

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 101/93

Dated the 30th day of August 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

ROSEMARY McELROY

of Auckland

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

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

DECISION

Introduction

A discussion of anal sex, an item on abortion in Russia and advice for men on identifying testicular cancer were among the items broadcast in episode 8 of the second series of *Sex* on Channel Two on 18 May 1993 between 9.30 - 10.30pm.

Mrs McElroy complained to Television New Zealand Ltd that the items breached broadcasting standards because they contained indecent material and the item on abortion was denigratory to women.

Responding that the information was intended to present health messages related to sexual activity in a non-judgmental fashion, TVNZ maintained that the information was presented responsibly and the health message was emphasised. It rejected Mrs McElroy's suggestion that the items were in breach of broadcasting standards and declined to uphold the complaint. Dissatisfied with that decision, Mrs McElroy referred her complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

Decision

The members of the Authority have viewed the item complained about and have read



the correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing.

The eighth episode of the second series of the programme *Sex* broadcast by TVNZ on Channel Two on 18 May 1993 elicited a complaint from Mrs Rosemary McElroy of Auckland who complained that three items were in breach of broadcasting standards. She claimed the item on anal sex was totally unacceptable and indecent, that the item on abortion in Russia was included only to titillate Western viewers and was denigratory to women and that a discussion and demonstration on identifying testicular cancer was indecent.

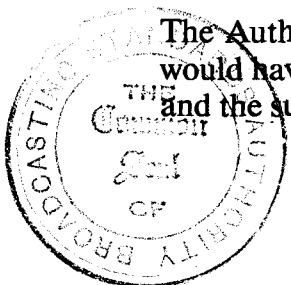
TVNZ reported that it had assessed the complaints against standards G2 and G13 of the Television Code of Broadcasting Practice. Those standards require broadcasters:

- G2 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.
- G13 To avoid portraying people in a way which is likely to encourage denigration of or discrimination against any section of the community on account of sex, race, age, disability, occupation status, sexual orientation or the holding of any religious, cultural or political belief. This requirement is not intended to prevent the broadcast of material which is:
 - i) factual, or
 - ii) the expression of genuinely-held opinion in a news or current affairs programme, or
 - iii) in the legitimate context of a humorous, satirical or dramatic work.

Standard G2

TVNZ reminded Mrs McElroy that the programme was aimed at a specific target audience and that it was intended to convey a number of health messages related to sexual activity. With reference to the item on anal sex, it noted that the topic was included in response to requests from viewers and that basic information was conveyed by Dr Kerry Phelp, one of the series' advisors, and Dr Basil Donovan, a venereologist. It reported that TVNZ's appraisers had cut almost three minutes from the segment "to remove any suggestion of gratuitousness". In its judgment, it reported, the resulting item tackled the issue responsibly, correctly identifying the risks involved and effectively conveying the health message. It declined to uphold the complaint that this item breached the currently accepted norms of decency and taste.

The Authority acknowledged that for some people the frank discussion about anal sex would have been confronting. However, it noted, the educational angle was emphasised and the subject was not sensationalised. The advice given by the two doctors was clinical



and matter of fact and made clear that anal sex was a potentially dangerous practice. In the Authority's view, in the context of the series, this discussion was appropriately dealt with and was not in breach of standard G2. Accordingly it declined to uphold this aspect of the complaint.

The second item complained about was a report on abortion in Russia, which, TVNZ noted, was preceded by a warning advising viewers that the content may be disturbing. The item, it continued, revealed the appalling conditions facing Russian women seeking abortions. It included footage of women in abortion clinics before, during and after abortion, and it was explained that the unhygienic conditions encountered led to a high rate of infertility after the procedure. TVNZ expressed its belief that the subject was a matter of public concern, noting that for the vast majority of Russian women, abortion was the only available form of contraception. It rejected the complaint that the item was indecent, observing that it "was not remotely titillating or voyeuristic in nature and engendered only a feeling of horror and sympathy in the viewer". It added that it believed that publicising the shocking conditions faced by women in Russia would ultimately lead to an improvement in their conditions.

The Authority acknowledged that the scenes in the abortion clinic were shocking and disturbing, and that the women were treated unsympathetically by the clinic staff. It agreed with TVNZ that the focus on the procedure was not titillating, observing that the mechanical approach of the clinic staff helped to emphasise the inhumane treatment received by the women and underscore the tragedy of lack of choice about birth control for ordinary women in Russia. Accordingly it declined to uphold the complaint that the item was in breach of standard G2.

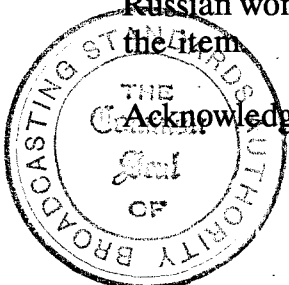
The third item concerned detection of testicular cancer and offered advice and demonstrated how to examine the testicles for symptoms of cancer. TVNZ observed that this item was first screened in the series in 1992 and was repeated in response to a viewer who had, as a result of the broadcast, identified a cancerous lump and had undergone surgery to have it removed. It noted that the item had been the subject of a complaint to the Authority which it had declined to uphold.

The Authority did not resile from its decision in the first series. It declined to uphold the complaint that the item was in breach of standard G2, confirming its view that the demonstration of a potentially life-saving practice was appropriately included in a series which was concerned with sexual health as an aspect of sexuality.

Standard G13

The final aspect of the complaint was that the item on abortion in Russia was in breach of standard G13, which requires broadcasters to avoid encouraging the denigration of sections of the community - in this case, women. In rejecting this complaint, TVNZ's view was that as a result of the publicity generated by the item, the conditions which Russian women endured might change. It did not agree that women were denigrated by the item.

Acknowledging that the subject of abortion was confronting and the depiction of the



procedure shocking, the Authority was nevertheless of the view that viewers would have felt sympathy for the women involved. It could not agree that the item was included to titillate Western viewers, being of the view that the scenes were so disturbing that the focus was on the conditions and the surroundings rather than on the women's bodies. While accepting that it was very undignified for the women to be shown in the process of having abortions, it did not believe that showing these scenes encouraged the denigration of women to the extent that the threshold for breach of the standard was reached. Accordingly it declined to uphold the complaint that the item was in breach of standard G13.

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

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson
30 August 1993

Appendix

Mrs McElroy's Complaint to Television New Zealand Limited

In a letter dated 6 June 1993, Mrs Rosemary McElroy of Auckland complained to Television New Zealand Ltd about episode 8 of the second series of *Sex* which was broadcast on Channel Two on 18 May.

She wrote that she considered the section depicting anal intercourse as totally unacceptable and indecent. She also questioned the educational value of the item on abortion in Russia which showed women undergoing the procedure and described it as the "ultimate humiliation of womanhood". Describing the segment which demonstrated to men how to check for testicular cancer as indecent, Mrs McElroy maintained that the information would have been effectively conveyed by an explanation and without "the rudeness of a live demonstration".

Mrs McElroy challenged TVNZ's description of the series as educational, commenting that that claim did not fool the public. She also challenged the assumption that only those who were religious or from a foreign culture would be offended by the programme, arguing that she believed those who accepted the programme would be a minority.

TVNZ's Response to the Formal Complaint

TVNZ advised Mrs McElroy of its Complaints Committee's decision in a letter dated 24 June 1993.

It reported that it had assessed her complaint under standards G2 and G13 of the Television Code of Broadcasting Practice which require broadcasters to observe accepted norms of decency and taste and to avoid encouraging the denigration of women.

Before referring to the specific items which were the subject of the complaint, TVNZ remarked that the series was aimed at a specific target audience and was intended to convey health messages about sexual activity in a non-judgmental manner.

TVNZ explained that the first item, about anal sex, was substantially cut before screening in New Zealand. It wrote:

The [Complaints] Committee believed that the item correctly identified an area of sexual activity where the "safer sex" message is particularly important. In its judgement, the edited version shown to New Zealand viewers retained the essential information and properly emphasised the risks involved.

Statistics quoted in the item indicate that anal sex is not uncommon in the community and the emphasis placed on the safety factors relates to an early



comment made by Dr Phelps [who presented the item] when assessing the concept of the "Sex" series:

"If we can save one life with information provided by "Sex" then it has been worth it."

Arguing that the subject was tackled responsibly and the health information delivered effectively, TVNZ did not accept that the item was in breach of standard G2.

The second item concerned the conditions Russian women face in abortion clinics. The commentary explained that abortion was virtually the only form of contraception available in Russia and showed women undergoing the procedure. TVNZ's view was that the world should know about the shocking conditions endured by Russian women. It rejected the complaint that there was anything indecent or titillating about the item and also that it denigrated women. On the contrary, it argued, publicity about the conditions may lead to an improvement in abortion practices.

The third item repeated an extract from the first series of *Sex* which had dealt with identifying symptoms of testicular cancer. TVNZ pointed out that the item had been repeated in response to a viewer's letter and further, that the Authority had ruled in the earlier series that the item was not in breach of standard G2.

Mrs McElroy's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's decision, in a letter dated 19 July 1993, Mrs McElroy referred her complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

Mrs McElroy challenged TVNZ's claim that the item on anal sex had merit, claiming that it was grossly irresponsible to advocate the use of condoms to promote safer sex when they had a high failure rate. She argued that by omitting this information, the item deceived those who might be encouraged to experiment with the practice. Far from "saving one life", Mrs McElroy suggested that it had the potential "to bring vulnerable young people into a perverted sexual lifestyle". She also challenged TVNZ's claim that the majority of those practising anal sex were heterosexual, asserting if that were true, the scourge of AIDS would not be a homosexual disease. She also suggested it was deceptive to suggest that anal sex was a method of contraception.

Regarding the second item, on abortion in Russia, Mrs McElroy expressed her outrage, commenting:

The absolute disrespect and cruelty shown in displaying a woman in this manner actually shows a hatred for women... .

This item was indefensible in its lack of respect, compassion and human dignity. The assertion that it was meant to help women is hypocritical and



sick. The subject was brought to the public's attention in a proper way in the TIME magazine.

She maintained that not only was the item demeaning of women but it was also indecent and in poor taste.

The third item, about testicular cancer, Mrs McElroy dismissed as "just plain rude".

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 22 July and TVNZ's reply, 30 July 1993.

First, it noted that Mrs McElroy had incorrectly ascribed the views on anal sex to TVNZ, when in fact they were the views of Dr Phelps and a venereologist Dr Basil Donovan.

Secondly, TVNZ expressed surprise that Mrs McElroy believed the item on abortion was denigratory to women and would have preferred that the information was not conveyed to the public. It argued that only by raising awareness about injustices can action be taken to change the shocking conditions, noting that this had been the case in Rumania and Bosnia when the plight of children and the sick became known.

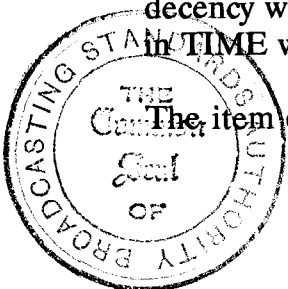
Referring to the final item, TVNZ explained that it believed it was not inappropriate to screen the item about testicular cancer again, particularly as individuals had benefitted from hearing the advice.

Mrs McElroy's Final Comment

In a letter dated 11 August 1993, Mrs McElroy commented, with reference to the item on anal sex, that TVNZ had to take responsibility for deciding whether the information conveyed was of such integrity that the public would not be misled. She explained that her strongest objection to the item was that the dangers of anal sex were not spelled out sufficiently and condom failure not mentioned at all. She reported that the AIDS Foundation had advised her that a water-based lubricant must be used since an oil-based one might break down the latex in a condom. Why, she asked, was no such information given in the programme? She also noted that no mention was made of painful fissures that can result from anal sex.

Regarding the item on abortion, Mrs McElroy argued that TVNZ had not read her letter correctly. She pointed out that she had never said that the public should not be informed about what was happening in Russia. Her complaint was that the manner in which the information was relayed was unacceptable as far as good taste and decency were concerned. She noted that the subject had been covered appropriately in TIME without offence.

The item on identifying testicular cancer, she argued, was not about how many men



found lumps but whether it was acceptable to relay information in a manner which was rude and offensive, taking into account the wide range of people who expect a standard of decency to be maintained on television.

