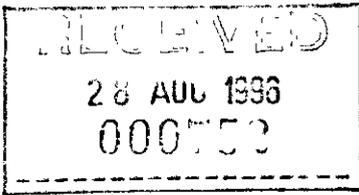


BROOKERS

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

AP No 35/95



BETWEEN

GERARDUS ADRIANUS MARIA
MOONEN

Appellant

A N D

TELEVISION NEW ZEALAND LIMITED

Respondent

Hearing 16 July 1996

Counsel Appellant in person
M F McClelland for Respondent

Judgment 14 August 1996

JUDGMENT OF GREIG J

The appellant complained to Television New Zealand Limited, the broadcaster of a programme which appeared on 27 November 1994 and which examined a therapy unit for convicted child sex offenders (and others) in Rolleston Prison. In the course of the programme the word "paedophile" was used on a number of occasions by the presenter in describing and referring to the men convicted of crimes and referred to in the programme. The appellant's argument is that broadcasting standards require accuracy and balance and that these had been breached by the use of the word "paedophile" as a synonym for criminals and child molesters. It was his claim that, by the misuse of the word "paedophile", people who were not criminal had been treated as inferior and discrimination against them had been encouraged. Television New Zealand Limited rejected the appellant's complaint. Dissatisfied with that he applied to the Broadcasting Standards Authority. The Authority, after receiving submissions from the appellant and Television New Zealand Limited, declined to uphold the complaint in a written decision dated 13 February 1995. The appellant now appeals that decision of the Authority to the Court.

The appeal is brought pursuant to s 18 of the Broadcasting Act 1989. By subs (4) of that section the Court is to hear and determine the appeal as if the decision or order appealed against had been made in the exercise of a discretion. That constitutes a somewhat narrower right of appeal than is generally understood by way of a general right of appeal by way of rehearing. The appellant must satisfy the Court that the Authority, in this case, has made an error of law or that it has failed to take into account some relevant consideration or that it has wrongly taken into account some irrelevant consideration or that the decision is plainly wrong. The Court, in considering this matter, is also entitled to have regard to the fact that the Authority is a specialist tribunal with wide and continuing experience in dealing with complaints and in considering and applying the Code of Broadcasting Standards promulgated under the Broadcasting Act.

The appellant has appeared throughout in person. He has brought these proceedings on his own behalf but, in addition, presenting himself as Chairman of the Australasian Man/Boy Love Association, an unincorporated association of persons which the appellant describes as an assembly of boy lovers and their

supporters. The Association has, among its purposes, the mutual support of those persons and an aim to dispel what the Association considers are myths which exist about boy love. It is asserted in material presented by the appellant that the Association "strives to educate society about the positive and beneficial nature of man/boy love and gives support to men and boys who are alienated and persecuted because of their desire for consensual sexual and emotional relationships with each other." It is the appellant's contention that the Association is against coercion, violence, non-consensual sex abuse, molestation and child prostitution. It is necessary to say, however, that in New Zealand virtually every form of sexual activity and conduct between a man and a boy up to the age of 16 is an offence under the Criminal Code and in most cases consent is not a defence.

The programme was an item in a series of programmes entitled "Frontline". The programme in question was broadcast between 6.30 pm and 7.30 pm on 27 November 1994. The programme began with an introduction by the presenter in these words:

" To most of us such a despicable crime as the sexual abuse of a child is a mystery. We are totally baffled as to how anyone can violate a child's innocence and rob them of their trust in adults. Tonight "Frontline" brings you a rare opportunity to look inside the minds of probably the most hated men in the country - paedophiles. "

In the course of the hearing I viewed the programme on a video recording. It referred on a number of occasions and made use of the word "paedophiles" to refer to convicted child sex offenders and, in particular to the persons who appeared and were referred to in the course of the programme being some of those who were undergoing the treatment at the Kia Marama unit at the Rolleston Prison. The identity of all of the men involved was suppressed by one means or another but there were interviews with them and with others who were involved in the Kia Marama Unit.

The appellant, in extensive and wide-ranging submissions, not all of which were relevant to the appeal and in particular an appeal against an exercise of

discretion, canvassed what he contended were breaches of a number of the broadcasting standards, namely, the requirement that broadcasters are -

- " G1 To be truthful and accurate in points of fact.
- G5 To respect the principles of law which sustain our society.
- G6 To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.
- G13 To avoid portraying people in a way which represents as inferior or is likely to encourage 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 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.
- G21 Significant errors of fact should be corrected at the earliest opportunity. "

The essential focus of the complaint and the submissions on appeal was the contention that the programme used the word "paedophilia" as a synonym for the criminal conduct of a child sex offender or for criminal offending when it was argued paedophilia had and included a neutral and non-criminal meaning of sexual attraction to pre-pubescent children. Reference was made to dictionaries and other literature in support of the contention. It was plain, however, from a reading of the literature that was produced, that in ordinary usage, at least in recent times, paedophilia has come to connote, in particular, criminal activity including what is sometimes referred to in the dictionaries as "paederasty". For example, in a report by the Parliamentary Joint Committee on the National Crime Authority in the Commonwealth of Australia in November 1995 described, under the title "Organised Criminal Paedophile Activity", the conclusion was that the word paedophile had no

agreed meaning but it was noted (para 2.7) that "most popular discussion in the media and elsewhere uses 'paedophile' without any clear definition but seemingly to refer to acts against children of up to at least 16 years of age" and in 2.11 that "the categories of child molester and paedophile overlap, but are not identical." In another item submitted by the appellant, an extract from a work *Perspectives on Paedophilia*, Taylor et al (ed) 1981, in a reference at p 24 in Chapter 2 under the heading "The Adult" by one Peter Righton, this appears:

" Most of the studies on paedophilia, however, treat as paedophile any sexual relationships entered into by adults with young people up to at least the point of mid-adolescence: so, for the purposes of this chapter, I shall do the same - albeit with some reluctance "

And in other documents and references it is clear that paedophilia can be and may be classified and extend to criminal activity.

In its the decision the Authority said this:

" In determining the complaint, the Authority considered that it was not necessary to enter the debate about the appropriate dictionary definition or current use of the words paedophilia and paedophile. It was of the view that in the specific context in the broadcast in which the word paedophiles was used, the term had referred to the convicted child sex offenders who were confined to the Kia Marama unit. "

That decision in the second sentence was clearly open to it and, indeed, as the appellant accepted, the use of the word in the programme was to refer to child sex offenders. His objection was that it did so generally, widening the scope beyond what he contended the word connotes. In my opinion the word now does have a wider connotation. What may once have been limited to a psychiatric or other expert meaning has now become a broader meaning which, in common usage, includes and refers to those who commit criminal offences between men and boys and other young people.

On either basis, therefore, the broadened meaning of the word "paedophile" or the limited context of its use in the programme could not be said that there was any breach of the standards G1, G5 and G6, and there being no significant error there could be no application of G21. The remaining issue was whether there was a breach of standard G13.

Any discrimination was required to depend upon the meaning and application of the words "sexual orientation" in the code standard. The Authority applied the definition contained in s 21 (1) of the Human Rights Act 1993, which is as follows

" (m) Sexual orientation, which means a heterosexual, homosexual, lesbian, or bisexual orientation "

That is an exclusive definition and does not include paedophilia. It was held, therefore, that this was not a subject upon which there could be a breach of that code standard. It may not always be proper to use the statutory definition of a term in one statute as applying in another in the absence of any specific reference or correspondence between the statute. In this case, however, it is clear, as the Authority noted, that the reference to sexual orientation, was not originally included in the code standards or the functions of the Authority in s 21 of the Broadcasting Act. It was added to the code G 13 at the same time and clearly as a result of the alterations and the additions to the Human Rights legislation in 1993. That clearly has a limited definition, one which would not and can not include paedophilia as an inclination or tendency or as a sexual activity. In its context the programme was about convicted criminals, not a section of the community which falls within the ambit of the prescription of discrimination in the Broadcasting Act or, indeed, the reference in the Human Rights Act. To the extent that the programme referred to other sexual activity between adults and young persons or children it was also criminal in this country and equally outside the ambit of the provisions that I have mentioned.

The decision of the Authority was founded on a correct view of the law. There was no error of law involved, nor was there any irrelevant consideration

taken into account or relevant consideration ignored. In the end the decision was plainly right and the appeal must be and is dismissed.

I think costs in a case such as this should follow the event. There will be an order for costs in favour of the respondent against the appellant in the sum of \$1,000 together with disbursements and other expenses to be fixed by the Registrar.

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