

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 168/93

Dated the 16th day of December 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

PHILLIP SMITS  
of Auckland

Broadcaster  
TELEVISION NEW ZEALAND  
LIMITED

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

DECISION

Summary

Night club scenes were used to illustrate an item on sex workers broadcast by TV1 on *PrimeTime* on 28 September 1993.

Mr Smits complained to Television New Zealand Ltd that the item breached the standard requiring good taste and decency by showing naked women dancing in a night club and that the footage reflected negatively on the Thai community and encouraged discrimination against Thai women.

Arguing that the footage was used appropriately in the news item and that a previous decision of the Authority had concluded that the shots were inoffensive, TVNZ declined to uphold the complaint. Dissatisfied with that decision, Mr Smits referred his complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

*For the reasons given below, the Authority declined to uphold the complaint.*

Decision

The members of the Authority have viewed the item complained about and have read the correspondence (summarised in the Appendix). As is its practice, it has determined



the complaint without a formal hearing.

An item on *PrimeTime* broadcast by Television New Zealand Ltd on 28 September 1993 about 10.00pm dealt with the results of a survey which was designed to reveal how well sex workers were protected from sexually transmitted diseases. Accompanying a voiceover which highlighted the problem of unprotected sex with prostitutes in other countries, footage of naked women dancing in a nightclub was included.

Mr Smits complained that the footage was offensive and in breach of the standard requiring observance of good taste and decency. He maintained that it was denigratory to Thai women because it encouraged a stereotypical view of them and was critical of the fact that the item was shown out of context. Noting also that it was the fourth time that the so-called "candle show" footage had been shown, Mr Smits accused TVNZ of "gratuitous, unjustified, mindless titillation".

In its response, TVNZ reported that it had assessed the complaint against standards G2 and G13 of the Television Code of Broadcasting Practice which require broadcasters:

- G2 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.
- G13 To avoid portraying people in a way which is likely to encourage denigration of or discrimination against any section of the community on account of sex, race, age, disability, occupation status, sexual orientation or the holding of any religious, cultural or political belief. This requirement is not intended to prevent the broadcast of material which is:
- i) factual, or
  - ii) the expression of genuinely-held opinion in a news or current affairs programme, or
  - iii) in the legitimate context of a humorous, satirical or dramatic work.

While it apologised that the "candle show" footage had caused offence, TVNZ maintained that it was entirely appropriate in the context of a news item about a serious subject. It referred to a recent decision of the Authority (No: 113/93, dated 8 September 1993) in which the same material was shown in a programme screened between 7.30 - 8.30pm and which was found not to be offensive in that context. It rejected Mr Smits' claim that the item was racist and denigratory, arguing that the women shown were not identified by their race and therefore could not have been denigrated on that basis.

The Authority considered first, the allegation that the "candle show" footage breached the standard requiring observance of good taste and decency. It noted that the same footage had been the subject of earlier complaints (Nos: 113/ 93 and 165/93, dated 8 September and 9 December 1993 respectively) and that on those previous occasions, the




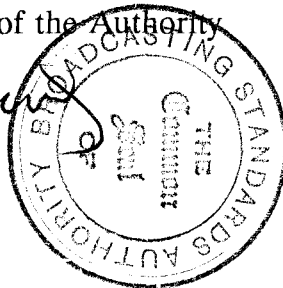
Authority had concluded that it was not in breach because it was indistinct, dimly lit, and relevant to the story. In assessing the relevance on this occasion, the Authority considered that in a story which encompassed facets of the adult entertainment world, including massage parlours and prostitution, it was relevant to include the brief (less than 6 seconds in duration) scene from the nightclub routine. It noted that the dancers were filmed from a different angle than in the earlier items and were even more indistinct and distant on this occasion. In reaching its decision that the inclusion of the "candle show" footage was not in breach of standard G2, it also took into account the hour of screening (about 10.00pm) which was well into AO viewing time.

With reference to the standard G13 aspect of the complaint, the Authority agreed with TVNZ that it was difficult, if not impossible, to ascertain the racial identity of the women featured. Not only was the sequence dimly lit, but they were in the background of the pictures. Since their identities were not clear, it was unable to conclude that they had been denigrated on the basis of their race and accordingly the Authority declined to uphold the complaint that the "candle show" footage breached standard G13.

**For the reasons set forth above, the Authority declines to uphold the complaint.**

Signed for and on behalf of the Authority

  
Iain Galloway  
Chairperson  
16 December 1993



## Appendix

### Mr Smits' Complaint to Television New Zealand Limited

In a letter dated 28 September 1993, Mr Phillip Smits of Auckland complained to Television New Zealand Ltd that the broadcast of an item about a sex industry survey on *PrimeTime* that evening breached broadcasting standards. It included footage of women dancing in a night club and, Mr Smits wrote:

I formally complain AGAIN about the 'showing' of these women FULLY NUDE in the context of what the item was about. Also in the context of all the other footage shown in similar reporting i.e. that strippers, sex workers etc are NEVER shown similarly.

He complained that not only was it indecent but also denigratory to women. In his view it was offensive because it was racist, and the offensiveness was exacerbated by the broadcast and repeated re-broadcast of the footage of the so-called "candle show". He pointed out that this was the fourth time this footage had been broadcast.

In a second letter to TVNZ dated 12 October, Mr Smits advised TVNZ that it had correctly interpreted the grounds of his complaint. He observed:

In the context of the item's subject - a survey on consumers' attitudes within the sex industry, I really don't see how you can defend the inclusion of the footage that I have complained about.

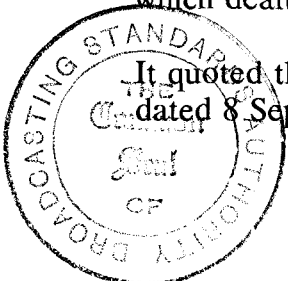
In the matter of defining racial discrimination, it is often a comparative judgment ie how one race (or races) is 'treated' compared to another race (or races). In the matter of breach of good taste and decency, it is my view (and always has been) that context is relevant, as is the use of explicit footage (or not) in other similar items.

### TVNZ's Response to the Formal Complaint

TVNZ advised Mr Smits of its Complaints Committee's decision in a letter dated 21 October 1993. It reported that the complaint had been considered under standards G2 and G13 of the Television Code of Broadcasting Practice which require broadcasters to observe standards of good taste and decency and avoid portraying people in a way which would encourage discrimination on the grounds of race.

While TVNZ expressed its regret that the footage had again caused Mr Smits offence, it believed that it was entirely appropriate in the context of a news item which dealt with a serious subject.

It quoted the recent decision of the Broadcasting Standards Authority (No:113/93, dated 8 September 1993) which found that the material was inoffensive in the context



of a programme screened between 7.30 - 8.30pm. TVNZ noted that on this occasion the material was screened about 10.00pm. It reported that it was unable to conclude that the pictures breached the standards of decency and taste, and did not believe that it was possible to identify the racial origin of the women, let alone that they were denigrated on the basis of their race.

### Mr Smits' Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's response, in a letter and Complaint Referral form dated 30 October 1993, Mr Smits referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

Mr Smits repeated his contention that there was a breach of good taste and decency and that the footage denigrated Thai women by its negative and selective portrayal of them.

He pointed out that the "candle show" footage was accompanied by a voiceover which stated that one of the reasons for the spread of HIV/AIDS in "other" countries was that clients had unprotected sex with prostitutes. In his view there was "MILES" of footage of the Thai sex industry, shot in Thailand, which could have been used by way of illustration, and he censured TVNZ for choosing the "candle show" footage, accusing it of "gratuitous, unjustified, mindless titillation".

Commenting that the survey results confirmed his view that the education programme had to be directed at the consumers, he added that the item should have also inquired into the "women trade" to New Zealand.

It [TVNZ] does not examine the lunacy of allowing a Thai go go bar to operate in New Zealand (for three years now). It does not examine the reverse scenario i.e. a prostitute from a high risk country coming here and allowing unsafe sex with customers that want that. No, but they (TVNZ) are only too happy to "use" footage taken from Superstar and palm it off as something sleazy from some "other country".

In Mr Smits' view, the repeated broadcast of the footage of the Thai women was offensive, especially since it was only shown to titillate. He also maintained that it was racist for TVNZ to be so casual about the use of the footage because it was insulting to the Thai community and encouraged a stereotype of Thai women and, in that respect, denigrated them.

### TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. The Authority's letter is dated 3 November and TVNZ's reply, 8 November 1993.

TVNZ reported that it had no further comment to add to its earlier letter which had advised Mr Smits of its decision.



**Mr Smits' Final Comment to the Authority**

When asked for a brief final comment, in a letter dated 11 November 1993, Mr Smits advised that he had no further comment to make.

He appended copies of some unrelated correspondence.

