

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 73/93

Decision No: 74/93

Dated the 17th day of June 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of complaints by

KERRY SHARP
of Palmerston North

and

KRISTIAN HARANG
of Auckland

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

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

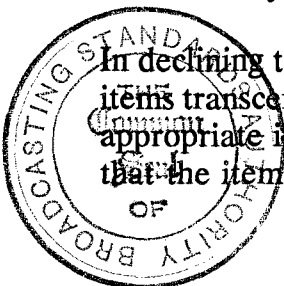
DECISION

Introduction

An item on erotic photography, a segment featuring a nudist colony and a discussion on sex in advertising were some of the items in the first episode of the second series of *Sex* broadcast on Channel Two on 16 March 1993 between 9.30 - 10.30pm.

Mr Sharp complained to Television New Zealand Ltd, the broadcaster, that the items on erotography and the nudist colony were offensive and objectionable and denigrated women by treating them as sex objects. Mr Harang complained that the item on the nudist colony was indecent and that the discussion on sex in advertising was unbalanced.

In declining to uphold any aspect of the two complaints, TVNZ denied that the first two items transcended the boundaries of good taste and decency, commenting that they were appropriate in the context of a series which was aimed at a mature audience. Arguing that the item on erotic photography was not denigratory to women, it maintained that



the reporting of events in a current affairs context did not denigrate the subjects of the investigation. It described the item on sex in advertising as a well balanced discussion which offered opposing views on the subject. Dissatisfied with those decisions, Mr Sharp and Mr Harang referred their complaints to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

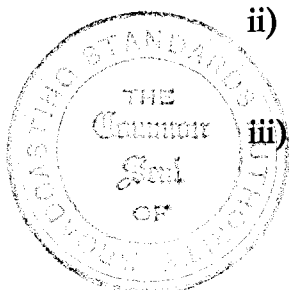
Decision

The members of the Authority have viewed the programme complained about and have read the correspondence (summarised in the Appendices). As is its usual practice, the Authority has determined the complaints without a formal hearing.

Mr Sharp complained to Television New Zealand Ltd about the first episode of the second series of the programme *Sex* which was broadcast on Channel Two on 16 March 1993 between 9.30 - 10.30pm. He described the segments on erotic photography and the nudist colony as offensive, objectionable and in breach of the good taste and decency standard, and claimed in addition that the segment on erotic photography was denigratory to women because they were portrayed as sex objects. In his letter of complaint, Mr Harang described the item on the nudist colony as "blatant pornography" and referred to the segment on sex in advertising as "blatant sexual filth". He also complained that the latter segment was unbalanced because it failed to give the moral conservative viewpoint.

TVNZ reported that it had assessed the complaints against standards G2, G6 and G13 of the Television Code of Broadcasting Practice. These standards 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.
- G13 To avoid portraying people in a way which is likely to encourage denigration of or discrimination against any section of the community on account of sex, race, age, disability, occupation status, sexual orientation or the holding of any religious, cultural or political belief. This requirement is not intended to prevent the broadcast of material which is:
 - i) factual, or
 - ii) the expression of genuinely-held opinion in a news or current affairs programme, or
 - iii) in the legitimate context of a humorous, satirical or dramatic work.

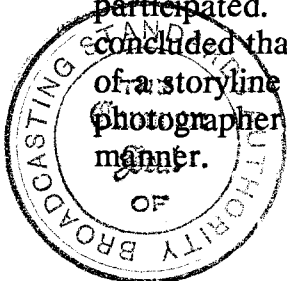


In its responses to both Mr Sharp and Mr Harang, TVNZ explained that the *Sex* series was aimed at a mature audience and that it used a non-judgmental approach in its coverage of many aspects of sexuality, health issues and the sex industry. With regard to the first item on erotic photography (erotography), TVNZ rejected Mr Sharp's description of the segment as "pornographic". It suggested that pornography contained a sinister element whereas erotica, TVNZ's preferred description, had connotations of love and was the more accurate way to describe the work of the photographer. It thus rejected Mr Sharp's claim that the segment was in breach of standard G2. Referring to his complaint that the segment was in breach of G13, TVNZ acknowledged that it could be argued that explicit nude photography denigrated women. However, it argued, in a current affairs context, the item was merely reporting an activity and did not in itself denigrate those who were portrayed.

Although the Authority was unenthusiastic about the item which depicted a woman photographing undressed women for the adult magazine market, it decided that it was not in breach of standard G2 because in the context of the programme it would not have been inconsistent with viewers' expectations. It regarded it as tending to be crass and sleazy but agreed with TVNZ that the item did not constitute pornography in its accepted definition. However, the Authority cautioned, the series ran the risk of over-emphasising this aspect of sexuality. As it observed in its decision on the last series of *Sex* (Decision Nos: 10/93 - 24/93):

... items which portrayed women stripping were shown more frequently than their importance in real life would warrant. In its view the series would have been as effective without those items and it was a sad reflection on society that the producers of the series felt it necessary to include such scenes merely to retain viewer interest.

With reference to Mr Sharp's claim that the item on erotography was in breach of standard G13, the Authority reiterated that the standard refers to denigration of women as a class and not just to those individuals depicted. Although it believed that the principal purpose of the item was to depict a bare breasted woman, it acknowledged TVNZ's argument that an unusual aspect of the item was the fact that the photographer was a woman, herself a former centrefold model. It noted that TVNZ had cut the item by 48 seconds to remove some of the more gratuitous poses, and that the reporting allowed viewers to make up their own minds about erotic photography. The Authority referred to an earlier decision (Decision No: 86/92) where it had concluded that the broadcast of a programme titled *Bikini Jam: Uncovering the Cover Girl* complied with the factual exception in G13 because it was a factual record of a swimsuit contest and the programme makers had made an honest attempt to examine the motives of those who entered such contests. Although there was some coverage of the contestants parading in their brief swimsuits, there was also an interesting story about some of the women who participated. Applying these considerations to the item on erotography, the Authority concluded that on balance standard G13 had not been breached because it had enough of a storyline to comply with the factual exception. It was sufficiently focused on the photographer rather than the nude model and was not presented in an overly salacious manner.



Both Mr Sharp and Mr Harang complained that the item about the nudist colony was in breach of standard G2. They both regarded the item as indecent and offensive, Mr Harang describing the item as "blatant pornography". In its responses to the complainants, TVNZ reiterated that in the context of the series and the late hour of the screening it did not believe that standard G2 was breached. It pointed out that the item provided an interesting insight into a little known aspect of sexuality. The Authority agreed with TVNZ that this was one of the more interesting, informational segments in the programme. It accepted that some people may find nudity offensive, but believed that in the context of the series, it was valid to make an inquiry into behaviour which is sometimes regarded as an aspect of sexuality. It noted that the item was certainly not titillating, nor was it voyeuristic or gratuitous. It portrayed people of a range of ages enjoying activities such as cycling and playing tennis and emphasised the family aspect of the nudist club. The point the item did make was that nudists were not sexually aroused by the presence of fellow nudists. In the context of a series on sex, the Authority concluded that standard G2 had not been breached and declined to uphold this aspect of the complaint.

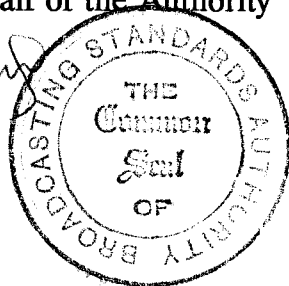
With reference to the item on the role of sex in advertising, Mr Harang maintained that it was "blatant sexual filth" and in breach of standards G2 and G6. TVNZ rejected both aspects of the complaint, responding that the images shown were not in breach of the standard requiring good taste and decency, and that because the item presented a number of perspectives on the role of sex in advertising, it was not unbalanced. The Authority agreed with TVNZ that the topic was a legitimate one to examine in light of current debate about the use of sexual images in advertising. It noted that the discussion canvassed the views of advertising executives who used sexual images because they believed that sex sold products successfully, as well as the view of women who, angry about the way they are treated by advertisers, were becoming increasingly intolerant of the use of sexuality to sell unrelated products. The Authority also agreed with TVNZ that the issues raised in the Pioneer stereo decision, to which Mr Harang referred (No: 68/92), were appropriately canvassed in the discussion about the use of sex in advertising and that a balance of views was presented. The Authority decided that none of the images was in breach of the standard requiring good taste and decency and accordingly declined to uphold the complaint that the item was in breach of standards G2 and G6.

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

Signed for and on behalf of the Authority

Iain Gallaway

Iain Gallaway
Chairperson
17 June 1993



Appendix I

Mr Kerry Sharp's Complaint to Television New Zealand Limited

In a letter dated 18 March 1993, Mr Kerry Sharp of Palmerston North complained to Television New Zealand Ltd about the broadcast on Channel Two of the first episode of the second series entitled *Sex* on Tuesday March 16, 1993 at 9.30pm.

Citing two aspects of the programme to which he objected, Mr Sharp complained that the item on the nudist colony was offensive and objectionable, and the item which featured 'erotography', in addition to breaching the good taste standard, denigrated women by treating them as sex objects.

He expressed his belief that a news report from the USA which found that the majority of people want less sexual content in movies had relevance for New Zealand. He concluded:

Many New Zealanders are equally very concerned, even shocked, at the immoral, unwholesome and thoroughly objectionable content on our television screens.

TVNZ's Response to the Formal Complaint

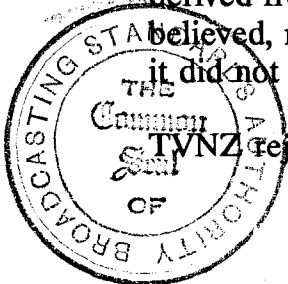
TVNZ advised Mr Sharp of its Complaints Committee's decision in a letter dated 7 April 1993. It reported that it had assessed his complaint under standards G2 and G13 of the Television Code of Broadcasting Practice.

At the outset, TVNZ reported that the *Sex* series followed the same format as the 1992 series, although it was aimed at a more mature audience than the first series. It wrote:

The programme tackles subjects which are informational, or of interest to older people, and to those who have been in long-term relationships. Matters to do with sex, sexuality, health issues, and the sex industry are encompassed in the content.

Dealing with the specific complaints, TVNZ noted that the first item concerned a female photographer who specialised in erotica. TVNZ disagreed with Mr Sharp that the item was pornographic, suggesting that in order to be pornographic the material must have a sinister element to it. It noted its etymology from the Greek "pornographos" - the writing of harlots. In contrast, it noted that the word "erotica" derived from the Greek "erotikos" meaning love. The definition of erotica, TVNZ believed, more accurately reflected the work of the photographer. Given the context, it did not find that the item breached the boundaries of good taste and decency.

TVNZ rejected Mr Sharp's assertion that the item denigrated women, pointing out



that in this case the item reflected the reality of life and reported on it. It acknowledged that:

a case can be argued that explicit nude photography denigrates both men and women, but reporting in a current affairs context on an aspect of the sex industry does not in itself denigrate those who are studied.

In this instance, it did not believe that the women were denigrated and commented that "both emerge as individuals of interest in an unusual and unfamiliar working environment."

TVNZ also observed that its appraisers had cut the item by 48 seconds because some of the visuals bordered on being gratuitous.

With reference to the item on the nudist resort, TVNZ explained that it was the final segment in the programme and was aired close to 10.30pm. It had attempted to find out what goes on in a nudist resort. The view among those interviewed appeared to be that nudity was natural and not sexually provocative. TVNZ concluded that because the item was not presented in a gratuitous or voyeuristic manner, it was not in breach of the good taste requirement and declined to uphold the complaint.

Mr Sharp's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's reply, in a letter dated 17 April 1993, Mr Sharp referred his complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

The items, Mr Sharp wrote, were objectionable and offensive and unsuitable to broadcast on national television in New Zealand. He described the item on erotography as the gratuitous use of a woman's breasts with no valid educational purpose. He rejected TVNZ's distinction between pornography and erotica, noting that other dictionary definitions revealed that the two were the same - "essentially designed to arouse sexual excitement". Mr Sharp argued that even if the models were there by free choice, it could in no way be justified. He cited the mounting evidence which linked rapes and violent attacks with pornographic magazines and videos, and recent research which showed that where censorship was reduced, pornography increased as did attacks on women and girls.

Mr Sharp rejected TVNZ's argument that the item on the nudist resort was acceptable at the late hour at which it was screened, claiming that it would never have been appropriate to show on national television. He accused TVNZ of pushing the line of decency and ascribed part of the blame for the suffering of abused children and rape victims to the advocates of sexual freedom and liberality promoted by TVNZ and others. He wrote:

The behaviour fuelled by pornography has greatly increased sexual molestation, rape and the oppression of the weak. It degrades women and



animalises men.

He accused TVNZ of "assisting the collapse of our nation's culture by screening the SEX series which includes pornography!"

Mr Sharp appended an article entitled "Pornography Warps Men's Attitudes".

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 21 April 1993 and TVNZ's reply 27 April.

TVNZ commented that it had little to add to its previous letter. It explained that it did not agree with Mr Sharp that the item on erotography denigrated women. It acknowledged that it was possible that women who posed nude were denigrated in the process but did not believe that an item which recounted the activity is in itself denigratory. It believed that the media had a responsibility to draw the activity to public attention so that people could make up their own minds. TVNZ explained that in keeping with the non-judgmental nature of the programme, the item merely reported on the activity. It did not believe that standard G13 was breached nor G2.

With reference to the item about the nudist colony, TVNZ explained that it "was a legitimate look at a lifestyle which is the subject of public curiosity." It rejected any suggestion that the naked bodies were in any way erotic.

In concluding, TVNZ challenged Mr Sharp's definition of pornography, and his assertion that its prevalence has been as a result of television. It cited examples of pornographic writings and art in various civilisations since the ancient Greeks. It claimed that Mr Sharp was wrong to use the word pornography to refer to the "relatively inoffensive, never violent, material to which he objects."

Mr Sharp's Final Comment to the Authority

In a letter dated 1 May 1993, Mr Sharp responded to TVNZ's reply, accusing it of justifying the programme content by redefining the meaning of pornography to suit its own interest. In his view, there was no distinction between pornography and erotica and the detrimental effects on women and children were the same.

He expressed his disappointment that TVNZ was pushing the boundaries of decency, commenting that it was irresponsible to do so. He wrote:

Sex is like dynamite. Either handle it according to the proven universal traditional moral standards, or it will blow up and destroy us. In fact, this disaster is already happening in New Zealand and around the world.

It is time for a change for the better. How many more women and girls will



suffer violence, rape or murder before the authorities in New Zealand begin to give decisions that require broadcasters to clean up their television programmes?

He concluded with a plea to TVNZ to improve the standard of television in New Zealand.



Appendix II

Mr Harang's Complaint to Television New Zealand Limited

In a letter dated 17 March 1993, Mr Kristian Harang of Auckland complained to Television New Zealand Ltd that episode 1 of the second series *Sex* which was broadcast on Channel Two on 16 March between 9.30 - 10.30pm contained material that was indecent and unbalanced.

In particular, he objected to the items about a nudist colony and on sex in advertising. He described the item on the nudist colony as "blatant pornography", and claimed that the item on sex in advertising was unbalanced because it failed to give the moral conservative viewpoint.

He concluded by stating:

It was just blatant sexual filth.

TVNZ's Response to the Formal Complaint

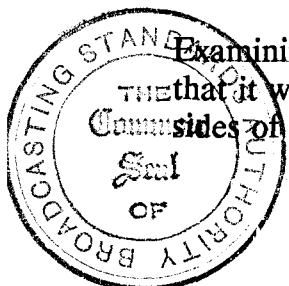
TVNZ advised Mr Harang of its Complaints Committee's decision in a letter dated 8 April 1993.

It reported that it had assessed Mr Harang's complaint under standards G2 and G6 of the Television Code of Broadcasting Practice which require broadcasters to maintain standards of good taste and decency and to show balance in all questions of a controversial nature. In its prefatory remarks, TVNZ wrote:

At the outset, the Committee noted that the new series of "Sex" is following the same format as that employed in the series broadcast last year. While maintaining its detached and non-judgemental approach to the subject matter, the new series is aiming at a more mature audience than was the case with the initial series. The series tackles subjects which are informational and of interest to older people and to those who have been in long-term relationships. Matters to do with sex, sexuality, health issues and the sex industry are encompassed in the context.

Referring to the complaint about the nudist colony, TVNZ reminded Mr Harang that it was the final segment in the programme, screened close to 10.30pm. It considered that the item provided an interesting insight into an aspect of sexuality which was not well known, and argued that because the material was not presented in a voyeuristic or gratuitous manner, there was no breach of standard G2.

Examining the second item about which Mr Harang complained, TVNZ took the view that it was a straightforward account of a widely discussed issue. It believed that both sides of the argument about sexism in advertising were articulately addressed and



accordingly, that it was not in breach of standard G6. Further, it did not find that any of the images screened were in breach of the standard of good taste and decency (G2).

In conclusion, TVNZ commented on Mr Harang's use of the word "pornography", pointing out to him that it was an inappropriate term to describe the content of the *Sex* series.

Mr Harang's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's decision not to uphold the complaint, in a letter dated 10 April 1993, Mr Harang referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

He repeated his contention that the items featuring the nudist colony and sex in advertising contained material that was objectionable to many people. He believed that it contradicted the BSA's Decision No: 68/92 which had upheld a complaint about the use of sexual appeal to sell an unrelated product. He reiterated that the items lacked balance, because there was no alternative viewpoint about abstinence and chastity. This viewpoint, in his opinion, had been upheld by the Authority in its Decision No: 20/93.

TVNZ's Response to the Authority

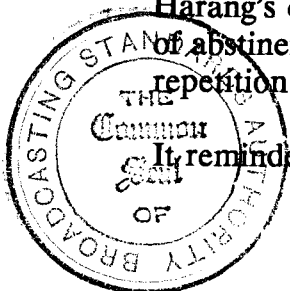
As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 15 April 1993, and TVNZ's reply, 28 April.

TVNZ commented that it had little to add to its previous letter. It wrote:

It is our observation that the new series has extended its constituency somewhat so that, while continuing to promote the safer sex message and provide basic advice on sexual matters, it also offers glimpses of life which provide information about options for those in sexual relationships to enhance those relationships, and it has spread its net more widely than did the series last year in examining aspects of the sex industry, and the various sexual lifestyles to be found in the community.

It disagreed with Mr Harang's interpretation of the Pioneer Electronics advertisement Decision (No: 68/92) and the Decision on the previous series of the programme *Sex* (No: 20/93). It noted that the item about sex in advertising raised the very issues that Decision No: 68/92 raised, and that Decision No: 20/93 did not uphold Mr Harang's complaint that insufficient attention was given to the alternative viewpoints of abstinence and chastity but upheld the complaint only on the ground that the repetition of an item out of context was gratuitous.

It reminded Mr Harang of the warnings which preceded the programme advising



viewer discretion, the late hour at which it was broadcast, and the fact that some cuts had been made before the programme was screened in New Zealand.

Mr Harang's Final Comment to the Authority

When asked to comment briefly on TVNZ's response, in a letter dated 4 May 1993 Mr Harang repeated his view that the scenes which offended him were injurious to the public good. Referring to the Authority's Decision No: 68/92, he repeated that using sex in advertising was decided against by the Authority. He wrote:

TVNZ cannot say they are non-judgemental when the whole message of their sex programmes coming through very strongly is that of pushing a philosophy of free sex, sex outside marriage, outside commonly accepted norms of decency in our society.

