

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 78/93

Dated the 28th day of June 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

PAULINE MILLER

of Invercargill

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

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

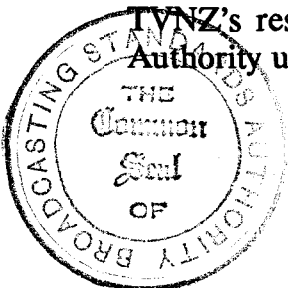
DECISION

Introduction

The film *Hard to Kill*, containing many scenes portraying conflict being resolved with violence, was screened on Channel Two at 8.30pm on 10 February 1993. It was an action film in which the hero, meeting violence with violence, relentlessly triumphed over evil and, in style, was similar to many others of the genre.

Mrs Miller complained to Television New Zealand Ltd that a promo or trailer for the film broadcast at 8.10pm on 10 February breached the broadcasting standard requiring a warning for children before the portrayal of violence. The depiction of the violence in the film itself, she continued, also breached the standards.

Acknowledging that the screening of the trailer before 8.30pm was a mistake, TVNZ upheld that aspect of the complaint. Arguing that Mrs Miller had based her complaint on a version of the film that she had obtained from a retail video outlet rather than on the version which was screened, TVNZ said that it had broadcast a version which had been modified for television by the removal of some nudity, some coarse language and some close-ups of violence. It declined to uphold the complaint. Dissatisfied with TVNZ's response, Mrs Miller referred her complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.



Decision

The members of the Authority have viewed the version of the film broadcast on television and have read the correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing.

Mrs Miller complained to TVNZ about the broadcast of the film *Hard to Kill* on Channel Two at 8.30pm on Wednesday 10 February. As the film depicted violent acts which were inconsistent with the maintenance of law and order, she claimed that it breached the broadcasting standards. Furthermore, she complained, as the broadcast of a promo for the film at 8.10pm on 10 February had not been accompanied with a warning that the film was unsuitable for children, the broadcast of that promo had also breached the standards.

After some correspondence with Mrs Miller in which it advised her of the standards under which the complaint would be considered and in which it asked for but did not receive more details of the aspects of the film complained about, TVNZ assessed the complaint about the trailer under standards V3 and V16 of the Television Code of Broadcasting Practice and the complaint about the film under standards G2, V1 and V2. As the broadcast of the promo contained material which was not suitable for screening before "AO" (Adults Only) time began at 8.30pm, TVNZ upheld that aspect of the complaint under V16. TVNZ apologised to Mrs Miller for any distress that the broadcast of the promo had caused her and advised her that Channel Two's Promotions Manager had been advised of TVNZ's concern at the lapse.

The complaint about the broadcast of the film itself, as noted above, was assessed against standards G2, V1 and V2 of the Code. The first requires broadcasters:

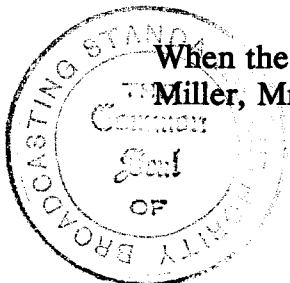
- G2 To take into consideration currently accepted norms of decency and taste in language and behaviour, bearing in mind the context in which any language or behaviour occurs.

The other two read:

- V1 Broadcasters have a responsibility to ensure that any violence shown is justifiable, i.e. is essential to the context of the programme.
- V2 When obviously designed for gratuitous use to achieve heightened impact, realistic violence - as distinct from farcical violence - must be avoided.

TVNZ acknowledged that the film was violent in parts but described it as "classic escapism - in the sense of providing distraction or relief from reality" which was typical of its genre, including "cowboy and Indian films", where the hero representing good inevitably triumphed over evil. As the film would not have been taken seriously and as it had been broadcast in "AO" time, TVNZ declined to uphold the complaint.

When the complaint was referred to the Authority, it was in the names of Mrs Pauline Miller, Mr Michael Reeves and Ms Jacinta Latta. The referral was accompanied by a



detailed analysis of the sequences in which violence was portrayed which in total time, the complainants alleged, amounted to about one fifth of the film.

When responding to the Authority's request for a response to the referral, TVNZ raised three procedural points. It noted first that Mrs Miller alone had made the initial complaint. Secondly, it recorded that, despite a request, Mrs Miller had not provided a detailed break down of the complaint and TVNZ had been required to assess the film "overall". Thirdly, the detailed analysis now supplied had apparently been made from a 95 minute version of the film rented from a video shop while the modified-for-television version which was broadcast lasted only 90 minutes.

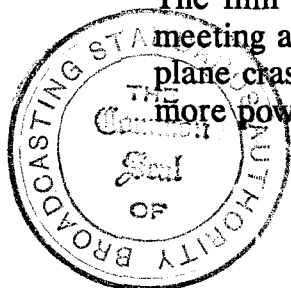
In regard to the film itself, TVNZ reiterated that it was an escapist movie, that it had been preceded with a warning, that it had been broadcast in "AO" time and that, apart from the *News* and *Holmes*, it was the most popular programme broadcast on television that week as it was seen by 604,000 people. Conceding that the film contained plenty of action but describing that action as "far-fetched" and virtually being of a "comic strip" character, TVNZ continued to describe the genre of the film as widely known and understood. Expressing regret that Ms Miller was offended, TVNZ concluded:

That notwithstanding, we observe that to uphold this complaint on the grounds of any of the codes quoted amounts to telling 604,000 New Zealanders that a film they chose to watch was not suitable for them. With the greatest respect, we suggest such a decision could appear unduly paternalistic. We submit that the context in the terms of public expectations of the film and viewer acceptance of it are important parts of the equation.

In addressing the procedural points raised by TVNZ, the Authority pointed out that it is bound by the provision in the Broadcasting Act 1989. Section 7(3) provides that a complainant, by way of referral to the Authority, may "seek an investigation and review of the broadcaster's action or decision, as the case may be". The complainant did not seek a review of TVNZ's action in upholding the complaint about the broadcast of the promo and so the Authority confined its deliberations to a review of TVNZ's decision on assessing the film under standards G2, V1 and V2. The Authority noted Mrs Miller's concern was shared by at least two others who, however, cannot be considered as formal complainants.

Having put to one side Mrs Miller's detailed complaint based on the video version which was not considered by TVNZ and after viewing the full film as screened on television, the Authority decided to record some of the action portrayed in the first 17 minutes of the broadcast before the first commercial break. That period also included the warning and the credits which were spread during the first 5 minutes of the broadcast of the film. The summary has been included in order to give an indication of the story and the action.

The film depicted a person (who was later shown to be the hero) secretly filming a meeting at which a person (later shown to be the villain) is arranging the murder in a plane crash of another person who is an impediment in his (the villain's) advance to a more powerful political position. The hero makes a noise and violently, but unarmed,



disposes of the man sent to investigate. The villain orders his underlings to kill the interloper immediately. The hero escapes the immediate danger in his car and stops at a bottle store on his way home which, before he completes his purchase, is held up by four thugs. A frighteningly tense situation develops and the shopkeeper, upon seizing a baseball bat, is shot in the chest at point blank range with a shot gun. The unarmed hero through skilful combat disarms and immobilises the four and the police are called.

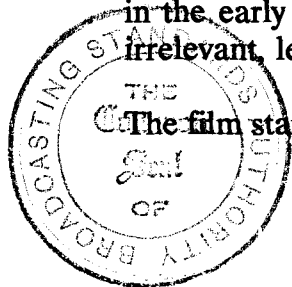
Upon arriving home the hero says goodnight to his small son after listening to him saying his prayers, retreats to the bedroom, climbs on to the bed and begins to make love with his wife. As she undresses, armed and masked assailants are shown creeping into the house. They burst into the bedroom of the partly dressed hero and nearly naked wife. Although one of the invaders is disarmed by the hero using his martial art skills, the others shoot the hero and his wife in a hail of gunfire. While the intruders are ransacking the hero's home looking for the tape filmed surreptitiously earlier, the infant son wanders into the room. The assailants start shooting at him as he runs away and falls out of a window - whether he is alive or dead is left unclear. A break for commercials begins. Interspersed with the mayhem at the hero's house is a scene which shows another police officer, who knew of the hero's exploits that evening, also becoming the victim of an armed intruder while resting at home.

Apart from recording that the hero does not die but survives, under a false name and in a coma, for seven years after which he recovers his health and, during a considerable number of violent incidents, ensures that good triumphs over evil, the Authority does not intend at this stage to discuss further the content of the film. It has recorded some of the events in the opening sequence in order to give some idea of the extent of the violence which was portrayed on Channel Two between 8.30 - 8.50pm on Wednesday 10 February 1993 - violence which recurred many times before the story reached its conclusion.

The standards distinguish between realistic and farcical violence and TVNZ has stressed the "far-fetched" nature of the action. The Authority agreed that some aspects of the film could be described as "escapist" and that some of the violence depicted verged on the fanciful. However, the brutal hold-up of the bottle store, of minimal relevance to the story, and the bloody invasion of the hero's home made use of situations which clearly relate to real fears held by many people. Accordingly, although at times the hero's exploits stretched credulity, the Authority was not prepared to excuse the violence as being unrealistic.

Having considered the film on an overall basis, the Authority concluded that its theme, as set in the opening sequences, highlighted the violent nature of the action by all the main participants in a realistic setting. The Authority acknowledged that some of the scenarios could have been considerably more realistic but it was not prepared to agree with TVNZ that the violence was acceptable as it was "escapism" in which violent action could be dismissed as being irrelevantly meaningless. The violence portrayed, especially in the early sequences, could not under any circumstances be dismissed as farcical or irrelevant, let alone of a "comic strip" character.

The film starkly portrayed blood and terror and the horror of being suddenly caught up



in mayhem in a manner which many members of the public would find disturbing. The broadcaster patronisingly suggested that the upholding of the complaint could make the Authority appear paternalistic in the eyes of 604,000 viewers. The Authority finds this comment disturbing indeed. Codes of Violence have been agreed to by the broadcasters and the Authority but it seems from this statement that they can be ignored in certain undefined circumstances. The Authority is quite prepared to be thought of as "paternalistic" in ruling that this film showed a degree of violence which was unacceptable - whether or not it was watched by 604,000 viewers.

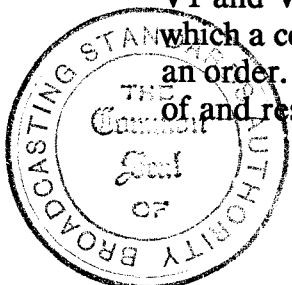
The Authority acknowledged that the film was shown in adults-only time and preceded by a warning. However, it decided that, as much of the violence shown was unnecessarily detailed, standard V1 was breached. As the violence embedded in realism was at times used gratuitously to achieve heightened impact, standard V2 was also contravened. Finally, standard G2 requires broadcasters to take into account accepted norms and the Authority decided that the extent and the explicitness of the violence portrayed breached that requirement.

Having reached the conclusion that each of the standards cited had been breached by the broadcast of the film *Hard to Kill*, the Authority decided to highlight which standard it considered had been most blatantly breached by the broadcast.

The Authority has recorded above its view that the inclusion of the bottle store scenes was of little relevance to the story and consequently, gratuitous. Their contribution seemed largely designed to set the scene for the forthcoming violence. The cold-blooded attack on the hero and his family in their home included an unacceptably drawn out scene of volleys of shots being fired at the retreating little boy. In a later lengthy sequence the recuperating hero and his companion survived a concerted onslaught on their house by what seemed to be a small army of well-armed gunmen. Subsequently, the hero and his son were reunited in a vicious scene when a friend was killed and the hero, using his unarmed combat skills, disposed of assorted assailants. There was also the inevitable face-to-face confrontation between the hero and the arch villain which was preceded by the yet more gruesomely violent confrontations between the hero and the villain's henchmen. In view of these sequences, the Authority decided that standard V2 - the prohibition on the use of realistic and gratuitous violence to achieve heightened impact - had been breached repeatedly. Indeed, of the three standards cited, the Authority regarded the breach of standard V2 to be the most serious contravention.

For the above reasons, the Authority upholds the complaint that the broadcast by Television New Zealand Ltd of the television version of the film *Hard to Kill* on Channel Two at 8.30pm on Wednesday 10 February 1993 breached standards G2, V1 and V2 of the Television Code of Broadcasting Practice.

Having upheld a complaint, the Authority may make an order under s.13(1) of the Broadcasting Act 1989. On the basis that the Violence Code, which includes standards V1 and V2, was only promulgated earlier this year and that this is the first occasion in which a complaint has been upheld under them, the Authority does not intend to impose an order. It believes that at this stage it is more important that broadcasters are advised of and respond to the Authority's interpretation of the standards. The Authority trusts



that it is now abundantly clear that programmes which include gratuitously violent scenes will be in breach of the Violence Code.

In its decisions, the Authority is reluctant to mention standards which have not been cited by a complaint. However, in order to inform broadcasters of its concerns about the application of the Violence Code, the Authority records the requirements of standard V10. It reads:

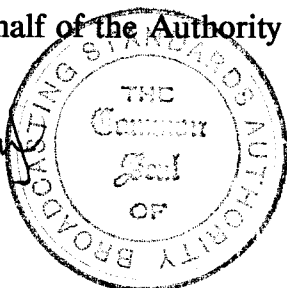
V10 The cumulative or overall effect of violent incidents and themes in a single programme, a programme series or a line-up of programmes back to back, must avoid giving an impression of excessive violence.

As will be apparent from the decision, had this standard been cited, the Authority would have had little hesitation in ruling that it had been breached by the broadcast and, in addition, that it was the principal standard breached.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



28 June 1993

Appendix

Mrs Miller's Complaint to Television New Zealand Limited

In a letter dated 11 February 1993, Mrs Pauline Miller of Invercargill complained to Television New Zealand Ltd about the film *Hard to Kill* broadcast on Channel Two at 8.30pm on Wednesday 10 February. She also complained about the broadcast of a trailer or promo for the film at 8.10pm on the same evening.

Mrs Miller said that promo depicted the most horrific and violent scenes from the film but the broadcast had not been preceded with a warning.

The film itself, she continued, depicted violent acts which were not in good taste and could encourage viewers to regard aggression as an acceptable way to deal with problems and thus also breached the broadcasting standards.

TVNZ's Response to the Formal Complaint

TVNZ advised Mrs Miller of its Complaints Committee's decision in a letter dated 10 March 1993 and reported that the complaint about the promo had been considered under standards V3 and V16 of the Television Code of Broadcasting Standards and the complaint about the film under standards G2, V1 and V2.

Dealing first with the complaint about the broadcast of the trailer, TVNZ acknowledged that it contained material which should not have been broadcast before 8.30pm and, consequently, breached standard V16. It explained that a scheduling error had occurred and that the Promotions Manager had been advised of the Complaints Committee's concern at the lapse. Moreover, TVNZ expressed its apology to Mrs Miller for any distress that the broadcast had caused her.

Describing the film as typical of the genre which, while violent in parts, recorded the hero's relentless progress as good triumphed over evil, TVNZ maintained that the theme involved "classic escapism". Escapism, it continued, in the sense of "providing distraction or relief from reality". Accordingly, TVNZ argued, it would not be taken seriously and as it was screened in "AO" (Adults Only) time, it did not breach standards G2, V1 or V2.

In regard to Mrs Miller's concern about the social impact of violence, TVNZ explained that the film which was screened was a modified-for-television version of a successful cinema movie. Further, as it was a familiar genre, viewers would not have been surprised by the action portrayed and the complaint about the broadcast of the film was not upheld.



Mrs Miller's, Mr Reeves' and Ms Latta's Complaint to the Broadcasting Standards Authority

As she was dissatisfied with TVNZ's response, in letter dated 24 March Mrs Miller and two others referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

The referral included a detailed analysis of the film in which ten sequences were identified and the standards recorded which each sequence was alleged to have breached. In the Complaint Referral Form completed at the Authority's request, the complainants disputed TVNZ's description of the film as one involving "escapism", describing that term as ludicrous.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 13 April 1993 and TVNZ, in its reply dated 26 April, began by raising three procedural issues.

First, TVNZ noted that the original complaint had been made by Mrs Miller alone and thus the Authority should regard the referral as being made by her alone.

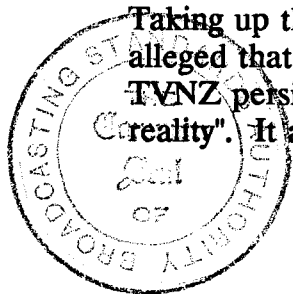
Secondly and despite a request to Mrs Miller for more details of the complaint which it was required to consider, the Complaints Committee had had to assess the complaint on the basis of a broad overview. In the circumstances, TVNZ stated:

With respect we believe it would be unjust were the Authority's review of the Complaints Committee's decision to be based on detailed material which was not offered to the Committee at the time the complaint was determined, and which has not therefore been considered by the Committee.

Thirdly, TVNZ noted that the complainants' list of specific complaints sent to the Authority referred to a 95 minute film while the film shown on Channel Two was modified for television and lasted 90 minutes. That suggested that the complainants had referred to a copy of the cinema version obtained from a retail video outlet.

Turning to the film itself, TVNZ recorded that the film carried an "AO" certificate, was screened in "AO" time and was preceded with a warning that some of the scenes and language could offend some viewers. Observing that the following point was not relevant directly relevant to standards, TVNZ also recorded that the film had rated very highly and that only one formal complaint had been received.

Taking up the point that Mrs Miller's original complaint was lacking in detail but had alleged that the broadcast had breached the standards by depicting violent acts, TVNZ persisted in its view that the film was "pure escapism" and "well divorced from reality". It added:



We respectfully suggest that viewers sat down to watch this movie always secure in the knowledge that in the end the hero would triumph against his adversities, and that good would overcome evil. It is that security which allows viewers to enter the realm of "escapism".

It is a tried and true formula, repeated many times in the last sixty years of film making, and used with spectacular success in action and adventure novel, murder mysteries both in literature and the theatre and in comic strip characters such as "Superman", and even "Dan Dare (Pilot of the Future)".

It described the action in many scenes in the film as "far-fetched" and, in view of the warning and classification, said that it had not breached the standards. It added that it would be paternalistic to tell the many New Zealanders who watched the film what was or was not suitable for them to view.

In forwarding a VHS copy of the film to the Authority, TVNZ repeated its concern that the complaint was based on the cinema and not the television version of the film.

The Complainants' Final Comment to the Authority

When asked to comment on TVNZ's response, in a letter dated 17 May the complainants said that they had made the complaint jointly as they agreed that the broadcast had breached the standards. They also acknowledged that they had watched a video of the cinema version rather than the modified-for-television version. They added:

However, we are sure that most of the episodes mentioned in our list of complaints were in the televised version also. In our letter of March 21, we asked if any violent episodes were cut, and if so, which ones. [TVNZ] failed to answer this question.

As for TVNZ's argument that the film was very popular, the complainants pointed out that this was not a criterion which applied to broadcasting standards.

In response to TVNZ's point that there was no proven link between viewing fictional violence and changes in behaviour and attitude, they cited the Mental Health Foundation's report that correlations between "the heavy viewing of violence on TV and aggressive behaviour were solid".

