knowingly schedule a film of this nature in the afternoon.

However, due to a scheduling error, the film was broadcast. Unfortunately, because of our computerized system, we could not pull it off air.

On October 15, the CBSC Executive Director had a telephone conversation with the complainant during which she read him the broadcaster's response (which he had not received due to mail delivery problems at his end). In that conversation, the complainant indicated his wish to pursue the complaint.

THE DECISION

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

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

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 *Voluntary Code Regarding Violence in Television Programming* for provisions relating to the scheduling of programming containing depictions of violence.

Recognizing that there are older children watching television after 9 pm, broadcasters shall adhere to the provisions of Clause 11 below (viewer advisories), enabling viewers to make an informed decision as to the suitability of the programming for themselves and their family members.

In order to provide viewers with the benefit of Canadian program classification and viewer advisories not available on foreign distant signals, broadcasters which have CRTC-permitted substitution rights over programming which is imported into their markets before the late viewing period, may employ substitution, notwithstanding Clause 10(a).

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, or
- (b) at the beginning of, and after every commercial break during programming telecast outside of late viewing hours which contains such material which is not suitable for children.

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 System

Icon Use Protocols - Frequency

The rating icon is to be keyed over the first 15-16 seconds of the program. [...] For programs which run longer than one hour, the icon is to be repeated at the beginning of the second hour. These are minimal use standards; stations may wish to use the icons more frequently on programs with particularly sensitive content.

The National Specialty Services Panel Adjudicators viewed a tape of the film in question and reviewed all of the correspondence. For the reasons provided at greater length below, the Panel considers that the broadcast of the challenged film breached Clauses 10 and 11 of the *CAB Code of Ethics* and Clause 4 of the *CAB Violence Code*.

Coarse Language

It has been the established policy of the CBSC Panels called upon to deal with the f-word that programming including such language was intended exclusively

for adult audiences. Moreover, the matter is dealt with at greater length in this Panel's decision of even date in *Bravo! re the movie Kitchen Party* (CBSC Decision 03/04-0928, December 15, 2004), in which reference is made to earlier CBSC decisions dealing with this subject, namely, *WTN re the movie Wildcats* (CBSC Decision 00/01-0964, January 16, 2002), *Showcase Television re the movie Frankie Starlight* (CBSC Decision 02/03-0682, January 30, 2004), and *Showcase Television re the movie Muriel's Wedding* (CBSC Decision 02/03-0882, January 30, 2004). The reader is referred there. As to the present matter, there is no question but that, on the grounds of the coarse language alone, the broadcaster has breached Clause 10 of the *CAB Code of Ethics* in broadcasting *Perfect Timing* prior to the Watershed.

Sexual Content

There have been many past occasions when CBSC Panels have had to deal with the assessment of sexual content in order to determine whether it was intended exclusively for adults. In *TQS re the movie L'inconnu (Never Talk to Strangers)* (CBSC Decision 98/99-0176, June 23, 1999), for example, the Quebec Regional Panel found the station's broadcast of the feature film *Never Talk to Strangers* at 7:30 pm in breach of the Code's scheduling provision. The Panel decided 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'." Similarly, in *TQS re the program 2000 ans de bogues* (CBSC Decisions 99/00-0116 and -0345, August 29, 2000), a tongue-in-cheek, non-dramatic, magazine-style program dealing with sexuality, accompanied by a series of images involving nudity and sexual activity, mostly taken from film clips of the production of a pornographic movie, the Quebec Panel found a breach.

In this case, the Council is of the opinion that the symphony of images presented in the program *2000 ans de bogues* is too risqué to be aired at 7:30 p.m. There are numerous illustrations of what concerns the Council. Among other things, despite the fact that they were run at double speed and digital pixillation had concealed the actors' genitalia, the sexual acts during the pornography segment were excessive. Moreover, in distinct contrast to the film *Strip Tease*, the scenes of nudity in this case are presented in an overwhelmingly erotic context, namely, in one part of the episode, during the making of a pornographic film. In *2000 ans de bogues*, not only are we able to see the actresses' bare breasts, we are also able to see them engaging in explicitly sexual acts. The Council has no doubt that such scenes belong to the category of programming considered to be "intended for adult audiences" and must, consequently, be aired after the Watershed hour.

In yet another style of programming, *CTV re W-FIVE (Swingers)* (CBSC Decision 99/00-0347, February 14, 2001), the Atlantic Regional Panel considered a complaint about a segment of the public affairs program *W-FIVE* dedicated to the "swinging" lifestyle which was broadcast at 8:30 pm in Halifax. The Atlantic Regional Panel concluded that the segment did include scenes intended for adult

audiences and was therefore in breach of the Code provisions relating to the Watershed.

While the Panel has no quarrel with the importance of broadcasters treating matters of public interest even when they may have an erotic component, the issue is whether they are oriented exclusively toward adults.

[...]

Here, the bare breasts and buttocks were displayed precisely because they were related to sexual activity. In fact the discussion of that activity by third parties and by the very participants made it clear that this link was intended. [...] The Panel does not consider that it is necessary that the purpose of the show's producer is to titillate. It suffices that the link between nudity and sexual activity is sufficiently established.

[...]

[T]he swingers themselves made it absolutely clear that they considered it necessary to deceive their families, to lie to them about what they are doing. If this was not a matter suitable for their own children to learn, the Panel has doubts about the appropriateness of such information for other young people.

In the matter at hand, the Panel considers that the frequent level of sexual activity, combined with yet more frequent nudity, make it clear that the film was exclusively intended for adult audiences. The fact that the film could be characterized as a romp, rather than a serious erotic film changes nothing in this regard. The material is inappropriate for viewing at a time of day when the younger members of families can be expected to be watching television and when the more adult members of families can expect that this can be done without the *need* to ensure that there will not be exclusively adult fare on the airwaves. *Perfect Timing* clearly fails this test and the Panel concludes that Bravo! has also breached the scheduling requirements of Clause 10 of the *CAB Code of Ethics* on the basis of the sexual content of the program.

The Classification Icon

One of the tools that broadcasters are required to provide their audiences is an on-screen classification system. It is a source of information for viewers, which enables them to make informed viewing decisions. Moreover, it is but one of the panoply of tools provided by broadcasters to their audiences. When Canada's private broadcasters established the classification system with on-screen icons, they determined that the minimum duration of the visibility of the icon would be *15 seconds*. It can, of course, be longer, but it *must* be no less than 15 seconds. In *TQS re the movie Film de peur* (CBSC decision 02/03-0940, April 22, 2004), the broadcaster had provided a 13+ classification icon at the start of the broadcast and following each commercial break, for 8, 9 or 10 seconds, on each occasion. Although the Quebec Regional Panel noted that the icon was only required at the start of the film and at the beginning of the second hour (the

broadcaster had overzealously supplied too many icons to viewers), it concluded that the duration of the display of the required icon at the required times was clearly insufficient.

The broadcasters' rules provide that the icon must be displayed for 15-16 seconds at the start of the program and at the top of each subsequent hour. In the case of *Film de peur*, the display of the pre-program icon was for 9 seconds, the 7:00-pm display was for 8, and the 8:06-pm display was for 10. Each of these displays was insufficient and constituted a breach of the technical requirements of the classification system, as established pursuant to Article 4 of the *Violence Code*.

The conclusion is no different in the present instance. Bravo!'s 10-11 second displays of the ratings icon were insufficiently long and are in violation of the provisions of Article 4 of the *Violence Code*.

Viewer Advisories

Another of the broadcaster-supplied audience tools is the viewer advisory. By its nature, it provides more information to audiences than the classification icon which is, necessarily, the most abbreviated summary of information (a mere letter or numeric designation without descriptive detail) regarding the content of the broadcast. The advisory, which is in words and in principle without limitation, can be more expansive and detailed. That being said, it must at least warn audiences of content that may be offensive. It can be conservative in its approach and can exceed what is there but it must not miss potentially offensive matter. It has missed in this case. It refers to coarse language. Fair enough. It refers to nudity. Plenty of that. It refers to mature subject matter. That is there, too. There is, however, not a single reference to what will be the most offensive material for some viewers; namely, explicit sexual content. The failure to identify that aspect of the content constitutes a breach of Clause 11 of the *CAB Code of Ethics*.

Broadcaster Responsiveness

The requirement that a broadcaster be responsive to the letter of complaint sent by a member of the public is considered by the Adjudicating Panels to be a significant part of the membership requirements of the CBSC. Such responsiveness is an essential part of the dialogue by which the CBSC considers that matters that trouble members of the public sufficiently to compel them to write are often successfully resolved. When accomplished in thorough and sensitive ways, such correspondence is also a way of letting the public know that broadcasters care about their audience's concerns. The letter from the Director of Programming acknowledged Bravo!'s scheduling error and, while brief, has fulfilled the broadcaster's obligations in this regard in this instance.

ANNOUNCEMENT OF THE DECISION

Bravo! 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 within seven days following the release of this decision during the time period in which *Perfect Timing* was broadcast; 2) within fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the statement to the complainant who filed the Ruling Request; 3) at that time, to provide the CBSC with that written confirmation and with air check copies of the broadcasts of the two announcements.

The Canadian Broadcast Standards Council has found that Bravo! breached the scheduling and viewer advisory provisions of the Canadian Association of Broadcasters' *Code of Ethics* in its broadcast of the feature film *Perfect Timing* on May 12, 2004. By broadcasting the film, which contained coarse language and explicit sexual content before the 9:00 pm Watershed hour for programming intended for adult audiences, Bravo! has violated Clause 10 of the Code. By failing to even mention the presence of explicit sexual content in the film in its advisories to viewers, Bravo! has violated the provisions of Clause 11 of the Code. In addition, by broadcasting the ratings icon for only a part of the required time, Bravo! has breached the article of the classification system that requires the provision of ratings information which is of assistance to viewers in deciding the suitability of the program for themselves and their families.

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

APPENDIX
To
***Bravo! re the movie Perfect Timing* (CBSC Decision 03/04-1719, December 15, 2004)**

I. The Complaint

The following complaint dated June 9, 2004, was sent to CBSC:

To whom it may concern,

I am writing to express concerns at two ideological ends of the broadcasting spectrum, with regards to recent TV broadcasts on Bravo [...]

[...]

My first real concern is with Bravo's broadcast of the ironically titled "Perfect Timing", an admittedly good natured soft core sex romp aired May 12, 2004 at 2:00 PM. I have let it slide on most of the seven or eight occasions in the last 18 months when the f-word was broadcast during daytime movies, only to have this happen. I have cautioned Bravo about CBSC policy before & I find their claim of a mistake on this occasion hard to believe given that the film aired with appropriate V-chip ratings & viewer advisories.

[...]

Thank you for your consideration.

II. Broadcaster Response

The broadcaster responded to the complainant's letter on June 9, 2004, with the following:

Dear Mr. C,

Re: CBSC File Number C03/04-1719

I am responding to your complaint about our broadcast of the Canadian film *Perfect Timing* on Bravo! on the afternoon of May 12.

I am entirely in agreement with you that the film as broadcast was inappropriate for afternoon viewing. We would never knowingly schedule a film of this nature in the afternoon.

However, due to a scheduling error, the film was broadcast. Unfortunately, because of our computerized system, we could not pull it off air.

We apologize for this error and for any discomfort it may have caused.

We thank you for bringing this matter to our attention. We appreciate hearing directly from our viewers, as we strive to improve our service.