

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 123/93

Dated the 29th day of September 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

WILLIAM WATERS
of Wellington

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

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

DECISION

Introduction

An action by the Police Armed Offenders Squad in Morrinsville was covered extensively on *One Network News* on 29 July. An armed person had held a number of people hostage in the Morrinsville Police Station and had spoken by telephone to television presenter Paul Holmes. Mr Holmes had agreed to go to Morrinsville although, eventually, that was unnecessary as the person holding the hostages was shot and killed by the Police.

The Broadcasting Standards Authority under s.4(1)(c) of the Broadcasting Act 1989 may accept complaints directly only when they allege that a broadcast has invaded an individual's privacy. Under that provision, Mr Waters complained to the Authority that the broadcast, by showing members of the Armed Offenders Squad in such a way that they were readily identifiable, contravened the privacy requirement. He also complained to Television New Zealand Ltd that the coverage breached a further 15 broadcasting standards.

In its response to the Authority, TVNZ pointed out that the identity of members of the Armed Offenders Squad was not secret and that members were frequently seen on television performing their duties. It also declined to uphold any aspects of the complaint made to it by Mr Waters. Although disagreeing with TVNZ's decision on the



complaint made to it, Mr Waters did not refer the decision to the Authority for investigation and review. Despite that decision, he requested that the Authority determine the aspect of the complaint which alleged an invasion of an individual's privacy.

Decision

The members of 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.

From the outset, the Authority wants to clarify the process in the Broadcasting Act. All complaints, other than on the grounds which allege the invasion of an individual's privacy, must be made first to the broadcaster. If a complainant is dissatisfied with the broadcaster's decision or action on the complaint, then it may be referred to the Authority for investigation and review. However, a complaint which alleges that the broadcaster failed to maintain standards consistent with the privacy of the individual may be made directly to the Authority under s.8(1)(c) of the Broadcasting Act 1989.

Pursuant to this provision, Mr Waters complained to the Authority that the coverage of *One Network News* of an incident in Morrinsville on 29 July involving the Police Armed Offenders Squad breached the privacy provision by broadcasting material which enabled members of the squad to be identified. That identification, he added, made them and their families possible targets for criminals.

In addition to the complaint alleging an invasion of privacy, Mr Waters also formally complained to the broadcaster, TVNZ, that the coverage breached a total of 15 standards in the Television Code of Broadcasting Practice.

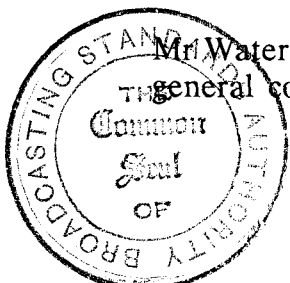
When asked by the Authority for its comments on the privacy aspect of the complaint, TVNZ noted that the identities of Armed Offenders Squad members were not secret and, throughout New Zealand, they were frequently seen on television performing their duties. Furthermore, TVNZ and the police often worked closely together and, on this occasion, there was no objection to TVNZ's actions. TVNZ commented:

While we respect Mr Waters for the concern he has for the welfare of members of the Armed Offenders Squads we believe his complaint is misplaced. There is nothing secret about the squads and in this case they were shown in the legitimate context of an important news event.

Neither we, nor the Authority, have received any complaint from squad members themselves or from their superior officers.

TVNZ also advised the Authority that no aspect of Mr Waters' "wide-ranging" complaint about coverage of the incident had been upheld.

Mr Waters advised the Authority that he did not intend to refer TVNZ's decision on his general complaint to the Authority as he had not realised until he received TVNZ's



decision that the coverage was not "live". However, that was not relevant to the privacy matter and he asked the Authority to determine that aspect of his complaint. He added that he had also written to the Commissioner of Police expressing the same concern but acknowledged that the recent broadcast of a television documentary about the Armed Offenders Squad had removed much of the substance of his argument.

In an Advisory Opinion sent to broadcasters in June 1992, the Authority listed a number of privacy principles which it considered applicable to complaints under s.4(1)(c) of the Broadcasting Act 1989 which, as noted, requires broadcasters to maintain standards consistent with the privacy of the individual.

Privacy principles i) and ii) could be relevant to the current complaint. They read:

- i) The protection of privacy includes legal protection against the public disclosure of private facts where the facts disclosed are highly offensive and objectionable to a reasonable person of ordinary sensibilities.
- ii) The protection of privacy also protects against the public disclosure of some kinds of public facts. The "public" facts contemplated concern events (such as criminal behaviour) which have, in effect, become private again, for example through the passage of time. Nevertheless, the public disclosure of public facts will have to be highly offensive to the reasonable person.

However, it is unnecessary to determine whether the pictures of the Armed Offenders Squad are "highly offensive" in view of principle v). It provides:

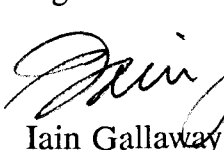
- v) An individual who consents to the invasion of his or her privacy, cannot later succeed in a claim for breach of privacy.

Mr Waters - not the police officers - made the complaint and it is apparent that the police did not consider that the television news coverage invaded the officers' privacy as neither the Police nor individual police officers alleged a breach of privacy. Mr Waters' efforts to gain Police support for his complaint seem to have been unsuccessful and in a recent documentary about the Armed Offenders Squad broadcast by TVNZ after the Morrinsville incident, no attempt was made to hide the members' identities.

As the people whose identities were disclosed on *One Network News* on 29 July did not attempt to retain their privacy nor complain that a breach had occurred, the Authority concluded that the broadcast did not breach s.4(1)(c) of the Broadcasting Act 1989.

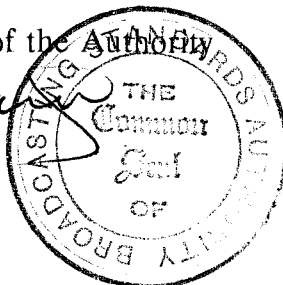
For the reasons above, the Authority declines to uphold the complaint.

Signed for and on behalf of the Authority


Iain Gallaway

Chairperson

29 September 1993



Appendix

Mr Waters' Complaint to the Broadcasting Standards Authority

In a letter dated 12 August 1993, Mr William Waters of Wellington complained to the Broadcasting Standards Authority about the coverage of an incident involving the Police Armed Offenders Squad in Morrinsville on TVNZ's *One Network News* between 6.00 - 6.30pm on 29 July. He alleged that the broadcast breached s.4(1)(c) of the Broadcasting Act 1989 as, by identifying the members of the Armed Offenders Squad, it had failed to maintain standards consistent with the privacy of the individual. He advised that he had also expressed his concern to the police but had not received a reply.

His concern about the invasion of the police officers' privacy, Mr Waters wrote, arose from the fact that following identification, the officers and their families could now be the targets of gangs and criminals. He contrasted their identification with the electronically "blocking out" of the identity of suspects as they entered or left a court.

Mr Waters also advised the Authority that he had complained formally to Television New Zealand Ltd about the same broadcast and had alleged breaches of a number of standards in the Television Code of Broadcasting Practice.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 13 August 1993 and TVNZ's reply, 30 August.

In contrast to Mr Waters' concern for members of the Armed Offenders Squad in Morrinsville, TVNZ stated:

We observe that the identities and activities of the various Armed Offenders Squads around New Zealand are not a secret. Members of the squads have frequently been seen on television, either performing their duties at emergency scenes or engaged in police exercises.

On this occasion the members of the Armed Offenders Squad knew television cameras were present at the scene and did not demur.

Adding that the police and TVNZ often worked closely together as had occurred on this occasion, TVNZ concluded:

While we respect Mr Waters for the concern he has for the welfare of members of the Armed Offenders Squads we believe his complaint is misplaced. There is nothing secret about squads and in this case they were shown in the legitimate context of an important news event.



Neither we, nor the Authority, have received any complaint from squad members themselves or from their superior officers.

TVNZ also supplied the Authority with a copy of its response to Mr Waters in which it declined to uphold any aspect of his "wide ranging" complaint.

Mr Waters' Final Comment to the Authority

When asked to comment on TVNZ's reply, in a letter dated 5 September 1993 Mr Waters said that he did not intend to refer his substantive complaint to the Authority for review as he had not previously realised that the broadcast was not in fact "live".

He requested the Authority, however, to determine the privacy aspect of his complaint although he acknowledged that the recent television documentary on the Armed Offenders Squad undermined his concern. He finished:

It is becoming increasingly obvious to me the Police condone the (free) use of TV and radio to promote, portray the Armed Offenders Squad and other police activities.

