

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 17/92
Dated the 7th day of May 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

MICHAEL BUCK
of Auckland

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

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

DECISION

Introduction

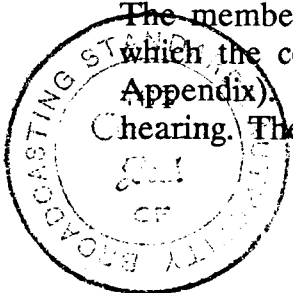
"Never Come Back" was the title of a series broadcast on three consecutive Sunday evenings in October 1991 on TV1's *Sunday Theatre*. The second episode, broadcast by Television New Zealand Ltd on 13 October, depicted the use of a near drowning in a bath and the use of a soldering iron as means to extract information.

Mr Buck complained to TVNZ that the scenes breached the broadcasting standard about depicting a technique of crime which invited imitation and two of the standards relating to the portrayal of violence.

TVNZ declined to uphold the complaint and Mr Buck referred it to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Decision

The members of the Authority have viewed the series containing the programme to which the complaint relates and have read the correspondence (summarised in the Appendix). As is its practice, the Authority determined the complaint without a formal hearing. The Authority's chairperson did not participate in this decision as, some months



previously, he had informally expressed his concern about the programme to TVNZ.

Mr Buck complained that the scenes of violence in the second episode of the three part series "Never Come Back" breached the Television Code of Broadcasting Practice. By showing the immersion of a person in bath water and the use of a soldering iron, in both cases for the purposes of extracting information, he alleged that the broadcast breached standards 9, 22 and 23 of the Code. They read:

- 9 Care should be taken in depicting items which explain the technique of crime in a manner which invites imitation.
- 22 The gratuitous use of violence for the purposes of heightened impact is to be avoided.
- 23 Ingenious devices and unfamiliar methods of inflicting pain or injury - particularly if capable of easy imitation - should not be shown without the most careful consideration.

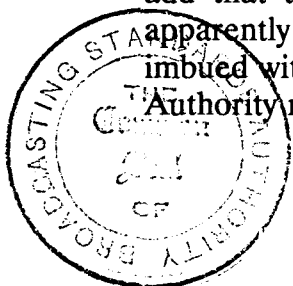
TVNZ acknowledged that the series "gave the two incidents in question an impact of discomfoting proportions". However, it had been rated AO (Adults Only) and the two incidents referred to had to be seen in the context of the entire programme. It also argued that methods used to inflict pain were not new ones, having been portrayed since the early cowboy films. Accordingly, it did not uphold the complaint and, in addition, questioned the relevance of standard 9.

The Authority first considered whether standard 9 was applicable. It is not lucidly worded and when applied in Decision No: 9/91 to a complaint about a crime reconstruction on *Crimewatch*, it was interpreted to mean:

Care should be taken in depicting items which explain the technique of a crime in a manner which might attract imitation.

When this wording is taken into account, it becomes apparent that there is overlap between standard 9 and standard 23. In the circumstances, the Authority decided that standard 9 was applicable to *Crimewatch*, or similar programmes which focused on explaining criminal techniques, while the current complaint was adequately and more appropriately assessed under standards 22 and 23. Consequently, the Authority declined to determine the complaint which alleged that the broadcast breached standard 9 of the Television Code.

Standard 22 prohibits the gratuitous use of violence for the purposes of heightened impact. It was not questioned that the two methods used to extract information - immersion in a bath and the applying of a soldering iron - involved violence. TVNZ correctly acknowledged that the incidents were powerful television. The Authority would add that the entire series contained an underlying menace - and that despite the apparently convivial relationships enjoyed by many of the characters, the series was imbued with the threat that violence could erupt unexpectedly at any time. Indeed, the Authority noted the explicit violence exhibited during a stabbing in the first episode of



the series. However, as that scene was not part of the complaint, the Authority was not required to rule on it.

Part of TVNZ's response to Mr Buck's complaint implied that because the programme was based on a great crime novel, because it displayed the excellence of the BBC production techniques, because it complied with the comprehensive BBC guidelines relating to violence and because it was shown by TV1 at a time for prestigious programmes, it complied unquestioningly with the New Zealand Television Code of Broadcasting Practice. While the Authority notes that these criteria are relevant, it does not share TVNZ's opinion that they are necessarily sufficient in themselves.

In assessing the complaint, the Authority took into account the context in which the violence was portrayed. It agreed with TVNZ that it was relevant to examine the entire series and, in view of the comments above about the series' tone, the Authority concluded that the portrayal of the two incidents, in themselves, did not involve the *gratuitous* use of violence.

Nevertheless, although it concluded that their occurrence did not breach the standard, the Authority then considered whether the length of the incidents could be considered gratuitous. It decided that the incident with the soldering iron was relatively brief but examined more cautiously the bath incident. A majority of the Authority did not accept TVNZ's argument that the programme's AO rating was sufficient for it to comply with standard 22. Because of the graphic way in which the incident was portrayed and the length of the portrayal of the near drowning in the bath, the majority decided that the violence portrayed, regardless of the tenor of the series, was shown gratuitously for the purposes of heightened impact. Accordingly, a majority of the Authority concluded that the programme breached standard 22 of the Code.

Standard 23 applies when unfamiliar methods or ingenious devices are used to inflict pain. The Authority decided that the requirement in the part of the standard which referred to easy imitation was met. However, the Authority considered that the threat of drowning could not be described as either unusual or ingenious. The use of a soldering iron is not necessarily such a well-known method of inflicting pain. The Authority took into account the discreet way the use of the soldering iron was portrayed and noted that the standard does not ban the use of unusual methods but requires that the most careful consideration be given to their showing. It was also of the opinion that the use of the soldering iron could not be described as ingenious or unfamiliar. Accordingly, the Authority declined to uphold the complaint that the incidents breached standard 23 of the Television Code.

For the reasons set forth above, a majority of the Authority upholds the complaint that the broadcast of an incident of a near drowning in the second episode of "Never Come Back" on 13 October 1991 breached standard 22 of the Television Code of Broadcasting Practice.

The Authority declines to uphold the complaint that the same broadcast breached standard 23 of the Code.



The Authority declines to determine the complaint that the broadcast breached standard 9 of the said Code.

Having upheld all or part of a complaint, the Authority may impose an order under s.13(1)(a) of the Broadcasting Act 1989. It does not intend to do so on this occasion as the incident was relatively brief when seen in the context of the entire programme, because the decision is a majority one and because the programme was a dramatisation of a spy story containing an underlying menace in which some explicit violence, although not to the extent portrayed, was not unexpected.

Signed for and on behalf of the Authority

JR Morris

Joanne Morris
7 May 1992



Appendix

Mr Buck's Complaint to Television New Zealand Ltd

In a letter dated 19 October 1991, Mr Buck complained to Television New Zealand Ltd about the episode (the second of three) of the series "Never Come Back" broadcast on TV1's *Sunday Theatre* on Sunday 13 October.

He referred to two scenes in which different techniques were portrayed to extract information. One involved the immersion and near drowning of the victim in a bath full of water and the other implied the use of a hot soldering iron.

He contended that the scenes breached the following standards in the Television Code of Broadcasting Practice:

- 9 Care should be taken in depicting items which explain the technique of crime in a manner which invites imitation.
- 22 The gratuitous use of violence for the purposes of heightened impact is to be avoided.
- 23 Ingenious devices and unfamiliar methods of inflicting pain or injury - particularly if capable of easy imitation - should not be shown without the most careful consideration.

TVNZ's Response to the Formal Complaint

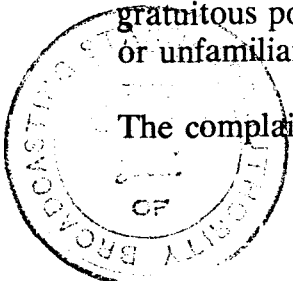
TVNZ advised Mr Buck of its Complaints Committee's decision in a letter dated 25 November 1991.

TVNZ began by noting that the BBC series was based on a famous crime novel of the same title published in 1941. The production techniques, it continued, "gave the two incidents in question an impact of discomfoting proportions" but not to the extent to breach the broadcasting standards. Further, it noted that the programme complied with the BBC's comprehensive guidelines relating to violence.

TVNZ observed that the programme had been rated AO (Adults Only), had been screened in AO time and that the two brief incidents had to be seen in the context of the entire programme.

In view of the context, TVNZ doubted whether standard 9 was applicable. It added that standards 22 and 23 were not breached as the depiction did not involve the gratuitous portrayal of violence for heightened impact nor the portrayal of ingenious or unfamiliar ways of inflicting pain.

The complaint was not upheld.



Mr Buck's Complaint to the Broadcasting Standards Authority

As Mr Buck was dissatisfied with TVNZ's decision, in a letter dated 28 November he referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989. He made the following five points.

- i) That the series was based on a novel was irrelevant when assessing what was broadcast on television.
- ii) The BBC guidelines were not necessarily relevant to New Zealand.
- iii) The methods of torture portrayed were sufficiently explicit to invite imitation and thus breached standard 9.
- iv) The methods portrayed moved beyond "unseemly methods of persuasion", as claimed by TVNZ and breached standard 22.
- v) The methods portrayed breached the "capable of easy imitation" aspect of standard 23 and TVNZ had not addressed the point.

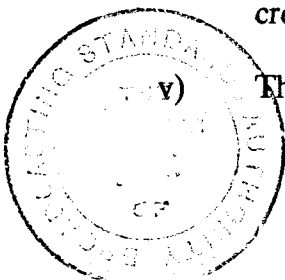
TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's comments on the complaint. The letter is dated 3 December 1991 and TVNZ's response is dated 9 March 1992. It said that it had little to add to its careful response of 25 November.

Referring to the specific points made by Mr Buck in his letter to the Authority, TVNZ recorded:

- i) It was relevant to record that the series was based on a quality novel and had been broadcast in a prestigious time slot.
- ii) Viewer expectations and preferences between Britain and New Zealand were not significantly different.
- iii) Water "treatments" and "branding" for humans had been used in films as a means of extracting information since the early Westerns. However, the methods used in "Never Come Back" did not invite imitation.
- iv) Two scenes in an hour long thriller programme could not be described as the broadcast of gratuitous violence for heightened impact. Their excision would have interfered with the programme's storyline and credibility.

v) The imitation point had been addressed in point iii) above.



TVNZ concluded:

Finally the company would reemphasise that a programme of such quality and production excellence needs to be assessed in its entirety, and the elements of "persuasion" be recognised as being in that context and not be taken in disjointed isolation. In our opinion the surrounding elements of "plot" justification should also be taken into account.

Mr Buck's Final Comment to the Authority

When asked to comment on TVNZ's response, apart from stating that he was unimpressed with TVNZ's defence, Mr Buck did not wish to comment further.

