

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 1999-053
Dated the 13th day of May 1999

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

MICHELLE LOOS
of Auckland

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

S R Maling Chairperson
L M Loates
R McLeod
J Withers

DECISION

A broadcast on *60 Minutes* on 1 November 1998 beginning at 7.30pm focused on the technological and medical advances in the care of seriously ill premature babies.

Ms Loos, who was the mother of one of the babies shown, lodged a complaint with Television New Zealand Ltd, the broadcaster, that the broadcast breached her privacy and several broadcasting standards. As TVNZ declined to uphold her complaint, it was subsequently referred to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

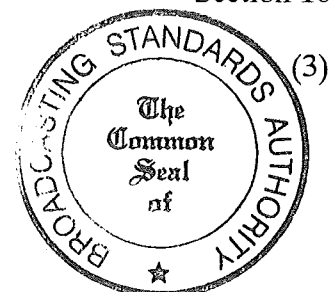
This complaint raised serious and complex issues for the Authority.

Following the Authority's deliberations, but prior to the release of a formal decision, it was advised by the complainant's solicitor that Ms Loos wished to withdraw the complaint as she had reached a settlement with TVNZ.

The Authority was asked if this course of action was open to the parties and the Chairman ruled it was, but subject to the question of costs. Both parties were advised of this.

Section 16(3) of the Broadcasting Act 1989 provides:

(3) Where, through failure to prosecute any proceedings at the time fixed for its hearing or to give adequate notice of abandonment of any proceeding, the



Authority considers it proper to do so, the Authority may order the party in default to pay to the Crown such sums for costs as it considers reasonable.

Notice of abandonment of this complaint was given late and only after the Authority had released its preliminary views to both parties. It is plain to the Authority that the complaint was only abandoned as a result of the settlement which Ms Loos then reached with TVNZ.

Considerable effort has been put in to the investigation of this complaint and significant costs have been incurred by the Authority.

This effort and these costs could have been avoided had TVNZ addressed its position with this complainant at an earlier stage.

For the foregoing reasons, a majority of the Authority concludes that it was the actions of TVNZ which were largely responsible for the late abandonment of this complaint. To that extent, it concludes that TVNZ is the party in default for the purposes of Section 16(3) and that this is an appropriate case in which to order TVNZ to pay costs to the Crown.

This is the first occasion on which the Authority has had to consider the withdrawal of a complaint by a party following the issue of an interim decision.


The Authority wishes now to place on record that in its view it is not competent for the parties to abandon proceedings under such circumstances. In future cases of this kind the Authority will proceed to a final determination in all cases where it has given an interim decision to the parties concerned.

For the foregoing reasons a majority of the Authority orders TVNZ to pay costs to the Crown pursuant to s.16(3) of the Broadcasting Act 1989 in the sum of \$5,000.00.

ORDER

Pursuant to section 16(3) of the Broadcasting Act 1989, the Authority orders Television New Zealand Ltd to pay costs to the Crown in the sum of \$5,000.00.

Signed for and on behalf of the Authority


Sam Maling
Chairperson
13 May 1999

