

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 46/92
Decision No: 47/92
Decision No: 48/92
Decision No: 49/92
Decision No: 50/92
Decision No: 51/92

Dated the 27th day of July 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of complaints by

J.E. WHYTE
of Paraparaumu

KRISTIAN HARANG
of Auckland

VALERIE CRAYMER-ALEXANDER
of Dunedin

L.G. SANDERS
of Tauranga

TRADITION FAMILY PROPERTY
(NEW ZEALAND)
of Wellington

FRANCES BURT
of Gisborne

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

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



DECISION

Introduction

Extracts from the film "Sacred Sex" were shown on TV1's *One Network News*, *Holmes and Tonight* at 6.00, 6.30 and 10.30pm on 12 February 1992. The items reported that the Secretary of Internal Affairs had referred the film, which had been given an R18 rating by the Chief Censor of Films, to the Films Censorship Board of Review.

The complainants wrote to Television New Zealand Ltd, as the broadcaster, complaining that the broadcasts had breached a number of broadcasting standards. Included among the allegations were the complaints that the broadcast of the excerpts on each of the programmes breached the standards requiring good taste and decency, the protection of children and the requirements of the classification codes.

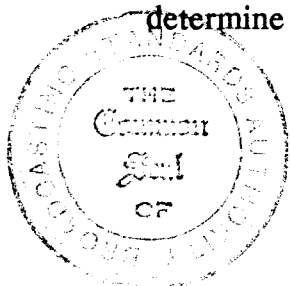
TVNZ upheld the aspect of each complaint which alleged that the broadcast of extracts on the *Holmes* programme breached the good taste and decency standard but declined to uphold any other aspects of the complaints. It reported that those who worked on the *Holmes* programme had been advised of the Complaints Committee's decision.

As they were dissatisfied with TVNZ's action on the aspect of the complaints upheld and as TVNZ had not upheld the other aspects of their complaints, the complainants referred the matters to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Format of the Decision

The decision will briefly describe the different ways the film "Sacred Sex", and excerpts from it, were dealt with in each of the programmes to which the complaints relate. It will then cover the issues of concern raised by each complainant although it will not repeat the discussion about particular standards after the first occasion. The decision will then proceed to assess the broadcasts against each standard. That section of the decision will conclude by recording the reasons for the dissatisfaction felt by a number of the complainants about TVNZ's actions on the aspect of the complaint which was upheld by its Complaints Committee. The Authority will finish the body of the discussion with its decisions.

Attached to the decision are six appendices which summarise the correspondence related to each complainant. Some of the complainants asked that they be given the opportunity to present their complaints orally at a formal hearing. Under s.10 of the Broadcasting Act, the Authority may set its own procedures and, in view of the comprehensive scope of the written material that it has received, it decided to follow its usual practice and to determine the complaints without a formal hearing.



The Broadcasts to which the Complaints Related

The members of the Authority have viewed a tape of the items to which the complaints relate and have read the correspondence concerning each complaint (summarised in Appendices 1 - 6).

The Secretary of Internal Affairs' action about the film "Sacred Sex" was the lead item on *One Network News* at 6.00pm on 12 February 1992 and brief extracts from the film were screened. The item included interviews with a number of people involved in producing the film as well as the Chief Censor of Films and the operator of an Auckland cinema where the film was due to be screened.

The extracts on the *Holmes* programme were longer and two substantial segments were shown. The first showed a clothed couple apparently making love accompanied by animal sounds and a commentary which explained that they were pretending to be wild animals to inflame their sexual desires. The second showed a woman from the waist up approaching the camera. That part of her body, at least, was naked and was swaying in time with the music. The extracts were followed by Mr Holmes interviewing Miss Patricia Bartlett from the Society for Promotion of Community Standards and Mr Alan Lowen, a psychologist, who ran the seminars featured in the film.

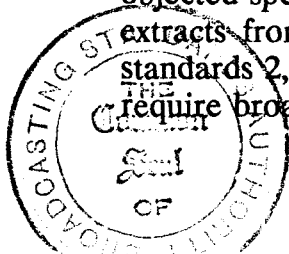
On *Tonight*, at 10.30pm, brief sections of the interviews from *One Network News* were shown as was part of the extract showing the couple participating in the animal-like movements, although without explanation of their behaviour. Another excerpt screened showed couples hugging in various states of undress.

The Complaints

Upon reading the correspondence and viewing the broadcasts, the Authority decided that the complaints focused on the item broadcast on the *Holmes* programme and, in particular, the good taste and decency of the excerpts shown, the effect of the broadcast on children and whether the broadcaster had complied with the classification codes. These are the issues raised by standards 2, 8 and 18 of the Television Code of Broadcasting Practice. As Mr Whyte, one of the complainants, alleged that TVNZ had breached standards 2, 8 and 18 of the Code by broadcasting excerpts during the *Holmes* programme, the details of his complaint will be presented first. The discussion of subsequent complaints will note the other issues raised but will not repeat TVNZ's comments about the applicability of standards 2, 8 and 18 to the *Holmes* programme.

1. Mr Whyte's Complaint

Mr Whyte complained to TVNZ about the broadcast of excerpts from the film "Sacred Sex" on the *Holmes* programme broadcast on TV1 at 6.30pm on 12 February 1992. He objected specifically to the portrayal of a woman "gyrating" her breasts and to showing extracts from a film with an R18 classification. The broadcast, he said, breached standards 2, 8 and 18 of the Television Code of Broadcasting Practice. The standards 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.
- 8 To abide by the classification codes and their appropriate time bands as outlined in the agreed criteria for programme classifications.
- 18 To be mindful of the effect any programme may have on children during their generally accepted viewing periods.

In regard to standard 2, TVNZ emphasised the word "context" and explained that it regarded it as important, through the use of the extracts screened, to intimate to viewers the type of film under discussion. Nevertheless, it agreed that some of the material shown on the *Holmes* programme had gone beyond the currently accepted norms of decency for a programme between 6.00pm and 7.00pm and it upheld that aspect of the complaint. TVNZ reported that those who worked on the *Holmes* programme had been informed of the Complaints Committee's decision.

When referring his complaint to the Authority, Mr Whyte not only maintained that the broadcast breached standards 8 and 18, but, in addition, he expressed his dissatisfaction with the action taken by TVNZ, having upheld an aspect of his complaint.

In its comments to the Authority, TVNZ argued that, because all the sequences of an R18 film do not necessarily earn that classification, one of its staff had carefully selected extracts to illustrate the type of material contained in the film. Through that process, TVNZ added, the more explicit extracts had been excluded to ensure the extracts shown complied with the *Holmes* programme General (or "G") classification. As the material selected met the "G" classification, TVNZ continued, standard 8 was not in issue. TVNZ remarked that one of the key factors in choosing the appropriate material for broadcast was to show excerpts that portrayed sex as wholesome rather than grubby.

On the question of penalty, TVNZ pointed out that a finding of professional misjudgment was a salutary penalty for any journalist or producer.

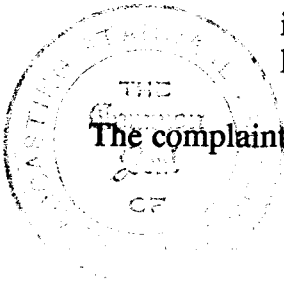
2. Mr Harang's Complaint

Mr Harang was concerned with the extracts shown on *One Network News* at 6.00pm which, he complained, were pornographic and fuelled an appetite for the sexual exploitation of women and children.

In dealing with his complaint, TVNZ assessed the broadcast against standard 2 of the Code of Broadcasting Practice which, as noted above, requires broadcasters:

- 2 To take into consideration currently accepted norms of decency and taste in language and behaviour, bearing in mind the context in which the language or behaviour occurs.

The complaint about the good taste and decency of the item on the 6.00pm news was not



upheld by TVNZ although its response to the complainant focused on the extracts broadcast during the *Holmes* programme. When referring his complaint to the Authority, Mr Harang supplied some material which claimed a link between television output and sexual offending. TVNZ described the material as conjecture and recorded the view, put to its Complaints Committee, that parents may have welcomed the opportunity provided by the broadcast to discuss human sexuality with their children in the home. TVNZ, denying that the material shown on *One Network News* was either erotic or pornographic, declined to uphold the good taste and decency complaint.

3. Mrs Craymer-Alexander's Complaint

This complaint focused on the items on the *Holmes* programme and the *Tonight* news at 10.30pm. Mrs Craymer-Alexander alleged that those broadcasts breached s.4(1)(a) and (b) of the Broadcasting Act 1989 and standard 18 of the Television Code of Broadcasting Practice.

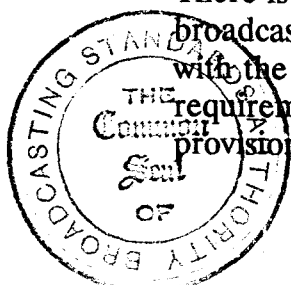
Standard 18 (mindful of the effect on children) has been addressed under Mr Whyte's complaint although, in addition to the complaint under that provision about the item on *Holmes*, Mrs Craymer-Alexander argued that, as viewers of all ages watched the late news, it also applied to that programme. That aspect will be considered in the next section when the Authority assesses the programmes against each of the standards cited.

Section 4(1) of the Act requires broadcasters to maintain standards which are consistent with:

- (a) The observance of good taste and decency; and
- (b) The maintenance of law and order.

The reference to s.4(1)(a) required the Authority to consider the relationship between it and standard 2 which refers to good taste and decency *in the context of currently accepted norms*. The wording used in the Act is not qualified by any reference to context and would allow the Authority to apply extremely rigid guidelines if it so desired. The Authority decided that, taking into account the other requirements in the Act, the legislative criterion was obviously designed to be applied reasonably. As the requirement in standard 2 is also a direction to use reasonable common sense, the Authority concluded that, when assessing a complaint, s.4(1)(a) is to be interpreted as including the contextual conditions contained in standard 2, and that TVNZ's decision that the item on the *Holmes* programme breached standard 2, applied to Mrs Craymer-Alexander's complaint under s.4(1)(a).

Mrs Craymer-Alexander's complaint under the maintenance of law and order requirement in s.4(1)(b) referred to the television broadcast of part of an R18 film. There is a reference in s.4(2) to the broadcast of films banned by the censor and to the broadcast of excisions but the Broadcasting Act does not require broadcasters to comply with the decisions of the film censor *per se*. After TVNZ had explained the legislative requirements to her, Mrs Craymer-Alexander withdrew her complaint under that provision. She suggested, nevertheless, that the Authority should assess that matter



under s.4(1)(a). The Authority reviews the decisions of broadcasters and examines the grounds raised in the initial complaint. Pursuant to that procedure, it declined to accept the complainant's invitation to examine the broadcast of excerpts from an R18 film as a question of good taste and decency. That issue has been raised under standard 8 and will be assessed under its terms.

In its response to her complaint, TVNZ commented to Mrs Craymer-Alexander that the complaint had not been upheld under standard 18 as:

it was not possible to determine that child viewers had been affected.

When referring her complaint to the Authority, Mrs Craymer-Alexander objected to TVNZ's implication that it was for her to prove that under-aged children had been affected and she drew a parallel with screening restricted films, observing that a cinema owner was absolutely liable if excluded persons were present. It was not necessary, she added, to prove that the excluded people would have been affected by the film.

4. Mr Sanders' Complaint

Showing extracts from an R18 film on the *Holmes* programme which included nudity and methods of sexual arousal was Mr Sanders' concern when he complained to TVNZ. He also objected to Mr Holmes' belittling attitude towards Miss Bartlett and believed that she was entitled to an apology from Mr Holmes and that all New Zealanders deserved an apology from TVNZ for the showing of the excerpts.

TVNZ assessed the complaint against standard 2 (good taste and decency in context) and reported that the complaint had been upheld.

Mr Sanders' referral to the Authority recorded his dissatisfaction with TVNZ's action having upheld his complaint. The extracts, he said, had been inappropriate for family viewing as they advanced a casual attitude to sexual relations whereas wholesome sex, which TVNZ incorrectly claimed was portrayed, only occurred in stable, loving marital relationships. He added that Mr Holmes, as the presenter, had to take responsibility and he decried the absence of professional discipline apparent in TVNZ's failure not to acknowledge its mistake publicly.

5. Tradition Family Property (New Zealand)'s Complaint

This complainant focused on the item screened on the *Holmes* programme and, in addition to complaints under standards 2, 8 and 18, alleged the programme breached standards 4, 6 and 24. Standards 4 and 6 require broadcasters:

4 To deal justly and fairly with any person taking part or referred to in any programme.

6 To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.



Standard 24 reads:

- 24 The combination of violence and sexuality in a way designed to titillate is not sanctioned.

Mr Raymond de Souza, Executive Secretary of Tradition Family Property (New Zealand), argued that the extract from the film showing people imitating wild animals while igniting their sexual desires breached that standard and he expressed outrage that the excerpts were broadcast at a time when television was watched by people of all ages.

With reference to standards 4 and 6, Mr de Souza complained that Miss Bartlett was not treated fairly by Mr Holmes as he had displayed bigotry. He sought a public apology for the broadcast from Mr Holmes both to Miss Bartlett specifically and to all viewers.

TVNZ advised the complainant that its Complaints Committee had upheld the standard 2 complaint but had declined to uphold the others. Referring to standards 4 and 6, TVNZ noted that Miss Bartlett had generated the controversy and thus it was the journalists' role to question her assertions. As TVNZ was unable to find any combination of violence and sex, it declined to uphold the standard 24 complaint, adding that the film had emphasised the positive and beautiful aspects of sex.

6. Mrs Frances Burt's Complaint

Mrs Burt complained about the items on *One Network News* and on the *Holmes* show. She stated that many children were encouraged to watch those early evening programmes and the portrayals of nakedness and (simulated) sexual acts were both indecent and unsuitable for children. TVNZ, she said, had irresponsibly broadcast pornography under the guise of news and she wanted steps taken to avoid its recurrence.

TVNZ considered her complaint under standards 2 and 18 and, other than upholding the broadcast of the item on the *Holmes* programme as a breach of standard 2, declined to uphold the complaint.

When Mrs Burt referred her complaint to the Authority, she expressed the opinion that the *Holmes* programme sensationalised a news item to increase the show's ratings. TVNZ described the accusation as unwarranted. The extracts had been broadcast, it stressed, to enable viewers to understand that the film contained a social message and that it was not "simply another explicit sex film".

The Standards Raised by the Complainants

The complaints variously relate to the items on *One Network News*, *Holmes* and *Tonight* and refer to broadcasting standards 2, 4, 6, 8, 18 and 24. While TVNZ upheld the standard 2 complaint about the item on the *Holmes* programme, some of the complainants then referred that aspect of the complaint to the Authority as they were dissatisfied with TVNZ's subsequent action.



The Authority intends to approach the complaints by way of the standards in the order it considers most relevant and, after explaining the scope of each standard, to apply it to the various programmes to which it relates.

1. Standard 2

This requires 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.

As explained in the discussion of Mrs Craymer-Alexander's complaint above, the Authority has included the complaint under s.4(1)(a) of the Broadcasting Act under this heading.

In Decision No: 2/90, the Authority explained its approach to the notions raised in the standard. It said:

In the Authority's view the concept of good taste and decency in a given situation or context pertains to conformity with such standards of propriety as the Authority considers to be in accord with generally accepted attitudes, values and expectations in New Zealand society.

The Authority also records its agreement with TVNZ that the extracts shown in the *Holmes* programme, which depicted the arousal of sexual interest through animal behaviour and the movements of an apparently naked woman, did not conform with society's generally accepted values in the situation or context. It appreciates TVNZ's concern that establishing bench marks is difficult but, emphasising that the extracts in question were broadcast during family viewing hours, disagrees with TVNZ's description of its decision as conservative and declines to accept TVNZ's invitation to rule that the broadcast did not, in fact, breach standard 2.

Neither of the extracts screened on the *Holmes* programme was shown on *One Network News* which, although including some brief extracts from the film, consisted mainly of interviews with a number of people who were involved with the film in some way. The Authority agreed with TVNZ that the way that the item was covered on *One Network News* did not breach standard 2.

The item on *Tonight* at 10.30pm was an amalgam of some of the material presented between 6.00 - 7.00pm together with a not previously screened extract from the film showing hugging couples in various states of undress. The Authority was principally concerned about the screening of the wild animal pretence extract. On the *Holmes* programme, the item included the film's soundtrack which explained the behaviour. Viewers of that excerpt on *Tonight*, without the benefit of an explanation, could well have assumed that it was a broadcast of a couple apparently having sexual intercourse. Nevertheless, taking into account the point that the extract broadcast at 10.30pm was considerably briefer than the segment shown at 6.30pm and the contextual point that it

was shown late in the evening, the Authority concluded that the broadcast was not contrary to the generally accepted values of New Zealanders and, thus, did not breach standard 2.

2. Standard 18

Broadcasters, under this standard, are required to be mindful of the effect any programme may have on children during their generally accepted viewing periods.

The Authority acknowledges that, apart from some specific provisions in s.4(2) of the Broadcasting Act which are not relevant to the current complaints, broadcasters are not bound by the film censor's classifications. Broadcasters are required to comply with their own classifications which are General ("G"), Parental Guidance Recommended ("PGR") and Adults Only ("AO"). Each classification includes criteria to which programmes of that type must comply.

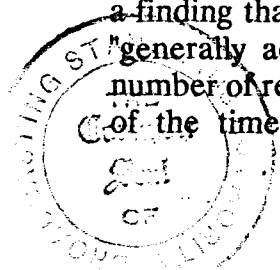
As the *Holmes* programme is broadcast during a "G" period, programmes at that time must "exclude material likely to be unsuitable for children under 14 years although they may not necessarily be designed for child viewers". *Tonight* screens during "AO" time for which the criterion is:

Programmes containing adult themes or those which, because of the way the material is handled, would be unsuitable for persons under 18 years.

As TVNZ upheld the good taste and decency complaint in regard to the item on *Holmes*, the Authority had little difficulty in reaching the conclusion that the complaint under standard 18 in regard to the same programme should also be upheld. Although the "G" guideline does not demand that the programme be designed for children (which the broadcast on *Holmes* seemingly was not designed to do), the "G" classification requires that material unsuitable for children be excluded. That requirement was not met on this occasion. The Authority decided that TVNZ, by its decision on standard 2, in effect acknowledged that the broadcast of the extracts on the *Holmes* programme also breached standard 18. If a broadcast during children's generally accepted viewing periods fails to meet good taste and decency norms in context, then it is almost inevitable that it will also breach the requirement for broadcasters to be mindful of the effect of the programme on children.

Regarding the relevant item on *One Network News*, the Authority decided above that it did not breach the good taste and decency requirements in standard 2. As the item on the *News* contained little detail which threatened the good taste and decency requirement and, in addition, little material which might offend children, the Authority decided that that item did not breach standard 18.

Without question, in the Authority's opinion, the details shown on *Tonight* would justify a finding that standard 18 had been breached if it had been screened during children's "generally accepted viewing periods". It is acknowledged that some children, for a number of reasons, may watch *Tonight* at 10.30pm but 10.30pm is well past the beginning of the time classified as "AO". As the broadcast did not occur within children's



"generally accepted viewing periods" or even near the start of "AO" time, the standard 18 complaint is not upheld in regard to the broadcast on *Tonight*.

3. Standard 8

This brief and direct standard requires broadcasters:

- 8 To abide by the classification codes and their appropriate time bands as outlined in the agreed criteria for programme classifications.

The classifications, "G" and "AO" are explained under the discussion above relating to standard 18. The criteria for "G" and "AO" are recorded there and for the sake of completeness, the Parental Guidance Recommended ("PGR") criterion is now noted.

Programmes containing material more suited to adult audiences but not necessarily unsuitable for child viewers when subject to the guidance of a parent or adult.

On TVNZ and TV3, "G" programmes may be screened at any time; "PGR" programmes are recommended for screening between 9am - 4pm on weekdays and after 7pm until 6am; "AO" programmes are recommended for screening between midday and 3pm on weekdays (except during school and public holidays) and after 8.30pm and until 5am.

Standard 8 raised different issues for the Authority in view of its possible meanings and when considering the current complaints under standard 8, the Authority focused on its introductory words which require broadcasters:

To abide by the classification codes

The classification codes to which the standard refers are part of the Television Code of Broadcasting Practice which is a code approved by the Authority under s.4(1)(e) of the Broadcasting Act. In those circumstances, the Authority is of the opinion that its duty, under standard 8, is to review a broadcaster's classification.

With reference to the excerpts from the film "Sacred Sex" shown on the *Holmes* programme the Authority noted that the complaints referred to extracts from a film which the film censor had classified as R18 but which classification was the subject of review. In those circumstances, TVNZ must have been aware that extreme care was necessary in showing extracts from such a film during the time slot for "G" programmes.

The Authority was not impressed with TVNZ's arguments, first, that the extracts shown avoided explicit sexual behaviour of the kind which earned the film an R18 classification, and secondly, that they concentrated on wholesome sexual practices which could well assist discussion within families about sex. In regard to the first, the Authority would point out that the R18 classification might result from the theme of a film rather than or as well as specific sequences within it. For TVNZ to claim to have an unannounced but active and beneficial role in a family's sex education was, in the Authority's opinion, a ridiculous assertion.

As the broadcast of extracts from the R18 film breached standards 2 and 18, the Authority decided that it had not complied with the requirement to abide by the classification codes and, thus, had also breached standard 8.

4. Standard 24

Because of its concerns about all aspects of pornography and violence, the Authority feels profound concern should standard 24 be breached. It reads:

- 24 The combination of violence and sexuality in a way designed to titillate is not sanctioned.

However, the Authority agreed with TVNZ that violence was not portrayed in the excerpts screened and, consequently, the standard was not breached. The wild animal behaviour copied seemed to consist of movement and sound rather than imitating behaviour involving any violence.

5. Standards 4 and 6

These standards were noted explicitly by one complainant and they require broadcasters:

- 4 To deal just and fairly with any person taking part or referred to in any programme.
- 6 To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

The complainant (Tradition Family Property) maintained that Mr Holmes' approach to Miss Bartlett of the Society for Promotion of Community Standards breached those standards. Another complainant (Mr Sanders) described Mr Holmes' attitude towards Miss Bartlett as one of ridicule although that aspect of his complaint was not specifically assessed by TVNZ under standard 4.

The Authority, again, agreed with TVNZ when it declined to uphold the complaint. It concurred with the broadcaster that Miss Bartlett, having been active in raising the public controversy about the film and having agreed to appear in the *Holmes* programme, should face some direct, if not aggressive, questioning about the reasons for her action. In addition to watching for undue aggression, the Authority assessed the interview to see whether Miss Bartlett was dealt with fairly and that the interview showed balance. The Authority noted that, as Traditional Family Property pointed out, Mr Lowen (the psychologist) had the first and last say which is contrary to the usual principles of natural justice. Despite that however, the Authority considered that Miss Bartlett put her case conscientiously, lucidly and intelligently and decided, on balance, that the interview was fair and balanced and thus neither standard 4 nor 6 was breached.

6. TVNZ's Action Having Upheld One Aspect of the Complaints

TVNZ's Complaints Committee decided that the broadcast of extracts from "Sacred Sex"



film on the *Holmes* programme breached standard 2 of the Television Code of Broadcasting Practice - the good taste and decency requirement.

Having reached that decision, TVNZ said that its action involved the following:

Those on the programme have been informed that the Committee believed that they had contravened the level of acceptability but that there was no evidence of any deliberate attempt to flout the standards. Although it was acknowledged that the material had been carefully selected from the film, it was considered there were extracts which were much less acceptable which the team refrained from using.

Some of the complainants expressed dissatisfaction with what they considered the undue mildness of that action. TVNZ advised the Authority that its staff consider a finding of professional misjudgment to be a salutary penalty. Whilst that may be so, the Authority also understands the complainants' request that TVNZ's action should take a more public form by way of a broadcast apology, or, at least, an explanation by Mr Holmes.

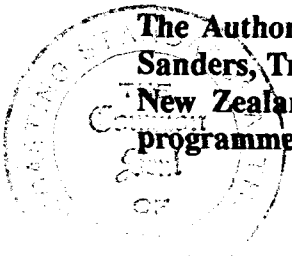
In dealing with those competing perspectives, the Authority asked TVNZ to explain the process by which those involved with the *Holmes* programme had been advised of its Complaints Committee's decision that the complaint under standard 2 had been upheld. TVNZ advised the Authority in a letter dated 23 June that its Director of News and Current Affairs, who had attended the Complaints Committee's meeting, advised the Executive Producer of the *Holmes* programme of the decision during a "semi-formal discussion". It further advised that if the broadcast had involved carelessness, foolishness or lack of attention, discipline might well have been considered appropriate. However, as the programme had tried to comply with the standards, disciplinary action was thought unnecessary and a constructive discussion had taken place.

The Authority found it difficult to accept that a "semi-formal" discussion between a senior staff member who was not even a member of the Complaints Committee and the Executive Producer of the *Holmes* programme would amount to a "salutary penalty" for those involved. Furthermore, publication of the Complaints Committee's decision would surely provide the public with the reassuring evidence that there was internal disapproval of the professional judgment of those responsible for the broadcast.

Decisions

For the reasons set forth above, the Authority upholds the complaints from Mr Whyte, Mrs Craymer-Alexander, Tradition Family Property and Mrs Burt that the broadcast by TVNZ Ltd of the item on the *Holmes* programme on 12 February 1992 breached standards 8 and 18 of the Television Code of Broadcasting Practice.

The Authority upholds the complaints from Mr Whyte, Mrs Craymer-Alexander, Mr Sanders, Tradition Family Property and Mrs Burt that the action taken by Television New Zealand Ltd, having upheld the complaint that the broadcast on the *Holmes* programme breached standard 2 of the same Code, was insufficient in the



circumstances.

The Authority declined to uphold any other aspects of the complaints.

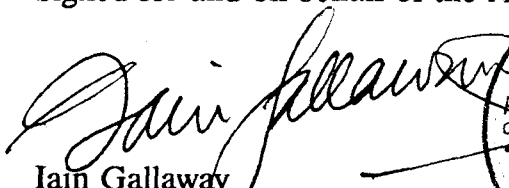
Having upheld all or part of a complaint under s.8 of the Broadcasting Act, the Authority may impose an order under s.13 of the Act.

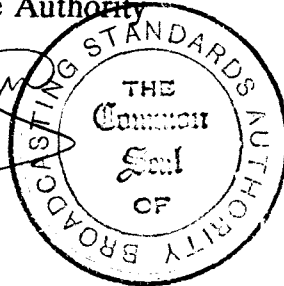
First, in view of the number of complaints referred to the Authority about the broadcast which indicates a significant degree of public concern; secondly, given that the broadcast occurred in "G" viewing time; thirdly, given that the complaint under standard 18 (effect on children) has been upheld by the Authority; fourthly, that only inadequate internal action was taken on the aspect of the complaint upheld by the Complaints Committee; and fifthly, that the public as viewers are entitled to be advised when TVNZ has failed in a substantial way to comply with the standards, the Authority imposes the following order under s.13(1).

ORDER

The Authority orders TVNZ to broadcast on a weekday between 6.30pm and 7.00pm, within seven days of this decision, a brief summary of this decision approved by the Authority.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



27 July 1992

SACRED SEX

Summary of Decisions

Six formal complaints from throughout New Zealand were received by the Broadcasting Standards Authority about the broadcast by Television New Zealand of extracts from the film "Sacred Sex". Only the *Frontline* programme, "For the Public Good" has evoked a larger number of complaints.

Concern was expressed about the broadcast of excerpts from the film on *One Network News*, *Holmes* and *Tonight* and, in addition, about Mr Holmes' manner when interviewing Miss Patricia Bartlett of the Society for the Promotion of Community Standards. The complainants variously alleged that the extracts breached the broadcasting standards requiring good taste and decency, requiring broadcasters to abide by the classification codes and to be mindful of the effect of a broadcast upon children. It was also said that Mr Holmes did not treat Miss Bartlett fairly and that the interview was unbalanced.

TVNZ only upheld the complaint that the broadcast of excerpts on the *Holmes* programme failed to comply with the standard requiring good taste and decency. It declined to uphold any of the other complaints. TVNZ said that the action taken, on the aspect of the complaint upheld, was to advise those involved with the *Holmes* programme of the Complaints Committee's decision. A finding of professional misjudgment, TVNZ added, is a salutary penalty for a journalist.

Some of the complainants expressed their dissatisfaction to the Authority about that action, arguing that a public apology was necessary.

Having viewed tapes of the broadcasts, the Authority decided that the broadcast of the extracts on the *Holmes* programme, in addition to breaching the good taste and decency standard, also breached the standards requiring broadcasters to comply with the classification codes and to be mindful of the effect that any programme may have on children. Because only brief and less explicit extracts were shown on *One Network News* and because *Tonight* is not broadcast during the time classified as General viewing time, the Authority agreed with TVNZ when it declined to uphold those aspects of the complaint. It considered the interview with Miss Bartlett was neither unfair nor unbalanced and declined to uphold that part of the complaint.

The Authority, while it accepts that a finding of professional misjudgment may be a salutary penalty for a broadcaster, was somewhat sceptical as to the impact in this case when, on inquiry, it was told that the Executive Producer of the *Holmes* programme was advised of the Complaints Committee's decision during a "semi-formal discussion". When that point was combined with the number of complaints which indicated a significant degree of public concern, the other aspects of the complaints upheld, the fact that it was screened during General viewing time and the Authority's concern for the protection of children, the Authority decided that the finding of professional misjudgment was not an adequate penalty. The Authority concurred with the complainants who argued that some public acknowledgement was necessary and, consequently, it ordered TVNZ to broadcast a summary of its decision, between the hours of 6.30 - 7.00pm, within seven days.

Appendix 1

Mr J.E. Whyte's Complaint to Television New Zealand Limited

In a letter dated 15 February 1992, Mr Whyte complained to Television New Zealand Ltd about the broadcast of excerpts from the film "Sacred Sex" on the *Holmes* programme on 12 February. He objected to the portrayals contained in the extracts and questioned TVNZ's authority to show extracts from an R18 film.

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Whyte of its Complaints Committee's decision in a letter dated 24 March 1992. It recorded that the complaint was assessed under standard 2 of the Television Code of Broadcasting Practice which requires broadcasters:

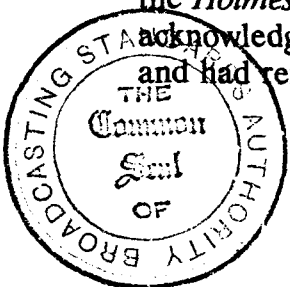
- 2 To take into consideration currently accepted norms of decency and taste in language and behaviour, bearing in mind the context in which any language or behaviour occurs.

TVNZ reviewed the news value of the item and, describing censorship as an important issue, stated:

The word "context" as contained in code 2 was considered to be all-important in the consideration of your complaint. And it was agreed that the visual material carried on both One Network News and *Holmes* was relevant to the story being told. It was thought that any reporting of the public controversy would have been at best misleading, and at worst incomprehensible if viewers had not been given the opportunity to learn of the type of film under discussion.

The Complaints Committee also believed that it was important to report that the film makers considered the film to be a documentary with an important social message. The visuals had been carefully selected, TVNZ continued, to give viewers a "feeling" for the film without showing the more explicit material.

TVNZ said that a majority of the Complaints Committee decided that the news coverage had not breached the good taste and decency standard while a majority thought that some of the material on the *Holmes* programme, in view of the length of the broadcast, had breached the standard. TVNZ reported that those who worked on the *Holmes* programme had been advised of the Committee's decision although it was acknowledged that the programme makers had not deliberately flouted the standard and had refrained from using less acceptable excerpts.



Mr Whyte's Complaint to the Broadcasting Standards Authority

As he was dissatisfied with TVNZ's decision, in a letter dated 6 April 1992, Mr Whyte referred his complaint to the Authority under s.8(a) of the Broadcasting Act 1989.

He maintained that the broadcast of the extracts was a serious breach of the broadcasting standards and that his complaint had been upheld but no penalty had been imposed - not even "an apology to the viewing public".

He repeated his contention that TVNZ had disregarded the film censor's R18 rating and had shown the extracts at an inappropriate time.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the referral. The request is dated 15 April and TVNZ's reply, 20 May.

TVNZ explained that items on the *Holmes* programme are expected to meet the General ("G") rating and that the extracts of the film which were shown were selected with great care to give viewers a "feeling" for the film without showing those parts which justified the R18 classification. Accordingly, Mr Whyte's complaint under standard 8, which requires broadcasters to abide with the classification codes, was not in issue.

TVNZ continued:

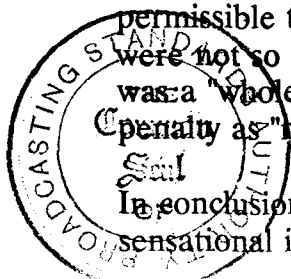
In summary we have an issue which community viewpoints will be marked by distinct differences. Even the company's Complaints Committee was divided as to how far such matters should be illustrated at 6.30pm. Nevertheless it was seen as a social issue which should not be suppressed. And one of the key factors was the suitability of material. In this regard it was seen as a wholesome portrayal concerning matters relating to sex as distinct from the grubby.

On the issue of penalty, TVNZ stated that a finding of professional misjudgment was, in itself, a "most salutary penalty" for any journalist.

Mr Whyte's Final Comment to the Authority

When asked for his comment on TVNZ's response, in a letter dated 30 May Mr Whyte wondered whether a court of law would agree with TVNZ that it was permissible to show selected extracts from an R18 film and claim that the extracts were not so classified. He disputed TVNZ's point that a display of gyrating breasts was a "wholesome portrayal" of sexual matters and described TVNZ's in-house penalty as "no penalty at all".

In conclusion, he maintained that the excerpts were broadcast solely for their sensational impact.



Appendix 2Mr Kristian Harang's Complaint to Television New Zealand Limited

After first writing to the Broadcasting Standards Authority, in a letter dated 28 February 1992 Mr Harang complained to Television New Zealand Ltd about the broadcast of excerpts from the film "Sacred Sex" on *One Network News* on 12 February. He wrote:

I consider the shots totally against good taste at that time, and when there are so many cases in the country of rape and sexual abuse, to show something like that on television only fuels an appetite for sexual exploitation of women and children.

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Harang of its Complaints Committee's decision in a letter dated 18 March 1992. It recorded that the complaint was assessed under standard 2 of the Television Code of Broadcasting Practice which requires broadcasters:

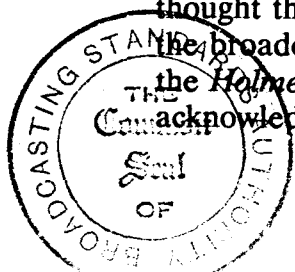
- 2 To take into consideration currently accepted norms of decency and taste in language and behaviour, bearing in mind the context in which any language or behaviour occurs.

TVNZ reviewed the news value of the item and, describing censorship as an important issue, stated:

The word "context" as contained in code 2 was considered to be all-important in the consideration of your complaint. And it was agreed that the visual material carried on both *One Network News* and *Holmes* was relevant to the story being told. It was thought that any reporting of the public controversy would have been at best misleading, and at worst incomprehensible if viewers had not been given the opportunity to learn of the type of film under discussion.

The Complaints Committee also believed that it was important for the programme to report that the film makers considered the film to be a documentary with an important social message. The visuals had been carefully selected, TVNZ continued, to give viewers a "feeling" for the film without showing the more explicit material.

TVNZ said that a majority of the Complaints Committee decided that the news coverage had not breached the good taste and decency standard while a majority thought that some of the material on the *Holmes* programme, in view of the length of the broadcast, had breached the standard. TVNZ reported that those who worked on the *Holmes* programme had been advised of the Committee's decision although it was acknowledged that the programme makers had not deliberately flouted the standard



and had refrained from using less acceptable excerpts.

Mr Harang's Complaint to the Broadcasting Standards Authority

As he was dissatisfied with TVNZ's decision, in a letter dated 23 March 1992, Mr Harang referred his complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

He maintained that the excerpts broadcast on the 6.00pm news breached the good taste and decency standard. They were shown, he alleged, for reasons of sensationalism rather than out of concern for news and he expressed his concern that the family unit, which he described as the basic pillar of society, was being denigrated by the senseless pornography shown on television. Censorship, he added, had become an issue because the news media were forever extending the boundaries.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. The request is dated 2 April and TVNZ's reply, 20 May.

TVNZ explained that it had processed the complaint in accordance with the complainant's concern which had referred to the news coverage - not to the item on *Holmes*. TVNZ repeated the points that the extracts shown were appropriate in the context of a news story and were shown to assist the viewers understand the issues and give some indication of the film's content. The news department had considered that it was important to show that the film was a documentary carrying a significant social message.

TVNZ pointed out that Miss Bartlett's actions about the film, not the news media's, had generated the censorship debate and that Mr Harang's concerns about the link between television programmes and criminal sexual activity was conjecture.

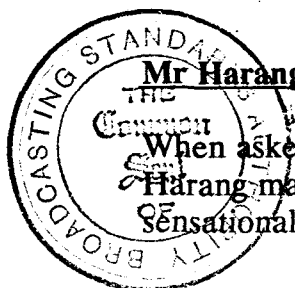
It concluded:

The complainant's reference to an R18 film being shown have no true relevance because whatever the rating of the film, the extracts shown were not considered as forming part of the material that earned that rating.

The company would submit that the material shown in the news at p was neither erotic nor pornographic as the complainant seems to suggest. And in a majority decision the Committee did not consider there had been a breach of code 2.

Mr Harang's Final Comment to the Authority

When asked for his comments on TVNZ's response, in a letter dated 25 May Mr Harang maintained his argument that the extracts were pornographic and sensationalised the harmful effects of sex for our society.



Appendix 3

Mrs Valerie Craymer-Alexander's Complaint to Television New Zealand Limited

In letters dated 19 February and 2 March 1992, Mrs Craymer-Alexander complained to Television New Zealand Ltd about the broadcast of extracts from "Sacred Sex", a film classified R18, on TV1's news and the *Holmes* programme on Wednesday 12 February.

She said that those programmes were watched by viewers of all ages and that, as the classification of the film was in dispute, no part of it should have been shown. Accordingly, she said, the broadcast breached the standard in the Broadcasting Act 1989 requiring the observance of good taste and decency and the provisions in the Act about broadcasting extracts of censored films.

She also complained that the broadcast breached the provision in the Television Code of Broadcasting Practice requiring the protection of children. In her second letter she said that, because the extracts from an R18 film were shown in contravention to the requirements of the Films Act, the broadcast breached the standard in the Broadcasting Act requiring the observance of standards consistent with the maintenance of law and order.

TVNZ's Response to the Formal Complaint

TVNZ advised Mrs Craymer-Alexander of its Complaints Committee's decision in a letter dated 18 March. It recorded that the complaint had been considered in the context of s.4(1)(a) and (b) of the Broadcasting Act 1989 and standard 18 of the Television Code of Broadcasting Practice. The Act requires broadcasters to maintain standards which are consistent with:

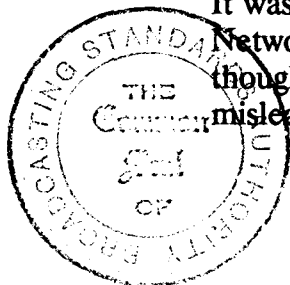
- (a) The observance of good taste and decency; and
- (b) The maintenance of law and order;

Standard 18 requires broadcasters:

- 18. To be mindful of the effect any programme may have on children during their generally accepted viewing periods.

TVNZ reviewed the news value of the item and, describing censorship as an important issue, wrote:

It was agreed by the Committee that the visual material carried on both One Network News and *Holmes* was relevant to the story being told. It was thought that any reporting of the public controversy would have been at best misleading, and at worst incomprehensible if viewers had not been given the



opportunity to learn of the type of film under discussion.

The Committee also believed it important to report that the film makers considered the film to be a documentary with an important social message. The visuals shown had been carefully selected, TVNZ continued, to give viewers a "feeling" for the movie without showing the more explicit material.

The Complaints Committee considered that it was a difficult task setting the boundaries of taste and decency and a majority had considered that the news coverage had not breached the good taste and decency standard while a majority thought that some of the material shown on the *Holmes* programme, in view of the length of the broadcast, had breached the standard. As it was difficult to determine what child viewers had been affected, the aspects of the complaint under s.4(1)(b) and standard 18 were not upheld.

TVNZ reported that those who worked on the *Holmes* programme had been advised of the Committee's decision although it was acknowledged that the programme makers had not deliberately flouted the standard and had refrained from using less acceptable excerpts.

Mrs Craymer-Alexander's Complaint to the Broadcasting Standards Authority

As she was dissatisfied with TVNZ's decision, in a letter dated 26 March Mrs Craymer-Alexander referred her complaint to the Authority for under s.8(a) of the Broadcasting Act 1989.

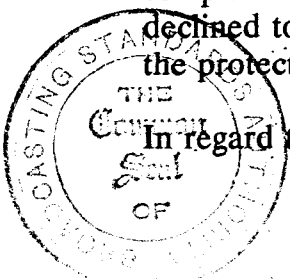
When she completed the Authority's Complaint Referral Form, she complained that TVNZ had not considered her good taste and decency complaint about the extracts shown on the 10.00pm news, that showing extracts from a restricted film breached s.4(1)(b), and that the item breached the standard designed for the protection of children. In regard to that aspect of her complaint, she objected to TVNZ's assumption that she bore the onus of proof regarding her contention.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the referral. The request is dated 15 April and TVNZ's reply, 20 May.

It began by explaining that in view of the contents of the complainant's letter and her remarks about the effect of the programme on child viewers, it had assumed that she had been referring to *One Network News* at 6.00pm. Now, in response to the complaint about the broadcast on *Tonight* at 10.30pm, in view of the hour, TVNZ declined to uphold the complaint either on the grounds of good taste and decency or the protection of children.

In regard to the broadcast of excerpts from a restricted film, TVNZ began by



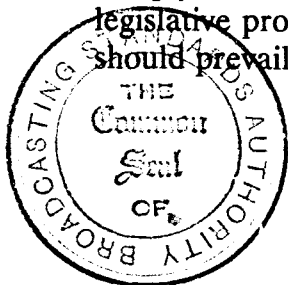
explaining that its letter to her dated 18 March had omitted to include the Committee's decision that the broadcast had not breached that provision in the Act. TVNZ added that although there had been some confusion about the film's classification in view of the Secretary of Internal Affairs' actions, it had been established that the film, during the review process, had carried an R18 rating and thus s.4(2)(b) of the Act relating to the broadcast of banned films was not relevant.

TVNZ said that there were different opinions about the boundaries of good taste - as had been evidenced in its Complaints Committee - but it believed, while the excerpts shown on *Holmes* were too explicit, that that did not apply to the extracts on the news taken from a film which dealt with sex in a wholesome manner. TVNZ considered that the broadcast at 10.30pm did not breach any of the standards raised and it concluded that the provisions in the Films Act were not relevant to television programmes.

Mrs Craymer-Alexander's Final Comment to the Authority

When asked for her comment on TVNZ's response, in a letter dated 4 June 1992 Mrs Craymer-Alexander accepted that TVNZ was not bound by the Films Act but maintained that TVNZ, by screening an excerpt from an R18 film, had failed to comply with the requirement for good taste and decency in the Broadcasting Act. She disagreed that the portrayal of sexual matters had been wholesome, as TVNZ insisted, describing the entire item as denigrating to women.

She also maintained her argument that the broadcast at 10.30pm on *Tonight* failed to comply with the good taste and decency standard. In conclusion, she argued that the legislative provisions, under which censorship classifications were imposed on films, should prevail over internal systems as operated by broadcasters.



Appendix 4Mr L.G. Sanders' Complaint to Television New Zealand Limited

In a letter dated 12 February 1992, Mr Sanders complained to Television New Zealand Ltd about the broadcasts of excerpts from the film "Sacred Sex" on the *Holmes* programme that evening.

He objected to showing extracts at that time from an R18 film and to the portrayal of nudity and methods of sexual arousal, stating that it should not be shown before 10.00pm. He also complained about Mr Holmes' implied attitude of ridicule when questioning Miss Bartlett. He believed that Mr Holmes should apologise to Miss Bartlett for his attitude and to all New Zealanders for showing the excerpts.

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Sanders of its Complaints Committee's decision in a letter dated 24 March 1992. It recorded that the complaint was assessed under standard 2 of the Television Code of Broadcasting Practice which requires broadcasters:

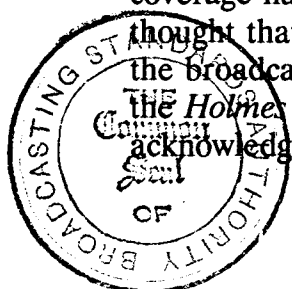
- 2 To take into consideration currently accepted norms of decency and taste in language and behaviour, bearing in mind the context in which any language or behaviour occurs.

TVNZ reviewed the news value of the item and, describing censorship as an important issue, stated:

The word "context" as contained in code 2 was considered to be all-important in the consideration of your complaint. And it was agreed that the visual material carried on both One Network News and *Holmes* was relevant to the story being told. It was thought that any reporting of the public controversy would have been at best misleading, and at worst incomprehensible if viewers had not been given the opportunity to learn of the type of film under discussion.

The Complaints Committee also believed that it was important to report that the film makers considered the film to be a documentary with an important social message. The visuals had been carefully selected, TVNZ continued, to give viewers a "feeling" for the film without showing the more explicit material.

TVNZ said that a majority of the Complaints Committee decided that the news coverage had not breached the good taste and decency standard while a majority thought that some of the material on the *Holmes* programme, in view of the length of the broadcast, had breached the standard. TVNZ reported that those who worked on the *Holmes* programme had been advised of the Committee's decision although it was acknowledged that the programme makers had not deliberately flouted the standard



and had refrained from using less acceptable excerpts.

Mr Sanders' Complaint to the Broadcasting Standards Authority

As he was dissatisfied with TVNZ's decision, in a letter dated 6 April 1992, Mr Sanders referred his complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

He expressed particular concern that extracts from a film with an R18 classification were shown during family viewing time. He argued that the action taken by TVNZ when upholding the complaint was insufficient and wrote:

Steps should be taken to ensure that this will not occur again - that our standards are more punitively dealt with when excesses like this occur. Holmes should feel some penalty sufficient to cause him to think twice about showing this junk again.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the referral. The request is dated 9 April and TVNZ's reply, 20 May.

It began by explaining that the extracts shown on television were not the sequences which justified the film's R18 classification. The extracts shown were carefully selected to meet a General (G) classification. TVNZ then argued that there were no studies which showed any deleterious effect of showing women's breasts to children and added that such displays were often useful starting points for family discussions about sexuality.

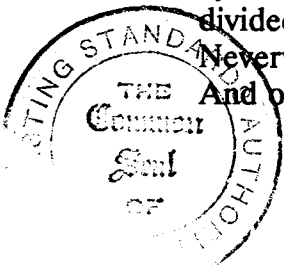
As Mr Holmes had not selected the extracts shown, TVNZ said that it was inappropriate to direct disciplinary action towards him. It continued:

The news department view has been that the whole "Sacred Sex" reaction had been the result - not so much of any serious failing by the *Holmes* team - but of a genuine attempt by that team to place a current controversy in a comprehensible context. The Complaints Committee, it should be recalled, did not question the sincerity of the effort put into illustrating what was a very difficult story to tell even though it proceeded to uphold the complaint.

On the issue of penalty, TVNZ stated that a finding of professional misjudgment was a "most salutary penalty for any journalist" and it concluded:

In summary we have an issue over which community viewpoints will be marked by distinct differences. Even the company's Complaints Committee was divided as to how far such matters should be illustrated at 6.30pm.

Nevertheless it was seen as a social issue which should not be suppressed. And one of the key factors was the suitability of material. In this regard it was



seen as a wholesome portrayal concerning matters relating to sex as distinct from the grubby.

Mr Sanders' Final Comment to the Authority

When asked for his final comment on TVNZ's response, in a letter dated 24 May 1992 Mr Sanders described the extracts from the film which were shown on *Holmes* as embarrassing and, moreover, said that it was inappropriate for TVNZ to dictate child rearing practices. He argued that TVNZ's attitude supported casual approaches to sexuality which destroyed stable loving marital relationships.

Although he accepted that Mr Holmes had not selected the extracts which were shown, Mr Sanders believed that, as the presenter, he should take responsibility. Contrary to TVNZ's statement, he did not seek retribution. Rather, he wrote, he wanted the error publicly acknowledged and a reassurance that such sexually explicit broadcasts would not reoccur.



Appendix 5Tradition Family Property (New Zealand)'s Complaint to Television New Zealand Limited

In a letter dated 29 February 1992, the Executive Secretary of Tradition Family Property (New Zealand), Mr Raymond de Souza, complained to Television New Zealand Ltd about the broadcast of excerpts from the film "Sacred Sex" on the *Holmes* programme on 12 February.

The extracts he said, showed a woman with naked breasts dancing before some people and lovers pretending to be wild animals in order to arouse their sexual instincts. Such extracts, he continued, had a special effect on children and suggested disorderly behaviour and social and moral degradation. He said that the excerpts breached standards 2, 24 and 18 of the Television Code of Broadcasting Practice which require good taste and decency, which prohibit the combination of violence and sexuality for the purposes of titillation and which require the protection of children. Showing extracts from an R18 film at 6.30pm, he continued, breached standard 8 of the code requiring the broadcast of items in the appropriate time bands.

Mr de Souza referred to comments made by Mr Holmes and a guest psychologist and provided the following summary:

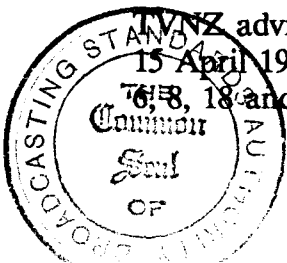
Presumably when the day comes that our children will enjoy group sex while going around roaring and groaning like wild animals, they will be finally free from the "repressive culture" within which they are being brought up. And we have the *Holmes* programme to thank for that stimulating revelation.

He then referred to extracts of the dialogue between Mr Holmes and Miss Patricia Bartlett of the Society for the Protection of Community Standards which showed, he stated, Mr Holmes defending the film and belittling generally accepted standards of morality. Mr Holmes' "sheer bigotry", he added, breached standards 4 and 6 of the Television Code requiring that people be dealt with fairly and that programmes show balance, impartiality and fairness.

Expressing his concern about how television stretched the limits of decency and how the average viewer was virtually helpless before what he described as the tyranny of the media, he concluded by suggesting that Mr Holmes apologise both to Miss Bartlett and to all viewers and give a clear assurance that such a broadcast would not be repeated.

TVNZ's Response to the Formal Complaint

TVNZ advised Mr de Souza of its Complaints Committee's decision in a letter dated 15 April 1992. It recorded that the complaint had been assessed under standards 2, 4, 6, 8, 18 and 24 which had been cited.



TVNZ reviewed the news value of the item and, describing censorship as an important issue, stated:

The word "context" as contained in code 2 was considered to be all-important in the consideration of your complaint. And it was agreed that the visual material carried on both One Network News and Holmes was relevant to the story being told. It was thought that any reporting of the public controversy would have been at best misleading, and at worst incomprehensible if viewers had not been given the opportunity to learn of the type of film under discussion.

The Complaints Committee also believed that it was important for the broadcast to report that the film makers considered the film to be a documentary with an important social message. The visuals had been carefully selected, TVNZ continued, to give viewers a "feeling" for the film without showing the more explicit material.

TVNZ said that a majority of the Complaints Committee decided that the news coverage had not breached the good taste and decency standard while a majority thought that some of the material on the *Holmes* programme, in view of the length of the broadcast, had breached the standard. TVNZ reported that those who worked on the *Holmes* programme had been advised of the Committee's decision although it was acknowledged that the programme makers had not deliberately flouted the standard and had refrained from using less acceptable excerpts.

In regard to the aspect of the complaint which focused on the manner in which Miss Bartlett had been treated, TVNZ pointed out that she had generated the controversy and thus it was relevant to ask her whether she had seen the film. Following a negative answer to that question, TVNZ said, it was relevant to explain the nature of the film to her and to ask her to explain the substance of her criticism. TVNZ said that the item had not breached standards 4 and 6.

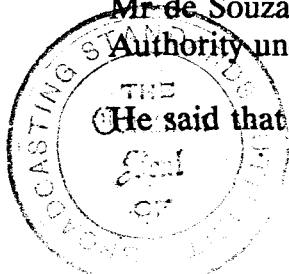
Standard 8 requires broadcasters to abide by classification criteria and TVNZ said the visuals had been selected carefully to avoid the material which resulted in an R18 rating for the film.

Standard 18 regarding the protection of children was not breached as none of the carefully selected extracts could have been upsetting for children. As the Committee was unable to find any combination of sex and violence, standard 24 was not relevant.

Tradition Family Property (New Zealand)'s Complaint to the Broadcasting Standards Authority

As the organisation was dissatisfied with TVNZ's decision, in a letter dated 10 May, Mr de Souza on its behalf referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

He said that TVNZ, because it argued that the extracts were relevant to the news



item, had failed to address the chief points of his complaint.

He was particularly concerned about TVNZ's comment that the item had not had an upsetting or harmful effect on children. He was also dissatisfied with the action taken by TVNZ after upholding an aspect of the complaint.

When he completed the Authority's Complaint Referral Form he again stressed his disagreement with TVNZ's comment about the effect of the item on children and argued that the Authority should hold a formal hearing as:

the Authority would be able to assess the case better - I believe - if a discussion could be verbally organised in a hearing, whereby the attempts to re-interpret the law by the broadcaster could more easily be made evident.

TVNZ's Response to the Authority

As is its usual practice, the Authority sought the broadcaster's response to the complaint. The Authority's letter is dated 19 May and TVNZ's response, 18 June.

TVNZ contested the complainant's argument that the extracts had damaging effects on children, remarking:

We would submit that this is a subjective viewpoint which cannot be proved one way or the other. We would comment that we are unaware of any authoritative study which has established any deleterious effect on children through viewing the sort of material when presented in an educational or scientific manner.

Challenging the complainant's remark that the item showed "group sex", TVNZ maintained that the therapy session displayed only sexual responsiveness.

With reference to the other arguments, TVNZ said that one aspect of the complaint had been upheld and that the others were answered in its 15 April letter to the complainant.

Tradition Family Property (New Zealand)'s Final Comment to the Authority

When asked to comment on TVNZ's response, in a letter dated 6 July Mr de Souza on the complainant's behalf expressed his deep concern in TVNZ's belief in its own infallibility, despite the obvious damage caused by its anti-family and anti-morality stances. Expressing amazement that TVNZ could assess "Sacred Sex" as being of a "candid nature" and "beneficial to young viewers", Mr de Souza wrote with reference to TVNZ's comment to the Authority:

It seems to me that TVNZ's hidden agenda has been finally publicised whereby they appear to have become anti-family and therefore anti-social. The public must become aware of it.



Appendix 6

Mrs Frances Burt's Complaint to Television New Zealand Limited

In a letter dated 27 February 1992, Mrs Burt complained to Television New Zealand Ltd about the broadcast of excerpts from the film "Sacred Sex" (on 12 February) on *One Network News* at 6.00pm and on the *Holmes* programme at 6.30pm on 12 February. The extracts, she wrote, breached the requirements that broadcasters maintain standards consistent with the observance of good taste and decency and that broadcasters are mindful of the effect of a programme on children during their generally accepted viewing periods.

She considered that the extracts which portrayed nakedness and (simulated) sexual acts were indecent and were not suitable for children. She stated that many children watched the news at 6.00pm and broadcasters should not be allowed to broadcast pornography under the guise of news. She considered TVNZ's actions had been very irresponsible and wanted action to avoid its reoccurrence.

TVNZ's Response to the Formal Complaint

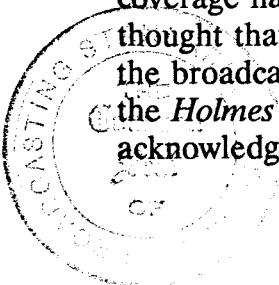
TVNZ advised Mrs Burt of its Complaints Committee's decision in a letter dated 15 April 1992. It recorded that the complaint was assessed under standards 2 and 18 of the Television Code of Broadcasting Practice.

TVNZ reviewed the news value of the item and, describing censorship as an important issue, stated:

The word "context" as contained in code 2 was considered to be all-important in the consideration of your complaint. And it was agreed that the visual material carried on both *One Network News* and *Holmes* was relevant to the story being told. It was thought that any reporting of the public controversy would have been at best misleading, and at worst incomprehensible if viewers had not been given the opportunity to learn of the type of film under discussion.

The Complaints Committee also believed that it was important for the broadcasts to report that the film makers considered the film to be a documentary with an important social message. The visuals had been carefully selected, TVNZ continued, to give viewers a "feeling" for the film without showing the more explicit material.

TVNZ said that a majority of the Complaints Committee decided that the news coverage had not breached the good taste and decency standard while a majority thought that some of the material on the *Holmes* programme, in view of the length of the broadcast, had breached the standard. TVNZ reported that those who worked on the *Holmes* programme had been advised of the Committee's decision although it was acknowledged that the programme makers had not deliberately flouted the standard



and had refrained from using less acceptable excerpts.

In regard to standard 18, TVNZ said its requirements was complied with through the careful selection process and that none of the visuals used could have been upsetting or harmful to children.

Mrs Burt's Complaint to the Broadcasting Standards Authority

As she was dissatisfied with TVNZ's decision, in a letter dated 6 May 1992 Mrs Burt referred her complaint to the Authority under s.8(a) of the Broadcasting Act 1989.

She said that the *Holmes* programme sensationalised the item for the purpose of increasing its ratings, and that TVNZ should have taken stronger action having upheld an aspect of the complaint.

She also said that the "vivid" visuals would have had a harmful effect on children, noting:

Naked adults in a state of sensual arousal cannot be considered suitable viewing for them - damaging their innocence - and also in this instance their opinion of adult behaviour.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to its referral. The request is dated 9 June and TVNZ's reply, 18 June. TVNZ described as unwarranted Mrs Burt's accusation about the use of the extracts for sensational purposes. The material had been shown, it continued, to enable the viewers to understand the type of film under discussion and to show that it was not an explicit sex film. TVNZ also argued that there was no evidence that the excerpts screened had had a harmful effect on children.

The reference to sensual arousal, TVNZ repeated, seemed to refer to the woman dancing with bare breasts and that aspect of the complaint, had been upheld by a majority decision. TVNZ regarded the use of the word "vivid" as not justified.

TVNZ concluded that it was a difficult task to set benchmarks and, as it considered its decision in upholding an aspect of the complaint as conservative, it invited the Authority to conclude that the broadcast was acceptable and that it did not breach standard 2.

Mrs Burt's Final Comment to the Authority

When asked to comment on TVNZ's report, in a letter dated 26 June Mrs Burt disagreed with TVNZ's reasoning to let viewers judge the social message for themselves which, she said, justified the screening of any material - no matter how pornographic. Pointing out that she and TVNZ differed about standards of decency, she asked the Authority to decide whether the extracts were "good" and "wholesome" and "of real value to the family viewing audience"

