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## CANADIAN BROADCAST STANDARDS COUNCIL

### NATIONAL SPECIALTY SERVICES PANEL

#### OUTtv re the film *L.I.E.*

(CBSC Decision 09/10-1703)

Decided January 7, 2011

R. Cohen (Chair), H. Pawley (Vice-Chair, Public), D.-Y. Leu, C. Sephton, L. Todd,  
D. Ward

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### THE FACTS

OUTtv broadcast the film *L.I.E.* at 9:00 pm Eastern Time (8:00 pm in the complainant's Central time zone) on May 27, 2010. *L.I.E.* is a dramatic motion picture (produced in 2001) in which the mother of the main character, 15-year-old Howie Blitzer, died shortly before in a car crash on the Long Island Expressway (L.I.E.). One senses that Howie's close family relationship had been with his mother and that his relationship with his father, Martin, was strained as a result of two issues: first, his mother's recent death; and second, his father's involvement soon thereafter with a woman Howie characterizes as a "bimbo".

At loose ends, Howie befriends a group of three other boys, Gary, Kevin and Brian, who commit break-and-enters in the neighbourhood. The viewer learns later in the film that Gary is also a male prostitute. In any event, Gary and Howie develop a close friendship and even plan to run away to California together. Gary soon convinces Howie to join him in breaking into the home of "Big John" Harrigan while Big John and his entourage are having a birthday party upstairs. An older ex-Marine, Big John lives with a young man named Scotty. While Gary and Howie are in the midst of the break-in in the basement, Gary intentionally breaks some housewares in order to make a noise that will resonate upstairs at the party. Big John hurries downstairs and almost catches them. In the end, the boys only manage to steal two prized handguns of Big John's, but, in

that altercation, Big John manages to tear off a piece of Howie's jeans, which soon allows him to track down Gary and Howie as the culprits.

When Big John ultimately confronts Howie, he advises the youngster that, if Howie returns the guns, he will not report Howie to the police. Taking that admonition seriously, Howie goes to Gary's home, where, in Gary's absence, he "breaks in" and finds the gun case, which, it turns out, is missing one of the weapons. Howie returns the case to Big John, who says that the missing handgun is worth a thousand dollars, which Howie volunteers to work off. Big John implies that this can only be accomplished with sexual favours, which, as matters evolve, are never rendered. As a part of the set-up of that prospect, though, Big John tells his live-in male concubine Scotty to leave for a few days. In the meantime, Howie's father Martin has been arrested by the FBI in connection with a fire in a building that his construction company had built, for which his use of cheap aluminum wiring had apparently been the cause. That fire resulted in the death of two firemen.

Howie, knowing nothing of that arrest, returns to an empty home and, believing that his father has abandoned him, he moves into Big John's home. Howie and Big John never do actually engage in sexual activity, and Big John appears to partially redeem himself as a person, as he advises Howie of the arrest and brings him to the prison where his father has been detained. Howie has the overdue son-to-father confrontation with his dad in a cinematic attempt to bring some closure to that relationship. In the meantime, after Big John leaves the prison, he drives towards an area off the L.I.E. apparently known for the picking up of young men. In what is the penultimate scene of the film, Scotty pulls alongside Big John's car and shoots him. The audience is left to assume that Big John has met his nemesis and dies. While that is occurring, the film cuts to Howie's opening monologue about the death of his mother and the impact of the Long Island Expressway on his life, following which the credits roll.

The film contains numerous instances of coarse language, such as "fuck" (and variations thereof) and "prick". There are also a number of sexual conversations and sexually suggestive scenes involving the boys among themselves or with Big John. The only actual sexual activity takes place in two scenes involving Howie's father and his girlfriend. There are also a few scenes of physical fights between the boys and one altercation between Howie and his father. None of the foregoing violence is particularly harsh. No weapons are used. No blood is drawn. The worst result appears to be a black eye or two. Even the shooting of Big John at the film's end is remarkably un-gory.

At two points in the film dialogue there were discriminatory comments made. One reference was to a "towel-head" and another was to a "typical Jew fuck".

The station broadcast the following viewer advisory at the beginning of the movie and coming out of every commercial break, in all instances in video format only:

The following movie contains mature content. Viewer discretion is advised.

Although the broadcaster stated in its letter (see below) that it had rated the film 18+, the logger recording reviewed by the Panel made it clear that it was actually a 14+ icon that appeared for 15 seconds at the beginning of the film. No classification icon was rebroadcast at the top of the second hour.

A complaint was received from a viewer in the Central Time Zone on May 28. Her e-mail said in pertinent part (the full text of all the correspondence can be found in the Appendix):

TV movie *L.I.E.* was shown at 8:00 pm (CST) on OUTtv.

To my knowledge child pornography is still illegal. The premise of the show was of an ex-marine seducing a young boy, propositioning him for oral sex, etc.

I hope you get lots of complaints for this channel teaching vile acts on a child. We make laws against sexual predators and then use TV to teach predators how easily [*sic*] it is to seduce the innocent.

On June 21, the Chief Operating Officer (COO) of OUTtv responded to the complainant with the following query:

Prior to providing a full response to this complaint, can you kindly provide us with the specific section of the CBSC rules which you feel have been violated by this feature film. It is not clear from your complaint.

The complainant replied that day with a short note that included the text of Clause 2 of the Canadian Association of Broadcasters (CAB) *Code of Ethics*. The COO sent a full response later that very day, in which he said in pertinent part:

We write in response to your complaint concerning the feature film *L.I.E.*, which OUTtv broadcast at 9:00 pm EST on May 27, 2010 preceded by a warning of its mature subject matter and with an 18+ V-Chip rating.

This multiple award-winning movie, produced in 2001, did garner some controversy due to the difficult subject matter. However, we feel that it deals with that subject in a straightforward, non-judgmental way. The topic requires **understanding** – not **acceptance** – since it is something that is going on all the time. We feel that both parents and teenagers could benefit by watching this film.

In the movie, the 15-year-old protagonist finds himself completely without guidance and is acting out by hanging out with a “bad” crowd and breaking into houses. When his friend persuades him to break into a specific house, they’re almost caught, leaving behind a piece of evidence that leads the ex-Marine owner of that house to track them down. “Big John” is a complex person and one who can still feel shame for the feelings he has for adolescent boys. Over time, as John gets to know Howie more personally, he sees similarities between Howie and his adolescent self, and when the opportunity finally presents itself for him to have sex with the teen, he makes the right decision. In doing so, John becomes, in Howie’s eyes, more of a father figure than Howie’s own father.

You may be uncomfortable with a partially sympathetic portrayal of a sexual predator, but that does not invalidate the film's potential value as a teaching tool. How can society solve a problem such as this, when it won't even talk about it or attempt to understand it?

You have indicated that you consider that, in airing this film, we have breached the terms of Clause 2 of the Canadian Broadcast Standards Council *Code of Ethics*. We are confused by this. Clause 2 was included in the *Code of Ethics* to prevent the broadcast of programs that discriminate against or are unduly abusive or hateful against one group or another, on the basis of race, national or ethnic origin, religion, age, sex, sexual orientation, marital status or physical or mental disability. This film does neither.

Even if you interpret the word "abusive" in Clause 2 to mean the portrayal of a specific form of abuse (i.e. sexual abuse), which we certainly do not, there is no such abuse portrayed in the film. There is a potential for abuse to have occurred, but it in fact did not in the particular case of the protagonist. Any other abuse that you may have flagged is implied rather than overt. This film does not celebrate these issues, but serves as a warning. We believe that any person who has viewed the film would clearly understand this.

We stand behind this film, which is a remarkable one, and our decision to license it, and will continue to air it, after 9:00 pm EST at our discretion.

Dissatisfied with this explanation, the complainant replied the following day:

I still feel this is completely wrong and unacceptable!

The clip I saw was a young boy being asked if he ever had a BJ by the ex-marine and in the background x-rated movies were playing ...

I feel for the child that was asked to play this part ...

It concerns me that this was allowed on TV before 10:00.

If the rating showed a warning about adult content, how come the boy was not an adult (I never saw a warning)?

The CBSC is unaware whether the broadcaster replied to this e-mail; however, it had no obligation to do so pursuant to the CBSC's membership obligations.

## THE DECISION

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

### *CAB Equitable Portrayal Code*, Clause 2 – Human Rights

Recognizing that every person has the right to the full enjoyment of certain fundamental rights and freedoms, broadcasters shall ensure that their programming contains no abusive or unduly discriminatory material or comment which is based on matters of race,

national or ethnic origin, colour, religion, age, gender, sexual orientation, marital status or physical or mental disability.

### *CAB Equitable Portrayal Code, Clause 8 – Exploitation*

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

### *CAB Equitable Portrayal Code, Clause 10 – Contextual Considerations*

Broadcasts may fairly include material that would otherwise appear to breach one of the foregoing provisions in the following contextual circumstances:

- a) Legitimate artistic usage: Individuals who are themselves bigoted or intolerant may be part of a fictional or non-fictional program, provided that the program is not itself abusive or unduly discriminatory;

### *CAB Code of Ethics, Clause 2 – Human Rights*

Recognizing that every person has the right to full and equal recognition and to enjoy certain fundamental rights and freedoms, broadcasters shall ensure that their programming contains no abusive or unduly discriminatory material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status or physical or mental disability.

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

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

[...]

(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.

[...]

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 3.0 – Scheduling

### 3.1 Programming

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.

[...]

(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 Violence Code*, Article 4.0 – Classification System for English-Language Broadcasters

### **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.

### **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

**18+ -- Adults (Intended for viewers 18 years and older)**

Descriptive

This classification applies to programming which could contain content elements that would make it unsuitable for viewers under the age of 18.

Violence Guidelines

- contains depictions of violence which, while integral to the development of plot, character or themes, are intended for adult viewing, and thus are not suitable for audiences under 18 years of age.

Other Content Guidelines

Language: might contain graphic language

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

*CAB Violence Code, Article 5.0 – Viewer Advisories*

5.1 To assist consumers in making their viewing choices, broadcasters shall provide a viewer advisory, at the beginning of, and during the first hour of programming telecast in late evening hours which contains scenes of violence intended for adult audiences.

[...]

5.3 Suggested language for suitable viewer advisories is outlined in Appendix A.

The Panel Adjudicators read all of the correspondence and viewed the broadcast of the challenged movie. The Panel concludes that OUTtv breached Clause 11 of the *CAB Code of Ethics* and Articles 4 and 5 of the *CAB Violence Code*. The Panel finds no breach of any of the other standards cited above relating to the content of the movie.

**The Substantive Content of the Film: Some Preliminary Observations**

The Panel fully appreciates the good faith and intentions of the complainant; however, it is concerned about her connection of the film to “child pornography”. While a part of the storyline leaves the sense that Big John might wish to have a sexual relationship with underage Howie, there is not a smidgeon of actual or even feigned sexual activity in the film (between those two characters). Nor is there any indication that *any* sexual act between Big John and an underage boy took place off-screen.

The Panel also considers that the complainant's assertion that the "premise of the show was an ex-Marine seducing a young boy, propositioning him for oral sex, etc." is not at all reflective of the reasonably complex layering of plot lines and motivations in *L.I.E.* The issues relate, among other things, to the relationships of Howie with his mother and his father, his anchorless wandering into bad peer relationships with the disappearance of his role models, the variety of risky behavioural "opportunities" for a young person, the narcissism of some of the other characters, jealousy, nemesis, and the unexpected underlying decency of a bad adult character. While the Panel expresses no view on whether any of the foregoing (or other) themes is handled well or badly, it is conscious of the opportunity presented by the film to explore some of these themes. It is obvious that not every film turns on "good" or positive themes. That is to be expected.

The Panel's point in this regard is that there is *nothing* inherently wrong in the broadcast of this film, although the broadcaster had an obligation to air the film in the proper time slot (which it did) and with the proper advisories and ratings (which it did not). The discussion of the matters raised both by the complainant and by the Panel on the basis of all the applicable codified standards follows.

### **The Invocation of the Human Rights Clauses**

In response to the initial e-mail from the complainant, the broadcaster asked which "section of the CBSC rules" applied so as to know what concerns to respond to. Although the complainant replied that it was Clause 2, her concerns did not appear to relate to human rights issues as much as to depictions of abuse. The broadcaster was understandably still confused by that explanation. While the Panel finds that the substance of her original complaint finds no grounding in the Human Rights Clauses, the Adjudicators have reviewed the entire film attentively, as is always the case. In so doing, they have come across two references that could fairly be understood to fall under the Human Rights Clauses. As noted above, one reference was to a "towel-head" and another was to a "typical Jew fuck". While the Panel considers that both references are clearly abusive, the Panel notes that they were made by characters in a dramatic film. It considers that they fall within the context of a dramatic film, and that the circumstances are not dissimilar from those encountered by the Ontario Panel in its assessment of a complaint relating to the broadcast of the film *Midnight Express*. At the time, the Panel agreed that Turkish law-enforcement and judicial personnel did not come off well in that movie, which told the story of an American who had been sent to a brutal Turkish prison for drug trafficking. That said, the Panel did not consider that film to be an attack on all people of Turkish decent. In their decision in *History Channel re the movie Midnight Express* (CBSC Decision 98/99-0203 and 0244, June 17, 1999), the Panel explained the point in the following terms:

The fact of the matter is that the only Turks in the film about whom Hayes has any justification to evaluate are those with whom he has had the worst experiences, namely, the representatives of the legal and penal system. They are painted brutally by director Allan Parker but they are the *only* segment of the Turkish population the viewer has contact with. [...] The bitter discriminatory perspective is limited to injustices perpetrated by the jailers, the lawyers and the judges and this perspective of the system is a legitimate political point of view, one protected by freedom of expression and artistic licence and is therefore not a breach of any Code.

The Panel added that there was “no assessment made by the screenwriter, the director or the film’s characters about the Turks or Turkey in general.” Since then, that principle was codified in the *CAB Equitable Portrayal Code*, in which Clause 10(a) specifically acknowledges “legitimate artistic usage” as a contextual consideration justifying the inclusion of some material that would otherwise fall afoul of other provisions of that Code. It specifically provides that material emanating from “individuals who are themselves bigoted or intolerant may be part of a fictional or non-fictional program.” The Panel considers that that contextual consideration finds its full application here and that the abusive references to South Asians and Jews are not in breach of the Human Rights Clauses of the *CAB Code of Ethics* or the *Equitable Portrayal Code*.

## **Exploitation and Sexualization of Children**

Clause 8 of the *CAB Equitable Portrayal Code* (and its equivalent predecessor in the former *CAB Sex-Role Portrayal Code*) has been primarily used in two very different circumstances. The first category of usage has been “humorous references to children in sexual contexts” and the second has been dramatic programming. While the challenged program in the matter at hand falls clearly into the second category, there is a useful discussion about the different categories in the decision of the Ontario Panel in *CFNY-FM re comments made on the Dean Blundell Show (Justin Bieber fans)* (CBSC Decision 09/10-0333, June 22, 2010).

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

In terms of the very issue of the meaning of “sexualization”, the Quebec Panel outlined appropriate parameters in dealing with a complaint about a news report about an alleged pedophile in *TQS re Le Grand Journal report (“Girl Assaulted Live”)* (CBSC Decision 06/07-0284, August 23, 2007).

The Quebec Panel acknowledges the revulsion of the complainant in having to come face to face with the issue of child pornography and the accompanying visual elements. The Panel's issue, though, is not the mere presence of such images, but the discretion associated with their use. The Panel considers that the broadcaster chose discreet, non-exploitative images which were entirely relevant, indeed useful to the awful story it was called upon to report. It does not find that the images were either explicit or sensationalist, as the complainant has contended. Moreover, the Panel does not consider that the reporting of such matters, to begin with, in any way perpetuates the recurrence of the criminal activity. If anything, the Panel believes that such news stories may have the effect of both alerting the public and dissuading child pornographers. Although the complainant did not raise the following issue, the Panel considers it useful to add that the broadcast in question did not *sexualize* children (a point anticipated in Article 4 [of the previous *Sex-Role Portrayal Code*, now replaced by Clause 8 of the *EPC*]). In the Panel's view, the word "sexualization" in the Article suggests the gratuitous, pandering or inappropriate attribution of sexual characteristics to children; the cautious reporting of a sexual occurrence without any of the foregoing elements will not constitute a breach of the prohibition of sexualization of children provision of Article 4.

The Panel notes that no breaches have been found in either of the two previous cases that involved serious dramatic presentations of adolescent sexuality. In *Showcase re an episode of Queer as Folk* (CBSC Decision 01/02-0217, September 13, 2002), this Panel dealt with a complaint about the sexual content of a drama series that followed the lives of gay men and women living in Pittsburgh. A viewer was concerned about a storyline involving the romantic relationship between a 17-year old male adolescent and a 30-something adult man. The program contained fairly explicit scenes of sexual activity between the two males, but no genitalia were shown. The Panel acknowledged that, although there was "significant sexual content in the challenged episode [...] which is more than merely suggestive," it concluded that it was neither exploitative of children under Clause 8's predecessor section nor problematic when aired after the Watershed hour (which runs from 9:00 pm - 6:00 am)

In a case much more similar to the matter at hand, namely, *Showcase Television re Kids* (CBSC Decision 97/98-1151, February 3, 1999), the Ontario Regional Panel dealt with the feature film *Kids*, which "documented" the life of inner-city teenagers who were heavily involved in drugs and sexual activity, and which depicted various scenes of depravity involving children below the age of 16. The Panel found that *Kids* did not "sexualize children" in contravention of the codified standards:

While young persons are depicted in the movie as involved in sexual activity, the movie is *about* the dangers of such promiscuity, among other things. The Panel does not believe that the restriction on the sexualization of children was meant to prohibit *all* programming dealing *in any way* with child sexuality. For example, the Panel does not expect that a violation of Clause 4 of the *Sex-Role Portrayal Code* would result from the broadcast of programming (whether documentary or dramatic) which deals with the sexual abuse of children.

Applying the foregoing standards to the matter at hand, the National Specialty Services Panel considers that the challenged dramatic film *L.I.E.* does not sexualize children. If anything, it dramatizes the lives of the young people in the film, whose activities in fact

involve other illegalities, such as theft, and breaking and entering. There is certainly no overt sexual activity involving children in the film, and at most the suggestion that Big John might have wished to so entice Howie. There is no indication that he even succeeded *off-screen* in that wish fulfillment. The Panel wishes to add that it finds no inherent problem in the complainant's expressed concern about Big John asking Howie about having a blow-job without there being any follow-through. Nor does the Panel agree with the complainant that "in the background x-rated movies were playing." There was nothing more than the top of a woman's head seen and, although one could *imagine* what would have been going on had the film excerpt reflected the full screen image, what is material is that it did not include any problematic, much less x-rated, sexual content. In the view of the Panel, the broadcast of *L.I.E.* does not in any way sexualize or exploit children in contravention of Clause 8 of the *Equitable Portrayal Code*.

### **Scheduling**

Although the film was broadcast after the start of the Watershed, safely, in other words, in exclusively adult broadcast territory, the Panel considers it useful to note a couple of the considerations that require the film's broadcast in that time frame. One of these is the coarse language, especially examples from the f-word family, used frequently throughout the film. In addition to that, there is the heterosexual sexual content in the scene involving Martin and his girlfriend. Finally, there is the violence associated with the shooting of Big John by Scotty.

The broadcaster conformed fully to the requirements of Article 3 of the *Violence Code* and Clause 10 of the *CAB Code of Ethics* in the timing of the broadcast, but those content issues find some repercussions in the following sections of this decision relating to classification and viewer advisories and are worth raising here. The Panel also wishes to add that, although the broadcast was received at 8:00 pm in the complainant's time zone, it benefited from the exception provided in the foregoing sections that permits the broadcast of adult material, provided it has respected the Watershed rules in the originating time zone.

### **Classification**

The rule relating to the display of the classification icon is straightforward and clearly laid down in Article 4 of the *Violence Code*. It must appear at the start of the program and again at the beginning of the second hour for programs that extend beyond sixty minutes. The failure to respect that requirement was noted in a previous decision of this Panel in *Showcase re the movie Rats* (CBSC Decision 99/00-0772, August 23, 2001),

and in a decision of the National Conventional Television Panel in *CTV re The Sopranos (Season 2)* (CBSC Decision 01/02-0104+, May 9, 2002). The failure of OUTtv to repeat the classification icon at the beginning of the second hour constitutes a breach of Article 4.

As to the choice of classification level, the Panel was struck by the broadcaster's statement that it applied an 18+ rating to the broadcast of *L.I.E.* when it was patently apparent on the logger of the broadcast that its choice had been 14+. The Panel considers that more care and attention are required in dealing with complaints from the public. The implication in this situation is that OUTtv's Chief Operating Officer did not review the program before replying.

The foregoing being said, the Panel does not consider that a rating higher than 14+ was required. Neither the violent nor the sexual content was intense enough to exceed the 14+ level. As to the issue of the coarse language, the Panel considers that the descriptor for that rating level permits strong or frequent profanity. In the view of the Panel, the intensity of the profanity reached that level, but that meets and does not exceed the 14+ level. There is consequently no breach on account of the choice of 14+ as the appropriate level of classification for the film.

### **Viewer Advisories**

When program content includes material that is "susceptible of offending viewers", broadcasters must provide viewer advisories that will enable members of the audience to determine whether the program will be suitable for viewing in their homes. The mandatory frequency of the advisories is a function of the time at which the program must be broadcast. If the program is relegated to a post-Watershed (9:00 pm-6:00 am) broadcast, advisories must be aired at the start of the program and coming out of each commercial break for the first hour of the broadcast. If the program is not *required* to be shown after the start of the Watershed, but its content is nonetheless inappropriate for children, advisories must be aired at the start of the program and coming out of each commercial break for the full broadcast of the program. In an attempt to soften the impact of post-Watershed (adult) programming that is permitted by exception to be broadcast on a single-feed service to other time zones pre-Watershed, the advisories are required at the start of the program and coming out of each commercial break for the full broadcast of the program.

In the matter at hand, OUTtv complied fully with that requirement. The necessary advisories were aired as required throughout the entire program, which was seen pre-Watershed by the complainant in the Central Time Zone.

There are, however, other viewer advisory requirements to be met. These relate to format and wording.

On the issue of wording, the CBSC has long since determined that the wording of any viewer advisories must reflect the content of the program. They are, after all, *advisories*, and without concrete information about the content of the program to which they refer, they provide no useful information on the basis of which individuals can decide to watch or avoid a broadcast. As this Panel said in *Showcase Television re the movie Rats* (CBSC Decision 99/00-0772, August 23, 2001), non-specific advisories were inadequate because they did not provide “any reasons for which a viewer might choose to exercise discretion.” See also two other decisions of this Panel to the same effect: *Showcase re an episode of Queer as Folk* (CBSC Decision 01/02-0217, September 13, 2002) and *The Comedy Network re an episode of Gutterball Alley* (CBSC Decision 01/02-0450 & 01/02-0481, September 13, 2002).

In the matter at hand, the National Specialty Services Panel concludes that the generalized non-specific viewer advisory provided by OUTtv was inadequate and in breach of Clause 11 of the *CAB Code of Ethics* because of its failure to include information about the coarse language and the sexual content (referring to the two scenes of Howie’s father Martin having intercourse with his girlfriend), both of which would have relegated the program to post-Watershed broadcast had the broadcaster not already made that choice. Although the violent content was relatively mild and was insufficiently gory to have forced the broadcast into post-Watershed timing, the Panel considers that, because of the shooting scene, the presence of that violent element ought to have been included in the advisory. The failure to include that reference constitutes a breach of Article 5 of the *Violence Code*.

On the issue of viewer advisory format, the CBSC’s jurisprudence has clearly required the presentation of all required viewer advisories in both video and audio formats since the decision of this Panel in *Showcase Television re the movie Rats* (CBSC Decision 99/00-0772, August 23, 2001). Although, in that instance (and several other cases), the broadcaster had only provided an audio version of the advisory, the principle of both audio and video formats was established there. Moreover, a video-only presentation was found to be in breach in *TQS re two episodes of the program Sex Shop* (CBSC Decision 03/04-0162 & -0320, April 22, 2004), in which the Quebec Regional Panel explained that “by failing to provide all viewer advisories in both audio and video format, the broadcaster has done a disservice to its viewers and has breached Clause 11 of the *CAB Code of Ethics*.” The National Specialty Services Panel finds that the single-format advisory is also a breach of that clause as well as of Article 5 of the *Violence Code*.

## Broadcaster Responsiveness

In all CBSC decisions, the Council's Panels assess the broadcaster's responsiveness to the complainants. In the present instance, the Panel finds that the attempt of the broadcaster's COO to determine what the complainant's actual concern was (as a function of the CBSC's Codes) was genuine and fair, since he wished to reply to that very concern. When he had that information from the complainant, he did his best to focus on the issues that he assumed were material. Even the Panel was uncertain at the end of the day of what primarily concerned the complainant. In the end, the Panel is satisfied that OUTtv's COO did his best to respond fully and thoughtfully to the complainant and that OUTtv has entirely fulfilled its membership obligation of responsiveness in this instance. The foregoing being said, the Panel does find it odd that his response indicated an 18+ ratings icon had been applied when it was only a 14+ icon on the logger the broadcaster provided.

## ANNOUNCEMENT OF THE DECISION

OUTtv is required to: 1) announce the decision, in the following terms, once during prime time within three days following the release of this decision and once more within seven days following the release of this decision during the time period in which *L.I.E.* was broadcast, but not on the same day as the first mandated announcement; 2) within the fourteen days following the broadcasts of the announcements, to provide written confirmation of the airing of the statement to the complainant who filed the Ruling Request; and 3) at that time, to provide the CBSC with a copy of that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by OUTtv.

The Canadian Broadcast Standards Council has found that OUTtv's broadcast of the film *L.I.E.* on May 27, 2010 breached provisions of the Canadian Association of Broadcasters' *Violence Code* and *Code of Ethics*. By failing to provide viewer advisories that referred specifically to coarse language, sexual content and violence, and by failing to provide advisories in both audio and video formats, both being requirements that assist viewers in making the necessary viewing choices for themselves and their families, OUTtv has breached the viewer advisory requirements set out in Clauses 11 of the *CAB Code of Ethics* and Article 5 of the *CAB Violence Code*. In addition, by failing to show the classification icon at the beginning of the second hour of the film, OUTtv has breached Article 4 of the *Violence Code*.

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

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## APPENDIX

### CBSC Decision 09/10-1703 Out TV re *L.I.E.*

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#### The Complaint

The CBSC received the following complaint via e-mail on May 28, 2010:

Last night:

TV movie *L.I.E.* was shown at 8:00 pm (CST) on OUTtv.

To my knowledge child pornography is still illegal. The premise of the show was of an ex-marine seducing a young boy, propositioning him for oral sex, etc.

I hope you get lots of complaints for this channel teaching vile acts on a child. We make laws against sexual predators and then use TV to teach predators how easily [*sic*] it is to seduce the innocent.

Please take action!

The broadcaster wrote to the complainant on June 21:

Dear [complainant],

Prior to providing a full response to this complaint, can you kindly provide us with the specific section of the CBSC rules which you feel have been violated by this feature film. It is not clear from your complaint.

Chief Operating Officer, OUTtv

The complainant replied that same day by simply citing Clause 2 of the *CAB Code of Ethics*:

Clause 2 – Human Rights

Recognizing that every person has the right to full and equal recognition and to enjoy certain fundamental rights and freedoms, broadcasters shall ensure that their programming contains no abusive or unduly discriminatory material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status or physical or mental disability.

#### Broadcaster's Response

OUTtv then provided a more fulsome reply dated June 21:

Dear [complainant]:

We write in response to your complaint concerning the feature film *L.I.E.*, which OUTtv broadcast at 9:00 pm EST on May 27, 2010 preceded by a warning of its mature subject matter and with an 18+ V-Chip rating.

This multiple award-winning movie, produced in 2001, did garner some controversy due to the difficult subject matter. However, we feel that it deals with that subject in a straightforward, non-judgmental way. The topic requires **understanding** – not **acceptance** – since it is something that is going on all the time. We feel that both parents and teenagers could benefit by watching this film.

In the movie, the 15-year-old protagonist finds himself completely without guidance and is acting out by hanging out with a “bad” crowd and breaking into houses. When his friend persuades him to break into a specific house, they’re almost caught, leaving behind a piece of evidence that leads the ex-Marine owner of that house to track them down. “Big John” is a complex person and one who can still feel shame for the feelings he has for adolescent boys. Over time, as John gets to know Howie more personally, he sees similarities between Howie and his adolescent self, and when the opportunity finally presents itself for him to have sex with the teen, he makes the right decision. In doing so, John becomes, in Howie’s eyes, more of a father figure than Howie’s own father.

You may be uncomfortable with a partially sympathetic portrayal of a sexual predator, but that does not invalidate the film’s potential value as a teaching tool. How can society solve a problem such as this, when it won’t even talk about it or attempt to understand it?

You have indicated that you consider that, in airing this film, we have breached the terms of Clause 2 of the Canadian Broadcast Standards Council *Code of Ethics*. We are confused by this. Clause 2 was included in the *Code of Ethics* to prevent the broadcast of programs that discriminate against or are unduly abusive or hateful against one group or another, on the basis of race, national or ethnic origin, religion, age, sex, sexual orientation, marital status or physical or mental disability. This film does neither.

Even if you interpret the word “abusive” in Clause 2 to mean the portrayal of a specific form of abuse (i.e. sexual abuse), which we certainly do not, there is no such abuse portrayed in the film. There is a potential for abuse to have occurred, but it in fact did not in the particular case of the protagonist. Any other abuse that you may have flagged is implied rather than overt. This film does not celebrate these issues, but serves as a warning. We believe that any person who has viewed the film would clearly understand this.

We stand behind this film, which is a remarkable one, and our decision to license it, and will continue to air it, after 9:00 pm EST at our discretion. We have attached some reviews of the film, as well as a list of awards it has won for your consideration.

## **Additional Correspondence**

The complainant wrote back to the CBSC on June 22:

I still feel this is completely wrong and unacceptable!

The clip I saw was a young boy being asked if he ever had a BJ by the ex-marine and in the background x-rated movies were playing ...I feel for the child that was asked to play this part.

It concerns me that this was allowed on TV before 10:00.

If the rating showed a warning about adult content, how come the boy was not an adult. (I never saw a warning).

This channel should be pay-per-view, but better yet blocked.

The complainant also sent a short note to the broadcaster on June 22:

Your response is confusing – can you explain these two questions:

Why is this a valuable teaching tool?

What is the lesson being taught?

The CBSC is not aware if the station responded to that e-mail, but it was under no obligation to do so under CBSC membership requirements.