

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: ID 3/92

Dated the 7th day of December 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

CENTREPOINT COMMUNITY  
GROWTH TRUST

of Auckland

Broadcaster  
TV3 NETWORK SERVICES  
LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

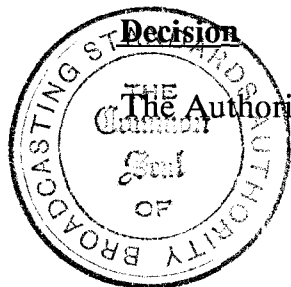
L.M. Dawson

INTERLOCUTORY DECISION

Introduction

The Centrepoint Community Growth Trust was referred to on *Three National News* between 6.00 - 7.00pm and on *Nightline* between 10.30 - 11.15pm on Tuesday 5 November 1991. Screening some shots of vehicles arriving and leaving the Trust's property, the reporter referred to a police raid earlier in the year. He added that some charges of sex crimes against children had been laid against members and that the Department of Social Welfare was investigating the welfare of the children living at the community.

The Trust's solicitors complained directly to the Broadcasting Standards Authority under s.8(c) of the Broadcasting Act 1989 that the filming by TV3 Network Services Ltd of the children in the vans entering and leaving the property was an invasion of their privacy. The solicitors also complained to the broadcaster under s.6(1)(a) that the items were inaccurate, unfair and unbalanced.



The Authority first received notice of this complaint in a letter dated 12 November 1991

when the solicitors for the Centrepont Community Growth Trust complained directly to the Authority about news items on TV3 on 5 November 1991. As the items showed some of the Community's children arriving and leaving the property in vans, the complaint alleged that the broadcasts breached the children's privacy. The solicitors also advised that a complaint alleging breaches of a number of broadcasting standards had been made to TV3 Network Services Ltd. That letter and all subsequent correspondence is summarised in the Appendix.

The Authority sought the broadcaster's comment on the privacy complaint and, despite intermittent requests from the Authority to both the complainant and TV3, it was not until June 1992 that the complainant provided the Authority with the full details of the complaint which had been first requested the previous November. Having received all the relevant details, the Authority again sought TV3's response.

In their reply dated 29 July, TV3's solicitors raised four preliminary issues for resolution before, they said, they would deal with the substance of the complaint.

First, as the privacy provision in the Broadcasting Act referred to the privacy of an individual, TV3 argued that, as the Centrepont Community Growth Trust was not an individual, it could not allege a breach of privacy.

Secondly, it was not possible to refer to the Authority those aspects of the complaint which legislatively were required to be considered by the broadcaster initially as the statutory time limits for a referral to the Authority had expired.

Thirdly, High Court proceedings covering in part some of the issues raised by the complaint had been issued by the complainant against TV3. The proceedings had been settled and the broadcaster had not responded to the complaint because:

It was a term of that settlement negotiation, a term which was agreed to by Centrepont, as part of the overall High Court proceedings, that it would discontinue the complaint to the Broadcasting Standards Authority.

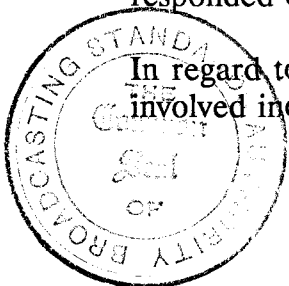
Fourthly, the broadcaster alleged that the Authority's letters to the parties seeking comment on the reasons for the delay were "clearly letters encouraging the complainant". It continued:

This de facto parens patriae role is quite inappropriate for the Authority to adopt.

The Authority dismisses this final submission as being totally without merit. Its letters to the parties - both the complainant and the broadcaster - were brief but polite reminders asking why responses had not been received to letters sent earlier.

The broadcaster's solicitor's letter was referred to the complainant's solicitors who responded on 8 September and it dealt with issues numbered one and three above.

In regard to the privacy issue, Centrepont's solicitors said that the privacy complaint involved individual members of the Community. Describing the points raised by TV3



as technical and lacking in substance and although they believed the process unnecessary, they submitted that the names of individual members should be substituted as complainants.

With reference to the point about the alleged condition of settlement of the High Court proceedings, they agreed that settlement negotiations had occurred. The letter referred to one meeting and recorded:

A settlement was not reached at that meeting. We confirm that TV3's solicitors suggested that a term of the settlement arrangement would be that Centrepont would discontinue the complaint to the Broadcasting Standards Authority. That proposed term of settlement was not agreed to by the writer or Mr Hooker [for Centrepont]. It is quite wrong for Grove Darlow [for TV3] to suggest to you that that was the case when it simply was not. Agreement to such a term was outside the ambit of our instructions from Centrepont and could not have been agreed to by us on behalf of Centrepont.

It added:

[T]he matter did not settle between the parties as the final terms of settlement were never agreed and no deed of settlement was ever executed.

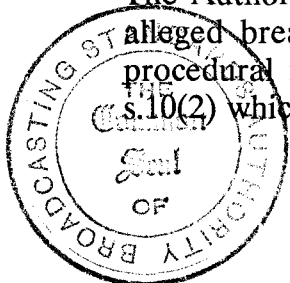
In view of the conflict between the parties, the Authority referred the complainant's letter to the broadcaster's solicitors. The response dated 29 October began:

TV3 does not accept the content of the Vallant Hooker [for Centrepont] letter. Before the Authority can consider whether there is any substance to the Broadcasting Standards issue at all it must first, in our view, decide whether or not there has been any settlement and secondly whether or not the Centrepont community has any standing to bring such a complaint.

They elaborated briefly on points 1 to 3 raised in its 29 July letter, arguing that the withdrawal of the complaint was agreed upon as was apparent from the complainant's subsequent actions and asked how the Authority intended to deal with the matter.

The Authority's response to that question focuses on the dispute between the parties about the settlement negotiations between them. Both parties were adamant in their views. The complainant's solicitors agreed that TV3 proposed the withdrawal of the complaint as a term of the settlement but, as they did not have instructions on the point, withdrawal was not agreed to. TV3's solicitors maintain that withdrawal of the complaint was a condition and, further, that settlement was apparent from the complainant's actions over the recent months.

The Authority has considered this procedural point carefully. Its task is to deal with alleged breaches of broadcasting standards and, although it must comply with the procedural requirements in the Broadcasting Act, it also abides by the provision in s.10(2) which reads:



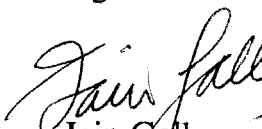
- (2) In considering every complaint referred to it under section 8 of this Act, the Authority shall provide for as little formality and technicality as is permitted by -
- (a) The requirements of this Act; and
  - (b) A proper consideration of the complaint; and
  - (c) The principles of natural justice.

The current complaint involves a direct factual conflict which, the Authority believes, could only be resolved by holding a hearing at which the parties gave evidence. Having heard the parties the Authority would then find for one of them and, if it found in favour of the complainants, it would only then start to consider the broadcasting standards matter which refers to a broadcast in November 1991.

Having regard to the lengthy process and probable inconclusive outcome if the Authority decided to attempt to resolve the factual disagreement and notwithstanding some concern for the broadcasting standards matter raised by the complainants, the Authority decided not to attempt to determine the complaint. Therefore, the Authority has decided to exercise the power conferred in s.11 of the Broadcasting Act to decline to determine the complaint.

**For the reasons set forth above, the Authority decides under s.11 of the Broadcasting Act 1989, in all the circumstances, not to determine the complaint.**

Signed for and on behalf of the Authority

  
Iain Gallaway  
Chairperson



7 December 1992

## Appendix

### The Centrepont Community Growth Trust's Complaint to the Broadcasting Standards Authority

In a letter dated 12 November 1991, the solicitors for members of the Centrepont Community Growth Trust complained to the Broadcasting Standards Authority about items on *Three National News* and *Nightline* broadcast by TV3 Network Services Ltd on Tuesday 5 November between 6.00 - 7.00pm and between 10.30 - 11.15pm.

Acknowledging that certain members of the Centrepont Community had been investigated by the Police and that the Department of Social Welfare had enquired into the care and protection of some of the Community's children during the previous six months, the Community's solicitors stated that Community representatives had met with staff from the Department of Social Welfare on 4 November. Responding to media pressure and contrary to the Community's advice, the Department decided to issue a press release on the progress of the investigation. In the spirit of co-operation, the Community decided that the statement would be issued jointly.

TV3 was advised that the statement would be issued at 2.30pm on the 5th November and its request to film the Community's property and the residents was declined. TV3 then set up its camera at the entrance of the property and filmed vehicles as they left to pick up children from school and filmed the vehicles as they returned with the children.

Enclosing a copy of a letter of complaint to the broadcaster about the item's lack of balance and unfairness, the complaint to the Authority continued:

The issue however which we raise with your Tribunal direct is one of **privacy**. We believe the filming of the children and the filming of the vans in pursuit to be an invasion of the privacy of our clients. In particular the effect of the filming and pursuit of the vans with the children was disturbing and distressing to the children. It was even more distressing in the context of the inaccuracies in the broadcast later on that day which is evident from the complaint we have laid with the television channel.

### The Authority's Process

The Authority received the complaint on 22 November 1991 and, on the same day, it sent a copy of it to TV3 Network Services Ltd asking both for comment and for a copy of the tape of the item to which the complaint related. The Authority's Complaint Referral Form was sent to the complainant for completion and return.

Further letters seeking the completion and return of the Form were sent on 23 January 1992 and 10 March. On the latter date, TV3 was asked again for its

comments.



In a letter dated 23 March, the complainant's solicitors advised that the completed Form would be returned shortly. As it had not been received by 5 June, the Authority sought advice from the complainant about the current status of the complaint.

### Details of the Community's Complaint

In a letter dated 22 June, the complainant's solicitors sent the Authority the completed Form along with 11 affidavits in support. They advised the Authority that no response had been received from TV3 about the complaint made direct referring to alleged breaches of a number of standards in the Television Code of Broadcasting Practice.

Most of the affidavits were made by residents and/or members of the Community who spoke of the events on 5 November 1991 involving TV3's filming and the effect on the children. One child resident spoke of the harassment she received at school as a "C P Kid" because of the publicity. Two school principals also signed affidavits noting the harmful effect of the adverse publicity on their pupils who lived in the Community.

### TV3's Response to the Authority

As is its practice, the Authority referred all the papers to TV3 as the broadcaster and asked for comment. The request was dated 26 June and, at TV3's solicitor's request, it later forwarded copies of all correspondence held on file and TV3's solicitor responded in a letter dated 29 July.

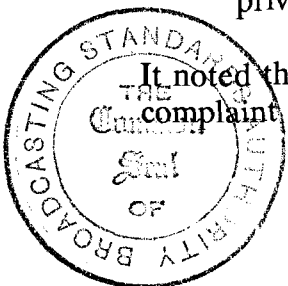
It made the following submissions:

#### 1) Privacy

On the basis that the provision in the Act referring to privacy requires broadcasters to maintain standards consistent with the "privacy of the individual" and as Centrepont Community was not an individual, TV3 argued that the provision did not apply. It continued:

Interestingly the same complainant brought a proceeding in the High Court at Auckland claiming breach of privacy and thereby seeking an injunction against TV3. The injunction was dismissed. However on 19 November 1991 His Honour Mr Justice Barker made the same statements that we make in this letter to Centrepont's solicitor, Mr Hooker, namely that the Centrepont Community Growth Trust was not an individual to whom the concepts of privacy could attach.

It noted that the affidavits supplied by the complainant in support of this privacy complaint had been filed in support of that court action.



2) Inaccurate, Unfair and Unbalanced Report

TV3 submitted that the Authority was time-barred from accepting those aspects of the complaint. Those aspects concerned matters that the Act required to be referred first to the broadcaster but could be referred direct to the Authority subsequently if the broadcaster did not respond within 80 working days of the broadcast (s.9(2)). That period, TV3 argued, expired on 23 February 1992.

The Authority would note that TV3's calculation appears to omit the statutory holidays referred to in the Act and the period expired, in fact, in mid-March 1992.

3) TV3's Non-Response

TV3 began:

TV3 did not respond to the complaint because there were settlement negotiations between TV3 and Centrepont's solicitors. It was a term of that settlement negotiation, a term which was agreed to by Centrepont, as part of the overall High Court proceedings, that it would discontinue the complaint to the Broadcasting Standards Authority.

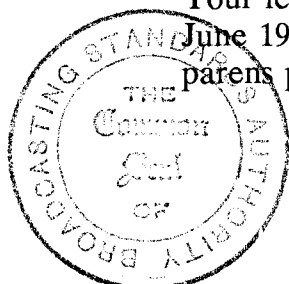
Despite negotiations, the proceedings continued to run until the proceedings were abandoned in letters dated 31 January and 10 February (enclosed) which, TV3 said, confirmed that settlement occurred. Although a Deed of Settlement had never been signed, the matter had been agreed. It added:

For these reasons TV3 did not respond to the letter of complaint dated 12 November 1991. We would hasten to add that at no stage by letter or during the course of any discussion did Centrepont insist on a response to the letter of complaint dated 12 November 1991 which it now purports to use as a basis of its complaint. If Centrepont was legitimately intending to pursue this complaint why was there no request to us for a response in substance to his letter of complaint?

4) Encouraging the Complainant

In conclusion, TV3 made the following submission:

The Authority is a facility for determining a complaint. Like any judicial tribunal we do not believe it is appropriate to enter into the fray and encourage complainants to pursue complaints (whether legitimate or not). Your letters of 22 November 1991, 23 January 1992, 10 March 1992 and 5 June 1992 are clearly letters encouraging the complainant. This de facto *parens patriae* role is quite inappropriate for the Authority to adopt.



Centrepoint Community Trust's Response to the Authority

The Authority sought the complainant's solicitors' comments on points made by TV3 and its reply is dated 8 September.

1) Privacy

The Community's solicitor said the complaint related to the privacy of the Community's members, residents and the children of each group. TV3, the letter continued, broadcast visuals of the vans carrying people from each of the above groups. It continued:

It is clear that the issue concerns the breach of privacy of individuals. However, these individuals are members of or associated with the Trust and we respectfully submit that it is appropriate that the Trust has brought the complaint on behalf of its members and associates whose privacy has been breached. The Trusts' activities and those of its members were the focus of the report. It is not possible to separate "the group" (ie the Trust) from the individuals.

It described TV3's approach as a technical one which detracted from the broadcaster's "gross infringements against the privacy of the individual members and associates of the Trust". If the Authority ruled that the Trust was not entitled to complain, the letter requested that the names of the members and associates be substituted as the complainants.

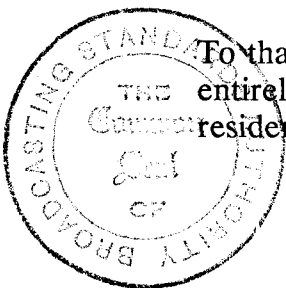
2) TV3's Non-Response

Confirming that settlement negotiations were held about Centrepoint's injunction proceedings against TV3, the letter advised that TV3's solicitors had suggested that a term of the settlement be the discontinuance of the complaint to the Broadcasting Standards Authority. That term was not agreed to by the Trust's solicitors, either at that time or later. Contrary to TV3's claim, the solicitors added, there was no agreement about the final terms of the settlement and it was misleading to describe the matter as abandoned. It advised:

The substantive proceedings are presently adjourned sine die (to no fixed date). If anything remained a major stumbling block to settlement it was the requirement by TV3 that the complaint to your authority be withdrawn. This was not accepted.

Centrepoint had not prosecuted the proceedings subsequently, it reported, as TV3 had desisted from reporting the trials of certain Community members in a "scandalous" manner.

To that end we believe the filing of the application for an injunction was entirely justified and proved to be effective in protecting Centrepoint's residents, members and former members from further invasions of their





privacy.

### TV3's Final Comment to the Authority

On 17 September 1992, the Authority sought TV3's response to the letter from the complainant's solicitors. TV3's solicitors' letter in reply is dated 29 October. It began:

TV3 does not accept the content of the Vallant Hooker letter. Before the Authority can consider whether there is any substance to the Broadcasting Standards issue at all it must first, in our view, decide whether or not there has been any settlement and secondly whether or not the Centrepoint community has any standing to bring such a complaint.

In regard to the settlement provision, it argued that the complainant's solicitors' actions indicated that that settlement had been reached. It was also apparent by the fact that Centrepoint's solicitors had not acted on the complaint earlier this year despite requests from the Authority for advice on progress.

It also argued that the solicitors had not responded to its point about the reference to privacy and the individual in the Broadcasting Act other than to describe the points made as "technical and unsubstantive".

Noting that Centrepoint's solicitors had apparently accepted the points about the lapsed time limits for the complaints made to TV3 and, maintaining that it was inappropriate to supply broadcast material until the procedural issues were settled, TV3's solicitors asked which procedure the Authority intended to follow.

