

Mr Dobie submitted that the inclusion of the word was not necessary to convey the brutal act of aggression. Factual acts of aggression and atrocities had been adequately reported on television in the past without the use of obscene language.

He further submitted that a word which is classed obscene remains obscene.

*The Corporation's Decision:* The Complaints Review Committee gave the following decision after considering Mr Dobie's submissions and those of Television One:

"The Complaints Review Committee of the Broadcasting Corporation of New Zealand (Messrs C. J. Freeman and M. P. Whatman) met on 4 April to hear a complaint from Mr G. W. Dobie, Wainuiomata, about the use of a four letter word in a 'Seven Days' programme ('A Fate Worse than Death') broadcast by Television One on 27 February 1977. The hearing was private and informal, and counsel were not heard.

The committee first considered a full written submission from the complainant, who was unable to be present. Mr Dobie argued that the word in question is, without doubt, obscene, that it is contrary to public decency, that its use in a broadcast is against the law, and that its use in the programme was not necessary in order to convey what happened. He reminded the Committee that, following an 'Edwards on Saturday' programme, the Police had warned Television One that they might be prosecuted if certain language was repeated. He said that a decision to support Television One on this matter would set a precedent for future standards.

In its plea of justification for the use of the word Television One (Mr D. Monaghan, Controller of Programmes; Mr Richard Thomas, Producer) first detailed public reaction to the broadcast: they received three phone calls, two of which complained of the language, and twelve letters, two of which were hostile, but only one of these two referred to the particular word. Whereas the complaint maintained that a word which is classed obscene remains obscene whatever the circumstances, Television One claimed that the use of a particular word must always be judged in the context of the programme as a whole and in the light of the intention of the producer of the programme. Answering questions from the committee, the producer said the protagonist of the programme had not been briefed beforehand, but had told her story in her own words. He had given careful consideration to the use of the word in question and sincerely felt it was necessary to leave it in so as to convey the crudity and the shock of the verbal assault. Answering a further question the producer said that the decision to retain the word was his own and had not been referred upwards.

In working towards a decision the committee felt that it was not proper for it, as a lay body, to try to define the precise legal meaning of the word "obscene" in relation to section 51 of the Radio Regulations, cited by Mr Dobie. Rather they saw it as their duty to judge the complaint under section 24 of the Broadcasting Act 1976 and the programme rules of the Corporation, as a problem in broadcasting ethics against the background of community standards. In reaching its decision the committee members laid particular emphasis on context and intention; they acknowledged that the programme was a serious attempt to grapple with one side of a grave and distressing type of crime, and they were convinced that the makers of the programme had no desire to shock viewers gratuitously. In the context of the whole programme they found that the use of the word was justifiable, and that any shock it would convey would be in keeping with a portrayal of that received by the victim. However, the committee qualified its findings with some criticism of the way in which the programme decision was made. The members felt that such decisions should not be taken lightly and they were surprised that in this instance the producer of the programme had not referred the problem to his superiors, as is believed to be standard practice in the BBC. With this qualification, the committee found it could not sustain the complaint against Television One."

The Tribunal has been informed by the Secretary of the Broadcasting Corporation that the corporation accepted the committee's finding without modification at a meeting on 3 May 1977.

*Reference to Tribunal:* Mr Dobie lodged a complaint with the Broadcasting Tribunal pursuant to section 25 (5) Broadcasting Act 1976.

In this complaint he stated the word was classed as obscene and its use in a public place was a criminal offence. The exoneration of TV 1 created a precedent for a repetition of the word in certain future programmes such as documentaries and dramatised documentaries.

He referred the Tribunal to the submissions he had made to the Corporation.

Mr Dobie considered the Corporation should have

1. Censured TV 1 for bad judgment in allowing the use of the word on a pre-recorded programme.
2. Given a direction to TV 1 to disallow the use of the obscene word on any programme.

*Hearing:* The Tribunal is required, for the purposes of any particular complaint, to co-opt two persons whose qualifications or experience are likely, in the opinion of the Tribunal, to be of assistance in dealing with that complaint. The Tribunal co-opted Mrs Helen McPhail, of Benio, Southland and Mr D. M. Wylie, of Wellington.

The Tribunal, including the co-opted members, viewed the tape of the programme and considered written submissions made by Mr Dobie who did not wish to be heard in person. The Corporation did not wish to make any further submissions, relying on the decision of the Complaints Review Committee which had been adopted by the Corporation.

*Decision:* The Tribunal considers that the use of the word in the context of the programme was unexceptionable.

The word was not used in an insulting or indecent way. The Tribunal notes that the word was used in its functional sense rather than its insulting or offensive sense.

It was used by a young woman who was relating the events as she had experienced them. Repetition of the actual words used to her reinforced the impression made on the viewer of the integrity of her story.

She did not dwell on the word; she passed over it in a manner which indicated that she was embarrassed to be discussing this part of the incident.

No attempt was made by the producer to dramatise or draw attention to the word which was neither used nor referred to again.

The use of any particular word must be considered in the context in which it occurs in relation to the whole programme. It is impossible to lay down any rule that a word will always be acceptable or unacceptable.

In making its decision, the Tribunal emphasises that the use of this word at present in most contexts would not be generally acceptable to the community; in some instances it would be obscene.

The Tribunal considers that to have given a warning of the use of the word in this programme would have been quite irresponsible. It would have led to an undesirable concentration on the existence of the word in the programme and would have advertised and highlighted its use.

As far as children are concerned, any child who was old enough to have heard and understood the word would not have been harmed by its use in the context in which it appeared in this programme. If a child had never heard the word before, he or she would be unlikely to have been impressed by its use in this programme.

However, these were subsidiary points since the complainant objects to the broadcasting of the word in any circumstances whatsoever.

We do not find the use in this programme constitutes a failure to observe standards of good taste and decency under section 24 1 (c) of the Broadcasting Act 1976.

We find the use of the word in this programme was not obscene, indecent or offensive.

The Tribunal does not consider the broadcast breached Regulation 51 Radio Regulations 1970 or the Programme Rules.

The Tribunal therefore upholds the decision of the Corporation on Mr Dobie's complaint.

The Tribunal notes that the Complaints Review Committee expressed surprise that the producer of the programme had not referred the problem to his superiors.

As it is likely situations will occur where decisions have to be made on use of language it agrees with the Complaints Review Committee that such decisions should be referred upwards by a producer.

*NOTE:* Co-opted members of the Tribunal, Mrs McPhail and Mr Wylie, as provided in the Act, have attended the meeting of the Tribunal and have viewed the film and taken part in the deliberations. The decision, however, has been made by the permanent members of the Tribunal.

Dated this 20th day of June 1977.

B. H. SLANE, Chairman.