

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 15/90

Dated the 15th day of August 1990

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

DR BRIAN PERRY

of Auckland

Broadcaster

TELEVISION NEW ZEALAND

LIMITED

I.W. Gallaway            Chairperson  
J.B. Fish  
J.L. Hardie  
J.R. Morris  
Sir David Beattie      Co-opted Member

DECISION

Introduction

On Friday 21 July 1989, the *Holmes* programme on TV1 ran an item concerning the difficulties being faced by 6B Limited, a small plastering company, in recovering payment for work done on various commercial and residential projects in and around Auckland.

The first half of the item featured an interview with Mr Fraser Bruce, the principal of the firm, which focussed on certain commercial projects (shown on screen), the amounts he claimed his company had lost on each of them and the reasons why this was so.

The second half of the item focussed exclusively on the company's claim that it was owed money for work done on a house owned by Dr Brian Perry. Mr Bruce and some of his employees were shown demonstrating outside Dr Perry's home at 7.15 am on the day of the broadcast. Mr Bruce was interviewed by Mr John Hudson, the *Holmes* reporter, about his concerns and several unsuccessful attempts were made by Mr Hudson to elicit comments from Dr Perry while he walked along the street to the place where his car was parked. A short time later, just before 9am, Mr Hudson entered the reception area of the offices where Dr Perry worked. After a discussion with the receptionist, the reporter and his film crew left without gaining the interview he had sought with Dr Perry.



### Correspondence Arising out of the Broadcast of the 6B Limited Item

The broadcast of this item led to an immediate complaint by Dr Perry to the Director of News and Current Affairs at Television New Zealand Ltd. Subsequently - following correspondence between Dr Perry (and his solicitors) and TVNZ Ltd (and its solicitors), as well as correspondence between the Authority and both parties - Dr Perry lodged a formal complaint on 11 September 1989 with TVNZ Ltd.

The complaint alleged that the broadcast of the item breached standards 1, 3, 4, 6, 10 and 12 of the Television Programme Standards section of the Codes of Broadcasting Practice for Television. These standards are reproduced in Appendix A.

### Dr Perry's Complaint to Television New Zealand Ltd

In his letter of 11 September, Dr Perry made a number of allegations of breaches of standards which, for convenience, have been summarised by the Authority as follows:

1. He had been given no opportunity to refute or reply to allegations contained in the item (standards 4 and 6);
2. He had not been dealt with justly or fairly (standard 4);
3. TVNZ "did not employ impartiality", in that the opportunities given to both parties to state their cases were "totally unbalanced" (standard 6);
4. TVNZ colluded with 6B Limited in not informing Dr Perry that the programme was in preparation (standard 10);
5. TVNZ's reporting was not objective or impartial and was clearly weighted in favour of one party (standards 6 and 12);
6. It was unfair and unjust, and lacking in objectivity and impartiality, to mention (twice) that the Bank of New Zealand was Dr Perry's employer (standards 4, 6 and 12); and
7. The programme contained three factual inaccuracies, the inclusion of which operated to the disadvantage and detriment of Dr Perry (standards 1 and 12).

To rectify matters, Dr Perry requested that TVNZ broadcast a full apology and retraction of what he described as "the defamatory comments" made in the item.

### TVNZ's Response to Dr Perry's Complaint

On 14 November 1989, TVNZ wrote to Dr Perry advising him that its Complaints Committee had considered his complaint at its meeting held on 25 October.



With regard to each of the specific allegations made by Dr Perry, the Committee had reached the following conclusions:

1. Dr Perry had had the opportunity to reply to Mr Bruce's concerns outside his home (where he was seen walking to his car and declining to respond to Mr Hudson's questions) and at his office. He would have been aware that an item was being made and it was open to him during that day to have contacted TVNZ and given his version of the dispute. Same-day treatment is important when trying to obtain both sides of a story in the interests of fairness and objectivity.
2. Dr Perry had been given every opportunity to put his side of the dispute but had declined to do so; in the absence of his version of events, the item was as just and as fair as was possible.
3. Both parties had been given the opportunity to speak about the dispute. Mr Bruce took that opportunity, but Dr Perry seemed to exercise his right of "no comment".
4. There was no collusion. 6B Limited informed TVNZ of the planned demonstration outside Dr Perry's home and the camera crew arrived after it had begun. (It was also noted that standard 10 referred to collusion in television competitions and not to collusion in the making of news items.)
5. The intention was to provide a balanced and objective view of the dispute. This did not transpire and it was made clear that only one side was being given. Dr Perry was seen to be refusing to answer questions that could have provided a better balance. It is not sound journalistic practice to abandon coverage of a dispute simply because one party declines to comment.
6. TVNZ did not twice refer to the BNZ as Dr Perry's employer. There was one such reference and it was in the introduction to *Holmes*. Although the Committee had reservations about the need to mention the BNZ, it did not consider that any standards had been breached in doing so. The statement was accurate and helped to give one of the parties a more complete and credible profile. In the item proper, Dr Perry was described as a "solvent Auckland banking executive" and his work-place described as his "Queen Street office".
7. The Committee acknowledged Dr Perry's point that the statement "... two years later he wants his money ..." incorrectly implied that 6B Limited had been waiting two years for Dr Perry to pay his bill. The statement had appeared in the introduction to *Holmes* and was intended to refer to the entire period during which the firm had experienced its financial woes. This factual error had, however, effectively been eradicated in the body of the item itself where Mr Holmes and Mr Bruce had each referred to the waiting period as being six months.

As to an alleged inaccuracy concerning the sum in dispute, the Committee had concluded that the reporter's statement "... and 6B, which claims to be owed \$6,000, ..." was a correct statement of 6B Limited's claim and not a conclusion



drawn by TVNZ.

With regard to a third alleged inaccuracy, the broadcast of Mr Bruce's statement that "We really need something like a tribunal where we can have our genuine disputes like this aired very, very quickly ...", the Committee regretted that Dr Perry had not taken the opportunities open to him to make his point that he had offered to submit the dispute to the Small Claims tribunal.

In summary, the Complaints Committee upheld only that part of the complaint which had alleged factual inaccuracy in mentioning, in the introduction, that 6B Limited had been waiting two years to be paid for its work. Since, however, there were two subsequent references to a six-months period, the Committee considered that a correction had effectively been made and that there would be little purpose in taking further action on air.

None of the other alleged breaches of standards was upheld.

#### Dr Perry's Complaint to the Broadcasting Standards Authority

Under s8(a) of the Broadcasting Act 1989, complainants may refer their complaints to the Authority for an investigation and review if they are dissatisfied with decisions made by broadcasters on their complaints.

On 28 November 1989, Dr Perry wrote to the Authority reaffirming his belief that the item had transgressed broadcasting standards in the manner outlined in his letter of 11 September to TVNZ. The letter included a point-by-point rebuttal of TVNZ's responses to his allegations, a request that a formal apology be broadcast and a request for \$10,000 claimed as restitution of legal costs.

Responding to the Committee's findings, Dr Perry made the following points:

1. Same-day treatment is not important. "TVNZ's programme had clearly been prepared a day or days prior to the demonstration." It was not acceptable to accost him in the street and to pressure him into commenting at 7.25 am; nor was it acceptable to arrive unannounced at his office and expect him to break out of an important all-day meeting.
2. TVNZ colluded with 6B Limited as the majority of the programme had been filmed before the demonstration which had itself been encouraged by TVNZ. Unless there are compelling reasons for broadcasting urgently, both sides to a dispute must be given fair and equal treatment.
3. The reference to the BNZ " ... was clearly made in order to maximise harm to me as a salaried employee of that institution". It was spurious to claim that the reference helped to give Dr Perry a more complete and credible profile.

Comments in the body of the item to the effect that 6B Limited had been waiting six months to be paid did not have the effect of "eradicating" the original



and erroneous reference to a two-year waiting period.

5. Statements suggesting that \$6,000 was owed and that no referral to the Small Claims Tribunal had been made, were "distorted" in order to show Dr Perry in a bad light. "The amount in dispute was only \$2,000; I had offered to refer the matter to the Disputes Tribunal ... the error and distortions of the facts combine to produce a biased and inaccurate program."

6. A policy bordering on harassment was employed by TVNZ to unsettle and pressure a lay person.

In accordance with its procedures, the Authority referred Dr Perry's letter to TVNZ on 8 December 1989 for a response. A completed Broadcasting Complaints Referral Form - in which Dr Perry stated that he had lost his job at the BNZ because of this matter - was also passed to TVNZ.

#### TVNZ's Response to the Authority

TVNZ responded as follows in a letter dated 21 February 1990:

1. It has always been sound journalistic practice to report events on the day they happen. It is not TVNZ's normal policy to hold, beyond the day of shooting, stories which have a "spot news" component.

Dr Perry's insistence about being denied an opportunity to reply was difficult to understand in light of his statement (recorded in his letter of 11 September) that "I told the police constable that attended the demonstration that the matter was, I hoped, being referred to the Disputes Tribunal, and I felt that I could not say anything to the television crew." Had Dr Perry made that statement to the camera, his position would have been seen in an understandable and balancing perspective. Had he wished to change his mind about commenting on the matter, he had the whole day to contact the TVNZ newsroom.

2. The majority of the item had not been filmed before the demonstration took place outside Dr Perry's home. TVNZ's newsroom knew of the intention to stage the demonstration, but there was no prior agreement or collusion that the demonstration would be filmed. Once it was "up and running", the camera crew moved in; having established a news "peg" on which to hang the rest of the story, filming subsequently took place at the other sites shown in the item.

3. The reference to the BNZ as Dr Perry's employer, while not an essential element in the item, was not made to cause "maximum harm". The description was accurate and gave Dr Perry a "more complete and accurate profile"; it related to his *bona fides* and was not, therefore, "spurious". The Committee had questioned whether it was necessary to link Dr Perry with the BNZ because it felt that it might not be fair to the Bank to identify one of its senior executives as being in a financial dispute.



4. Viewers would have been left in no doubt, by the end of the item, that the complainant had been involved in a dispute with a six month history. To have returned to the item at a later date to mount a correction could have been confusing for viewers as " ... a proper explanation with visual recall would have been necessary if the matter was to be properly understood".

5. The sum of \$6,000 was the amount said to be claimed by 6B Limited and was not a statement of fact by TVNZ. The reference to a tribunal was made by Mr Bruce and was not a statement of fact made by TVNZ. These matters were not distorted by TVNZ to place Dr Perry in a bad light. If the end result was a biased item, resulting from the complainant's point of view not being given, then this was entirely of Dr Perry's own making.

6. The allegation of a policy bordering on harassment was a very serious charge and a "total misconstrual of the courteous and quiet approach of the reporter ... . Although the complainant may be a lay person, as he says, it is clear that he is not inexperienced in handling matters of significant business importance at a level of greater weighting than a building subcontractor's disputed account."

Finally, TVNZ submitted that a reopening of the issue by broadcasting an apology the following week, after the complainant appeared to have had a change of mind, had not only not been called for, in the light of the fact that reasonable opportunities had been given to him, but also because " ... it would have been an inconvenience and something of a discourtesy to viewers to expect them to sit through a portrayal embracing a recapitulation of the facts where the complainant was virtually telling them he had now changed his mind about explaining the whole issue, and that by his reckoning a sum of only \$2,000 was in dispute and not \$6000 as the subcontractor said."

#### Dr Perry's Further Comments to the Authority

Dr Perry was invited to comment on TVNZ's comprehensive response and he did so, in a letter dated 22 March, as follows:

1. The reference to the BNZ was "highlighted" by TVNZ because of its recent adverse publicity and its forthcoming Annual General Meeting. Although TVNZ claimed the reference to be "inadvertent", that was an untruth and TVNZ could not be trusted to tell the truth in this matter. "The message to the viewing public is along the lines of ... 'You've heard the dirt about the Bank of New Zealand ... now here's some more dirt on one of its senior executives' ".

2. The Committee had "criticised" TVNZ for including the reference to the BNZ but this was not disclosed in its letter of 14 November 1989 reporting on the Committee's findings. TVNZ should not "filter" the Committee's findings.

3. TVNZ knew, Dr Perry suspected, of 6B Limited's allegations "some weeks before July 21st" and he could have been approached for comment prior to the filming. The unquestioning acceptance of the accusations of one party amounted



to "collusion with one side out to harm the other side". The techniques used to obtain his view "were those of harassment, biased reporting and collusion".

4. The introductory and "attention-grabbing" reference to " ... two years later he wants his money. The BNZ executive won't pay him ... " is the message that sticks in viewers' minds.

### TVNZ's Further Comments to the Authority

TVNZ was given the opportunity to respond to the various points made by Dr Perry and did so, in a letter dated 2 May, as follows:

1. The suggestion that TVNZ "highlighted" BNZ involvement would appear to give a new or unconventional meaning to the word. Similarly, the suggestion that TVNZ regarded the reference to the BNZ as "inadvertent" was misconceived and that to then claim that it is "an untruth" was more than somewhat disquieting. The motives ascribed to TVNZ for mentioning the BNZ were specious.

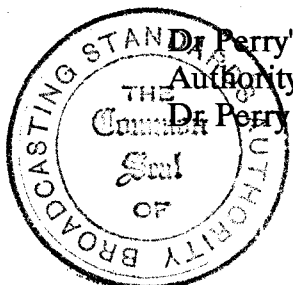
2. The Committee had not "criticised" TVNZ for including a reference to the BNZ as being Dr Perry's employer: the reference had been seen merely as not being an essential ingredient in the item. The allusion to filtering hardly needed refutation as all the facts had been traversed in exhaustive detail.

3. The period of prior knowledge was "only a day or two" and to have approached the complainant prior to the demonstration could have been an exercise in futility if there was to be no protest in public. "An independent action had first to be mounted before TVNZ could consider filming. Recognised standards of responsible journalism do not permit situations whereby cameras are used as a catalyst for a demonstration or connive in the stage-managing of an activity employing pressure tactics ... he alleges harassment techniques but if polite, low-key approaches, as depicted in vision, amount to the New Collins dictionary definition for harass, namely to trouble, torment, or confuse by continued persistent attacks, questions etc, then it would appear the dictionary definition requires not only re-examination but rewriting."

4. The reference to "two years later" was a scripting error, a mistake, and for that reason the Committee had seen fit to uphold the complaint in part. If it was "attention-grabbing", viewers would have stayed with the item and come to learn that the time-frame was six months and not two years. It was the six months message that would remain in viewers' minds.

### Decision

Dr Perry's dissatisfaction with his treatment on *Holmes* first came to the attention of the Authority shortly after its establishment in July 1989. At that time, the Authority advised Dr Perry on the procedures to be followed, in terms of the newly-enacted Broadcasting



Act, in making a formal complaint to TVNZ Ltd about the programme. Following correspondence between Dr Perry and TVNZ, and Dr Perry's solicitors and TVNZ's solicitors, Dr Perry lodged his formal complaint with TVNZ in a letter dated 11 September 1989. That complaint was heard by TVNZ's Complaints Committee on 25 October 1989 and the outcome conveyed to Dr Perry on 14 November 1989. Two weeks later, Dr Perry referred his complaint to the Authority for an investigation and review of TVNZ's decision.

In its handling of Dr Perry's complaint, the Authority, fully conscious of its responsibilities and requirements to observe the principles of natural justice, has from the outset been at pains to ensure that every comment and communication received from each party has been passed to the other, both prior and subsequent to the receipt of the formal complaint, thus providing each with the opportunity for further comment. This has involved the Authority acting as the go-between, receiving and forwarding the letters. Whilst well-expressed, these have invariably been lengthy and at times somewhat emotional and many have generally done little more than repeat or buttress, with various refinements, allegations and counter-allegations which have already been made not once, but several times. There have also been delays along the road, some of which have been excusable and others inexcusable, but all of which have been frustrating. The end result has been that the Authority, following the receipt of TVNZ's letter of 2 May, felt that it was in a position to decide that further correspondence would be counter-productive. It has thus finally been able to investigate and review the complaint and to make its determination.

Despite the daunting nature of the voluminous and protracted correspondence surrounding the offending *Holmes* item - more than thirty separate letters have been written on the subject - the "talking-through" of the complaint in this way has enabled the Authority to conclude that the issues which fall to be determined are few. In essence, they relate to first, allegations of three factual inaccuracies; secondly, unjust and unfair reference(s) to the Bank of New Zealand as Dr Perry's employer; thirdly, collusion between TVNZ and 6B Limited in filming the demonstration; fourthly, harassment of the complainant by the reporter; and fifthly, finally and most importantly, unjust and unfair treatment of Dr Perry by TVNZ in denying him an adequate or reasonable opportunity to refute or to reply to Mr Bruce's allegations, a denial which it is further alleged resulted in the broadcast of a programme which was neither objective nor impartial.

Each of these issues will be considered in turn.

1. Factual Inaccuracies

The Authority first considered the reference to "two years" in the very brief introduction to the programme. The introduction read as follows:

He is a plasterer. He did the job. He cut no corners. Two years later he wants his money. The BNZ executive won't pay him.

TVNZ has readily acknowledged that the reference to "two years" was a scripting error





and the Authority, having viewed the programme and read the transcript, agrees that the two subsequent and factually correct references to the waiting period having been six months would have served to correct any lingering memories viewers might have retained of the earlier error. It did not call for a correction in a subsequent *Holmes* programme.

The second factual inaccuracy alleged by Dr Perry related to the sum in dispute. The statement concerning the amount of money at stake was made by the reporter, Mr Hudson, in the following passage:

The house belongs to a solvent Auckland banking executive Brian Perry. He's in dispute with the builder who walked off the job and 6B which claims to be owed \$6,000. Today they demonstrated.

Dr Perry disputed the amount owed. He maintained that 6B Ltd did not begin work until late 1988 and that no account whatever, not even for a progress payment, had been submitted to the head contractors by November 1988 when the contractor left the site leaving his home only two thirds complete.

With regard to Dr Perry's claim that the reporter's statement was a factual inaccuracy, the Authority notes that there can be no broadcast of a factual inaccuracy if the sum of \$6,000 was indeed the amount "claimed" by 6B Limited. The reporter did not vouchsafe the veracity or merits of the claim, he merely reported it.

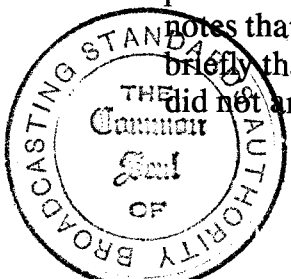
The third alleged factual inaccuracy concerned the question of referring the dispute to a tribunal for settlement. Mr Bruce was at one point seen saying:

We really need something like a tribunal where we can have our genuine disputes like this aired very, very quickly and we're in and out and the matters sorted out.

Dr Perry considered this statement to be inaccurate in that there was no acknowledgement that he had offered to refer the matter to the Small Claims Tribunal. The Authority does not agree that the broadcast of Mr Bruce's statement was the same as denying that an offer had been made to refer the matter to that Tribunal. Again, the Authority can find no factual inaccuracy or distortion of fact.

## 2. Bank of New Zealand

With regard to the matter of the reference(s) to the Bank of New Zealand as being Dr Perry's employer, Dr Perry appears to have accepted before referring his complaint to the Authority that there was only one such reference and that this was in the introduction to the programme. To TVNZ's acknowledgment that this reference was not essential, the Authority would go further and say it was an undesirable inclusion; but the Authority cannot accept Dr Perry's contention that it was "highlighted" for the purposes claimed by him or that it was done with any ulterior motive calculated to exert undue pressure and to maximise harm to him as an employee of the bank. (The Authority notes that in his completed Broadcasting Complaints Referral Form, Dr Perry mentioned briefly that he had lost his job with the BNZ as a result of the *Holmes* item although he did not amplify this remark in any correspondence. If he did lose his job for this reason,



it is unfortunate indeed, but the Authority is aware from the correspondence before it that 6B Limited had written a letter complaining about Dr Perry direct to the Bank *before* the broadcast of the *Holmes* item. Bank officials may therefore have become aware of the item whether or not the Bank had been specifically named. Furthermore, whatever the merits or demerits of 6B Limited's claims against Dr Perry, it is difficult to see how the broadcast of the item could, in the eyes of the ordinary viewer, have been seen as reflecting adversely on the BNZ.)

### 3. Collusion

The charge of collusion between TVNZ and 6B Limited is a serious one. By the time he approached the Authority for review, Dr Perry had rightly dropped his initial and inappropriate allegation that there had been collusion in breach of standard 10 (competitions) of the Programme Standards. Instead, he saw collusion as having taken place in the more general sense of TVNZ's having encouraged and connived in the mounting and filming of the demonstration weeks before it took place. On this, the Authority accepts TVNZ's explanation that its prior knowledge of the dispute was "only a day or two", that the demonstration was an independent action (ie not encouraged by TVNZ) and that there was no prior agreement that it would be filmed.

### 4. Harassment

In the same way that the Authority found no evidence of collusion so, too, did it fail to find any evidence of Dr Perry's being "harassed" by the reporter, Mr Hudson. The Authority must agree with TVNZ that there was no harassment, in the dictionary sense of the word, of Dr Perry.

That does not, however, mean that the Authority also agrees with TVNZ's contention that its reporter adopted a "courteous and quiet approach". The view of a reporter pursuing the complainant with such words as "Mr Perry, Mr Perry are you going to pay these guys" ... "Hey, why can't you tell us why you won't pay these guys" bore little resemblance to the "courteous and quiet approach" claimed by TVNZ Ltd.

Nor does the Authority believe that comments by the reporter such as:

The trouble is that his car was being much cooler than its driver ...

We felt Mr Perry might be more convivial in his Queen Street Office ...

were justified and they did nothing to enhance a programme which was presumably intended to illustrate seriously the major financial problems (this was a relatively minor one) many subcontractors were suffering as a result of the collapse of the building boom following the sharemarket crash.



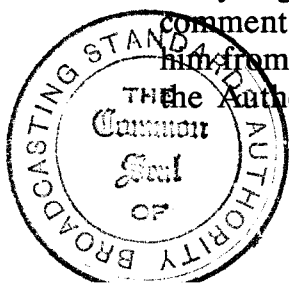
## 5. Unjust and Unfair Treatment

The last and most important issue which must be resolved, is whether Dr Perry was provided with an adequate or reasonable opportunity to give his side of the story and, in doing so, to refute or reject the views put forward by Mr Bruce on behalf of 6B Limited. If he was denied that opportunity, there must be at least a *prima facie* case that he was treated unjustly and unfairly and that the programme lacked objectivity, impartiality, fairness and balance.

The Authority has given careful consideration to TVNZ's arguments in support of its position that such an opportunity was afforded Dr Perry. The Authority accepts that, there having been no collusion with 6B Limited, it would have been a futile exercise to have approached the complainant before the demonstration was "up and running"; it also has no difficulty in accepting the view that "same-day" treatment is important when trying to obtain both sides of a story which, having only a "spot-news" component, would be withheld from screening on the day of shooting only in exceptional circumstances.

What the Authority does not accept, however, is the contention that Dr Perry had an adequate or reasonable opportunity to give his side of the story when he was questioned on leaving his house by Mr Hudson or when Mr Hudson appeared unannounced at his place of work while he was in a meeting. In the Authority's view, Mr Hudson's less than courteous approach outside the house at 7.25 am on a midwinter's morning (the complainant was filmed scraping the frost from his car windscreen) when Dr Perry emerged from his home accompanied by his daughter and totally unaware of the presence of a television film crew, was not conducive to eliciting a measured or, indeed, any response from the complainant. Dr Perry's reaction, in the circumstances, was perfectly understandable and his lack of response - or, as TVNZ put it, his apparent exercise of his right of "no comment" - cannot be regarded as a failure to take an adequate or reasonable opportunity to reply to or to refute 6B Limited's allegations. The same conclusion applies to the unannounced visit by Mr Hudson and his film crew to Dr Perry's offices and his non-availability for an interview during a day when he was engaged throughout in an important meeting with visitors from the Republic of China. In both instances, circumstances were such that the opportunity to respond was, in the Authority's view, neither adequate nor reasonable.

The notion that Dr Perry was aware that the *Holmes* team was preparing an item and that he had all day to withdraw from his meeting in order to make a brief call to TVNZ giving his side of the dispute is superficially an attractive one. But it fails to take account of the knowledge of ordinary viewers who, like Dr Perry, have never heard of the "same-day" imperatives of stories with a "spot-news" component. Dr Perry cannot be assumed to have known that the demonstration was "spot news", that it would feature as an item on *Holmes* that very night and that it was therefore considered vital that his side of the story be obtained that day. On the contrary, in the absence of what he, as a non-journalist, might have regarded as a compelling reason to screen the item that night, Dr Perry might reasonably have expected that the item would not run without his balancing comment. Moreover, as someone whose professional training would presumably inhibit him from giving unpremeditated replies to questions put to him, Dr Perry appeared to the Authority to be exercising the responsible judgement in choosing not to reply. The



Authority consequently considers that he could reasonably have expected reciprocal professional courtesies to have been extended to him, in the manner and the timing of questioning by TVNZ's reporter.

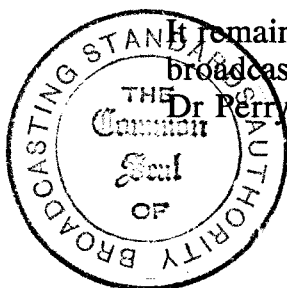
The programme was screened on the evening of Friday 11 July. Dr Perry telephoned Mr Julian Mounter, the Chief Executive of TVNZ's office early on the following Monday morning and on learning the correct procedure, he immediately delivered a letter to TVNZ setting out clearly his side of the story. This was obviously the first possible opportunity available after the programme had screened on the Friday evening and it is both inaccurate and unfair to the complainant for TVNZ to suggest the "he appeared to have a change of mind" about giving his side of the story. Having been informed of Dr Perry's version of the dispute TVNZ in turn was provided with the opportunity to publish a brief statement in the *Holmes* programme that evening referring to the item screened on Friday night and stating the complainant's side of the argument. Thus the item would have featured on two consecutive programmes and would have been clearly within the period of current interest as provided in the Codes of Practice. TVNZ chose not to do so on the basis that a re-opening of the issue was not called for, not only because of the reasonable opportunity already provided, but also because "it would have been an inconvenience and something of a discourtesy to viewers to expect them to sit through a portrayal embracing a recapitulation of the facts".

The Authority does not accept this argument. To do so would be to accept that it might never be appropriate for TVNZ to apologise or to add balance by means of a recapitulation of events because such action would inconvenience or otherwise be discourteous to viewers. It does not believe that reasonable opportunities had been provided before the programme was broadcast and it believes that a brief reference to the allegations made on that previous *Holmes* programme and to Dr Perry's reply to them could and should have been made whether or not it was a discourtesy or inconvenience to viewers which in the circumstances the Authority considers to have been highly unlikely. Had journalistic imperatives given way to plain good manners, the allegations of lack of fairness, justness, impartiality etc in the item might never have arisen.

In light of the foregoing, the Authority has concluded that there is a *prima facie* case that Dr Perry was not given a reasonable and adequate opportunity to state his version of the dispute in reply to or in refutation of Mr Bruce's allegations on behalf of 6B Limited. In the absence of any other material in the programme which would have remedied this imbalance, the Authority further determines that Dr Perry was treated unjustly and unfairly, in breach of standard 4, in a programme which, as a necessary corollary, was itself broadcast in breach of standards 6 and 12 in that it lacked objectivity, impartiality, fairness and balance.

**For the reasons set forth above, the Authority upholds the complaint to the extent noted in the foregoing paragraph.**

It remains to consider whether TVNZ should, as requested by Dr Perry, be required to broadcast an apology to Dr Perry and to pay some or all of the legal costs incurred by Dr Perry in connection with the broadcast.



On the question of an apology, it is a matter of regret that TVNZ did not seriously contemplate broadcasting the terms of an agreed statement giving Dr Perry's version of the dispute.

That said, however, the Authority has decided that any apology, which would need to be tailored to the findings of the present Decision, would serve no useful purpose if it were now to be broadcast so long after the item was screened.


In his letter to TVNZ written on the first working day after the broadcast of the *Holmes* item, Dr Perry asked TVNZ to contribute \$10,000 towards his legal expenses. At that time, he was also contemplating bringing an action for defamation against TVNZ. Dr Perry later waived any legal actions or claims he may have had following notice that TVNZ would not proceed to determine his complaint until it had received written acknowledgement from him that whatever legal action he contemplated taking, in respect of the subject-matter of the complaint, had been "extinguished".

The Authority questions TVNZ's entitlement to require Dr Perry to waive any right of action he may have had at law in order to proceed with his formal complaint under the Broadcasting Act. In the Authority's view, the Act contemplates that normal legal processes, which would include an action for defamation, would run alongside the formal complaint process. These jurisdictions are separate but, unlike the situation under the Broadcasting Act 1976, no longer mutually exclusive. In waiving his right to pursue his defamation claim, Dr Perry also gave up any chance he might have had to recover costs that he had incurred up to that time arising out of the *Holmes* broadcast.

The Authority considers it appropriate that costs be awarded in the sum of \$500.

The Authority co-opted Sir David Beattie as a person whose qualifications and experience were likely to be of assistance in dealing with the complaint. Sir David took part in the consideration and determination of the complaint but the Decision is that of the permanent Members.

Signed for and on behalf of the Authority

  
Iain Gallaway  
Chairperson



15 August 1990

**APPENDIX A**

Extract from the TV Programme Standards Section of the Codes of  
Broadcasting Practice for Television

General

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

1. To be truthful and accurate of points of fact.
- ...
3. To acknowledge the right of individuals to express their own opinions.
- ...
4. To deal justly and fairly with any person taking part or referred to in any programme.
- ...
6. To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.
- ...
10. In contests there must be no collusion between broadcasters and contestants which result in the favouring of any contestant over others.

News and Current Affairs

A television news and current affairs service should take account of the following points:

...

News must be presented accurately, objectively and impartially.

