

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 5/91

Dated the 15th day of March 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

ANNA COFFEY

of Auckland

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

DECISION

Introduction

The film "The Big Doll House", which screened on TV2 at 11.35 pm on 30 November 1989, was described by the *Listener's* film critic, in the 27 November 1989 issue, as follows:

Ultra-tacky made-in-the-Philippines sexploitation film about a brutal warder and the bimbos in cages that he torments. Finally, the women get tired of having their clothes ripped off and take revenge with machine-guns. This film re-launched an entire genre of soft-core prison S & M movies, including Jonathan Demme's *Caged Heat*. Yuk.

Ms Coffey's Complaint to Television New Zealand Limited

Ms Anna Coffey considered that the film depicted the gratuitous sexual torture of young women and, on 4 December 1989, wrote to Television New Zealand Limited complaining that such depiction breached statutory requirements of good taste. She sought copies of the relevant statutory and other provisions governing the broadcast of this sort of material, together with an explanation as to why the broadcast of the film was not in
the breach of those provisions.



In an interim acknowledgement dated 11 December 1989, Mr Peter Fabian, TVNZ's Programme Standards Manager, said that he was enclosing a copy of the relevant standards provisions of the Broadcasting Act 1989 and the Codes of Broadcasting Practice for Television. He also explained that "... to answer the questions you raise, it will be necessary to call in the programme for assessment ..." and that Ms Coffey could expect to receive answers in the New Year.

Following a "prodding" by Ms Coffey, Mr Fabian provided her with his assessment in a letter dated 16 March 1990. In apologising for the delay, Mr Fabian explained that the videotape had not turned up and he had only just received a dubbing of it. He then noted that while he had difficulty in finding any merit in the film there would nevertheless have been a few viewers who would have been entertained by it. He went on to say that:

In spite of its screening I regard the fact that it was accepted for transmission to be one of those marginal or borderline decisions. In my view many would consider it contrary to statutory standards provisions. I myself have very serious doubts about it.

May I say I share your concerns about the film and consider your bringing to our attention your genuinely held views of concern was fully justified.

I will be having discussions with our programmers and appraisers in the hope that such sadistic and dubious material is substituted for [sic] something of a better standard in the future. I shall certainly be taking steps to try to ensure there is no repeat screening.

On receipt of this letter, Ms Coffey decided to pursue the matter further by elevating her informal complaint to the status of a formal complaint under the Broadcasting Act 1989. She therefore replied immediately to Mr Fabian alleging that the broadcast of gratuitous scenes of sexual torture and violence against women breached standards of good taste and decency.

TVNZ's Response to the Formal Complaint

TVNZ's Complaints Committee gave preliminary consideration to Ms Coffey's formal complaint at its April meeting and, at its following meeting on 28 May 1990, upheld the complaint. After apologising for the delay in advising Ms Coffey of the decision, caused by "... a reordering of priorities due to somewhat exceptional circumstances ..." and a desire to give a "... proper explanation of the Committee's findings and notification of action which has been taken ...", Mr Fabian advised Ms Coffey, in a letter dated 20 June, that her formal complaint had been upheld as having breached the obligation placed on broadcasters by Programme Standard 2 of the Codes of Broadcasting Practice for Television. That Standard reads as follows:

In the preparation and presentation of programmes, broadcasters are required:



2. To take into consideration currently accepted norms of decency and taste in language and behaviour, bearing in mind the context in which any language or behaviour occurs.

It was explained to Ms Coffey that the Committee had acknowledged the validity of the points she had made about the unacceptable nature of the material. The Committee had then focused its attention on how the movie had "got-to-air" and why it had not been rejected outright by TVNZ's Programme Appraisers. The letter continued:

[T]he Appraiser who assessed the programme was in serious doubt about its suitability for television screening. But because a number of late night horror-type films had gone to air about that time, without causing any adverse viewer reaction, it was classed as being in the dreadful but marginally acceptable category for late screening ...

The film was one of a number purchased in a package lot with rights for two screenings. The Committee were in agreement with the reservations I expressed in my letter to you of 16 March. It was agreed the programme did not meet the requirements of the standards code in question ...

Action has been taken to ensure that the programme does not have a repeat screening. The company's appraisers have been made aware of the fact that this type of sadistic material is not suitable for screening by Television New Zealand Limited.

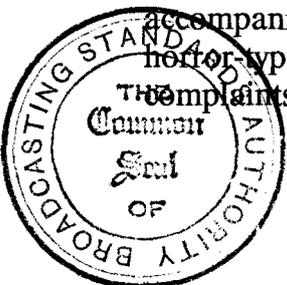
Ms Coffey's Referral of the Complaint to the Broadcasting Standards Authority

Ms Coffey was dissatisfied with the "action" taken by TVNZ and wrote to the Authority seeking advice on the procedures to be followed in referring her complaint to the Authority for investigation and review. She considered TVNZ's handling of her complaint as evidence of a cavalier attitude and mentioned that she had only just received a copy of the Codes of Broadcasting Practice for Television.

In a Complaint Referral Form dated 5 July, Ms Coffey formally asked the Authority, pursuant to section 8(a) of the Broadcasting Act 1989, to investigate and review the action taken by TVNZ. She considered TVNZ's broadcasting of the film, knowing its contents, to have been contemptuous of standards of good taste and decency. In light of this, the "action" taken by TVNZ in upholding her complaint was insufficient since it:

... primarily involved making Appraisers aware of standards of which they were already aware. In real terms, this does not constitute any action in response.

Ms Coffey also remarked that a "theme of justification" for having broadcast the movie accompanied the upholding of her complaint, in that Mr Fabian had mentioned that horror-type movies - a different genre, in Ms Coffey's view - had not attracted similar complaints.



Ms Coffey's complaint was referred to TVNZ for a response on 11 July 1990.

TVNZ's Response to the Authority

In a response dated 11 September, Mr Fabian defended the company's action in making its Appraisers aware of the standards:

... the "making aware" terminology is something of a euphemism for a good old-fashioned dressing down! As such, it is submitted it was significant action.

As to Ms Coffey's second cause of dissatisfaction, the theme of justification, Mr Fabian maintained that this was taking matters too far. His reference to horror-type movies not having attracted similar complaints had been proffered as a courtesy, as a frank explanation of " ... the viewpoint given to the Committee for the Appraiser not taking the positive steps of recommending outright rejection".

Mr Fabian also drew attention to what he called the " ... most prime or salutary action taken", namely taking the movie off-air, which ensured there would be no repeat screening. He continued:

The purchase contract for the package, which included this film, was for two screenings This meant that the action taken to "pull" the programme cost TVNZ \$NZ6896 approximately This [is] a considerable penalty to pay for what the company considered to be an exceptional error of judgement on the part of the appraiser

Alluding to the delays that had accompanied the processing and determination of Ms Coffey's complaint, Mr Fabian commented that:

In the first instance, before the matter became a formal complaint, it is acknowledged that there was an unacceptable delay due in part to the Christmas-New Year holiday period, and the fact that the VHS tape could not be traced and a new dubbing had to be made once I had been alerted to the fact that the tape had not been found.

It should be made clear that the complainant would have received an earlier reply concerning her formal complaint if it was not for the fact that the Complaints Committee only part-heard the complaint in the first place, and adjourned the matter till the following month's sitting pending the obtaining of further information. A further problem arose due to a reordering of priorities in the wake of a contentious "Frontline" programme.

Finally, Mr Fabian rejected the allegation that a cavalier attitude had been taken by the company. He also noted that he found it surprising that Ms Coffey only received a copy of the Codes on 28 June 1990, given that he had enclosed a copy with his letter of 11 December 1989.



Mr Fabian's letter was referred to Ms Coffey for a brief, final comment on 12 September 1990.

Ms Coffey's Reply to the Authority

In a reply dated 14 September, Ms Coffey made three main points.

First, TVNZ's claim that by not rescreening the movie the company had suffered a financial penalty, was "distinctly spurious". TVNZ did not choose to drop the programme out of a desire to inflict a financial penalty upon itself; it did so because to have given it a second screening would have been to act in contravention of the provisions of the Broadcasting Act 1989 and Programme Standard 2.

Secondly, Ms Coffey denied ever having received the copy of the relevant Codes which Mr Fabian had stated he was enclosing with his letter of 11 December 1989. She considered that TVNZ took advantage of her ignorance and, from the outset, could have acquainted her with the Codes and with information about the distinction between informal and formal complaints.

Thirdly, Ms Coffey considered that TVNZ "... could have acted most acceptably in ways that I would have considered adequate." She was willing to outline her thoughts on this to Mr Mounter, TVNZ's Chief Executive, and had in fact tried to contact him to that end. She remained hopeful that a dialogue might yet take place as there were "... some constructive options to be discussed".

As Ms Coffey's letter had raised a new issue - the proposed meeting - it was referred to TVNZ on 21 September for comment.

TVNZ's Reply to the Authority

Mr Fabian replied to the three main points raised by Ms Coffey in a letter dated 12 November.

First, he acknowledged that much of what Ms Coffey had said about the legality of a second screening had substance. But it had to be remembered "... that had the programme been rejected in the first place there would have been no cost to the company, but because it had one playing, and a second one had been paid for as part of the contractual agreement, it meant that the \$6896 was irrecoverable".

Secondly, with regard to the supplying of the Codes, Mr Fabian pointed out that his letter of 11 December had specifically stated that a copy of the Codes was enclosed - if they had been inexplicably omitted, Ms Coffey never mentioned it in subsequent correspondence. Further, TVNZ firmly denied that the company took advantage of her ignorance - after Ms Coffey had said that she wanted her complaint to be treated as a formal complaint, Mr Fabian had advised her that it would be assessed under Programme Standard 2 of the Codes. As she had already been sent a copy of the Codes,



" ... it was assumed she knew what was involved".

Finally, with regard to the proposed dialogue, Mr Fabian suggested that since he was responsible for censorship, and is in Auckland at least once a month, he might be better placed to discuss options with Ms Coffey, especially given that the Chief Executive had not seen the programme and had not been closely involved with the complaint. As he would be in Auckland on 28 November, Mr Fabian suggested a meeting with Ms Coffey on that date.

A copy of Mr Fabian's letter was sent to Ms Coffey on 14 November asking whether she would be amenable to meeting Mr Fabian on the date suggested.

The Authority finally received a reply from Ms Coffey on 15 February 1991 in which she explained that she had been overseas since early November. As she was now anxious to finalise the complaint, she declined the opportunity to meet Mr Fabian.

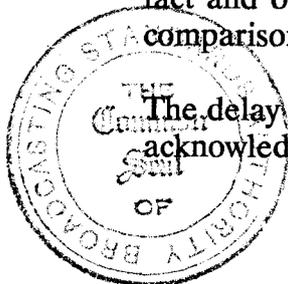
Decision

As TVNZ Ltd upheld Ms Coffey's formal complaint, the Authority is not required in this Decision to make a determination on the substance of her complaint, i.e. the allegation that the broadcast of "The Big Doll House" breached standards of good taste and decency. The only matter that falls to be determined is whether the action taken by TVNZ in upholding that complaint was adequate and reasonable in the circumstances. In order that this question be addressed in its fullest sense, however, the preceding summary of correspondence has been set forth in more detail than would normally be required in a decision which does not involve a substantive determination.

It is apparent from the correspondence that Ms Coffey's complaint went through two distinct phases before reaching the Authority. Initially, her complaint was regarded by TVNZ as an informal one. Upon receiving, more than three months after making her complaint, a substantive response from TVNZ, Ms Coffey wrote back to the broadcaster elevating the status of her complaint to that of a formal complaint under the Broadcasting Act 1989. A further three months elapsed before Ms Coffey was advised that her formal complaint had been upheld. Ms Coffey then approached the Authority, and further correspondence followed with both TVNZ and Ms Coffey. As a result of further delays, almost exclusively on the part of TVNZ, the Authority was not in a position to give preliminary consideration to the complaint until its meeting in mid-November 1990.

This complaint therefore took almost a year to be processed. While some other complaints that have come before the Authority have taken a lengthy period, they have concerned matters of substance, often involving detailed argumentation on matters of fact and on points of law. This is not the case with Ms Coffey's complaint which, by comparison, is relatively straightforward.

The delay in responding substantively to Ms Coffey's initial and informal complaint was acknowledged by TVNZ as being "unacceptable". The Authority would go further - it



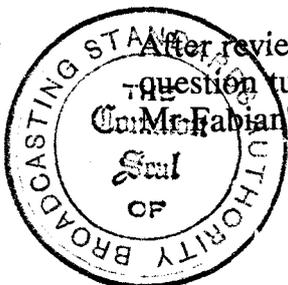
was also contrary to the spirit of at least one of the principles listed in section 5 of the Broadcasting Act 1989. In running counter to the admonition contained in s.5(h) - which states that "The first consideration of a complaint should be prompt and without undue formality" - TVNZ evidenced an unconscionable disregard for one of the basic principles which underpin the complaints regime laid down in the Act.

The further delays that took place after Ms Coffey had lodged her formal complaint also lie primarily at the feet of TVNZ. While acknowledging that the Authority had asked TVNZ to give priority to certain, more serious, complaints arising out of the Frontline programme "For the Public Good", it was not envisaged by the Authority that Ms Coffey's complaint would, with others, be relegated by TVNZ to the back-burner for such a long time. If TVNZ's internal complaints-handling system is to be sufficiently flexible to cope with any future re-ordering of priorities, whether or not sought by the Authority, or with any increase in the number of formal complaints lodged with the company, it may well be that its procedures and/or staffing requirements need to be reviewed. Either that, or the Authority will have no alternative other than to seek the imposition of time-limits on responses.

Before turning to the "action" taken by TVNZ after upholding Ms Coffey's complaint, the Authority will address other aspects of the allegation that the company, through its employees, adopted a "cavalier" attitude towards her complaint. Apart from the above-mentioned delays, these include the Company's failure to inform the complainant of the difference between informal and formal complaints and to provide information about the Codes of Broadcasting Practice for Television. After reading all the correspondence, the Authority can understand why Ms Coffey feels that TVNZ took advantage of her ignorance. Although her initial complaint appeared to be informal, the fact that Ms Coffey specifically requested copies of the relevant statutory provisions concerning good taste and decency - a statutory ground for a formal complaint - should have alerted TVNZ to provide Ms Coffey with information about, for example, the distinction between informal and formal complaints. The Authority understands that TVNZ would now respond to an initial complaint such as Ms Coffey's by sending the complainant a copy of the Authority's pamphlet which summarises complaints procedures and explains the distinction between informal and formal complaints. This pamphlet was still being printed when Ms Coffey's initial complaint was received by TVNZ, but the information contained therein nevertheless could, and should, have been made available to Ms Coffey. The failure to do so is evidence of a less than proper and, to this limited extent, somewhat "cavalier" response by the broadcaster. With regard to the non-provision of information about the Codes, the Authority is of the view that because Ms Coffey took no action to inform TVNZ that the copy of the Codes was missing from the enclosures to its letter of 11 December 1989, her allegation that the company was remiss in not providing this information cannot be sustained.

As earlier stated, the crux of the complaint is whether the action taken by TVNZ in upholding the complaint was adequate and reasonable in the circumstances.

After reviewing the correspondence, the Authority has concluded that the answer to this question turns upon whether TVNZ should have done more than administer, to adopt Mr Fabian's term, a "dressing-down" to the Programme Appraiser whose wayward action



or, more properly, inaction, resulted in the broadcast of "The Big Doll House". The Authority accepts that the broadcast was the result not of some sinister plan to foist B grade sexploitation movies upon an unsuspecting public or of a slackening of standards, but of the ineptitude of a Programme Appraiser. The fault lay not in the system, but with one of its staff. In the circumstances, the "dressing-down" of the staff member concerned was entirely appropriate. If that Programme Appraiser, and others, have been reminded of the need for constant vigilance in maintaining standards of good taste and decency, the viewing public can only benefit in the long run. The Authority has accordingly concluded that the "dressing-down" action taken by TVNZ in upholding the complaint was adequate and reasonable in the circumstances.

For the foregoing reasons, the Authority declines to uphold the complaint.

The Authority notes that it has placed no weight at all on the submission that TVNZ suffered a financial penalty as a result of not screening the movie a second time. As Ms Coffey has pointed out, to have given it a rescreening would have been to breach the statute and the Codes. Had the Programme Appraiser concerned done his or her job properly in the first place, the modest purchasing costs would never have been incurred.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



15 March 1991