

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 169/93

Dated the 16th day of December 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

OWEN BRACEY

of Auckland

Broadcaster

TELEVISION NEW ZEALAND

LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

L.M. Dawson

DECISION

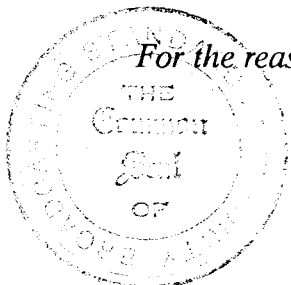
Summary

An interview with the victim of an accident caused by a drunken driver broadcast on *Holmes* on TV1 on 2 August between 6.30 - 7.30pm highlighted the physical and emotional injuries she suffered and the controversy surrounding the lenient sentence imposed on the driver.

After congratulating it for the excellent item, Mr Bracey then complained to Television New Zealand Ltd that the lack of reference to Victim Impact and Reparation Reports breached the requirement for accuracy, balance and respect for the principles of law.

In its response, TVNZ maintained that the programme had eloquently demonstrated the effects of the accident on the victim and contrasted this with the position of the offender. It reported that it was unable to detect any inaccuracies in the item, that it showed no disrespect for the principles of law and that the subject was approached in an objective manner. Dissatisfied with that decision, Mr Bracey referred his 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 any aspect of 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 physical and emotional injuries of a woman who had been the victim of an accident caused by a drunk driver were the focus of an interview on *Holmes* broadcast on TV1 on 2 August 1993. The item highlighted the long term effects of the injuries received by the woman in contrast to what she described as the lenient sentence imposed on the offender, a previously convicted drunk driving offender.

Mr Bracey congratulated TVNZ for its report on the accident victim which drew attention to the apparent anomaly which allowed the offender to be treated with what he described as leniency by the court, while the victim's injuries would affect her long term.

Notwithstanding the sensitivity with which the subject was discussed and the validity of the points made, in Mr Bracey's view the item contained inaccuracies and was lacking in balance. He complained to TVNZ that because it failed to investigate whether judicial comments had been made regarding the impact on the victim and whether there was a Victim Impact Report statement or a Reparation Report for emotional harm suffered by the victim, the item was in breach of broadcasting standards. He also argued that given the victim's injuries, TVNZ made a major omission in neglecting to give information on how the recent Accident Compensation legislation affects victims of crime. In addition, he claimed it failed to respect the principles of law because it omitted to cite the legislation which provided for victims' rights. He maintained that the public was entitled to be informed of the principles of law and practice and that the reporter should have investigated the background more fully.

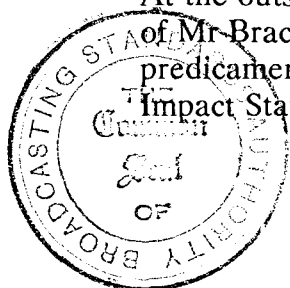
TVNZ advised Mr Bracey that it had assessed the complaint against standards G1, G5, G6 and G14 of the Television Code of Broadcasting Practice which require broadcasters:

- G1 To be truthful and accurate on points of fact.
- G5 To respect the principles of law which sustain our society.
- G6 To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

Standard G14 provides:

- G14 News must be presented accurately, objectively and impartially.

At the outset TVNZ expressed its opinion that it was difficult to understand the nature of Mr Bracey's complaint and that it had assumed that it was his belief that the victim's predicament would have been made clearer had there been a reference to the Victim Impact Statement, if indeed one existed. It considered that the programme had drawn



attention to the effect of the accident on the victim and contrasted that with the situation of the offender following his sentence. It concluded that it was up to the viewer to decide whether justice had been served and did not believe that reference to a Victim Impact Statement would have made the story any clearer to the viewer. It rejected the claim that the programme contained factual inaccuracies.

The Authority did not accept Mr Bracey's argument that the lack of reference to victims' rights constituted a matter of inaccuracy. It considered that in the context of a story about the effects of an accident on one woman it was not necessary to have an in-depth discussion of victims' rights. Although it acknowledged that such information would have been interesting, it was not an essential part of a story which set out to highlight the apparent disparity between the circumstances of the victim and the offender in the aftermath of a serious accident. The Authority believed the general subject of victims' rights was not crucial to this particular victim's story and was of the view that the omission of discussion of victims' rights did not constitute a breach of standard G1 and declined to uphold that aspect of the complaint.

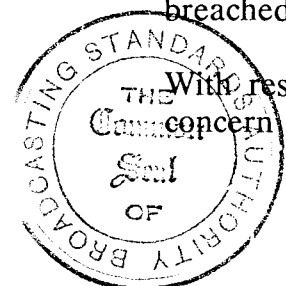
Turning to the claim that the item was in breach of standard G5, TVNZ maintained that the item showed no disrespect for the principles of law. It contended that it was the proper role of journalism to question whether the sentence handed down was appropriate.

The Authority acknowledged that journalists indeed have a role in highlighting apparent inequities in the law and in some instances, in educating the public about topical issues. However, it did not accept Mr Bracey's argument that the item's failure to refer to the provisions of the Criminal Justice Amendment Act, and the Victims of Offences Act constituted a breach of standard G5. Accordingly it declined to uphold that aspect of the complaint.

Rejecting the claim that the item lacked balance, TVNZ pointed out that although the focus of the item was clearly on the long term impact of the accident on the innocent victim, it had included the judge's reasoning for the sentence and acknowledged the offender's remorse. It noted that the offender had been given an opportunity to comment but declined to do so.

The Authority rejected the argument that failure to refer to judicial comments on the existence of a Victim Impact report (or its equivalent) breached the requirement for balance. Although it would have been interesting to know if the proper process had been followed, that was not the essence of the story. In the Authority's view it was reasonable that the item confined itself to making the point that the offender was shown leniency because he had embarked on a drug and alcohol rehabilitation programme while on the other hand the victim was now faced with a lifetime of suffering. The item did not have to extend to informing the public of the principles of law and practice or the statutory provisions for victims of crime. It concluded that standard G6 was not breached.

With respect to standard G14, TVNZ argued that the item raised issues of public concern and presented them to viewers to assess. It did not believe that it was

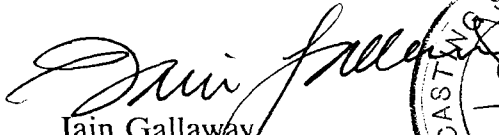


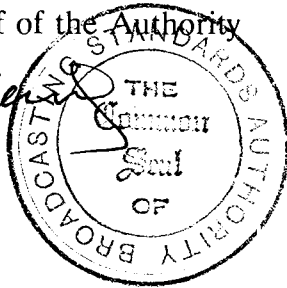
inaccurate, observing that "any partiality was confined to legitimate concern for the victim" and that the story was objective in its approach. It declined to uphold the complaint that the item was in breach of standard G14.

The Authority considered that on this occasion the standard G14 requirement was subsumed by standards G1 and G6, which have been discussed above.

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

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson
16 December 1993



Appendix

Mr Bracey's Complaint to Television New Zealand Limited

In a letter dated 5 August 1993, Mr Owen Bracey of Auckland complained to Television New Zealand Ltd about an item broadcast on *Holmes* on 2 August 1993 concerning the victim of an accident involving a drunken driver.

Mr Bracey congratulated TVNZ on its expose, and Mr Holmes on his sensitivity in interviewing the victim. However, he claimed that the lack of reporting of any judicial comments with respect to reports on the victim breached the requirement for accuracy (G1 and G14). Further, the lack of reference to the statutory provisions which require that victims have either a Victim Impact Statement or a Reparation Report for Emotional Harm breached the requirement that broadcasters respect the principles of law. The requirement for balance was breached, he continued, because there was no reference to whether or not a Victim Impact Statement had been made according to the provisions of the Criminal Justice Amendment Act 1987 No 3, and a major omission was made when no information was given as to how the recent ACC legislation affects victims of crime.

In Mr Bracey's view, the public was entitled to be informed of the principles of law and practice, and failure to do so diminished confidence in the criminal justice system. He questioned whether there was a lack of awareness of the provisions and the implications for the victims or whether reporters and producers were suppressing investigative comment to avoid upsetting the judiciary, the police or the probation service.

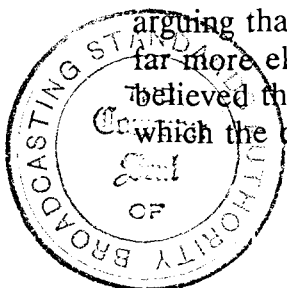
He concluded by thanking TVNZ for its excellent item.

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Bracey of its Complaints Committee's decision in a letter dated 29 August 1993. It reported that it had assessed the complaint under standards G1, G5, G6 and G14 of the Television Code of Broadcasting Practice which were nominated by Mr Bracey.

TVNZ indicated that it had some difficulty in understanding the nature of the complaint, adding that it seemed that Mr Bracey believed that the victim's predicament would have been made clearer had there been a reference to the Victim Impact Statement - if one existed.

It believed that the item drew attention to the impact of the accident on the victim, arguing that the visual images of the woman and her verbal descriptions provided a far more eloquent testimony than any official form could do. It argued that it believed that it was the role of journalists to raise questions about the manner in which the courts function and by contrasting the position of the victim with the



offender, it was left to the viewer to decide whether justice had been done.

TVNZ expressed its view that it was unable to see that the reference to a Victim Impact Statement would have made the story any clearer to the viewer. Nor did it believe that additional comment from the judge was necessary. It concluded that there were no factual inaccuracies.

Turning to standard G5, it reported that the item showed no disrespect for the law although it did raise the question of whether the sentence imposed in this case was appropriate.

With reference to the claim that the item lacked balance, TVNZ asserted that the item was clearly intended to reflect the long term impact on the innocent victim, but that the judge's reasons for the lenient sentence were reported, as was the offender's remorse. The offender, it noted, declined to comment.

In considering standard G14, TVNZ noted that the item raised issues of public concern and did not believe that the item was inaccurate in any way. Although it acknowledged legitimate concern for the victim, it believed the story was approached in an objective manner.

Mr Bracey's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's decision, in a letter dated 12 September 1993, Mr Bracey referred his complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

In response to TVNZ's difficulty in understanding the complaint, Mr Bracey attempted to clarify his arguments.

In his view, few people were aware of the legislation which provides for victims and their families and because few knew of their rights, they could not assert them. As a result, their only public champion was the *Holmes* programme. Therefore, Mr Bracey continued, he assumed that investigative journalists would be conversant with the legislation which empowers victims. He also assumed that the media, in its watch dog role, would inform the public when the machinery of law was not being implemented with regard to victims of crime. Accordingly, in his view, the reporter should have asked the victim whether a Victim Impact Statement or a Reparation Report had been prepared. By omitting this information, he claimed that the reporter was presenting an inaccurate report and showing lack of respect for the principles of law by avoiding any reference to the 1987 legislation.

Mr Bracey enclosed information from a publication entitled "Towards Equality in Criminal Justice" which showed that there was a low level of compliance in furnishing Victim Impact Statements. He believed that the public should be informed that the law was not being implemented.



He asked:

If the Holmes programme is not prepared to ask the awkward and difficult questions who will?

He concluded by suggesting that apparent lenient sentencing was imposed because the consequences of the offence for the victim were not being presented to the court. In his view, the public were entitled to be better informed about their own criminal justice system.

Mr Bracey appended the following:

Copies of 2 letters from the Minister of Police
Information from the Commissioner of Police to police dealing with Victim Impact Statements and Reparation Reports
A proposed letter to victim
A blank Victim Impact Statement
Victims Task Force: Towards Equality in Criminal Justice p. 178
McGinty v Ministry of Transport, AP 146/90 6 September 1990 (1 page)
Submission by Mr Bracey on the Criminal Justice Law Reform Bill

TVNZ's Response to the Broadcasting Standards Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 21 October and TVNZ's reply, 29 October 1993.

In its brief response, TVNZ indicated that it had nothing to add to its previous letter.

Mr Bracey's Final Comment to the Authority

In a letter dated 3 November 1993, Mr Bracey advised that he had no further comment to make.

