

The Tribunal considers that the Broadcasting Corporation and Radio New Zealand Limited responded to the complainant patiently throughout.

The complaint is not upheld.

Co-opted Members

R. M. Carter and G. K. Drury were co-opted as persons whose qualifications and experience were likely to be of assistance to the Tribunal. They took part in the deliberations of the Tribunal but the decision is that of the permanent members.

Signed for the Tribunal.

B. H. SLANE, Chairman.

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Decision No. 12/90

COM 9/89

Before the Broadcasting Tribunal

In the matter of the Broadcasting Act 1976, and in the matter of a complaint by **Vincent Joseph Duffin** of Auckland:

Warrant Holder: Television New Zealand Ltd.:

Chairman: Judge B. H. Slane.

Member: Ann E. Wilson.

Co-opted Members: R. M. Carter and G. K. Drury.

Dated this 31st day of January 1990.

Decision

Introduction

On 13 September 1988 at 8 p.m., Television New Zealand screened on TV1 its consumer affairs programme *Fair Go*. An item in the programme concerned amniocentesis. This is the medical procedure whereby amniotic fluid is drawn from the womb during pregnancy to determine whether or not there are abnormalities in the cell structure of the foetus.

The programme opened by posing the question:

"Are mothers-to-be getting the same access to health care services up and down the country?"

Soon after that it said:

"This complaint focuses on how pregnant women are selected to undergo a test that can identify Down's Syndrome ... a common cause of mental deficiency in unborn children."

In particular, the item concerned 33-year-old Tricia Jones of Tauranga who had decided to ask for this procedure to be carried out. Because of the death of her 2-year-old son from a heart defect, she had applied for the test on the grounds of maternal anxiety.

The Auckland Hospital Board had cancelled her appointment because she would be nearly 34 when her baby was born. That particular board did not generally carry out the procedure on pregnant women under the age of 37 though there were exceptions.

The programme then posed the question whether maternal anxiety was considered a valid reason for a test in Auckland. "In the past we've done them under those circumstances", was the quoted reply. "But we no longer have the facilities ... it's due to a shortage of trained people."

However the 2 other hospital boards carrying out the tests in the central and southern regions of the country did so generally when women were younger (35 and up).

The Complaint to TVNZ

Mr Duffin began by writing on 20 September 1988 to the producer of *Fair Go* expressing his concerns regarding the item.

He said that he was sure that many viewers would have been

unaware that the tests were carried out for the purpose of aborting any children unfortunate enough to be identified as "abnormal".

Further he was concerned that the programme should dismiss the 1 in 100 chance that the amniocentesis test would cause a miscarriage of babies who in all likelihood would be normal.

"My point is that your item appeared to present an entirely 1-sided view of amniocentesis tests, with absolutely no reference to the reasons for it or the controversy surrounding it."

The complainant said that the tests themselves raised many important ethical questions which he outlined and which he said the programme failed to allude to.

Reporter's Reply

On 2 November 1988 the television reporter concerned wrote to the complainant saying that in no way did the story attempt to dismiss the risk of miscarriage. "The script stressed that it was because of this, amniocentesis testing is restricted."

The reporter said Mrs Jones' complaint illustrated an area within the public health system where equal treatment of patients did not exist. It was for that reason the story was run on *Fair Go*. The reporter wrote:

"You comment in your letter on the story's apparent failure to focus on the ethical nature of this test. The decision to have an amniocentesis is obviously a personal one made by the mother—a right I strongly defend."

On 22 November 1988 Mr Duffin replied to the reporter's letter at length. In it he summarised his complaint as follows:

"(1) Amniocentesis is synonymous with abortion of babies diagnosed as having abnormalities in their cell structure. It is therefore a delicate and controversial topic, not only by association with abortion, but because of the potential adverse impact on the rights and esteem of abnormal citizens of our society. As such, I do not believe that it was a suitable topic for *Fair Go*.

(2) *Fair Go* treated the subject as if it was an amoral issue; simply a difference of opinion between a mother and the Auckland Hospital. There was absolutely no reference or inference to abortion or controversy.

(3) *Fair Go* demonstrated a firm pro-abortion bias, completely overlooking the perspective of the child, or those who would speak on his or her behalf. It appeared to belittle the risk of the test to the child's life and in effect treated the life of an abnormal child as if it had negative value."

After further brief correspondence between the complainant and the BCNZ, the complainant sought formal consideration of his complaint by the BCNZ.

Television New Zealand Ltd. came into existence on 1 December 1988 to replace part of the former BCNZ. On 15 March 1989 the TVNZ Ltd. Complaints Committee decision was communicated to Mr Duffin by letter.

Television New Zealand's Decision

The programme standards manager, on behalf of the Chief Executive of TVNZ, wrote that the item and the complaint was considered by the Complaints Committee at its meeting on 1 March 1989.

TVNZ said the complaint was considered against section 95 (1) (e) of the Broadcasting Act 1976 and television programme rule 1.1 (g).

"They respectively require broadcasters to have regard to the principle that when controversial issues of public importance are discussed, reasonable efforts are made to present significant points of view, either in the same programme or in other programmes within the period of current interests; and to show impartiality and fairness in dealing with political matters, current affairs, and all questions of a controversial nature.