

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 52/91

Dated the 18th day of November 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

GAY COLLINS

of Wellington

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

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

DECISION

Introduction

"Catching Up" was the title of a Friday documentary broadcast by TV1 at 8.30pm on 1 March 1991. It dealt with the experiences of four New Zealanders returning home after spending considerable time overseas. Business executive Kay Dangaard was one of the four featured and her reminiscences included a visit to the primary school which she had attended as a child. She expressed her hatred for the school as while there, she said, she had been sent to Coventry for three years. She added that that had occurred as Gay Pickering, a "real spiteful little girl", had spread a rumour about her around the school.

The solicitors for Mrs Gay Collins, formerly Gay Pickering, complained to Television New Zealand Ltd that the item breached the broadcasting standards requiring, first, truth and accuracy, secondly, that people referred to be dealt with justly and fairly, and thirdly, privacy of the individual. An apology and compensation were requested.

Referring to the brevity of the comment made by way of recollection of an event which had occurred more than 35 years previously, TVNZ declined to uphold the complaint. As Mrs Collins was dissatisfied with TVNZ's response, her solicitors referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act



Decision

The members of the Authority have viewed the item to which the complaint relates and have read the correspondence (summarised in the Appendix).

The Authority emphasises from the outset that the complaint relates to events which occurred more than 35 years ago. The length of time which has elapsed since the events does not detract from the intensity of the feelings now felt by the complainant and Ms Dangaard. However, it is of considerable relevance to the accurate resolution of the facts. As is apparent in the proceeding paragraphs, the Authority is unwilling to reach a final determination of some points on which the party's recollections are at odds with each other.

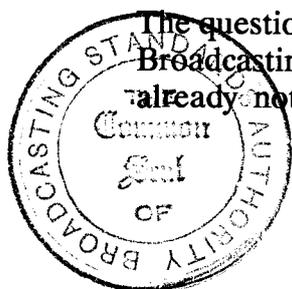
The complaint was made under s.4(1)(c) of the Broadcasting Act 1989 and standards 1 and 4 of the Television Code of Broadcasting Practice. Section 4(1)(c) requires broadcasters to maintain standards consistent with the privacy of the individual and the standards require broadcasters:

1. To be truthful and accurate on points of fact.
4. To deal justly and fairly with any person taking part or referred to in any programme.

Dealing with the complaint under standard 1, the Authority noted that the complainant maintained that, although she had had a disagreement with Ms Dangaard, she had not spread rumours about her nor had she sent her to Coventry for several years. The complainant said that a former school teacher confirmed her recollections. On Ms Dangaard's behalf, TVNZ argued that the details of the dispute were in question but that it was unlikely that Ms Dangaard would have invented the incident after 35 years. This was one factual issue on which the Authority, on the material before it, was not prepared to reach a conclusion. It accepted there had been a childhood dispute between the complainant and Ms Dangaard but, because of the passage of time, was unable and not prepared to reach a conclusion as to the effect, lasting or otherwise, of that dispute. Further, it doubted that a full hearing of the facts would enable the matter to be resolved. The Authority, therefore, declined to determine the complaint which alleged a breach of standard 1.

With regard to the alleged breach of Mrs Collins' privacy, the complaint centred on Ms Dangaard's reference to Gay Pickering (the complainant's maiden name) as "a real spiteful little girl". TVNZ stated that the comment referred to a time when both Ms Dangaard and the complainant were children and that there was no evidence that the complainant had been subject to a vituperative response as a result of the broadcast. In her final comment, however, the complainant recorded that her parents had received an adverse response at the local bowling club.

The question whether a broadcaster has breached the privacy standard of s.4(1)(c) of the Broadcasting Act 1989 depends on a determination of the facts of the matter yet, as already noted, the Authority considers the facts about this childhood dispute to be



incapable of determination. As a result, the Authority was unable to reach a conclusion on the complainant's privacy complaint.

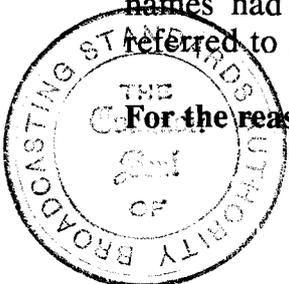
Mrs Collins also complained that the programme had not dealt with her fairly. She should, she said, have been given the opportunity to respond to what she described as and what the Authority considered to be a nasty comment. TVNZ maintained that it was unnecessary to obtain the complainant's response as the programme was a documentary and did not entail editorial endorsement of the comment. Further, it stated, childhood memories did not require a balancing perspective. It also claimed that Ms Dangaard was exercising her right of freedom of expression referred to in the New Zealand Bill of Rights Act 1990. On that point, the Authority agreed with the complainant's solicitors that the Act, in view of its reference to existing legislation, had no relevance.

The Authority would have some sympathy with the programme's producers if they argued that it could well be difficult to locate a person referred to after 35 years in order to get a reaction to a comment which the producers did not regard as particularly serious. In addition, the style and context of the programme would not easily have accommodated a balancing comment on what many people might well consider a minor, almost trivial, matter. Nevertheless, it was a comment made forcefully and it referred, by name, to one specific person in a small community and it was something which seemed quite unnecessary to the programme. The Authority considered that the segment could easily have been filmed again at the time excluding the actual name, Gay Pickering, or her name could have been edited or faded or broadcast in the prerecorded programme in some way as to make it indecipherable. A majority of the Authority is of the opinion that the producers, and TVNZ as the programme's broadcaster, should have contemplated the various possibilities before the item was broadcast.

That majority did not regard the breach of the standard to be major. Furthermore, commonsense indicated that, presumably for effect, Ms Dangaard must surely have exaggerated the recollected events of her schooldays. Viewers could not have seriously believed her statements that no-one at that age spoke to her for three years, or that she failed School Certificate because she could not translate into English the French word for flying saucer. They would also probably attach the same credibility to her comments about Gay Pickering - now Mrs Collins. Nevertheless, having said that the offensive nature of the comment put it in a category where it cannot be dismissed totally as trivial, a majority of the Authority considered that the broadcaster did not deal with the complainant fairly.

The minority of the Authority declined to uphold the complaint on the basis that it was unrealistic to expect documentary makers to check extensively every fact given or opinion expressed in a reminiscence programme. That was particularly so in a situation like the present when a long period had elapsed since the time being recalled, when people's names had changed, where memories might have become blurred and the people referred to might be quite different in terms of maturity and experiences.

For the reasons set forth above, a majority of the Authority upholds the complaint that



the broadcast on 1 March 1991 breached standard 4 of the Television code of Broadcasting Practice.

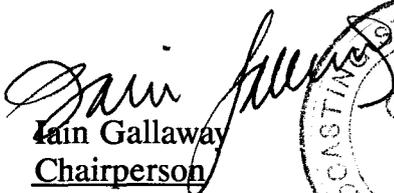
The Authority declines to determine the complaint that the broadcast breached s.4(1)(c) of the Broadcasting Act 1989 and standard 1 of the Television Code.

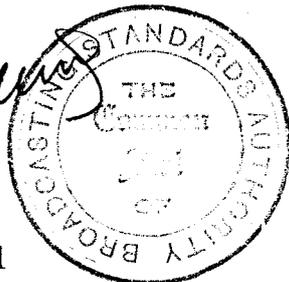
The complainant requested an apology, compensation and payment of legal costs. The Authority's power under s.13(1)(d) to award compensation only applies when a privacy complaint under s.4(1)(c) has been upheld. As it did not uphold that aspect of the complaint, the Authority does not have the power to award compensation.

The Authority has not, to date, awarded costs under s.16 of the Act and it did not regard the current complaint as being a major one of sufficient seriousness to justify varying its usual practice in this instance. Nor, in the Authority's opinion, did the fact that Mrs Collins chose to have her complaint made by solicitors, in itself, entitle her to costs.

On a number of occasions the Authority has issued an order under s.13(1)(a) of the Act to direct a broadcaster to publish a statement. As the current complaint refers to an incident which occurred in the 1950s and dealt with a dispute between two primary school children, the Authority did not regard it as of sufficient significance to justify an order. Consequently, an order under s.13(1)(a) was not considered an appropriate remedy.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



18 November 1991

Appendix

Mrs Gay Collins' Complaint to Television New Zealand Limited

After some preliminary correspondence, Mrs Collins' solicitors complained to Television New Zealand Limited in a letter dated 14 June 1991 about a Friday documentary entitled "Catching Up" broadcast by TV1 at 8.30pm on 1 March 1991. Part of the programme involved a visit by business executive Kay Dangaard to the primary school in Titahi Bay which she had attended. Ms Dangaard expressed her hatred for the school and ascribed the responsibility for her misery to Gay Pickering. She described Gay Pickering as a "real spiteful little girl" who, after a fight between them, had spread a rumour about her which had resulted in her being sent to Coventry for the next three years.

The complainant said that she was the Gay Pickering referred to and she complained that the programme breached three broadcasting standards.

First, it was not truthful and accurate on points of fact as, Mrs Collins said, she had not been spiteful to Ms Dangaard, she had not spread rumours and Ms Dangaard had not been sent to Coventry. These points, she added, were confirmed by a retired school staff member.

Secondly, the programme had referred to the complainant but not dealt with her justly and fairly. The complainant had lived in the small residential community for 37 years and was well-known there by both her maiden and married names. Most of her 5 children and 13 grandchildren also lived in the area but she had not been given the opportunity to comment on the reference to her in the item.

Finally, by naming the complainant the programme had not maintained standards consistent with the privacy of the individual.

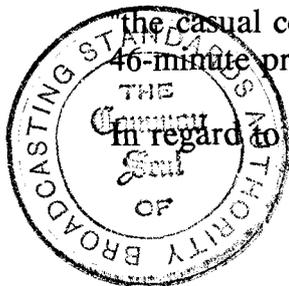
The complainant requested an apology, compensation and payment of legal costs.

TVNZ's Response to the Formal Complaint

TVNZ advised the complainant of its Complaints Committee's decision in a letter dated 31 July 1991. The programme had been considered under standards 1 and 4 of the Television Code of Broadcasting Practice and s.4(1)(c) of the Broadcasting Act 1989.

TVNZ explained that the segment in question involved Ms Dangaard reminiscing to her sister-in-law about events which had occurred 35 years previously and noted that "the casual comments made were very much within the context and style of the total 46-minute programme".

In regard to the truth and accuracy complaint, TVNZ argued that Ms Dangaard's



recollections of events which occurred more than 35 years ago were more likely to be accurate, than those of Mrs Collins' or the former staff member's, as Ms Dangaard was the affected party.

In view of the documentary nature of the programme in which Ms Dangaard's recollections were not endorsed by the broadcaster, TVNZ stated that the complainant had not been dealt with unfairly.

Concerning the privacy complaint, TVNZ pointed out the programme had used the complainant's maiden name and had referred to a childhood matter which occurred more than 35 years previously. In the circumstances, TVNZ also declined to uphold that aspect of the complaint.

Mrs Collins' Complaint to the Broadcasting Standards Authority

As Mrs Collins was dissatisfied with TVNZ's response, on 2 September 1991 her solicitors referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989. In addition to the initial complaint to TVNZ, her solicitors provided the following information.

In regard to the truth and accuracy complaint, it was said that the former staff member, a deputy principal, had recently advised the complainant of a visit from Ms Dangaard's mother at the time of a childhood argument between the complainant and Ms Dangaard. The deputy principal had, at the time of the visit, observed the harmonious relationship which then existed between the children. Contrary to TVNZ's point of view that Ms Dangaard was the best judge of the circumstances, it was argued that the complainant's recollection had been independently verified.

The complainant's name, the complaint continued, could have been edited, or faded, to make it indecipherable as its use added nothing to the programme. Nevertheless, TVNZ had used her name and the complainant had not been given the right to challenge Ms Dangaard's recollections.

The complainant disagreed with TVNZ that the complainant's privacy had been protected by the use of her maiden name. She was well known in the community, as were both the Pickering and Collins families. The former staff member had recognised the complainant by the reference to her maiden name and had telephoned her. Her age at the time of the incident, the letter continued, was not relevant.

TVNZ's Response to the Broadcasting Standards Authority

As is its practice, the Authority referred the complaint to the broadcaster for comment. The request is dated 3 September 1991 and TVNZ's prompt response is dated 16 September.

In regard to the truth and accuracy issue, TVNZ accepted that the former staff



member recognised that the Gay Pickering referred to in the programme was now Gay Collins and that he had observed Ms Dangaard and the complainant, at the time of Ms Dangaard's mother's visit to the school, walking arm-in-arm. However, Ms Dangaard had said that "children", not the complainant herself or alone, had sent her to Coventry. Referring to the impact that the incident had had on Ms Dangaard, TVNZ wrote:

The company would continue to seriously question the allegations that comments made in the programme are untrue and finds it difficult to believe that what was stated, even though it referred to incidents 35 years ago, could be an invention.

Obviously, there was a disagreement. This was confirmed by both parties. It would seem that the fine details are what may be in dispute. Accordingly, the company would submit that the broadcast was neither untruthful nor inaccurate insofar as it related to the key points of fact.

TVNZ denied, concerning the complaint that Mrs Collins had not been dealt with fairly, that childhood memories required the presentation of a balancing perspective. Further, TVNZ claimed that Ms Dangaard was exercising her right of freedom of expression referred to in s.14 of the New Zealand Bill of Rights Act 1990.

TVNZ considered that the programme had not breached the privacy standard, as it said that there was no evidence that the complainant had been subject to a vituperative response. Moreover, it was difficult to understand how a revelation about a childhood incident could now reflect unfavourably on the complainant's character.

In the circumstances TVNZ said that an apology was not called for, that there was no breach of privacy which justified an amount of costs under s.13(1)(d) of the Broadcasting Act 1989 and that there should be no award of costs.

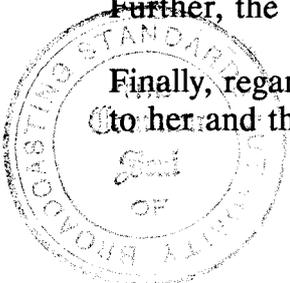
Mrs Collins' Final Comment to the Authority

When asked to comment on TVNZ's response, in a letter dated 2 October 1991 Mrs Collins's solicitors maintained, first, that the item was not truthful and accurate. Acknowledging that there had been a short-lived disagreement between the complainant and Ms Dangaard, the complainant stated the allegation about spreading the rumour was exaggerated and untrue.

Secondly, with regard to not having been dealt with justly and fairly, the complainant said that TVNZ would have had no difficulty in locating her but it had not done so and she had not been given the opportunity to respond to the references to her.

Further, the letter argued that the New Zealand Bill of Rights Act had no relevance.

Finally, regarding privacy, the complainant said that the programme had caused hurt to her and that friends in Titahi Bay and elsewhere had communicated to her about



the item. The solicitor's letter continued:

Our client's parents are still receiving adverse reaction to the programme particularly at the local bowling club which they attend weekly.

In summary, the complainant's solicitors repeated the statement that the programme breached broadcasting standards and further:

- * There was no public interest dramatic or other need for our client to be named in the programme.
- * As regards our client the programme was an unwarranted, spiteful and vicious attack.
- * Even if Dangaard's version of the school days was correct (which is denied) it was not just and fair or necessary some twenty five years later to name our client and to do so without prior reference to her was a gross invasion of her and her family's privacy.

