

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 4/90

Dated the 26th day of March 1990

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by  
MR PETER W HAMILTON  
of Wellington

Broadcaster  
TELEVISION NEW ZEALAND  
LIMITED

I.W. Gallaway Chairperson  
J.B. Fish  
J.L. Hardie  
J.R. Morris

DECISION

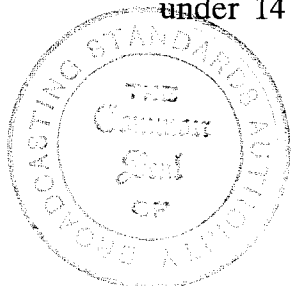
Introduction

This complaint arose from the broadcast of an episode of *Sons and Daughters* which was screened on TV 1 at 5.25 pm on Monday, 14 August 1989.

Mr Hamilton was concerned that the episode contained violent material (a hostage-taking scene) unsuited to younger viewers of primary school age who might, at that time of the evening, reasonably be expected to form part of the viewing audience. As a result of incorrect information, Mr Hamilton wrote a letter to the Authority on 14 August 1989, complaining about the violence in this programme. Acting on the Authority's advice, he subsequently re-addressed his complaint to the broadcaster, as required by the Broadcasting Act 1989.

Mr Hamilton's Complaint to Television New Zealand Limited

Mr Hamilton wrote to TVNZ on 30 August 1989 formally complaining that the episode in question "contained violent and offensive material totally unsuited to children aged under 14 years, in my case my daughter aged 9 and son aged 5".



Mr Hamilton also stated his further concern that the episode breached standards 18,19 and 20 of the TV Programme Standards included in the Codes of Broadcasting Practice for Television. (Although paragraphs 18, 19 and 20 are variously referred to by the complainant and by TVNZ as 'guidelines' or 'codes', the Authority prefers to use the term "standards" and has substituted this term wherever it has quoted from correspondence.)

These three standards, which are designed to protect the interests of children, read as follows:

### Protection of Children

In the preparation and presentation of programmes and news and current affairs output broadcasters are required to observe the following points:

- 18 To be mindful of the effect any programme may have on children during their generally accepted viewing periods.
- 19 Themes and scenes dealing with disturbing social and domestic friction or sequences in which children or animals may be humiliated or badly treated are to be avoided.
- 20 Violence is unacceptable if it is presented in a manner which will unnecessarily disturb, alarm or distress children during their generally accepted viewing times, as determined by the censorship classifications criteria.

Mr Hamilton considered that the screening of the hostage-taking scene showed an "unacceptable disregard for the Code, and general public decency, or insufficient prior vetting of a programme screened when juveniles can be expected to form a (major) part of the viewing public".

Attached to his letter to TVNZ was a copy of Mr Hamilton's initial complaint addressed to the Authority of 14 August 1989. In that letter Mr Hamilton had explained that:

"I understand (from my wife) that the episode in question contained an exceptionally violent scene of a hostage taking, followed by (off-screen) gunshots indicating a suicide of the hostage taker. There was no indication (i.e. in the Listener) that this episode could contain violent material. My wife was obliged to turn the TV off but only after our two children (daughter, aged 9 and son aged 5) had been subjected to this disgusting and traumatic episode".



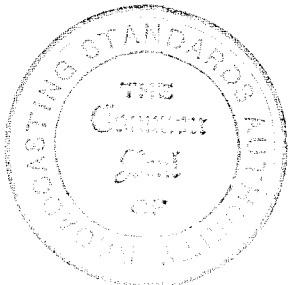
### The Episode

*Sons and Daughters* is an episodic Australian "soap". In common with other programmes of this genre, the story-line generally follows a predictable course. As the subject-matter is of prime adolescent and adult interest, and since it normally does not contain material likely to be unsuitable for children under 14 years, the programme is consistently classified by TVNZ's programme appraisers as a General Programme. Because of its "G" classification this episode, as with its predecessors, could be screened at any time in accordance with the provisions of the Television Censorship Classifications included in the Codes of Broadcasting Practice for Television.

With regard to the subject-matter of the particular episode in question, the Authority accepts - as a starting point - the general description contained in TVNZ's letter to the complainant of 4 October 1989 informing him that his complaint had not been upheld (for further details of this letter, see below). That description was as follows:

"It was noted that in the particular episode a climax was reached in a theme which had been intertwined throughout a number of preceding episodes. It involved a young woman who had been receiving anonymous telephone calls from a man threatening her. At the time the calls were coming, she befriended her next door neighbour, a man living on his own whom she trusted. One day, while visiting her flat, the situation altered. The man refused to let her leave as he believed she was his daughter whom he had not seen since his wife left him years earlier. Realising the seriousness of her situation she tried to reason with her kidnapper, but he became angry, produced a gun and threatened to use it if she tried to leave him. No blows were struck and the shooting which occurred was not witnessed by the cameras although the sound of two shots was heard."

To that, the Authority would add that armed police arrived outside the flat while the young woman was trying to reason with the kidnapper. Prior to their arrival, the kidnapper (or hostage-taker) had appeared to be both totally confused and deluded (as to the identity of the young woman). After their arrival, the tension mounted and he became physically dangerous as well - he brandished a gun and, in his ravings, told the young woman that "I should've got rid of you and your mother years ago". Shortly thereafter he pointed the gun at her, exclaiming that "... if I can't share my life with you, then...!" (The sentence was not finished.) The camera immediately shifted to the scene outside the flat and two shots were heard coming from inside. The armed police then broke into the flat and the young woman emerged in a state of shock. A policeman said that the man was dead and that he "almost took the girl with him". The young woman then announced that the man had put the gun to her head and that, at the last minute, he had shot himself. She was then embraced by her boyfriend.



### Television New Zealand's Response to Mr Hamilton's Complaint

In a letter dated 4 October 1989, TVNZ advised Mr Hamilton that his complaint had been considered in the context of standards 18, 19 and 20 of the Television Programme Standards and had not been upheld by Television New Zealand's Complaints Committee.

After describing the episode (see the passage quoted earlier) the letter noted that serious consideration was given to the question "whether it would be reasonable to cut scenes containing themes and aspects dealing with friction of this nature. A hostage situation inevitably implies violence of a sort and the scene in question embraced raised voices and the presence of a hand gun. Police were present outside the door".

TVNZ acknowledged that while "the portrayal may not have precisely met the requirements of [standard] 19, the censor saw the incident as conveying an important message for any child that may have been viewing, as well as adults, in the aspect of stranger-danger". It was also pointed out that this was a message that the NZ Police had been trying to get through in their school educational activities. The preceding episodes were important in establishing this point since the hostage-taker was revealed as someone who had been a kind and friendly person to start with but who had later changed in nature.

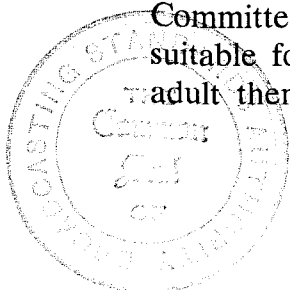
Another element in TVNZ's consideration was that the hostage-taking resulted in a call to the Police, "so that here was another lesson in dealing with a crisis situation". It was also noted that TVNZ's appraiser or censor of the episode had brought up two children and "was acutely aware of public awareness messages which can be built-in through television programmes".

The letter continued as follows:

"Taking into account the context in which the so-called violence occurred and the fact that there was nothing gratuitous about it, the Committee believed the programme was not presented in a manner which would infringe the three [standards], even though a view was expressed that very slight trimming of the scene could probably have been sustained.

If anything it was considered that the programme may have provided an educational lesson for the protection of children and adults rather than being harmful in the context envisaged by the [standards]. Accordingly, your complaint was not upheld."

By way of additional comment, TVNZ advised Mr Hamilton that its Complaints Committee had observed that *Sons and Daughters* "is not a programme either entirely suitable for young viewers or likely to have great appeal for children. It embraces adult themes and much of the dialogue could be difficult to understand and many



situations depicted could be totally boring for the young." Reference was then made to the fact that on the evening in question, audience research had revealed that only 14% of the available audience in the 5 to 9 year-old bracket, and only 15% in the 10 to 19 year-old bracket, had actually viewed the episode.

### Mr Hamilton's Complaint to the Broadcasting Standards Authority

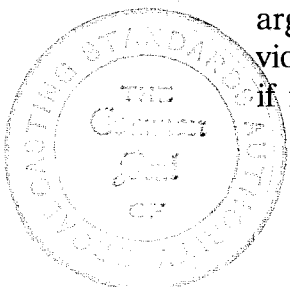
On 16 October 1989, Mr Hamilton, being dissatisfied with the decision of TVNZ's Complaints Committee, referred his complaint to the Authority pursuant to section 8(a) of the Broadcasting Act 1989.

Mr Hamilton was concerned that TVNZ had not, in his view, addressed the substance of his complaint in view of the precise wording of standards 18, 19 and 20 of the TV Programme Standards section of the Codes of Broadcasting Practice for Television. He maintained that the violent scenes in the episode had been broadcast in breach of those [standards] and that the arguments advanced by TVNZ in support of its decision not to cut the scene(s) could not be sustained through a close reading of those standards. He therefore maintained that TVNZ had erred in not upholding his complaint.

Mr Hamilton's letter contained a very detailed rebuttal of almost everything that had been put forward in TVNZ's letter of 4 October 1989.

Summarised, the salient points may be reduced to the following:

- there is nothing in standard 19 to suggest that *context* may justify the portrayal of social friction or violence
- the "off-camera" gun-shots, far from reducing the impact of the violence, made the scene more traumatic because Mr Hamilton's daughter assumed that the young woman had been shot
- there was no indication in the classification of the episode that parental guidance would be required to explain the incident to children
- it was an exercise in sophistry amounting to little more than ex post facto justification to argue that while the portrayal may not have precisely met all the requirements of [standard] 19, it carried an important message of "stranger-danger"
- the "lesson" for young viewers contained in the act of calling the police for assistance was probably lost on most young viewers; in any event, Mr Hamilton argued, there is nothing in the standards to suggest that social friction or violence is acceptable in programmes screened during children's viewing time, if it is educational or otherwise contains a lesson for them



- the fact that public awareness messages can be built into television programmes should not be employed to justify a prima facie breach of the standards
- the assertion that the incident was "so-called violence" and was not gratuitous, suggested that TVNZ considered that it was not violent *per se* - Mr Hamilton sought the Authority's view on this interpretation
- if *Sons and Daughters* is not a programme entirely suitable for children or likely to appeal to them, "why then does it carry a 'G' classification and why is it screened during children's normal viewing hours?"

Mr Hamilton's complaint to the Authority was referred to Television New Zealand Limited for its comments.

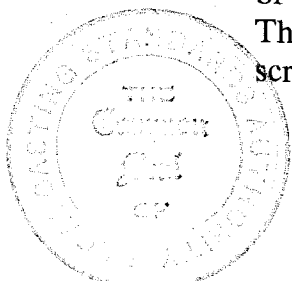
#### Television New Zealand's response to the Authority

In a letter dated 5 December 1989, TVNZ commented further upon Mr Hamilton's complaint.

TVNZ took issue with the comment in Mr Hamilton's letter of 14 August that the episode contained "an exceptionally violent scene of hostage-taking", pointing out that it was apparent that Mr Hamilton did not, himself, view the episode. While admitting that the scene was tense and generated suspense, TVNZ submitted that it was not of an "exceptionally violent nature".

With regard to the salient points made by Mr Hamilton, TVNZ's comments were as follows:

- the overall *context* does have an intrinsic bearing on the degree to which scenes depicting social upset may be illustrated
- in turning off the television set, Mrs Hamilton denied her daughter learning that the young woman had not been shot; the child's trauma would have been reduced if she had seen that the young woman was subsequently embraced by her boyfriend and that the episode had a happy ending
- a programme with predominantly adult appeal, as distinct from an adult classification, should not require heavy censoring to reduce it to a sanitised form suitable for younger viewers who, in the normal course of events, would be uninterested in such material or be unable to comprehend its import. The hour of 5.25 pm is not regarded as a generally accepted viewing period for children. This is usually prior to 5.15 pm when programmes catering to their interest are screened.



- as to classification, the programme is consistently assessed as being suitable for a "G" classification because of the usual non-violent nature of the material, even though the subject matter is usually of prime adolescent and adult interest.

"However, as with most soaps, there will be episodes having stronger material in them and the episode of "Sons and Daughters" in question is a case in point. Nevertheless the episode was not considered to be sufficiently out of kilter, given the context of the story-line, to warrant the recommendation of a PGR certificate which would have resulted in a 7 pm placement or total withdrawal. But as a result of a thorough scrutiny, TVNZ acknowledges that slight editing might have been appropriate. Nevertheless it was not believed the matter was of sufficient gravity to warrant a finding that the codes had been seriously flouted."

- while (again) conceding that "fine-tuning exercises would have been appropriate to more precisely or safely take the episode totally within the requirements of [standard] 19, thus possibly resulting in a diminution of the "disturbing" proviso of the [standard]", TVNZ said that the educational ("stranger-danger") element was seen by the Complaints Committee "as a possible spin-off virtue if younger viewers did happen to take notice of the odd segment of the programme". TVNZ agreed with Mr Hamilton that "this aspect was incidental to the main purpose of the programme"

- as to the "lesson" about calling the police being lost on most young viewers, TVNZ made the point that children were not obliged to view the scene since the programme is not recognised "as being of prime interest for young viewers"

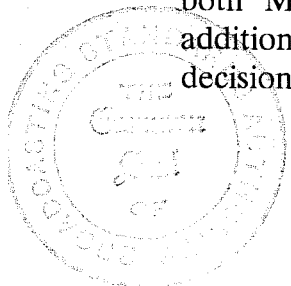
- TVNZ also expressed an interest in learning the Authority's views on "so-called violence" and "violence per se", in the context of this episode.

### **Mr Hamilton's Comment**

Mr Hamilton was given the opportunity to comment upon TVNZ's response to the Authority but, in the interests of a speedy resolution of his complaint, he declined the offer to do so.

### **Decision**

The foregoing detailed recital of the complainant's claims of breaches of standards and TVNZ's counterclaims has been set forth in order to illustrate the extent and depth of both Mr Hamilton's concerns and TVNZ's consideration of his complaint. An additional reason for doing so, and one that is not strictly essential to the Authority's decision on the complaint, is that the points raised by both parties have confirmed the



Authority's resolve to review standards 18, 19 and 20 for the Protection of Children.

Before commenting on the substance of the complaint, the Authority wishes to record its view on a matter that was alluded to, almost by way of an aside, by TVNZ. This concerns the "standing" of a complainant. While it is apparent that Mr Hamilton did not himself view the episode of *Sons and Daughters*, the Authority does not, in the circumstances of this particular complaint, consider this to be relevant. This may not, however, always be the case with a complaint brought by a complainant who has not viewed the programme on which the complaint is based. In this connection, the Authority notes that it has power under the Broadcasting Act 1989 to decline to determine a complaint if it considers that, in all the circumstances of the complaint, it should not be determined by the Authority.

On the substance of Mr Hamilton's complaint, the Authority is satisfied that, despite the fact that its Complaints Committee did not uphold the complaint, TVNZ has to all intents and purposes conceded that it erred in not cutting or editing-out some of the more disturbing scenes in the episode in question.

This concession is either acknowledged or left to be inferred by the reader in statements contained in TVNZ's letters of 4 October 1989 and 5 December 1989. While maintaining throughout that *Sons and Daughters* is not something that very young viewers could be expected to watch (given that it is aimed at prime adolescent and adult viewers) and that its time-slot of 5.25 pm is not regarded as a "generally accepted viewing period" for very young children, TVNZ did make the following acknowledgements:

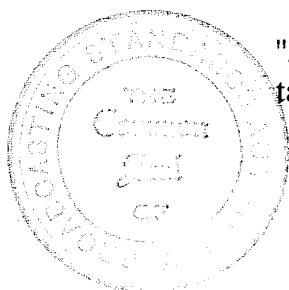
"Serious consideration was given to the question as to whether it would be reasonable to cut scenes containing themes and aspects dealing with friction of this nature..."

"...while it could be acknowledged that the portrayal may not have precisely met the requirements of [standard] 19..."

"Taking into account the context in which the so-called violence occurred and the fact that there was nothing gratuitous about it, the Committee believed the programme was not presented in a manner which would infringe the three [standards], even though a view was expressed that very slight trimming of the scene could probably have been sustained."

"... as a result of a thorough scrutiny TVNZ acknowledges that slight editing might have been appropriate. Nevertheless, it was not believed the matter was of sufficient gravity to warrant a finding that the [standards] had been seriously flouted"

"...fine tuning excisions would have been appropriate to more precisely or safely take the episode totally within the requirements of [standard] 19. It was





contemplated that such action may have resulted in a diminution of the "disturbing" proviso of the [standard]..."

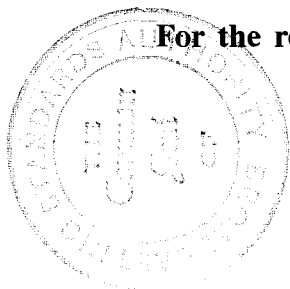
"Although the Complaints Committee did have misgivings, which were frankly and properly conveyed to the complainant, the Company does not believe that, in quantum terms, the negative shadings take matters sufficiently far enough to justify a finding that the codes in question have been breached"

The Authority is of the view that the cumulative effect of these statements must inevitably lead to only one conclusion: the acknowledgement that "very slight trimming", "slight editing" and "fine tuning excisions" would have been appropriate and could have been sustained in order to meet precisely or "safely take the episode totally within the requirements of standard 19", is tantamount to an admission by TVNZ that the broadcasting of the programme in an uncensored format breached standards 18, 19 and 20 relating to the Protection of Children. The belief that the broadcast may not have "seriously flouted" the standards is, of course, also relevant.

Putting that conclusion to one side, however, the Authority considers that the broadcaster should have made excisions of scenes which had a strong potential to disturb or distress younger viewers. Such scenes might, for example, have included those in which the man said that he "should have got rid of you and your mother years ago" and "if I can't share my life with you, then...". When these sentences were coupled with the action both on-screen (the brandishing of the hand-gun and its being pointed at the young woman) and off-screen (the sound of shots), the scenes clearly constituted scenes which were likely, in terms of standard 20, to unnecessarily disturb, alarm or distress child viewers who might happen to watch the episode. The cutting of these and possibly other scenes would have reduced considerably the potential unnecessarily to disturb, alarm or distress those younger viewers. Reducing that potential would also have shown that the broadcaster was, in terms of standard 18, mindful of the effect the episode could have on children during a time which the Authority finds difficulty in accepting is not one of their generally accepted viewing periods. It would also, of course, have demonstrated that steps had been taken to bring the programme within the confines of standard 19, i.e. scenes dealing with disturbing social and domestic friction were being avoided. (In this connection, while acknowledging TVNZ's concession that any possible educative value with regard to "stranger-danger" was incidental to the main purpose of the programme, the Authority notes that the situation in which the young woman found herself was not an example of "stranger-danger".)

The Authority is satisfied that the broadcasting of this episode of *Sons and Daughters* was carried out in breach of standards 18, 19 and 20 (Protection of Children) of the TV Programme Standards section of the Codes of Broadcasting Practice for Television.

**For the reasons set forth above, the Authority upholds the complaint.**



The Authority does not consider the breach to be such as to warrant the making of any order pursuant to s. 13 of the Broadcasting Act 1989.

Reference is made earlier in this Decision to the Authority's resolve to review standards 18, 19 and 20.

One matter which will be looked at in the review is the absence of any specific reference to "context" in these standards. Mr Hamilton, for example, noted that none of the standards mentioned context as an exception or justification for the portrayal of social or domestic friction or violence. However, in the Authority's view, the context within which social and domestic friction or violence is portrayed must always be of prime consideration and must be considered in light of the perceptions of the intended audience, especially its ability to comprehend and appreciate the constraints or conventions within which the story-line is being acted out. Where the domestic friction or violence - whether it be a domestic fight or a hostage-taking - takes place in a house or other setting with which a young viewer, while not necessarily an intended viewer, might readily identify, it is patently obvious that that viewer may very likely be disturbed, alarmed or distressed by what he or she sees. In such circumstances, "off-screen", "down-played" or objective portrayals of the domestic friction or violence are clearly preferable to "on-screen", intimately detailed portrayals. Irrespective of the precise wording of a particular standard, context and degree of portrayal must therefore play an important part in determining whether or not that standard may have been breached. It would be facile to argue that standard 19 should be interpreted to prevent the broadcast of scenes of social or domestic friction, irrespective of the context in which they appear and irrespective of the degree to which they might be "disturbing" to younger viewers who might or might not be watching the programme.

Another matter is that of violence. Mr Hamilton asked for the Authority's views on whether there is a difference between violence "so-called" and violence *per se* (or real violence) and TVNZ also expressed interest in learning the views of the Authority on this question. As this is a matter which will be considered in the context of research currently being undertaken as a prelude to reviewing, in consultation with broadcasters, the Violence section of the TV Programme Standards, the Authority considers it premature to comment on this issue in the context of the present complaint.

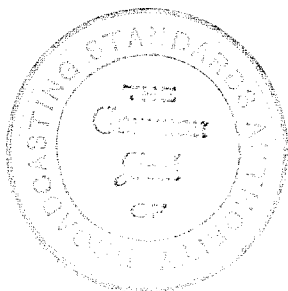
There are two further matters which concern the Authority. One is the absence of a Children's classification in the Television Censorship Classifications, a classification provided for in a number of other countries. The other is the absence of any definition of the time periods which are loosely referred to as children's "generally accepted viewing periods/times". In the present case, the Authority finds it hard to agree with the contention that the 5.25 pm time-slot is not a "generally accepted viewing period for children". The question of a Children's Classification, with all its implications, will therefore be discussed with broadcasters and examined by the Authority for possible inclusion in the Television Censorship Classifications.

However, so long as the "G" classification covers everything from children's cartoons, to *Batman*, to *Sons and Daughters*, *Neighbours*, *Home and Away* and other "soaps" of this ilk, the onus will continue to be on parents or other care-givers to monitor what children, especially young children, watch. Responsible parents or care-givers, as educators, share with broadcasters the responsibility to ensure that children are protected from viewing any scenes which might cause them unnecessary distress.

In this respect, the Authority notes its adherence to the school of opinion that holds that television is not and is not intended to be an "electronic baby-sitter", provided to keep children occupied while parents or other care-givers go about their business or pleasure. It is incumbent upon them to monitor what the very young children watch or, better still, to sit with and to help interpret such things as a character's behaviour or to counterbalance apparent distortions of the child's "real world".

Signed for the Authority

  
Iain Gallaway  
Chairperson



26 March 1990