

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 21/90

Dated the 18th day of October 1990

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

THE NEW ZEALAND MINING
AND EXPLORATION ASSOCIATION
INCORPORATED
of Auckland

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson
J.B. Fish
J.L. Hardie
J.R. Morris

DECISION

Introduction

This complaint arose from the broadcast on 14 October 1989 of a programme on TV1 called "Prospects", a documentary which examined the anti-mining protest movement on the Coromandel Peninsula. The film was independently produced by Pit Productions of Wellington and was purchased and screened by TVNZ Ltd in the normal way.

The New Zealand Mining and Exploration Association Incorporated (the NZMEA) considered that the programme was unbalanced and biased and contained factual errors and inaccuracies. The Association's legal counsel were accordingly instructed to lodge a formal complaint with TVNZ Ltd.

The NZMEA's Complaint to TVNZ Ltd

In a letter dated 27 October 1989, the Association's solicitors wrote to TVNZ formally complaining that the broadcaster had failed to carry out its statutory responsibility, under section 4(1)(d) of the Broadcasting Act 1989, to maintain standards consistent with

"... the principle that when controversial issues of public importance are discussed, reasonable opportunities are made, or reasonable opportunities are



given, to present significant points of view either in the same programme or in other programmes within the period of current interest."

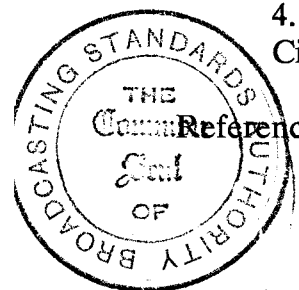
The NZMEA viewed the programme as being unbalanced in its presentation and biased in favour of the "anti-mining faction". In support of this view, the following concerns were specifically mentioned:

1. "Prospects" was described in the *Listener* as a "documentary about the Coromandel Peninsula and the concerns of the people who live there", which explored the contrasting opinions of mining companies and the local community and questioned whether a multi-national goldrush can be sustained ecologically or economically. However, the comments of the spokesman for the complainant Association, Mr Peter Roberts of Spectrum Resources, in his "token interview", were brief. The input from the industry was insubstantial and heavily edited.
2. The credits to the programme described it as being produced with the "valuable assistance of ... Mike Donoghue" (an officer of the Department of Conservation and a member of the Peninsula Watchdog Group) and was followed by a special thank you to "all the people fighting to save the Coromandel Peninsula". The anti-mining perspective in the film was confirmed by a newsletter of the Peninsula Watchdog Group which stated that "[t]his excellent 25 minute documentary is available to Watchdog members and supporters to use as a tool ...".
3. The overall tenor of the programme as an "anti-mining" documentary was clearly evidenced by its general thrust. TVNZ should, pursuant to its obligations under section 4 of the Act, allow representatives of the mining industry to redress the balance.

In addition, the NZMEA alleged that many of the statements made on the programme by people opposed to mining were factually incorrect, incapable of substantiation or misleading. Particular mention was made of :

1. The comments of Dr Stella Penny, from which viewers could have inferred that operational mines, or mines recently closed, were the cause of stream pollution from leaching.
2. The comments of Ms Tanya Popp that mining companies had no right "to just come along and take what they want from the land for their own greed "especially when New Zealanders aren't even getting anything out of it".
3. Ms Margaret Pye's statement that "should this company decide to mine, there is nothing that the community can legally do to stop them".
4. Mr Maurice Cowan's statement, which began "Welcome to Waihi, Cyanide City", also contained many factual inaccuracies.

Reference was also made to a Local Opinion Survey conducted in 1986 which found that



"most people didn't want mining on the peninsula" and that 86% opposed large-scale mining. The NZMEA was concerned that the programme failed to mention a larger survey conducted by Mr Graham Lee MP in 1988 which showed that a majority of people were in favour of the mining with appropriate environmental controls.

TVNZ's Response to NZMEA's Complaint

In a letter dated 31 January 1990, TVNZ advised the NZMEA, through the latter's solicitors, that its complaint had been considered in the context of section 4(1)(d) of the Act and not upheld by TVNZ's Complaints Committee.

In response to the NZMEA's allegations, and specific points of concern, TVNZ commented as follows:

1. The programme was in the nature of a documentary. The Committee had noted that it was essentially the story of the protest movement and its environmental concerns in the Coromandel and not of mining per se. It set out to explain the rationale of the movement, the activities of the mining companies and the feelings of the local community. Mr Roberts' comments were brief, partly because the NZMEA stance was only partially relevant to the item and partly because his statements were a succinct and accurate representation of the mining companies' position.
2. While the film credits fitted with the premise of the documentary being a story of the protest movement, it was acknowledged that the credits could give an unacceptable image of bias. But since the programme was examining the fight that was taking place against mining, the special thanks message was not seen by TVNZ to be incongruous.
3. A bias of sorts would inevitably be seen in the programme simply because it was the story of a protest movement. The Committee noted that, according to the TVNZ production library records, there had been 13 news items on the subject of mining during the first 11 months of 1989. A balance of viewpoint and public understanding would inevitably arise from such broad coverage. As to the suggestion that TVNZ should allow representatives of the mining industry to redress the balance, the Committee could see no reason why the NZMEA should not commission its own documentary and submit it to TVNZ for consideration.

With regard to the allegations of factual inaccuracies, etc, TVNZ replied as follows:

1. Dr Stella Penny's comments were considered to be of an historical nature. Given that there is currently no mining on the Coromandel itself (the only operating mine being at Waihi), her concerns were clearly those of pre-existing pollution.

2. As to the comments of Ms Tanya Popp, it was noted that she, too, was "clearly proffering an opinion". In context, she was one of five people expressing



their worries about potential mining.

3. While Margaret Pye's comment was technically incorrect, it was an opinion proffered in the light of the protest movement not succeeding in opposing the granting of any exploration licence. The camera reflected an honestly-held opinion.

4. Maurice Cowan was formerly Deputy Mayor of Waihi and his segment was included to look at the impact of the open-cast mine in Waihi as one indication of what a fully-fledged mine might mean to the Coromandel. He was expressing his genuine viewpoint and exercising a freedom of speech to which he is entitled on a matter of not only public interest but public concern relating to the environment.

The 1986 survey was seen by TVNZ as being mentioned in the context of it being the catalyst for residents to go to the Planning Tribunal, not as any definitive claim of accuracy. It was noted that the survey was conducted only among Coromandel residents whereas Mr Lee's survey covered his entire electorate.

In summary, the Complaints Committee was satisfied that in the broader context the pro-mining view had been explored. In spite of some reservations about production aspects of the programme, TVNZ did not consider, given the nature of the topic and taking the overall picture into consideration, that section 4(1)(d) had been breached. A reasonable opportunity was given a mining representative to present significant points of view in the programme. Accordingly, the complaint was not upheld.

The NZMEA's Complaint to the Broadcasting Standards Authority

On 27 February 1990, the Association's complaint was referred by its solicitors to the Authority for an investigation and review.

The essence of the NZMEA's complaint was that although the programme contained brief comments from Mr Roberts, it was unbalanced in its presentation and biased in favour of the "anti-mining faction". Mining on the Coromandel is a "controversial issue of public importance" and TVNZ had failed to use reasonable efforts or to make available reasonable opportunities to present significant points of view either in the same programme or in other programmes within the period of current interest. While the programme was intended to have the appearance of a documentary about mining on the Coromandel, its tenor was that of an "anti-mining documentary". There may have been 13 news items on mining during the first 11 months of 1989, but those items in general focused on protest activity as opposed to the benefits of mining.

The Association's complaint was referred to TVNZ for a response.



TVNZ's Response to the Authority

On 16 July 1990, TVNZ responded in a letter which was confined to addressing the issue of alleged bias or imbalance. The main points made were as follows:

1. TVNZ had readily acknowledged that "Prospects" was essentially a look at the mining protest movement on the Coromandel Peninsula. Nevertheless an articulate spokesman for the miners was seen in five segments of the programme explaining their point of view or attitude. TVNZ regarded this frequency, within a 25 minute programme, as having given the miners "reasonable opportunities" to present significant points of view in the same programme, as required by section 4(1)(d) of the Act.
2. If the NZMEA believed fuller coverage should have been given to miners' viewpoints, or there should have been a strong pro-miner element to "balance" the protester element, TVNZ submitted that the broadcaster was not obliged to do so on the basis of two recent Broadcasting Tribunal Decisions - 10/90 and 12/90 - where certain broad principles were identified. Quoting the Tribunal's statement in Decision No 10/90 that "It is legitimate to limit the information in a programme in accordance with the purpose of the programme. Programme makers are entitled to take aspects of a topic and confine themselves to that" (p 10), TVNZ maintained that that was the approach taken by the makers of the "Prospects" programme, even though mining comment was sought and included. The "aspect" in question was the fight that was taking place against mining on the Coromandel Peninsula.

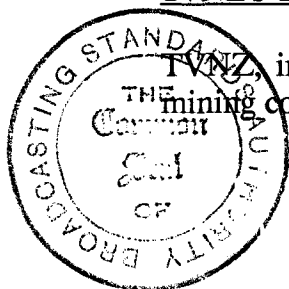
TVNZ also referred to the Tribunal's comment in Decision No 12/90 that "It is not a principle of broadcasting standards that all matters relevant to a particular topic must be mentioned." (page 9)

The NZMEA's Further Comments to the Authority

The Association was invited to comment on TVNZ's response. In a letter dated 30 August, its solicitors made a number of points, the most salient of which, for the purposes of this Decision, was that the near-total failure of the programme to test the arguments of those opposed to mining - many of whom voiced false, inaccurate or misleading comments - was the origin of the alleged bias of the programme. The programme looked at only one side of the issues it raised. Dr Stella Penny, Ms Tanya Popp, Mr Maurice Cowan and others were examples where potentially misleading or unsubstantiated opinions should not have been allowed to go unchallenged. A balanced programme would have avoided this bias.

TVNZ's Further Comments to the Authority

TVNZ, in its letter of 17 September, maintained that a precise testing of each anti-mining comment from the NZMEA spokesman was not called for. The programme was



assessed in its overall context and not in a segmented and matching-up way. TVNZ was under no obligation to give equal coverage to both sides in order to achieve balance. Thirty seconds given to an articulate speaker can have a greater impact than, say, three minutes devoted to a waffler.

The NZMEA's Final Comment to the Authority

On 9 October, the NZMEA's final comments were received by the Authority.

With regard to the points raised by TVNZ and mentioned above, the NZMEA's solicitors denied that the Association was suggesting that equal coverage should have been given to both sides. Its argument was that TVNZ was not entitled to limit the scope of a programme dealing with controversial aspects of a topic with a resulting impression of partiality and lack of objectivity.

As to TVNZ's reliance on the two Decisions of the Broadcasting Tribunal (TVNZ's letter of 16 July), the NZMEA drew attention to that part of Decision No 12/90 which commented, in paragraph 4 of page 10, to the effect that "a programme is entitled to limit, or even refrain from, controversial aspects of a topic, unless that results in unfairness or partiality or, in the case of a new programme, lack of objectivity."

The letter also referred to a number of matters which it had raised in its letter of 30 August and upon which TVNZ had commented in its letter of 17 September. As those matters are not relevant to the Decision which follows, they have not been summarised.

Decision

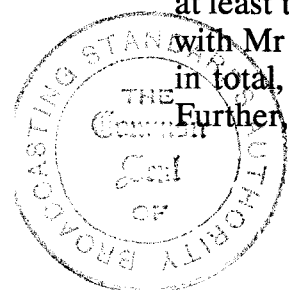
As noted earlier, section 4(1)(d) of the Broadcasting Act provides:

4(1) Every broadcaster is responsible for maintaining in its programmes and their presentation, standards which are consistent with -

...
(d) The principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest.

The Authority considered that the programme "Prospects" was indubitably about a controversial issue of public importance, a view borne out by the fact, supplied by TVNZ, that there had been 13 news items on mining in the first 11 months of 1989.

It observed that the programme was principally made up of a series of interviews with at least twenty people opposed to mining. Five extracts were included from an interview with Mr Peter Roberts (the nominated spokesperson for the complainant NZMEA) but, in total, these occupied some 45 seconds of the programme's 25 minute running time. Further, while the Authority agrees with TVNZ that Mr Roberts is "articulate" and that



his comments were "succinct", it considers that the editing and the brevity of the interview extracts served to trivialise his views.

In light of the programme's clear focus upon anti-mining views and the fact that it was broadcast in isolation - i.e. without a "follow-up" programme focusing upon the views of those in favour of mining - the Authority formed the view that, unless the programme was not represented to be a balanced documentary, its broadcast would have breached s.4(1)(d) of the Broadcasting Act 1989.

Accordingly, the Authority examined the opening sequences of "Prospects" in order to determine whether the credits gave any indication of the stance the programme would take with regard to goldmining. There was no such indication; indeed, opening credits were almost non-existent. "Prospects" begins dramatically with a variety of visual sequences of gold (ingots, effigies, jewellery, coins etc) and a voice-over which begins: "The Oxford Dictionary defines gold quite simply as 'the most precious metal ...' ". The only written words to appear are "Prospects" and, later, "Coromandel Gold" before the local scenes and interviews begin.

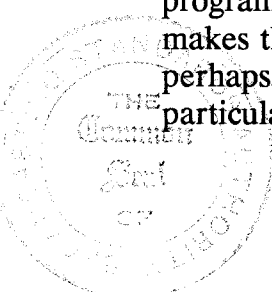
Consequently the Authority is of the view that there was nothing in these opening sequences to indicate anything other than that a balanced programme could be expected.

Although realising that it would be of incidental significance, the Authority pursued the matter by studying the advance publicity for "Prospects", as presented in the print media, in order to consider whether or not this contained any flagging of the stance of the programme. Not even in the two readily available sources was any expectation aroused that the programme would be partisan. The synopsis prepared by Pit Productions and supplied to the Authority by TVNZ states "we were exploring the contrasting opinions of the mining companies and the local population". The "Listener" description was of a "documentary about the Coromandel Peninsula and the concerns of the people who live there". Nowhere in this publicity was there any indication that the programme was to be principally made up of a series of interviews with people opposed to mining.

As a result of the programme's imbalanced attention to the views of the pro- and anti-mining positions and its failure to signal the nature of its content, the Authority believes that the broadcast of "Prospects" clearly failed to meet the requirements of s.4(1)(d) of the Broadcasting Act: the opportunity given in the programme for the pro-mining point of view to be presented was not "reasonable".

For the foregoing reasons, but with the reservations set out below, the Authority upholds the complaint that s.4(1)(d) of the Broadcasting Act 1989 was breached by the broadcast of the programme "Prospects".

The Authority notes the principles referred to in the Broadcasting Tribunal Decisions 10/90 and 12/90 and further recognises implications in regard to documentary programmes which could be drawn from those Decisions. The Authority therefore makes the additional point that had the introduction to the "Prospects" programme or, perhaps, even the advance publicity, signalled that it was a documentary presenting a particular perspective on a single topic - in this case the anti-mining lobby on the



Coromandel Peninsula - then opportunities to present another viewpoint within the same programme would not have been necessary. TVNZ would then have been editorially responsible for determining whether or not a programme "in reply" was required within the period of current interest. In view of the long term nature of the struggle between the pro- and anti- mining groups, defining the period of current interest could be a vexing question for the broadcaster to resolve.

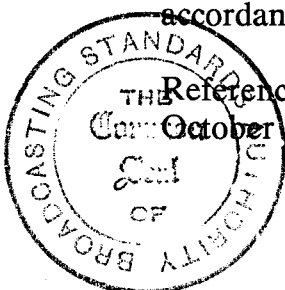
The Authority considers that the presentation of community programmes should not be inhibited by this Decision but rather that it highlights the need for adequate signalling of programme content. Had this occurred in regard to "Prospects" the allegedly "anti-mining" final credits referred to would have been acceptable. As broadcast, without adequate flagging, these credits were considered to exacerbate the lack of balance in the programme. The Authority notes TVNZ's preparedness to screen a programme on behalf of the pro-mining faction, provided it is of adequate quality.

In its complaint to TVNZ, the NZMEA specifically alleged that factual errors and inaccuracies were made in a number of the interviews broadcast in the programme, in particular mentioning

- incorrect implications which could be drawn from the comments of Dr Stella Penny concerning stream pollution
- Tanya Popp stating that "New Zealanders aren't even getting anything out of it"
- Margaret Pye saying "there is nothing the community can legally do to stop this" (ie mining) and
- Maurice Cowan's extensive views introduced by his "Welcome to Waihi, Cyanide City".

The Authority considers that the implications which could be drawn from Dr Penny's comments would be dependent upon a viewer's knowledge of mining in the Coromandel. It has examined the remaining allegations of inaccuracy in light of Programme Standard 1 of the Codes of Broadcasting Practice for Television which requires broadcasters "to be truthful and accurate on points of fact" and has weighed the differing viewpoints in regard to the complainant's allegations. On the one hand, the NZMEA says that the statements are factually incorrect. On the other hand, the anti-mining people were clearly seen as giving their personal interpretations of the matters under discussion; they were presented in the programme as putting forward their own views of the facts. The Authority notes that Programme Standard 3 requires broadcasters "to acknowledge the rights of individuals to express their own opinions". It is of the view that, given the controversial nature of the programme's subject matter, the alleged "factual errors" were opinions of the facts, earnestly put forward by their proponents and presented in accordance with Programme Standard 3.

Reference is made in the correspondence (NZMEA through their counsel to TVNZ 27 October 1989, TVNZ to NZMEA 31 January 1990 and NZMEA to the Authority 30



August 1990), to the Local Opinion Survey referred to in the programme by two interviewees and the alleged omission of balancing mention of Graham Lee's 1988 Survey. The Authority accepts the view of TVNZ that the Lee Survey would have been irrelevant to the programme as it was conducted in an area beyond as well as including the Coromandel Peninsula. It notes that there was no editorial support in the programme for the accuracy or otherwise of the 1986 Survey; it was simply referred to.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



18 October 1990