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

Showcase Television re the movie *Frankie Starlight*

(CBSC Decision 02/03-0682)

Decided January 30, 2004

R. Cohen (Chair), S. Crawford (Vice Chair, Industry), H. Pawley (Vice Chair, Public),
M. Hogarth, M. Harris, V. Morrissette, P. O'Neill

THE FACTS

The feature film *Frankie Starlight* was broadcast by the specialty service Showcase Television, starting at 1 pm on Monday, January 20, 2003. It tells the story of a man suffering from dwarfism, who wrote a book about his life. The plot reveals how he was conceived to a woman, Bernadette, who hid herself on an American troop ship heading back to North America. Caught at her attempt to stow away, she was sent back to Ireland. The film recounts the story of Bernadette and Frankie, who, during the course of one relationship of the mother's, was nicknamed Frankie Starlight. The movie continues with the story of Frankie as a mature writer. The version broadcast contained some, although very little, nudity and sexuality (including a brief scene of a couple having sex and a side view of a young girl's breast as she washed herself), as well as some foul language, including the word "fucking" numerous times (in the mouth of one supporting character) and the question "Do you guys fuck?" on another occasion.

The movie was preceded by a viewer advisory in both oral and visual formats; it ran following four of the six commercial breaks but not after those of 2:14 or 2:48 pm. The advisory stated:

This program contains scenes with nudity and sexuality. Viewer discretion is advised.

The movie was rated PG and an icon to that effect appeared at the beginning of the movie and the top of the second hour.

On February 17, a complainant wrote to the CBSC about several broadcasts. With respect to *Frankie Starlight*, he said (the full text of the complaint and all other correspondence can be found in the Appendix):

I am writing to complain about the use of inappropriate language during daytime television broadcasts, that is to say, prior to the 9:00 PM threshold.

During a broadcast of the movie "Frankie Starlight" (Showcase; Monday January 20, 2003), the word "fuck" or "fucking" was uttered four times less than twenty minutes into the movie during the ninety seconds I was tuned in while channel-surfing, just after it began at 1:00 PM.

The Publicist for Showcase replied on July 4. She said, in principal part:

Frankie Starlight is a life-affirming, pleasant drama about a social misfit who has written a book about his life. The film does contain some coarse language, and three of the characters use the f-word. While this language is part of the drama, it is not used in an aggressive or derogatory way, but in a mumbled and playful manner. We understand that this language may have caused you concern. Our view is that this language must be viewed within the context of the program as a whole: in this case, it helps define the emotional relationships of the characters and their experiences.

Showcase is very conscious of the need for viewer advisories and warnings and we take them very seriously. At the time of the broadcast, *Frankie Starlight* was rated PG. Our Programming department has reviewed the film and has decided that it warrants a rating of "14+", as well as a viewer advisory warning of nudity, sexuality and coarse language. The rating and advisory have been added to the film and will air during all future broadcasts of *Frankie Starlight*.

The "14+" Classification allows parents to use V-chip technology to screen out programs with mature subject matter that they do not wish their children to watch. For more information about this technology, please visit www.vchipcanada.ca.

While the complainant did not file a formal Ruling Request, the CBSC considered his response to be the equivalent of a Ruling Request, thereby triggering the CBSC's complaints process.

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 its *Voluntary Code Regarding Violence in Television Programming*:

CAB Code of Ethics, Clause 10 (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. [...]
- (b) 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.

[...]

- (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).

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.

CAB Violence Code, Article 4.0 (Classification System):

PG – Parental Guidance

Descriptive

This programming, while intended for a general audience, may not be suitable for younger children (under the age of 8). Parents/guardians should be aware that there might be content elements which some could consider inappropriate for unsupervised viewing by children in the 8-13 age range.

Programming within this classification might address controversial themes or issues. Cognizant that pre-teens and early teens could be part of this viewing group, particular care must be taken not to encourage imitational behaviour, and consequences of violent actions shall not be minimized.

Violence Guidelines

- any depiction of conflict and/or aggression will be limited and moderate; it might include physical, fantasy, or supernatural violence.
- any such depictions should not be pervasive, and must be justified within the context of theme, storyline or character development.

Other Content Guidelines

Language: might contain infrequent and mild profanity
might contain mildly suggestive language

Sex/Nudity: could possibly contain brief scenes of nudity
might have limited and discreet sexual references or content when appropriate to the storyline or theme

14+ (Over 14 Years)

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

The National Specialty Services Panel read all of the correspondence and viewed a tape of the film. The Panel concludes that Showcase is in breach of Clauses 10 and 11 of the *Code of Ethics* for broadcasting a program containing coarse language before 9:00 pm and for failing to include viewer advisories to this effect during the January 20 broadcast. It also finds Showcase in breach of the *Violence Code* for applying a PG rating to the movie, rather than the higher 14+ rating, which the film required.

The Issue of Coarse Language before the Watershed

There is a line of CBSC jurisprudence that establishes the principle that the use of coarse, not mild, swearing renders a program appropriate for viewing by adult audiences only. It has been a principle established in that group of precedents that the f-word and its derivatives constitute coarse and offensive language. In *WTN re the movie Wildcats* (CBSC Decision 00/01-0964, January 16, 2002), for example, this Panel dealt with a film starring Goldie Hawn as the coach of a high school men's football team, which was broadcast on a Sunday afternoon from 4:00 pm to 6:00 pm EST. A classification icon of 14+ appeared at the beginning of the movie and again at the beginning of the second hour; however, there were no viewer advisories at any point. The issue of concern to this Panel was that *Wildcats* contained some foul language, including the f-word and derivatives. The broadcaster muted out the words "fuck" on two occasions and "motherfucker" on three. In four instances, though, the word "fuck" (or variations of it) and, in one instance, "motherfucker", were not muted out by the broadcaster. Of the presence of these words in the film, the Panel said:

The use of "fuck" and "motherfucker" in a dramatic film renders it programming "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 [...]

In another case involving the present broadcaster, namely, *Showcase Television re the movie Destiny to Order* (CBSC Decision 00/01-0715, January 16, 2002), this Panel was

called upon to deal with a film that aired at 2:00 pm (it followed the life of a fictional crime novelist who was writing about a motorcycle gang.) The movie contained numerous utterances of very coarse language throughout, which the Panel determined was inappropriate for a pre-Watershed time-slot. It put the matter in the following terms:

In the case of *Destiny to Order* [...] 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.

In a more recent case, also involving Showcase Television, namely, *Showcase Television re The Cops* (CBSC Decision 01/02-1076, February 28, 2003), the Panel was once again called upon to consider a similar complaint, namely, one about the use of the f-word and variations. In that case, the program aired at 5:00 pm and did not contain viewer advisories. Even acknowledging there that “the use of coarse language may well be relevant, in this case constituting an accurate representation of how urban police officers and the individuals with whom they interact would speak,” the Panel concluded that that was not a material or justifiable explanation. As the Panel stated, it

must merely determine whether the inclusion of such coarse language as was found in the challenged episode of *The Cops* was sufficient to cause it to fall into the same category of programming “intended for adult audiences” as the broadcasts of *Destiny to Order* and *Wildcats* noted above. The Panel finds that the numerous instances of the f-word and its derivatives in this dramatic scripted program should not have aired in a pre-Watershed environment.

The bottom line is that the film ought to have been broadcast after 9:00 pm (or the words muted or deleted from the broadcast in a pre-Watershed environment). It was not and this constitutes a breach of the provisions of Clause 10 of the *CAB Code of Ethics*.

The Viewer Advisory

CBSC Panels have often underscored the great importance it places on viewer advisories. In order to give full vent to the broadcast flexibility that flows from freedom of expression, there must, on the level of audience equity alone, be some balance. Some of that balance is represented by the definition and application of standards. Other parts of that balance are represented by the provision of information to the audience. That information is generally of two types: first, the classification icon, which is a non-descriptive reflection of content level, arbitrarily attributed to groups on the basis of age; and second, the viewer advisory, which provides more elaborated

information in words about the content. They supplement each other and together provide viewers with a full portrait of a program's content, which enables audience members to make an *informed* choice about whether to watch, or to avoid, a particular broadcast.

In the light of the obvious coarse language in *Frankie Starlight*, the Panel cannot understand why Showcase Television has failed to *even refer* to the issue in its advisory, which deals only with sexuality and nudity. If the viewer advisory is to remain the useful tool for the viewing audience it was intended to be and generally *is*, it *must* be relevant to the content of the programming. Accordingly, the absence of any mention of coarse language in the advisory constitutes a disservice to viewers and a breach of Clause 11 of the *CAB Code of Ethics*.

Showcase also failed to include advisories following two of the six commercial breaks during the course of the broadcast (those at 2:14 and 2:48 pm). Since Clause 11(b) requires such advisories following every commercial break during the pre-Watershed broadcast of an entire film when the broadcast "contains ... material which is not suitable for children," it has also on that count breached Clause 11 of the *CAB Code of Ethics*.

The Content and Rating of the Film

In the view of the Panel, there was nothing in the plot or presentation of the film, other than the language issue, that rendered it problematic for broadcast prior to the Watershed. The scenes of sexual activity, for example, were not, in the view of the Panel, intended exclusively for adult audiences. On the other hand, as discussed above, it is the Panel's view that the language was so intended. It therefore concludes that the not infrequent use of coarse, as opposed to mild, profanity renders the film a 14+, rather than a PG, film. The Panel appreciates that that is also the view of the broadcaster, which has advised in its letter that, when broadcast in future, *Frankie Starlight* will be rated 14+. The error in classification does, however, constitute a breach of Clause 4 of the *Violence Code*.

A Repeated Disregard for the Private Broadcaster Codes

On the basis of a number of previous CBSC decisions, including several involving Showcase Television itself, the language left in *Frankie Starlight* by the broadcaster makes it clear that the film ought not to have been scheduled for broadcast before 9:00 pm. The Panel is consequently concerned by the failure of Showcase to respect the standards to which all other broadcasters must, and do willingly, adhere. At the same meeting of the National Specialty Services Panel as that in which the present decision was taken, the Panel also considered *Showcase Television re Muriel's Wedding* (CBSC Decision 02/03-0882) and *Showcase Television re Trailer Park Boys* (CBSC Decision 02/03-0909), the first of which involved the use of coarse language before the

Watershed, and the second of which involved the use of coarse language after the Watershed. Both of these films also involved Showcase's failure to include viewer advisories with the required form and frequency, which also constitutes a breach of the private broadcasters' codified standards.

The existence of five or more breaches of the same Code provision in three years appears to reflect an unwillingness on the part of Showcase Television to abide by the rules applicable to the rest of Canadian private broadcasters.

While it has historically been most unusual for the CBSC to face repetitive Code breaches by the same broadcaster, this is actually the third occasion when such an issue has come before a Panel. The CBSC has dealt with the two previous instances in the following terms.

In the first case, namely, *CILQ-FM re the Howard Stern Show* (CBSC Decision 97/98-0487, 488, 504 and 535, February 20, 1998), the Ontario Regional Council explained the requirements of membership and their application to such a situation.

As the CBSC Members Manual provides, under the heading "Criteria of Membership", "To become a member of the Council, a broadcaster ... must agree to carry out the responsibilities of membership outlined in the following" and, under the immediately following heading "Responsibilities of Membership", it is provided:

Stations voluntarily becoming members of the Council agree to:

- (a) Abide by, and agree to be judged by, the broadcasting codes of the CAB administered by the Council.
- (b) Encourage, educate and assist managers, programmers, producers, journalists and performers to understand, and conduct themselves in accordance with these standards.

Thereafter, as a part of "Compliance", the rules of membership provide:

If a member broadcaster fails to comply with a decision of the Council, by not broadcasting a Council decision in favour of the complainant or by refusing to adhere to an approved standard, the broadcaster's membership in the Council will be revoked.

The consequence of not adhering to the "approved standards", which were the creation of the private broadcasters themselves, would be the removal of the member from the voluntary authority of the CBSC. While, ultimately, all CBSC members are subject to the regulatory authority of the CRTC, any broadcasters who might cease to be members would be more immediately involved with the formal regulatory regime.

It should not be forgotten that the standards were instituted by Canada's private broadcasters to ensure that the acceptable content criteria of broadcast material would be the same for all listeners and viewers and, moreover, that no individual stations would be able to steal a competitive march on other broadcasters in their market by breaching those standards.

It is an extremely positive endorsement of the self-regulatory process that, hitherto, the CBSC has never invoked the above-noted provisions relating to adherence to standards

to remove a member from its midst. It is equally significant that no member has ever resigned by reason of its refusal to adhere to industry Codes.

In the case of, the *Howard Stern Show*, the broadcaster had already put infrastructural mechanisms in place *prior to* the rendering of the second decision and it was clear that diligent, even expensive, methods were being employed to ensure that the program would conform to Canadian private broadcaster standards.

In the second case, namely, *TQS re Faut le voir pour le croire* (CBSC Decision 99/00-0460, August 29, 2000) the Quebec Panel was faced with a similar problem of disregard for the private broadcasters' codified rules. On that occasion, the Panel concluded:

In the circumstances, in addition to its finding regarding the specific breach in the case of the broadcast under consideration, the Council specifically concludes that the broadcaster must, within the thirty days following its receipt of the text of this decision, provide the CBSC with concrete indications of the measures which it intends to put in place in order to avoid the recurrence of the broadcasting of inappropriate sexual content prior to the Watershed. Failing that, the CBSC will determine whether there is any reason for which Télévision Quatre Saisons should be entitled to remain a member of the CBSC or whether TQS should become the first private broadcaster in Canada to be removed from the self-regulatory mechanism.

Since those two decisions, and in order to avoid any uncertainty in this regard, the CBSC has modified its *Manual* to ensure that the obligations of its members are clear. The *Manual* now provides:

Broadcaster members which join the CBSC do so voluntarily and, by so doing, agree to:

[...]

b) avoid the recurrence of any breach of the Codes which has previously been decided against them with respect to a particular program or series;

Members even agree to ensure that the principles established in a decision rendered against *another* broadcaster will be respected by them in their own programming decisions. The undertaking is framed as follows:

Broadcaster members which join the CBSC do so voluntarily and, by so doing, agree to:

[...]

c) respect the conclusions of any CBSC decision which applies to any program or series they are running, even if that decision was rendered in response to a complaint directed at another station or stations running that same programming;

Accordingly, as in the cases of CILQ-FM and TQS referred to above, the Panel concludes that Showcase Television must, within the thirty days following its receipt of the text of this decision, provide the CBSC with concrete indications of the measures which it intends to put in place in order to: a) avoid the recurrence of the broadcasting of coarse or offensive language prior to the Watershed; and b) ensure that it will include

viewer advisories with the required form and frequency in its programming. Failing the receipt of that written assurance of the steps Showcase plans to take, the CBSC will determine whether there is any reason for which Showcase Television should be entitled to remain a member of the CBSC benefiting from the operation of the self-regulatory mechanism.

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 Publicist's letter acknowledged its errors regarding both the ratings level and the substance of the viewer advisory; consequently, it has fulfilled the broadcaster's obligations in this regard in this instance.

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 within seven days following the release of this decision during the time period in which *Frankie Starlight* 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 Showcase Television breached the classification, scheduling and viewer advisory provisions of the Canadian Association of Broadcasters' *Code of Ethics* in its broadcast of the feature film *Frankie Starlight* on January 20, 2003. By broadcasting the film, which contained several instances of coarse language before the 9:00 pm Watershed hour for programming intended for adult audiences, Showcase has violated Clause 10 of the Code. By failing to even mention the presence of coarse language in the film, and by failing to run the advisories following each commercial break, Showcase has violated the provisions of Clause 11 of the Code. By rating the film PG rather than 14+, Showcase has also violated the provisions of Article 4 of the *CAB Violence Code*.

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

APPENDIX
To
Showcase re the movie *Frankie Starlight* (CBSC Decision 02/03-682,
January 30, 2004)

I. The Complaint

The following complaint dated February 17, 2003 was sent to the CBSC :

Canadian Broadcast Standards Council
Ottawa, Ontario, Canada

To whom it may concern:

I am writing to complain about the use of inappropriate language during daytime television broadcasts, that is to say, prior to the 9:00 PM threshold.

During a broadcast of the movie "Frankie Starlight" (Showcase; Monday January 20, 2003), the word "fuck" or "fucking" was uttered four times less than twenty minutes into the movie during the ninety seconds I was tuned in while channel-surfing, just after it began at 1:00 PM.

[complaints about other broadcasts dealt with in other files]

Thank you for your consideration.

II. Broadcaster Response

The broadcaster responded to the complainant's letter on July 4, 2003 with the following:

Dear Mr. C,

Showcase appreciates and considers all viewer feedback and we thank you for taking the time to express your concerns about the movie *Frankie Starlight*, which aired on Monday, January 20, 2003 at 1 p.m. ET/PT on our network.

Frankie Starlight is a life-affirming, pleasant drama about a social misfit who has written a book about his life. The film does contain some coarse language, and three of the characters use the f-word. While this language is part of the drama, it is not used in an aggressive or derogatory way, but in a mumbled and playful manner. We understand that this language may have caused you concern. Our view is that this language must be viewed within the context of the program as a whole: in this case, it helps define the emotional relationships of the characters and their experiences.

Showcase is very conscious of the need for viewer advisories and warnings and we take them very seriously. At the time of the broadcast, *Frankie Starlight* was rated PG. Our Programming department has reviewed the film and has decided that it warrants a rating of "14+", as well as a viewer advisory warning of nudity, sexuality and coarse language. The

rating and advisory have been added to the film and will air during all future broadcasts of *Frankie Starlight*.

The "14+" Classification allows parents to use V-chip technology to screen out programs with mature subject matter that they do not wish their children to watch. For more information about this technology, please visit www.vchipcanada.ca.

Thank you for drawing our attention to this matter and I hope that we have addressed your concerns.