

**Broadcasting Standards Authority  
Board Decisions – Public Litmus Test**

**RESEARCH REPORT**

**Prepared for Dominic Sheehan, Chief Executive**

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# 1 Background and Objectives

The Broadcasting Standards Authority (the BSA) is an independent Crown entity empowered by the Broadcasting Act 1989 'To receive and determine complaints ... to publicise procedures in relation to complaints ... to encourage the development and observance by broadcasters of codes of broadcasting practice ... and to conduct and publish findings on matters relating to standards in broadcasting'. The Act imposes a responsibility on broadcasters to maintain standards, including the observance of good taste and decency, the maintenance of law and order, the privacy of the individual, the protection of children, the requirement for broadcasts to be accurate, fair, and balanced, and for broadcasters to have safeguards against the portrayal of persons in programmes in a manner which encourages denigration or discrimination.

The BSA periodically undertakes research to test Board decisions regarding complaints that have been made. Prior to 2004, focus groups with the general public were used to test Board decisions. Since 2006 however, these litmus tests of Board decisions have been undertaken with the Community Advisory Panel. However, in order to ensure the continued relevancy of Board decisions, for a selection of recent decisions, the BSA once again wished to undertake research with the viewing public.

The purpose of this research was to:

- Identify the decision that would have been made by the viewing public with respect to a selection of recent complaints
- Understand the rationale behind that decision
- Identify whether the public's decision matched that of the Board – and if not, why not, and
- Explore reactions to actual Board decisions.

This report presents the results of that research.

## 2 Project Methodology

This was a qualitative project which involved conducting two focus groups with members of the viewing public. The specific sample structure for the focus groups is outlined in the following table.

### Sample Structure

Approach	Participants
<b>Group One</b>	A mix of men and women (50/50), aged between 25 and 35 years, mixed ethnicity as follows: <ul style="list-style-type: none"> <li>• Pacific (2)</li> <li>• Asian (2)</li> <li>• NZ European / Pakeha (4)</li> </ul>
<b>Group Two</b>	A mix of men and women (50/50), aged between 25 and 35 years, Maori

There were eight participants in each group and a range of life-stages were represented (single people, couples no children, one and two parent families). Participants resided in a range of geographical locations across the Auckland region.

### Process

Participants were shown video clips of four (Group One) and five (Group Two) items against which complaints had been made. No information, other than the fact that a complaint had been made, was provided prior to the each clip being shown. After viewing each clip participants were provided with information regarding the relevant standard(s) and separated into three smaller groups. Each smaller group was asked to consider the content of the clip and the relevant standard(s) and to make a decision about whether to uphold or not uphold the complaint.

After discussion around these decisions, the actual Board decision was identified – with reasons provided and participants were asked for further comment.

Each group was two hours in duration.

### 3 Research Findings

#### ITEM ONE

##### 2008-112 Turner (Shortland Street)

**Broadcast:** 7 pm, Tuesday 2 September on TV2

**Complaint:** The complainant alleged that the episode breached standards of good taste and decency. He argued that “the violence in this episode was totally unacceptable given the time of night the programme is screened”.

##### The public’s decision

Fifteen out of sixteen participants, across the two groups, voted to **not uphold** this complaint and one voted to uphold the complaint – i.e. fifteen out of sixteen **did not agree** with the Board’s decision. Initially, all sixteen had voted to not uphold this complaint, but one woman changed her mind at the commencement of the group discussion:

*“I’m changing my mind now because I’m just noticing the AO [on the sheet handed out] ... I think maybe they should have changed the whole programme to AO ... I don’t think the programme has any child themes in it” (Pakeha)*

The main reasons given for not upholding this complaint were that:

- The violence was considered to be very low level – and therefore acceptable for a 7 pm time slot, when children may be viewing

*“We didn’t think it was violent enough ... there was no killings, there was no gore ... there was no blood” (Pakeha)*

*“I think it was just a bit of intimidation, it wasn’t anything” (Maori)*

*“It’s not graphic enough” (Asian)”*

*“It was borderline ... but I don’t think it was severe enough to uphold the complaint” (Maori)*

*“For me, translating it into good taste and decency, that wouldn’t meet that ... but I thought it was OK” (Maori)*

*“If there was blood, it would have been a different story” (Maori)*

*“It just wasn’t very violent” (Pakeha)*

*“To me it was the head knocking back on the rock that was the hardest thing, if there had been a blood stain, that would have been warranted” (Maori)*

*“To go one level ahead of PGR is R16 ... I don’t think this one is R16” (Asian)*

- The violence was considered to be less extreme than violence depicted on other programmes (including in news items) – i.e. participants based their decision on the violence content of other programmes, and relative to other programmes, the violence depicted here was low level

*“I think that’s a PGR level of violence ... because of the exposure in a lot of other programmes, even cartoons have more violence than that” (Pakeha)*

*“On other programmes you get the gore and the blood and everything else ... you know, what’s a bit of a slap around” (Pacific)*

*“I think that even in the ads kids get to see little short snippets of even gruesome violence, advertising police programmes, CSI ... so for that, that was quite tame” (Maori)*

*“I think now that’s the only choice we have. If they play anything less violent it’d be in cartoons” (Pacific)*

*“I’m thinking Bart Simpson, it shows a lot more than that” (Pacific)*

*“I’ve seen worse than that, it didn’t really get my blood boiling” (Maori)*

*“Even the six o’clock news, there’s still a lot of violence that goes on there” (Pakeha)*

*“[Basing decisions on other programmes] it’s community standard because that’s what the world’s about” (Pakeha)*

- The violence was considered to be **implied** only – there were no scenes showing the actor actually being hit with a baseball bat. Note that the one participant who voted to uphold the complaint emphasised that, implied or not, if standards are not upheld at this level, it results in increased desensitisation to violence and in increasingly violent content being broadcast – *“next thing there’ll be bats going through heads because no one’s upholding the standards”*. Most other people did not agree with this view however.

*“I mean, he held the bat but he didn’t hit the guy” (Pacific)*

*“The scene they show is the threat of violence, but actually witnessing it is quite different” (Pakeha)*

*“I don’t think it was as explicit, it was implied that there was violence and stuff without actually seeing the impact of it and the resulting, you know ... basically if you’re an adult then you know what it means, but if you’re a child ... they’re not seeing that” (Maori)*

*“Well you didn’t see him get hit with the baseball bat” (Maori)*

- The violence built over time – it would have been obvious to anyone viewing that the violence may have eventually escalated (therefore providing enough warning if

viewers did not wish to continue watching a final, more violent scene). Note that participants made a distinction in this respect between sudden and unexpected violence, and expected violence (believing that expected violence has less impact than sudden violence). Furthermore, when the violence did eventually escalate, it was considered to be of a very short duration

*“It was really short-lived as well” (Pakeha)*

*“He hit his head and then it moved on” (Pacific)*

*“I saw it but it was just the once, and it wasn’t really a rock” (Maori)*

- The PGR classification was seen as providing adequate warning for parents if they did not want their children to view this programme – i.e. parents were seen as having been given fair warning (and especially so if a verbal warning had been broadcast prior to the commencement of this episode)

*“After 7, its PGR, they’re following the guidelines I believe” (Pakeha)*

*“Yeah, we’ve been warned, parental guidance, don’t let your kids wander around and then get offended and make a complaint” (Maori)*

*“It does say parental guidance recommended, and if they were offended ... they had plenty of time to switch the channel” (Asian)*

*“Shortland Street usually gives a warning” (Pakeha)*

*“They basically mitigated it by referring to it as PG whatever ... well if the guy has a concern of children watching it, he’s been warned” (Maori)*

*“Yeah, because its PGR parents are supposed to be there anyway” (Pakeha)*

*“That’s what PGR is saying, it’s putting the responsibility back on the parents” (Pakeha)*

*“That scene of being hit by the rock is a bit ‘ooh’, but again it is parental guidance” (Pakeha)*

Participants were asked whether the easy accessibility of baseball bats should have been taken into account. The general view here was that all manner of weapons are easily available in New Zealand – therefore, using a baseball bat as a weapon was no worse than using another type of weapon.

*“But so is a knife [available]” (Pakeha)*

*“It’s pretty normal [to see baseball bats being used as weapons on TV]” (Pacific)*

*“Talking about kids, looking at that scene I don’t think that next time they have a baseball bat they’ll think ‘oh I can use this to smack somebody around the head” (Maori)*

In summary, the viewing public did not agree with the Board's decision because:

- The violence was considered to be very minor – and therefore acceptable for 7 pm (and for children)
- Parents are given fair warning anyway if they don't want their children to watch this – the programme is PGR and Shortland Street usually provides a verbal warning for episodes like this
- The violence is of a lower level (or no worse) than other violence on TV, including other programmes targeted at children
- The scene builds over time and then any actual violence (hitting his head on a rock) is short-lived, and
- The violence involving the baseball bat is implied – i.e. there is no scene where the actor is hit with a baseball bat.

## ITEM TWO

### 2008-059 Cross (Shortland Street)

**Broadcast:** 7 pm, Wednesday 30 April on TV2

**Complaint:** The complainant said that he was appalled that “TVNZ is prepared to accept it is suitable family viewing to show a pair of men undressing, getting into bed and one disappearing under the blankets to obviously start oral sex with his mate”.

#### The public's decision

Eight out of eight participants in Group One voted to **uphold** this complaint – i.e. all participants **agreed** with the Board's decision.

Group Two (Maori) were mixed in their decisions – in this respect there appeared to be some people in this group who were less comfortable overall in making a decision to uphold the good taste and decency complaint. There appeared to be some concern in this respect that the decision might appear discriminatory – and therefore, initially some people decided to not uphold the complaint. Comments made during the discussion however, did not reflect this view. All participants voted to uphold the complaint regarding children's interests however.

The main reasons for upholding these complaints were that:

- The sexual content of this scene was considered to be extreme for a 7pm time slot and a PGR classification – both in terms of the fact that the scene is prolonged and that the scene involves a specific sexual act (oral sex) which participants did not feel was appropriate given the time slot for the programme. Note that unlike the previous violence clip, participants did not consider a PGR classification - in terms of 'fair warning' - to be relevant here

*“Adult themes ... that was a bit too graphic” (Pacific)*

*“Not just sex, but oral sex and things like that ... my opinion is that children are exposed to violence a lot more but you know sexual things aren't really ... well fighting and guns and cops and robbers are things that kids get into when they are little, but sexual themes are much more adult” (Pakeha)*

*“For me it breached both, the oral sex part of it, if it hadn't had that, if they were just lying in bed [it would have been OK]” (Maori)*

*“The fact that it started in a room, two half naked men, even if it was a man and a woman it would have immediately set an alarm bell in my head” (Pacific)*

*“It's not a PGR theme” (Pakeha)*

*“Just what he said about the oral sex and that. I disagree with that ... but I think gay people have their rights too, but they should tone it down for the children” (Maori)*

*“Just the time and the oral sex thing, I mean if they had just been kissing and cuddling ... its not the fact that they were gay or anything” (Maori)*

*“I guess its more the whole issue that [ ] raised, you see kids playing, they hit each other and you say ‘don't hit your brother, don't hit your sister’, but you see kids playing mummys and daddys and kissing each other and its ‘what are you doing?’” (Pacific)*

*“There's a legal age on having sex and its 16, its not 10, that might be watching Shortland Street” (Pakeha)*

- The content of this clip (two men about to engage in a sexual act) was considered inappropriate by some participants in Group One, in that it is exposing children to sexual options they may not be old enough (or do not yet need to) understand. Note that two participants in Group One (both Pakeha) were extremely disturbed by the gay content of this clip. Other participants emphasised that this made no difference to their decision, but some acknowledged that the scene was more controversial because of this. No one in Group Two (Maori) made comments in this respect.

*“I thought it was disgraceful to be honest, I thought it failed on observance of all counts of good taste and decency ... just that it's at seven o'clock and you've got children watching it and getting mixed messages” (Pakeha)*

*“I thought that general sexual stuff is bad enough but this one is a bit unusual” (Asian)*

*“I'd say R15, 16, because at that age most kids are aware ... if not, they're pretty sheltered” (Pakeha)*

*“Two men ... it just makes it more controversial” (Pakeha)*

*“It's a bit more in your face” (Pakeha)*



Note that even though no oral sex actually takes place, the implication of sexual activity in this context, at 7 pm, was considered to be as significant as if the actual act itself had been shown. Furthermore, there was a view among most that the other content of the clip was also overtly sexual. A minority of participants claimed to only have a concern over the oral sex component.

*"I thought it was already too graphic when they took off their clothes and starting touching each other ... it was really sexual, not implied" (Asian)*

In summary, the viewing public agreed with the Board's decision because:

- The oral sex component of this clip, whether oral sex actually occurred or not, was inappropriate for the age of children who could be watching Shortland Street (given the 7pm time slot)
- The rest of the clip was also considered to have inappropriate sexual themes given the time slot and classification, and
- The gay theme depicted here was considered inappropriate by some because of the age of the children that may be viewing (and the fact that they may not yet be ready to be exposed to the sexual options that may be available to them in the future).

### ITEM THREE

#### 2007-016 Russek (Close UP)

**Broadcast:** 7 pm, December 5, 2007 on TV One

**Complaint:** The complainant stated that he had suffered severe embarrassment and distress as a result of the Close Up programme as he was unaware that he was being videotaped. The complainant asserted that his permission had not been sought to be included in the broadcast, to be quoted or to have his name released to the public. He noted that the incident had taken place on his private property. He maintained that his privacy had been invaded, and that he had been treated unfairly because he had been branded "as a person who is investigated by the police and who is therefore associated with criminal behaviour".

#### The public's decision

Sixteen out of sixteen participants **upheld the privacy** complaint – i.e. all participants **agreed** with the Board's decision.

Fifteen out of sixteen participants **upheld the fairness** complaint – i.e. the majority of participants **did not agree** with the Board's decision (the one person that did not uphold this complaint was in Group One).

The main reasons for upholding the privacy complaint were that:

- Mr Russek did not know he was being filmed. Note also that participants raised concerns regarding the way in which the filming occurred – i.e. secretly through the window of a vehicle

*“It seems a bit sneaky, I thought it wasn’t legal to use video footage in that situation”* (Pakeha)

*‘He would have invited them onto his land and they would have filmed him without his knowledge and without his consent’* (Pakeha)

*“Blatant ... the didn’t even ask any of his permission, he had no idea”* (Maori)

*“They deceived him”* (Pakeha)

- Mr Russek was on his own private property – i.e. he was not in a public place while being filmed

*“And the fact that they were on his private property”* (Pacific)

*“They’re on his property”* (Maori)

*“[Private land] hugely, a massive difference”* (Pakeha)

- There was no public interest in the item being screened on television – in this respect, Mr Russek was not involved in any way in the abduction of the child and this clip did not assist the investigation in any way

*“He’s no threat to society”* (Pakeha)

*“I don’t think the public did need to know”* (Maori)

*“If they had a lead or something then fair enough, but this poor guy had nothing to do with it”* (Maori)

*“He was a dead end”* (Maori)

*“We didn’t need to know that, it didn’t tell us anything about the case”* (Pacific)

*“They didn’t ask him if they could film it on TV and he wasn’t a danger to society”* (Asian)

The main reasons for upholding the fairness complaint were that:

- Even though the Police Officer at the end of the clip clearly indicated that Mr Russek had no involvement in the child’s abduction, the fact that he had been investigated (and twice visited by the Police) may have left an overall impression that he may have had some involvement in this case. Participants noted that not everyone may have watched the entire clip and therefore may not have heard the Police Officer clear Mr Russek of any involvement. There was also some concern that because Mr

Russek lives in a small town, that the impact of having been investigated may have a more significant impact

*“This is just basically Joe Bloggs farmer that’s been wrongly accused, who is practically cleared after” (Pacific)*

*“He must have been accused for them to come around ... nah, there’s some stigma attached” (Asian)*

*“Especially when there’s a camera sneaking, going through the back seats ... you think this guy’s a little bit dodgy” (Pakeha)*

*“And the impression that the media gave of him was a negative one” (Maori)*

*“Cause he was not part of it anyway ... so it’s made him look like he was [part of it] ... there’s a lot of half listeners out there” (Maori)*

*“And saying the Police had interviewed him twice” (Pakeha)*

*“Nah, cause he told them clearly that the police had been in twice and they found nothing ... and they were going ‘are you sure?’, ‘are you sure?’, like they’re accusing him ... that’s what they’re trying to imply, that he’s staying on the property next door [the child] and you know something about it, that’s my feeling” (Maori)*

*“I would have thought just by watching that he is somehow connected to the case, because they’re on his private property” (Pakeha)*

*“You might walk away thinking he was guilty” (Pakeha)*

*“Cause they were baiting him” (Maori)*

*“It will make a big impact on him and his future life” (Asian)*

*“It’s trial by media and it’s not fair” (Pakeha)*

One participant said he would not have held up the fairness complaint. In his view, the Police Officer’s statement at the end of the clip was seen as clarifying that Mr Russek had had no involvement in the case.

*“I think they did clear him and he appeared calm and innocent” (Pakeha)*

In summary, the viewing public agreed with the Board’s decision regarding the privacy complaint but did not agree with the Board’s decision regarding the fairness complaint. This was because:

- Mr Russek had not been told he was being filmed and that the film would be aired on television, he was on his own private property and there was no public interest in the information being made public

- The clip may have left some doubt in some people's mind regarding his involvement in the child's abduction – especially given that he had been investigated and twice visited by the Police (and regardless of the fact that the Police Officer in the clip cleared him of any involvement) – i.e. participants' felt that there may still be a lingering perception that he must have had some involvement for him to have been investigated at all.

## ITEM FOUR

### 2006-061 Walden (Police College)

**Broadcast:** 10.30 pm, May 9, 2006 on TV2

**Complaint:** The complainant explained that he was the man shown being ejected from Westpac Stadium. In his view, the item breached his privacy and was unfair to him. He admitted that his behaviour “was offensive to a reasonable person”, but said that he had lived the incident down and let the justice system take its course. The complainant stated that the event portrayed had occurred many months prior to the broadcast. The complainant stated that he had been embarrassed and harassed at the time of the incident because he had friends who were members of the police, and he had been abusive towards police staff. He added, “recalling the incident on national television meant that those who did not know of the incident do now. Those that did know have been reminded of my misdemeanour”.

### The public's decision

Participants found this the most difficult decision to make, with the greatest amount of disagreement between group members. The decisions made by participants with respect to privacy and fairness complaints were as follows:

Group One:

- Four participants – voted to not uphold either complaint (privacy or fairness)
- One participant upheld privacy, but not fairness
- One participant upheld fairness, but not privacy
- One participant did not uphold privacy but was unsure about fairness
- One participant did not uphold fairness but was unsure about privacy.

Group Two:

- One participant upheld both complaints (privacy and fairness)
- Two participants upheld privacy but not fairness
- One participant upheld fairness but not privacy
- One participant was unsure about either
- One participant did not uphold privacy but was unsure about fairness
- One participant upheld privacy but was unsure about fairness
- One participant did not uphold either complaint.

As described above, views on this complaint were extremely mixed. Most people did not feel that Mr Walden's privacy had been breached because he was in a public place and had [they assumed] been aware he was being filmed. Even if he had not been aware that he was being filmed, the general view was the same – if a person is going to behave unacceptably in a public place it is “their look out”.

*“And who's to say he's learnt his lesson” (Pakeha)*

*“See I'm a firm believer that if you're in the public arena, you're fair game” (Pacific)*

*“But he's wasting police time and he knows he's being filmed” (Pakeha)*

*“On the privacy issue, I think he was fair game, he was doing it in public and annoying other people as well” (Maori)*

*“He's gotten rid of his privacy the minute he's standing out of the stadium acting up, as far as fairness goes, I mean showing it 13 months later ... he's going to live that whole issue again but it is unfair to him” (Pacific)*

*“For me it's that he's committed a crime ... privacy, who cares” (Maori)*

*“Four police officers' time” (Pakeha)*

One person felt his privacy was breached because permission had not been sought prior to the broadcast.

*“I agreed with his complaint only because they didn't get his permission to use his image or his quotes or whatever” (Maori)*

Most participants also agreed that it was in the public interest to broadcast this. The main reason given for this was that it may be a deterrent in terms of other similar behaviour.

*“I thought it should have been showed, I thought it was in the public interest as a deterrent ... anyone looking at that would think what an idiot ... but his face should have been blacked out, they didn't need to show his face ... [why?] ... cause the programme was about the cops, not about him” (Asian)*

*“For example, if someone was [doing graffiti] in a public building and they were filmed, I wouldn't have any regrets about putting them on national TV ... and he was being a nuisance” (Asian)*

*“Personally I don't think its fair, but for public interest this scenario for us to know these things happen, its important ... see what the police have to put up with” (Maori)*

Most people were also of the opinion that the length of time between the incident and the broadcast was irrelevant – again, mainly because of the complainant's behaviour in a public place.

*“That sort of thing cannot become a private fact over a course of time, when you have an outburst like that, its in front of everyone, its in front of the camera ... if I strut around naked outside and its on film ... its too bloody bad” (Pakeha)*

*“He shouldn’t have acted like that in the first place” (Pakeha)*

Some participants did feel however that Mr Walden’s face should have been pixilated because of the length of time between the incident and broadcast. These same people indicated that if the length of time had been shorter, they would not have expected his face to have been pixilated.

*“To have it all brought up again is a little unfair considering he was obviously very intoxicated” (Pakeha)*

*“If he goes for a job ... ‘oh, you’re that guy” (Pakeha)*

*“They could have shown that same image but blacked out his face” (Maori)*

*“If they filmed it straight away, I’d be OK with that [showing his face], but 13 months later I don’t think they need to show his face” (Asian)*

*“But I think they should have blurred his face out because ... ultimately what was the point in showing that story, it doesn’t show spectacular young policing work, it shows a funny drunk dude getting his arse hauled out of there” (Pakeha)*

*“I think that although he acted nonsense I think that everybody makes mistakes. I think that he deserves a second chance ... this could be a rock to block his way in the future” (Asian).*

## ITEM FIVE

### 2007-017 Agnew (Close Up)

**Broadcast:** 7 pm, November 14, 2006 on TV One

**Complaint:** The complainant argued that the interview with the children was intrusive and damaging. She noted that the little girl was “extremely distressed when questioned”, and contended that this had shown an inexcusable lack of consideration for her feelings. The daughter was in a distressing situation, she said, and questioning her on national television was “an appalling use of adult power over children”.

### The public’s decision

This clip was only shown to Group Two (Maori) and only briefly discussed. However, the majority of participants indicated that they would have **upheld** the complaint. One person said they would not have and one was unsure.

*“Shouldn’t do that to children”*

*"I thought the interview was very bad"*

*"I would expect for her to talk to an adult like that, but [not a] child"*

Other comments centred around the fact that the mother must have given permission for the child to be interviewed and could have stopped it at any time, and the fact that perhaps the story achieved greater awareness and recognition of this family's plight.

*"For me it's the parents that make the decision"*

*"She can't speak English but that doesn't mean she's dumb"*

*"It achieved the purpose that was in her best interests [to get the story out]"*.

Thank you for taking the time to read this report.

**Michelle Irving – Director**

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**Mobius Research and Strategy – *Delivering with aptitude, and the right attitude***

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