

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 21/92

Dated the 7th day of May 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

DR MILES WISLANG

of Whangaparaoa

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

L.M. Dawson

DECISION

Introduction

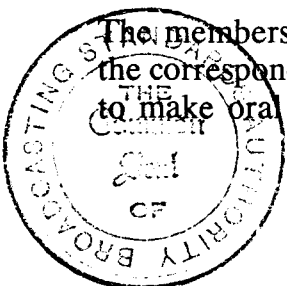
Ann Geddes, an Auckland professional photographer who had contributed to a calendar of baby photographs being published for charity, was featured on an item on TV1's *Holmes* show on 13 August 1991. The item showed her at work, included some of her photographs and recorded her preference for child portraiture.

Dr Miles Wislang complained to Television New Zealand Ltd that Ms Geddes' so-called "art" in photographing naked children in carefully chosen poses was soft-core pornography. The programme encouraged the denigration of children, and in addition, he said, breached the standards designed for the protection of children.

As TVNZ declined to uphold his complaint, Dr Wislang referred it to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Decision

The members of the Authority have viewed the item complained about and have read the correspondence (summarised in the Appendix). Dr Wislang expressed his preference to make oral submissions to the Authority as he considered TVNZ's reasoning to be



faulty. Section 10 of the Broadcasting Act 1989 permits the Authority to determine a complaint, if it thinks fit, without a formal hearing. The Authority's normal practice is to determine complaints on the papers and it believes, in regard to this complaint, that it has sufficient material to reach a determination without such a hearing.

The Authority points out that this complaint relates to a programme which was broadcast some nine months ago. In the past the Authority has criticised TVNZ for its delay in responding to requests for information. However, the Authority acknowledges that TVNZ's performance has improved since the Authority expressed dissatisfaction last year about the delays. The delay in determining this complaint has been largely due to the time Dr Wislang has taken to respond to requests from the Authority.

Dr Wislang complained that an item on the *Holmes* programme, which featured a female professional photographer who specialised in child portraiture, showed photographs of naked children in contrived poses which were reminiscent of the soft-core pornographic child studies of the Victorian era. He claimed that the item breached standards 26, 218 and 19 of the Television Code of Broadcasting Practice. Standard 26 reads:

- 26 The portrayal of people in a way which is likely to encourage denigration of or discrimination against any section of the community on account of sex, race, age, disability, occupation status, sexual orientation or the holding of any religious, cultural or political belief shall be avoided. This requirement is not intended to prevent the broadcast of material which is:
- i) factual, or
 - ii) the expression of genuinely-held opinion in a news or current affairs programme, or
 - iii) in the legitimate context of a humorous, satirical or dramatic work.

Standards 2 and 18 require broadcasters:

- 2 To take into consideration currently accepted norms of decency and taste in language and behaviour, bearing in mind the context in which any language or behaviour occurs.
- 18 To be mindful of the effect any programme may have on children during their generally accepted viewing periods.

Standard 19 provides:

- 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.

TVNZ declined to uphold the complaint as it considered the photographs to be spontaneous, attractive and tasteful. It added that the children were not exploited and



that the photographs were for a calendar for the Child Abuse Foundation - a foundation which was unlikely to accept photographs which might appeal to the prurient.

In subsequent correspondence, Dr Wislang has expressed the opinion that TVNZ had only drawn comparisons with great works of art and had failed to compare the photographs with the salacious work of the Victorian photographers who exploited children.

The Authority examined the photographs shown on the item carefully. It decided that the photographs were attractive and appealing and, indeed, sensual. Having formed the opinion that the photographs were sensual, the next step involved reaching a decision whether they were sensuous i.e. aesthetically appealing, or sexual, i.e. self-indulgently carnal. Whereas Dr Wislang had argued that the photographs had crossed the line from the pure to the impure, the Authority considered that the boundary had not been breached. It believed that while some of the photographs may have been contrived in terms of props and clothing, their aim was to reveal the freshness and innocence of very young children.

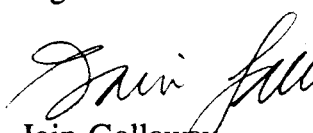
In reaching that opinion, the Authority decided that the photographs did not contain Victorian overtones. It also noted that they were to be used in a calendar for the Child Abuse Foundation. That Foundation, the Authority believed, would be unlikely to accept material which might involve any physical, sexual or financial exploitation of children.

With reference to the standards under which Dr Wislang made the complaint, the Authority concluded that, while some reservations were held about the degree of uncontrived innocence displayed in some of the photographs, the item did not portray children in a way which was likely to encourage their denigration and thus did not breach standard 26. It believed that standards 18 and 19, which are concerned with the protection of children, were of minimal relevance and were not breached.

The Authority considered that standard 2 was the kernel of Dr Wislang's complaint - i.e. did the portrayal of the photographs of the children breach currently accepted norms of decency and taste? The Authority believes that child protection is a matter which must be taken seriously and it agrees with Dr Wislang that there is a definite line between acceptable and unacceptable portrayals of sensual material. On this occasion, however, as noted above, the item had not crossed the boundary to the extent that it breached broadcasting standards.

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

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson
7 May 1992



Appendix

Dr Wislang's Complaint to Television New Zealand Limited

In a letter dated 23 August 1989, Dr Miles Wislang complained to Television New Zealand Ltd about an item of TV1's *Holmes* programme broadcast by Television New Zealand on 13 August 1991. He also referred to an unacknowledged fax that he had sent to Mr Holmes on 14 August 1991 about the same item.

The item had dealt with an Auckland based female professional photographer who specialised in child portraiture. Expressing his concern about the photographer's so-called "art" and the photographs shown, along with a concern about the influence of pornography, Dr Wislang said naked children were portrayed:

in carefully chosen, even contrived, poses and wearing (I hope, fortuitously) such expressions as to invite comparisons with those now infamous examples of soft-core pornographic child "studies" of the Victorian era.

He stated that the programme breached standards 26, 2, 18 and 19 of the Television Code of Broadcasting Practice.

TVNZ's Response to the Formal Complaint

TVNZ advised Dr Wislang of its Complaints Committee's decision in a letter dated 4 October 1991.

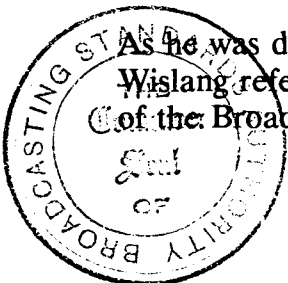
Pointing out that photography was a genuine art form and that the photographer featured (Ann Geddes) was a leading exponent, TVNZ drew comparisons with the numerous portraits of unclothed infants painted by famous artists. It added that the portrayal of naked infants had a long artistic history and, furthermore, it did not accept that the child subjects felt exploited. TVNZ wrote:

In the view of the [Complaints] Committee the photographs included in the item did not reflect any exploitation of children's bodies. They were considered unfailingly spontaneous, attractive and tasteful.

TVNZ added that the charity for whom the calendar was done, the Child Abuse Foundation, would be most unlikely to accept the portraits if they might arouse the viewers' unhealthy instincts.

Dr Wislang's Complaint to the Broadcasting Standards Authority

As he was dissatisfied with TVNZ's decision, in a letter dated 22 October 1991, Dr Wislang referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989. He was asked to complete the Authority's Complaint



Referral Form which was finally received in full on 4 March 1992.

He argued that TVNZ, rather than apply a formal definition to the wording in standard 2 which referred to "currently accepted norms of decency and taste", had not treated his complaint seriously. Indeed, he added, TVNZ had regarded his complaint as "jocular and frivolous". Consequently, he said, TVNZ had reached unjustified conclusions and had failed to determine the limits of acceptability within the broadcasting standards. A formal hearing with verbal submissions, he stated, would be the only way to determine the issues.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's comment on the referral and TVNZ's response is dated 13 March 1992. It began:

First the company would comment that it has found this complaint to be somewhat bewildering. We have been unable to match the suggestions of soft-core pornography with the attractive child portraiture depicted in the low-key coverage of the gifted child photographer, Anne Geddes, at work.

The child portraits, it continued, did not exploit children but helped bring out their lack of inhibitions. TVNZ repeated the point that the Child Abuse Foundation would be most unlikely to use material in its calendar which was pornographic or provocative in any way. It also disputed Dr Wislang's comments about its professed factual errors and inadequate reasoning. It referred to Dr Wislang's preference for a hearing and concluded:

We would submit that on the basis of the written material there is no prima facie case for the company to answer let alone be called upon to answer any oral submissions. Furthermore, we would further comment that the publicity such a procedure would generate would be out of all proportion to the obvious innocence of the particular broadcast.

Dr Wislang's Final Comment to the Authority

When asked to comment on TVNZ's response, in a fax dated 10 April 1992, Dr Wislang maintained his perspective that oral submissions were necessary. He stated the central question was whether the portrayal of the photographs breached the standards. The Authority, he added was required to exercise judgment independent of the Child Abuse Foundation.

He maintained that the photographs resembled the style and spirit of some of the justifiably condemned work done by Victorian child photographers who exploited the line between the pure and charming on the one hand and, on the other, the impure, seductive or even salacious. Moreover, he maintained that TVNZ by referring only to the great works of art, had failed to compare the photographs displayed on the item with child pornography.

