

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 145/93

Dated the 15th day of November 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

K. RICHARD FOXLEY  
of Palmerston North

Broadcaster  
RADMASS 99.4FM  
Massey University

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

DECISION

Summary

The content of three songs played during the daytime on 24 July 1993 on the Massey University student radio, Radmass 99.4FM, included material which was sexually explicit and contained coarse language.

Mr Foxley complained to the President of the Massey University Students' Association, who referred the complaint to the Station Manager of Radmass 99.4FM, that the content of the songs was in breach of the broadcasting standard requiring good taste and decency and could have been heard by young children and teenagers.

Responding to the complaint, the Station Manager assured Mr Foxley that the staff of Radmass were familiar with, and obliged to adhere to, a code of practice set down by the management. He noted that foul language and obscenities by announcers were expressly forbidden, but that that prohibition did not apply to the content of recorded material. Acknowledging that certain material aired on Radmass was "on the edge", he nevertheless maintained that there was a right to freedom of expression and declined to uphold the complaint. Dissatisfied with that decision, Mr Foxley referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.



*For the reasons given below, the Authority upheld the complaint that the broadcast of **Properties of Propaganda** was in breach of the standard requiring observance of good taste and decency and a majority upheld the complaint that the broadcast of **My Sleepy Lover** was in breach of the same standard. The Authority declined to uphold the other aspect of the complaint.*

### Decision

The members of the Authority have listened to the tapes of the three songs 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.

Mr Foxley complained to the Massey University Students' Association that three songs played during the daytime on Radmass 99.4FM (the Massey University student radio station) on 24 July 1993 contained coarse language and were sexually explicit. In his view, those songs - *Properties of Propaganda*, *My Detachable Penis* and *For My Sleepy Lover* - were filthy and obscene and in breach of broadcasting standards. Commenting that he was both horrified and angered by the broadcast, Mr Foxley argued that it was not the kind of material which should be broadcast over the airwaves since teenagers and young children could tune into it.

Responding on behalf of Radmass, the Station Manager acknowledged that some of the material broadcast on Radmass was "on the edge". However, in his view, standards of decency and good taste were subjective and varied between individuals. He defended the right of people to express their views through all media, and argued that much of the material aired on Radmass was a reflection of society expressed in an artistic way through music. In response to Mr Foxley's argument about the impact of such material on children, the Station Manager maintained that children had to be exposed to reality and that responsible parenting would teach children the difference between right and wrong and about freedom of choice.

At the outset, the Authority accepted that student radio was a distinct genre of radio and was largely managed by young people who were targeting other young people. It acknowledged that the boundaries of what was acceptable might well be wider for student radio than for mainstream stations, but noted that the requirements of the Broadcasting Act 1989 and the standards set down in the Radio Code of Broadcasting Practice still applied to student radio stations.

It began its assessment of the complaint by referring to the standard allegedly breached. Standard 1.1(b) (now renumbered as R2) of the Radio Code of Broadcasting Practice requires broadcasters:

- R2 To take into consideration currently accepted norms of decency and good taste in language and behaviour, bearing in mind the context in which any language or behaviour occurs.

The Authority took into consideration that the broadcast was on a student radio station and that the songs were played during the daytime at an hour when children would



normally be at school. It accepted that the station targeted those in the under-25 year age group and that it was to be expected that this was a group which was constantly challenging limits and pushing for new boundaries. However, it considered that a radio station which broadcast on public airwaves is still obliged to adhere to broadcasting standards and has a responsibility to do so.

After analysis of the content of the three songs complained about, the Authority concluded first, that the content and language of the song *My Detachable Penis* was lighthearted and humorous and not inappropriate in the context, and declined to uphold the complaint that it was in breach of standard R2.

Secondly, in considering *Properties of Propaganda* it observed that the lyrics were barely distinguishable, except for the chorus "We gonna fuck that shit" which was frequently repeated. In the Authority's view, those words were clear, and because they were sung in a strident and aggressive tone and repeated many times, breached the standard requiring good taste and decency (standard R2). (The lyrics of the entire song are appended). In reaching its decision, the Authority also took into account the results of a survey it commissioned in July 1993 entitled *Perceptions of "Good Taste and Decency" in Television and Radio Broadcasting* which indicated that the use of the word "fuck", in the context of a television programme broadcast in adult viewing time, was deemed to be more than moderately objectionable to 75% of New Zealanders.

Thirdly, the Authority considered *For My Sleepy Lover*. In the view of the majority of the Authority the intimacy and sensuousness of the lyrics, in addition to the use of the word "fuck", while perhaps acceptable late at night, was not appropriate for broadcast during the day and breached standard R2.

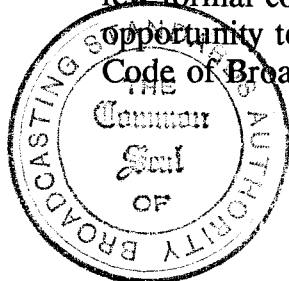
The minority, while accepting that the song was marginal, felt that the brevity and gentle tone of the lyrics saved it from breaching the standard.

**For the reasons set forth above the Authority upholds the complaint that the broadcast of the song *Properties of Propaganda* on Radmass 99.4FM on 24 July 1993 was in breach of the standard requiring the observance of good taste and decency.**

**A majority of the Authority upholds the complaint that the broadcast of the song *For my Sleepy Lover* on the same day was in breach of the same standard.**

**The Authority declines to uphold any other aspect of the complaint.**

Having upheld a complaint, the Authority may impose an order under s.13(1) of the Broadcasting Act 1989. It does not intend to do so on this occasion as there have been few formal complaints about the lyrics of popular songs previously and therefore little opportunity to convey to student radio broadcasters their obligations under the Radio Code of Broadcasting Practice.



Signed for and on behalf of the Authority

*Iain Gallaway*

Iain Gallaway  
Chairperson  
15 November 1993



## Appendix

### Mr Foxley's Complaint to Radmass 99.4FM

In letters dated 24 July 1993, Mr Richard Foxley of Ashhurst complained to the President of the Massey University Students' Association and to the Vice Chancellor of Massey University about the content of songs which were broadcast on Radmass 99.4FM that day. His letters were referred to the Station Manager (Mr Vaughan Murray).

Mr Foxley stated that the content of some of the songs played on Radmass both horrified and angered him. In particular, he cited three examples - a song called "Detachable Penis", a song by a group called Fishbone which contained the words "Fuck that Shit" in the chorus and a sexually explicit song called "My Sleepy Lover".

In his view the content of these songs was objectionable and it was undesirable to have such material on the radio capable of being listened to by teenagers and young children. He claimed that the material being broadcast on Radmass was harming the reputation of Massey University.

In a letter dated 9 August 1993, Mr Foxley received an assurance from the Acting Vice Chancellor that the provisions of the Broadcasting Act 1989 regarding the complaints procedure would be drawn to the attention of the Station Manager.

### Radmass's Response to the Formal Complaint

Mr Murray, Station Manager of Radmass, advised Mr Foxley of the station's decision in a letter dated 13 August 1993.

He pointed out that Radmass's operation was governed by a set of rules (which he appended), breach of which would result in the announcer's suspension. He noted that obscene language by announcers on air was not tolerated, although he drew a distinction between the behaviour of announcers and the content of recorded material. Arguing that acceptable standards of good taste and decency in language and behaviour were subjective, he expressed his view that every person had the right to express their own opinions through all media.

Acknowledging that some of the material played on Radmass was confronting, he nevertheless argued that it was a true reflection of society and that people, including children, had a choice about whether or not to listen.

Mr Murray enclosed a copy of the Radmass House rules.



### Mr Foxley's Referral to the Broadcasting Standards Authority

Dissatisfied with Radmass's response, in a letter dated 5 September 1993, Mr Foxley referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

Commenting that he found the response from Radmass patronising, Mr Foxley expressed his surprise that the House rules which prohibit announcers from using foul language on air did not extend to recorded material. Acknowledging that the boundaries of good taste had moved considerably in recent years, Mr Foxley nevertheless maintained that there should still be limits as to what could be broadcast.

### Radmass's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 15 September and Radmass's reply, 17 September 1993.

Mr Murray, for Radmass, expressed his concern that the matter should have reached the stage of being referred to the Authority. He maintained that there had been no direct contact between himself and Mr Foxley and that Mr Foxley had not accepted his invitation to meet to discuss the matter.

He expressed his view that the only thing Mr Foxley would find acceptable would be for the station to remove the offending songs from the Radmass playlist. He noted that the songs had been aired on the station for some time at different hours and there had been no other complaints and that they were not seen as offensive in the context of the rest of the playlist. He offered a description of the three songs:

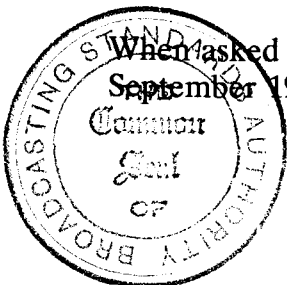
"Properties of Propaganda" is a reflection upon the state of Afro American peoples in the USA. Certainly it is a hard edged and an uncompromising song, but it is a song that is culturally, politically and socially important.

In the case of "Detachable Penis" it was felt this song was one of the most humorous and popular tracks on our playlist, a sentiment reflected in its top 10 commercial success and video airing on the Saturday morning music video shows.

"For my Sleepy Lover" was indeed thought to be erotic and suggestive, but neither explicit nor offensive.

### Mr Foxley's Final Comment to the Authority

When asked to comment on Radmass's response, Mr Foxley in a letter dated 25 September 1993, disputed some of the points made by Mr Murray.



Explaining the process he undertook in making his complaint, Mr Foxley noted that he had been advised by the Vice Chancellor's office to direct the formal complaint to the President of the Massey University Students' Association in the first instance. He did not go back to the Station Manager, being of the view that there was very little common ground on which to meet. He observed that Mr Murray had probably correctly interpreted his feeling that the only thing he would find acceptable would be to take the songs off the playlist.

Responding to Mr Murray's comments that no formal complaints had been made about these songs, Mr Foxley said that that was not surprising, since most of the listeners were in the 15-25 year-old age group and would be unlikely to complain.

He questioned Mr Murray's analysis of the content of the songs, observing that explicit language was used and it was unacceptable.

The lyrics of the songs are provided below:

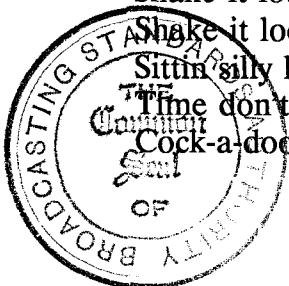
### PROPERTIES OF PROPAGANDA

Best to bust the dust  
 Of a flow to powder the crust  
 A grain of sand and a gust of wind  
 To stir my stomach  
 And a ground swell to shake  
 The all that it must take  
 To break the headache  
 In my earthquake  
 Git together  
 Yo' shit  
 Move your ass  
 To a proper toilet

We gonna fuc we gonna phuck  
 We gonna fuque this shit on up  
 (repeated several times)

Git it like it's posed to be gotten  
 Hear it like it's posed to be heard

Shake it loose  
 Shake it loose holy cow  
 Sittin' silly like a morning roost  
 Time don't tell no swells  
 Cock-a-doodle do duck or git goosed

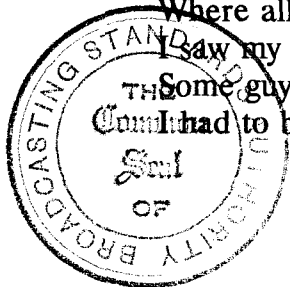


Sittin it on down  
 Sit your ass on down  
 Git together your shit move your ass  
 To a proper toilet  
 (repeated several times)  
 Phuk shit up  
 (repeated several times)  
 It's the properties of propoganda  
 (repeated several times)  
 When your feet don't move and you  
 Don't know where you  
 STANDDA

We gonna fuk that shit  
 (Repeated several times)

### MY DETACHABLE PENIS

I woke up this morning with a bad hangover  
 And my penis was missing again.  
 This happens all the time. It's detachable.  
 This comes in handy a lot of the time.  
 I can leave it home when I think it is going to get me in trouble  
 Or I can rent it out when I don't need it.  
 But now and then I go to a party, get drunk  
 And the next morning I can't for the life of me remember what I did with it.  
 First I looked around my apartment and I couldn't find it  
 So I called up the place where the party was  
 They hadn't seen it either.  
 I asked them to check the medicine cabinet  
 Cos for some reason I leave it there sometimes.  
 But not this time.  
 So I told them if it pops up to let me know.  
 I called a few people who were at the party, but they were no help either.  
 I was starting to get desperate.  
 I really don't like being without my penis for too long.  
 It makes me feel like less of a man.  
 I really hate having to sit down every time I take a leak.  
 After a few hours of searching the house, calling everyone I could think of  
 I was starting to get very depressed.  
 So I went to the kiosk and ate breakfast  
 Then as I walked down Second Avenue towards St Mark's Place  
 Where all those people sell used books and other junk on the street  
 I saw my penis lying on a blanket next to a broken toaster oven.  
 Some guy was selling it  
 I had to buy it off him.





He wanted twenty two bucks but I talked him down to seventeen.  
 I took it home, washed it off and put it back on.  
 I was happy again, complete.  
 People sometimes tell me I should get it permanently attached  
 But I don't know  
 Even though sometimes it's a pain in the ass,  
 I like having a detachable penis.

### FOR MY SLEEPY LOVER

Last night kisses  
 Big lip Daddy  
 Love taking your sweet time  
 And every tomorrow  
 Sleepier than the one before  
 A still slow sacred fuck.

The clock buzzes  
 You lick  
 The clock hums  
 You're pulling off my underwear  
 I resist  
 The clock starts to moan in the dark  
 And your hands pull me down between your legs  
 Each morning sleepier  
 And yet we stay awake  
 Kissing my life...

