

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 165/93  
Dated the 9th day of December 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

PHILLIP SMITS  
of Auckland

Broadcaster  
TELEVISION NEW ZEALAND  
LIMITED

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

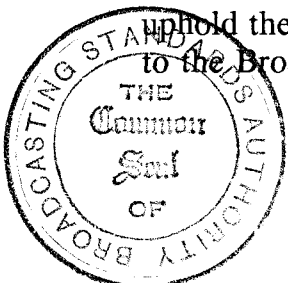
DECISION

Summary

An item on *PrimeTime* broadcast on TV1 on 12 August 1993 reported the sentencing of a nightclub owner for the keeping of a brothel.

Mr Smits complained to Television New Zealand Ltd, the broadcaster, that the footage which showed nude women dancing inside one of the owner's nightclubs contravened the standard for good taste and decency. He also alleged that the item was lacking in balance because it took a sympathetic view of the nightclub owner's conviction.

In its response, TVNZ maintained that the use of the footage of the dancers was relevant in the story about the activities of the nightclub owner, and that the indistinct and dimly lit sequence was not in breach of the standard for good taste and decency. With reference to the allegation that the item lacked balance, TVNZ stated that the report of the nightclub owner's convictions was accompanied by a report of his well-known, albeit sometimes notorious, career in the adult entertainment business. It denied that there was any suggestion of admiration for the man or his business and declined to uphold the complaint. Dissatisfied with that decision, Mr Smits 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 declined to uphold the complaint.*

### 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 sentencing of a nightclub owner for brothel keeping was the subject of an item on *PrimeTime* broadcast by TVNZ at approximately 9.50pm on 12 August 1993. The item included footage of nude and partly clad women dancing in one of his clubs.

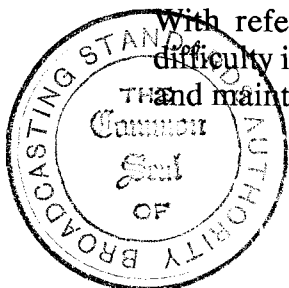
Mr Smits complained to TVNZ that the showing of the nude women dancing was not relevant to the story about the conviction and sentencing of the nightclub owner and was offensive and gratuitous. He noted that one of the sequences had been the subject of an earlier complaint which at the time of the broadcast had not been decided by the Authority. In his view, it was wrong to re-broadcast that footage pending the Authority's decision. Referring to other footage of dancers and a black and white photograph of a topless woman, Mr Smits maintained that these were pornographic and included only to titillate. Mr Smits questioned whether the use of the footage of the dancers was ever appropriate or relevant. He also argued that because the entire item appeared sympathetic to the nightclub owner, it was lacking in balance.

TVNZ assessed the complaint against standards G2 and G6 of the Television Code of Broadcasting Practice. 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.

It maintained that the report on the sentencing of the nightclub owner was a newsworthy event and a matter of public interest, since he was a well-known figure in the Auckland adult entertainment business. In its view, it was relevant to illustrate the man's business activities with the scenes from the nightclubs. TVNZ pointed out that most of the dancers were wearing bikinis and that there was only one short clip of "what may have been a nude woman" and in its recent ruling, the Broadcasting Standards Authority had determined that the sequence, because it was indistinct and dimly lit, had not been in breach of broadcasting standards. However, TVNZ did acknowledge that there was an argument to be made that it was time the news and current affairs department acquired some fresh pictures to illustrate this type of story, since this footage had been repeated. It declined to uphold the complaint that the item was in breach of standard G2.

With reference to the balance aspect of the complaint, TVNZ reported that it had difficulty in understanding Mr Smits' claim that it was sympathetic to the nightclub owner and maintained that it merely reported the facts. It rejected the suggestion that the item



was lacking in balance and contained bias in favour of the nightclub owner.

In its determination of the good taste and decency aspect of the complaint, the Authority took into account its earlier decision (No: 113/93 dated 8 September 1993) in which it had ruled that the "candle show footage" was not in breach because it was indistinct and dimly lit, and relevant to the story. It believed that the inclusion of the footage, both of the "candle show" and the "go-go" dancers, in an item about sentencing the owner of the nightclub in which the footage was shot, was relevant because it illustrated the business world in which he operated. As for the still black and white photograph which showed a topless woman, the Authority accepted that it had some historical relevance in that it showed how long he had been in the adult entertainment business, although it was inclined to the view that the sequence was unnecessarily prolonged. In reaching its decision that the item was not in breach of standard G2, it also took into account the hour of screening (9.50pm) which was well into AO viewing time.

In its assessment of the balance aspect of the complaint, the Authority was unable to agree with Mr Smits that the item showed a bias in favour of the nightclub owner. It believed that the report on the sentencing was objective and the charge (for brothel keeping) was reported accurately. While the item was perhaps unnecessarily detailed, there was no suggestion that the man's activities were glamorised or condoned. The Authority declined to uphold the complaint that the item was in breach of standard G6.

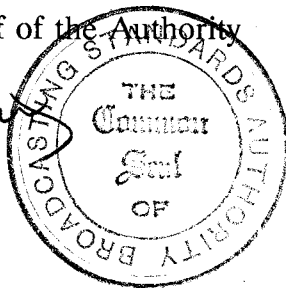
**For the reasons set forth above, the Authority declines to uphold the complaint.**

TVNZ's response to the Authority and Mr Smits' final comment both focussed on the style of Mr Smits' complaint. The Authority did not believe that the style was relevant to its decision. However, it has written to Mr Smits pointing out that his vernacular style, when offensive, may reduce the effectiveness of his complaints.

Signed for and on behalf of the Authority



Iain Gallaway  
Chairperson  
9 December 1993



## Appendix

### Mr Smits' Complaint to Television New Zealand Limited

In a letter dated 13 August 1993, Mr Phillip Smits of Auckland complained to Television New Zealand Ltd about an item on *PrimeTime* broadcast on TV1 on 12 August at approximately 9.50pm.

The item reported the sentencing of Mr Rainton Hastie, an Auckland nightclub owner, who had been charged with keeping a brothel and was accompanied by shots of nude women dancers in one of his clubs. Upon seeing the promo for the item earlier in the evening, Mr Smits had telephoned TVNZ to point out that the nightclub footage was the subject of a complaint awaiting the BSA's decision and that it would be wrong to re-broadcast it before the Authority's decision was released.

Mr Smits maintained that the showing of the nude women was not relevant to the item about the conviction and sentencing of Mr Hastie. In his view, the broadcast and re-broadcast of this sequence was racist.

There was also a sequence of "go-go" dancers and a photograph of a topless woman which Mr Smits described as pornographic and included only to titillate.

On the lack of balance, Mr Smits pointed to the selectiveness of the reporting of historical events, commenting that the entire item appeared sympathetic to Mr Hastie, from the tone of the presenter's introduction to the inclusion of comments made by his supporters.

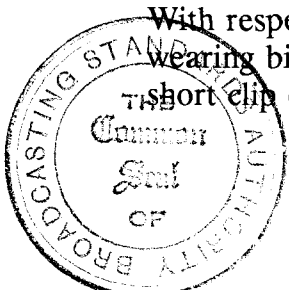
He added that he intended doing a detailed analysis of the item.

### TVNZ's Response to the Formal Complaint

TVNZ advised Mr Smits of its Complaints Committee's decision in a letter dated 16 September 1993 when it reported that the complaint had been assessed under standards G2 and G6 of the Television Code of Broadcasting Practice. These standards require broadcasters to take into consideration currently accepted norms of decency and taste in language and behaviour and to show balance, impartiality and fairness in dealing with questions of a controversial nature.

It maintained that the report on the sentencing of Mr Hastie was a newsworthy event and a matter of public interest, since he was a well known figure in the Auckland adult entertainment business. The item, it continued, summarised the offences for which he was convicted and then briefly recorded the history of his business activities.

With respect to the item on the nude dancers, TVNZ noted that most of them were wearing bikinis and other items of clothing and that there was only one extremely short clip of "what may have been a nude woman". It maintained that the footage



was relevant in the story of Mr Hastie's activities in the nightclub scene. It also referred to the recent decision (No: 113/93) in which the Authority had described the identical footage as "indistinct and dimly lit" and emphasised the importance of relevance in judging the taste and decency standard. TVNZ noted that the earlier item was screened between 7.30 - 8.30pm, whereas this item was broadcast about 10.00pm. It concluded that standard G2 was not breached.

Turning to the balance complaint, TVNZ reported that it had difficulty in understanding Mr Smits' claim that the item was sympathetic to Mr Hastie. It pointed out that the item began by outlining the outcome of his court appearances and then went on to profile the career of "a well-known, if sometimes notorious" figure in the club business. It denied that there was any suggestion of bias towards Mr Hastie, and maintained that the item merely reported the facts. It rejected the complaint that the item lacked balance.

### Mr Smits' Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's response, in a letter and Complaint Referral Form dated 25 September 1993, Mr Smits referred his complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

Mr Smits gave a detailed analysis of the item along with his interpretation of the script. He was led to the conclusion that the footage of the dancers was gratuitous and offensive. He rejected the Authority's ruling in decision No: 113/93 that the scene of the candle show was indistinct and dimly lit, claiming that any independent assessment of the sequence would reveal that the women were naked.

He provided a commentary and analysis of the script which supported his view that the item was biased in favour of Mr Hastie. He suggested that more investigations should have been made into some of the claims made by Mr Hastie about his business and his financial affairs.

Finally, he accused the presenter of being "a 'media slut'...for the garbage heap" and TVNZ of "pandering to a low-life pimp/flesh merchant."

### TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 27 September 1993 and TVNZ's reply, 12 October.

TVNZ remarked that it had nothing further to add to the response made to Mr Smits on 16 September. However, it made some observations concerning the style of Mr Smits' complaints, noting that he has been a regular complainant.

It noted that he persisted in raising issues which have already been determined by the Authority, referring in particular to the "candle show footage". It pointed out to the



Authority that since lodging this complaint, Mr Smits had made yet another complaint about the "candle show footage". While acknowledging that it was time the news and current affairs department acquired some fresh pictures to illustrate this type of story, it believed that the repetitive nature of the complaints wasted time for all concerned.

Of even greater concern to TVNZ was the abusive tone of Mr Smits' letters. While accepting that in Mr Smits' view this represented acceptable vernacular, TVNZ reported that it found it both unnecessary and offensive. It concluded:

We understand that other media outlets and organisations have been similarly plagued by this aspect of Mr Smits' correspondence and we would welcome comment on it from the Broadcasting Standards Authority. Frankly, we believe he is abusing not only the individuals to whom he refers, but also the complaints system itself.

#### Mr Smits' Final Comment to the Authority

In a letter dated 17 October 1993, Mr Smits made his final comment on TVNZ's response.

Referring to TVNZ's point that the candle show footage had been the subject of a recently released decision, Mr Smits pointed out that at the date of the broadcast, that earlier decision had not been released. He objected to TVNZ's suggestion that it needed "fresh footage" so it did not have to repeat the candle show sequence, claiming that it was an outrage to suggest that was needed, because in his view, the footage was never shown in an acceptable context.

He objected to TVNZ seeking comment from the Authority on the tone of his letters, maintaining that he had the right to complain in any way he liked. He wrote:

You have no right to reject a complaint or rule against it because you don't like my choice of words. Your (paid) job is to filter out my anger/emotion etc. My (unpaid) job is to put my grievance as best I can. As far as abuse and disrespect of the complaints system itself - what about Paul Holmes?? In my view it's TVNZ who have no respect for the complaints system - they couldn't care less about so called Broadcasting Standards. They couldn't give a damn - just look at what they do. Look at what they make. Look at the insulting, patronising, dishonest, twisted responses they give to formal complaints... .

He also defended his right to make attacks on individuals, claiming that he had a right to abuse them. He assured the Authority that it could do nothing to make him modify his complaints, and asked that it try to understand why he was so angry with the item.

Mr Smits appended some unrelated correspondence.

