

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 1/92

Dated the 10th day of February 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

L.J. COWAN
of Invercargill

Broadcaster
TV3 NETWORK SERVICES
LIMITED

I.W. Gallaway Chairperson
J.R. Morris
R.A. Barraclough
L.M. Dawson

DECISION

Introduction

"69 Positions in 60 Seconds" was the title of an item shown by TV3 Network Services Ltd on its news programme, *Nightline*, on the evening of 2 August 1991. It showed a couple in bed in night attire and it began with the man fondling and kissing the woman's breasts and then groping under her nightie. The film was speeded up considerably and, in fast forward mode, it showed the couple stripping and apparently adopting many different positions for sexual intercourse. The film returned to normal speed and it depicted the couple back in bed with the man dropping off to sleep and the woman reading her book.

Mrs Cowan complained to TV3 that the item breached the broadcasting standard requiring good taste and decency. Some two months later, TV3 advised Mrs Cowan that its Complaints Committee declined to uphold her complaint principally because of the time of the item's broadcast and the age composition of the audience.

As Mrs Cowan was dissatisfied with TV3's decision, she referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.



Decision

The members of the Authority have viewed the item complained about and have read the correspondence (summarised in the Appendix).

The Authority is aware of the publicity which the broadcast of the item complained about evoked at the time. While taking cognisance of the differing views expressed, the Authority has confined its consideration to an assessment of the item against the broadcasting standard allegedly breached.

Broadcasters are required, under s.4(1)(a) of the Broadcasting Act 1989, to maintain in their programmes standards which are consistent with the observance of good taste and decency. The Authority has adopted the following interpretation of that phrase (Decision No: 2/90):

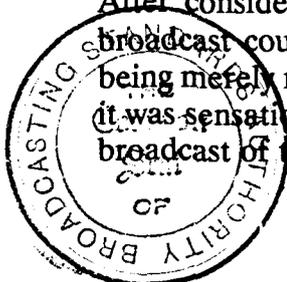
In the Authority's view, the concept of good taste and decency in a given situation or context pertains to conformity with such standards of propriety as the Authority considers to be in accord with generally accepted attitudes, values and expectations in New Zealand society.

With regard to the item in question, the Authority accepts TV3's point that the item screened late in the evening, that audience research indicated no discernible child audience and that *Nightline* has a reputation for broadcasting challenging and sometimes risqué material. Acceptance of this last argument of course does not involve agreeing that the item in question did not cross the boundary between a risqué broadcast and one which breached the standards. The Authority therefore has the responsibility of deciding in this case whether that boundary was in fact crossed.

TV3 also argued that the approach to the broadcast was light-hearted and related to a preceding item about a 92 year old man who had fathered a child. The Authority considered that the link between the preceding item about the elderly father and the contentious item was tenuous and, indeed, was contrived. It agreed that the approach was light-hearted but, as Mrs Cowan noted, after the broadcast one presenter said "I don't believe we played that" and the other added "But only once". Those comments indicated that the presenters, at least, were aware that it had been questionable, if not irresponsible, to broadcast the item.

TV3 also argued that the item did not portray specific sexual activity. To the extent that the item did not display genitalia and its speed made it difficult to ascertain exactly what position was being depicted, the Authority would agree. However, because of the item's content and the normal speed at which the item began and finished, the viewer knew exactly that sexual activity was being portrayed.

After considering the arguments, the Authority had no doubt in concluding that the broadcast could not be described as "just a giggle" and that, in fact, it moved beyond being merely risqué. The circumstances in which the item was broadcast were contrived, it was sensationalist and it was explicit about what was being portrayed. The gratuitous broadcast of the item displayed such bad taste that the Authority considered that it did



not correspond with the generally accepted attitudes and values in New Zealand society and thus it did in fact cross the boundary previously referred to.

Given the context in which the item was broadcast, such as the absence of any discernible child audience and the hour at which the broadcast took place, the Authority concluded that it was inappropriate to impose an order under s.13(1)(a) of the Act directing that the broadcaster make any statement relating to the complaint.

For the reasons set forth above, the Authority upholds the complaint that the item's broadcast breached s.4(1)(a) of the Broadcasting Act 1989.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



10 February 1992

Appendix

Mrs Cowan's Complaint to the TV3 Network Services Ltd

In a letter dated 6 August 1991, Mrs Cowan complained to Television New Zealand Ltd about an item on TV3's *Nightline* on 2 August. She described the item as filth which was addictive and which desensitised and dehumanised people, adding that it breached s.4 of the Broadcasting Act 1989.

TVNZ apparently forwarded the letter to TV3 Network Services Ltd but Mrs Cowan repeated her complaint in a letter to TV3 dated 1 September 1991.

TV3's Response to the Formal Complaint

In a letter dated 17 October 1991, TV3 advised Mrs Cowan of its Complaints Committee's decision. It made the following points:

- * the item was broadcast at about 11.30pm
- * audience research disclosed no discernible child audience at that time
- * "*Nightline's* reputation for presenting bold, challenging and sometimes risque material on late night television is well established with viewers, who must accept some responsibility in choosing whether or not they wish to watch a late night programme of this type."
- * a light-hearted approach was adopted and the item was related to the preceding story about a 92 year old man who had fathered a child
- * the item did not involve specific sexual activity.

The Committee, arguing the item was presented in a humorous context for an adult audience, declined to uphold the complaint.

Mrs Cowan's Complaint to the Broadcasting Standards Authority

As Mrs Cowan was dissatisfied with TV3's response, in a letter dated 29 October she referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989. She complained that the item did not meet the broadcasting standard requiring good taste and decency.

She elaborated on her complaint in the Complaint Referral Form where she observed that the two presenters were shocked and one had said "I don't believe we just showed that".



She concluded:

It seems to me that those in authority do not listen to the public and the time it takes for anything to be done is ridiculous. Can you honestly tell me that someone somewhere does not have a secret agenda in mind to destroy society with filth that we don't want or need, not only on TV but in magazines. If not, how about cleaning up all the TV channels and give the public of New Zealand a fair go. How about exposing the faceless people who are responsible for screening these filthy movies.

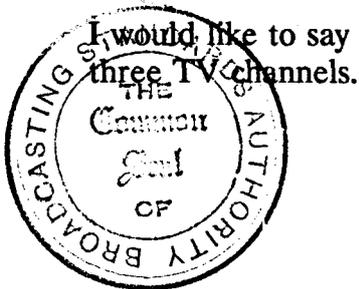
TV3's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. The request is dated 4 November 1991 and TV3's reply is dated 12 December.

TV3 stated that it repeated the points made in its 17 October letter to Mrs Cowan. In addition, it noted that Mrs Cowan's complaint seemed to be based on press reports rather than having seen the programme. It objected to Mrs Cowan's comment (quoted above), describing it as an outrageous allegation, and requested that the Authority confine its consideration to the issues noted in its 17 October letter.

Mrs Cowan's Final Comment to the Authority

When asked for comment on TV3's response, in a letter dated 7 January 1992 Mrs Cowan objected strenuously to TV3's comment that her complaint was based on press reports. She said that she had attached the press report to her complaint to emphasise her concern. She said:



I would like to say again people are fed up round here with the filth on all three TV channels.