

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 6/92

Dated the 2nd day of March 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

SOCIETY FOR PROMOTION OF
COMMUNITY STANDARDS

Broadcaster
TV3 NETWORK SERVICES
LIMITED

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

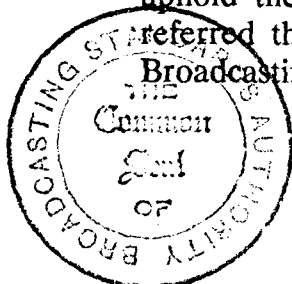
DECISION

Introduction

"The Sex We Don't Talk About" was the title of the *Inside New Zealand* documentary broadcast by TV3 Network Services Ltd on Thursday 29 August 1991. The documentary examined male and female homosexual behaviour.

The Society for Promotion of Community Standards complained to TV3 that the programme grossly misled the audience about the proportion of homosexual people in New Zealand when it said that an estimated 10% of New Zealanders was gay. The Society stated that the comment breached the broadcasting standards requiring first, truth and accuracy, and secondly, balance and fairness. The lack of authority given for making the estimate, it continued, also constituted a breach of the standard which requires the avoidance of any deceptive programming practice which takes advantage of the viewers' confidence in broadcasting.

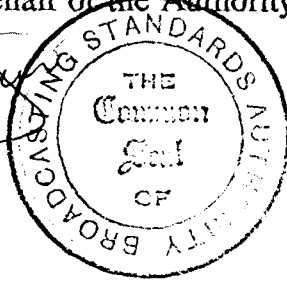
TV3 argued that the figure was an estimate based on reliable sources and declined to uphold the complaint. As the complainant was dissatisfied with TV3's decision, it referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.



revealed the agony and stress (such as drug addiction and attempted suicides) displayed by some people in coming to terms with their sexual identity. The Authority believed that the programme probably increased the understanding felt by many about male and female homosexual lifestyles but that it did not, as the complainant feared, do so in a way which uncommitted people might find attractive.

Signed for and on behalf of the Authority

Jain Gallaway
Jain Gallaway
Chairperson



2 March 1992

Appendix

Society for Promotion of Community Standards Inc's Complaint to TV3 Network Services Ltd

A member of the national executive of the Society for Promotion of Community Standards (Dr D.L. Hutchinson) wrote to TV3 Network Services Ltd on 15 September 1991 about the *Inside New Zealand* documentary, "The Sex We Don't Talk About", broadcast by TV3 on 29 August 1991. He wrote:

Our complaint is that your programme grossly misled the audience as to the proportion of gay or lesbian people in New Zealand society. In so doing, it created an attraction to a controversial practice which is heightened because of the asserted numbers involved in it.

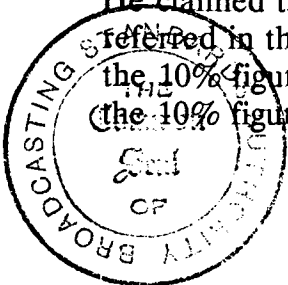
Dr Hutchinson stated that it was announced both in advertisements for the programme and during the programme itself that an estimated 10% of New Zealanders were gay or lesbian. He contended that the figure was of doubtful authenticity and, moreover, it did not distinguish between orientation and practice. Furthermore, he said, the programme implied that it referred to practice as the number in the former group would be very difficult to ascertain.

He argued that the only source of the 10% figure of which the Society was aware was the work of Alfred Kinsey. He cited sources which seriously questioned Kinsey's work and quoted more recent figures from Professor Court who estimated that less than 1% of the population was exclusively homosexual. By treating the 10% figure as fact, he stated, many impressionable young people might have been misled.

He said that the broadcast breached standards 1, 6 and 7 of the Television Code of Broadcasting Practice. They require broadcasters:

1. To be truthful and accurate on points of fact.
2. To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.
7. To avoid the use of any deceptive programme practice which takes advantage of the confidence viewers have in the integrity of broadcasting.

He claimed that TV3 had not shown fairness as required by standard 6 as it had not referred in the broadcast to the doubt felt by other researchers as to the accuracy of the 10% figure, and that standard 7 had been breached as the lack of verification of the 10% figure detracted from broadcasters' integrity.



TV3's Response to the Formal Complaint

TV3 advised the Society for Promotion of Community Standards of its Complaints Committee's decision in a letter dated 29 October 1991. It reported that the 10% figure was taken from statements from the Mental Health Foundation and the New Zealand Family Planning Association, as well as from the Kinsey Report. It continued:

While the basis of your complaint is that you dispute the figure quoted, it was felt that this figure, which is used by reputable social organisations, could be used as an accurate representation of reality.

It noted in addition, in response to the alleged breach of the truth and accuracy standard, that the programme had used the words "It is estimated ...". In regard to the fairness requirement of standard 6, TV3 argued that the dispute about the accuracy of the estimate was largely confined to academia. The broadcast had presented the figure with reference to the increasing public understanding and tolerance of homosexuality. TV3 rejected the complaint under standard 7 as the figure came from reliable sources. It concluded:

Further, while you dispute the findings of Kinsey, you did not identify any research which would have indicated a figure different from the ten per cent used in the documentary.

The TV3 Complaints Committee felt that the use of the ten per cent figure in the context of the documentary was fair and reasonable, and declined to uphold your complaint.

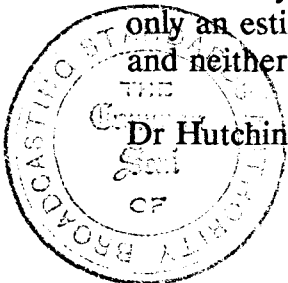
The Society's Complaint to the Broadcasting Standards Authority

As the Society was dissatisfied with the broadcaster's decision, on 22 November 1991 Dr Hutchinson, on the Society's behalf, referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989. The Society, he said, maintained its opinion that the programme breached broadcasting standards 1, 6 and 7.

With regard to the points made by TV3 in response to the complaint, he questioned the qualifications of the bodies cited in support of the 10% figure. TV3, he said, should have consulted the Health Department or the Aids Foundation, neither of which promulgated the 10% figure. He stated that there was, in fact, no published research on the incidence of homosexuality in New Zealand.

The Society, he wrote, accepted unquestioningly that the 10% figure was broadcast only an estimate but repeated the complaint that the estimate was grossly exaggerated and neither truthful nor accurate.

Dr Hutchinson pointed out the statistics about homosexuality varied by how it was



defined - e.g. orientation (and intensity thereof) and practice (and frequency thereof). The Society believed, summarising the New Zealand material that was available, that less than one per cent of the total population were unmarried and occasionally or fairly often participated in homosexual behaviour. He concluded:

The use of the ten percent figure, therefore, is grossly misleading, and a deceptive programme practice which detracts from the integrity which should underline broadcasting. Its incorrectness could have been confirmed from more authoritative sources than were contacted. The figure is, moreover, a very important piece of information in the context of the programme, and should have been better researched.

TV3's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. The request to TV3 is dated 22 November 1991 and the reply 10 December.

TV3 pointed out that the Society did not disprove the estimate broadcast but made the case for research to determine the figure accurately. It argued that the programme stated that the figure was an estimate and the presenter, in his comments, in effect invited viewers to make up their own minds. The sources quoted by the Society, TV3 argued, were not any more reliable than the figures used by the programme makers and the Society apparently wanted a ruling from the Authority on the level of homosexuality in the community.

It finished its response:

TV3 stands by its claim that the estimate used was a reasonable one, sourced from organisations reputable in this area. TV3 is also of the view that these organisations are neutral on this issue, with little to gain by raising, or lowering, their estimates.

The Society's Final Comment to the Authority

When asked to comment briefly on TV3's response, in a letter dated 30 December 1991, Dr Hutchinson of the Society National Executive disputed TV3's claim that viewers were asked to make up their own minds about the proportion of homosexuals in New Zealand. The commentator had presented the 10% figure "as fact". Moreover, the letter continued, TV3 should have consulted more authoritative sources. The letter observed:

I reiterate that a ten-fold difference between arguable rates of incidence of homosexuality cannot justify persistently choosing only the upper extreme. Such practice smacks of sensationalism at the expense of balance and integrity.

