

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 13/91

Dated the 18th day of April 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

C.L. Robertson
of Thames

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

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

DECISION

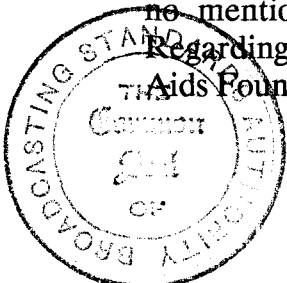
Introduction

An item on the *Holmes* programme on 24 July 1990, broadcast on TV1, dealt with the introduction of the Bill of Rights legislation into Parliament during the previous week. The item reported that the New Zealand Aids Foundation was angry that the Bill did not include anti-discrimination provisions relating to sexual orientation as a recently released opinion poll indicated that a majority of New Zealanders were opposed to discrimination against homosexuals.

Mr Robertson's Complaint to Television New Zealand Limited

Mr Robertson wrote to TVNZ on 24 July to complain that the item breached the Television Codes of Broadcasting Practice in that first, it failed to present significant points of view when dealing with a controversial issue, and secondly, it breached the requirements for fairness and accuracy.

With regard to the first point, he described the item as "entirely one-sided" as there was no mention that Parliament had rejected such anti-discrimination clauses in 1987. Regarding the second, he conjectured that the opinion poll had been conducted by the Aids Foundation, which he described as "not a neutral party", and the respondents would



be people who favoured non-discrimination. He concluded:

Why should homosexuals get this special support without presenting the other side?

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Robertson, in a letter dated 4 September, that its Complaints Committee had considered the complaint in the context of s4(1)(d) of the Broadcasting Act 1989 and standards 1 and 6 of the Television Codes of Broadcasting Practice. Section 4(1)(d), which, in the Authority's opinion, in this instance imposes a requirement similar to that of standard 6, reads:

- (1) Every broadcaster is responsible for maintaining in its programmes and their presentation, standards which are consistent with -
 - (d) The principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest;

Standard 1 requires broadcasters to be truthful and accurate on points of fact.

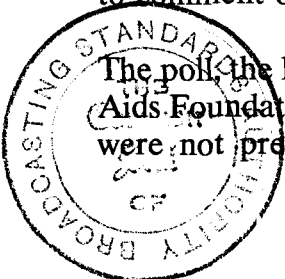
TVNZ explained that the first part of the item had dealt with a family whose homosexual son had experienced discrimination before he died of AIDS. The item then quoted extensively from an opinion poll which appeared to confirm that most New Zealanders thought that discrimination on the grounds of sexual preference should be illegal. The item included an interview with the director of the Aids Foundation who explained that the organisation felt strongly about the need for anti-discrimination legislation.

Regarding the requirement for balance, the Complaints Committee considered that the legislation presented the other side. It observed:

Naturally the focus is in one direction but that does not necessarily equate with the implication implicit in the term "one-sided".

It was a role of journalism, it added, to investigate claims of injustice made about proposed legislation. The role was of increased validity when the critics produced an opinion poll which suggested that one aspect of the legislation was out of touch with public thinking on an issue. It was noted that, "while it was not strictly necessary in this case", the Minister of Justice and the Prime Minister had been asked but had declined to comment on the programme.

The poll, the letter explained, had been conducted by AGB-McNair at the request of the Aids Foundation. This was a "very reputable polling organisation" and the results, which were not predetermined by either the polling company or by the Aids Foundation,



"showed New Zealanders strongly opposed to discrimination against homosexuals". The poll's basis, the letter said, was explained twice during the item.

The Complaints Committee declined to uphold the complaint.

Mr Robertson's Complaint to the Broadcasting Standards Authority

As Mr Robertson was dissatisfied with TVNZ's decision, he referred the complaint to the Broadcasting Standards Authority on 8 September 1990 under s8(a) of the Broadcasting Act 1989.

He began:

Basically, the programme promoted the viewpoint of the "gay" community.

Pointing out that the legislation introduced into Parliament did not deal with discrimination against homosexuals, he asked:

How can that non-existent legislation be the other side of the argument?

Parliament, he continued, had discussed and rejected a proposal to prohibit such discrimination legislatively when dealing with homosexual law reform in 1987. Thus, the *Holmes* programme was helping to revive an "old issue".

Referring to the item itself, he noted that discrimination against an AIDS victim was different from discrimination against homosexuals. The former, he said, was something over which the sufferer had no control. However, if the distinction between an AIDS victim and a homosexual was blurred, it may give "an unfair slant of emotion in favour of the homosexual side". While he accepted the reputation of the company which conducted the poll, he considered that the Aids Foundation which commissioned the poll would have had some influence on the questions posed and thus on the answers obtained.

The item, he concluded:

... tended to promote non discrimination for homosexuals, and that without any reasonable opportunity for a suitably qualified person to present the other direction.

TVNZ's Response to the Authority

The Authority, in a letter dated 14 September 1990, invited TVNZ to respond to the complaint.

TVNZ responded in a letter dated 5 March 1991 - nearly six months after the Authority requested its response. TVNZ pointed out that discrimination against homosexuals had



been a controversial topic for some years and that the item had recalled a massive 1986 petition to Parliament. It also noted that the topic raised a multitude of issues. It disputed Mr Robertson's claim that the programme promoted one view. Rather, Paul Holmes, as devil's advocate, had examined the gay community's viewpoint.

Mr Robertson's comments, it continued, suggested that he had not seen the full item and the item's introduction was reproduced. TVNZ wrote:

This introduction can leave no doubt that the item did concern an aspect of a piece of legislation - that establishing a Bill of Rights - and the omission from the legislation of any reference to rights according to sexual predilection. Given the circumstances, it would have been wrong for the programme to suppress or refuse to broadcast information that a segment of the community, even though it may not be a universally admired one, had a legitimate gripe with the government.

It was recalled that the Prime Minister and the Minister of Justice had declined to comment. It was added that "balance" did not require portraying homosexuality as an abomination, as that was not the legislation's intention.

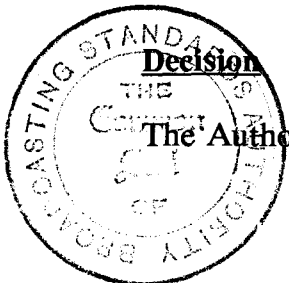
TVNZ concluded that as the complainant was not aware of all the item's contents, the complaint was "defective, imperfectly conceived, and in the unsustainable category". In the circumstances, it submitted that the Authority should decline to determine the complaint.

Mr Robertson's Final Comment to the Authority

At the Authority's invitation, Mr Robertson commented on TVNZ's response in a letter dated 8 March 1991.

He reiterated his point that an item which provoked sympathy for an AIDS victim was followed by the sympathetic portrayal of homosexuals. They were separate points but the programme had not clarified the distinction. He insisted that the item had given an unopposed "plug for the gay community" on prime time television. He also repeated his argument that the legislation could not be considered the opposing point of view as there was no legislative provision dealing with discrimination against homosexuals before Parliament. He described TVNZ's language as emotive. The discrimination issue, he said, dealt not with an "abomination", but with, to recall an example he had previously used, the possibility of a homosexual scoutmaster. He recorded:

Parliament previously dealt with the issue of discrimination against homosexuals when it debated homosexual law reform and did so at great length. Why should parliamentarians again pursue it. Is TVNZ all that naive?



The Authority has studied the correspondence and carefully considered the arguments

put forward by Mr Robertson in support of his complaint and by TVNZ in response. All the members have viewed the item which gave rise to the complaint.

The Authority declines to accept TVNZ's submission to dismiss the complaint under s11(b) of the Broadcasting Act 1989. Although Mr Robertson may not have seen the entire item, his complaint encompasses a substantial portion of it. Any misunderstandings which might result from a less than total viewing of the item on his part will be addressed by the Authority when determining the complaint.

The complaint focuses on s4(1)(d) of the Act and standard 6 of the Television Codes of Broadcasting Practice. Together in relation to this complaint, they require that programmes dealing with controversial issues show balance and impartiality, and that reasonable efforts are made to present significant points of view within the period of current interest.

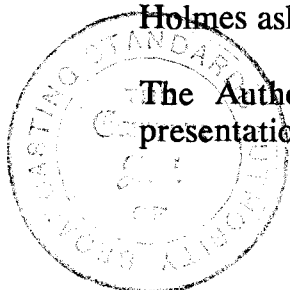
Mr Robertson also raised, in relation to the poll results dealt with in the programme, standard 1 which requires factual truthfulness and accuracy. He questioned the validity of the results of a poll conducted by the New Zealand Aids Foundation. When it was explained to him that the poll had been conducted by AGB-McNair, he accepted that the poll had been undertaken by a reputable polling organisation. Although Mr Robertson, in his initial letter to the Authority dated 8 September 1990, pondered about the degree of influence the Aids Foundation might have had in preparing the questions, it was not a matter to which he referred in his letter to the Authority of 8 March 1991. The Authority accepts TVNZ's submission that AGB McNair is a professional pollster, that the basis of the poll was explained twice during the item, and that the Aids Foundation, when commissioning the poll, took the risk that the results may not be to its liking.

For the foregoing reasons the Authority declines to uphold Mr Robertson's complaint that the programme breached the standard requiring factual truthfulness and accuracy.

Returning to the complaint concerning balance, the Authority agrees with TVNZ that the omission of provisions in the Bill of Rights legislation to prohibit discrimination on the grounds of sexual predilection was sufficiently important to justify a discussion of the issue in a current affairs programme. The Authority does not accept Mr Robertson's contention that because the legislation did not deal with this issue, it was invalid to discuss it. Debate about legislation frequently includes looking at issues which are not covered as well as those which are.

Accepting that the issue was validly included does not answer the next point about whether the debate which occurred was balanced. Indeed, if TVNZ's examination of the issue was confined to the item broadcast on 24 July, despite the visual and audio references to the massive 1986 petition, it is doubtful whether balance was achieved. TVNZ described Holmes as the devil's advocate. While the Authority accepts that Mr Holmes asked some critical questions, the issues discussed were not examined in depth.

The Authority disagrees with TVNZ's suggestion that Mr Robertson sought the presentation of the viewpoint that homosexuality was an abomination. In his



correspondence, Mr Robertson stated explicitly that while the practice of homosexuality should be condemned, homosexuals should be approached with friendship. In Mr Robertson's opinion, legislatively prohibiting discrimination against homosexuals could raise problems for the armed forces and the scout movement.

TVNZ observed that both the Prime Minister and the Minister of Justice refused to debate the legislative omission on the *Holmes* programme. TVNZ added that their refusals did not warrant a finding of imbalance and the Authority accepts that point of view. Specifically, s4(1)(d) requires the making of reasonable efforts to present significant points of view on a controversial issue. TVNZ did so on this occasion. Generally, s4(1)(d) refers to the presentation of other significant points of view within the period of current interest. Discrimination on the grounds of sexual preference is an issue which has surfaced over eons. Some observers, and no doubt some politicians, might have hoped that the issue was finally settled legislatively in 1987 when homosexual law reform was enacted. However, the Authority accepts that this is not so. Furthermore, although many aspects of the issue were omitted from the item broadcast on 24 July, there are a plethora of alternative sources which provide differing viewpoints.

On this basis, the Authority is inclined not to uphold the complaint that the item breached either s4(1)(d) or standard 6 of the Television Codes of Broadcasting Practice. However, one other matter requires consideration before a final decision is reached. In his letter of complaint to the Authority of 8 September 1990, Mr Robertson wrote:

The programme started off with what he calls a "human interest piece", but which in fact was likely to soften up the audience for what was to follow. Furthermore, discrimination against an AIDS victim is different from discrimination against homosexuals. AIDS is something that the sufferer cannot reverse or control in any way, so is in a different category and rightly evokes our sympathy.

This point requires the Authority to examine the linkage between the human interest item and the interview with the director of the Aids Foundation undertaken by Holmes wearing the devil's advocate hat.

Taking into account the points that the human interest item was concerned with the discrimination experienced by a victim of AIDS before his death, that the Aids Foundation commissioned the public opinion survey, and that the person interviewed was the Director of the Aids Foundation, the Authority has decided that linkage existed and, moreover, that this link was considerably more than tenuous. Homosexual men are a high risk group for HIV/AIDS. The person interviewed, although advancing the case for banning discrimination on the grounds of sexual preference, was not speaking as the spokesperson for a Gay Rights organisation. He was advancing the case for a legislative prohibition of discrimination against homosexuals in the interests of reducing the social tragedies which are inflicted by AIDS.

The Authority accepts that the human interest story was not designed to "soften-up" the viewers or to allow, as Mr Robertson wrote, an uncontested platform for the gay community on prime time television.



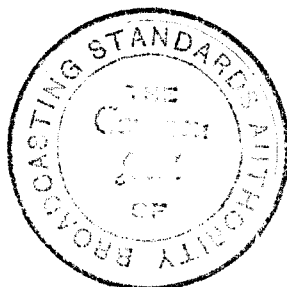
Accordingly, the Authority declines to uphold the complaint that the programme breached the standard requiring reasonable efforts to present significant points of view on a controversial issue.

For the reasons set forth above, the Authority declines to uphold the complaint.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



18 April 1991