

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 28/90  
Dated the 19th day of December 1990

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

PATRICIA BARTLETT  
of Lower Hutt  
(on behalf of the  
the Society for Promotion of  
Community Standards)

Broadcaster  
TELEVISION NEW ZEALAND  
LIMITED

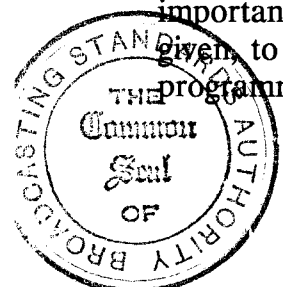
I.W. Gallaway Chairperson  
J.B. Fish  
J.L. Hardie  
J.R. Morris

DECISION

Introduction

At 8.35 pm on 30 September 1989, TV2 broadcast a programme entitled "Safer Sex". The programme had an 'AO' certificate and was broadcast with an appropriate warning. The production had been co-financed by TVNZ Ltd and the Health Department and the Authority was advised by TVNZ that it was an information special which had set out to alert young adults to the dangers of unprotected sex in an entertaining and informative manner. The programme's target audience was in the 16 to 25 years of age range and it averaged a rating of 20% .

On behalf of the Society for Promotion of Community Standards Inc., Miss Patricia Bartlett made a formal complaint to TVNZ alleging that in broadcasting the programme the company had breached its statutory responsibilities under the Broadcasting Act 1989 to maintain standards consistent with first, the observance of good taste and decency (section 4(1)(a)) and secondly, the principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest (section 4(1)(d)).



Because Miss Bartlett's complaint was not upheld by TVNZ's Complaints Committee, she referred her complaint to the Authority for an investigation and review of the broadcaster's decision.

### Miss Bartlett's Complaint

The thrust of Miss Bartlett's complaint, as made first to TVNZ on 21 October 1989 and subsequently in referring the matter to the Authority on 13 February 1990, can conveniently be summarised in two parts as follows:

#### **Good Taste and Decency**

1. The programme did not put forth a moral code in sexual behaviour. Moral codes such as marriage were ignored or not considered relevant. Sex was stripped of its dignity and treated as a big joke, as something that one should have whenever one feels so inclined. The representative of the Family Planning Association, Mrs Lusk, acted in bad taste and was offensive in advocating the touching of female breasts, the clitoris, the penis and balls as "ways to not go all the way and have intercourse". By saying that masturbation produced orgasm, Mrs Lusk implied that this was good behaviour whereas the 1942 edition of the Oxford Dictionary defined masturbation as the "practise of self-abuse". It is most unlikely that young people pleasuring each other as recommended could stop before intercourse.
2. The "Simon and Sara" skit conveyed the inaccurate impression that Simon, who had the wart virus, did not need treatment while Sara needed to continue to have smear tests and coposcopy treatment. It was in bad taste to hold up this promiscuous couple as "safe" and worthy of praise and imitation.
3. The "Professor Condom" skit exceeded the bounds of good taste and decency in asking young people to place a condom over a foam replica of a penis. Some of the accompanying dialogue, like "I go where you cum", was crude and offensive.
4. The "Lerv Connection" skit held up a bisexual male as the safest partner for a girl because he used condoms. The skit was inaccurate because bisexual males are in the high risk group for contracting Aids. Condoms have a 15% failure rate with anal sex, so it is very likely a bisexual male will contact Aids and pass the virus to female partners. The heterosexual male partner who does not use condoms is not in the high risk group for contracting Aids or HIV. It was in bad taste not to include in the programme as broadcast the comments of a youth who thought he would keep sex until marriage.

#### **Lack of Balance**

1. The programme was unbalanced in that while 6 skits lasting 19 minutes were spent on promoting condom usage, only 1 skit lasting 4 minutes was spent



on saying "No". The amoral approach taken by the programme was a controversial issue of public importance and should have been balanced by the presentation of a significant point of view, such as the Christian moral ethic, which does not agree with that approach. There should have been a compere who upholds the Christian ethic, such as Ian Grant, a man with extensive experience in working with young people both on and off television.

2. There should, by way of balance, have been at least one skit promoting sex in marriage as a life-long commitment.

3. Divorcing sexual morality from marriage and treating sex as a commodity which can be used at the drop of a hat, as does the FPA, the Education and Health Departments, is resulting in high ex-nuptial and abortion rates. A balanced programme would have exposed the dangers in this amoral approach.

4. None of the three doctors expressed genuine concern about promiscuous life-styles. All they wanted to do was to promote the use of condoms. (Are they employed in any way by the FPA?) The inclusion of caring family doctors would have provided some balance.

5. The approach adopted in 6 of the 7 skits, i.e. that sex is for gratification and nothing else, was unbalanced. The procreative side should have been given equal importance to the pleasure side. The importance of the pill in encouraging sexual promiscuity should have been highlighted since one of the chief causes of chlamydia in girls is having sex at an early age with different partners. The role of the FPA in distributing the pill to girls under 16 years of age without their parents' consent should have been recognised.

6. To balance the "Safer Sex" programme, TV2 should broadcast the Australian programme "It's OK to say NO" at 8.35 pm one evening. The programme promotes chastity and marriage, is balanced, and is not offensive or in bad taste.

7. The audience appeared to have been manipulated and biased as certain comments made by young Christians in the studio audience were not included in the programme as broadcast.

### **TVNZ's Response**

In a letter dated 19 December 1989, the decision of TVNZ's Complaints Committee was forwarded to Miss Bartlett. Subsequently, in a letter dated 9 July 1990, TVNZ submitted additional comments following the referral of the complaint to the Authority. These latter comments drew extensively upon statements made in a Decision of the Broadcasting Tribunal (No. 10/90 of 31 January 1990) on a similar complaint brought by Miss Bartlett about the programme "First Aids" broadcast in September 1987.



In both letters, TVNZ refuted the various allegations made by Miss Bartlett. For the purposes, therefore, of matching each of the numbered allegations put forward on behalf of the Society under the headings of good taste and decency and balance, comments will be extracted from both letters and merged to provide a single response to those allegations.

### **Good Taste and Decency**

Before responding to each of the specific allegations covering breaches of standards of good taste and decency, TVNZ's Complaints Committee first examined the fundamental question of whether or not "Safer Sex", as a programme in itself, was capable of being held to have been broadcast in contravention of the relevant provisions of the Act.

The Committee considered that broadcasters were bound to rely on common sense evaluations and interpret, as best they could, the public perception of such things in the climate of contemporary attitudes. In a context of public health or survival versus feelings of offence, it was assumed that the overwhelming tide of public opinion would favour the education-to-help-survive concept.

It was also felt that facts about sexually transmitted diseases were presented in a structured manner. Advice of an increasing rate of such diseases among young people was highlighted as were disease prevention methods, mostly by way of humour to retain the attention of the target audience. It ranged from "saying no" to using prophylactics.

It was accepted by the Committee that the presentation of the programme was all-important in measuring the other elements of the taste and decency equation. Its assessment was that the approach adopted was direct, frank and matter-of-fact yet permeated with good-natured banter and humour. Awkwardness which might arise in dealing with the programme's subject matter, and which might impinge on taste considerations, was considered to be remarkably absent.

By telephone calls alone - 250 callers supporting the programme and 175 callers being against it - the public response to "Safer Sex" was overwhelmingly positive given that most people usually phone to complain. Press reaction was also positive without exception. The (then) Deputy Leader of the Opposition and Spokesman on Health, Don McKinnon, was quoted as supporting the programme. Like many others, he sought a repeat at an earlier hour. These reactions were interpreted as strongly suggesting that the public at large was not upset by taste and decency factors. That the (then) Minister of Health, in puppet image, was prepared to give an opening warning about the programme's content, added evidence which suggested that both sides of the main political spectrum supported this type of educational programme.

Because of the nature of the programme, TVNZ had sought legal advice with regard to section 4(1)(a) of the Act. Both the script and the final edited version were studied and no serious problem areas were identified. In addition, a number of health professionals, who were consulted, found the script to be factual and accurate.



The Committee was accordingly unable to conclude that the good taste and decency provisions of the Act had been breached. Accordingly, this part of Miss Bartlett's complaint was not upheld.

TVNZ nonetheless felt that some comment was called for in reply to Miss Bartlett's specific allegations. Merging the comments contained in its letters of 19 December 1989 and 9 July 1990, and matching them with Miss Bartlett's allegations (enumerated earlier), they can be summarised as follows:

1. The programme deliberately set out not to advocate a particular moral stance. Whether sex was capable of being seen as being treated as a big joke or not is beside the point. The point of the programme was to assist in presenting information about the alarming spread of sexually transmitted diseases, particularly for those in age groups most at risk. Such concerns currently transcend moral arguments.

Miss Bartlett's extraction, in explicit detail, of terms used by a member of the Family Planning Association look and sound blatant in cold print. In the context of the programme and the circumstances surrounding the thrust of the particular passage, however, these terms defused the taste and decency equation. If the three doctors in the programme did not agree with what was being said, they were in a position to either advise that it be edited out or make further comment.

The 1987 edition of the Oxford Dictionary defines masturbation as "sexual arousal by manual stimulation of genitals". This is a less emotive definition than that quoted by the complainant from the 1942 edition of the same dictionary and is considered to reflect changing times and attitudes. It would be a more appropriate reflection of the way the matter was treated in the programme.

2. The "Simon and Sara" skit was presented in the context of encouraging young women to have regular smear tests. The notion of "bad taste" would appear to be strangely misplaced in these circumstances.

3. The "Professor Condom" skit was a demonstration concerning the use of condoms and was almost identical to the manner of presentation used in the "First Aids" programme (produced by London Weekend Television) with the main exception being that the New Zealand illustration might be described as being more sophisticated than that of the British programme, in that a foam object was used instead of a finger.

In this connection, attention was drawn to the views of the Broadcasting Tribunal at pp14 and 15 of Decision No 10/90 in considering an almost identical allegation made by Miss Bartlett about the "First Aids" programme. Miss Bartlett had alleged that there had been a flippant and tasteless treatment of condoms in that the programme showed the handling and demonstration of the use of condoms by a man and a woman using a finger. In addition, a panelist had laughed about his numerous sexual encounters.



The Tribunal, however, had decided that:

The context in which this occurred is of course vital in making any assessment of it. It occurred within an educational programme backed by an official campaign. While there must be few contexts in which condoms are displayed on television, we cannot say that it was in this context in breach of standards of good taste and decency, even though it may have offended a number of viewers.

We doubt that it would have offended most of those for whom the programme was intended and a suitable warning was broadcast in advance.

In this case the flippant treatment was deliberate. An off-beat approach would be more acceptable to a young audience than to the Society's witnesses.

TVNZ submitted that given the context and the Tribunal's comments, the "Professor Condom" skit did not exceed the bounds of good taste and decency.

4. The point of the "Lerv Connection" skit was to emphasise the importance of protection. It indicated that it was safer to have protected sex with a bisexual person than unprotected sex with a sexually active heterosexual.

The use of condoms was presented as a means of reducing the risk of contracting sexually transmitted diseases. The programme did not suggest that the use of condoms offered 100% protection by eliminating the risk. Notions of bad taste, given the common-sense interpretation of the phrase, did not seem to be applicable to the non-inclusion in the programme of the youth who thought he would keep sex until marriage.

### **Lack of Balance**

TVNZ's Complaints Committee also decided not to uphold the second part of Miss Bartlett's complaint, i.e. that the programme lacked balance.

Summarised, and listed in an order matching Miss Bartlett's specific allegations, TVNZ's response was as follows:

1. The purpose of "Safer Sex" was to highlight the serious public health issue of sexually transmitted diseases which is causing major public concern and has the potential to reach epidemic proportions if it is not addressed. The majority of the targeted audience (16-25 year olds) are sexually active outside marriage and are likely to have multiple sex partners. This puts them in a very high risk category.

Given current mores, it was considered unlikely that these young people could be persuaded to restrict sexual activity to within marriage. It was believed that a strong emphasis on abstinence, on "saying No", would very likely have had the effect of the programme losing credibility with the target audience.



It was not the purpose of "Safer Sex" to take any moral stance about the behaviour of the target audience. It recognised the status quo and set about informing and educating from this standpoint. That it did not become heavily involved in promoting moral viewpoints did not, in the view of the Complaints Committee, mean the programme was unbalanced.

Justification for the Complaints Committee's decision that the programme was not unbalanced because it did not deal with this moral aspect, is contained in Decision 10/90 of the Broadcasting Tribunal where, answering an almost identical charge by Miss Bartlett concerning "First Aids", - namely, that the moral position was not put - the following passage is recorded at page 13:

There is no obligation to do so. The complainant has a position on sexual behaviour which, if followed by all people, would gradually reduce the incidence of Aids. It is not the obligation of the broadcaster to present that position in this programme because the programme was not about moral positions. It was about sexual conduct and Aids. It was entitled to deal with that behaviour and its consequences (which it did) without giving moral reasons to advocate a certain lifestyle.

While we may think that the programme could be done better another way, the purpose of this Tribunal's decision is to determine whether or not there is a breach of minimum standards required in programmes. We are not programme critics or reviewers to impose our views on how programmes may best be done. Nor does the Act do more than require adherence to those standards it defines ...

Accordingly, on the basis of the Tribunal's determination, TVNZ considered that it had not been guilty of imbalance in screening a programme which did not, in detail, embrace aspects of the moral element or Christian ethic.

2. As to the suggested skit relating to sex in marriage, the fact of the matter is that the points that such a skit might make are self-evident. High-impact skits driving home the message of the dangers of promiscuity would make more sense to the target audience than ones which embrace conventional wisdom and patterns of behaviour.

3. The programme did not set out to investigate questions of sexual morality. The makers were guided by the best possible advice from those who have a public responsibility for the health of the community.

4. Of the three medical practitioners who appeared on the programme, one is employed by the Department of Health, one is a General Practitioner and one acts as an advisor to the Family Planning Association. Although it is not clear what the unified or collective views of "caring family doctors" might be, they would not be likely to stray far from what the medical schools and Health Department find propitious for safer sex.



5. The Committee observed that it was reasonable to assume that most adults do not engage in sexual activity purely for procreation. The "pill scenario" was used to allege a lack of balance but the hypothesis on which it was based is not a factor proven beyond any reasonable doubt.

6. As for the "It's OK to say NO" video, the rights-holders were welcome to submit it to TVNZ for consideration with a view to broadcast.

7. The programme was filmed before an invited studio audience. As is fairly standard with this type of production, the final version was substantially edited and approximately 25 per cent of the material shot was used in the final version. The material was selected on the basis of providing a representative, balanced sample of views from young people.

The fact that the comments by certain young Christians did not appear in the final programme was not because of the sentiments they expressed. It is possible their opinions may not have been as well or succinctly expressed as those that were used.

Members of the audience were not manipulated. They were coaxed no differently from the way in which any other studio-based programme is conducted. As it happened, the producer was so disappointed with the audience's response to the discussion about "saying no" that at the end of the recording session the compere was required to return to the subject to elicit further responses. These were edited in at the beginning of the programme.

In its concluding comments, TVNZ drew the Authority's attention to various segments of Decision No. 10/90 of the Broadcasting Tribunal. The full text of this passage is set out in the Appendix to this Decision.

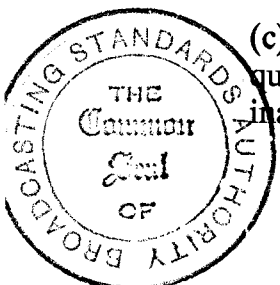
#### **Miss Bartlett's Final Comments to the Authority**

In a letter dated 12 September, Miss Bartlett provided a brief, final comment which made a number of points, amongst which were the following:

(a) TVNZ's statement that concern about Aids currently transcends moral arguments is not accepted by the Society. It is the ignoring of the moral dimension in living which has caused the rapid spread of Aids.

(b) The "Professor Condom" skit was not more sophisticated than its English equivalent. The English programme used only one condom (whereas 50 were used on foam rubber penises in "Safer Sex") and did not employ the coarse and tasteless gutter language of "Professor Condom".

(c) The point being made in the "Lerv Connection", while perhaps not raising questions of good taste and decency, nonetheless promoted the dissemination of inaccurate and erroneous information.





(d) "Caring doctors" are concerned about the emotional, as well as the physical, health of their patients. Giving advice on condoms is not the only advice doctors give to young people. The three doctors on the programme gave the impression that all doctors support the philosophy of the Family Planning Association.

(e) The video "It's OK to say NO" had been submitted to neither TVNZ nor the Broadcasting Tribunal. If edited to replace written remarks with voice-overs, it would be more suitable for public television and would, if broadcast, provide the balance lacking in "Safer Sex".

### Decision

Before turning its attention to the substance of the complaint, the Authority noted the preference expressed by Miss Bartlett to appear before the Authority to give evidence or make further submissions in the event of the Authority deciding to hold a formal hearing. Pursuant to the provisions of s.10 of the Broadcasting Act 1989 which permit the Authority, if it thinks fit, to determine a complaint without a formal hearing, the Authority's usual practice is to determine complaints on the papers without a formal hearing or receiving oral submissions. It saw no compelling reason to vary this practice in this instance.

A prolonged and prolific correspondence has been entered into between the complainant and the broadcaster, TVNZ, a correspondence which, in the Authority's view, has allowed each party to put its case adequately and it must be stated, increasingly repetitiously, in regard to content. Consequently the Authority considered that there was ample material available for it to arrive at a proper determination based on the papers. Indeed a formal hearing, in the Authority's view, could merely tend to repeat the existing arguments of the parties and hence do little but further delay a decision.

Further, TVNZ had drawn to the the Authority's attention that a complaint made by Miss Bartlett in 1987 on similar grounds was heard by the then Broadcasting Tribunal at a formal hearing at which witnesses from both the Society and the BCNZ were heard. A detailed decision on this complaint (Decision 10/90), dated 31 January 1990 and running into 17 pages, became available during the time covered by the correspondence in the present case, and has been studied by the Authority. Consequently, the Authority holds a view similar to that of TVNZ that a formal hearing would be unwarranted and would be repetitious.

The Authority, then, considered Miss Bartlett's present complaint on the papers.

The complainant alleges two specific breaches of the requirements of the Broadcasting Act 1989, namely of s.4(1)(a) and s.4(1)(d). Section 4(1) provides that:

- 4(1) Every broadcaster is responsible for maintaining in its programmes and their presentation, standards which are consistent with -



- (a) The observance of good taste and decency; and  
 ...  
 (d) The principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest.

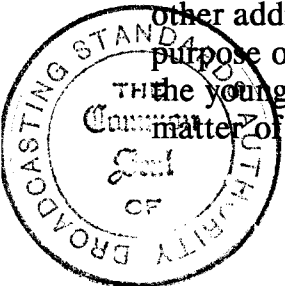
#### Section 4(1)(a) of the Act - Good Taste and Decency

In regard to the maintenance of standards consistent with the observance of good taste and decency, the Authority refers to its own definition of this concept as set out in Decision No: 2/90 (19 January 1990) which also relates to a complaint made by Miss Bartlett on behalf of the Society for Promotion of Community Standards. This Decision stated that in the Authority's view "the concept of good taste and decency in a given situation pertains to conformity with such standards of propriety as the Authority considers to be in accordance with generally accepted attitudes, values and expectations of New Zealand Society".

In order to decide then whether or not the programme "Safer Sex" breached the requirements for the observance of standards of good taste and decency, the Authority believed that it must first establish the purpose of the programme and hence the expectations it engendered as well as its overall impression. Then it must indicate what it believes to be the generally accepted attitudes of society with regard to the topic or topics traversed by the programme.

The Authority notes TVNZ's statement that the programme "set out to alert young adults to the dangers of unprotected sex in an entertaining and informative way. Its target audience was in the 16 to 25 years range". The programme was designed to be educational and specifically it was directed towards young adults whose attention is unlikely to be either attracted or sustained by any programme they may consider to be even remotely "preachy", "moralistic" or, even worse, "boring". The opinion of the Authority is that notice of such a programme would create the expectation in the minds of the viewers of an accurate presentation with an informal format, the educational intent of which would be honestly achieved without a hint of pomposity. The Authority believes that "Safer Sex" successfully fulfilled such reasonable expectations by way of its clearly stated medical opinions, simple diagrams and skits which while humorous nevertheless left the viewer in no doubt as to the seriousness of the situation with regard to the dangers of unprotected sex.

There was no attempt to deal with aspects of sex other than this stated need for prophylactic measures from the health standpoint, in order to combat sexually transmitted diseases (Stds). For instance, no mention was made of human sexuality, of sex as communication, of sex among older couples nor of moral stances. These and any other additional topics were, in the Authority's view, rightly precluded by the over-riding purpose of the programme, the success of which depended on retaining the attention of the young viewers for whom the programme's educational message could be, in fact, a matter of life or death.



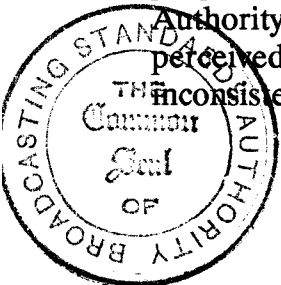
Given that this was the purpose of the programme, and that this purpose was, the Authority believes, achieved, the Authority then sought to establish current indicators of "generally accepted attitudes values and expectations in New Zealand society" with regard to the need to educate young adults on how they may best avoid the risk of Stds. The Authority notes the report by TVNZ of reactions to the programme - 20% rating, 250 callers supporting the programme with some 175 against it ("overwhelmingly positive given that most people usually phone to complain"), and press reaction which was "positive without exception". Spokespersons from both major political parties were quoted as being supportive.

The Authority is of the view that the advent of the Aids epidemic and the increasing awareness of the serious consequences of Stds have over recent years modified generally held attitudes on the necessity for education about sex and about the use of condoms and other protections vis a vis previously widely supported moral stances on such matters. The changed Oxford dictionary definition of masturbation between the 1942 and the 1986 editions is illustrative of changes in viewpoints. The Authority notes that the programme - which significantly was called "Safer Sex" and not "Safe Sex" - points out that 40% of persons in the relevant age group are sexually active. It appears to be the view that most people, even while they may question the morality of the so-called "sexual revolution" of recent years, would agree with the statement of TVNZ that "the tide of concern now evident relating to sexually transmitted diseases, which are capable of decimating populations if not controlled, seemed to override considerations of upset feelings for some. In a context of public health or survival versus feelings of offence, it was assumed that the overwhelming tide of public opinion would favour the education-to-help-survive concept."

**The Authority therefore believes the programme to be consistent with the observance of standards of good taste and decency. For this reason the Authority declines to uphold the complaint that the broadcast of the "Safer Sex" programme breached s.4(1)(a) of the Broadcasting Act 1989.**

The Authority will nonetheless consider the specific allegations made by Miss Bartlett in regard to s4(1)(a), dealing with them in the order in which they have been summarised earlier in this Decision:

1. With regard to the absence in the programme of the advocacy of a moral code, such as marriage, in sexual behaviour, the Authority is aware of the sincerity of Miss Bartlett's views as expressed, for example by her comment that the dignity of sex and its procreative potential was ignored. But the Authority considers that these arguments have been dealt with above, as has the changed definition of masturbation. While aware that some people may well disagree with and/or be offended by the suggestions in the programme that e.g. touching may be a pleasurable alternative to intercourse, the Authority is of the view that these sections of the programme were consistent with the perceived expectations of a frank and matter-of-fact presentation and hence were not inconsistent with maintaining standards of good taste and decency.



2. As to the "Simon and Sara" skit, the Authority agrees with TVNZ that its "context was the encouragement of young women to have smear tests" and that "bad taste notions would seem strangely misplaced in these circumstances".

3. The Authority notes Miss Bartlett's view that (inter alia) the "Professor Condom" skit was in the "worst possible taste". The Authority considers that this was possibly the most sensitive section of the programme, in that matters usually private and potentially embarrassing were discussed and portrayed graphically. The Authority considers that while the deliberate use of humour in this instance could be considered a little clumsy or even overly blunt and forthright, it believes that within the context of a programme designed to educate, such humour was not inappropriate. It provided an opportunity for the young people to whom the programme was directed to laugh, both at the puns and at what was essentially a touch of bawdiness in order to cope with the potential of the topic to generate embarrassment and nervous laughter. The open discussion, straight talking and practical demonstration on a matter where ignorance and anxiety are commonplace, was in the view of the Authority consistent with standards of good taste and decency in this particular context.

The Authority is aware of the Broadcasting Tribunal's Decision on a similar issue: "We doubt that it would have offended most of those for whom the programme was intended and a suitable warning was broadcast in advance. In this case the flippant treatment was deliberate. An off-beat approach would be more acceptable to a young audience than to the Society's witnesses."

4. Miss Bartlett specifically commented that the "Lerv Connection" skit was "dishonest and inaccurate" in that a bi-sexual wearing a condom would not be a safer partner for a girl than a heterosexual who does not use condoms. It was also "in bad taste not to include a youth who thought he would keep sex until marriage". The Authority is of the view that these allegations do not relate directly to the observance of good taste and decency, but rather they are matters involving elements of accuracy and balance. Hence the Authority does not sustain Miss Bartlett's argument in relation to her complaint that the sketch offended standards of good taste and decency.

#### **Section 4(1)(d) of the Act - Lack of Balance**

In considering this part of the complaint, the Authority has taken particular note of the following part of the Broadcasting Tribunal Decision 10/90:

**(c) The moral position was not put**

There is no obligation to do so. The complainant has a position on sexual behaviour which, if followed by all people, would gradually reduce the incidence of Aids. It is not the obligation of the broadcaster to present that position in this programme because the programme was not about moral positions. It was about sexual conduct and Aids. It was entitled to deal with that behaviour and its



consequences (which it did) without giving moral reasons to advocate a certain lifestyle.

While we may think that a programme could be done better another way, the purpose of this Tribunal's decision is to determine whether or not there is a breach of minimum standards required in programmes. We are not programme critics or reviewers to impose our views on how programmes may best be done. Nor does the Act do more than require adherence to those standards it defines

...

The Authority is of the view that the present case and the present complaint are so parallel to that in Decision 10/90, that further comment on the question of breaching s.4(1)(d) would be inappropriate and that the Tribunal's wording could not be bettered.

However, the points made by Miss Bartlett must be addressed and this will be done in the order in which they are summarised earlier in this Decision.

#### Points 1 and 2

Miss Bartlett alleges that the programme was unbalanced and she quotes as examples, times and the number of skits devoted to "saying No" compared with those dealing with condoms. In the opinion of the Authority the promotion of condoms was one of the basic purposes of the programme so this must feature in it, and this featuring is quite valid.

But in viewing "Safer Sex" the Authority also noted that "saying No" was in fact the dominant theme of the first segment of the programme and that the option of saying No was clearly put forward at the very beginning of the presentation before any of the skits or more flippantly-designed segments were shown. The presenter stated in the opening sequence "The first option ... we all have for safer sex life is not to have sex at all!" This choice was strongly reinforced by later statements by the presenter (eg " ... everything from how to say no ..." ) and by reference to 17 year-olds who "for 60%, the majority, saying no is more normal than saying yes". Further, the very articulate young people taking part were specifically asked to suggest practical ways of refusing to have sex and their answers illustrate how cogently this "side" of the sex question was dealt with. For example, various young women stated that they would:

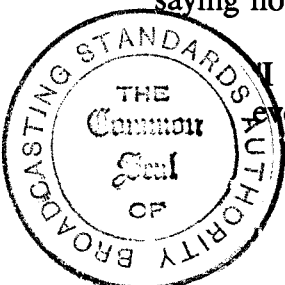
"laugh hysterically"

"tell him you've got a disease"

"Just be honest, I s'ppose; just say no even though that's kind of scary"

Young men were shown on the programme stating the following (inter alia) in regard to saying no:

"I think that a lot of our TV (and) movies ... portray an unrealistic thing, that every girl you meet you're going to hop into bed (with) which isn't the way it is



and I don't think the girls want it that way."

"I get hassled by 13 year-olds for being a virgin ... Some should be able to come out and say Hey, I haven't had sex. I want to save it till I'm married."

This section concluded with a young woman saying " ... if she says no then its her right. It's always her right to say no".

Consequently the Authority considers that the option of "saying No", was well and emphatically portrayed in the programme before the topic of condoms was dealt with at all.

#### Points 3, 4 and 5

The Authority considers that one basic theme is common to these three points namely the relationship between morals and Stds together with one final comment from Miss Bartlett that the "medical side lacked the balance of caring family doctors. Doctors should have more to offer than condoms". As already stated the target audience was 16 to 25 year-olds, many of whom "are sexually active outside marriage and are likely to have multiple sex partners" (letter from TVNZ dated 19 December). The Authority is in accord with the view expressed by TVNZ on this matter.

Again it must be emphasised that the programme did not set out to investigate questions of sexual morality. The makers were guided by the best possible advice from those who have a public responsibility for the health of the community. Had such medical and family planning authorities believed a lesson in sexual morality would have been more effective than the clinical up-front approach, then such expert opinion would no doubt have given the claims being made by the complainant full support and backing in the programme. A balance factor would not seem to be seriously at issue here.

Given that the purpose of the programme was indicated by its title (Safer Sex), the Authority considers that the promotion of condoms by the doctors interviewed (after due emphasis had been given to the "no sex" option) was appropriate. The Authority has no evidence on which to decide whether or not those doctors who were interviewed were "caring family doctors", the definition of which would at best be highly subjective and was not attempted by Miss Bartlett. The Authority is quick to acknowledge that Miss Bartlett is entitled to her personal view of whether or not these doctors, the Family Planning Association and the Health Department proffered the best possible advice in the making of this programme but it considers that such expertise would be acceptable to the majority of New Zealanders.

#### Point 6

The facts presented by Miss Bartlett about chlamydia and the causes of Stds are not germane to consideration of her complaint in regard to s.4(1)(d) although, in passing, the Authority is tempted to speculate whether or not the promotion of condoms in the past



may have prevented greater problems from occurring. It does not see that the omission of these items about Stds as demonstrating a lack of balance in the programme.

Members of the Authority have viewed the "alternative" video suggested by Miss Bartlett and note both the comment made by TVNZ that the "the rights holders of "It's OK to Say No" are fully entitled to submit the programme to TVNZ for consideration", and Miss Bartlett's claim that "we believe if edited it would balance what was lacking in the New Zealand programme". The Authority declines to make an order in regard to this video but is aware that Miss Bartlett could discuss it further with TVNZ should she care to.

In summary, in considering any alleged breach of s.4(1)(d) of the Broadcasting Act, the Authority again notes the Decision (10/90) of the Broadcasting Tribunal in relation to a similar case. The view of the Authority is that the Tribunal's wording is equally applicable in the present instance:

The Tribunal also accepts that ... the programme complained of can be seen as directed to a particular audience rather than having of necessity to deal with every aspect of Aids, or at least address a wider audience, in one programme. Nor did there have to be other television programmes in the period of current interest specifically targeting other specific points of view on moral issues.

This programme was not about moral issues, it was about options for the heterosexually active, most of whom would be unlikely to stay watching a programme with a moralistic purpose.

We do not believe that this programme itself was unbalanced for the purposes it was intended and we do not find there was a need to balance the programme with a significant different point of view.

**For the foregoing reasons the Authority declines to uphold the complaint that the broadcast of "Safer Sex" breached s.4(1)(d) of the Broadcasting Act 1989.**

Signed for and on behalf of the Authority



Iain Gallaway  
Chairperson



19 December 1990

## APPENDIX

### Extract from TVNZ's Letter of 9 July 1990 to the Authority

In concluding its letter, TVNZ referred to Decision No 10/90 of the Broadcasting Tribunal and remarked as follows:

Finally it would seem appropriate to draw the Authority's attention to various segments from the Tribunal's judgement in support of this submission, and summary, as follows:

- (a) "The London Declaration which emerged from the World Summit of Ministers of Health on Programmes for Aids Prevention, held in London in January 1988, said: 'The single most important component of national Aids programmes is information and education.' "

The company would submit that in its broadcasting of the "Safer Sex" programme it fulfilled not only what might be described as a public duty, but it also met, given its context, the two provisions of the Broadcasting Act in question. In fact, as stated in my letter to the complainant: "In the context of public health or survival versus feelings of offence, it was assumed that the overwhelming tide of public opinion would favour the education-to-help-survive concept." In fact it did, if the unity of viewpoint reflected by both the main political parties (my letter at page two) is anything to go by.

- (b) Under the "Hearing" heading, the following quotation, arising from evidence of a Health Department witness, is valid in the context of this "Safer Sex" programme:

"To be effective, the programme had to be presented in a manner in which the attention of young people was captured and held for a sufficient length of time for its messages to strike home. To achieve that, appropriate language had to be used and it was acknowledged that that may have been offensive to some members of the viewing audience. Prior warning was given.

It could be expected that the segment of the programme which dealt with the use of condoms might prove controversial in the way it was presented. But the failure of condoms most frequently related to the manner in which they were used rather than because of an intrinsic defect in the condom itself. Explicit directions concerning their use needed to be given if they were to be effective, he said.

The programme was directed at sexually active young people and accepted that young people engaged in the activity. That did not mean educational programmes should ignore the value of celibacy or the limitation of sexual partners as an effective means of avoiding infection ...





... publicity about Aids has raised public awareness and made it possible to talk about subjects that were unacceptable previously. This awareness plus the promotion of safer sex had had a spin-off effect in reducing the incidence of other sexually transmitted diseases. Society was becoming more tolerant in appreciating the dangers which the gay community and intravenous drug users were exposed."

(c) In the opening comments of the Decision portion of the judgement, the Tribunal made the following observations which are equally applicable to the "Safer Sex" programme:

"It concluded that the unusual seriousness of the topic justified an explicit, arresting, educational approach. We also considered that, subject to a warning, it was appropriate to broadcast the programme at a time when the maximum viewing audience of those targeted was available. Parents would be in a position to exercise control over their children watching the programme if they were under an appropriate age. The programme was not prurient in its approach.

The major issue on which the Department of Health and the Society differed was that the Department wished to take people as they were and have them modify their behaviour in the interests of preventing the transmission of the disease, while the Society wished to highlight the dangers to the community of homosexuals and drug users, to advocate abstinence (outside marriage) on both moral and practical grounds and to emphasise the safety of sex within marriage.

Fundamentally, this issue is not a new one and has cropped up in relation to health education generally and contraceptive advice to unmarried people in particular. There appear to be strongly held views in society. One view does not accept the "lowering" of standards that has resulted in or accompanied widespread sexual activity outside marriage. It suggests that the provision of any information that enables contraception or prevention of disease to occur, runs a serious risk of promoting the activity itself. The other view is that the activity has been going on for some time and is not likely to be changed significantly by a moral campaign. Therefore, in the interests of the individual and society, education and information should be made available to those at risk.

The Tribunal is not going to resolve the diversity of society's attitudes and acknowledges both these points of view within the community.

However, the Tribunal cannot take the position that it is wrong for the television service to be used to provide this information when society itself does not by law ban that information being given ...

Likewise, it is permissible to accept the "promiscuity" of the targeted audience as a fact and give them options within their lifestyle. That is



hardly a breach of community standards which we are obliged to apply.

We do not believe it is inappropriate to use amusing, eye-catching, off-beat methods of teaching rather than using lecturing, serious or moralistic approaches ...

The Tribunal also accepts that ... the programme complained of can be seen as directed to a particular audience rather than having of necessity to deal with every aspect of Aids, or at least address a wider audience, in one programme. Nor did there have to be other television programmes in the period of current interest specifically targeting other specific points of view on moral issues.

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We do not believe that this programme itself was unbalanced for the purposes it was intended and we do not find there was a need to balance the programme with a significant different point of view."

