
**CANADIAN BROADCAST STANDARDS COUNCIL
QUEBEC REGIONAL PANEL**

CFCF-TV re the premiere episode of *The Dark Angel*

(CBSC Decision 00/01-0183)

Decided August 22, 2001

G. Bachand (Chair), R. Cohen (*ad hoc*), B. Guérin and P. Tancred

THE FACTS

CFCF-TV (Montreal, a CTV affiliate) broadcast the premiere episode of a new series *The Dark Angel* on October 3, 2000 at 7 p.m. The broadcast had originally been scheduled to air from 8:00-10:00 p.m. but the station decided to reschedule it to 7:00-9:00 p.m. due to the last minute scheduling of the *Pierre Elliott Trudeau Farewell Show* by the CTV network from 9:00-11:00 p.m.

The Dark Angel is a television series about a young woman who was created as part of a new breed of genetically-engineered “super humans”. The premiere episode begins with her escape from the compound in which she was created and follows her adventures in a post-apocalyptic, futuristic and chaotic society. Although the object of a perpetual chase by her creator, she teams up with a smart young man and together they use their powers to do good in a corrupt world.

The episode was classified with a 14+ rating and the icon was shown during the opening scenes and again midway through the program. Despite that rating and the 7:00 p.m. broadcast time, there were no viewer advisories at any time during the program.

A complainant was concerned with the use of such words and phrases as “damn”, “listen to the bitch”, “you are a damn ass female”, “kick ass”, and “son of a bitch” during the course of the program. The comment which particularly incited the complaint was uttered just under an hour into the program when an unsympathetic character called the heroine a “prissy little bitch”.

The Letter of Complaint

On October 4, 2000, a viewer wrote to the CRTC, which, in the normal course, referred the complainant's letter to the CBSC. The following is an excerpt from that letter (the full text of which can be found in Appendix A):

At 8:00 pm last night (Oct. 3, 2000), I was channel surfing, and stopped briefly on channel 12, CFCF, a CTV affiliate. I watched only for a few minutes, but that was enough for me to hear one woman call another woman a "bitch". The show turned out to be the premiere episode of *The Dark Angel*.

This type of language seems entirely inappropriate for such an hour, perhaps at any hour on a network which broadcasts over the public airwaves. I always thought certain words were not allowed to be used on the television unless it is on certain cable channels to which one must pay extra to subscribe. The Broadcasters act of 1991 expressly forbids profanity from being used on shows which broadcast over the public airwaves and yet it is creeping into more and more shows.

The Broadcaster's Response

The station's Vice President, Programming, replied on October 24 (the full text of that letter can also be found in Appendix A) stating, among other things, that

[T]his program is normally scheduled from 9:00 to 10:00 pm. On this occasion it has been scheduled from 8:00 to 10:00 pm to accommodate the 2 hour premiere.

The day before, CTV informed us that they were going to produce a *Pierre Trudeau Farewell Show* from 9:00 to 11:00 pm that night which meant we had to move the two-hour premiere of *The Dark Angel* to 7:00 to 9:00 pm.

All our programs are screened for profanity and on many occasions we have deleted words from various shows, especially movies in prime time.

On this occasion, the girl used the word "bitch" in what we know as a derogatory term, however, the word "bitch" is a word in the English language (a female canine). I wish the girl had not stated this word in that manner, although it's not something we would have edited out.

If the program had gone as scheduled (8:00 to 10:00 pm), this word would have been used just shortly after 9:00 pm, a more acceptable time.

The complainant was not satisfied with the broadcaster's response and, on November 12, requested that the CBSC refer the matter to its Quebec Regional Panel for adjudication.

THE DECISION

The CBSC's Quebec Regional Panel considered the complaint under the Canadian Association of Broadcaster's (CAB) *Violence Code*. The relevant clauses of that Code read as follows:

Clause 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.

Clause 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 Regional Panel members watched a tape of the program in question and reviewed all of the correspondence. The Panel considers that, in terms of the program content aired, the broadcaster did not breach the terms of Clause 3.1.1 of the *Violence Code*; however, the Panel did find that, by broadcasting this premiere episode of *The Dark Angel* in the early evening *without any* viewer advisories, the broadcaster had breached Clause 5.2 of the *Violence Code*.

Offensive Language: A Watershed Issue?

Beginning with its decision in *TQS re the movie L'inconnu (Never Talk to Strangers)* (CBSC Decision 98/99-0176, June 23, 1999), the CBSC has made clear its position that the Watershed provision in Article 3.1.1 of the *Violence Code* applies more broadly than to issues of *violence* intended for adult audiences.

The Council also considers that some of the erotic scenes, in particular the very first sex scene which depicts "rough" lovemaking, come within the purview of what would generally be considered as material "intended for adult audiences". In *CITY-TV re Ed the Sock* (CBSC Decision 94/95-0100, August 23, 1995) and in *CFMT-TV re an Episode of "The Simpsons"* (CBSC Decision 94/95-0082, August 18, 1995), among others, the CBSC has noted that broadcasters have tended, over the five years in which they have been adhering to the *CAB Violence Code*, to apply the watershed hour principle not only to programming containing *violent* material but also to programming containing other kinds of material deemed by the broadcaster itself to be more suitable for mature audiences.

For greater certainty, the Quebec Regional Panel wishes to add that the use of offensive language may be understood as falling within the purview of programming intended for adult audiences. While the CBSC has on numerous occasions dealt with offensive language, with respect to programs aired in a post-Watershed environment, no CBSC Panel has yet found a breach on the basis of the use of coarse language. As an example, in a recent decision, *CTV re The Sopranos* (CBSC Decision 00/01-0131+, March 8, 2001), the National Convention Television Panel dealt with complaints concerning, among other things, the coarse language contained in CTV's presentation of *The Sopranos* at 10:00 p.m. The Panel ruled:

There is no disputing that the language used in *The Sopranos* is 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. While, as noted above, these tend to be far less present in the domestic

family dialogue, it must be admitted that they are present there as well from time to time. While off-colour language has been raised as an issue in the past, there has been but one occasion when it has been as constantly present as it is in this series. In *CJOH-TV re "White Men Can't Jump"* (CBSC Decision 94/95-0060, March 12, 1996), the Ontario Regional Panel, in dealing with the language of youths in the streets of Venice Beach, California, applied the principle laid down by the same Panel in *CFRA-AM re Steve Madely* (CBSC Decision 93/94-0295, November 15, 1994).

While it 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."

In this case, the coarse, foul, indeed crude, language used by the mobsters is their vernacular. It is not employed gratuitously; it is used as one might expect that they would *really* use it. Uneducated, their choices are fewer than those of the more literate people in the show who use such terms infrequently or not at all. While not endorsing its usage, the Panel recognizes its relevance to the story being told. It is up to the broadcaster to play such programming in the correct time slot and to apply those other tools which the Codes require, such as explicit viewer advisories. Having aired the show at 10:00 p.m., timing is not an issue and advisories are dealt with below. The broadcast of the language itself, in the circumstances of this show, while not for everyone's ears, is not a sanctionable usage.

The circumstances of *The Dark Angel* are readily distinguished from *The Sopranos* in that the show under consideration here aired in a pre-Watershed environment. It would be reasonable to expect that the threshold of acceptability of allegedly offensive language would be more stringent than that applied in a post-Watershed broadcast such as *The Sopranos*. In fact, CBSC Panels have had several opportunities to consider the issue of offensive language in a pre-Watershed environment.

When, for example, in *CHAN-TV re Sportscastr* (CBSC Decision 95/96-0108, December 18, 1996), the words "crap" and "ass" were used by an interviewee sports expert in a description of a hockey team, the B.C. Panel found no breach despite the fact that a viewer had felt that such "gutter words" were completely unacceptable and were setting a very poor example to the younger generation of B.C. The Council considered the complaint under Clause 6(3) of the *CAB Code of Ethics* as well as with reference to section 5(c) of both the CRTC's *Radio Regulations, 1986* or *Television Broadcasting Regulations, 1987*, which provides that "A licensee shall not broadcast ... (c) any obscene or profane language or pictorial representation." Applying current broad social norms, the Council concluded that this language, while not "attractive, articulate or perhaps even appropriate to the airwaves," nevertheless did not violate the Code.

They may even be, to use the characterization of the complainant, "gutter or crude" language. They are not, however, in the view of the B.C. Regional Council, either obscene or profane, which is ultimately the test which the Regional Council must apply.

In another relevant decision, *CIRK-FM re T-Shirt Promotion Spot* (CBSC Decision 96/97-0206, December 16, 1997), the Prairie Regional Panel determined that the use of the phrase "Life's a

“Bitch” in a promotional announcement for K-97 T-shirts did not offend the “prevailing standards of good taste”, the test under Clause 8 of the *CAB Code of Ethics*. Although the Panel considered the question of offensive language under a different Code clause than that being applied here, the Panel’s observations bear application to the present circumstances:

It is the view of the Regional Council that, in general, for a matter to breach the “prevailing standards” test of Clause 8, it must extend beyond the level of offensiveness, if not even crudeness or vulgarity. This is not to suggest that the CBSC *approves* in any way of offensiveness, crudeness or vulgarity on the airwaves but rather that, in the interest of preserving a broad range of scope for freedom of expression, *such* matters of taste must be left to the marketplace.

[...]

In the result, the Council found that the broadcasters in each of the above instances were not in breach of the Codes with respect to the language used. Moreover, it is the view of the Prairie Regional Council in this case that the expressions “Life’s a bitch” and “Kick ass”, while admittedly crude, have fallen into more commonly acceptable usage than a number of the expressions used in the decisions previously cited. In the circumstances, the Council can find no breach of the Code.

The Panel further noted:

Broadcasters are, however, generally members of the communities in which they function and will regularly attempt to respond to the concerns of their listeners or viewers, even on matters of taste which do not fall within the purview of the Codes. That, though, is a matter for the determination of each station and the broadcaster is under no compulsion in this regard.

In the Panel’s view of the matter at hand, the questionable language is similar to that considered in *CHAN-TV re Sportscast* and *CIRK-FM re T-Shirt Promotion*. While the language in *The Dark Angel* may not be entirely appropriate, and is not to be condoned, it is neither profane nor obscene. The expressions “damn ass”, “kick ass” or “bitch” are used throughout the program in a very modern and positive way so as to emphasize qualities of friendship (however un-traditional this may seem to some). On the one occasion that the use of the word “bitch” can be presumed to have been intended to have a derogatory meaning, it is used by a despicable character to insult the heroine of the program, thus a gesture without significant negative impact. In any event, the Quebec Panel does not consider that the language used amounts to programming intended for adult audiences. Consequently, the broadcaster is entitled to air the program in an early evening timeslot.

Despite the fact that it concludes that the language is not so strong as to characterize this program as one intended for adult audiences, the Panel does consider that it is not suitable for children. While such a characterization does not require a post-Watershed broadcast, it does lead to some added requirements under the *Violence Code*.

The Issue of Viewer Advisories

It goes without saying that viewer advisories need only attach to programming that can, according to the broadcaster Codes, be aired. Their purpose is to alert the audience to the content of programming which, although acceptable, *may offend* certain viewers. In *CTV re Poltergeist - The Legacy* (CBSC Decisions 96/97-0017 and 96/97-0030, May 8, 1997), the Ontario Regional Panel considered the purpose of viewer advisories:

The rationale underlying the requirement of viewer advisories is found in the background section of the Code, which states that "... creative freedom carries with it the responsibility of ensuring ... that viewers have adequate information about program content to make informed viewing choices based on their personal tastes and standards." The repetition of viewer advisories *during the course of* the first hour serves as a second, third and fourth chance for viewers to receive important information concerning the program they are considering watching, *even where they may tune in late*. The Code takes into account that many viewers make their viewing choices *after* the first few minutes of a program, which may result in a viewer missing an initial advisory. The Council is of the view that CTV's approach to viewer advisories in this case, *i.e.* other than the initial advisory, providing them only in the *second* hour of the program, is insufficient for viewers and in breach of the spirit and wording of the Code. [Emphasis added.]

Since this Panel considered that the offensive language content of this program was not suitable for children, the more stringent viewer advisory requirements apply in this case. In an important CBSC Decision on this matter, *TQS re the movie L'inconnu* (CBSC Decision 98/99-0176, June 23, 1999), the Quebec Regional Council found that:

TQS' provision of viewer advisories was inadequate in light of the movie's content and its scheduling. Given that the movie was broadcast outside of late evening hours, it is subject to the requirements of Clause 5.2 of the *Violence Code* which states that "broadcasters shall provide a viewer advisory *at the beginning of, and during* programming telecast outside of late evening hours, which contains scenes of violence not suitable for children [Emphasis added]". To fully appreciate the meaning of the emphasized words, one must consider the requirement of Clause 5.1, which requires the viewer advisories be provided "at the beginning of, and during the first hour of programming telecast in late evening hours [i.e. post-watershed]" which contains elements of violence intended for adult audiences. In the Council's view, the effect of these provisions is that the broadcaster must provide viewer advisories during the full length of a pre-watershed program which contains violent scenes "not suitable for children." If the codifiers had intended that advisories be limited to "the first hour" of programming requiring advisories at all, they would have chosen parallel language for the two sub-clauses.

By failing to provide viewer advisories at any time during the early evening broadcast of *The Dark Angel*, CFCF-TV has breached the provisions of Clause 5.2 of the *Violence Code* with respect to the use of viewer advisories.

The Change of Network Schedule: A Mitigating Circumstance?

In his letter, the Vice-President, Programming of CFCF-TV explained that the program, which would generally run in the 9:00-10:00 p.m. time slot, was scheduled at 8:00-10:00 p.m. because it was a two-hour episode. This ought, of course, to have alerted the station to the possible need to run viewer advisories *in any event*. The CFCF representative then raised the network's decision

to run the *Pierre Elliott Trudeau Farewell Show* from 9:00 to 11:00 p.m. that night as a defence to the fact that the entire episode ran in a pre-Watershed time frame. As he put it, this “meant we *had to move* the two-hour premiere of *The Dark Angel* to 7:00 to 9:00 p.m. [emphasis added].” This, of course, is not the case. The network decision meant that *something* needed to be rescheduled. It did not mean that *The Dark Angel* needed to remain in the schedule and that the programming which it replaced had to be moved. That was solely the decision of CFCF-TV. It is, in any case, incidental to the issue at hand, namely, the failure to use viewer advisories, but one which the Panel considers appropriate to raise because of the reliance placed on it by the broadcaster. The Panel hastens to add that, despite its appreciation of the difficulty a broadcaster could have in finding appropriate editing facilities at the last minute to add on-screen advisories, the *original* 8:00 p.m. starting time for the program ought to have informed CFCF-TV of the need for advisories *in the first place*.

Broadcaster Responsiveness

The CBSC always recognizes the broadcaster's obligation, as a CBSC member, to be responsive to complainants. Therefore, in addition to assessing the relevance of the Codes to the complaint, the CBSC always assesses the *responsiveness* of the broadcaster to the substance of the complaint. In this case, the Panel finds that the broadcaster's reply dealt with the issues raised by the complainant, although not in a way to satisfy him, which is necessarily the case with respect to all matters which reach the adjudication stage. The Panel finds the reply adequate. Nothing more is required.

CONTENT OF THE ANNOUNCEMENT OF THE DECISION

CFCF-TV 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 Dark Angel* was broadcast; 2) within the 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; 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 CFCF-TV.

The Canadian Broadcast Standards Council has found that CFCF-TV has breached provisions of the Canadian Association of Broadcaster's *Violence Code* in its broadcast of the premiere episode of *The Dark Angel* on October 3, 2000. In the Council's view, the movie contained scenes with offensive language which were not be suitable for children. By broadcasting the movie in the early evening, at 7:00 p.m. without adequate viewer advisories, CFCF-TV has breached the viewer advisory requirements set out in Clause 5.2 of the *Violence Code*.

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

Appendix
TO CBSC DECISION 00/01-183
CFCF-12 re The Dark Angel

I. The Complaint

The following complaint dated October 4, 2000 was sent to the CRTC and forwarded to the CBSC in due course:

To Whom it may concern,

At 8:00 pm last night (Oct. 3, 2000), I was channel surfing, and stopped briefly on channel 12, CFCF, a CTV affiliate. I watched only for a few minutes, but that was enough for me to hear one woman call another woman a "bitch". The show turned out to be the premiere episode of *The Dark Angel*.

This type of language seems entirely inappropriate for such an hour, perhaps at any hour on a network which broadcasts over the public airwaves. I always thought certain words were not allowed to be used on the television unless it is on certain cable channels to which one must pay extra to subscribe. The Broadcasters act of 1991 expressly forbids profanity from being used on shows which broadcast over the public airwaves and yet it is creeping into more and more shows. These standards seem to be eroding away more and more as networks try to compete with cable channels.

I think this trend should be stopped. For those who want that kind of programming, let them subscribe to cable channels. For the sake of the rest of us, please enforce the standards.

II. Broadcaster Response

The broadcaster responded to the complainant's letter on October 23, 2000 with the following:

The CBSC has asked me to respond to your e-mail of October 4, 2000 in reference to the premiere episode of *The Dark Angel*.

First of all, I want you to know that this program is normally scheduled from 9:00 to 10:00 pm. On this occasion it has been scheduled from 8:00 to 10:00 pm to accommodate the 2 hour premiere.

The day before, CTV informed us that they were going to produce a *Pierre Trudeau Farewell Show* from 9:00 to 11:00 pm that night which meant we had to move the two-hour premiere of *The Dark Angel* to 7:00 to 9:00 pm.

All our programs are screened for profanity and on many occasions we have deleted words from various shows, especially movies in prime time.

On this occasion, the girl used the word "bitch" in what we know as a derogatory term, however, the word "bitch" is a word in the English language (a female canine). I wish the girl had not stated this word in that manner, although it's not something we would have edited out.

If the program had gone as scheduled (8:00 to 10:00 pm), this word would have been used just shortly after 9:00 pm, a more acceptable time.

Once again, thank you for your concerns and taking the time to write.

III. Additional Correspondence

The complainant was unsatisfied with the broadcaster's response and sent the CBSC Ruling Request form by e-mail on November 2, 2000.