

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 46/93

Dated the 22nd day of April 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

JOHN MALLEY
of Wellington

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

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

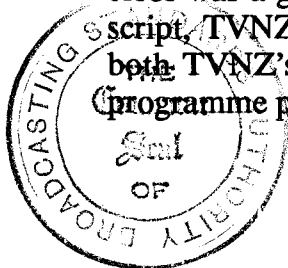
DECISION

Introduction

The theft of firearms from a licensed collection was dealt with in a segment on TV1's *Crimewatch* broadcast between 8.30 - 9.30pm on 27 October 1992. Among the stolen weapons, the item reported, were two semi-automatic machine guns while the accompanying visuals depicted a Chinese submachine gun and a Sten gun being fired fully automatically.

Mr Malley complained to Television New Zealand Ltd that the item was inaccurate as automatic weapons were described as semi-automatics. It also involved a deceptive broadcasting practice as, by repeating a mistake made during at least two earlier broadcasts, TVNZ was trying to influence the public on the issue of semi-automatic firearms.

Describing the mistake as an unfortunate but genuine error, TVNZ upheld the complaint that the item was inaccurate. It had drawn the mistake to the attention of the staff of *Crimewatch* and reminded them of the need for care in the matter of details. As the error was a genuine mistake and had not been noticed by a police officer checking the script, TVNZ declined to uphold the other aspect of the complaint. Dissatisfied with both TVNZ's decision not to uphold the aspect of the complaint alleging a deceptive programme practice and with the action taken on the aspect of the complaint upheld, Mr



Malley 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 to which the complaint relates and have read the correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing.

An item on *Crimewatch*, broadcast between 8.30 - 9.30pm on 27 October 1992 and involving a reconstruction, dealt with the theft of some firearms from a licensed collector. The item portrayed the type of weapons stolen and, while reporting that two semi-automatic machine guns had been taken, showed a visual of a Chinese submachine gun and a Sten gun being fired automatically. As it was inaccurate to describe a fully automatic weapon as a semi-automatic one, Mr Malley complained to TVNZ that the item breached standard 1 of the Television Code of Broadcasting Practice which requires broadcasters:

- 1 To be truthful and accurate on points of fact.

In addition, he maintained that the item breached standard 7 of the Code which requires broadcasters:

- 7 To avoid the use of any deceptive programming practice which takes advantage of the confidence viewers have in the integrity of broadcasting.

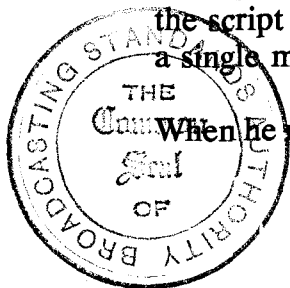
In support of his complaint under standard 7, he stated that it was not the first occasion that TVNZ had depicted fully automatic weapons while the script referred to semi-automatics. As *Crimewatch* had a reputation for accuracy and as many police officers were present who would have been able to explain the difference between semi-automatics and sub machine guns, he wrote:

I cannot help but feel this is a continuing deceptive practice designed to influence the public on the issue of semi-automatic firearms.

TVNZ acknowledged that the item contained a factual error and had breached standard 1. The visuals had been correct in showing a Chinese type 50 sub-machine gun and a Sten Mark II but the script had been incorrect in referring to "two semi-automatic machine guns". Describing the mistake as unfortunate but a genuine error, TVNZ said that the *Crimewatch* staff had been reminded of the need for special care in matters of detail.

Noting that standard 7 implied that something underhand had occurred, TVNZ said that the script had been checked by the police officer in charge of the investigation and, as a single mistake had occurred, it denied that the item had breached standard 7.

When he referred his complaint to the Authority, Mr Malley expressed his dissatisfaction



with the action taken by TVNZ having upheld his complaint under standard 1 and, moreover, maintained that the broadcast breached standard 7. In regard to the first matter, he argued that the mistake should have been publicly acknowledged and, secondly, in view of previous mistakes and in order to avoid a repetition, it was necessary for the distinction between semi and fully automatic weapons to be explained to all staff.

In response, TVNZ argued that the broadcast of a correction was not justified as the error was a relatively minor one. In addition, the item had been factually accurate visually and had conveyed the relevant public service message which would help the police recover the weapons. Furthermore, TVNZ wrote, the comparatively minor correction of this sort in a public service programme could well confuse and distract from the information conveyed in the item. TVNZ commented:

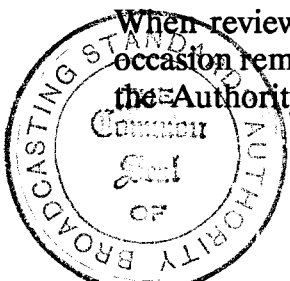
While we understand Mr Malley's frustration at what he sees as inaction over his complaint, it is the Company's view that the public good has been best served by letting the matter lie.

Mr Malley in his referral of the complaint to the Authority emphasised two matters: his dissatisfaction with the inadequacy of TVNZ's action after upholding his factual inaccuracy complaint under standard 1 and, under standard 7, his concern about the past mistakes and the need to eliminate any possibility of their recurrence. In view of the overlap between these points, the Authority dealt with the two aspects of the complaint as one matter. TVNZ described the current mistake as genuine and although intention to deceive on the broadcaster's part is not an essential requirement of standard 7 (deceptive programme practice), the Authority felt that the appropriate way to begin to consider the complaint was to review the action taken by TVNZ having upheld the factual inaccuracy (standard 1) complaint.

The Authority would also note, because of complaints it has ruled on (Decision Nos: 74/92, 75/92 and 76/92), that it is aware of at least one other occasion when TVNZ has referred inaccurately to semi-automatic weapons while showing visuals of fully automatic weapons being fired. However, the Authority noted one substantial distinguishing component about the current error. Mr Malley said that the complaint should not have occurred because of the police presence on *Crimewatch* to which, TVNZ replied, the script had been checked by the Police. That had not occurred on the previous occasion.

In view of those circumstances, the Authority accepted that the mistake on this occasion was a genuine error and, although it might have been careless, it was not deliberate. Although an intention to deceive is not an essential element in a finding that standard 7 has been breached, on this occasion the Authority decided that the mistake in the context of the entire item did not amount to a deceptive programme practice in contravention of the standard. At the same time, however, the Authority accepted that Mr Malley's suspicions, in view of the other occasions when TVNZ has reported inaccurately on semi-automatic weapons, were understandable.

When reviewing TVNZ's action which, having upheld the complaint, involved on this occasion reminding the *Crimewatch* staff of the need to ensure that details were accurate, the Authority noted Mr Malley's argument for, first, a public acknowledgment of the




error, and secondly, training of all TVNZ staff to ensure that the mistake is not repeated. TVNZ believed that its action was adequate as the breach was not a major one, the visuals were correct, the public service message was conveyed, and a correction in the circumstances would well confuse viewers. Moreover, it maintained, the suggestion was not practical in view of the steady turnover of TVNZ staff.

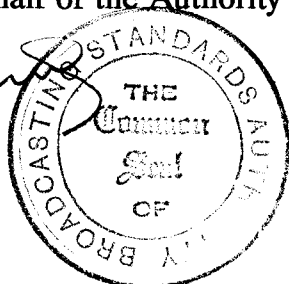
The Authority considered, first, the arguments in favour of a public correction and decided, in agreement with TVNZ, that the error was not major and as the broadcast, for the most part, was accurate, the broadcast of a correction indeed could well confuse the viewer. The Authority also took into account the fact that many, if not most, viewers would not have noticed the error and that it was a detail of peripheral relevance to the thrust of the item. Moreover, as the viewers who noticed the error would have realised that a mistake had been made because of their familiarity with semi or fully automatic weapons, the Authority decided that an order to broadcast a public correction would principally involve a punitive action being imposed on the broadcaster rather than one imposed for the benefit of viewers. Although an order which includes a punitive sanction might sometimes be appropriate, the Authority concluded that this was not such an occasion.

The second aspect of the complaint referred to the action taken internally and, Mr Malley argued, TVNZ should ensure that all staff understood the difference between semi and fully automatic weapons. While appreciating Mr Malley's concern, the Authority decided that for two reasons it would not suggest to TVNZ that it carry out this action. First, there were practicalities such as staff turnover as TVNZ noted. Secondly, the Authority accepted that while the issue about the difference between semi and fully automatic weapons was of major importance both publicly and privately to those who were licensed to have such guns, it was not a major matter for most viewers. Accordingly, the Authority decided not to order TVNZ to undertake any further action.

For the reasons set forth above, the Authority, first, declines to uphold the complaint under standard 7 of the Television Code of Broadcasting Practice, and secondly, declines to uphold the complaint that TVNZ's action, having upheld the standard 1 complaint was inadequate.

Signed for and on behalf of the Authority


 Iain Gallaway
 Chairperson



22 April 1993

Appendix

Mr Malley's Complaint to Television New Zealand Limited

In a letter dated 4 November 1992, Mr John Malley of Wellington complained to Television New Zealand Ltd about a segment of the programme *Crimewatch* broadcast on TV1 at 8.30pm on 27 October 1992.

The item had covered the theft of some firearms from a licensed collector and reported that a number of semi-automatic machine guns had been taken. The accompanying visuals depicted a Sten gun being fired automatically and a Chinese submachine gun.

Mr Malley stated that the item breached standards 1 and 7 of the Television Code of Broadcasting Practice requiring respectively truth and accuracy and the avoidance of any deceptive programme practice. It was inaccurate as no submachine gun could be described as semi-automatic when quite plainly a full automatic. He referred to earlier items broadcast by TVNZ when fully automatic weapons had been described as semi-automatic and argued that it was a continuing deceptive practice designed to influence the public on the issue of semi-automatic weapons. That view, he added, was reinforced as the inaccurate broadcast had occurred on *Crimewatch* which was a programme with a reputation for accuracy and where many police officers were present who would have been able to explain the difference between semi-automatic weapons and submachine guns.

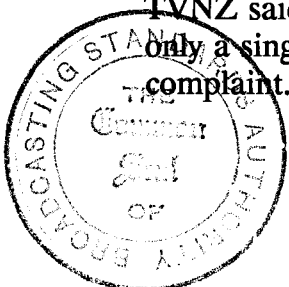
He requested the broadcast of an apology on the next episode of *Crimewatch* together with an explanation about the distinction between automatic and semi-automatic weapons.

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Malley of its Complaints Committee's decision in a letter dated 17 December 1992.

It reported that the item had referred to the loss of "two semi-automatic machine guns" whereas a later check of the facts showed that the items were fully automatic and had, in fact, been correctly demonstrated. TVNZ acknowledged that a mistake had occurred in the script despite being checked by the police officer in charge of the investigation. Describing the mistake as an unfortunate and genuine error, TVNZ upheld the complaint under standard 1 and stated that the *Crimewatch* staff had been reminded of the need for special care.

TVNZ said that standard 7 implied that something underhand had occurred and, as only a single mistake had been made, it declined to uphold that aspect of the complaint.



Mr Malley's Complaint to the Broadcasting Standards Authority

Dissatisfied both with the action taken on the aspect of the complaint upheld and that the other aspect had not been upheld, in a letter dated 10 January 1993 Mr Malley referred his complaint to the Broadcasting Standards Authority under s.8(a) the Broadcasting Act 1989.

As TVNZ had given viewers incorrect information about what constituted a semi-automatic weapon, Mr Malley argued that the error should have been publicly acknowledged. Otherwise, he added, the complaints procedure was a farce.

In regard to the standard 7 complaint, he accepted that mistakes occurred but argued that all staff should be informed of the differences between the weapons. By not doing so, he continued, TVNZ management had shown that they did not care if it happened again.

He believed a public admission of the mistake was appropriate as was advice to all TVNZ staff about what semi-automatics were and were not.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 22 January 1993 and TVNZ's reply 2 February.

TVNZ said that the script, because it dealt with a specialist area, had been checked by the police officer in charge of the investigation of the burglary during which the firearms were stolen. Although the mistake in the script had occurred early in the item, the true nature of the weapons was clearly shown later in the item and referred to correctly in the accompanying script. The error was regretted but as it was not regarded as a major one and as a correction could serve to confuse or detract from the information at the core of the item, it had been decided:

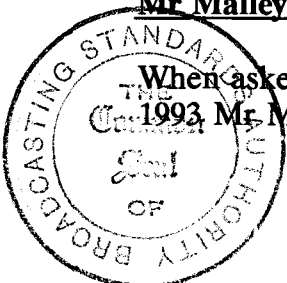
... the public good had been best served by letting the matter lie.

TVNZ concluded:

The staff involved are aware of their error and will doubtless take extra care if confronted by similar information in the future. Mr Malley's suggestion that all staff be advised of the nature of semi-automatic weapons is well-meant but not practical given the steady staff turnover that occurs in a large organisation such as ours.

Mr Malley's Final Comment to the Authority

When asked for a brief comment on TVNZ's response, in a letter dated 22 February 1993, Mr Malley that TVNZ, over the years, had consistently incorrectly identified



fully automatic weapons as being semi-automatic. Consequently, he argued, many viewers would now believe that machine guns were semi-automatic firearms. Had there been only one mistake he would have been unlikely to complain but:

The perpetuation of this lie must be stopped and the only way it can be stopped is that TVNZ must either publicly admit they made a mistake or receive a fine. Anything else is not a deterrent to their reporting inaccuracies.

