

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 60/93

Dated the 13th day of May 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

BRIAN KIRBY

of Auckland

Broadcaster

TV3 NETWORK SERVICES
LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

DECISION

Introduction

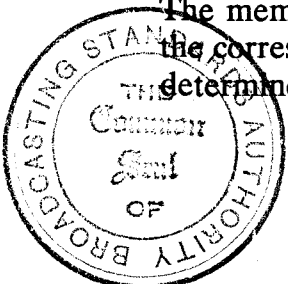
The possible use of firearms by angry farmers in North Auckland whose land could be threatened by a recommendation from the Waitangi Tribunal was covered in the first item on TV3's news programme *Nightline* broadcast at 10.30pm on 30 September 1992.

Mr Kirby complained to TV3 Network Services Ltd that he considered the item to be totally reprehensible in that it was badly researched, badly reported and, by referring to cannibalism, was designed to incite racial disharmony.

Maintaining that the item was factually and historically correct and that it reported the attitudes of some local farmers accurately, TV3 declined to uphold the complaint. Dissatisfied with TV3's decision, Mr Kirby referred his 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 complained about and have read the correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing.



Mr Kirby complained to TV3 about the lead item on TV3's *Nightline* news broadcast at 10.30pm on 30 September 1992. The item reported that some North Auckland farmers were arming themselves in their anger at a recommendation in a Waitangi Tribunal report that some privately owned land in North Auckland be returned to the Maori claimants. Describing the item, and in particular the reference to cannibalism, as designed to incite racial disharmony, Mr Kirby stated that it was badly researched and badly reported and that it breached some specific standards in the Television Code of Broadcasting Practice.

TV3 assessed the complaint under standards 2, 5, 12 and 26 of the Code. Standards 2 and 5 require broadcasters:

- 2 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.
- 5 To respect the principles of law which sustain our society.

Standards 12 and 26 read:

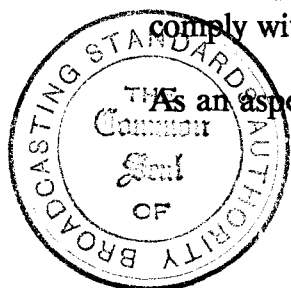
- 12 News must be presented accurately, objectively and impartially.
- 26 Portraying people in a way which is likely to encourage denigration of or discrimination against any section of the community on account of sex, race, age, disability, occupational status, sexual orientation, or the holding of any religious, cultural or political belief shall be avoided.

The exceptions to standard 26 which are not relevant to this complaint have been omitted.

Pointing out that the item reported a Federated Farmers' response to a Waitangi Tribunal recommendation, TV3 declined to uphold any aspect of the complaint. The item had been accurate, it continued, in reporting a Tribunal recommendation - not an order - in reporting that it was the first such recommendation and that, in response, some farmers were arming themselves. As for the reference to cannibalism, TV3 maintained that it was made as a general historical comment about conflict and was not a reference to Maori specifically.

The first point the Authority wishes to address is the inordinately long time that TV3 took to respond to Mr Kirby's complaint. He wrote to TV3 in a letter dated 5 October 1992 forwarding his formal complaint about a broadcast on 30 September and TV3 acknowledged the complaint in a letter dated 12 October. The Act allows broadcasters 60 working days to respond to a complaint and in this instance, taking holidays into account, that time expired in mid January 1993. TV3's response to the formal complaint was dated 26 January 1993. The Authority registers its deep concern that TV3 failed to comply with the time limits set out in the statute.

As an aspect of his concern about the broadcast, Mr Kirby questioned the relevance of



the news item as the Waitangi Tribunal recommendation to which it referred had been released to the public some two months before the item on 30 September. As this concern raises a matter of news judgment which is outside the Authority's jurisdiction, it declines to comment other than to note that the Federated Farmers' report, seemingly from some members in North Auckland, revived the issue at the time the item was broadcast.

The Authority also noted that the item was accurate when it described the Tribunal's ruling as a recommendation - not an order - and that it was the first such recommendation made by the Tribunal. Furthermore, it had not been inaccurate or in bad taste when reporting that at least some farmers, because of their anger at the recommendation, had given consideration to an armed response should the government adopt the recommendation. Consequently, with reference to these aspects of the programme, the item did not breach the standard 12 requirement for accuracy, objectivity and impartiality.

Another aspect of the complaint alleged that the item was misleading by not referring to the Government's policy about not taking private land. Despite the fact that the Tribunal's recommendation referred to in the item was unique, it has been the policy of successive Governments not to acquire private land compulsorily as compensation for Treaty claims. The Treaty of Waitangi Policy Unit within the Justice Department confirmed that this was policy announced explicitly by Prime Ministers Lange, Palmer and Bolger. Accordingly, the Authority examined closely the item's reference to the possibility that private land might be taken to see if it acknowledged this long-standing public position.

The item did not acknowledge this long-standing policy. Rather, it dealt with the possibility of an armed response should a Tribunal recommendation be implemented. As the policy, the recommendation and the response were of such importance in a contentious and sensitive area, the Authority was of the view that objectivity required a reference to the explicit existing policy. The item concluded with the comment that the government had "to sort it out". With hindsight, it can be recorded that the government heeded that injunction by enacting a law which prohibits the Waitangi Tribunal from making recommendations about private land. That enactment reaffirmed the policy of successive governments that private land would not be taken as a result of a Tribunal recommendation and, the Authority concluded, the omission of any reference to the existing policy on a news broadcast about such an important matter contravened the requirement in standard 12 for "objectivity" and "impartiality".

The reference to cannibalism was the next aspect of the item which the Authority focused on. Was it an innocent comment as TV3 argued, or was it an incitement to racial disharmony as Mr Kirby maintained?

The Authority took into account that cannibalism was a practice to which Maori have resorted in the past and that it is an historical matter with which Maori are at present coming to terms. Accordingly, a remark which could well have been made innocently, or naively, might well come across as inflammatory, sensational and offensive. That conclusion could be more readily drawn in an item which dealt with an issue - that



farmers might possibly resort to the use of firearms in response to a recommendation from the Waitangi Tribunal - in a dramatic and colourful manner. Moreover, rather than assessing the Tribunal's recommendation, the item had dealt only with the possibility of violent reaction by the incumbent farmers.

When considering the complaint, especially the alleged aspects of poor taste and inciting racial disharmony, it has been necessary for the Authority to consider the tone of the item. In doing so, the Authority wishes to make it clear that it is commenting on the standard issues raised. It does not wish its comments to be seen as questioning TV3's editorial decisions although with this complaint, as occurs with some others, it might not be possible to keep them entirely separate.

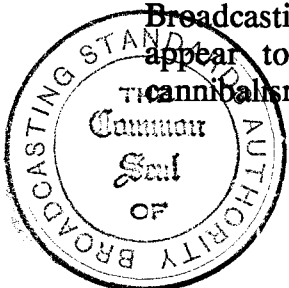
In deciding whether the item breached the standards 2 and 26 requirements, the Authority took into account its dramatic, indeed unnecessarily sensational, approach to the potential conflict occasioned by the Waitangi Tribunal's recommendation. The Authority had sympathy for Mr Kirby when he described the item as badly researched and badly reported and could understand why he considered the item's tenor or mood, and particularly the reference to cannibalism, breached the standards. However, a majority of the Authority concluded that although the item bordered on a breach of the good taste standard, it had not done so as its impact was softened somewhat by the fact that the rather alarmist opening and closing remarks were not borne out by the comparatively bland comments of the farmers interviewed during the item. The minority on the other hand decided that the reference to cannibalism was both alarmist and in poor taste and that the item had crossed the boundary and breached the standard requiring good taste and decency in language and behaviour.

In the past, the Authority has ruled that a breach of standard 26 which prohibits the broadcast of denigrating or discriminating material requires a high level of denigration or discrimination for a breach to occur. Although the reference to cannibalism in the current item might have been offensive to some viewers, the Authority decided that it did not encourage denigration of or discrimination against a section of the community on account of race. Furthermore, the Authority concluded that the item did not breach the requirement in standard 5 to show respect for the principles of law as it was giving information. In other words, whereas it reported the possibility of unlawful action, it neither glamorised nor encouraged that behaviour.

For the reasons set forth above, the Authority upholds the aspect of the complaint that the broadcast by TV3 Network Services Ltd of an item on *Nightline* on 30 September 1992 breached standard 12 of the Television Code of Broadcasting Practice. A majority of the Authority declines to uphold the complaint that the same programme breached standard 2 of the Code.

The Authority unanimously declines to uphold any other aspect of the complaint.

Having upheld a complaint, the Authority may make an order under s.13(1) of the Broadcasting Act 1989. As the aspect of the complaint which has been upheld does not appear to be the complainant's principal concern (which was the reference to cannibalism) and as the contravention occurred by way of omission rather than by the



making of a statement lacking in objectivity, the Authority does not intend to impose an order on this occasion.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



13 May 1993

Appendix

Mr Kirby's Complaint to TV3 Network Services Limited

In a letter dated 5 October 1992, Mr Brian Kirby of Auckland complained to TV3 Network Services Ltd about an item broadcast on the news programme *Nightline* at 10.30pm on 30 September 1992. The item reported the angry reaction of some North Auckland Pakeha farmers following the release of a Waitangi Tribunal report which recommended the return of some privately owned land in North Auckland to the Maori claimants.

Mr Kirby began:

I object to the reporters commentary, as it is considered mischievous journalism, badly researched, badly reported, and designed to incite racial disharmony, whether it is intentional or accidental, the objective is the same, the media acted irresponsibly, and has a duty to be morally honest and morally straight.

The Waitangi Tribunal's report, he continued, had been made public two months previously; the Tribunal did not have the power to take private land; the matter had already been addressed by politicians; the reference to cannibalism was reprehensible and inaccurate; and the item appeared to be motivated by racist considerations.

He complained that the item breached standards 2 and 26 of the Television Code of Broadcasting Practice and s.4(1)(b) of the Broadcasting Act 1989.

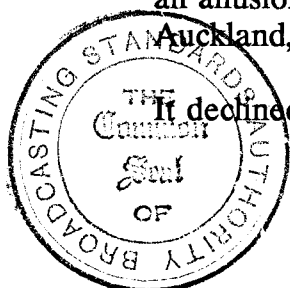
TV3's Response to the Formal Complaint

TV3 advised Mr Kirby of its Complaints Committee's decision in a letter dated 26 January 1993 when it dealt with the nine specific points raised by Mr Kirby. The complaint, it reported, had been considered under standards 2, 5, 12 and 26 of the Television Code of Broadcasting Practice.

The item, TV3 began, reported a federated farmers response made on the day of the broadcast. It had also reported that the Waitangi Tribunal had recommended the return of privately owned land - not that it had the power to take land - and that it was the first such recommendation. The farmers' reactions in arming themselves was news as that fact had been announced by Federated Farmers.

TV3 acknowledged that the item had included a reference to cannibalism but, it maintained, that was a general comment about the historical conflict in the area - not an allusion to Maori specifically. Referring to some other issues in conflict in North Auckland, TV3 denied that the item was motivated by racial implications.

It declined to uphold the complaint.



Mr Kirby's Complaint to the Broadcasting Standards Authority

Dissatisfied with TV3's response as he considered it to be insulting in the way it dealt with his complaint, in a letter dated 11 February 1993 Mr Kirby referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Mr Kirby wrote:

I was particularly disturbed on viewing the item in the instance at the misuse of TV news to blatantly propagandise the public, particularly as the issue was well canvassed by both TV3, TVNZ and other media some 2 months before.

The government, he continued, had previously assured the public that it did not intend to purchase private land and return it to the Maori. However, the item implied that the Pakeha were arming themselves and that Maori would revert to cannibalism to solve the conflict. The reference to cannibalism, he maintained was a slur on Maori and, he pointed out:

We cannot fix race problems by saying there is no problem or in this case, saying Maori are the problem, or arming ourselves. But we can by being open and honest and not sacrificing the principles.

He added that enquiries to Federated Farmers had shown that the press release on which the item was based was not released by its national office but probably by a member of the North Auckland branch.

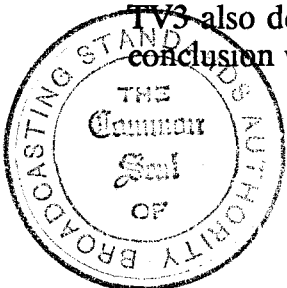
TV3's Response to the Broadcasting Standards Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 14 February 1993 and TV3's reply, 19 February.

Pointing out that the news item focused on the claims made by Federated Farmers, TV3 maintained that Mr Kirby's contention that the item was designed to incite racial disharmony was both spurious and invalid. It continued:

At no point did the item imply that Maori were the most recent practitioners of cannibalism. No comparisons were made. At no point did the item imply that because Maori once practised cannibalism (or were ever likely to again) the farmers were arming themselves for protection. The statement was demonstrative of the historical violent conflict and that the land in question could again be the subject of conflict (violent).

TV3 also denied that the item had intentionally maligned Maori, arguing that that conclusion was based on the extreme interpretation Mr Kirby had chosen to give to it.



Mr Kirby's Final Comment to the Authority

When asked to comment on TV3's reply, in a letter dated 2 March 1993 Mr Kirby repeated that his complaint focused on the tone of the programme and the reference to cannibalism. News items such as the one complained about, he continued, further limited an marginalised Maori.

He continued:

My only motive in taking action was a sense of justice and the hope that TV3 would be more careful in future reporting. I am not looking for any sort of public apology from TV3, just an undertaking that in future, care would be taken to be fair, instead we have received a denial and confrontational defence, irrespective of moral responsibility.

I hope that the Broadcasting Standards Authority, Te Mana Whanonga Kaipaho, is able to find the heartwood amongst all the sapwood chips that are chopped from the tree and scattered around as a distraction to the real issue.

