

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 43/91

Dated the 20th day of September 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

Mr C.G. COSTELLO

of Wellington

Broadcaster

PIRATE 99FM

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

DECISION

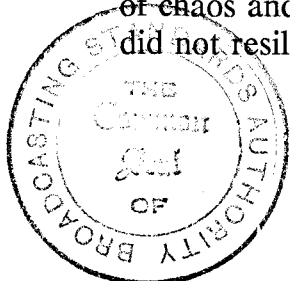
Introduction

Tuesday 2 April 1991 was the final day of operation for Wellington's radio station Pirate 99FM. During the last hour, between 11.00pm and midnight, the station broadcast a "joke" comparing women with dog excrement and referred to some politicians and Government officials in obscene terms.

In a letter dated 11 April, Mr Costello complained to Mr Derek Archer, the owner of the station. He said that the final evening's broadcast breached the provisions of the Broadcasting Act 1989 which require broadcasters to maintain standards consistent with the observance of good taste and decency.

Mr Costello did not receive a reply to his letter and after 80 working days had elapsed since the broadcast complained about, in accordance with s.8(b) of the Broadcasting Act 1989 he referred his complaint to the Broadcasting Standards Authority.

When contacted by the Authority, Mr Archer expressed his disgust at the dog excrement "joke". He added that the final broadcast was an emotional time, that it was a situation of chaos and although he could not remember calling the Government "shit-heads", he did not resile from that opinion.



## Decision

The members of the Authority have studied the correspondence (summarised in the Appendix) and have listened to a tape of the final hour of Pirate 99 FM's broadcast on 2 April 1991. It was the station's final hour of operation and a tape was made available by the Radio Frequency Service.

Mr Costello's complaint has been considered by the Authority under s.4(1)(a) of the Broadcasting Act 1989 which requires broadcasters to maintain standards which are consistent with:

- (a) The observance of good taste and decency.

Mr Costello, while making the point that he was "a man of the world", objected to the pollution of the airwaves by Pirate 99FM on the evening of 2 April. He mentioned specifically:

1. the "joke" comparing women with dog excrement;
2. the use of the word "fuck"; and
3. describing the Government as "shit-heads".

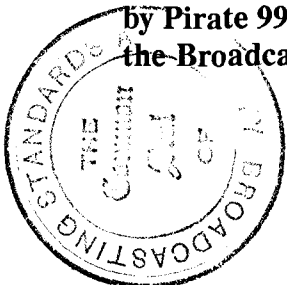
Mr Archer acknowledged in his letter of 19th July to the Authority that the "joke" was disgusting. He also said that he could not recall describing the Government as "shit-heads", but did not consider the description to be wrong. While broadcasting on 2 April, he acknowledged that the use of the word "fuck" was inapposite. He explained in his letter that the station's last hours were both chaotic and emotional and concluded with the sentence:

On behalf of the Staff of Pirate FM ... SORRY it happened.

Having listened to the tape and read the correspondence, the Authority agrees with Mr Costello that the broadcaster clearly breached the good taste and decency standard. Indeed, Mr Archer virtually admitted this in his letter to the Authority.

In regard to the broadcaster's explanation about chaos and emotion, Mr Costello pointed out that Mr Archer had lost control. The Authority agrees and adds that the broadcast was contrary to the public's justified expectations as to the degree of responsibility expected of a broadcaster. Although the Authority accepts that the broadcast could have been even more offensive had it not been for the total disorganisation surrounding it, it finds preposterous the notion that it was in some way appropriate to broadcast a party of the kind broadcast by 99FM during its final hours.

**For these reasons, the Authority upholds the complaint that the programme broadcast by Pirate 99FM on the evening of 2 April 1991 breached the requirement in s.4(1)(a) of the Broadcasting Act 1989 to maintain standards of good taste and decency.**



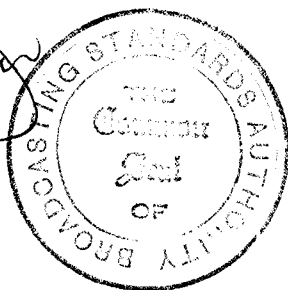
The Authority is empowered by s.13 of the Act to make an order when a complaint is upheld. The thrust of the available orders is directed at requiring the broadcaster to publish an approved statement. However, Mr Archer is no longer a broadcaster and the Authority has considerable doubts about the usefulness in the circumstances of requiring him to publish an approved statement, for example, in the press. Indeed, in anticipation of this very problem, ie. the usefulness of the sanctions in the Act when applied to a broadcaster which breaches the standards in its final days, the Authority proposed to the Ministry of Commerce some amendments to the Broadcasting Act for consideration during the Ministry's review of the Act.

In regard to the present complaint, the Authority upholds it, as is recorded above, but believes that, under the present legislation, there is apparently little more which can usefully be done. It acknowledges the apology in Mr Archer's letter and trusts that he is now aware that Pirate 99FM's broadcast on the evening of 2 April 1991 was totally irresponsible and in poor taste.

Signed for and on behalf of the Authority

*Iain Gallaway*

Iain Gallaway  
Chairperson



20 September 1991

## Appendix

### Mr Costello's Complaint to Pirate 99FM

In a letter dated 11 April 1991, Mr Costello complained about the good taste and decency of some of the remarks broadcast by Pirate 99FM late in the evening of 2 April 1991. He referred to a "joke" comparing women with dog excrement and the use of obscene terms when referring to Government officials and New Zealanders.

Potential libel actions, he noted, were the broadcaster's business, "but to pollute the public airwaves as you did on this occasion is cowardly and contemptible".

### Mr Costello's Complaint to the Broadcasting Standards Authority

As Mr Costello did not receive a reply from Pirate 99FM and as 80 working days had elapsed since the date of the broadcast complained about, on 11 July 1991 he referred his complaint to the Broadcasting Standards Authority under s.8(b) of the Broadcasting Act 1989. He said that he had sent his letter of complaint to the broadcaster's street address and had included his name and address on the envelope in case of non-delivery. As the letter had not been returned, he assumed that it had been received by Mr Archer.

He expanded on his complaints about the material which was broadcast - noting that the following were relatively mild examples:

What is the similarity between women and dog shit? The older it is, the easier to pick up.

Asking "Who the fuck cares for ZMFM?".

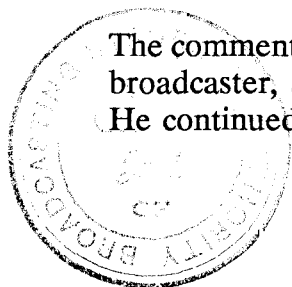
Calling politicians "shit-heads".

### Pirate 99FM's Response to the Broadcasting Standards Authority

Having obtained the home address of Pirate 99FM's owner (Mr Derek Archer), the Authority sought his response to the complaint.

Mr Archer replied promptly in a letter dated 19 July stating that he had never received Mr Costello's complaint. "The first rather belated knowledge of this matter was the receipt of your letter of 16 July". He said that the broadcast on the evening of 2 April had been the last for Pirate 99FM and there had been more than 60 people on the premises. He had been unable to find out who was responsible for the dog excrement comment which, he added, he found disgusting.

The comments about the Government officials, he recorded, were made by another non-broadcaster, although Mr Archer did not disagree with the sentiment they contained. He continued:



Other comments listed we cannot recall but for the record, it was absolute chaos, and a very emotional time for the twenty staff that had just been made redundant by a Government protection racket called "Tendering the airwaves to protect themselves and their friends". Long live free speech and free broadcasting, or we might as well roll the tanks in the streets.

He concluded:

I regret that this broadcast had to take place, and must apologise for the clear emotions that took control over common sense, but alas, Pirate 99FM is no more so C.G.Costello, J.P. can now only listen to Pam Corkery saying "Fuck" for thrills.

### Mr Costello's Final Comment to the Authority

Mr Costello was asked to comment on Mr Archer's response and his reply is dated 25 July 1991.

He made four points:

1. He did not accept Mr Archer's excuse, that of blaming non-delivery on NZ Post, for failing to reply to his letter of complaint.
2. He described himself as a man of the world and his reaction to the language would have been same if forced upon him by a stranger in a public place.
3. He had deliberately excluded comments about the tendering process from his complaint. However, he expected good taste and decency from all broadcasters.

4. "Mr Archer admits control was lost. It was his responsibility to not lose control".

