IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

AP 89/95

UNDER	the Broadcasting Act 1989
IN THE MATTER	of a determination of the Broadcasting Standards Authority dated 12 April 1995 (decision no. 25/95)
BETWEEN	TELEVISION NEW ZEALAND LIMITED Appellant
AND	MINISTRY OF AGRICULTURE AND FISHERIES Respondent

Hearing: 24, 25 October 1996

Counsel: W Akel for Appellant
N McAteer for Respondent

Decision: 13 FEB 1997

RESERVED DECISION OF McGECHAN J

Solicitors:

Simpson Grierson, Solicitors, Auckland, for Appellant
Crown Law Office, Wellington for Respondent

The Appeal

This is an appeal under s18 Broadcasting Act 1989 against a decision of the Broadcasting Standards Authority ("Authority") dated 12 April 1995 allowing in part a complaint against Television New Zealand Ltd ("TVNZ"), and ordering a corrective statement. The Broadcasting Standards Authority, originally named as a second respondent, was dismissed as a party on 24 June 1996. With the passage of time, and developments since the Authority's decision, it is recognised the proposed corrective statement no longer would be appropriate. The underlying issues, some of which are significant, require resolution nevertheless.

The Programme

The programme concerned was one of a current affairs series known as "Frontline" broadcast by TVNZ. It went to air on Sunday 4 September 1994 at 6.30pm on TV1. It was in two parts, with a total running time of approximately 60 minutes. Its title was "Dicing with Disease". The focus of the programme was BSE ("mad cow disease"). Its general thrust was to point to the serious effects of BSE on cattle, potential risks BSE could be imported into New Zealand in genetic material such as cattle embryos and semen, the severe repercussions which could follow, and to question whether government (specifically MAF) safeguards were sufficient given the risks perceived. I am satisfied, having seen a replay of the programme and studied

the script, that many viewers would have been left with a clear impression risks were such that MAF action to date had been inadequate. MAF took grave umbrage, and complained in the strongest terms.

I will not attempt any detailed blow by blow narration of the programme. There are difficulties, in any event, in capturing adequately the impact of the screen in the printed text. It suffices for introductory purposes to adopt the description given by the Authority in its decision. The Authority stated the programme:

> "... examined the level of risk to New Zealand agriculture posed by the continued importation of genetic material (cattle semen and embryos) from Britain where bovine spongiform encephalopathy, or BSE, is not uncommon. That the programme dealt with a matter of major importance was apparent from the item's introduction when the presenter described BSE as one of the 'Doomsday diseases of the animal world'. She continued:
>
> > ...diseases that could devastate countries like New Zealand which is so heavily dependent on agriculture. To date we have escaped the ravages of these deadly imports but it's been a close call. Now some New Zealanders are wondering whether our luck could run out.
>
> The item began by referring to the scrapie scare of the 1970s which had involved the slaughter of 8,000 pedigree sheep on quarantine farms and showed graphic scenes of burning carcases. It pointed out that the scrapie scare had taken place despite warnings to the government from veterinarians and then asked whether history was about to be repeated. The reporter continued:
>
> > Today some farms and veterinarians believe we haven't learnt any lessons from the 1970s scrapie scare. In fact they believe we are exposing ourselves to a related disease that would devastate the beef

> and dairy industries in this country between them worth more than six billion dollars a year. The disease is Bovine Spongiform Encephalopathy. Otherwise known as BSE or Mad Cow Disease.

Concerns in New Zealand about the impact of the disease and the risks involved in the importation of genetic material were expressed by two farmers, a representative of the Meat and Wool Section of Federated Farmers, two academic veterinarians, and a representative of the bio-technology industry. The case for maintaining the policy of controlled importation was put by the Minister of Agriculture, a spokesperson (Dr O'Hara) for the Ministry of Agriculture and Fisheries (MAF), and an importer of genetic material. Concerns overseas about the impact of the material were put by spokespeople for the cattle industry in Australia and Canada. The British contribution included one person on each side of the debate. The danger inherent in the current policy was put most forcefully by Professor Richard Lacey, a microbiologist from Leeds University, when he reviewed the current knowledge about how the disease was transmitted and stated:

> I will guarantee within four or five years BSE will be a major problem in New Zealand. You don't need to import these materials from the UK, this is an unnecessary danger. It must stop immediately.

The comments from the spokesperson for Ministry of Agriculture, Fisheries and Food (MAFF) in Britain, the Assistant Chief Veterinary Officer, were similar to the comments from Dr O'Hara of MAF in New Zealand. Shortly after the item carried Professor Lacey's above remark, Dr O'Hara was asked whether he was prepared to expose New Zealand farmers to the risk involved "for a few straws of semen and a few embryos". He answered:

> If we were to put a ban in place or to have maintained the ban that we had in place, is that technically and scientifically justifiable in the face of what we are required to do under the rules which now govern international trade and those rules were very clearly set out in the Uruguay Round of the GATT? No international body expects us to take a risk that is unjustifiable but equally no international body expects us to operate a zero risk. What you are in effect asking us to

> do is to consider the reimposition of a zero risk policy. We have never had a zero risk policy.

The reporter referred to Dr O'Hara's close knowledge of the scrapie scare in the 1970s when he had defended the importation of the sheep which later had to be destroyed. Pointing out that he had been accused of shallowness at the time, the reporter asked whether the public could have confidence in MAF on this occasion. Dr O'Hara said it was for the public to decide, commenting:

> If I had the ultimate wisdom and could foresee the future I would agree with you - but I am not that smart unfortunately.

In addition to the points noted above, the programme dealt at some length with the cause of BSE - which seemed reasonably well understood - and its transmission - a matter on which there was some fundamental disagreement. It was the possibility of transmission through genetic material which was the principal focus of the differing perspectives advanced in the programme. The point about the transmission of BSE is discussed further in the section below recording the Authority's findings.

The programme accepted that cattle contracted BSE after eating animal feed containing offal from scrapie infected sheep and it concluded by asking whether it was possible for humans to get a BSE-type disease from eating BSE infected meat. The disease in question was Creutzfeldt Jakob Disease, or CJD, which is a member of the same family as scrapie and BSE. Professor Lacey believed, in view of some recent incidents, that it had been shown that humans got CJD from BSE infected cattle. The British MAFF spokesperson (Dr Taylor) put another view when he commented:

> Some people believe that it could happen and that has to be accepted as a possibility, nobody actually knows The attitude of the government in this country has been that there is a possible risk and therefore control measures are designed to prevent that risk. So in essence we don't know whether it could happen, we assume that it might and all our control measures are designed to prevent it happening.

Dr Taylor's answer is included in full to indicate not only his specific comment on CJD but also the style usually adopted by the expert spokespeople who were interviewed during the programme. When answering questions calling for a professional opinion, the spokespeople as a rule did not answer categorically 'yes' or 'no' but on the degree of probability based on the available scientific knowledge."

The Complaint

MAF filed a lengthy complaint. It alleged breach *inter alia* of broadcasting standards G1, G6, and G20. These read:

"**All programmes (including advertisements and promos)**

In the preparation and presentation of programmes, broadcasters are required:

G1. To be truthful and accurate on points of fact.

G.6 To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

News, Current Affairs and Documentaries

G.20 No set formula can be advanced for the allocation of time to interested parties on controversial public issues Broadcasters should aim to present all significant sides in as fair a way as possible, and this can be done only by judging every case on its merits."

The complaint commenced with a general allegation of non compliance with requirements for balance, fairness and accuracy. As to Standard G1, factual

inaccuracies, it complained of Frontline's treatment of the Canadian experience following the importation into Canada of one cow infected with BSE, and Frontline's reference to a 'growing' body of 'expert opinion'. As to Standards G6 and G20, lack of balance, the complaint asserted:

> "The Frontline item was blatantly biased in its approach and content. No genuine attempt was made to give balanced coverage to both points of view. Dissidents and those holding minority views were given more weight and coverage in the programme than mainstream, majority opinion, and doubt was cast on the credibility and integrity of those defending the MAF position."

The complaint then continued "For example:", and stated 12 matters. In the Authority's words:

> "The examples on imbalance listed were:
>
> (1) The two clips used in the introduction were both from people opposed to the policy.
>
> (2) The programme referred to luck as the basis of MAF's policy.
>
> (3) The frequent use of the word "some" implied that expert opinion was roughly divided on the issue.
>
> (4) The programme suggested that the academic interviewed from Massey University spoke for all academics at Massey.
>
> (5) Dr O'Hara was introduced with the comment that he "says we have nothing to fear, or have we?" Subsequently, his credibility was undermined by references to MAF's attitude to the scrapie scare.

(6) The programme suggested that only importers of genetic material with "vested interests" supported MAF's policy. The item did not note that 13 of the 15 members of MAF's Agriculture Security Consultative Committee (ASCC) which had considered the issue on five occasions, supported the policy. The two dissident members were interviewed rather than the thirteen members in support.

(7) The item suggested that the spokesperson for Federated Farmers Meat and Wool Section represented all farmers.

(8) The two farmers who were interviewed who opposed the importation expressed opinions which were not challenged and were reported as facts.

(9) In reporting that New Zealand's policy was out-of-step with that in Australia, the programme implied that New Zealand was out-of-step with the world. No one from the Australian equivalent of MAF was interviewed and it was not reported that the Australian policy, rather than New Zealand's, was internationally out-of-step.

(10) Only passing reference was made to the fact that OIE (Office International des Epizooties), the veterinary equivalent of WHO, had accepted a practice on which New Zealand has based its policy. MAF commented:

> The programme makers were prepared to conduct interviews in England, but not to cross the channel to France to obtain comment from the OIE.

(11) The OIE viewpoint was only put by an importer of genetic material whose credibility had been questioned as his interest in making money from the trade had been emphasised.

(12) Whereas the "vested interests" support for MAF's policy was highlighted, the "vested interests" of those opposed to the policy were not mentioned."

The Complaints Committee directed two relatively minor corrections, which were promptly broadcast. In general however, it rejected MAF's complaint, considering the substance of the programme was neither inaccurate nor unbalanced.

Authority's Decision

The Authority approached decision in a particular way. It did not confine itself strictly to examples listed by MAF. It proceeded, indeed, to consider and make findings adverse to TVNZ on two aspects of the programme not the subject of any specific complaint, and to give those additional matters some considerable significance in assessing other specifics. The Authority found some specifics as to inaccuracy and imbalance made out, and then effectively stood back and considered the question of lack of balance in a broader perspective. There is no escape from a full record of the words used:

> "The Authority has adopted the headings used by the parties in their correspondence. It is of the opinion that balance is the principal issue raised by the complaint. Balance is a matter raised under standard G6 and the Authority's conclusion on this point will take into account not only the twelve points raised specifically under standard G6 but also its assessment of the programme overall with regard to such matters of fairness and being even-handed about an issue which, without question, is (to use TVNZ's phrase) one of "genuine public interest".
>
> There are two other matters about the programme overall on which the Authority considers it appropriate to record its deliberations before dealing with the specific aspects of the complaint. Neither matter was

raised directly by MAF as a detailed aspect of its complaint about the item's alleged factual inaccuracies or the item's lack of balance They are matters which the Authority has found it necessary to resolve in order to deal with the specific complaints and which, having become appraised of the information, have been relevant in its decision about the item's overall balance.

With regard to the first matter, as the programme section on pages 2-3 of this decision explained, the broadcast focussed on the possible transmission of BSE through genetic material. However, the programme did not state clearly whether any other methods of transmission were possible.

The central issue was explained to viewers fairly early in the programme when some canisters were shown and the commentary reported:

> They contain straws of cattle semen and embryos which have been imported from Britain and that is what this debate is all about. Many people believe we run the very real risk of introducing BSE to this country by importing such bovine genetic material but agricultural officials say the risk is astronomically small. Not only that, they say BSE can't be passed from one cow to another. In the past 18 months they've approved the importation of more than 20,000 straws of semen and some 220 embryos from Britain.

The programme also stated a little later that cattle acquired BSE from eating meat and bone meal containing sheep offal contaminated with scrapie.

However the danger involved in the importation of embryos and semen was not explained until Professor Lacey was interviewed and he argued that the evidence now indicated that BSE was transmitted vertically from cow to calf. He maintained that BSE was in the blood and in many organs of live animals (before the symptoms of BSE were exhibited) and, consequently:

> We know from experiments from other animals with similar diseases that infection is very widely spread and therefore we have absolutely no reason to doubt that it will include embryos and semen.

The opposing viewpoint was put later by an importer of genetic material when he argued:

> All the information from the International Veterinary Organisation is that there is no way that BSE can be transmitted in semen and I believe that the International Veterinary Organisation - which is the equivalent to World Health Organisation - if they say that there is no way this disease can be transmitted in semen, well who else do we believe if we don't believe the highest body that there is in the veterinary world.

At that stage the commentary again addressed the issue of being considered by the programme:

> About the only thing almost everyone in this story agrees upon is that there is a risk of introducing BSE to New Zealand from inseminating our cattle with British semen or implanting them with British embryos. The point of issue is just how big that risk is. Some farmers we have spoken to say that they have been told by MAF there is a 3 in 10,000 chance of the disease entering this country. In other words, 3 out of every 10,000 animals donating sperm to New Zealand could have BSE. However, MAF have told *Frontline* the odds are much lower.

The item reported that MAF could not give an absolute guarantee that BSE was not contained in the imported genetic material and the programme canvassed the degree of risk advanced by the experts. The degree ranged from Professor's Lacey's near certainty of this vertical form of transmission to MAF's Dr O'Hara's two or three chances in a million given the controls set in place as to the selection of donor animals and treatment of the genetic products should the disease in fact be transmitted in this way.

However, while the divergent opinions about the vertical transmission of BSE were, after considerable discussion, finally presented in a straight-forward way, the question of horizontal transmission was never dealt with directly - ie could a cow catch BSE from another cow following some degree of contact?

The point was touched on twice in the discussion. The first reference is the one noted above when the item explained to viewers the central issue ('...agricultural officials ... say BSE can't be passed from one cow to another') and the second occurred in the discussion about the Canadian case when the programme commented.

> Well even one confirmed case could have major implications for New Zealand, if what happened in Canada is anything to go by. Last year a Canadian cow which had been imported from Britain before Canada banned such imports developed BSE. Even though the disease is not considered contagious, Canadian officials called for more than 300 animals to be slaughtered. They included the diseased animal, 270 members of its herd and 64 other animals imported from Britain many years earlier.

These passing comments, in the Authority's opinion, were inadequate in dealing with the issue of horizontal transmission.

The 'North and South' article dealt clearly with the matter and it reported at the outset that BSE was not contagious between cattle. It was not transmitted through contact. The *Frontline* item did not address this matter directly because, as was apparent in the report to MAF on the complaint, TVNZ believed that horizontal transmission was a possibility. The evidence quoted by TVNZ in support of this stance referred to Professor Diringer in Berlin who stated:

> It is certainly too early to conclude that the possibility of transmission of BSE in cattle either vertically or horizontally does not exist

Besides referring to vertical transmission - which was the issue in contention - as well as horizontal transmission, the Authority considered that this quote from one person not otherwise referred to in the programme or the correspondence was insufficient evidence to justify the programme's treatment of the issue. Indeed, the Authority concluded that the omission of any explicit comment in the broadcast that BSE was almost certainly not contagious was a major omission.

A second omission was an explicit explanation of the length of time during which embryos and semen had either been imported or their

importation had been banned. After reading the transcript closely, it is apparent that the policy to allow the importation of such material had been in operation for eighteen months at the time of the broadcast. However, because of the passing way in which it was referred to and because of the suggestion from the critics that the policy had been recently adopted, the Authority considered that the point was unjustifiably given insufficient emphasis and, moreover, was presented in a confusing manner.

The 'North and South' article supplied by MAF reported that at the height of the BSE epidemic in the United Kingdom, approximately 263,000 straws of semen and 1300 embryos were imported into New Zealand. The MAF spokesperson interviewed for the article said what he described as 'a great natural experiment' had not resulted in the introduction of BSE.

The Authority sought elaboration on the point from MAF which said that the material was imported between 1980 - 1989. It was in 1989 that the ban on the importation of bovine material was put in place. MAF considered that about 150,000 progeny would have been produced through that material and:

> The recognised incubation period for the disease is between two and eight years (with a mode of four years), and not a single case has been confirmed here. It is unlikely, given the symptoms of BSE, that any case could have gone undetected.

The Authority considered that the omission of this information about the amount of genetic material imported before the ban was imposed in 1989 (granted the fact that no cases of BSE have been reported in New Zealand) was important in its assessment of the programme overall.

The Authority reiterates that while these two matters were not specific aspects of the complaint, their resolution was essential in determining whether the item, overall, was balanced They are addressed in the conclusion below.

Factual Inaccuracies - standard G1

(1) The first complaint about factual inaccuracy involved the summary of the Canadian experience which MAF alleged did not highlight that the infected animal discovered had been imported live and, because BSE was not contagious, did not justify the academic's later reference that a similar situation in New Zealand would involve the slaughter of thousands of animals TVNZ upheld the aspect of the complaint when the reporter implied that BSE not just could but would be discovered in New Zealand. In the Authority's opinion, TVNZ's statement of clarification dealt with all matters raised in the complaint except the references to the extent of the slaughter in Canada (300 animals) and that a similar situation in New Zealand would result in 'thousands of animals' being slaughtered.

In determining this aspect of the complaint, the Authority accepted that the item implied that political and trade considerations - not animal health reasons - were the reasons for the number of cattle slaughtered in Canada.

However, it considered that the item was not clear when considering the consequences of an outbreak of BSE in New Zealand. A close examination of the transcript revealed that if the slaughter was based on controlling the impact of the imported genetic material, thousands of animals would need to be slaughtered because of the inadequacy of the records in this country. In addition the professor of veterinary science at Massey University stated clearly:

> If you take the same view as Canada where they destroyed all the contact animals ... you would be talking about thousands and thousands of animals

In deciding this aspect of the complaint and the references, first, to the slaughter of 'thousands' of animals and then to 'thousands and thousands', the Authority believed that any confusion felt by the viewer because of these different estimates arose because of the item's inadequate explanation that BSE was not contagious. Following a careful reading of the transcript, the Authority accepted that the slaughter of 'thousands' was based on the possibility of genetic transmission while the slaughter of 'thousands and thousands' would occur for trade and political reasons and where transmission through contract was accepted as a possibility.

However, because this distinction became clear only after a close reading of the transcript, the Authority did not accept that the item's explanation of the consequences of an outbreak of BSE in New Zealand was adequate - let alone comprehensive - and, accordingly, it upheld this aspect of the complaint.

(ii) The Authority thought that the item was unfair and possibly inaccurate, as the complaint urged when it said in reference to the biotechnology industry that many overseas customers were nervous. The reliance by TVNZ on the spokespeople from one company and the later reference to a letter by the US Food and Drug Administration did not, in the Authority's opinion, justify such a sweeping statement.

TVNZ advised the Authority:

> The [Complaints] Committee also saw a letter from the US Food and Drug Administration which recommends that bovine products from countries where BSE is known to exist should not be used. Clearly, if BSE was discovered here it would have major implications for the New Zealand Biotechnology Industry as the United States is that industry's largest market.

This information, in the Authority's opinion, was insufficient to justify the remark in the programme and, although not necessarily a matter of accuracy, it was a matter of balance to be taken into account when considering the item overall under standard G6.

(iii) The Authority also upheld the next complaint about inaccuracy when the item referred to a 'growing' body of 'expert opinion'. While it has no doubt that the body of lay opinion might be increasing, eg among mayors as TVNZ pointed out, the item did not produce evidence that a growing number of experts opposed MAF's policy.

(iv) The last aspect of the factual inaccuracy complaint said it was inaccurate to draw parallels between the scrapie scare of the 1970s and BSE because of the difference in the diseases. TVNZ argued that the parallels drawn referred to official attitudes - not disease transmission - and declined to uphold that aspect of the complaint.

While inclined to agree with TVNZ, the Authority also took into account the item's lack of clear information about whether or not BSE was contagious between cattle. Because of the inadequate way in which the item dealt with the issue of contagion, the Authority decided that although the comment was not inaccurate, the lack of clarity about the parallels between scrapie and BSE was an issue to be considered when the Authority ruled on the item overall under standard G6.

In summary, the Authority reached the following decisions on the points raised under standard G1:

(i) Upheld
(ii) Not upheld as a matter of inaccuracy
(iii) Upheld
(iv) Not upheld

Lack of Balance - Standards G6 and G20

MAF raised 12 matters (listed on pages 6-7 of this decision) when it alleged a lack of balance and TVNZ upheld one in relation to the introduction of MAF's Dr O'Hara. The Authority considered that this matter was adequately dealt with in the clarification broadcast by TVNZ.

Rather than deal fully with each of the other 11 points, the Authority will note the matters on which it has decided that MAF's complaint should be upheld and on those which it agreed with TVNZ and declined to uphold the complaint.

On the first aspect noted on page 6 - that the introduction included without balance the view points of two opponents to MAF's policy - the Authority was divided. While a minority was inclined to the view that the introduction should include comments from both sides of the debate, the majority decided that it was unreasonable to expect an introduction to summarise all the arguments.

The Authority also decided not to uphold the aspects of the complaint that the programme suggested that MAF's policy was principally based on luck given the confusion about whether or not MAF had undertaken a quantitative risk analysis, that the item implied that the opposition to the

policy was evenly divided, that it was suggested that the veterinary Faculty at Massey University was unanimous in its opposition to MAF's policy, that support for MAF's policy only came from those with a vested interest, that the programme suggested that the spokesperson for Federated Farmers Meat and Wool Section represented all farmers and that it was not acknowledged that some of the policy's opponents had vested interests in the issue. Finally, the Authority declined to uphold the complaint that the OIE's recommendations were not reported

The aspects upheld involved first the allegation that the opinion of one of the two farmers who opposed the policy, while possibly representing other farmers, was indeed presented as fact - eg 'the beef consumption of the people in England has dropped forty per cent'. Also upheld was the complaint that the item carried the implication that New Zealand, by being out-of-step with Australia, was out-of-step internationally. In reaching this conclusion, the Authority noted that as the item compared New Zealand to Australia only, it was reasonable to infer that Australia was following the accepted international guidelines.

Having read the material which records that the matter was considered by the OIE, the Authority is now aware that Australia is out-of-step internationally. Because this matter only became clear after examining the material, the Authority was concerned about the way the OIE's findings were presented by the importer of genetic material who had vested interests. Because of the focus on the spokesperson's vested interests, the Authority considered that the credibility of the only comments about the OIE that were made or reported in the item was undermined. Accordingly, it upheld that aspect of the complaint.

In summary, of the 12 points (see pages 6-7) of the complaint which alleged a breach of standards G6 and G20 (and into which was incorporated standard G14), the Authority reached the following decision:

(1) Not upheld (a majority view)
(2) Not upheld
(3) Not upheld
(4) Not upheld
(5) Upheld by TVNZ
(6) Not upheld

(7) Not upheld

(8) Upheld

(9) Upheld

(10) Not upheld - the OIE policy was advanced

(11) Upheld - the credibility of the OIE policy was undermined by the emphasis on the importer's vested interests

(12) Not upheld

Concluding Comments

As will be apparent, the Authority upheld some of the specific aspects of the complaint but declined to uphold a greater number. However, it did not believe that its decision on whether the item, overall, was balanced simply involved counting the points upheld and weighing them against the points not upheld.

Bovine spongiform encephalopathy (BSE) is a matter about which the Authority - like the vast majority of New Zealanders who are not cattle or dairy farmers - knew little before viewing the programme about which MAF complained. The Authority was supplied with some background material which had previously been made available to *Frontline* and has read the 'North and South' article published some two months after the broadcast.

Having studied the material and reviewed the programme, the Authority considered some matters were given inadequate emphasis in the *Frontline* broadcast. Although it has upheld some specific complaints under both standards G1 and G6, the Authority was concerned in its overall determination as to whether the item, to use the language from both the complainant and the broadcaster, was rigorous, fair and even-handed in giving both sides a hearing and allowing viewers to draw their own conclusions.

On this point, the Authority would not go as far as MAF and insist on the absence of editorialising, provided that the material was presented in such a way as to allow the viewer to concur with or dispute the editorial stance adopted.

Applying the standard requiring fairness to the programme overall, the Authority was not convinced that the requirements in standard G6 for overall balance and impartiality, in addition to fairness, had been met.

Whereas MAF operated a policy on the basis that it considered the risk of BSE to New Zealand cattle from genetic material was negligible, the opponents argued that, because of the consequences of BSE being discovered in New Zealand, policy formulation should have been deferred until conclusive scientific evidence as to the safety of embryos and semen was available in the year 2001.

The issue explored in *Frontline*'s 'Dicing with Disease' was of public importance and it merited the use of the strong terminology employed. However, because of the fundamental importance of the topic, the programme had to be particularly careful to comply with the standards. Because it breached the broadcasting standards on the specific points noted - specifically because it dealt inadequately with the issues of contagion and transmission, because it failed to specify the length of time during which the present policy had been in force and the significance of the past (less stringent) policy, and because it was not clear that New Zealand, unlike Australia, complied with the Organisation Natural des Epizooties, the Authority concluded that, overall, the broadcast contravened standard G6."

Appeal : Legal principles

There was no significant dispute as to legal principles applicable to disposition. As put by the Court of Appeal per McKay J in *Comalco New Zealand Ltd v The Broadcasting Standards Authority and Anor* (1995) 9 PRNZ 153, 161-162

"Section 18(4) of the Broadcasting Act requires the Court to hear and determine an appeal "as if the decision or order appealed against had been made in the exercise of a discretion". This means that the appeal should only be allowed if the Authority has proceeded on a wrong principle, given undue weight to some factor or insufficient weight to

another, or is plainly wrong, *Fitzgerald v Beattie* (1976) 1 NZLR 265, 268 (CA); *Havelock-Green v West Haven Cabaret Ltd* (1976) 1 NZLR 728, 730 (CA)."

I refer also to the words of Eichelbaum CJ in *TV3 Network Services v BSA* (1995) 2 NZLR 720, p 727:

> "Under s18 of the Act there is a right of appeal to this Court. The section provides that the Court is to deal with the appeal as if the decision appealed against had been made in the exercise of a discretion. This means the appellant needs to show the Authority based its conclusion on some error of principle (including an error of law, for example an error in the interpretation of the statute) that it took irrelevant considerations into account or failed to consider appropriate ones, or was plainly wrong. What the Court is not allowed to do is simply substitute its own view for the authority's."

Counsel for TVNZ correctly emphasised that such appeals are indeed *appeals*, and not applications for judicial review subject to the greater restrictions applicable to such latter. In the words of Cooke P in *Shotover Gorge Jet Boats v Jamieson* (1987) 1 NZLR 437, 439:

> "The first (major misconception) is that such cases as *CREEDNZ Inc v Governor-General* (1981) 1 NZLR 172 and *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948)1 KB 223 and observations therein, are relevant in determining the scope of statutory appeal rights. They are not. **They are directed solely to the supervisory jurisdiction of the Courts by way of judicial review or the prerogative writs or declaratory proceedings or the like.** The grounds on which an appeal Court will interfere with the discretionary decision are wider than those available in judicial control proceedings: *G v G* (1985) 2 All ER 225 230 per Lord Fraser."

Counsel for MAF, with equal correctness, emphasised that due weight should be given to the expertise of the Authority as a specialist tribunal;

citing in this context *Jardine Insurance Brokers Ltd v TVNZ* (HC 176/94 and HC 189/94, Auckland, 3 November 1995, Temm J).

Grounds of Appeal : Submissions for Appellant

TVNZ appeal all adverse findings, and the consequential orders requiring a corrective statement. Detailed grounds were supplied. There is no escape from a full record (apart from grounds related to the corrective statement orders).

"No.	Page	Findings	Grounds of Appeal
1	20	The programme overall breached standard G6.	This finding was so unreasonable and plainly wrong • The purpose of the programme was to alert viewers to the genuine concerns of some experts as to the risks of importing genetic material from Britain In so doing the supporters of the status quo were given a fair opportunity to be heard. • The programme included considerable comment in support of the policy, by MAF, the IVO, MAF UK, the dairy section of Federated Farmers, the Minister of Agriculture and EuroGenes NZ Ltd. • Some views opposed to MAF policy were acknowledged by TVNZ to be considered by some to be extravagant and sensational, and were followed by opposing views. • Some more extreme comments were challenged by the interviewer. • The primary thrust of the programme was not to determine the **level** of risk of BSE *entering NZ; rather it focussed on* the views as to whether **any** risk, however negligible, was worth taking, bearing in mind the consequences. • As part of that assessment there was confusion as to whether MAF had undertaken a quantitative risk analysis • The views of those who believed that **any** or a very low risk is an unacceptable risk is a valid view • The BSA **declined** more complaints under G6 than it upheld, including * that the introduction was unbalanced, * that the programme suggested that MAF's policy was principally based on luck,

No.	Page	Findings	Grounds of Appeal
			* that the items implied that opposition to the policy was evenly divided, * that Massey veterinary staff were unanimous in their opposition, * that support for MAF only came from those with a vested interest, * that the Federated Farmers' spokesperson represented all farmers, * that it was not acknowledged that some opponents had vested interests, and * that the OIE's recommendations were not reported. • In doing so the BSA expressly acknowledged it was unreasonable to expect an introduction to summarise all the arguments, and that there was confusion about whether MAF had undertaken a qualitative risk analysis and by inference it upheld the contrary view to MAF's other assertions. The BSA took into account irrelevant considerations: • two of the three specific findings relied on were not the subject of any complaint, • the North and South article. The BSA failed to take into account relevant considerations: • the strengths of the programme overall, balanced against any incidental breaches, • the programme heightened the awareness of the public in an issue of public interest which was not widely known, • the various views in the debate were presented as opinion, • the opinion in support of MAF policy was not underplayed, • that an editorial stance is justified so long as viewers are presented with information to enable them to decide for themselves, • section 14 of the NZ Bill of Rights Act 1990.
2.	20, 21	The order that TVNZ broadcast a statement, and the terms of that statement.	

No.	Page	Findings	Grounds of Appeal
3.	14, 15	Horizontal transmission was inadequately dealt with. It was a major omission not to include explicit comment that BSE was almost certainly not contagious.	The BSA acted in excess of jurisdiction and took into account irrelevant considerations: • This was the not subject of either the complaint or the programme, • It was inappropriate to compare the programme with a magazine article published after the broadcast The decision is plainly wrong: • The programme states that BSE was not considered to be contagious and that MAF believed it cannot be passed from one animal to another.
4.	15	The programme omitted to give an explicit explanation about the amount of genetic material imported before the ban was imposed in 1989, and this was important in the assessment of the programme overall.	The BSA acted in excess of jurisdiction and took into account irrelevant considerations: • This was not the subject of the complaint, • It has no impact on the argument as to whether any risk, even if negligible, is acceptable.
5.	16	Upholding breach of G1 - inadequate explanation of consequences of an outbreak of BSE in New Zealand	The decision is plainly wrong: • the BSA acknowledged that the explanation did become clear in the script, • the programme did state that BSE was not considered to be contagious, • the comment made was expert opinion, and presented a such, • it would have been clear to viewers that there are differing opinions, • lack of tracing in NZ is a matter of potential concern which could lead to more animals slaughtered in the event of BSE being discovered here, • the expert's comments were clearly made in the context of the risk of horizontal transmission/by contact, and was made on the express qualification of 'if' NZ took the same conservative approach as Canada, which was clearly communicated as cautious, • The fact that Canada has continued to import semen and embryos from Britain was included in the clarification broadcast on 27 November 1994, and in any event is irrelevant to the consequences of a discovery.

No.	Page	Findings	Grounds of Appeal
6.	17	Upholding breach of G1 to say there was a growing body of expert opinion opposed MAF's policy.	The decision is unreasonable and plainly wrong: • Views recently expressed by two members of the NZ Agritech Inc, and the US Food and Drug Administration, • Four eminent NZ veterinarians known to TVNZ, three of whom were on the programme, • Former director of Unilever in the UK, • Four, risen from two, members of the Agriculture Security Consultative Committee, • Mr Orr of the Meat and Wool section of Federated Farmers.
7.	18	Lack of balance - breach of G6 and G20 - that the opinion of one of the two farmers interviewed, while possibly representing other farmers, was presented as fact.	The decision is plainly wrong: • Both farmers had serious concerns which reflected the views of a significant number of farmers, • Their views were presented as their own opinion, and were challenged by TVNZ.
8.	18	Lack of balance - breach of G6 and G20 - the item carried an implication that NZ, by being out of step with Australia, was out of step internationally, as it was reasonable to infer that Australia was following internationally accepted guidelines; and the credibility of the OIE policy was undermined by the emphasis on the importer's vested interests.	The decision is plainly wrong and irrelevant factors were taken into account: • New Zealand is out of step with Australia, New Zealand's closest neighbour with a significant agricultural industry and close trade links to New Zealand, and generally similar policies (CER). • That Australia may be out of step with the rest of the world is irrelevant to the comparison with the policies of the two countries, • Nothing in the programme suggested that New Zealand was out of step with the rest of the world, and comment by MAF and others on the programme showed that this was not the case."

Counsel strongly emphasised s 14 of the New Zealand Bill of Rights Act 1990 ("Bill of Rights") and its protection for freedom of speech. In counsel's words:

> "44. IT is submitted that in considering any complaint under the Act, the very strong balancing factor must be s 14 NZBOR.

(a) The starting point in the consideration of any complaint should be an interpretation of s 4(1)(d), and the Codes of Practice made under that Act, that reflects that the rights and freedoms contained in the NZBOR are subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

(b) If s 4(1)(d) and the Code can be given a meaning which is consistent with s 14 NZBOR, that meaning shall be preferred to any other meaning.

(c) Put another way, the BSA in the exercise of its discretion in determining if there has been a breach of the Code, and in making any consequential orders, should only find against the broadcaster and expressly s 14 NZBOR where the complainant has demonstrated that it is demonstrably justified in a free and democratic society."

There was supporting reference to recognised principles as to application of the Bill of Rights laid down standard authorities, particularly *MOT v Noort* (1992) 3 NZLR 260, 269, 272, 282; *R v Butcher* (1992) 2 NZLR 257, 264, 267; and, with that, *R v Oakes* (1986) 24 CCC(3d)321, 348. I was referred also to passing observations in relation to s 14 in *R v Liddell* (1995) 1 NZLR 546-547, and as to freedom of speech in TVNZ: *R v Bain* (CA 225/95, 22 July 1996).

Bringing in all levels of complaint, counsel ultimately distilled the TVNZ submissions in these terms:

"58. WITH respect, the decision of the BSA is plainly wrong, not only as relates to the general finding of imbalance and specific breaches of the Code, but also in the order made by it. The BSA failed to perform the balancing act required of it - it gave undue weight to some factors and insufficient weight to

> others. In particular, it failed to consider the issues raised by s.14 NZBOR It is not the case of this Court being asked to simply substitute its own view, but rather find that the BSA was in fact plainly wrong, particularly in view of the developments since the programme was broadcast. This is not to say however, that the BSA was not plainly wrong at the time it made its decision."

Submissions for MAF

Again, I have the benefit of detailed argument. A summary must suffice. I rearrange sequence somewhat to fit with that adopted by TVNZ.

(1) *Overall balance.*

The Authority was not "plainly wrong". Viewed overall, the conclusions of the Authority reached were within the range of the possible. The appeal, in reality, asks this Court to reconsider and to reach a different conclusion; i.e. simply to substitute its own view for the Authority's, an impermissible approach. The Authority's regard to horizontal transmission and prior importation was not an improper regard to irrelevant considerations, despite the absence of express complaint on those aspects. There was general complaint "the programme" breached Standard G6 "in that it lacked balance". The two matters concerned "may well be seen" to be within that generality. The Authority could look at material found helpful even when not the subject of individual complaint. Its functions within s 21(1) are broad. Many complaints, including those by lay persons, will not be particularised. The contention of irrelevancy would invoke an undesirable

legalism contrary to the intention of s 10(2). The Authority has the powers of a Commission of Inquiry, including investigatory powers, the emphasis being upon the proper determination of the ultimate issue: "if that requires the Authority to examine the matter in a way slightly different to that presented by the complainant, then so be it". Counsel accepted this latter raised questions of degree, and could raise questions of natural justice, but the present was not an application for judicial review, and there was no complaint of breach of natural justice involved. The Authority was within its powers to make use of the "North and South" magazine as a source of information, and clarification of inadequate coverage.

(2) *Orders made.*

No record is necessary.

(3)&(5): *Horizontal transmission and inadequate examination of consequences of outbreak.*

The Authority adopted the correct approach in looking to a (misleading) general impression the programme would create, rather than a close reading of the transcript which produces possible accuracy. The Authority's expertise as to impressions is to be given weight. The conclusion reached was open.

(4) *Prior importation.*

No submission was made.

(6) *Growing body of expert opinion.*

There was no sufficient support of that assertion at the time: opinion was neither "expert", nor "growing". The Authority could come to its contrary conclusion on the information then available. The programme was not correct when made, and cannot be corrected retrospectively. The relevant time is when the programme goes to air. Otherwise, a final determination would not be possible. The sensitivity and importance of the issue heightens the need for accuracy.

(7) *Farmer's opinion presented as fact.*

It was open to the Authority to find that views put forward were presented as fact.

(8) *Out of step with Australian practice and therefore internationally.*

The Authority's finding was open. There was a clear and erroneous implication that New Zealand being out of step with Australia was out of step with the mainstream approach.

As to s 14 of the Bill of Rights, counsel submitted the relevant standards established under the Broadcasting Act 1989 "must" be seen as examples of s 5 reasonable limits prescribed by law which are demonstrably justified in a free and democratic society. In oral submission, the "must" was modified to "may"; accompanied by a rider that in event of conflict the Broadcasting Act and its

standards must prevail. The Authority, it was said, was aware of s 14 principles, which flow through into the "tensions" within the Broadcasting Act. The Broadcasting Act 1989 and Bill of Rights were enacted within the "same atmosphere".

Ground (1) : Overall breach of G6 balance

"Plainly wrong"

Was the Authority's decision "plainly wrong"? The word "plainly" means what it says: not "arguably wrong", or "debatable" or even "not the decision I would have reached myself", but *plainly* in error. That is an exacting requirement. The point is important, as many individual points put forward by TVNZ in support of asserted balance are valid as far as they go (I leave aside the value judgment that supporters of the status quo were indeed given a "fair opportunity" to be heard). However, they are not the total picture. There are also the three matters on which the Authority eventually based the "balance" decision: horizontal transmission, length of time previous policy had been in force without problems, and compliance by New Zealand (unlike Australia) with international standards. Subject to further points as to irrelevant considerations in respect of the first two matters - considered shortly - it was open to the authority to conclude favourable points so listed by TVNZ were outweighed by those three deficiencies. Even if benefit of the doubt is given TVNZ on probable perceptions of the Canadian experience and of horizontal transmissions lists and likely consequences, it is a serious thing to omit to say an open door policy had been in operation for years, and until very recently, without adverse consequences. That is a persuasive consideration. (Indeed, a cynic might say so persuasive it would spoil the story). It likewise is serious

to omit to say New Zealand practice conforms with international standards other than Australian. There is a quite different impression when Australia is presented not as a paragon but as the odd man out. Whether or not the decision is one which others would reach is not in point. It was a decision which was well open. It was not "plainly" wrong.

"Irrelevant consideration"

Were the contagion/transmission, and previous policy without adverse results, points "irrelevant considerations" wrongly taken into account?

The question requires some analysis.

At risk of fatuity, the Authority is bound by the terms of the statute. It deals only with the complaint made. It considers the subject matter of the complaint, whatever that subject matter may be. A complaint does not trigger powers to conduct some general inquisition and directions on unrelated topics.

At like risk, whether an item is relevant to a complaint made depends on what the complaint is about. The colour of a car is not relevant to a complaint it is extremely noisy; but could be relevant to a complaint it is visually distracting.

The statutory scheme requires "formal" complaints to be in writing: s 5(f). The scheme of the complaint - what it is about - is determined by the written word reasonably interpreted. There is no requirement for particularity. The range can be from the very general to the very particular, or indeed a mixture.

The complaint letter (27 September 1994) has a scheme and wording of its own. It commences with a very general allegation of failure to maintain standards consistent with s 4(1)(d), the terms of which are reproduced labelled the "principle of balance", and adds allegations of breaches of principles of fairness and accuracy. It then says "specifically" there was breach of Code paragraphs G1, 6, 14, 15 and 16. Under subheadings it restated those various code paragraph numbers and requirements. It opens under each with further generalised allegations. Under code G6, presently relevant, it alleges in general terms that the programme was "blatantly biased in its approach and contents"..."no genuine attempt was made to get balanced coverage of both points of view". It alleges "dissidents and those holding minority views" were given more weight and coverage than "mainstream majority opinion"; and "doubt was cast on the credibility and integrity" of those defending MAF's position. Then (and the words chosen are significant) it states "For example:", and proceeds to list the 12 features previously noted, some highly specific. The letter ends with general allegations, including "lack of balance" in the programme.

Objectively read, the complaint alleges general lack of balance, followed by examples. They are merely examples. They are not said to be exhaustive. It is not a case of a generality followed by a "namely", or even an "in particular". It is not as if the complaint alleged general lack of balance, and then stated "the respects in which lack of balance occurred are as follows,". This is not an accident. When the writer intended to be specific, that occurred. The word "specifically" was used in identifying particular code provisions. In the result, there is room, within words used, for reference to other breaches, not included within the "examples" put forward, and for such to be taken into account in the course of investigation.

There was, of course, a potential danger of breach of natural justice if

this was done. There can be no doubt natural justice was required: s 10(2)(c). If the Authority identified other matters, outside previously stated examples, which it proposed to take into account, it was necessary to give both sides (and particularly the broadcaster) notice and an opportunity to answer. Failure to do so would mean the decision would be open to judicial review. However, that obligation did not exclude from outset an ability to take into account a relevant item.

There is no doubt, in this case, that omissions adequately to state the position on transmission, and on previous policy with absence of adverse effects, can be seen as relevant to overall programme balance. These points were not examples raised by MAF in the complaint, but could be taken into account on the general question which the wording of the complaint letter posed. They were not excluded by exhaustive terminology. There is no complaint of breach of natural justice.

These two matters were not irrelevant considerations.

Nor can regard paid to the "North and South" article be labelled irrelevant. This aspect is different in kind. It is not a complaint about topics, but about materials consulted. It is not open. The Authority, with its powers as a Commission of Inquiry, was entitled to gather information from any source it saw fit as to topics properly under consideration, subject only to requirements of natural justice which are not in issue. The Authority could consult the Encyclopaedia Britannica or the Womens Weekly if it so desired.

"Failure to take relevant considerations into account"

I defer the matter of s 14 Bill of Rights.

It is said certain items (eg. the strengths of the programme overall) were not taken into account. These, of course, are not mandatory criteria, with regard required by statute. In that light, the question whether "relevant" considerations were not taken into account rather merges into the previous question whether the decision reached is "plainly wrong". If a point is relevant, and significant, a decision which takes no account of it may well appear to be wrong. Some of the asserted relevant considerations are objectively acceptable (eg. a heightening of public concern), but others involve value judgments (eg. opinion in support of MAF was "not underplayed"). Taking the points listed at best for TVNZ, with allowance for value judgments involved, I am not satisfied these matters, even if not taken into account, invalidate the decision reached. The decision has other strengths. As already held, it is not plainly wrong, even with arguable omissions.

"Section 14 Bill of Rights"

I do not disregard s 14 Bill of Rights, confirming the right to "freedom of expression", and within that "to impart information and opinions". It appears the relationship between the complaint provisions of the broadcasting legislation and s 14 are not the subject of previous authority. The cases of *Liddell* (supra) and *Bain* (supra) cited do not much assist. The point, accordingly, must be approached in principle.

Section 14 must be read in its statutory context, and kept in perspective. Section 4 provides, at outset, that other statutes stand notwithstanding inconsistency with the Bill of Rights. Section 5 provides that *subject* to such ongoing predominance of other statutes, the rights specified within the Bill of Rights, including s 14 freedom of expression, may only be restricted within such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. (I shorten these

to "reasonable limits"). With particular relevance to s 4, s 6 then provides that in cases of available choice as to the meaning of the statute, interpretations consistent with Bill of Rights freedoms - including s 14 freedom of expression - are to be preferred. That does not empower the Court to override clear statutory provisions inconsistent with Bill of Rights freedoms. It is merely an interpretation provision, particularly useful in cases of vagueness or ambiguity.

There is no doubt the provisions of the broadcasting legislation dealing with complaints stand, and in their terms, notwithstanding the generality of s 14 freedom. Their priority is preserved under secs 4 and 5. The most that can be said is that where questions of interpretation arise, the legislation is to be construed most consistently with freedom of expression. This is not a question of downstream subjection of some untrammelled freedom of expression within reasonable limits under s 5: it is a matter of statutory override by the broadcasting legislation from outset.

The relevant, and predominant, broadcasting legislation provisions stipulate for standards under s 4 and empower a code of practice under s 21. This legislation expressly imposes limits - eg. good taste, decency, law and order, privacy, balance and the like - on freedom of expression which broadcasters otherwise would have. Broadcasters are made subject to certain limits in that respect which do not apply more generally in life. This is not a situation where the broadcaster has some complete freedom which the Authority then somehow seeks to restrain on a basis restraints are reasonably justified. The broadcaster is constrained by the Broadcasting Act from outset, with general s 14 freedoms constrained correspondingly. The most which can be said is that in approaching decision whether statutory (including Code) standards are met the Authority should, where room exists, prefer approaches consistent with freedom of speech. Where there genuinely

is room for interpretation, freedom is to be protected. That is not a small or unimportant obligation, but that is its limit.

I turn, in that light, to submissions for TVNZ. I can accept some of the submission, particularly paragraphs (a) and (b) as far as they go. I accept the interpretation of s 4 and the Code should be so as to reflect rights to freedom of expression, and (subject to the point next mentioned) that such freedoms should be subject only to reasonable limits. I accept the interpretation preference towards freedom. However, paragraph (c) goes too far. The Authority is entitled, indeed obliged, under the Broadcasting legislation to apply its current and complaint provisions even if such action might, objectively, be said to limit freedoms contrary to s 14. Its statutory duties predominate under secs 4 and 5. The Authority could well give attention to s 14 in interpreting the provisions under which it is operating. Section 14 could be a proper discretionary factor in weighing up remedial orders to be made, no longer an issue. The Authority was not further obliged.

The Authority does not refer in express terms to s 14 in the course of its decision. It did not need to do so. It was not faced with issues of statutory interpretation which so demanded. The question of remedy no longer arises. I do not regard this aspect as establishing failure to have regard to irrelevant considerations.

Ground 3 : Horizontal transmission

"Irrelevant considerations"

Findings against contentions of irrelevancy through not being the subject of complaint apply again. The comparison with the "North and South" magazine has its difficulties, as television and print media are

different in their possibilities and requirements. However, I have no doubt the Authority, an expert body, made all necessary allowances, and it goes much too far to contend for absolute irrelevancy.

"Plainly wrong"

The Authority's finding is one which was open. Indeed, given its expertise in evaluation of television impressions, it is one to be paid particular respect. The finding is to be evaluated on the state of knowledge which existed at the time of the programme; said not to have been adequately expounded. A question might well arise whether there should be orders for corrective statements when, post-broadcast, the state of knowledge shifts in support of the impugned statement; but that problem no longer arises in this case.

Ground 4 : Prior importation

Findings against contentions of irrelevancy through not being the subject of complaint apply again.

The contention of irrelevancy to arguments whether any risk, even negligible, is acceptable has a certain logical appeal, but is overly refined. The degree of negligibility of risk is relevant to discussions whether one should even bother thinking about the matter. If the question is whether there should be trees in parks in feared lightning fatalities amongst persons standing underneath, it is relevant to know there have been no such fatalities; certainly before one cuts down all the trees. The Authority can act on pragmatic considerations, respecting habits of thought, where considered appropriate.

Ground 5 : Standard G1 : inadequate explanation of consequences of outbreak

Ground 6 : Standard G1 : growing body of expert opinion

Ground 7 : Standards G6 and G20 : opinion presented as fact.

I refer to previous observations as to the meaning of "plainly wrong." At least some of the detailed points made in support of the "plainly wrong" contention have some force. However, even with that allowance, it cannot be said the differing view reached by the Authority is "plainly wrong". It is a view which is open.

Ground 8 : Standards G6 and G 20 :out of step with Australia

"Plainly wrong"

Previous approaches apply. It was well open to the Authority to view the reference to being out of step with Australia as implying New Zealand was out of step with the international community as a whole It is quite simply misleading to point to a difference from Australia without adding the additional context of alignment with the rest of the world. In the sense in which the statement could be, and probably would be, taken it was plainly wrong; and was not cured by corrective implications arguably available from statements by others.

"Irrelevancy"

The assertion of irrelevancy is based on contention that the fact Australia is out of step with the rest of the world is irrelevant to comparison with Australia itself. The weakness in this argument is that

the comparison was not one with Australia in itself, but presented as one with Australia as by implication typical of the wider international community. The oddity of the Australian position was relevant; and indeed important.

Orders for corrective statements

MAF submits orders for corrective statements were proper when made, but accepts that with the passage of time (exceeding two years) cessation of the "Frontline" programme, and given developments in the UK and New Zealand (in short, advancing awareness) "a real question does arise" whether the orders made are "still appropriate". Lapse of time is seen as of particular importance, with a danger of confusion if corrective statements are made.

I share MAF's concern that the delay factor in itself has made the orders difficult to sustain, and a concern lest similar situations arise in the future. However, in the present rather special case MAF's concession plainly is warranted. I leave open the question whether such corrective orders were a proper solution when made, and within that any s 14 aspects. A decision is not necessary. As matters stand, it is in the public interest the corrective orders made now be quashed, a course not resisted.

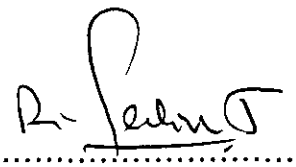
Order

(1) The appeal insofar as against portions of the Authority's decision upholding respondent's complaint of breaches of Standards G6, G1, and G6 and G20, and finding the existence of two important omissions in the programme which resulted in or influenced the

Authority's decision the programme overall lacked balance, is dismissed.

(2) The appeal insofar as against orders TVNZ broadcast a statement and against the terms of that statement is allowed, with the orders made in that respect quashed.

(3) Costs are reserved. Memoranda may be submitted.



.....

R A McGechan J