

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 30/93

Dated the 29th day of March 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

FEMALE IMAGES AND  
REPRESENTATION IN SPORT  
TASKFORCE (FIRST)

Broadcaster  
TV3 NETWORK SERVICES  
LIMITED

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

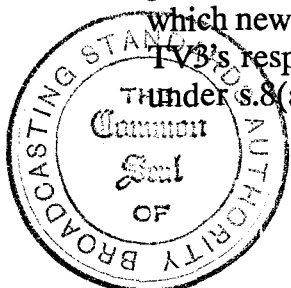
DECISION

Introduction

Eight items of sports news were broadcast on 3 *National News* on 3 September 1992. Five referred to male sport and lasted 146 seconds, two to mixed sport of 128 seconds and one to women's sport of 105 seconds. Taking into account the total time given to sports stories by way of the sex of the participants, the proportions were 38% male, 34% mixed and 28% female.

FIRST complained to TV3 Network Services Ltd, as the broadcaster, that given that at least half the population of New Zealand were women, its news was not objective. Rather it argued, the news was biased. Furthermore, it maintained, the unequal portrayal of news sport between men's and women's sports denigrated women and discriminated against them.

Arguing first that the Broadcasting Act was not concerned with material which was not broadcast and, furthermore, that it was inappropriate to use the broadcasting standards process to advance a moral point of view when news value was the sole criterion by which news items were selected, TV3 declined to uphold the complaint. Dissatisfied with TV3's response, FIRST referred its complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.



## Decision

The members of the Authority have read the correspondence relating to this complaint (summarised in the Appendix). The representatives of FIRST argued that oral submissions would complement the written material. The Authority invited the parties to meet for the purposes of hearing informal submissions and discussions but, as TV3 declined to participate, the Authority believed that little if any further advantage would be gained by hearing further formal submissions, particularly as the written material on the jurisdictional point was comprehensive. Accordingly, the Authority has followed its usual practice and determined the complaint without a formal hearing.

FIRST complained to TV3 that its coverage of women's sports during its main daily news bulletin, *3 National News*, for the first week of September 1992 was unbalanced and, consequently, that it denigrated women and discriminated against them. TV3 denied the allegation and, declining to uphold the complaint, argued that the complainant was trying to use the complaints process to achieve a social goal - that of increased television coverage of women's sport. Moreover, TV3 maintained that the Authority did not have the statutory jurisdiction to consider the complaint, first, as it did not raise a matter of broadcasting standards, and secondly, as the Authority's task was to assess material which had been broadcast: it did not have the jurisdiction to assess material which was not broadcast.

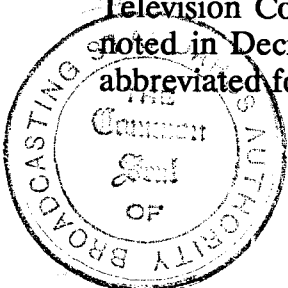
In anticipation of this reaction on the broadcaster's part, the complainant referred to the Authority's decision No: 18/90 which dealt with this point. In that case a leader of a political party complained to the Authority that a broadcaster failed to cover the party's alternative budget released at the same time as the official budget. In that decision the Authority accepted:

The fact that it is only in rare circumstances that the non-broadcast of a programme or an item within a programme will give rise to a breach of the Standards included in the Television Programme Codes.

The non-broadcast of an item, the Authority continued, could amount to a breach of s.4(1)(d) of the Broadcasting Act and standards 6 and 16 of the Television Code of Broadcasting Practice:

... if the material were capable of being considered to constitute a significant point of view on a controversial public issue and its inclusion deemed necessary in the interests of preserving balance, impartiality and fairness.

Taking into account this earlier ruling, the Authority declined to accept without question TV3's argument that it was precluded from examining the issue raised by the complainant solely on the basis that the complaint referred to material which was not broadcast. It noted that FIRST's complaint was initially based on standard 12 of the Television Code of Broadcasting Practice. Although standard 12 was not specifically noted in Decision No: 18/90, it applies the general requirement of standard 6, in an abbreviated form, specifically to "news".



On the basis that the complaint referred to the balance between material which was broadcast with material which was not, the Authority declined to accept TV3's submission that, as the complaint referred to material which had not been broadcast, it did not have jurisdiction to deal with the complaint.

Although that ruling dealt with one aspect of the jurisdictional dilemma, it did not deal with TV3's submission that because the Authority was not established to rule on such social issues as gender inequity in the reporting of sport, it therefore did not have jurisdiction on that ground to deal with the complaint.

To TV3, FIRST complained that as only a small proportion of the time given to sports news on 3 *National News* reported women's sports, the broadcaster showed a lack of objectivity and balance contrary to standard 12 of the Television Code of Broadcasting Practice. Women's sports were contrasted with men's sport and mixed sport on 3 September 1992 and, FIRST stated, the coverage of women's sport amounted to only 28% of the time given to sports items. Further, FIRST argued that the broadcast breached standard 26 of the same Code as the imbalance in selection and presentation of news items was likely to encourage discrimination against women in such areas as sports sponsorship and sport funding.

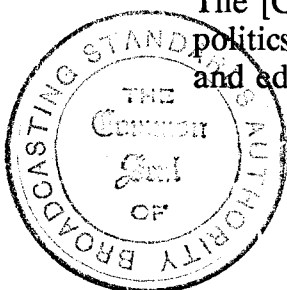
FIRST explained that the week selected to examine the coverage of women's sport was not typical. It was atypical in that the provincial netball championships (a women's sport) were taking place.

Standards 12 and 26 of the Television Code read:

12. News must be presented accurately, objectively and impartially.
26. The portrayal of 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 shall be avoided. 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 response to FIRST, TV3 maintained:

The [Complaints] Committee points out that news items are never selected by politics, gender, creed or ethnic background; news value only is the criteria [sic] and editorial decisions are made on that basis on the day.



Thanking FIRST for its comments and expressing the opinion that no further action on its part was necessary, TV3 declined to uphold the complaint.

When referring the complaint to the Authority, FIRST argued that TV3 should be censured for treating the complaint with contempt. It continued:

We deny that our complaint is based on a moral point of view and we think that that is an excuse for TV3 not to take the time to deal with it in the manner it deserves. We further deny the TV3 contention that there is no jurisdiction for this type of complaint.

In its response, TV3 contended that the matter had been discussed at great length in its Complaints Committee and reported:

The conclusion of the Committee is that the complainant is attempting to use the wrong forum to correct what the complainant perceives to be a social wrong or inequity in the reporting of sport.

Our contention, one to which we continue to adhere, is that the Broadcasting Standards Authority was not established to place judgement on such social matters and therefore has not the jurisdiction to deal with the complaint.

FIRST also complained to TVNZ under standards 12 and 26 of the Television Code about its coverage of women's sport during the same week. Both broadcasters argued forcefully that, as the complaint raised the issue of news judgment which was a matter of editorial concern rather than broadcasting standards, it was an issue over which the Authority lacked jurisdiction. When dealing with that aspect of the complaint in FIRST's complaint against TVNZ, the Authority included the following material.

### **The Ruling**

The Authority first examined the question whether the complaint was a programming matter or a standards issue. If the former, the Authority would be precluded from investigating it as it has interpreted the provisions of the Broadcasting Act to exclude it from exercising any jurisdiction about programming matters. However, it decided that although there is an aspect of programming involved in the complaint, there is also an aspect of standards. Specifically, s.21(1)(e)(iv) of the Act provides that the Authority shall have a role in developing codes of broadcasting practice in relation to:

- (iv) Safeguards against the portrayal of persons in programmes in a manner that encourages denigration of, or discrimination against, sections of the community on account of sex, race, age, disability, or occupational status or as a consequence of legitimate expression of religious, cultural or political beliefs.

That requirement is encapsulated in standard 26 of the Television Code which was cited by FIRST in its complaint. Although FIRST's complaint raised both



programming and standards questions, the Authority concluded that there was a sufficient aspect of it which involved broadcasting standards for the Authority to consider whether or not it should determine the complaint.

The Authority then observed that as both sides of the debate had considerable merit and as the complaint was neither solely a standards issue nor a matter of editorial judgment, the issues raised by the complaint were complex indeed. Nevertheless, it proceeded to examine the arguments advanced by the complainant and the broadcaster and its comments on them are reported below.

On the one hand, the Authority sympathised with TVNZ's statement, although denied by FIRST, that upholding the complaint could well impose a quota in effect on news items. Furthermore, the quota would not necessarily apply only to women's sport. A quota could also be applied to news about other issues - women's or otherwise.

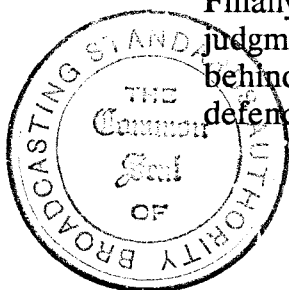
On the other hand, the Authority agreed with FIRST that TVNZ should be challenged on its assumption that gender is irrelevant to sports news. The Authority accepted FIRST's broad philosophical point about sport, and consequently sports news, that gender is relevant to both participation and spectator interest. Furthermore on a practical level, as FIRST argued, television coverage of a particular sport is highly relevant to sponsorship and other financial support.

The Authority also noted that FIRST did not give examples of women's sport which had suffered because of lack of television coverage. Nor were examples given of women's sports events for the first week of September which were not covered, or for that matter, a comparison of the sports excluded when categorised by the sex of the participants. Netball was referred to but it is already one of the four major sports covered by TVNZ.

The Authority did not doubt, taking into account the statistics supplied, that FIRST's specific complaint regarding the comparative lack of television coverage given to women's sport was true. Nor did it doubt that participation in and the development of women's sport suffered by receiving less than 50% coverage on the television sports news. However, the Authority also acknowledged TVNZ's argument that its role, as with all news including sport, was to reflect community interests and that its role was not, for example, to adopt a proactive role in fostering the development of a particular sport.

Nevertheless, the Authority observed and TVNZ implicitly acknowledged that television coverage of Australian rugby league had probably fostered the participation in and media coverage of that particular (male) sport.

Finally, the Authority accepted FIRST's allegation that "professional news judgment" might be merely a facade for conventional attitudes and a shelter behind which those lacking innovation might hide. "News judgment" was not a defence which had to be accepted without challenge.



Having presented the arguments about whether the complaint raised broadcasting standards or programming issues, and acknowledging that the standards matters raised involved editorial decisions which were inextricably entangled with the broadcast of any particular item, the Authority reached the following conclusion.

FIRST has a number of substantive arguments which all broadcasters should take into account when reviewing editorial decisions about the news value of the items to be or not to be broadcast. The arguments about the imbalance of the coverage of women's sports which are well-documented overseas include the lack of sufficient highly visible role models, the lack of awareness of opportunities, the lack of encouragement to participate, and the lack of sponsorship and other financial support. However, because of the overlap between news judgment, which is the broadcaster's responsibility, and broadcasting standards, a shared responsibility between the Authority and the broadcaster, the Authority believed that it was inappropriate to determine this complaint.

After giving consideration to issuing an Advisory Opinion to all broadcasters about the need to exercise news judgment about any sports item in a way which does not attract and provide grounds for complaints about the lack of objectivity or the promotion of discrimination, the Authority decided to defer issuing an Opinion at this time. The Authority believed that by making this complaint, along with the other actions taken in bringing issues to the notice of broadcasters, FIRST has ensured that broadcasters will continue to assess their own performance in this area and, if need be, increase the amount of women's sport coverage.

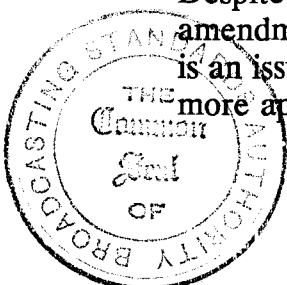
The Authority concluded that similar reasoning was applicable to FIRST's complaint against TV3.

**For the reasons set forth above, the Authority declines in all the circumstances under s.11(b) of the Broadcasting Act to determine FIRST's complaint that TV3 Network Services Ltd's coverage of women's sport for the week 31 August - 4 September 1992 breached standards 12 and 26 of the Television Code of Broadcasting Practice.**

The Authority added the following to its decision on FIRST's complaint against TVNZ.

In view of the importance of the issue raised by this complaint, the Authority acknowledges that this conclusion is not entirely satisfactory. The Authority has made a concerted effort to reach a substantive decision on the complaint. However, the Broadcasting Act 1989 which incorporates a philosophy about broadcasting and sets out the Authority's functions and responsibilities provides the Authority with neither effective power nor a clear mandate to deal with the complaint.

Despite the statutory lacuna, the Authority does not intend to suggest an amendment which would affect the Act's philosophy. Rather, it believes that it is an issue to which a commercial or social response on the broadcasters' part is more appropriate rather than a regulatory one by the legislature. Furthermore,



the Authority suggests that the complainant might give consideration to advancing its case by approaching substantial and influential funding organisations which are also concerned with achieving social objectives.

Signed for and on behalf of the Authority

  
Ian Gallaway  
Chairperson



29 March 1993

## Appendix

### FIRST's Complaint to TV3 Network Services Limited

Ms Judy McGregor of Palmerston North and Ms Pamela Harvey of Wellington, on behalf of the Female Images and Representation in Sport Taskforce (FIRST), complained to TV3 Network Services Ltd about 3 *National News* broadcast on 3 September 1992.

They pointed out that eight items of sports news were broadcast during the programme, five of which referred to male sport, two to mixed sport and one to female sport. Taking into account the total time given to sports stories, the proportions of time given to the items by way of the sex of the participants were 38% male, 34% mixed and 28% female.

Referring to TV3's promotional material which maintained that 3 *National News* was an hour in length in order to give viewers the full story, they argued the entire programme had to comply with the broadcasting standard which requires that news be presented accurately, objectively and impartially. They also said that the broadcast complained about occurred during the week of the New Zealand netball championship and noted that netball had a large following measure in terms of participation. However, they wrote:

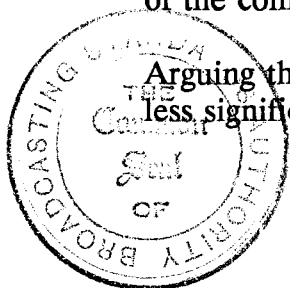
By given women less than 30% coverage when a major event of national interest to them is in progress, presents an opposite or different view of reality.

The complainants referred to an earlier Authority decision (No: 18/90) where it was accepted that in rare circumstances the non-broadcast of an item could amount to a breach of standards. Taking into account, first, the high degree of credibility TV3 ascribed to its news, and secondly, that their research showed that the coverage of women's sport on 3 September was not out of step with the average, the complainants argued:

The bias in favour of men's sports stories, and the limited coverage of women's sports stories does not accurately represent the actual situation in New Zealand considering population, sports participation rates, audience appeal or the availability of topical, newsworthy stories available for selection and presentation according to journalistic convention. Thus, minimal visibility gives rise to a breach of standards.

They also complained that the coverage of women's sport breached standard 26 of the Television Code of Broadcasting Practice which prohibits the broadcast of programmes which encourage the denigration of, or discrimination against, a section of the community on account of sex.

Arguing that TV3's portrayal of women's sport was less equal, less newsworthy and less significant than its portrayal of men's sport, the complainants maintained that the





imbalance was likely to encourage discrimination against women in the area of sports sponsorship and funding. Further, as the media image of sports women fostered self esteem and positive role models for young women, the inferior status accorded women's sport by TV3 was likely to denigrate women. The complaint concluded:

The programme standard uses the words "is more likely to encourage" which imposes a higher standard of duty on broadcasters. Biased selection of sports on 3 *National News* on 3 September 1992 in favour of male sport is likely to encourage denigration of, and discrimination against, women in the community.

### TV3's Response to the Formal Complaint

TV3 advised Ms McGregor of FIRST of its Complaints Committee's decision in a letter dated 2 November 1992.

Arguing that it was inappropriate to use the broadcasting standards process to advance a moral point of view and that news value was the criterion by which news items were selected, TV3 declined to uphold the complaint.

### FIRST's Complaint to the Broadcasting Standards Authority

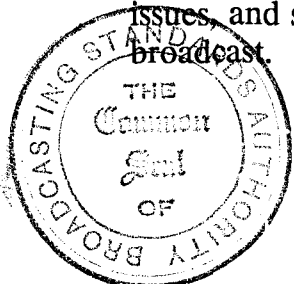
Dissatisfied with TV3's response, in a letter dated 20 November 1992, Ms Harvey on FIRST's behalf referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Denying that the complaint was based on a moral point of view or that TV3 did not have the jurisdiction to consider that type of complaint, Ms Harvey said that TV3 had not considered the substance of the complaint. Moreover, she argued, TV3 had held the basis of the complaint in contempt and had made no effort to deal with it seriously.

### TV3's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the referral of the complaint. Its letter is dated 23 November 1992 and TV3's reply, 27 November.

TV3 stated that the complaint had been thoroughly considered at several meetings and the Complaints Committee had concluded that FIRST was attempting to use the wrong process to correct what it perceived to be a social wrong. First, it contended that the Broadcasting Standards Authority was not established to judge such social issues, and secondly, it asked whether the Authority could assess that which was not broadcast.



**FIRST's Response to the Authority on the Jurisdictional Issue**

When asked to comment on TV3's points made in its reply dated 27 November 1992, in a letter dated 8 December, Ms Harvey on FIRST's behalf argued, first, that the complaint was based on standards 12 and 26 of the Television Code and not on "a social wrong or irregularity". The letter continued:

The BSA can judge an "omission" if that omission shows that the presentation of in this case a news programme if such presentation shows a lack of objectivity and impartiality as we say the programmes referred to do or if as we contend the programme portrays people in a way that is likely to encourage denigration of and discrimination against a section of the community on account of sex.

Secondly, referring to the precedent set in Decision No: 18/90, FIRST maintained that the Authority was able to comment about bias when omission was the basis of the complaint.

**Further Correspondence**

In view of the complex issues raised by this complaint, the Authority proposed to the parties that an informal round table discussion be held to allow them to elaborate on their points of view.

Whereas Ms Harvey was prepared to participate on FIRST's behalf, TV3 declined to do so. It advised the Authority in a letter dated 8 February 1993 that:

FIRST wants more coverage of women's sport on television and they want to use the Broadcasting Standards Authority to force that.

We understand their position but find that the overwhelming principle for us is preservation of freedom of the electronic press from the influence of pressure groups.

We are therefore unwilling to enter into discussion which might lead to compromise of this principle, vital in any democracy.

