

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 98/93

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Dated the 19th day of August 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of complaints by

ROSEMARY McELROY

of Auckland

and

LYNDA PRYOR

of Papakura

Broadcaster

TELEVISION NEW ZEALAND

LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

L.M. Dawson

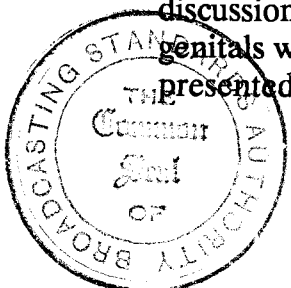
DECISION

Introduction

Explicit shots of female genitals were shown in episode 7 of the second series *Sex* broadcast on Channel Two on 11 May 1993 between 9.30 - 10.30pm.

Mrs McElroy and Mrs Pryor complained to Television New Zealand Ltd that the item was in breach of broadcasting standards because it was indecent and offensive, and was demeaning and humiliating to women.

Responding that the item provided clinical and useful information, TVNZ explained that it approached the subject in a non-voyeuristic manner and was an appropriate subject for discussion in the context of the series. It denied that the explicit descriptions of female genitals would denigrate women, arguing that the manner in which the information was presented was not denigratory. It declined to uphold either aspect of the complaints.



Dissatisfied with that decision, Mrs McElroy and Mrs Pryor referred their complaints to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

### Decision

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

Mrs McElroy and Mrs Pryor complained to TVNZ Ltd that the item on the care and cleaning of female genitals in episode 7 of the second series of *Sex* broadcast on Channel Two between 9.30 - 10.30pm on 11 May was in breach of broadcasting standards.

In particular, they each wrote, such an explicit depiction of genitalia contravened the standard for good taste and decency, was unnecessary and included only to titillate. Both complainants rejected TVNZ's argument that the item provided important education and information, noting that the information was readily available from books. Mrs Pryor expressed her outrage at the showing of the young girl's genitals on television, commenting that TVNZ's explanation - to inform viewers about changes as the body matures - could not be rationalised when it also claimed that the programme was aimed at adults, for whom such changes had already occurred.

Mrs McElroy also claimed that the item breached the standard which requires broadcasters to avoid encouraging the denigration of women. She argued that it was demeaning and insulting to portray a woman's genitals and further, that this type of explicit material has been linked to those who commit sexual crimes.

TVNZ advised both of the complainants that it had assessed their complaints against standards G2 and G13 of the Television Code of Broadcasting Practice. Those 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.
- 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, 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
 in the legitimate context of a humorous, satirical or dramatic work.



TVNZ prefaced its response to the complainants with some general remarks about the programme, observing that it was screened one hour into AO viewing time, was preceded by a verbal and on-screen warning and that its title was "an unambiguous statement of its content." It noted that the programme was clearly aimed at young adults and aimed to provide information about various aspects of sex and sexuality.

With respect to the item "which offered advice to women on the care of the vulva", TVNZ explained that its decision to show it had not been taken lightly. It justified its inclusion in the programme, noting that a good deal of useful information was conveyed in a clinical, non-voyeuristic fashion, adding that it believed some of the information would have been new and important to some women. It likened this item to one screened in the first series of *Sex* which dealt with the care and cleaning of the penis and how to identify testicular cancer and had been the subject of a complaint to the Authority. In its decision on that complaint, the Authority, it noted, had declined to uphold the complaint, on the grounds that it conveyed useful information. TVNZ also referred to the survey which was commissioned by the Authority which appeared to accept depiction of genitals on television, provided that the medical and educational rationale was emphasised.

Responding to Mrs Pryor's complaint that there was no justification for the inclusion of the young girl's vulva, TVNZ noted that the intention was to show women the changes that occur with maturation, and to alert them should any other change be detected.

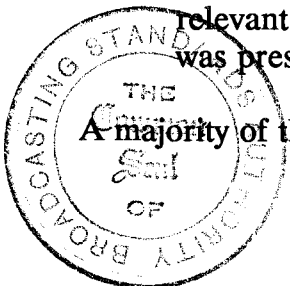
The Authority acknowledged that the results of the survey cited by TVNZ revealed that:

In conclusion, New Zealand society in general, inasmuch as it could be represented in this non-randomly selected set of focus groups would appear to accept this programme as useful and valid television. Furthermore, they would be prepared to accept more of the same and would accept some that "goes further" than that shown so long as the educational and medical rationale was emphasised.

In other words, ordinary New Zealanders appear to be willing to see explicit portrayals of genitals, provided that there was some educational or medical purpose. The Authority notes that in a previous decision (Decision Nos: 96/93 and 97/93) about episodes 4 and 5 of *Sex* a complaint was made that male and female genitals infected with the herpes virus, and the process of taking a pap smear were shown. The Authority wrote:

Acknowledging the results of the research, and accepting that in the context of the programme, discussion about medically-oriented aspects of sex was important, the Authority decided that depictions of the herpes-infected genitals and of the pap smear procedure were not in breach of standard G2. It recognised that for some viewers, such depictions would have been confronting and even disturbing, but felt that in the context of this series, the information was conveyed to viewers was relevant to one of the series' themes - of sexual health, including safer sex - and was presented in a clinical, professional manner.

A majority of the Authority made a distinction between the two items described above



and the item which is the subject of this complaint. In the first place, the appearance of a healthy, disease-free vulva seemed to obviate the medical rationale which otherwise might have justified its inclusion. Secondly, the majority looked for a possible "educational" angle to the item. It noted that two photographs were shown - one of an adult woman's genitals and one of a young girl's. Parts of the genitals were identified by name and a comparison was made between the two, supposedly to identify changes as the body matures. In the view of the majority it was unnecessary to screen a photograph of spread labia to convey that information, which could have been done just as clearly and more inoffensively by means of a diagram. The majority upheld the complaint that this part of the item was in breach of standard G2.

The majority questioned the need for the inclusion of the young girl's genitals, concurring with Mrs Pryor when she wrote that TVNZ's rationale for including that segment (so that viewers would know what changes to expect during maturation) was not consistent with its description of the programme as being designed for young adult viewers, all of whom would have already gone through such changes.

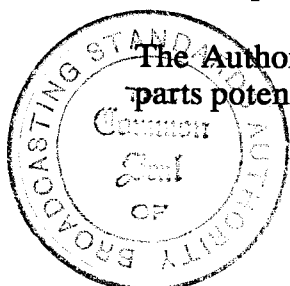
Accepting that for many women the explicit portrayal of genitals would be confronting, the minority was of the view that in the context of the medically-oriented discussion led by Dr Phelps, the photographs of both the adult woman's and the young girl's genitals were acceptable to use by way of illustration.

With reference to the second part of the item, which included an explanation about the washing of the vulva, the majority drew a distinction between this item and the item on penile cancer and testicular cancer which was screened in the last series. It noted that certain diseases of the penis were related to lack of hygiene and that information about identifying possible testicular cancer - like that about breast cancer - needed to be demonstrated rather than told. The items about pap smears and herpes in earlier episodes, it noted, were in similar vein to the item on penile and testicular cancer. They demonstrated symptoms and gave important medical information. However, the majority did not agree that information about washing of women's genitals constituted medical advice, and was inclined to share the complainants' view that the close-up demonstration of washing and the discussion was patronising to women. It was unable to accept that the inclusion of this segment could be justified on medical grounds and did not accept that there was any other justification for it. Accordingly, it upheld the complaint that this segment was in breach of standard G2.

The minority was of the view that the discussion about washing the vulva was legitimate, although was inclined to agree with the majority that the close-up demonstration was patronising.

Mrs McElroy also complained that the item was demeaning and denigratory to women and in breach of standard G13. TVNZ acknowledged that the frank discussion may have been discomfiting to many women, but because the information was presented in a clinical, professional manner, it did not demean or denigrate women.

The Authority noted Mrs McElroy's argument that the display of their most intimate parts potentially puts women at risk of sex offenders and acknowledged that unnecessary



display of a woman's genitals, which in most societies throughout history have been kept covered, was psychologically invasive to many women. However, in a previous decision where it has interpreted the standard (Decision No: 86/92) it wrote:

The complainants and the broadcaster have approached the complaint on the basis of whether or not it encouraged denigration of or discrimination against women. The Authority has defined denigration as a "blackening" of a reputation of a group and has ruled that a high level of deprecation is necessary for a programme to encourage denigration. It has defined discrimination to mean any practice that makes distinctions between individuals or groups so as to disadvantage some and to advantage others. However, when taking into account the full provisions of standard 26 [G13], the Authority has decided that it is not necessary to determine the denigration and discrimination issues traversed by the parties as it is provided in paragraph (i) of standard 26 [G13] that the requirements in that standard are not intended to prevent the broadcast of factual material.

In the Authority's opinion, that exception applies only when a programme unequivocally advances fact rather than the attitudes of the programme makers.


The Authority agreed that because the item was factually accurate, it complied with the exception envisaged by standard G13(i). Accordingly it declined to uphold the complaint that it was in breach of standard G13.

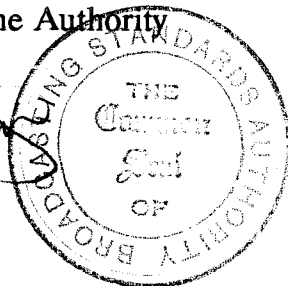
**For the reasons set forth above, a majority of the Authority upholds the complaint that the item on female genitals in Episode 7 of the second series of *Sex* broadcast on 11 May 1993 was in breach of standard G2 of the Television Code of Broadcasting Practice.**

**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 because the breaches were not major given the context of the programme which was about various aspects of sex and sexuality.

Signed for and on behalf of the Authority

  
Iain Gallaway  
Chairperson  
19 August 1993



## Appendix I

### Mrs McElroy's Complaint to Television New Zealand Limited

In a letter dated 12 May 1993, Mrs Rosemary McElroy of Auckland complained to Television New Zealand Ltd about an item on episode 7 of the series *Sex* broadcast on Channel Two on 11 May 1993 between 9.30 - 10.30pm.

Mrs McElroy expressed her distaste of the item which featured female genitals, arguing that such explicit pictures were contrary to standards of decency and good taste. She maintained that the whole programme was designed to titillate and rejected any excuse that it might be educational. She also argued that it was demeaning and humiliating to women to display female genitals, pointing out:

In a climate where women are constantly fearful of sexual attack, it presents another danger in that male respect is eroded as all modesty and privacy is stripped away.

She described the instructions on how a woman should wash herself as insulting and concluded by adding that she believed that this programme has overstepped what is acceptable on national television and that "it deliberately sought to entertain in a salacious manner."

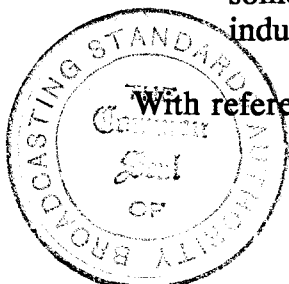
### TVNZ's Response to the Formal Complaint

TVNZ advised Mrs McElroy of its Complaints Committee's decision in a letter dated 28 May 1993. It reported that the complaint had been considered under standards G2 and G13 of the Television Code of Broadcasting Practice which require broadcasters to take into consideration accepted norms of decency and taste in language and behaviour and to avoid portraying people in a way which is likely to encourage denigration on account of sex.

Its prefatory remarks explained that the programme was screened at 9.30pm which is one hour into Adults Only viewing time, that it was preceded by a warning advising viewer discretion and that the nature of the series was widely known and its title an unambiguous statement of its content.

It [the Complaints Committee] observed that "Sex" is quite clearly aimed at young adults, as well as the sexually active older section of the population. The series aims to provide a wide spread of information - some of it medical, some of it aimed at reducing the risk of sexually transmitted diseases, some of it aimed at assisting those who are unhappy about their sexual relationships, some of it providing an insight into what goes on within the worldwide sex industry and some simply interesting.

With reference to Mrs McElroy's specific complaint, TVNZ noted that its decision to



show the item had not been taken lightly, but that it believed the information conveyed would have been useful and some "seemed new and important". It referred to the item on care of the penis which was screened in the last series and which was the subject of a complaint which had not been upheld by the Broadcasting Standards Authority. It also referred to the public opinion survey which had been commissioned by the Authority which appeared to accept that items which had an educational and medical rationale were acceptable in the programme.

It concluded that the item on female genitals, because it was educational and not presented in a voyeuristic manner, did not breach the standard for good taste and decency. With respect to the G13 aspect of the complaint, TVNZ noted that it recognised that such frank and explicit descriptions were confronting and even embarrassing. However it did not agree that the manner in which they were presented amounted to denigration of women.

### Mrs McElroy's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's response, in a letter dated 15 June 1993, Mrs McElroy referred her complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

Mrs McElroy challenged TVNZ's argument that the programme's educational value overrode other considerations of what was appropriate regarding public expectations of decency on television. She objected to the display of a woman's most intimate parts for what she considered prurient purposes. She wrote:

As for the much touted medical aspect, I consider the visual depiction of the vulva and the suggestion from TVNZ that women would find it 'new and important' to be told to wash this area and even how to go about it patronising and insulting. Since the beginning nature has had a way of indicating when a bath is necessary!! The flavour of the series is clearly lascivious and I consider the display of female vulva a non-medical issue and in accord with pornographic intent.

Mrs McElroy considered that such explicit material was designed to titillate rather than educate and that women and girls paid the ultimate price for the feeding of men's lusts.

Responding to TVNZ's argument that the programme was intended for adults and was preceded by a warning, she noted that many children stayed up late and watched everything and that other people may see this material by accident, having just turned the television on or changed channels. Mrs McElroy also doubted the validity of the opinion poll cited by TVNZ, noting that a huge number of viewers avoided the programme completely. She concluded by stating:

I was enraged, and all the more so because the government has a stated policy to curb indecent material.



I consider the education excuse a lie.

**TVNZ's Response to the Authority**

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 17 June 1993 and TVNZ's reply, 29 June.

Rejecting Mrs McElroy's use of the term prurient to describe the material in the item, TVNZ asserted:

the subject was handled in a straightforward and clinical manner and was devoid of the prurience detected by Mrs McElroy.

In explaining why the programme chose to be very explicit in dealing with health issues (such as this one, that dealing with testicular cancer, the one concerning smear tests, and that which provided advice about self examination for breast cancer - to name a few) consultant Dr Kerry Phelp said:

It is not sufficient just to tell. You need to show it as well. People need to have very detailed and specific knowledge about sexual practices, sexual relationships, and their own bodies in order to protect themselves. Some of our images are quite confronting. Unless you tell people exactly what you are talking about and show them exactly what you are talking about they'll walk away thinking - what were they on about?

TVNZ observed that in deciding to show this item it had taken into account the analysis on public attitudes to *Sex* undertaken for the Broadcasting Standards Authority by a unit at Massey University, which was published in March 1993. That study indicated that almost all of the participants would have accepted the type of material in this item, provided that it was educational and informational.

With respect to Mrs McElroy's concern that explicit images contribute to sexual offending, TVNZ suggested that sexual offences were triggered by a number of factors and that there was no evidence to suggest that information about sexual matters "treated in a non-voyeuristic and clinical manner" would cause sexual offences.

TVNZ also rejected Mrs McElroy's argument that the programme would adversely affect children, pointing out that it was screened well into adult viewing time and was preceded by a verbal and on screen warning.

Finally, in response to Mrs McElroy's criticism of the opinion poll which revealed that the programme *Sex* was useful and valid, TVNZ wrote:

Television New Zealand observes that the published analysis suggests a very professional and studious approach to the subject. We would be surprised if





the Broadcasting Standards Authority had put its name to an analysis of this nature that was not properly conducted.

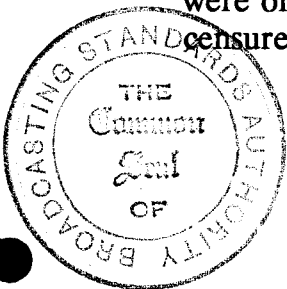
**Mrs McElroy's Final Comment to the Authority**

In a letter dated 9 July 1993, Mrs McElroy maintained that there was "nothing significant" regarding health in the item. She considered that the decision to confront people with the depiction of a woman's genitals was patronising and suggested that people were "too dumb to receive information through the ear-gate or in a dignified manner". She noted that the recent cervical smear campaign was done in an inoffensive manner.

Mrs McElroy also challenged TVNZ's rejection of her argument of the link between sex offending and pornography, pointing out that a recent programme on TVNZ had interviewed men who rape and who admitted having extensive libraries of pornography.

Responding to TVNZ's argument that the subject was handled in a clinical manner, Mrs McElroy suggested that "there was nothing professional or clinical about the blonde floosie in the pink dress who introduced the item". She concluded:

The fact that Mr Edmunds said in his letter to me (28 May) that the item involved considerable discussion within TVNZ indicated that they knew they were on dangerous ground. They were worried that they would come under ~~the~~ censure but decided they would take the risk anyway.



## Appendix II

### Mrs Pryor's Complaint to Television New Zealand Limited

In a letter received by TVNZ on 20 May 1993, Mrs Lynda Pryor of Papakura complained to Television New Zealand Ltd that the broadcast of episode 7 of the second series of *Sex* on 11 May 1993 breached broadcasting standards because it contained material that was "totally disgusting and degrading to women and men alike."

She accused TVNZ of being only concerned with ratings and insulting her intelligence by labelling the programme as educational. She asked why it was necessary to show female genitals, commenting that she felt her privacy was invaded and that she felt humiliated. She added that showing a young girl's genitals was "well over the top".

In her view, such material would provide odd thrills for "sick, dirty voyeurs". She concluded:

TV has already anaesthetised the public to violence, you are definitely trying to do the same with sex. One day there will be a backlash against this (as there is with violence), so I'd use your grey matter to come up with some real 'art' on TV. Something that requires more than naked children.

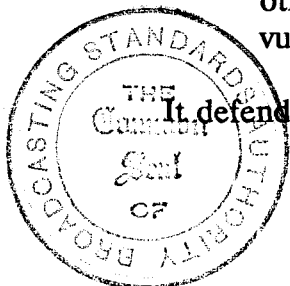
### TVNZ's Response to the Formal Complaint

TVNZ advised Mrs Pryor of its Complaints Committee's decision in a letter dated 28 May 1993. It noted that the series was broadcast at 9.30pm, in AO time, and was preceded by a verbal and on-screen warning advising viewer discretion. It explained that the programme was quite clearly aimed at young adults as well as older people and that it aimed to provide a variety of information about different aspects of sex and sexuality and that it refrained from making any judgment on the activities which it portrayed. TVNZ also noted that the programme had been subject to censorship cuts before screening in New Zealand and that its programmers had taken into account the Authority's decision on the last *Sex* series (Decision Nos: 10/93 - 24/93), referring to the screening of an item on the penis, and the results of a focus group study carried out by Mr Chris Watson, Senior Lecturer at Massey University.

With reference to the specific item - the care of the female genitals - TVNZ wrote:

The Committee noted that the item approached the subject in a very clinical, non-voyeuristic fashion and that it frankly and openly provided a good deal of useful information. Some of it might have been familiar to some women - but other information, such as the fact that women should not rely solely on the vulva being a self-cleaning organ, seemed new and important.

It defended its inclusion of the reference to the pubescent vulva, stating that it was



included in a segment which explained how organs change with age. The intention, it continued, was to indicate that such change was natural and expected and to alert women should they notice any other kind of changes.

TVNZ declined to uphold the complaint.

### Mrs Pryor's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's decision, in a letter dated 29 May 1993, Mrs Pryor referred her complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

She reiterated her complaint that the screening of pubescent female genitalia on television was outside any conceivable standard of decency and taste. She argued that TVNZ could not rationalise the showing of pubescent genitalia when it claimed that the series was directed at an adult audience, all of whom would have been through this natural change. She urged for the remainder of the series to be censored in a stricter manner.

Mrs Pryor expressed her dissatisfaction with TVNZ's response to her complaint, noting that it did not address the real problem of a decline in moral standards. She wrote in her Complaint Referral Form:

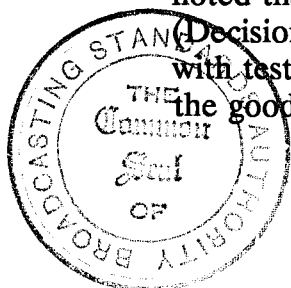
We were also disturbed with the belief that only religious and overseas cultures find this programme disturbing. We don't belong in either categories and certainly we are comfortable with topics on sex, providing they are necessary to the people watching that time slot. Because something is "generally accepted" doesn't make it right.

Mrs Pryor concluded by acknowledging that some items on *Sex* were interesting and worthy of inclusion.

### 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 June 1993, and TVNZ's reply, 28 June.

TVNZ explained that its decision to show this item was taken after studying the recommendations and conclusions of the analysis of public attitudes towards the screening of the first series of *Sex* which had been commissioned by the Broadcasting Standards Authority. It observed that most of the participants believed that portrayal of such explicit items was justified in a medical and educational context. TVNZ also noted that it had taken into account the Authority's decision on the first series of *Sex* (Decision Nos: 10/93-24/93) in which it found that a similar type of item, dealing with testicular cancer and keeping the penis clean and healthy, was not in breach of the good taste and decency standard.



In response to Mrs Pryor's argument that it was unnecessary to screen pictures of the pubescent vulva when the target audience was clearly older, TVNZ explained that it was useful for parents who sought to give reassuring answers to their children about the process of change.

Arguing that the Authority had accepted the validity of an approach which accepted rather than passed judgment on the lifestyle of its target audience, TVNZ pointed out that the programme deliberately

avoided adopting a lecturing, hectoring, or moralistic approach - believing that such an approach would only drive away those for whom the information is intended.

It concluded by pointing out that the role of television was to reflect society as it was, rather than to change it. It also noted that Mrs Pryor had incorrectly assumed that the series was withdrawn in Australia, observing that it ran through to its scheduled conclusion. The decision that was made was that it would not make a third series.

#### Mrs Pryor's Final Comment to the Authority

When spoken to on 4 August 1993, Mrs Pryor advised that she did not wish to respond to TVNZ.

