

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 60/92

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Decision No: 62/92

Dated the 10th day of September 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of complaints by

KERRY SHARP

of Palmerston North

CLAY NELSON

of Wellington

CHRISTIAN HERITAGE PARTY

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

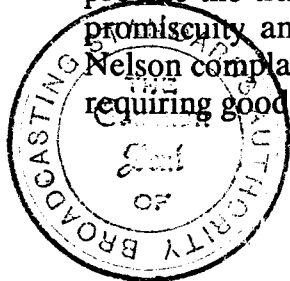
L.M. Dawson

DECISION

Introduction

"Sophie's Sex Special" was broadcast on TV2 at 8.30pm on 6 May 1992 and repeated one week later. The Australian programme was designed to educate and inform young adults about various aspects of sexual behaviour. It included practical advice from experienced professionals and moral comment from a variety of perspectives.

Mr Sharp complained to Television New Zealand Ltd that the programme was unbalanced as liberal attitudes were advanced and only a token effort was made to provide the traditional moral viewpoint. He described liberal attitudes which endorsed promiscuity and male and female homosexuality as both bankrupt and amoral. Mr Nelson complained that the programme failed to comply with the broadcasting standard requiring good taste and decency and, he said, it encouraged promiscuity. The Christian



Heritage Party, in addition to a complaint about the programme's failure to meet the good taste and decency requirement, said that it failed to respect the principles of law. The well-established fundamental principles of a civil society, it said, were breached by a programme portraying sexual activity outside of marriage and presenting homosexuality as an acceptable alternative.

TVNZ said that the programme dealt with sexual practices which research showed were occurring and the practical advice for sexually active young adults was balanced by the variety of views presented by the participants. It also stated that the programme, which was classified as Adults Only ("AO") carried a cautionary message and that the competing arguments were represented by credible sources. In addition, it recorded that homosexual behaviour between consenting adults was not illegal in New Zealand and it declined to uphold all the complaints. As the complainants were dissatisfied with TVNZ's decision, they referred their complaints to the Authority under s.8(a) of the Broadcasting Act 1989.

Decision

The members of the Authority have seen the programme complained about and have read the correspondence (summarised in the Appendices). As is its practice, the Authority has determined the complaints without a formal hearing.

From the outset, the Authority records that this decision relates only to the programme "Sophie's Sex Special". It does not apply to the genre of sex programmes generally and, in particular, it does not apply to the series entitled "Sex", also hosted by Sophie Lee, which is currently being broadcast by Television New Zealand Ltd.

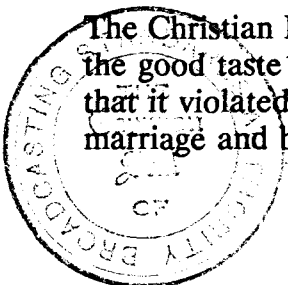
"Sophie's Sex Special" was broadcast by TVNZ on TV2 on Wednesday 6 May at 8.30pm and repeated a week later. In its listings for 6 May, the Listener described the programme in the following way:

Sophie Lee (Penny Wellings in *The Flying Doctors*) hosts a programme for teenagers which looks at the conflicting issues of selling products with sexual imagery, safe sex, the use of condoms, sex education and AIDS. (AO)

The three complaints about the programme which have been referred to the Authority raise the following issues.

Mr Nelson complained that the programme failed to maintain standards consistent with the requirement for good taste and decency. He agreed with a participant in the programme who had said that sex should be saved for marriage and Mr Nelson believed that the programme exploited sex and encouraged promiscuity.

The Christian Heritage Party, in addition to a complaint that the programme breached the good taste and decency standard by being "nothing short of pornographic", alleged that it violated the basic law of civilised societies by portraying sexual activity outside marriage and by describing homosexuality as an acceptable alternative.



Mr Sharp complained about the item's lack of balance. It presented, he said, a "bankrupt, liberal and amoral" perspective while dealing with the traditional moral viewpoint in only a token way. He was particularly concerned that the programme did not give any information about condom failure rate. Safe sex, he said, was achieved by abstinence before and fidelity during marriage.

In its response to the complainants, TVNZ began by emphasising the care the programme had taken to ensure that the contrasting views were presented by credible sources, that the sex education aspects had been presented by qualified and experienced professionals and that traditional religious views had been advanced throughout the programme by the Rev Fred Nile.

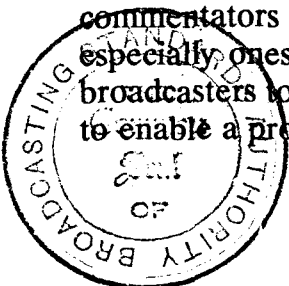
TVNZ assessed the complaints against standards 2, 5 and 6 of the Television Code of Broadcasting Practice. They require broadcasters:

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.
5. To respect the principles of law which sustain our society
6. To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

In regard to the complaint that the programme breached standard 2, TVNZ pointed out that the programme had been given an "AO" classification and that the broadcast had been preceded by an announcement suggesting that viewers exercise discretion. It described the allegations that the programme promoted promiscuity as extreme and, taking into account the context of the entire programme, declined to uphold the complaint that it breached the good taste and decency requirement in standard 2.

TVNZ's response to the complaint under standard 5 was to maintain that the activity discussed, and specifically homosexual behaviour between consenting adults, did not breach New Zealand's statutes. In regard to the standard 6 complaint about balance, TVNZ again referred to the programme's "AO" classification and argued that not only were Rev Nile's views broadcast throughout the programme but that the issues were discussed as thoroughly as could be expected in such an "education-type" programme lasting 45 minutes.

When examining the programme, the Authority noted first that it was introduced by reference to an issue which, while possibly familiar to Australian viewers, was unfamiliar to a New Zealand audience. Because of the New Zealand audience's lack of familiarity with the point addressed, the Authority believed that some of the introduction which dealt with the programme's scope and the experience and qualifications of the commentators was not readily comprehensible. With controversial programmes, and especially ones with an educational thrust, the Authority would expect New Zealand broadcasters to ensure that arcane references are either omitted or explained to viewers to enable a programme's agenda to be fully understood. The Authority also noted that



the programme was preceded by the broadcast of a clear warning about the programme's broad theme.

The Authority proceeded to examine the good taste and decency complaint under standard 2 of the Television Code. It acknowledged that the programme assumed that some, if not most, young adults were sexually active and, rather than focus on whether such people should be sexually active, it aimed to give advice to those who were or contemplating becoming so. In view of the dangers of AIDS and other sexually transmitted diseases, the Authority accepted that the programme's approach did not breach standard 2.

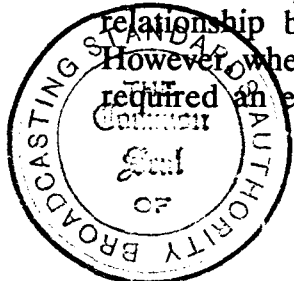
In considering further the points raised by the complainants under that standard, the Authority records that there is a fine line between what is generally acceptable by New Zealand society and what is not, but that this programme did not cross the line. Despite the inclusion of some background material which was questionable at times, the programme could not be described as pornographic, or verging thereon, and it did not attempt, as one complainant alleged, to engineer society. As TVNZ explained, the educational items were presented professionally and the Authority observed that while all members of society are surrounded by sexual imagery, the programme presented the issues in a way which emphasised education and information rather than titillation. Moreover, the acceptance by some of the programme's commentators of not only sexual imagery but also sexual activity was balanced by the Rev Nile's more traditional views on the issues.

Standard 5 requires broadcasters to respect the principles of laws which sustain our society. The Authority decided that this standard refers to statute and common law. While appreciating the Christian Heritage Party's wish for such laws to equate with Christian values, the Authority noted that while the core Christian values are universally accepted by Christians, there is a wide range of opinion about values which are not central to Christianity. Indeed, the Authority acknowledged that there is a debate about what are the central values. In its conclusion on this point, the Authority agreed with TVNZ that as the behaviour portrayed did not breach New Zealand's criminal and civil laws, that aspect of the complaint could not be upheld.

The complaint that the programme breached the requirement in standard 6 for balance raised the issues about both the programme's overall theme and its comments about some specific "safe sex" practices.

In regard to the programme's theme, the Authority was of the view that, while attitudes were touched on, the programme assumed that young adults were sexually active or contemplating becoming so and also advanced the idea that such behaviour was acceptable for such people in which to participate. In the Authority's opinion that approach omits any reference to the relationship between sex and love.

The Authority regarded the minimal way in which the programme discussed the relationship between attitudes to and the practice of sex as a serious deficiency. However, whether that deficiency amounted to a breach of the requirement for balance required an examination of the item's overall professed theme. To put the question



more bluntly, should all broadcasts about sex for young adults include the traditional moral message? In dealing with the question, the Authority took into account that television is not the only source of sex education and that the programme "Sophie's Sex Special" was not intended to deal with all possible sexual matters. As described in the Listener and as was apparent from the broadcast, its main concern was the health risks associated with sexual activity. Although the programme only touched in passing and indeed unsatisfactorily on attitudes - for example, the option to say no was only briefly mentioned - attitudes were not central to the programme's theme about the various sexually transmitted diseases which confront sexually active young adults today.

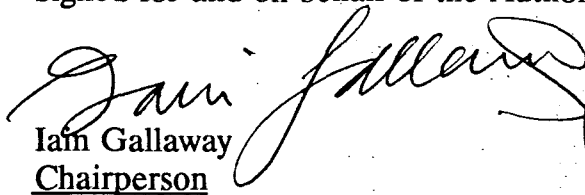
Having reached the decision that the programme was balanced in the way it dealt with attitudes as they were not central to its theme, the Authority then considered whether the programme dealt with the issue of sexually transmitted diseases in a balanced way. That involved considering the point made by one complainant that the condom failure rate was dealt with inadequately. The Authority accepts that condom use, because of their failure rate, is not the complete answer to sexually transmitted diseases. As the programme mentioned, albeit briefly, abstinence is a more reliable way of preventing the transmission of such diseases. However, the Authority also accepts that the use of condoms is safer than not using them and, as that was the point highlighted in the programme, it was prepared to accept that the issue about the transmission of sexual diseases was dealt with in a sufficiently balanced way so as not to breach standard 6.

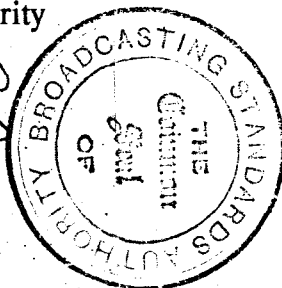
The Authority has some sympathy for viewers who felt that the programme gave insufficient attention to traditional values which relate sexual activities to faithful marital relationships. However, the programme was not designed to deal with those values in depth but to give advice about disease risks that young people face when they are or become sexually active. Accordingly, the Authority concluded that it did not breach standard 2 of the Television Code requiring good taste and decency, standard 5 which requires respect for the principles of law which sustain our society or standard 6 which requires balance when it dealt, first, with attitudes, and secondly, if only just, when dealing with procedures to minimise or eliminate the risk of contracting sexually transmitted diseases.

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

The Authority repeats a point made at the beginning that this decision applies only to "Sophie's Sex Special" and not to any other programmes of a similar type.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



10 September 1982

Appendix AMr Sharp's Complaint to Television New Zealand Limited

In a letter dated 8 May 1992, Mr Kerry Sharp complained to Television New Zealand Ltd about the programme "Sophie's Sex Special" broadcast by TV2 at 8.30pm on 6 May.

Describing the attitudes portrayed in the programme as bankrupt, liberal and amoral and noting that it made only a token effort to provide the traditional moral viewpoint on sex, he maintained that the programme was unbalanced. It was unbalanced, first, because it presented liberal sex education which endorsed promiscuity and male and female homosexuality; secondly, because it did not debate the point whether sex education divorced from traditional moral standards encouraged promiscuity and teenage pregnancy; thirdly, because it conveyed the fallacy that explicit sex education would solve promiscuity and teenage pregnancy; and fourthly, because it dealt with sexually transmitted diseases and AIDS inadequately.

Arguing that effective sex education dealt with attitudes and behaviour, he stated that programmes such as "Sophie's Sex Special" which tried to be value free in fact promoted and endorsed immorality, promiscuity and sexual experimentation. He referred to an American report which substantiated his contentions and outlined the issues which should be included in an effective sex education programme. He concluded:

... we believe that "Sophie's Sex Special" was very unbalanced and did not present all the factual information available for people, especially teenagers, to make informed decisions in the very important area of sex. It merely promoted a liberal amoral philosophy based on "safe sex with a condom". It did not deal with the serious consequences of promiscuity to individuals as well as to a nation.

We ask, therefore that TVNZ screen follow-up programmes to balance the viewpoint presented in "Sophie's Sex Special".

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Sharp of its Complaints Committee's decision in a letter dated 12 June. It said the complaint had been assessed under standard 6 of the Television Code of Broadcasting Practice which requires broadcasters to show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

TVNZ began by commenting about the programme's theme:

It was noted that generally the programme makers had gone to great



lengths, not only to educate, but to ensure that while educating, the views expressed had been balanced by counter argument from very credible sources.

2. While Sophie Lee was the main presenter for the programme, care had been taken to ensure that the actual sex education had been undertaken by a qualified and experienced professional.
3. The church had been represented with its views by the inclusion of the Reverend Fred Nile throughout the programme.

The programme, it continued, discussed the sexual practices which the research figures indicated were occurring in Australia. Although concentrating on providing advice for sexually active young adults, it was balanced with the views of Rev Fred Nile. TVNZ also noted that the complaint tended to be a critique of the way the programme dealt with the issues rather than a complaint about balance and concluded:

In summary the Committee believed that the programme responsibly covered most of the conceivable grounds that such an educational-type programme could hope to cover in the space of roughly three-quarters of an hour. Also the fact that the programme carried an AO certificate and was preceded by a warning as to the nature of the programme, was of significance in assessing the matter.

The complaint was not upheld.

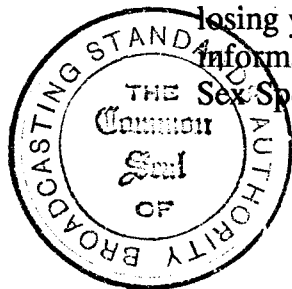
Mr Sharp's Complaint to the Broadcasting Standards Authority

As he was dissatisfied with TVNZ's response, in a letter dated 15 June 1992, Mr Sharp referred the complaint to the Authority under s.8(a) of the Broadcasting Act 1989.

The programme, he wrote, promoted liberal attitudes while only giving token consideration to traditional values. The only safe sex, he stated, was abstinence before and fidelity during marriage. He was critical of the programme's promotion of condoms as "safe sex", adding that the acknowledged failure rate of condoms or the reduction in risk by the use of condoms did not result in safe sex.

TVNZ, Mr Sharp noted, had not answered his specific complaints but had attempted to justify the programme. He observed.

Considering the fact that promiscuous sex may mean contracting AIDS and losing your life, very great care must be taken to convey all the relevant information in a balanced way, in a sex education programme like "Sophie's Sex Special".



TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's comment on the complaint. Its letter is dated 18 June and TVNZ's response, 23 July.

Noting that the complaint was related to the programme's balance, TVNZ said that Mr Sharp's specific submissions nevertheless related to intangibles such as the contrast between liberal attitudes and traditional values. TVNZ believed that the programme had, in a responsible way, covered all the issues it could hope to in three quarters of an hour. Although the failure rate of condoms could have been mentioned, TVNZ added, it was not essential for the purposes of balance.

Mr Sharp's Final Comment to the Authority

When asked to comment on TVNZ's reply, in a letter dated 26 July Mr Sharp maintained that TVNZ was irresponsible to dismiss the failure rate of condoms as insignificant. Not to give any information about condom failure, he added, was dishonest, deceptive and unbalanced.

He wrote:

The fact that chastity/abstinence from promiscuous sex is the only safe sex was not emphasised in "Sophie's Sex". This view was generally espoused by older, religious "fuddie duddies". On the other hand, the myth of "Safe Sex" using a condom was promoted by young, modern, "switched on" people.

Sophie's Sex was psychologically unbalanced in favour of the myth of "safe sex" and against the chastity/abstinence message which is in reality the only safe



Appendix BMr Nelson's Complaint to Television New Zealand Limited

In a letter written after "Sophie's Sex Special" had been screened on TV2 on 6 May 1992, Mr Clay Nelson complained to Television New Zealand Ltd, as the broadcaster, that the broadcast failed to meet the standard which requires all programmes to maintain standards which are consistent with the observance of good taste and decency.

He agreed with the programme's participant who said that sex should be saved for marriage and expressed his belief that the broadcast exploited sex and encouraged promiscuity.

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Nelson of its Complaints Committee's decision in a letter dated 12 June. It reported that the programme had been assessed under standard 2 of the Television Code of Broadcasting Practice which requires broadcasters 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.

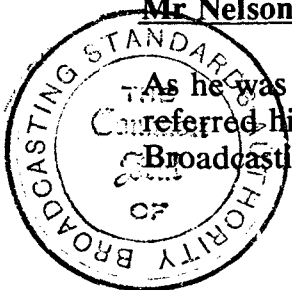
TVNZ began by explaining:

1. It was noted that generally the programme makers had gone to great lengths, not only to educate, but to ensure that while educating, the views expressed had been balanced by counter argument from very credible sources.
2. While Sophie Lee was the main presenter for the programme, care had been taken to ensure that the actual sex education had been undertaken by a qualified and experienced professional.
3. The church had been represented with its views by the inclusion of the Reverend Fred Nile throughout the programme.

Further, taking into account the programme's Adult Only (AO) classification and the positive responses received, TVNZ maintained that the standard had not been breached.

Mr Nelson's Complaint to the Broadcasting Standards Authority

As he was dissatisfied with TVNZ's response, in a letter dated 18 June Mr Nelson referred his complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.



Expressing his concern about the pornographic nature of the item and the way it encouraged promiscuity and noting that Rev Nile was from the Congregational Church, he asked why the mainstream church was not represented? The absence of a mainstream church representative, he implied, meant that the programme breached standard 2.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. All the papers were sent to TVNZ on 29 June and TVNZ's response is dated 22 July.

TVNZ argued that the point about the absence of a representative from a mainstream church was not relevant to the alleged breach of standard 2. It described the allegation of pornography as an extreme interpretation of adultery and said that the programme did not encourage promiscuity.

It repeated the point that the item was broadcast in AO time, added that it was accompanied by an advisory message about the item's content and denied that it breached standard 2.

Mr Nelson's Final Comment to the Authority

When asked to comment on TVNZ's response, by telephone on 31 August 1992 Mr Nelson repeated the main points covered in his complaint. He referred to the comments from a young relative which, he said, confirmed his belief that such programmes encouraged promiscuity.



Appendix CChristian Heritage Party's Complaint to Television New Zealand Limited

In a letter dated 12 May 1992, the leader of the Christian Heritage Party (Rev Graham Capill) complained to Television New Zealand Ltd about the programme "Sophie's Sex Special" broadcast on the TV2 at 8.30pm on 6 May 1992. He alleged that the broadcast breached standards 2 and 5 of the Television Code of Broadcasting Practice which require that programmes, first, meet the currently accepted norms of decency and taste in language and behaviour, and secondly, respect the principles of law.

With regard to standard 2, the Party referred to the portrayal of sexual acts, nudity and homosexual behaviour which it described as:

nothing short of pornographic, albeit under the disguise of being a documentary.

As for standard 5, the Party said the programme, by portraying explicit sexual activity outside of marriage, violated the basic law of civilised societies. By portraying homosexuality as an acceptable alternative, the Party continued, the programme ignored the view of the petitioners against homosexual law reform who did not accept that homosexuality was a "condition" which individuals have. Mr Capill concluded:

I was offended by the explicit sexual content, and the philosophical agenda that was being preached to teenagers. If we wish to have a strong, healthy, society, history, experience, and the Bible indicate that family life must be emphasised and promoted. Your programme did precisely the opposite.

TVNZ's Response to the Formal Complaint

TVNZ advised the Christian Heritage Party of its Complaints Committee's decision in a letter dated 12 June and said the programme had been assessed against the two standards noted.

TVNZ began by explaining:

1. It was noted that generally the programme makers had gone to great lengths, not only to educate, but to ensure that while educating, the views expressed had been balanced by counter argument from very credible sources.

While Sophie Lee was the main presenter for the programme, care had been taken to ensure that the actual sex education had been undertaken by a qualified and experienced professional.



3. The church had been represented with its views by the inclusion of the Reverend Fred Nile throughout the programme.

With regard to the complaint about good taste and decency, TVNZ said that the AO programme contained an advisory notice and the statistics about sexual behaviour presented did not breach the standard. The complaint under standard 5 was dismissed as homosexual acts between consenting adults were legal in New Zealand.

In summary the Committee concluded that given the brevity of the so-called sexual acts, the time of screening, the AO classification and the advisory notice, code 2 could not be in serious jeopardy. As for Code 5 relating to respect for the principles of law, the applicability of this code was seen to be in question. Accordingly, the committee was unable to determine that either code in question had been breached. Your complaint was not upheld.

Christian Heritage Party's Complaint to the Broadcasting Standards Authority

As the Christian Heritage Party was dissatisfied with TVNZ's response, in a letter dated 3 July Mr Capill on the Party's behalf referred the complaint to the Authority under s.8(a) of the Broadcasting Act 1989. He also enclosed results of a poll published in the "National Business Review" of 5 June 1992 in which 54% of the 750 respondents had said New Zealand was basically still a Christian country.

Regarding the requirements for good taste and decency, the Party wrote:

Many of the portrayals in the programme were nothing short of pornographic, albeit under the cloak of a documentary. Surely, if Broadcasting Standards are to have any meaning, Broadcasters should be prohibited from deliberately setting out to mould society's foundation. I do not believe that it can be denied that this programme set out to socially engineer that which is not currently accepted norms of decency and taste.

The requirement in standard 5 about respecting the principles of law, the Party understood, did not refer to strict legality but to the well-established fundamental principles of a civil society. While acknowledging that homosexuality was legal in New Zealand, the Party argued that the programme violated the basic principles of law by portraying sexual activity outside of marriage and presenting homosexuality as an acceptable alternative.

The Party disagreed with TVNZ's remark that the Rev Fred Nile's comments provided balance. Describing that view as moral relativism, the Party said Rev Nile's comments were minor in comparison with the item's social engineering agenda.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint.



Its letter enclosing all the papers was dated 15 July and TVNZ's reply, 23 July.

TVNZ argued, first, that not all Christians subscribed to the Christian Heritage Party's beliefs, and secondly, that homosexuality was not advocated but explained in relation to the dangers of sexually transmitted diseases. TVNZ disputed the complainant's contention that, by the screening of the programme, it had deliberately indulged in social engineering.

As for the Party's interpretation of standard 5 to include the need to show respect for general societal principles, TVNZ submitted that the type of programme complained about should deal with issues which it did in fact discuss. TVNZ concluded:

Contrary to the complainant's view, we do not seek to circumvent standards by providing an informational warning and allocating adult certificates. Adherence to standards and guidance for viewers should not be regarded as some sort of a dodge. The company does take its responsibilities in these matters seriously. It does not believe that the broadcast breached either of the codes in question.

Christian Heritage Party's Final Comment to the Authority

When asked to comment on TVNZ's reply, in a letter dated 30 July Mr Capill on the Party's behalf argued that the support for the Homosexual Law Reform Act petition showed that the vast majority of New Zealanders, Christian or not, agreed on that issue.

Mr Capill maintained that the programme's mention of homosexual behaviour as an alternative sexual lifestyle alongside heterosexual relationships was, in effect, promoting it. He disputed TVNZ's contention that the programme's focus was safe sex and continued:

If Television New Zealand screen sexually deviant practices, that have little support in the community, how can it be denied that they will have an influence on the ethics and morals in that area? ... We would submit that such programmes do have a social engineering component, no matter whether this was intentional or not. Therefore, much more care needs to be taken in their use.

In conclusion, the complainant argued that there were absolutes which should govern programming and that they should be regarded as principles of law within the terms of standard 5 of the Television Code of Broadcasting Practice.

