

been lodged because Mr Withrington wrote to Mr Jane on 11 February 1987 acknowledging his complaint and enclosing information on the procedure to be followed if he wished to pursue the matter further.

The Tribunal will require Triple M/Stereo FM to inform it of the procedures followed by the station to maintain written and audio records of material broadcast, and the manner in which these records are handled when advice of a complaint has been received.

Co-opted Members:

Diane Billing and J. A. Kelleher were co-opted as persons whose qualifications and experience were likely to be of assistance to the Tribunal in the determination of the complaint. They took part in the deliberations of the Tribunal but the decision, in accordance with the Act, is that of the permanent members.

Signed for the Tribunal:

R. BOYD-BELL, Member.

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Decision No. 21/88

COM: 2/88

Before the Broadcasting Tribunal

In the matter of the Broadcasting Act 1976, and in the matter of a complaint by **M. A. Morrison** of Lower Hutt:

Warrant Holder: The Broadcasting Corporation of New Zealand (Television One):

Members: Anne E. Wilson and Robert Boyd-Bell.

Co-opted Members: Russell Campbell and G. K. Drury.

Decision

The Complaint

On 17 January 1988 Mrs M. A. Morrison referred to the Tribunal a complaint about the programme called "The Singing Detective" which played over some weeks on Television One. Her particular complaint concerned the episode broadcast on Monday, 19 October 1987, commencing at 9.30 p.m. and was specifically about a scene which was broadcast at approximately 10.15 p.m. Mrs Morrison maintained that the programme "contained pornographic intercourse scenes" and felt that the scenes were not acceptable and went beyond reasonable standards of decency. She claimed this was in breach of the Corporation's responsibility as outlined in section 24 (1) (c) of the Broadcasting Act 1976.

That section reads:

"(1) The Corporation shall be responsible for maintaining, in its programmes and their presentation, standards which will be generally acceptable in the community, and in particular it shall have regard to—

(c) The observance of standards of good taste and decency."

The particulars of the complaint were stated in the formal complaint form as follows:

"Intercourse scenes as outlined in my letter to BCNZ 20 October 1987 should not be screened from 9.30 p.m. onwards which is a relatively early part of the evening because many children are viewing programmes much later than this. Headmasters and teachers regularly complain that pupils watch television till late at night. I challenge the BCNZ statement that the man's genitals were not shown because after he withdrew from the act of intercourse his penis was clearly visible. This is definitely an infringement of the Broadcasting Act section 24 (1) (c) 'the observance of standards of good taste and decency'."

Her particular objection was expressed as:

"The particular pornographic intercourse scenes are not

suitable for screening at *any time* so the 9.30 p.m. slot is irrelevant and the scenes were gratuitous and prurient and offended the Broadcasting Act section 24 (1) (c). Marital infidelity was part of the plot of the programme but the explicitness was not at all necessary to convey this. Marital infidelity is a regular theme in television programmes and is conveyed in an acceptable manner without sexual explicitness. These scenes could and should have been cut without in any way affecting the theme. There was ample time to cut the scene before the actual offensive intercourse took place; for example when the man lifted her dress, lowered her panties and she lay on her back on the ground. Any normal person would automatically conclude what would have followed; for this reason I consider the scene gratuitous. The 'dramatic significance' of the scene being observed by a juvenile boy would not have been impaired if the recommended cut had been made, and for this reason in my opinion the scenes were most 'inappropriate'. It follows that the NZBC believes it can show anything and everything under the title 'dramatic significance'."

Complaint to the BCNZ

Mrs Morrison had previously laid a formal complaint with the Broadcasting Corporation. The programme was shown on 19 October and she wrote to them the next day laying a complaint under section 24 (1) (c). The Secretary of the Corporation replied to her on 22 December 1987 advising that the Corporation had concluded that it was not in breach of the Act and that the complaint could not be upheld. Shortly after Mrs Morrison laid her complaint with the Tribunal.

As Mrs Morrison's description of the scenes, in her letter of 20 October to the Corporation, are the basis of her complaint, they are quoted here.

"It is most insulting to have beamed into one's lounge a man with his trousers off penetrating a woman who is lying on her back with her legs twined round his waist. All the motions of intercourse were performed and I believe live sex took place. When the man withdrew his genitals were shown.

This scene was followed with a similar one in which the woman asked the man to remain inside her, which he did. Breast fondling followed and most intimate talk. . . .

The scenes occurred about half way through and lasted a long time. They were not fleeting scenes. The idea of marital infidelity could have been sustained by the man lifting her dress. The actual sex shown was gratuitous and prurient and served no honest purpose."

The Corporation Response

The Corporation, in their reply, stated that "the scene in question was an integral part of an ugly, unpleasant experience in a young person's life, one with lasting effects. It was not designed as a gratuitous act to titillate the viewers imagination, but was an integral part of the structure of the series. Although it was more explicit than might normally be accepted, it was specifically relevant to the whole drama series and, given its dramatic significance, not inappropriate."

When Mrs Morrison laid her complaint with the Tribunal she stated that she was dissatisfied with the outcome of the complaint to the Corporation because

"Even though the Broadcasting Corporation of New Zealand conceded that the intercourse scene 'was more explicit than might normally be accepted' I maintain the scene was not acceptable and went beyond reasonable standards of decency. It was the type of activity one expects to find only in a dirty pornographic video. The same offensive scene was screened twice in this series."

She considered that the decision should have been that the programme should have been cut and the offensive scene deleted.