

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 113/93

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Dated the 8th day of September 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaints by

PHILLIP SMITS

of Auckland

and

CHRISTIAN HERITAGE PARTY

of Christchurch

Broadcaster

TELEVISION NEW ZEALAND

LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

L.M. Dawson

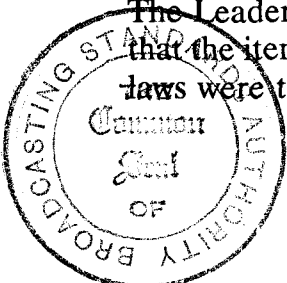
DECISION

Introduction

Possible changes to the law regarding soliciting were examined in an item on Channel Two's *60 Minutes* broadcast between 7.30 - 8.30pm on Sunday 18 April 1993.

Mr Smits complained to Television New Zealand Ltd that the item breached the broadcasting standard requiring good taste and decency by showing a naked Thai woman dancing in a night club. It breached the standard requiring balance, he continued, by not showing the dangers of prostitution as reported, for example, in Queensland and by allowing a night club owner to declare that prostitution was a victimless crime.

The Leader of the Christian Heritage Party, the Reverend Graham Capill, complained that the item was unbalanced as the views of those who opposed the liberalisation of the laws were touched on only briefly.



Pointing out that the item had been preceded with a warning, that it was not possible to decide if the dancer shown was naked and that New South Wales was the appropriate place to investigate the consequences of decriminalisation, TVNZ declined to uphold Mr Smits' complaint. Maintaining that the item dealt with the reasons for the proposed changes and the consequences of them and that it was not a debate about the morality of prostitution, TVNZ declined to uphold the Christian Heritage Party's complaint.

Dissatisfied with TVNZ's decisions, Mr Capill on the Christian Heritage Party's behalf and Mr Smits referred their complaints 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 Appendices). As is its practice, the Authority has determined the complaints without a formal hearing.

An item included on Channel Two's *60 Minutes* broadcast on 18 April followed up the Associate Minister of Health's suggestion that soliciting be decriminalised as the health dangers involved were of greater concern than the moral issues associated with prostitution.

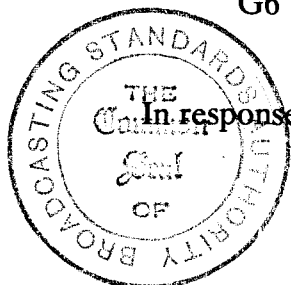
The broadcast drew complaints from Mr Philip Smits in Auckland and the Christian Heritage Party. The former complained, first, that the portrayal of a naked Thai woman dancing in an Auckland bar specialising in adult entertainment breached the broadcasting standard requiring good taste and decency. Secondly, the item was unbalanced as it reported only the positive aspects of decriminalisation in New South Wales and had not dealt with the "down side" of prostitution. He suggested that the programme should have examined "soliciting, pimping, brothel keeping" in Queensland where prostitution was still illegal.

The Christian Heritage Party's complaint also focussed on balance and argued that, by including only two interviews totalling just over one minute from opponents to the liberalisation of the law in a 20 minute programme, the item was "biased in the extreme".

TVNZ considered the good taste complaint under standard G2 of the Television Code of Broadcasting Practice and the balance complaints under G6. They 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.
- G6 To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

In response to the good taste and decency aspect of the complaint, TVNZ said the item



had referred to a "Thai style bar" and had not identified the ethnic background of the dancers portrayed. Moreover, it had not been possible to decide whether any of the dancers were fully naked.

As for Mr Smits' complaint about balance, TVNZ described the item as "a straight-forward investigation of the consequences of decriminalising the soliciting laws". The situation in New South Wales had been examined in view of its similarity to the proposed New Zealand reform. Describing the programme in more detail, TVNZ continued:

It was not about whether prostitution was right, nor was it an examination of whether the law change was desirable from a moral position. It accepted that a proposal had been made and pointed to the practical consequences. The item acknowledged opposition to the move both here and in New South Wales (comments from Mr Graeme Lee and Rev Nile were included) but that was not the principal thrust of the programme.

That point was emphasised in TVNZ's response to the complaint from the Christian Heritage Party. In addition, TVNZ commented:

This was in the nature of providing information to the public so that it can make up its own mind about the issue. No stand, for or against the change, was taken by the programme.

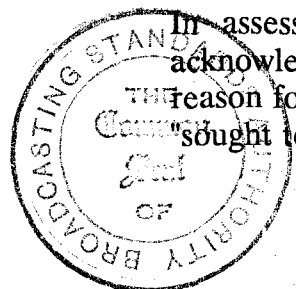
It added:

To draw a parallel, one could imagine a situation where a change in the liquor licensing laws was proposed. While there undoubtedly is a moral dimension to that matter as well, the [Complaints] Committee does not believe a media outlet would be at fault by merely explaining the present situation, and outlining the changes that come as a result of the law changed. That is what this item did - the only difference being that the subject was soliciting.

Neither complaint was upheld.

The Authority considered first Mr Smits' complaint that the shot of an apparently naked dancer in a "Thai-style bar" breached the good taste and decency standard. It noted that the current affairs programme had been preceded with a warning which would have been useful to viewers and moreover that the scene complained of was indistinct and dimly lit. Taking into account the standard's requirement to consider the context of the broadcast complained about, the Authority decided that the portrayal of the dancer was relevant to the programme's theme and that the good taste requirement of standard G2 was not contravened.

In assessing the balance complaint raised by both complainants, the Authority acknowledged, as first explained in the item's introduction, that health concerns were the reason for the proposals to change the soliciting law. TVNZ's statement that the item sought to examine why a law change was considered necessary, and what the practical



consequences would be if soliciting was decriminalised" was also taken into account. Moreover, the Authority took note of the half page newspaper advertisement for the item, provided by Mr Smits, showing a woman wearing net stockings and a short skirt and bending down to talk through an open car door to the male driver. In large letters, the heading read:

ACCORDING TO THE LAW, SHE'S NOT A PROSTITUTE. SHE'S A SOLICITOR.

It continued:

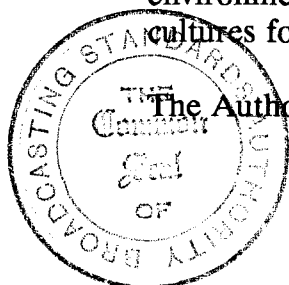
Receiving money for sex is not illegal in New Zealand. Soliciting with that intention is. It is this legal paradox that allows police to arrest prostitutes in possession of condoms, and hinders the practising of safe sex and the fight against AIDS. Daryll Hutchison investigates a controversial proposal to liberalise sex worker laws.

In view of these comments and after watching the programme, the Authority agreed with TVNZ and decided the issue explored had not been the morality of prostitution but concerns about physical health issues, specifically the control of STDs and AIDs, and the practical consequences of reforming the soliciting laws. However, in reaching that conclusion, the Authority was not prepared to accept that the morality of prostitution could be totally separated from an examination of the practicalities. The Authority then considered Mr Smits' concern about balance.

Having watched the programme and read the correspondence, the Authority examined TVNZ's explanation to see whether it accepted that both the moral questions involved and the practical consequences could be approached from differing points of view. In his complaint when he raised that point, Mr Smits suggested that the situation in Queensland would have been more appropriate to explore rather than that in New South Wales as the issues which arose when prostitution was outlawed, as in Queensland, would have been more evident. TVNZ picked up the reference to Queensland and, quite correctly in the Authority's view, argued that the situation in New South Wales was the more relevant as the soliciting laws had been liberalised in that State.

However, Mr Smits maintained that TVNZ did not respond to his concern that the item was unbalanced by not referring to the fact that liberalisation might not be a positive experience for all involved. To quote the newspaper advertisement, TVNZ maintained that the item would "investigate a controversial proposal to liberalise sex worker laws". Apart from brief comments from two acknowledged morals campaigners (discussed below), the item seemed to focus on those who believed that the changes would be positive. The Authority considered carefully the complaint that the item breached the requirement for balance by failing to investigate in any depth whether the reform could have some questionable if not some unpleasant impacts on prostitutes and their work environment and perhaps on society generally (eg the importation of women from other cultures for the purpose of prostitution).

The Authority noted that the main argument put forward in favour of decriminalisation



was the health concerns. It also noted that much of the programme was taken up by explaining the present situation and how prostitutes continued to work and how the soliciting prohibition was circumvented. Although this part of the item referred to a double-standard, it did not advance a case for decriminalisation and thus did not require to be balanced. A similar comment can be made about the segment which discussed the situation in Sydney. Although some of that portion was distinctly sleazy and even of doubtful relevance, it was principally concerned with providing information.

When returning to the question on whether balance was achieved either on the practical issues or on the morality question, the Authority started from the basis that the case for decriminalisation was based on health concerns. It then studied the comments from the two spokespersons from a moral perspective - the Reverend Fred Nile and the Hon Graeme Lee. However, their comments did not focus on the question of morality. Rather, they spoke about the likelihood of some practical problems and both argued that there would be negative health consequences to decriminalisation. Mr Lee cast doubt on the advice from Departments when dealing with health matters and Mr Nile called brothels AIDs disease centres. He also asked whether prostitutes, if offered sufficient money, would be prepared to have sex without a condom.

The Authority decided that while their contributions were relatively brief, they did in fact present counter arguments to the main justifications for decriminalisation advanced in the programme. In the Authority's opinion, as the practical consequences of decriminalisation were presented from differing perspectives, the broadcast did not contravene standard G6 as Mr Smits alleged.

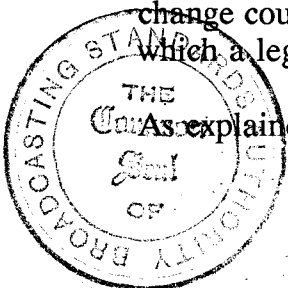
The complaint from the Christian Heritage Party argued that the two commentators shown had principally objected to the proposal on moral grounds and were given only a short period within the total programme in which to express their points of view. On the basis that the item was concerned with practicalities and not with morality, TVNZ declined to uphold the complaint.

In its referral of the complaint to the Authority, the Christian Heritage Party disputed TVNZ's reasoning that soliciting and prostitution could be discussed without addressing the moral issues. Such issues, it said were inevitably involved in considering the question of what would be the "rights" and "wrongs" of decriminalising soliciting. That point was made explicitly in its final comment to the Authority when it stated in response to TVNZ:

By their own definition of the purpose of the programme that it was to look at "the consequences should the law change go ahead", we would contest they did not do that, the negative consequences were all but left out!

TVNZ, in its response to the complaint, drew an analogy with the liquor licensing laws where both moral and practical issues are involved and argued that a proposal for law change could be dealt with by explaining the existing situation and the probable changes which a legal amendment would entail.

As explained above in deciding Mr Smits' complaint, the Authority considered that for




balance to be achieved both the negative and positive consequences of change would have to be explored. The Authority also accepted that the changes explored in the programme, although predominantly practical, could well have included a moral component. As noted, the Authority concluded that the interviews with Mr Fred Nile and Mr Graeme Lee did in fact deal sufficiently with the substantive health issues raised by the programme for the balance requirement to be satisfied.

Although questions of morals were touched on briefly by a number of people spoken to and although it was acknowledged that people might well object to the changes for moral reasons, the morality argument was not a central issue. Consequently, in view of the item's focus, the Authority concluded that it was unnecessary to explore that debate. The decriminalisation proposals were advanced for health reasons and that topic was addressed from different perspectives. Accordingly, as the item acknowledged that questions of morality were involved, the Authority decided that it had not breached the requirements for balance as outlined in standard G6 of the Television Code as alleged by the Christian Heritage Party.

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

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



8 September 1993

Appendix I

Mr Smits' Complaint to Television New Zealand Limited

In a letter dated 18 April 1993, Mr Philip Smits of Auckland complained to Television New Zealand Ltd about an item on Channel Two's *60 Minutes* which had been broadcast from 7.30 - 8.30pm that evening. He argued that the item, which had dealt with the decriminalisation of soliciting, breached the broadcasting standards requiring good taste and decency and balance.

In regard to the good taste and decency aspect of the complaint, Mr Smits said the standard was breached by the portrayal, gratuitously, of a naked Thai woman. The depiction, he suggested, indicated that "naked brown bodies" did not count.

As for the balance aspect, Mr Smits argued that Queensland, not New South Wales, should have been chosen to show the problems associated when prostitution was prohibited. The example selected, he continued, allowed the owner of an Auckland night club to declare that prostitution was a victimless crime.

Mr Smits concluded that the item had not examined the issue but had titillated the viewer.

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Smits of its Complaints Committee's decision in a letter dated 7 May when it reported that the complaint had been assessed under standards G2 and G6 of the Television Code of Broadcasting Practice.

TVNZ recorded that the item, dealing with a suggestion from a Government Minister about some proposed changes to the soliciting laws, had investigated the present position and the possible consequences of change.

Dealing with the aspect of the complaint that the item reinforced the stereotype of Thai women, TVNZ said that apart from describing the premises as a "Thai-style bar", the ethnic backgrounds of the dancers had not been identified. Moreover, it had not been possible to decide if any fully naked dancers were shown. As "Thai-style" referred to a type of adult entertainment, TVNZ decided that Thai women had not been denigrated and had the good taste standard had not been breached.

As for balance, TVNZ said that opposition to the proposed law reform on moral grounds was noted in the programme. However, its focus had been on the practical consequences and, consequently, as the situation in New South Wales was of considerably more relevance than the situation in Queensland, the balance requirement had not been contravened.



Mr Smits' Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's decision, in a lengthy letter dated 15 May 1993, Mr Smits referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989. He also enclosed some other video tapes as a comparison to the programme complained about. He analysed both a newspaper advertisement for the item and the programme itself in considerable detail questioning both the taste of the visuals and the balance in the comments. He castigated the techniques used in making the item and expressed particular concern about the violence and health problems in the "sex industry".

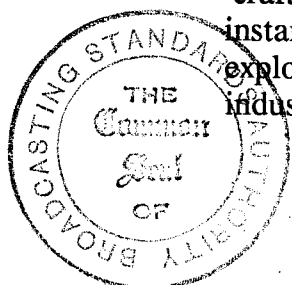
During his detailed analysis of the programme, Mr Smits' noted some examples which, he said, indicated the item's lack of balance. For example, the item had not examined the motivation for prostitutes nor the dangers of the occupation. The two owners of adult entertainment businesses in which prostitution could be occurring were not questioned about the reasons why they advocated law reform. Nor were they questioned about the dangers to the health of women who worked on the premises,

The interviews in Sydney, Mr Smits continued, had glamorised the lifestyle of the prostitutes and had not examined the "sadness" or "sordidness" of that life. The two prostitutes spoken to had only been asked about the financial rewards of the job. The interview with a prostitute who worked alone and apparently from her home, Mr Smits added, had no relevance other than to titillate the viewer. Moreover, although there was a reference to facilities for drug abusers in Sydney, there was no suggestion of any connection between drugs and prostitution. In contrast with the impression of Kings Cross portrayed by the item, Mr Smits maintained an accurate picture would show:

... the omnipresence of hard core pornography (its drowning in it), the subjugation and exploitation of (irresponsible) young people, intravenous drug use by prostitutes (they "work" to support habits), the "use" of women from other cultures, big time pimping. It's an industrial combine - a sausage machine. Young women (and some men) are fed in one end, out the other comes money, in the name of "entertainment" and sexual gratification of the "consumers".

In summary, Mr Smits maintained that the item had allowed two operators of adult entertainment facilities to "justify their existence unchallenged". He continued:

This item is quite possibly the most woeful attempt at balanced current affairs reporting in the history of television in this country. And that it appeared under the banner of 60 Minutes a world renowned and respected programme makes it doubly sad. The reporter/producer lack of commitment to his chosen 'craft' was awesome. His lack of understanding of the issues, the same. For instance there is no mention AT ALL of two key matters - the matters of exploitation and safety. If he knew ANYTHING about the sex industry/prostitution he would have unearthed an underlying third matter



(condom disposal). I'm not going to elaborate about the dangerousness of street prostitution except to say this: Remember Leah Stephens?

There is a documented correlation between Tourism and countries that have a "laissez faire" approach to controlling their sex industry. Condom disposal is an environmental/ecological casualty of stupid brothel laws: Thousands of these things (yeah thousands) end up in the sewerage systems of New Zealand every night and day. They're made of RUBBER. Don't ya think that was worth a mention?? No, too busy titillating us. Too busy twisting the truth, misleading through blatant manipulation of an audience that was conned into watching by hype. ... They're required by statute to be balanced in approach.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 20 May 1993 and TVNZ's reply 11 June.

Noting that the item examined the practical consequences of a proposed law change and despite Mr Smits' lengthy submission to the Authority, TVNZ reported that its Complaints Committee had dealt with two issues. They were the complaints that pictures from a night club in Auckland were indecent and denigrated Thai women and that the programme was unbalanced because the situation in New Zealand had been contrasted with the situation in New South Wales rather than that in Queensland.

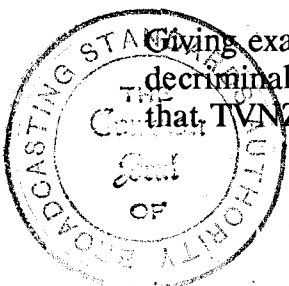
TVNZ repeated that the material shown was not indecent and that it had referred to a Thai-style bar which did not denigrate Thai women. Indeed, one viewer had possibly identified one of the women featured as a Korean-American. TVNZ also maintained that as soliciting had been decriminalised in New South Wales, the situation in that state was more relevant to New Zealand than the situation in Queensland.

Mr Smits' Final Comment to the Authority

In response to TVNZ, in a letter to the Authority dated 18 June 1993 Mr Smits maintained that the programme was unbalanced and had presumed that the amending Bill, which would be the subject of a conscience vote, would be enacted. Furthermore, the item had contrasted the New Zealand situation only with New South Wales and, Mr Smits wrote:

The item did not "examine the practical consequences of a proposed law change in this country which would decriminalise soliciting".

Giving examples from a number of countries where soliciting had been decriminalised, he maintained that the result was the exploitation of women. He felt that TVNZ had responded neither thoughtfully nor comprehensively to his complaint.



Appendix II

Christian Heritage Party's Complaint to Television New Zealand Limited

In a letter dated 26 April 1993, the Leader of the Christian Heritage Party, the Reverend Graham Capill, complained to Television New Zealand Ltd about the item concerning decriminalising soliciting which had been broadcast on *60 Minutes* on Channel Two between 7.30 - 8.30pm on Sunday 18 April.

Noting that the item had reviewed the current situation and had included interviews with prostitutes, massage parlour owners and the Minister of Health, Mr Capill said that only one minute and three seconds in a 20 minute programme was devoted to interviews with two people who opposed the liberalisation of the law. He described that imbalance as biased, adding:

This is a controversial issue that required that both sides be put. To give but one minute to one side is a gross misuse of production licence.

TVNZ's Response to the Formal Complaint

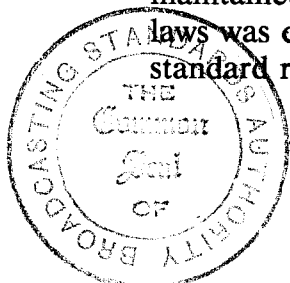
TVNZ advised the Christian Heritage Party of its Complaint Committee's decision in a letter dated 7 May 1993. It reported that the complaint had been considered under standard G6 of the Television Code of Broadcasting Practice which requires balance, impartiality and fairness.

TVNZ began by suggesting that the complainant had misunderstood the programme's purpose. It had not been a debate about the morality of prostitution or soliciting nor a discussion whether law changes were necessary or desirable. TVNZ continued:

It started from the point that a law change is under consideration and proceeded from there to explain what the present situation was, and the practical consequences of a change. The consequences were demonstrated by outlining the situation in New South Wales where a law exists which is similar to that proposed for New Zealand.

This was in the nature of providing information to the public so that it can make up its own mind about the issue. No stand, for or against the change, was taken by the programme.

Drawing an analogy with liquor licensing where a discussion about a law change did not require an examination of the moral dimension of the liquor laws, TVNZ maintained that the programme, which had examined why a change to the soliciting laws was considered necessary, and the practical consequences, did not breach the standard requiring balance, fairness and impartiality.



The Christian Heritage Party's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's response, in a letter dated 2 June 1993 the Christian Heritage Party referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Maintaining that the broadcast was unbalanced, on the Party's behalf Mr Capill objected to TVNZ's narrow definition of the programme's theme. If the issue was controversial, he argued, the relevant standard required balance, impartiality and fairness and that had not occurred in the broadcast complained about. Even if TVNZ's narrow interpretation was accepted, he continued, the programme had not adhered to these criteria in its examination of the controversial issue of why a law change was considered necessary, and what the practical consequences would be if soliciting was to be decriminalised.

Mr Capill also disputed TVNZ's claim that the matter was "not a moral debate", describing that assertion as "totally ridiculous". He referred to the contents of TVNZ's letter and concluded:

I am sure that if we were to ask the average person on the street whether they considered this to be a controversial issue they would reply, without hesitation, that it is. I am sure a jury would agree. We would submit that the amount of time dedicated to the people supporting changed was completely out of balance with the opposing views expressed. If the object was to give people the opportunity to make up their own minds then it is of absolute importance that both sides develop their arguments fully and they are given close to equal time to do so.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 14 June 1993 and TVNZ's reply 30 June.

Explaining that the item looked at the practical consequences of a proposed change to New Zealand's soliciting laws, TVNZ said it had little to add to its letter to the Party dated 7 May. It accepted that there was a moral debate about prostitution but that was not the subject of the item. It continued:

Were the moral rights and wrongs of prostitution to be debated every time the subject came up, the discussion would never move beyond that point. The purpose of this item was to show what lay behind the move to decriminalise soliciting, and the consequences should the law change go ahead.

The moral position was acknowledged in the programme - but the main focus was on the law change itself.



The Christian Heritage Party's Final Comment

When asked to comment on TVNZ's response, in a letter dated 12 July 1993 Mr Capill on the Party's behalf argued that TVNZ had misinterpreted the complaint. The Party accepted that the issue was decriminalising soliciting - not prostitution per se - but maintained that the item had not explored fully the rights and wrongs of decriminalisation. In other words, it had not examined the negative consequences should the law change proceed.

