

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 44/93

Dated the 19th day of April 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

TREVOR C. HANSEN

of Auckland

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

L.M. Dawson

DECISION

Introduction

The fact that a Coroner had refused to release a body for cremation for about four months, despite requests from the deceased woman's family, was dealt with in an item on TV1's *Holmes* programme broadcast at 6.30pm on 7 December 1992.

Mr Hansen complained directly to the Broadcasting Standards Authority under s.8(c) of the Broadcasting Act 1989 that the item failed to maintain standards consistent with the privacy of the individual. The body was that of his former wife and the item reported that she had developed a drug addiction after the divorce. The item also showed the couple's wedding photograph and, Mr Hansen said, he had been embarrassed by the disclosure. In addition, he said, the item had implied that his lifestyle was similar to that of his former wife.

TVNZ stated that the item had explored the deceased woman's life style and had explained that the drug addiction began after the marriage failure. It pointed out that the marriage was a matter of public record and, denying that the item implied that Mr Hansen's life-style was similar to that of his former wife, maintained that the item had ~~not~~ breached the complainant's privacy.



Decision

The members of the Authority have viewed the item to which the complaint relates and have read the correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing.

Mr Hansen complained directly to the Authority under s.8(c) of the Broadcasting Act 1989 that an item on the *Holmes* programme, broadcast between 6.30 - 7.00pm on 12 December 1992, failed to maintain standards consistent with the privacy of the individual as required by s.4(1)(c) of the Act. The item had dealt with his former wife from whom he had been divorced for 10 years. His former wife had died but, for some four months, the Coroner had not released her body for cremation. The programme called the deceased Dawn Hansen and stated that she had developed a drug habit after the divorce. It also showed a wedding photograph taken when Trevor Hansen (the complainant) and Dawn Hansen (the deceased) were married.

Pointing out that he had been particularly embarrassed by the display of the photograph, Mr Hansen complained, first, that the marriage was irrelevant to a story about the tardy release by the Coroner of his former wife's body, and secondly, that the item implied that he might lead a similar life style with regard to drugs.

Complaints alleging a breach of privacy, unlike complaints on any other grounds, may be made directly to the Authority. Upon receipt of the complaint, it sought the broadcaster's response and in its reply TVNZ said the item was a poignant story containing relevant material about a woman who had had a "rough deal" both in life and in death. The marriage, it added, was a matter of public record and the story made it clear that her drug habit developed after its break-up. There was no implication, TVNZ maintained, that Mr Hansen led a similar life-style.

The Authority agreed with TVNZ on that latter point. The item explained clearly that the drug addiction had developed after the end of the marriage and, furthermore, the Authority decided that there was no implication in the item that after the divorce Mr Hansen's life-style had been similar to that of his deceased former wife.

However, there were a number of privacy aspects which required a more thorough examination. The Authority began by assessing whether the item breached any of the privacy principles set out in Decision No: 19/92 and which are applied by the Authority when assessing complaints under s.4(1)(c) of the Act alleging a breach of the privacy provision. The principles have been made available to all broadcasters in the form of an Advisory Opinion issued by the Authority.

Privacy principles (i) and (ii) provide:

- 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.

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.

Under these principles, the Authority recognised that the complainant's marriage, like all marriages, was a public fact and, moreover, it was always likely to remain so. Although the public disclosure of the former marriage was undoubtedly very embarrassing to Mr Hansen, the Authority accepted that it would not have been offensive to the average member of the public - that is the reasonable person of ordinary sensibilities. Thus the item did not breach privacy principles (i) or (ii).

Another privacy principle possibly relevant to this complaint which is listed in Decision No: 19/92 is principle (iii) which states that a ground for complaint is the intentional interference (in the nature of prying) with an individual's interest in solitude and seclusion. It continues:

The intrusion must be offensive to the ordinary person but an individual's interest in solitude or seclusion does not provide the basis for a privacy action for an individual to complain about being observed or followed or photographed in a public place.

This principle, as well as principles (i) and (ii), was taken into account by the Authority when considering Mr Hansen's point that although the item referred to his former wife's recent de facto relationship and a photograph was shown of a child of that relationship, the de facto partner was neither interviewed nor identified. The principle was also considered when the Authority examined the point that the deceased was referred to in the commentary as "Dawn Hansen" while her coffin when portrayed carried the name "Dawn Hall".

The Authority decided, however, that the principle did not apply as it had already decided that the item contained nothing which was offensive to the ordinary person.

That conclusion on principle (iii) was reinforced by principle (iv) which provides:

- (iv) Discussing the matter in the "public interest" defined as a legitimate concern to the public, is a defence to an individual's claim for privacy.

The Authority had no hesitation in deciding that the situation concerning the deceased's body was a matter of "public interest". Although it would have been possible to approach the story from a number of angles, the Authority concluded that the one adopted by TVNZ did not involve the disclosure of private facts nor did it involve the intentional interference (in the nature of prying) with Mr Hansen's interest in solitude and, accordingly, it did not breach s.4(1)(c) of the Act.

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

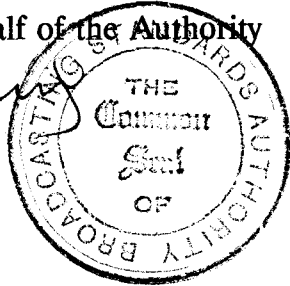


The Authority has considerable sympathy for Mr Hansen. The item revealed part of his life which, it would appear, he would have preferred to have remained in his past. However, as noted above, a marriage is a matter of public record which is unlikely, if ever, to become a private fact.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



19 April 1993

AppendixMr Trevor Hansen's Complaint to the Broadcasting Standards Authority

In a letter dated 12 December 1992, Mr Trevor Hansen of Auckland complained that an item on TV1's *Holmes* programme broadcast on 7 December by Television New Zealand Ltd breached s.4(1)(c) of the Broadcasting Act 1989. That provision requires broadcasters to maintain standards consistent with the privacy of the individual.

The item, Mr Hansen wrote, had featured his former wife, now deceased, and the fact that despite requests from her family, the Coroner had refused to release her body for some four months. The story had mentioned her unhappy life, had shown a close-up of their wedding photograph and reported her drug addiction following the divorce.

Mr Hansen said that he had been divorced for some ten years and that the photograph had been recognised by many people who did not need to know he had been married previously. He had been embarrassed in both his professional and personal life and by the implication that his lifestyle was similar to that of his former wife. He concluded:

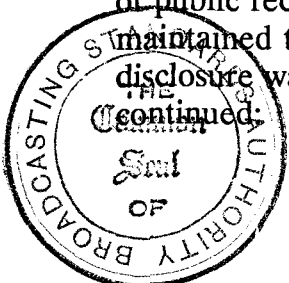
I feel that showing my photo was irrelevant to and added nothing to the story that they were trying to highlight i.e. the difficulty in getting Dawn's body released for cremation.

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 January 1993 and TVNZ's reply, 4 February. TVNZ said that the item on *Holmes* was an investigative piece which explored the reasons for the Coroner's continued refusal to release Dawn Hansen's body some four months after her death. It regarded the story as a poignant one about a woman who had had a "rough ride" in life followed by a "rough deal" in death. She had had an unhappy childhood and, when her marriage failed, she had gone to Australia and had become involved with drugs. TVNZ maintained:

The script made it clear that Dawn's drug habit started after the breakup of the marriage and we do not believe there was any implication in the programme that Mr Hansen "led a similar lifestyle".

In regard to the privacy complaint, TVNZ pointed out that the marriage was a matter of public record and the shot of the wedding photograph lasted eight seconds. It maintained that the marriage had not become, in effect, a private fact and its disclosure was not offensive to a reasonable person of ordinary sensibilities. It



We believe it is important that the news media should be able to recount "facts of history" in news and current affairs programmes. A marriage is a matter of public record, and this particular marriage had relevance to the news story being told.

Respectfully, we do not believe the item encroached on Mr Hansen's right to privacy.

Mr Hansen's Final Comment to the Authority

When asked to comment on TVNZ's response, in a letter dated 15 February 1993 Mr Hansen stated that TVNZ had not only encroached on his privacy but had failed to report the facts of history accurately. That was evident as comments from only one member of the family were reported and that member was alienated from the rest of the family.

Mr Hansen maintained that his privacy was breached as:

- (1) he had been divorced from the deceased for some 12 years;
- (2) since the divorce, his former wife had usually been known by her maiden name and not her married name - Hall rather than Hansen;
- (3) The item had not contained any reference to his former wife's de facto partner who, as father of her son, was surely relevant to the story.

As point (4), he wrote:

Frankly I do not understand why or how a zoomed-in still shot of my face alone was relevant to the story in any way at all. Once again I say, surely photographs of more recent years would have been more pertinent, as they would have dealt with Dawn's circle of people prior to her death, not those of some twelve - fifteen years earlier.

He concluded by suggesting that TVNZ appeared to have little understanding of what most people considered privacy to be.

