

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 45/91

Dated the 20th day of September 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

PATRICK MILLEN

of Otaki

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

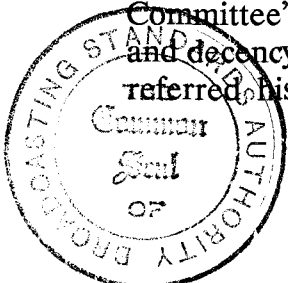
DECISION

Introduction

Jacqueline Stallone, mother of actor Sylvester Stallone, was interviewed on the *Holmes* programme on 22 April 1991 while in New Zealand to promote her book on astrology. During the interview, Mrs Stallone described Queen Elizabeth II as "an old bag" and "a selfish, greedy, militant zero". On the following day, 23 April, Mr Holmes again interviewed Mrs Stallone seeking an apology. In the interview shown on the *Holmes* programme on the 23 April, Mrs Stallone said that she was unrepentant.

In a letter of complaint to TVNZ Ltd, Mr Millen described the 22 April interview as being in poor taste and offensive to New Zealanders who held the Queen in high regard. He cited a number of broadcasting standards and provisions in the Broadcasting Act 1989 which, he alleged, were breached by the item's broadcast.

TVNZ's Complaints Committee upheld the complaint that the item was not in good taste and thus breached s.4(1)(a) of the Act but rejected the other grounds raised by the complainant. The Committee required the *Holmes* programme to broadcast a statement of its findings on 24 May. As Mr Millen was dissatisfied both with the Complaints Committee's decision not to uphold his complaint other than on the ground of good taste and decency and with the professional quality of the statement broadcast on 24 May, he referred his complaint to the Broadcasting Standards Authority under s.8(a) of the



Broadcasting Act 1989.

Decision

Background

The members of the Authority have studied the correspondence (summarised in the Appendix) and have viewed the three items complained about. The Authority believes that the following description of the sequence of events will assist in understanding its conclusions on the matters raised.

Mrs Jacqueline Stallone, an American astrologer and mother of actor Sylvester Stallone, was interviewed live by Mr Paul Holmes on the *Holmes* programme, broadcast by TV1, on 22 April 1991. During the interview, Mrs Stallone spoke of her dislike for Queen Elizabeth II describing her, amongst other terms, as "an old bag".

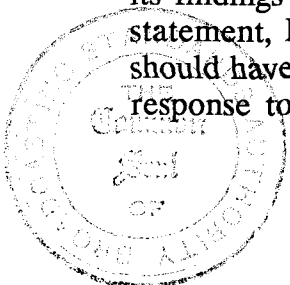
The programme was the subject of a formal complaint by Mr Millen. He cited a number of standards from the Broadcasting Act 1989 and the Television Code of Broadcasting Practice which he alleged had been breached. In summary, the complaint claimed that the broadcaster failed to observe good taste and decency (s.4(1)(a)), failed to deal justly and fairly with the Queen (standard 4), failed to show balance, impartiality and fairness (standard 6), and failed to present other significant points of view (s.4(1)(d)).

The *Holmes* programme on 23 April disclosed that a number of viewers had complained directly to TV1. As a result, an item was broadcast showing Mr Holmes interviewing Mrs Stallone earlier on that day in order to seek an apology or retraction. She declined to give either.

Mr Millen complained that this interview compounded Mr Holmes' errors from the previous evening as he had allowed Mrs Stallone "to repeat her diatribe".

TVNZ's Complaints Committee upheld Mr Millen's complaint that the broadcast on 22 April had breached the good taste and decency requirement in s.4(1)(a) of the Act, although the breach was unintentional. However, it declined to uphold the complaint on any other grounds, arguing that the broadcast on 23 April achieved the fairness and balance which might have been lacking from the first interview. The Committee directed that its findings be broadcast on the *Holmes* programme on 24 May.

As Mr Millen was dissatisfied that his complaint was not upheld on any ground other than good taste and decency, he referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989. Under the same provision, he also complained that he was dissatisfied with TVNZ's actions after upholding his complaint on the ground of good taste and decency. The Complaints Committee had directed that its findings be broadcast on the *Holmes* programme on 24 May. When reading the statement, Mr Holmes had used the word "maybe" after reporting the finding that he should have challenged more vigorously Mrs Stallone's comments about the Queen. In response to that aspect of Mr Millen's complaint, TVNZ advised the Authority that



"maybe" had been used as a "bridge-building" word, in the sense of "maybe that's right", rather than in the sense of "perhaps" as suggested by Mr Millen.

Item on 22 April

The Authority first examined the item broadcast on 22 April. It noted that the item was a live interview with an opinionated and rather brazen interviewee. TVNZ's Complaints Committee concluded that this broadcast breached s.4(1)(a) - the good taste and decency requirement - and this aspect of the item has not been considered further.

The Authority concluded, for the reasons advanced by TVNZ, that the item did not breach standards 5, 12, 14 and 17 of the Television Code of Broadcasting Practice. (These standards, and TVNZ's reasons for declining to uphold a breach of them, are dealt with on pages i and ii of the Appendix). The Authority also concluded that the 22 April item did not breach s.4(1)(b) of the Broadcasting Act 1989 which requires broadcasters to maintain standards consistent with the maintenance of law and order. Again, the Authority agreed with TVNZ's explanation that Mrs Stallone's comments did not amount to sedition.

Mr Millen stated also that the item breached s.4(1)(d) of the Broadcasting Act 1989 and standards 4 and 6 of the Television Code of Broadcasting Practice. Section 4(1)(d) of the Act requires standards consistent with:

- (d) The principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest.

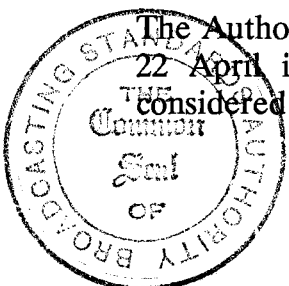
The standards require broadcasters:

- 4 To deal justly and fairly with any person taking part or referred to in any programme.
- 6 To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a political nature.

With regard to the item, TVNZ advised Mr Millen that Mr Holmes was taken by surprise by Mrs Stallone's vehement comments about the Queen. In its report to him, TVNZ wrote:

In hindsight the Committee considered that it would have been preferable had Paul Holmes, at this point, challenged what Mrs Stallone had just said instead of carrying on with a different line of questioning.

The Authority agreed with that observation. However, it deferred any decision on the 22 April item's conformity with the relevant broadcasting standards until it had considered the effect of the 23 April item which, TVNZ claimed, cured any defect (other



than good taste and decency) in the earlier item.

Item on 23 April

The item on 23 April involved a second interview with Mrs Stallone in which she declined to apologise or retract her comments broadcast on the previous evening. Unlike the "live" interview on the previous evening, the interview broadcast on 23 April had been recorded earlier in the day. Mr Millen advised the Authority that he accepted that live interviews involved some professional risks. However, in his opinion the presentation of a recorded interview increased TVNZ's responsibilities to comply strictly with the standards. The Authority agreed with this observation. With regard to the reasons for the second interview, TVNZ recorded in its letter to Mr Millen:

... it was acknowledged that the remarks concerned New Zealand's Head of State and one who many regard with the utmost respect. For a New Zealand audience it appeared to the Committee to be somewhat over the top. This was obvious from the vehement reaction encountered at the TVNZ switchboards around the country.

In its letter to the Authority, TVNZ wrote:

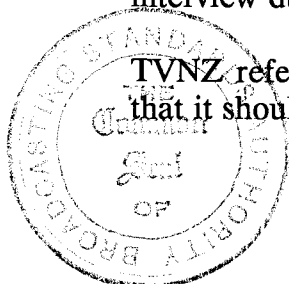
Taking the balance and fairness aspect first, the company believes that by setting out to remedy the situation the next day a genuine attempt was seen to have been made to achieve balance and fairness. The fact that the implementation of the remedial action may have been imperfect in the eyes of the complainant does not, it is submitted, mean that the intent of code 6 was not substantially fulfilled. As for the way the interview was conducted, the Committee agreed with the complainant that it would have been desirable had Mrs Stallone been challenged more vigorously during the first interview. But it was the attempted putting right action, it is submitted, that dissipates the jeopardy of a code 6 breach.

It continued:

Whether or not the second interview with Mrs Stallone should have gone to air or, instead, a simple announcement of unrepentance be broadcast, as suggested by the complainant, is a debatable point. The fact is that television is a visual medium and seeing Mrs Stallone ducking an apology would surely be testimony for viewers as to the nature of the individual rather than the performance of the interviewer, or the correctness or otherwise of the action being taken.

In arriving at its decision, the Authority was required to decide whether the effort to obtain an apology was sufficient. It agreed with TVNZ that the second interview highlighted Mrs Stallone's questionable qualifications as an interviewee and, moreover, raised the question of whether she merited, in the first place, the previous evening's interview during an hour purportedly set aside as TV1's "news hour".

TVNZ referred to Mr Holmes' performance during the second interview and implied that it should be put to one side. The Authority ignored that inference as it considered



Mr Holmes' fatuous manner to be relevant to its decision. Had the interview been conducted in a serious manner, the Authority might have been inclined to accept TVNZ's submission that the item provided, first, the opportunity to present other significant points of view, and secondly, the balance and fairness required by the standards. However, in view of Mr Holmes' light hearted approach, the second interview principally provided a platform for Mrs Stallone to repeat her comments.

There were a number of other ways that the *Holmes* programme could have met the broadcasting standards. It could have interviewed a representative from the United States Embassy or in fact one of many Americans who would have been available to counter Mrs Stallone's attitude to the Queen. This opportunity was not attempted but TVNZ should have given it to others if its purpose was to provide a balancing interview. Indeed, it would have been adequate to make a simple statement regretting the fact that Mrs Stallone's comments had distressed viewers and mentioned that it had attempted, without success, to obtain an apology from her. The way it was done, however, not only exacerbated Mrs Stallone's remarks from the previous evening but also confirmed her attitude and provided an opportunity for sensational, rather than responsible, journalism. TVNZ has stated that it was debatable whether or not the second interview should have gone to air. The Authority does not consider that it was.

In these circumstances, the Authority did not agree with TVNZ's submission that the broadcast on April 23 met the standards brought into question by the 22 April item for the presentation of other significant points of view and for balance and fairness, required as a result of the previous evening's item. The Authority concluded that, contrary to TVNZ's submission, setting out to remedy the situation but failing to achieve that effect was insufficient to meet the requirements of the standards. Thus, the Authority concluded that by broadcasting, in conjunction, the items on 22 and 23 April, TVNZ had breached the requirements in s.4(1)(d) of the Broadcasting Act and standards 4 and 6 of the Television Code of Broadcasting Practice.

Item on 24 May

Mr Millen also complained that Mr Holmes' presentation of TVNZ's Complaints Committee's decision on 24 May was unsatisfactory in that the use of the word "maybe" indicated that he questioned the finding on the point that he should have challenged Mrs Stallone more vigorously in the first interview. TVNZ disagreed with that interpretation. After studying the broadcast of the statement, the Authority had a great deal of sympathy with Mr Millen as there was, indeed, a suggestion that Mr Holmes did not agree with the Complaints Committee. However, the Authority also acknowledged the alternative interpretation advanced by TVNZ and considered that it could well have been Mr Holmes' manner, rather than the specific wording which he used, which Mr Millen might have found unacceptable.

The Authority draws attention to an observation made on an earlier occasion (Decision No: 16/90) of the requirements for a statement, explaining or apologising for a breach of broadcasting standards, to be made sincerely and the addition of qualifying words would certainly not be acceptable. On this occasion, however, the Authority concluded



that although the wording and style of the delivery of the explanation reduced its impact substantially, it was not, on balance, sufficiently self-indulgent to justify a finding that it was unacceptable.

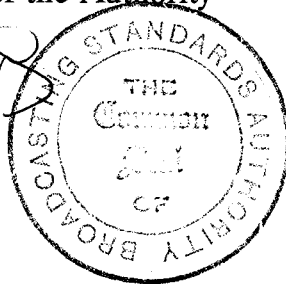
For the reasons set forth above, the Authority upholds the complaint that the broadcast of the interviews on 22 and 23 April breached s.4(1)(d) of the Broadcasting Act 1989 and standards 4 and 6 of the Television Code of Broadcasting Practice.

The Authority declines to uphold, first, the complaint which alleged breaches of other standards in the Code, and secondly, the complaint about the unsatisfactory presentation on 24 May of the Complaints Committee's finding that the broadcast on 22 April breached s.4(1)(a) of the Act.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



20 September 1991

Appendix

Mr Millen's Complaint to TVNZ Ltd

In a letter dated 22 April 1991, Mr Millen complained that a Mrs Stallone, during an interview on that evening's *Holmes* programme, had made some "gratuitous, outrageous and vehement utterances about the Queen" for which she should have been reprimanded by Mr Holmes. The comments were in poor taste and "offensive to all New Zealanders who hold their Head of State in high regard". The interview, he said, breached standards 4, 5, 6, 12, 14, and 17 of the Television Code of Broadcasting Practice.

In addition, in a letter to TVNZ dated 6 May to confirm that his complaint was a formal one, Mr Millen alleged breaches of section 4(1) (a), (b) and (d) of the Broadcasting Act 1989. He also referred to the interview with Mrs Stallone on 23 April which, instead of obtaining an apology, had compounded the errors from the previous evening. He wrote:

Mr Holmes' omission [by not interrupting Mrs Stallone] cannot, in my opinion, be excused as reasonable indulgence in the hyperbole of an outrageous if opinionated foreign visitor ignorant of New Zealand mores. Mrs Stallone's demeanour and vituperative language was too studied and contemptuous and vehement, even vindictive, to provide a licence for colourful if heavy humour.

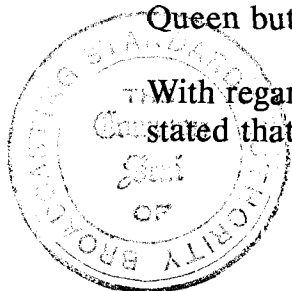
Section 4(1) of the Broadcasting Act 1989 requires broadcasters to maintain standards consistent with:

- (a) The observance of good taste and decency;
- (b) The maintenance of law and order;
- (d) The principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view in the same programme or in other programmes within the current period of interest.

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Millen of its Complaints Committee's decision in a letter dated 22 May 1991. It recorded that Mr Holmes was taken by surprise by Mrs Stallone's remarks about the Queen and, with hindsight, the Committee believed that Mrs Stallone should have been challenged there and then. With regard to the interview broadcast the following evening, Mr Holmes had then challenged Mrs Stallone's attitude towards the Queen but had been unable to extract an apology.

With regard to the specific standards which Mr Millen said had been breached, TVNZ stated that:



- * The requirement in standard 4 for fairness had been met by the interview on 23 April.
- * Mrs Stallone's comments did not amount to sedition and thus did not breach the standard 5 requirement to respect the principles of the law.
- * The requirement in standard 6 for fairness and balance was achieved by the broadcast on 23 April.
- * As the interview was not "a straight news presentation", it did not breach the accuracy and objectivity of news as required by standard 12.
- * Although the item might have caused distress, contrary to the requirement in standard 14, it did not breach the standard where the full wording refers to "unnecessary ... distress".
- * As the views were clearly personal opinion, there were no significant errors of fact to be corrected as required by standard 17.

Nevertheless, the Committee believed that Mr Holmes should have challenged Mrs Stallone during the first interview as her remarks were "somewhat over the top". Taking into account the good taste and decency requirement in s.4(1)(a) of the Act, TVNZ recorded:

Even allowing for the circumstances of the live broadcast and the nature of the interviewee, the Committee believed that in commenting on the Queen in the way Mrs Stallone did, there was a conflict with this Act provision. In this regard the Committee upheld your complaint.

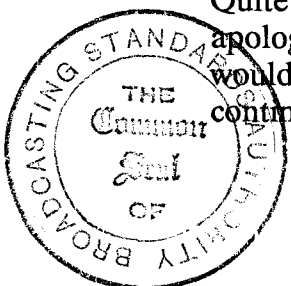
Notwithstanding that the breach had been unintentional and that only the complaint under s.4(1)(a) had been upheld, the Committee directed that the *Holmes* programme broadcast the Committee's findings.

Mr Millen's Complaint to the Broadcasting Standards Authority

As Mr Millen was dissatisfied, first, with TVNZ's decision to reject his complaint other than on the grounds of good taste and decency and secondly, with the professional quality of the broadcast of the Committee's findings, he referred the complaint to the Broadcasting Standards Authority on 28 May 1991.

He stated his opinion that the broadcast on 23 April did not achieve balance and fairness to correct the item aired on 22 April. He wrote:

Quite apart from the attempt to extract an apology from Mrs Stallone, a swift apology from the programme to viewers for getting it wrong in the first place would surely have been the professional thing to do. The vicissitudes and contingent risks of live presentation are understandable and professionally



admissible; one does not need to be unrepentant about such hazards.

The wording of the statement, particularly the use of the word "maybe", ("meaning 'perhaps' or 'possibly'") indicated that Mr Holmes did not accept that he should have challenged Mrs Stallone more vigorously.

TVNZ's Response to the Authority

As is its usual practice, the Authority asked TVNZ for its comments on the complaint. The request is dated 31 May and the response was received on 5 July.

In regard to the issue of balance and fairness, TVNZ stated that:

... by setting out to remedy the situation the next day a genuine attempt was seen to achieve balance and fairness. The fact that the implementation of the remedial action may have been imperfect in the eyes of the complainant does not, it is submitted, mean that the intent of code 6 was not substantially fulfilled.

It added that it was a matter of debate whether the second interview should have been broadcast or, instead, replaced by an announcement that Mrs Stallone was unrepentant.

The fact is that television is a visual medium and seeing Mrs Stallone ducking an apology would surely be testimony for viewers as to the nature of the individual rather than the performance of the interviewer, or the correctness or otherwise of the action being taken.

Discussing the apology broadcast on 24 May, TVNZ noted that the word "maybe" could be interpreted in a number of ways (such as "maybe so" or "maybe that's right") and that in the context, it was used mainly as a link between two sentences.

It repeated the point that to TVNZ the issue was one of good taste and decency as the words complained about were made by a studio guest during a live interview - not by the interviewer. TVNZ concluded:

In these circumstances the company believes it reached a fair and responsible decision and that the action taken was reasonable and commensurate with the finding.

Mr Millen's Final Comment to the Authority

When asked, Mr Millen said that he did not want to comment on TVNZ's letter to the Authority.

