

13th June 2005

Mr Brian Robinson

HAMILTON

Dear Mr Robinson

Television New Zealand Ltd
Te Reo Tātaki
100 Victoria Street West
PO Box 3819
Auckland
New Zealand
tvnz.co.nz

Further to my letter dated 30th May I advise that TVNZ's Complaints Committee has completed its enquiry into your formal complaint about an item on *Sunday* shown on TV One at 7.30pm on 1st May.

The item examined the case of the late Mr Walter Lake, a former senior member of the Presbyterian Support Services who ran the Berhampore Orphanage in Wellington. Despite a distinguished civic and military record, Mr Lake had been subsequently identified as a sexual predator who had molested children between the ages of eight and fourteen whilst they were in his care. The police had received 13 complaints. The item raised the question about whether enough had been done to help Mr Lake's victims.

You wrote:

"The programme ignored consideration of the strong denials of offending that Lake had made himself prior to his death, and simply stated the position that Lake had committed a crime.

For a serious crime that is disputed, the lack of coverage of the possibility that Lake may be innocent shows a lack of balance and impartiality.

If this programme is deemed to be fair, it will set a sad precedent that the death of an individual permits the media to make comment that would otherwise be defamatory. Most people, including myself, value my name highly, both in life and have an expectation that lies about me will not be told publicly in an official manner after my death".

Your complaint was considered in the context of standards 2 (guideline 2a) and 4 (guideline 4a) of the Free-to-Air Television Code of Broadcasting Practice. These state:

Standard 2 Law and Order

In the preparation and presentation of programmes, broadcasters are responsible for maintaining standards which are consistent with the maintenance of law and order.

2a Broadcasters must respect the principles of law which sustain our society.

Standard 4 Balance

In the preparation and presentation of news, current affairs and factual programmes, broadcasters are responsible for maintaining standards 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.

4a Programmes which deal with political matters, current affairs, and questions of a controversial nature, must show balance and impartiality.

Having considered your complaint, the committee observed that it appeared to be made on a mistaken assumption that TVNZ, or *Sunday*, held on to this information until after the death of Mr Lake in order to avoid the risk of defamation. In fact, as the item observed, the information was the result of a long and painstaking investigation by TVNZ journalists with the main allegations first broadcast in two items on *Holmes* on 15th July and 22 July 2004. Mr Lake was still alive at that time, but neither he nor his lawyers issued defamation proceedings against TVNZ. On his lawyer's advice, Mr Lake refused several times to be interviewed by TVNZ.

The committee noted further that truth is a complete defence against defamation. The principle of "innocent until proven guilty" is a legal one and is not a principle that necessarily applies to journalism where exhaustive enquiries have uncovered sufficient evidence to counter a charge of defamation. If journalists were to apply an "innocent until proven guilty" test in every case, many very important stories would never be uncovered. By far the most famous in recent years, of course, was the Watergate enquiry undertaken by journalists at the *Washington Post* but there have been many in this country, and throughout the "free" world, in which journalists – confident of the truth and accuracy of their material – have published it prior to it becoming a matter for the courts or other official enquiries.

It is important to remember that central to all the business of journalism is the public's "right to know". That right is encapsulated in section 14 of the New Zealand Bill of Rights Act 1990 and states:

“Freedom of expression: Everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and opinions of any kind in any form”.

While that freedom is not absolute, section 14 of the Bill of Rights is one that is given a high level of priority in journalism as is indicated in the preamble to the Free-to-Air Television Code of Broadcasting Practice:

“Fundamental to broadcasters, and to the Broadcasting Standards Authority’s activities, is the statutory right to freedom of expression, which is provided for in Section 14 of the New Zealand Bill of Rights Act 1990”.

In this case, the committee noted, the team of investigative journalists had to make the choice of whether to believe Mr Lake (OBE, Justice of the Peace and a senior member of Presbyterian Support) or the many who accused him of abuse. Having gathered all the evidence they could they believed the complainants were telling the truth, not Mr Lake. Interestingly the police shared the view. They told *Sunday* that they were about to arrest and charge Walter Lake with multiple counts of child abuse, but he died before the arrest could be made.

It was the committee’s opinion that standard 2 was not breached. It did not believe that an item which raised legitimate questions about victims of child abuse and how their complaints were being handled could be considered inconsistent with the maintenance of law and order. You would expect, surely, that a free press in a democratic society would fully and thoroughly investigate such circumstances?

Turning to the issue of balance, it was noted by the committee that three times before this *Sunday* broadcast a reporter had contacted the lawyer who had acted for Mr Lake before he died. The first two requests were in the form of an invitation for members of Mr Lake’s family to contribute to the programme, if they wished to. They didn’t. The third time was a request for an interview, but was also intended as a courtesy call to advise the family when the programme was going to be broadcast, in case they might wish to avoid seeing it.

The standard requires that reasonable opportunities are given for significant points of view to be heard. As Mr Lake was by then dead, it was appropriate that the significant point of view should be requested through his lawyer.

It was the committee’s view that the programme made it clear that some disputed the guilt of Mr Lake. The Presbyterian Support spokesman, Trevor Roberts, said on the programme, “It’s about the management of risk and finding the truth of the matter. The fact that the police have decided to charge doesn’t mean that he’s guilty, and I have to tell you that our own investigations into some of the matters where we have been able to investigate indicate that there are some quite considerable issues of credibility in respect of some of these complaints”.

You complained about "spooky music". With respect, this was a "spooky" subject. The committee did not believe that the use of "spooky" music was inappropriate when re-enacting "spooky" events.

As a final observation on the matter of balance, the committee noted that on 22nd May a follow up item on *Sunday* included an extract from an historical taped interview with Mr Lake. Here's a transcript of what was said:

Reporter: "Walter Lake went to his deathbed six months ago denying he ever sexually abused children".

Voice of Walter Lake: "There's nothing on my conscience after all these years"

The committee did not believe that standard 4 was breached.

While the committee was sorry you found fault with this item, it was satisfied that its broadcast did not infringe the Free-to-Air Television Code of Broadcasting Practice. Accordingly your complaint was not upheld.

In accordance with section 7(3) of the Broadcasting Act you are hereby notified that it is your right, should you be dissatisfied with this decision, to refer the matter to the Broadcasting Standards Authority, P O Box 9213, Wellington, as provided under section 8 of the Act, for the purpose of an investigation and review of the decision. A time limit of twenty working days is attached to the exercise of this right.

Yours sincerely



David Edmunds
Programme Standards Manager