

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 38/91

Dated the 30th day of August 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

DR F.H. SIMS

of Auckland

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

DECISION

Introduction

On Sunday 18 November 1990 a programme produced by Television New Zealand Ltd, entitled "Medical Misadventure", was broadcast on TV1's *Frontline*. The programme began by highlighting the outcome of three pregnancies over a five to six year period in the Hamilton area in which mentally impaired babies were born as a result of complications occurring during delivery. The cases were used as illustrations of the complexities involved in, and the shortcomings of, the procedures for discipline within the medical profession.

Dr Sims complained to TVNZ Ltd that the programme was biased and emotive and that it was unfair to Waikato Hospital as it did not place these three cases in the context of the many successful pregnancies dealt with by the Hospital during the same period.

TVNZ rejected the complaint, pointing out that the programme focused on the shortcomings in the medical disciplinary system and that it did not blame either the hospital or the doctors involved for the birth of the three mentally impaired babies. Dr Sims referred his complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989 as he believed that TVNZ had not dealt adequately with the substance of his complaint.



Decision

The members of the Authority have studied the correspondence (summarised in the Appendix) and have viewed the programme to which the complaint relates.

The *Frontline* programme entitled "Medical Misadventure" was broadcast by Television New Zealand Ltd on TV1 on Sunday 18 November 1990. It dealt with the medical profession's disciplinary process and used, as examples of shortcomings in the process, the outcome of three pregnancies over a five to six year period in the Hamilton area in which mentally impaired babies were born as a result of complications occurring during delivery.

In a letter dated 26 November 1990, Dr Sims complained to TVNZ Ltd that the programme was biased, emotive and unfair to Waikato Hospital as it had not placed the three births discussed in the context of the many successful pregnancies dealt with by the Hospital during that time.

TVNZ considered the complaint under s.4(1)(d) of the Broadcasting Act 1989 and standard 6 of the Television Code of Broadcasting Practice. Section 4(1)(d) requires broadcasters to maintain standards which are consistent with:

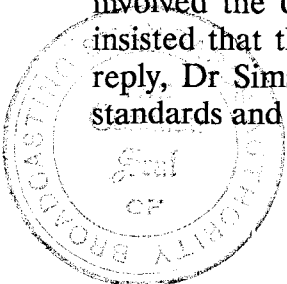
The principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest.

Standard 6 requires broadcasters:

To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

TVNZ advised Dr Sims that it accepted his points about the high risk nature of birth but that the disciplinary process within the medical profession, not childbirth, was the focus of the programme. It explained that the three births discussed were used as illustrations of the existing disciplinary procedures and were used as cases of possible medical misadventure. Two of the parties involved in the disciplinary process arising from the cases used, Dr Jim Clayton of the Medical Practitioners Disciplinary Committee and the named consultant obstetrician's counsel, TVNZ added, had expressed their satisfaction with the fair approach taken by the programme.

When referring his complaint to the Authority, Dr Sims questioned whether the programme had clearly explained its focus, adding that it was his impression that its purpose was to describe three tragedies associated with one doctor and one hospital, and their investigation by the medical disciplinary committee. He said the programme had involved the doctors in a "trial by media". TVNZ, in its response to the Authority, insisted that the programme was a responsible investigation of medical discipline. In reply, Dr Sims maintained that the medical profession was committed to the highest standards and that it was television's responsibility to present to the public only accurate



and balanced information.

In some other decisions, the Authority has criticised TVNZ for not acknowledging that a programme's focus may not be so narrowly targeted as TVNZ has maintained. However, on this occasion, having examined the broadcast carefully, it agreed with TVNZ that the programme's focus was on the medical disciplinary process. The deficiencies in that process, of which there seemed to be a number, were acknowledged by the representatives of the medical profession as well as being highlighted, as expected, by the families who had recounted their experiences with the process. The Authority did not agree with Dr Sims that a trial by media occurred: it was the disciplinary process which was spotlighted, not any particular doctor at Waikato Hospital.

As evidence of that conclusion, the Authority points out that TVNZ reported no adverse comment with the broadcast from two of the parties involved in the disciplinary processes arising from the cases used as illustrations of possible medical misadventure, both of whom had participated in the programme; and that the General Manager of Waikato Hospital explained recent revisions to Hospital procedures to ensure that problems which had led in the past to disciplinary matters did not reoccur. It is significant that none of the parties who might have been aggrieved by the broadcast complained.

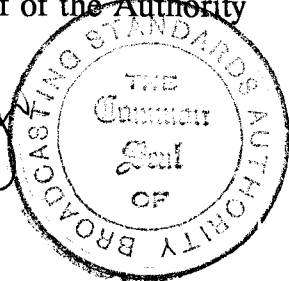
In the terms of the standards raised by the complaint, the Authority concluded that medical discipline is a controversial matter of public importance, that reasonable opportunities were given to present significant points of view, and that the programme had shown balance and fairness. Indeed, the Authority records that it was impressed by the programme - *Frontline* handled a difficult and emotional issue in a conscientious and sensitive but unsensational way.

For the above reasons, the Authority declines to uphold the complaint.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



30 August 1991

Appendix

Dr Sims' Complaint to Television New Zealand Limited

Dr Sims, a retired pathologist, made a formal complaint to TVNZ Ltd in a letter dated 26 November 1990. He described a *Frontline* programme broadcast by TV1 on 18 November entitled "Medical Misadventure" as biased and emotive, and unfair to Waikato Hospital and its doctors, as it did not place the three pregnancies in which mentally impaired babies were born as a result of complications occurring during delivery in the context of "the huge number of normal and difficult or complicated deliveries handled successfully" during the five or six year period.

He described the interviews with hospital representatives and doctors as a "gesture of fairness" but that they did not "excuse the programme from the responsibility of presenting the facts in a fair and unbiased manner".

A fair and unbiased programme, he said, would have noted that birth was a very high risk time and would have placed the mistakes in the context of the total number of operations involved.

TVNZ's Response to the Formal Complaint

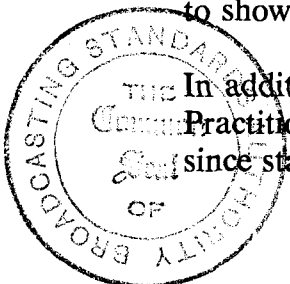
TVNZ advised Dr Sims of its Complaints Committee's decision in a letter dated 5 March 1991. The complaint had been considered in the context of s.4(1)(d) of the Broadcasting Act 1989 which requires that opportunities be given for the presentation of significant points of view, and standard 6 of the Television Code of Broadcasting Practice which requires balance, impartiality and fairness.

TVNZ emphasised that the programme concerned the disciplinary processes within the medical profession and had used as examples the experiences of three families "whose babies were born at Waikato Hospital with brain damage - apparently as the result of medical misadventure".

Noting that Dr Sims had said that he had little direct relationship with Waikato Hospital or the practice of obstetrics, TVNZ recorded:

In this regard the Committee was informed that the lawyer representing Dr Kitching (sic) - the man who was consulting obstetrician in the case of all three babies - telephoned *Frontline* after the programme to congratulate the producer on the "fair and thorough approach" the programme took. Further, the lawyer asked for a videotape copy of the programme so that he could take it to London to show to colleagues at a conference on medical/legal questions.

In addition the Committee was advised that Dr Jim Clayton from the Medical Practitioners Disciplinary Committee, who also appeared on the programme, had since stated that he was satisfied with the programme as broadcast. Given these



circumstances it appeared that you may be seeking to support a group of colleagues who, after all, felt they had been treated quite fairly.

TVNZ accepted the specific points made by Dr Sims about the high risk nature of birth, but repeated:

The plight of the babies was seen as being used as a means to illustrate what appeared to be flaws in the medical disciplinary system - flaws which the interviews indicated were acknowledged by everyone in some degree.

Dr Sims' Complaint to the Broadcasting Standards Authority

As Dr Sims was dissatisfied with the decision of TVNZ's Complaints Committee, he referred the complaint to the Authority on 27 March 1991 under s.8(a) of the Broadcasting Act 1989. He said that he was dissatisfied as the substance of his complaint had not been dealt with.

He said that at no point in the programme had the impression been conveyed that the purpose was to investigate the medical profession's disciplinary processes. He continued:

My impression (and I am sure this would apply to all viewers) was that the purpose of the programme was to describe a human tragedy involving three babies born with brain damage, and their families - all associated with one particular doctor, and one particular hospital, and the steps taken by the medical disciplinary committee to investigate these.

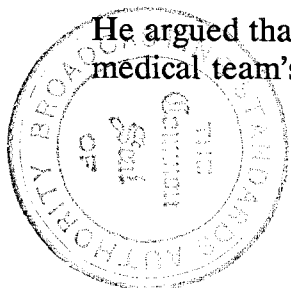
Even if the primary purpose was to investigate medical discipline, he added, the programme had been extraordinarily insensitive to have three families relive their anguish.

In the Authority's Complaint Referral Form, he maintained that the programme was grossly unfair to the doctors and the hospital. He wrote:

The crux of the matter is that the assessment of a highly technical matter, such as the management of complicated pregnancies can only be performed with fairness by a panel of experts in the same field.

It was the opinion of the broadcaster that the Medical Disciplinary Committee had not dealt correctly or adequately with the situation, and the programme was constructed as an invitation to the public to form a judgement on the matter from the presentation. i.e. It was a "trial by the media".

He argued that a balanced presentation required that equal prominence be given to the medical team's full record.



TVNZ's Response to the Authority

As is its practice, the Authority referred the complaint to the broadcaster. The letter to TVNZ was dated 19 April 1991 and the reply is dated 1 July.

TVNZ stated that Dr Sims had misinterpreted the programme's focus. It quoted from a trailer, from the programme's introduction and from a transcript of a backgrounder presented to stress that medical discipline was the focus. The programme had used human terms to deal with a complex issue to ensure that it was properly understood by viewers. In the circumstances, it was unnecessary to refer to the number of births without problems.

TVNZ challenged Dr Sims' assertion that the assessment of the management of complicated pregnancies could only be performed by a panel of experts. The job of journalists, it added, was to translate, in consultation with experts, complex technical issues into lay language. In this case, the birth of the three babies had been used as illustrations of deficiencies in the complaints process.

It is further submitted that it was not a case of "trial by media" as he asserts. It was the exercise of the proper function of responsible, investigative journalism.

TVNZ concluded that discipline in the medical profession was an issue of public interest and the programme, in discussing that topic, was fair and balanced.

Dr Sims' Final Comment to the Authority

Dr Sims was asked for his comments on TVNZ's letter and in his response dated 7 July 1991 he noted the power of the media especially when dealing with complex issues. Quoting passages from the programme's transcript referred to by TVNZ, Dr Sims wrote:

It invites the viewer to come to the conclusion that the doctor and the hospital are not competent in the management of complicated obstetrics, and that the Medical Disciplinary Committee was at fault in not dealing more severely with them.

If the focus was solely on medical disciplinary procedures, as TVNZ maintained, it would have been as well served by presenting three cases involving different doctors and different hospitals.

He reiterated the point that the programme was trial by media:

... I consider that only accurate and balanced information should be presented to the public. ... I believe that the medical profession generally are strongly committed to the maintenance of the highest standards of skill and care possible.

