

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 26/90 and
Decision No: 27/90
Dated the 14th day of December 1990

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of complaints by

THE NEW ZEALAND BUSINESS
ROUNDTABLE

AND

THE TREASURY

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

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

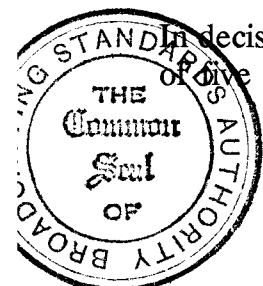
Sir David Beattie
G.F. Whitehead Co-opted Members

DECISION

Introduction

On Sunday 29 April 1990, a programme produced by Television New Zealand Limited and entitled "For the Public Good" was broadcast on TV1's "Frontline". As a result of the broadcast, TVNZ received eight formal complaints, including those of the New Zealand Business Roundtable and the Treasury. One of the remaining six complaints was made on a confidential basis and requires no further mention since it was not referred to the Broadcasting Standards Authority. Another was made by the then Prime Minister on his own behalf, that of the Government and four Cabinet Ministers of the day. The other four complaints were made by individuals and organisations involved in New Zealand's major business sector.

In decisions reached at the end of May, TVNZ's Complaints Committee upheld aspects of five of the complaints, finding a total of ten breaches of the Broadcasting Act or



Television Programme Standards. A press release dated 1 June quoted the Chief Executive of TVNZ as saying that:

while the programme contained much useful information and not all complaints had been upheld, the Committee's findings had showed the programme to have been seriously flawed.

Attached to the prepared press release statement were TVNZ's interim letters to complainants advising in summary form of the Committee's decisions upon each of their complaints.

On 10 June, TVNZ broadcast on "Frontline" an item lasting some seven and a half minutes which summarised the Committee's decisions upon those complaints which had been upheld, contained brief statements from three of the successful complainants and expressed TVNZ's regret for the mistakes in "For the Public Good".

Following the Complaints Committee's decisions and TVNZ's action, seven complaints were referred to the Broadcasting Standards Authority for investigation and review pursuant to s.8(a) of the Broadcasting Act 1989. One of these was later withdrawn. The remaining six complaints referred to the Authority were those of the then Prime Minister, three Cabinet Ministers of the day (whose initial complaints had been merged in the Prime Minister's complaint), the New Zealand Business Roundtable (NZBR) and the Treasury.

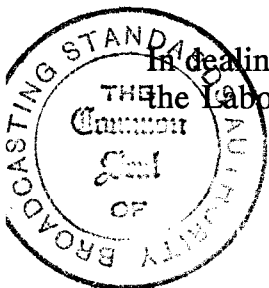
Each of the complaints raised distinct issues and required separate consideration. To date, however, the Authority has not been in a position to give attention to the complaints of the Ministers of the Crown because their submissions on a preliminary matter raised by TVNZ have not all been received as yet. Meanwhile, the Authority has concluded its deliberations on the complaints of the NZBR and the Treasury. It is for the sake of convenience - ie to avoid repetition of background information relevant to both complaints - that the Authority's decisions upon these complaints are presented in this one document.

"For the Public Good"

In its approximately 46 minute running time, "For the Public Good" dealt with two distinct topics, both of which stand out as fit subjects for journalistic investigation. The first received by far the greater attention and concerned the funding of New Zealand political parties' election campaigns. The introduction to the programme explained that the 1986 Royal Commission on the Electoral System had recommended that:

political parties should be required to disclose the name, size and source of their big donations and that those returns should be made available for public inspection but that recommendation has been ignored.

In dealing with this topic, the programme placed a heavy emphasis upon the funding of the Labour Party's campaign prior to its re-election to government in 1987. Revealing



that a substantial amount of that funding had come from major New Zealand business interests, the programme raised two other matters in connection with its first topic: the manner in which those donations from business interests had been collected, expended and accounted for by the Labour Party, and the post-1987 Labour Government's sale of State-Owned Enterprises to the private sector.

The other topic was the lack of any formal requirement that Members of Parliament in New Zealand declare their private interests. As was explained in the programme's introduction:

Under Cabinet Rules Ministers are expected to ensure that no conflict exists or appears to exist between public duty and private interest.

Those rules are being rewritten but where other countries have long insisted that for the public good MPs must disclose their private interests, we have accepted our politicians' good faith on trust.

The programme's format involved extensive use of extracts of interviews with politicians and ex-politicians, businessmen, present and past Labour Party executives and political and economic commentators. As a proportion of its total running time, approximately 60% of "For the Public Good" comprised interview extracts. The remaining portion of the programme was comprised largely of voice-over statements made by the reporter to the accompaniment of film of related events. A small proportion of the programme comprised reconstructions of events referred to by the reporter, and other visual effects created for the programme. Occasionally, those and other scenes were screened to the accompaniment of music.

The foregoing account of the programme gives no indication of the impact which it had, or seemed to be designed to have, on its audience yet, in the Authority's view, that impact was such that it cannot be ignored in any assessment of the complaints which were referred to it. Although the reasons for its view of the programme as a whole will be explained below, in summary it can be said that the Authority considers that "For the Public Good" gave the clear impression that leading businessmen had bought favours from the post-1987 Labour Government. Moreover, the programme achieved that effect despite a dearth of supporting facts. The Authority agrees with the statement in the Dominion editorial of 24 May 1990:

The programme was a closely contrived package of suggestion and innuendo, embroidered with emotive language and suggestive camera shots.

From the moment when the "Frontline" presenter introduced the programme, it was indicated that matters which had been kept hidden from the public and which were detrimental to its interests would be revealed. If any viewers doubted that they had understood the presenter correctly, those doubts would have been allayed immediately the reporter began reading her script - for it was threaded through with emotive figures of speech consistent with the exposure of improper dealings. By way of example, the opening lines of the reporter's script were as follows:



Away from the public gaze there is a dark side to New Zealand politics.

Over the past six years, almost unquestioned, a group of highly-placed businessmen, politicians and public officials has dominated the processes of democracy in this country.

For six years the public has accepted at face value the government's assurances that what's good for business was good for us all.

What hasn't been revealed is what lies beneath the surface - a web of undisclosed connections that have served the ends of a few.

Behind the facade of open government business donations to election campaigns have been made on the understanding particular policies would continue, sensitive government records have been destroyed, cabinet ministers have invested in the booming sharemarket and, in the pursuit of power, millions of dollars have flushed through the political system leaving no trace.

Tonight we examine whether the connections between those who seek power and those who pay for their quest are truly for the public good.

Bolstering the dark mood of statements such as those were some of the visual effects created for the programme. The Authority refers, for example, to the still photographs of tangled wires (the "undisclosed connections") upon which other visuals were superimposed on occasions during the programme, and to the supposed re-enactment of a silhouetted businessman having a telephone conversation in which he seemed to be agreeing upon a "deal" with a politician or other representative of a political party. The dramatic music accompanying some of the visuals heightened the atmosphere still further.

As a result of the use of such techniques, it is the Authority's opinion that viewers were invited to react unfavourably to those interviewees who were seen to be maintaining a position different to that stated or alluded to by the reporter. Thus, while the interviews supplied the only evidence for the programme's conclusions and suggestions, when the connection between the reporter's and an interviewee's words was tenuous (as it was on several occasions) or even contradictory (as also happened on occasion), the mood was set for viewers to deduce that the reporter was telling the truth and the interviewee was not.

The Authority notes that the language and other effects employed in "For the Public Good", which harmonised to create a sinister impression of the truth of the matters under examination, are characteristic of what is termed "advocacy" journalism. Advocacy journalism, however, has not been adopted as a programme policy or practice by TVNZ: its norm is "uncommitted" or traditional journalism. The Authority considers that the previous adherence of "Frontline" to that norm had earned the programme a worthy reputation. As a result, it is of the view that by using a mainstream vehicle such as "Frontline" to convey the messages contained in "For the Public Good", TVNZ made the abrupt transition from traditional to advocacy journalism in a totally unacceptable



manner.

It is for the above reasons that the Authority believes that the overall effect of "For the Public Good" cannot be ignored in any consideration of complaints made about the programme. It notes, however, that TVNZ's Complaints Committee only took that approach when a complainant very clearly specified that the tenor of the programme as a whole was relevant to its complaint(s). In other instances, the Committee attempted to assess complaints - which were, inevitably, focused on specific parts of the programme - in isolation from the context supplied by the programme's overall tenor. In the Authority's opinion, that approach was artificial and, as a result, unfair.

The Authority has other concerns about TVNZ's broadcast of "For the Public Good" and its treatment of the formal complaints inspired by the programme. However, as they are not directly relevant to the Authority's determination of the complaints referred to it, they will be the subject of an advisory opinion to be issued by the Authority pursuant to s.21(1)(d) of the Broadcasting Act 1989 for consideration by the Board of TVNZ Ltd.

DECISION NO: 26/90

THE NEW ZEALAND BUSINESS ROUNDTABLE'S COMPLAINT

Summary of Complaint, Decision of TVNZ's Complaints Committee and Action Taken by TVNZ

By letter dated 4 May 1990, the Chairman of the NZBR, Sir Ronald Trotter, made a formal complaint to TVNZ in which it was first alleged that the broadcast of "For the Public Good" breached the Television Programme Standards in that it "was not balanced, impartial, fair or accurate."

After setting out some information about the NZBR, the letter stated:

Television is the most powerful organ of the mass media. It is capable of conveying messages and impressions in a dramatic manner by the clever use of statements and images which cannot later be re-examined by the viewer to assess their truth. Neither print nor radio are capable of the impact of television in the hands of skilful operators. These techniques were used by "Frontline" in a journalistically dishonest manner to achieve a specific end.

Seven specific matters were then identified as the causes of the NZBR's complaint and comments made about all but one of them.

Plainly, the NZBR challenged the accuracy, at least, of the first four matters, for it alleged that these were -

dominant impressions which ordinary New Zealanders would have drawn from the "Frontline" programme ... None of these inferences is valid and none was supported in the programme by factual evidence.



Those four "dominant impressions" were stated to be that:

- (i) the members of the Business Roundtable were buying specific policies from politicians;
- (ii) in return for financial support the post-1987 government sold state-owned enterprises at less than their true market value to these companies;
- (iii) the policies espoused by the Business Roundtable are "extremist" and bad for New Zealand;
- (iv) the Business Roundtable has engaged in covert action to subvert democratic government and obtain results that are not publicly defensible.

The other three specific matters about which the NZBR complained fell squarely within its original allegation of imbalance, partiality and unfairness in the programme. The letter stated:

The programme was seriously flawed in several other respects:

- (i) it completely failed to recognise the fact that the post-1984 policies greatly reduced, if not eliminated, the ability of firms to use personal relationships with politicians to gain specific advantage for their companies;
- (ii) it did not give the Chairman and Executive Director an opportunity to comment on the specific allegations;
- (iii) the scripting used emotional language, demonstrated an inherent anti-business bias, and used visual images with script to generate a hostile audience response to the major business sector and the Business Roundtable in particular.

Near the end of the letter, a summary of the NZBR's view of the programme was given - by means of quotations from an editorial published in The Australian newspaper on 2 May. (A version of the programme was broadcast in Australia soon after its broadcast in New Zealand.) Amongst those quotes were the following:

The program featured an abundance of innuendo. Breathless reference, deduction, assertion, speculation ... were all there too.

But objectivity was much harder to find. Facts - hard facts that compel serious attention - were also in short supply.

The Television New Zealand programme is almost breathtaking in its naivety. In the end it may say more about the state of television journalism in New Zealand than about the country's government.

The letter concluded with a request that TVNZ broadcast a full correction and apology



on the next "Frontline" programme and disseminate a press statement to all mass media, the text of which was to be agreed upon with the NZBR. Earlier in the letter it had been stated that if TVNZ did not comply with the request, the NZBR's formal complaint must be proceeded with.

By letter dated 1 June 1990, TVNZ informed the NZBR that its Complaints Committee had upheld part of the complaint. It was stated that the Committee considered that a segment of the complaint "had validity", namely, the allegation that a dominant impression capable of being drawn from the programme was that NZBR members were buying specific policies from politicians. Next, the letter stated that the Committee considered that "a code relating to fairness" had been "imperfectly observed" insofar as the NZBR Chairman -

should have been given the opportunity to comment on specific matters, particularly the role of your members regarding contributions to the Labour Party election campaign.

The letter of 1 June conveyed the Complaints Committee's recommendation that the NZBR Chairman be given the opportunity to have a written statement read on "Frontline", as follows:

This statement would be confined to the area in which the Committee found grounds for upholding your complaint. The recommendation is that you should have the opportunity to explain how you see your members' role in making donations to political parties.

By letter to the NZBR dated 8 June, TVNZ's Complaints Committee's decision was explained in depth, by means of a point by point response to the matters raised and elaborated in the NZBR's letter of formal complaint. The contents of that letter will be summarised in the course of this Decision. However, it is notable here that the letter begins with the explanation:

Your organisation's complaint was considered in the context of two Television Programme standards, codes 1 and 6. They respectively require broadcasters to be truthful and accurate on points of fact; and to show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

In the portion of the 10 June "Frontline" programme which was devoted to outlining the Complaints Committee's decisions on the complaints received about "For the Public Good", the decision on the NZBR complaint was summarised by the presenter in these terms:

In the case of the New Zealand Business Roundtable, the Complaints Committee upheld a segment of their complaint. This related to a dominant impression, capable of being drawn from the programme, that Roundtable members could be thought to be buying specific policies from politicians. On fairness grounds, it was considered that the Chairman of the Roundtable should have been given the



opportunity to comment, particularly on the role of Roundtable members regarding contributions to the Labour Party election campaign in 1987.

Next, a statement, prepared by the NZBR and introduced as its response, was both read out and displayed on the screen. It was in these terms:

The New Zealand Business Roundtable is an organisation of Chief Executives of major New Zealand companies. Its main interest is in the development of policies to make New Zealand a more successful country and benefit all New Zealanders. The Business Roundtable is strictly non-partisan, it has no involvement with political funding. The subject is never even discussed within the organisation. Individual members, and other companies, make their own decisions as to whether they support the political process with financial contributions. The Business Roundtable is pleased that Television New Zealand has admitted Frontline's mistake in creating the impression that the New Zealand business sector had tried to influence specific policies by political contributions and that a right of comment should have been provided. However, it does not consider that this limited response adequately addresses its formal complaint and it will be referring the matter to the Broadcasting Standards Authority.

NZBR Request for a Formal Hearing Declined by the Authority

In referring its complaint to the Authority by letter dated 22 June, the NZBR expressed a preference for it to be determined by way of a formal hearing. Section 10(1) of the Broadcasting Act 1989 empowers the Authority to determine the procedures it will adopt in considering complaints, as follows:

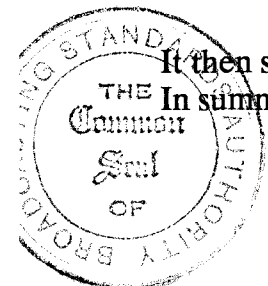
The Authority may, if it thinks fit, consider and determine any complaint referred to it under section 8 of this Act without a formal hearing, but, in that case, -

- (a) Shall give the complainant and the broadcaster a reasonable opportunity to make submissions to it in writing in relation to the complaint; and
- (b) Shall have regard to all relevant submissions made to it in writing in relation to the complaint.

By letter dated 5 July 1990, the NZBR elaborated its reasons for preferring a formal hearing. It first stated:

Our understanding is that the Act provides for a formal hearing as a standard procedure, and lays down certain procedures to be followed if the Authority decides not to hold a hearing. In this sense it is submitted that the issue to be considered by the Authority is whether there are grounds for denying "Frontline" complainants a right to a hearing.

It then supplied five reasons which, in its view, favoured the holding of a formal hearing. In summary, these were that a hearing would provide the Authority with the opportunity



to obtain, through questioning, a full understanding of the complex, wide-ranging and nationally important issues raised in the programme and that the public interest in the matter would not be seen to be satisfied unless there was a hearing.

The NZBR then explained, however, that it -

would wish to avoid a hearing which was protracted, overly-formalised or capable of becoming a media spectacle.

It was, in part, because the Authority was convinced that a formal hearing of any of the "Frontline" complaints referred to it would not meet those wishes of the NZBR that, at a meeting on 11 and 12 July, it decided not to hold a hearing. When the NZBR was informed of this, however, it requested the Authority to reconsider the decision. The Authority reconsidered the matter on 2 August and confirmed its original decision.

In declining the NZBR request for a formal hearing of its complaint, the Authority first had regard to the words of s.10 of the Broadcasting Act 1989. It disagreed with the NZBR that a presumption in favour of a formal hearing is established by the wording of that provision.

Next, the Authority considered the preferences of the five other "Frontline" complainants and of TVNZ, all of whom had been asked to express their views upon the matter of the need, or desirability, for a formal hearing. At the time at which the Authority originally decided not to hold a formal hearing, and at the time that decision was confirmed, none of the other complainants, nor TVNZ, had expressed a preference for a formal hearing. Indeed, the then Prime Minister, the Treasury and TVNZ were clear in their preference for the Authority to proceed "on the papers" and the other three complainants had indicated that they were not concerned whether or not a hearing was held. (The Authority records the fact, however, that, some weeks after the confirmed decision of the Authority was relayed to them, two of the complainants - Messrs Prebble and Douglas - did express dissatisfaction with it.)

After taking into account the preferences of the other complainants and of TVNZ and determining that a formal hearing was not wanted by them, the Authority considered the possibility of holding a hearing for the NZBR complaint, perhaps allowing other complainants to participate if they wished. However, this possibility was rejected, largely because of the fact that defamation actions had been commenced by each of the Cabinet Minister complainants. The Authority considered that, in light of that fact, and even if a formal hearing were confined to the NZBR complaint, it would be nigh impossible to avoid it becoming something of a dress rehearsal of the trial of issues which would be before the High Court in the defamation actions. In the interests of justice, therefore, the Authority was persuaded that a formal hearing was undesirable.

That conclusion was reinforced by the Authority's reading of the written material which it had received to that point pertaining to the substance of the complaints referred to it.

In its view, the continued flow of written submissions would provide ample opportunity for conveying to the Authority the information necessary for its determination of the complaints.



Finally, the Authority considered that the public interest in the matter of the "Frontline" complaints was not necessarily best served by the holding of a formal hearing. Such a hearing would be time-consuming and also costly and these were considered appropriate matters to take into account when weighing the public interest in the complaints against all the other matters counterbalancing the desirability of a formal hearing.

For the above reasons then, the Authority decided not to conduct a formal hearing for any of the complaints referred to it but to proceed instead "on the papers" and with the full opportunity for written submissions to be presented. It acknowledges the NZBR's opposition to that decision but records its own confidence in the justice of the procedures adopted to determine each of the "Frontline" complaints.

Referral of the Complaint to the Authority and Later Correspondence

As has been stated, the NZBR referred its complaint to the Authority by letter dated 22 June. It elaborated its reasons for so doing in a letter dated 7 August. While the major part of the later letter restated the concerns about "For the Public Good" which the NZBR had originally expressed in its 4 May letter of complaint to TVNZ, four aspects of it warrant mention here.

First, the NZBR alleged that TVNZ's broadcast of "For the Public Good" breached not only standards 1 and 6 of the Television Programme Standards (which TVNZ had identified as the bases of the complaint) but also standards 4, 12 and 16.

Secondly, the letter of 7 August expressed the NZBR's dissatisfaction with TVNZ's treatment of its complaint. In addition to alleging that the treatment breached standard 17 of the Television Programme Standards, the letter criticised five aspects of the Complaints Committee's process and TVNZ's subsequent action upon the complaint. It alleged that the decision-making process was too slow; the internal review procedure was deficient in that no information or comment was sought from the NZBR; the general approach taken by the Complaints Committee was not objective; the opportunity provided to the NZBR, on the "Frontline" programme of 10 June, to comment about the shortcomings of "For the Public Good" was too restrictive; and, lastly, that the scheduling of that item - at the conclusion of "Frontline" - was poor in that the viewing audience was at its lowest point at that stage of the programme.

Thirdly, the conclusion to the letter of 7 August stated the NZBR's deductions about the motives of those responsible for producing "For the Public Good", in the following terms:

The overall theme, the selection of commentators who included unidentified New Labour Party activists, the reliance on left-wing and trade union economists as supposedly objective sources, and the deception used in seeking interviews, all point to a programme carefully assembled over an extended time, aimed at discrediting recent economic policy and inferring the existence of a corrupt relationship between the government and the business sector. ...

We believe that it is amply demonstrated that the programme:



- was developed in breach of normal journalistic standards;
- was consciously assembled and produced in a deceptive and conspiratorial way;
- took and used a public medium for the political purposes of a small group;
- made serious and damaging statements as fact which have injured New Zealand both internally and overseas;
- reveals a failure on the part of the management of TVNZ to exercise control during production and transmission, to allow the Australia programme to proceed to air, and to provide a prompt or adequate response to formal complaints.

Fourthly, the NZBR expressed its view that the Authority should, upon determining its complaint, utilise the full range of sanctions available to it, including ordering TVNZ to cease broadcasting for a specified period and to publish in the main daily newspapers a comprehensive statement, approved by the Authority, of the inadequacies in "For the Public Good". Further, the view was expressed that the Authority should express publicly:

its view of the responsibilities of the Board of TVNZ in this matter, the performance of the chief executive and senior managers responsible for the programme and for handling the complaints, and the integrity of the journalists concerned.

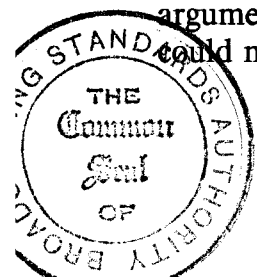
Upon receipt of the NZBR's 7 August letter, the Authority forwarded a copy of it to TVNZ with a request for any further comments it may wish to make. By letter dated 28 September TVNZ responded, reiterating much of the content of its 8 June letter to the NZBR but also raising other matters, four of which again merit mention here.

First, TVNZ defended its Complaints Committee's interpretation of the NZBR's complaint as being based on standards 1 and 6 of the Television Programme Standards and vigorously opposed the NZBR's allegation that TVNZ had breached other standards by broadcasting "For the Public Good".

Secondly, TVNZ alleged that the NZBR's letter to the Authority pursued a line of argument which had not been raised in the original complaint. That line of argument, TVNZ stated, was revealed by the following paragraph in the NZBR's letter of 7 August:

The emotive and negative language used in the scripting, the use of an unidentified economist who is a member of a left-wing political organisation and is closely associated with the trade union movement, the use of an unidentified New Labour Party member and the use of sinister music and images, created a programme that lacked balance, impartiality and fairness.

TVNZ's letter explained that its Complaints Committee had not considered this line of argument when it had determined the NZBR complaint and asserted that the NZBR could not now raise it with the Authority.



Thirdly, TVNZ strenuously denied the NZBR's allegation that the programme evidenced a conscious breach of broadcasting standards, describing it as "diabolical". It claimed that NZBR's attribution of unconscionable motives to those responsible for the programme, and its submissions to the Authority about appropriate orders and statements which it should make upon determining the complaint, were evidence of the NZBR's "vindictive and vexatious" approach. In consequence, TVNZ urged the Authority to decline to consider the complaint, on the basis that it was vexatious, pursuant to s.11(a) of the Broadcasting Act.

Fourthly, TVNZ asserted that, in light of the action that had already been taken as a result of the programme, a conflict of natural justice and a "sentencing twice over" would result if the Authority complied with the "urgings" of the NZBR as to penalties. The actions already taken by TVNZ were said to include its proper and prompt treatment of the complaint, the reasonable opportunity provided to the NZBR to make a statement on "Frontline" on 10 June and the "serious internal censure" of the producer of the programme and staff members concerned, as a result of which -

the producer and director are no longer in the employ of TVNZ. The reporter goes in a few weeks.

The Authority sent TVNZ's letter of 28 September to the NZBR with a request for its final comments. These were supplied in a letter dated 9 October which, in addition to highlighting some of the areas of disagreement between TVNZ and the NZBR, emphasised:

The central point we have consistently made is that this was not a programme with the occasional 'blemish' or 'imperfection'. Our view is that the programme as a whole was flawed in that it created a theme using assertion, innuendo and selective reporting, and failed to substantiate it with solid factual evidence.

In response to the points made by TVNZ about the Authority's role in reviewing its decision and action upon the complaint, the NZBR stated:

On this appeal, we interpret the Authority's duty as being to consider our complaint afresh in all respects and to reach a fair and just decision. The Act also requires the Authority to review the way broadcasters handle complaints. It has power to impose costs and sanctions if appropriate. Actions TVNZ may have taken against its staff are totally irrelevant to the exercise. Companies which break the law are also liable to prosecution or disciplinary action from a variety of bodies regardless of what action they may take against staff responsible for errors of judgment.

DECISION

Section 11(a) of the Broadcasting Act 1989

The first matter requiring a decision arises from TVNZ's submission that the Authority



should decline to determine the NZBR complaint, pursuant to s.11(a) of the Broadcasting Act 1989, for the reason that it is vexatious. As will become apparent, the Authority does not share TVNZ's view that the NZBR complaint is vexatious.

Accordingly, the Authority declines to exercise the power conferred on it by s.11(a) of the Broadcasting Act 1989.

Television Programme Standards

As has been stated, in referring its complaint to the Authority, the NZBR challenged TVNZ's Complaints Committee's interpretation that the complaint was based upon standards 1 and 6 (only) of the Television Programme Standards. The complainant maintained that several other programme standards (namely, standards 4, 12, 16 and 17) had been breached by the broadcast of "For the Public Good" and that the Authority should consider those standards, as well as standards 1 and 6, when it reviewed the Complaints Committee's decision. TVNZ defended its Committee's interpretation in subsequent correspondence to the Authority.

Having given the matter careful consideration, the Authority is of the view that TVNZ's Complaints Committee's interpretation of the grounds for the present complaint was reasonable. The clear wording of the NZBR's letter of formal complaint and the obvious thrust of the concerns there expressed are well matched by the content of standards 1 and 6 of the Television Programme Standards. These standards, which appear under the heading General, provide:

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

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

...

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

For ease of understanding the Authority's reasons for endorsing TVNZ's Complaints Committee's interpretation of the NZBR complaint, the other Television Programme standards raised by the NZBR are:

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

...

4. To deal justly and fairly with any person taking part or referred to in a programme.

...

News and Current Affairs

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



points:

12. News must be presented accurately, objectively and impartially.

...

16. 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.

17. Significant errors of fact should be corrected at the earliest opportunity.

In the Authority's view, standard 6 has both a general and a specific aspect. It is general in its broad requirement of "balance, impartiality and fairness" but is specific in that it applies only to programmes which deal with political matters, current affairs and controversial questions. Standard 4 is characterised by its general application (ie to all programmes) but in the more specific circumstances of unjust or unfair dealings with a person taking part or referred to in a programme. Standard 16 is confined to news and current affairs programmes and deals specifically with one important aspect of "balance" in such programmes.

As a result, when a programme falls within the ambit of standard 6 - as "For the Public Good" undoubtedly does - it is the Authority's view that the standard's general requirements of "balance, impartiality and fairness" embrace the more specific statements made in standards 4 and 16 about fair dealing and balance. This means that a complainant who alleges specific instances of lack of balance, impartiality or fairness in a programme which deals with political matters, current affairs or other controversial questions, and who seeks to invoke standards 4 and 16 in addition to standard 6 as the bases of identical complaints (as the NZBR sought to do), is in fact engaging in repetition. For this reason then, the Authority is satisfied that TVNZ's Complaints Committee did not "read down" the NZBR's carefully itemised complaints by considering those which related to "balance, impartiality and unfairness" only in terms of standard 6 and not in terms of standards 4 and 16: the matters dealt with by those other standards would, if relevant, arise for the Committee's consideration under standard 6.

Accordingly, the Authority declines to determine the NZBR's complaints alleging breaches of standards 4 and 16 of the Television Programme Standards.

(The above analysis of the respective ambits of standards 6, 4 and 16 does not mean, of course, that a complainant is engaging in repetition when complaints which are not the same in substance are made on the bases of different standards.)

With respect to the other two standards sought to be invoked by the NZBR, the Authority is satisfied that neither is relevant to the complaint. Standard 12 is expressed to apply only to "news". Elsewhere in the Programme Standards, the terms "news" and "current affairs" are both used, revealing that they are distinct for the purposes of the Programme Standards. In light of that, it is the Authority's view that "For the Public Good" is a current affairs programme.



Before leaving standard 12, however, the Authority observes that its limitation to news programmes seems unjustifiable, especially in light of the heading to the section in which the standard appears, ie News and Current Affairs. While the truth and accuracy of current affairs programmes is required by the very general terms of standard 1, it is the Authority's view that both standard 12 and complainants' comprehension of the standards regime would be improved if it were amended to specifically include current affairs programmes.

The Authority also notes that TVNZ's Complaints Committee did not reject complainants' complaints based on standard 12 on the grounds that the standard is confined to news programmes. Indeed, the Committee upheld some "Frontline" complaints which were made in reliance on standard 12. In the Authority's view, the true basis for the Committee's upholding of those complaints is, and will be until such time as standard 12 is amended, found in standard 1.

Accordingly, the Authority declines to uphold the NZBR complaint alleging a breach of standard 12 of the Television Programme Standards.

Turning to standard 17 (which requires significant errors of fact to be corrected at the earliest opportunity), the Authority notes that the general scheme of the Broadcasting Act empowers it to review complaints only after they have been made to the broadcaster in the first instance. Therefore, if the NZBR wished to invoke standard 17 as the basis of a complaint about the action taken by TVNZ in response to its original complaint, it would have needed to have made a further formal complaint to TVNZ and then, if dissatisfied with TVNZ's response, referred the complaint to the Authority. As it happens, however, that circuitous course of action is rendered unnecessary because the Authority is empowered, by s.8(a) of the Broadcasting Act, to investigate and review both the decision and the action taken by a broadcaster upon a complaint. Hence, by referring its original complaint to the Authority, the NZBR automatically invoked the Authority's powers to review the action taken by TVNZ upon that complaint.

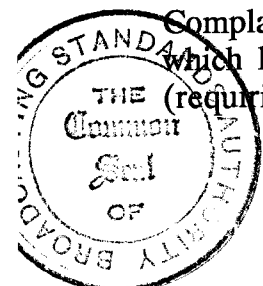
Accordingly, the Authority declines to determine the NZBR's complaint alleging a breach of standard 17 of the Television Programme Standards.

The Authority now turns to consider the NZBR's complaints of breaches of standards 1 and 6 of the Television Programme Standards.

Standard 1 - Broadcasters to be truthful and accurate on points of fact

Preliminary point regarding NZBR's first allegation

As has been noted, the NZBR alleged that "For the Public Good" conveyed four inaccurate "dominant impressions", the first of which was that the members of the NZBR were buying specific policies from politicians. The only finding made by TVNZ's Complaints Committee in favour of the NZBR was that the first allegation "had validity", which led it to find a breach of standard 6 of the Television Programme Standards (requiring balance, impartiality and fairness). As explained in TVNZ's letter of 8 June



to the NZBR, the Committee considered that the fairness element of standard 6 had been "improperly observed" by the programme's failure to provide the Chairman of the NZBR with the opportunity to comment on -

matters, particularly the role of [NZBR] members regarding contributions to campaign funds of political parties, and in particular that of the Labour Party in 1987.

As a result, the NZBR was given the opportunity to have a statement read out on the 10 June "Frontline" apology programme, the terms of which have been recorded earlier in this Decision.

In its correspondence to the Authority, TVNZ expressed surprise that the NZBR was dissatisfied with the Complaints Committee's ruling upon the first allegation and with TVNZ's action upon the matter and that the NZBR had, as a result, referred these matters to the Authority. The Authority, however, comprehends the NZBR's concern. In its view, it is one thing for a television broadcaster to uphold a complaint alleging a breach of standard 1 - which requires truth and accuracy. It is quite another thing for the broadcaster to acknowledge that the essence of the complaint "has validity" but to then find a breach, not of standard 1, but of standard 6 - which does not proscribe inaccuracy but requires balance, impartiality and fairness. The latter course, intentionally or otherwise, evades an admission that inaccurate material was broadcast by labelling the acknowledged flaw an "unfairness" in the programme's structure rather than an "inaccuracy" in its content.

While TVNZ's Complaints Committee may not have intended to downgrade the NZBR's complaint by finding that standard 6, rather than standard 1, was breached by the programme's implications about NZBR members buying policies from politicians, the Authority sympathises with the NZBR's view that the Committee's finding did have that effect. As the NZBR stated to the Authority:

... instead of a direct retraction [TVNZ] merely conceded that an opportunity for comment should have been provided. [Letter of 7 August, p5].

We believe this was a totally inadequate response. There should have been a full, prompt, unqualified withdrawal and apology to the NZBR and major companies.

A damaging allegation like this cannot be corrected five weeks later by providing a tightly circumscribed opportunity to comment. Denials by affected parties are never as convincing as withdrawals or apologies by the publisher or broadcaster. This is particularly so when a considerable time has elapsed since an allegation was publicised. [Letter of 9 October, p4].

Because it is sympathetic to the reasons for the NZBR's concern, the Authority has not exempted, from its investigation and review, the Complaints Committee's decision on the NZBR's first allegation.



Allegation (i)

As has been stated, TVNZ's Complaints Committee acknowledged that the NZBR's first allegation (ie that "For the Public Good" gave the dominant impression that members of the NZBR were buying specific policies from politicians) "had validity". It did not agree, however, with the NZBR's further assertion that the impression given was tantamount to one that the political process had been corrupted by money from major companies, some of which are members of the NZBR.

In explaining the Complaints Committee's decision upon this allegation, TVNZ in its letters of 8 June (to the NZBR) and of 28 September (to the Authority) stressed that the programme's intention was to highlight the fact (or "paradox", as it was referred to in the 28 September letter) that business interests were donating money to the Labour Party's 1987 election campaign in the expectation that the economic policies of the Labour Government would continue. In the Committee's view, this intended emphasis had come through in the programme but there had been one error, when the reporter stated, near the end of the programme:

Even before the revelation that business was buying specific policies in return for donations, the [Royal] Commission [on the Electoral System] recommended safeguards.

Because of that error, the Complaints Committee had acknowledged the validity of the NZBR's allegation despite the fact that it did not agree with the NZBR that the erroneous impression had been given by any other statements in the programme.

The Authority's first comment on TVNZ's treatment of the NZBR's first allegation is of more general application and was signalled earlier in this Decision: it considers that TVNZ's Complaints Committee was not justified in failing to have regard to the tenor of the programme as a whole when considering the NZBR's (or other complainants') several complaints. As was explained earlier, the reason for the Authority's view lies in the fact that "For the Public Good" adopted an advocacy style of journalism yet was broadcast on "Frontline", a programme known and respected for its previous adherence to TVNZ's norm of uncommitted journalism.

Quite apart from that, however, the Authority disagrees with the accusation made by TVNZ in its letter of 28 September, that the NZBR was raising for the first time (to the Authority) the relevance to its complaints of techniques adopted in the programme's construction. In the Authority's view, it is plain from the NZBR's original letter of formal complaint that it was calling in aid of its specific complaints the overall style and effect of the programme. That letter referred to the "techniques" by which television can impart messages and impressions and accused "For the Public Good" of using them in a journalistically dishonest manner. Further, the quotations from The Australian which were supplied by way of summary of the NZBR's complaint were of general import - questioning the integrity of the programme as a whole.

As a result, the Authority has taken a broader view than did TVNZ's Complaints Committee of the matters relevant to each of the NZBR's complaints. For example, with



regard to the NZBR's first allegation of untruthfulness, the Authority has not confined its attention merely to the individual statements made in the programme about the donations of business interests to political parties: it has considered the cumulative effect of those statements in light of the messages, allusions, images and music which surrounded them.

The Authority has concluded that, despite TVNZ's argument that the programme sought to reveal the fact that business interests gave money to the Labour Party in the hope that the Labour Government's economic policies would continue, and despite the fact that the programme contained statements precisely to that effect, that message was not the one which was left with the viewer. Instead, a message adverse to both business and the Labour Government was conveyed by the combined effect of such things as:

- the programme's many allusions to wrongdoing by politicians and business interests;
- its emphasis upon politicians' close links with individual businessmen and the favours done by the latter for the former and the knighthoods conferred by the former upon the latter;
- its suggestions that the government was the conduit of economic policy devised elsewhere and that there were several covert operations involving the Labour Party - or elements of it - and business interests;
- the dramatic style of the music and of some of the created visuals broadcast in connection with the above topics.

Because the NZBR was clearly identified in the programme with many of the practices which were (by means of the sorts of techniques listed above) suggested to be improper, the Authority has no hesitation in accepting the NZBR's argument that "For the Public Good" gave the impression that members of that organisation were buying specific policies from politicians by making donations to the Labour Government's 1987 election campaign. The untruthfulness of that impression is asserted by the NZBR and is supported by the Complaints Committee's acknowledgment that an error occurred when the reporter specifically stated that business had been buying specific policies from politicians. Further support for TVNZ's own view that the impression was untruthful is found in its letter to the Authority of 28 September where, in explaining another decision of the Complaints Committee upon a complaint of the NZBR, it is stated:

Donations [by business to the 1987 Labour campaign] were made on the understanding that particular policies would continue - not on the understanding that business would take on the role of a puppeteer.

Accordingly, the Authority upholds the complaint that TVNZ, in broadcasting "For the Public Good", which programme gave the impression that members of the NZBR were buying specific policies from politicians, breached the truth and accuracy requirement of standard 1 of the Television Programme Standards.



Allegation (ii)

The NZBR's second allegation was that the programme gave the dominant and untruthful impression that, in return for financial support, the post-1987 Government sold State-Owned Enterprises at less than their market value. In support of this allegation, the NZBR, in its original letter of complaint, drew attention to a segment of the programme where the reporter stated:

The scale of the '87 campaign meant Labour began its second term debt ridden and owing at the very least a debt of gratitude to a few powerful businessmen.

Some of those business interests didn't have to wait long for the campaign investment to pay dividends.

Five months into their second term the government announced it was selling 14 billion dollars of public assets.

The government said this was necessary to reduce the crippling public debt, but it also provided a once in a lifetime opportunity for business to dip into the public treasure chest.

Among those in the queue were many who had bankrolled Labour's return to office.

Some of them were already exerting their influence on SOE boards, even before the move to sell prized public assets.

As well, the NZBR's letter of 4 May outlined the assets sale process, stating:

The SOEs have been sold by a competitive bidding process with overseas investors having significant or equal opportunities to make bids. In most, if not all, cases the government took independent expert advice on the sale decision. ...

The open nature of the sale process has facilitated the realisation of the highest possible values for the assets. It has been conducted to a significant extent on an arm's length basis from government ministers. There can be no bias towards individual companies on the basis of any donations they might have made to the Labour Party.

TVNZ's letter to the NZBR, explaining its Complaints Committee's decision not to uphold this aspect of the NZBR's complaint, justified the programme's inclusion of the topic of asset sales and emphasised the fact that the programme had not stated that the assets were sold at less than market value. Further, it stated:

While the programme did not suggest that the sales had been conducted other than within an openly competitive framework, the Committee was critical of the fact that such procedures were not adequately described in the programme so there could be no doubt as to the working of the sales processes.



Neither the NZBR nor the Authority disputes that the topic of asset sales is a fit one for exploration by a television current affairs programme. Further, there is no dispute that the asset sales were conducted openly and competitively. The matter in dispute is whether the treatment of the topic of asset sales in "For the Public Good" gave the untrue impression that SOEs were sold at less than their market value.

The Authority believes that the programme's treatment of that topic cannot be assessed solely in the light of what was said about the asset sales: the omission of any explanation of the asset sales process (an omission of which the Committee was critical) forms an important part of the context within which the statements about the sales must be judged. Further, as has been earlier emphasised, the Authority believes that the NZBR's complaints must be considered in the light of the tenor of the programme as a whole.

In considering whether standard 1 of the Television Programme Standards was breached in the manner alleged by the NZBR, the Authority first noted, as TVNZ argued, that it was not actually stated in the programme that state assets were sold at less than their market value. However, it was the Authority's firm view that what was stated about the asset sales, assessed in the context of the tenor of the programme, very clearly gave an adverse impression. Thus, the Authority had no difficulty whatsoever in concluding that the programme gave the impression that state assets should not have been sold or, more particularly, that they should not have been sold to those who eventually bought them.

The extra factor which persuaded the Authority that the NZBR was correct in its allegation that the programme gave the impression that the assets had been sold at less than market value was the combined effect of particular phrases used by the reporter in connection with the asset sales and the programme's omission of any description of the sales process, in particular its omission of information pertaining to their estimated and realised values. Hence, for example, the Authority agrees with the NZBR that the connotations of the earlier quoted statement about business "dipping into the public treasure chest" are not the innocuous ones claimed by TVNZ.

TVNZ's argument, in essence, was that that expression could only be interpreted to mean that a container of assets had been opened and that interested parties were invited to bid for them. In light of the tenor of the programme as a whole and the statements surrounding the "treasure chest" statement, the Authority firmly rejects TVNZ's interpretation. It notes that immediately after the "treasure chest" passage quoted earlier, the reporter asked "So who got what?" and proceeded to describe the purchases in these terms:

Alan Hawkins, for Equiticorp, got New Zealand Steel.

Sir Ron Trotter, for Fletcher Challenge, picked up the Rural Bank and Petrocorp.

Sir Ron Brierley, of Brierleys, got our airline, Air New Zealand, and badly wanted the BNZ.

The Authority fails to detect in those statements, or those which preceded them, any suggestion that purchasers bid for state assets or that market value was paid for them.



In its view, the descriptions given of the asset sales, with their emphasis upon individual businessmen "getting" and "picking up" assets, were designed to recall the programme's earlier mentions of personal connections between individual businessmen and politicians and of favours and knighthoods being granted by one group to the other. Another statement adding weight to the "favours" messages appeared later in the programme:

It was in the climate surrounding the asset sales programme that the real nature of the relationship between business and government was gradually revealed.

In the scramble to transfer state assets to the private sector the notion of the public good often came in a poor second.

In the Authority's view, such descriptions of the asset sales, together with the programme's failure to include any explanation of the competitive process by which they were conducted, foster the drawing of an impression that certain business interests received preferential treatment in the sales process. And while it may be argued that giving a purchaser preferential treatment need not mean that the purchase price was lower than market value, the Authority believes such a distinction amounts to hair-splitting.

Accordingly, the Authority upholds the complaint that TVNZ, in broadcasting "For the Public Good", which programme gave the impression that state assets were sold at less than their market value, breached the truth and accuracy requirement of standard 1 of the Television Programme Standards.

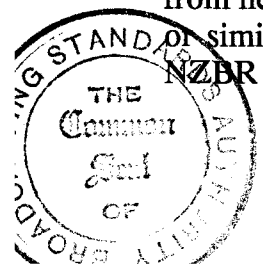
Allegation (iii)

The NZBR's third allegation of inaccuracy in "For the Public Good" was framed in such a way that it comprised two separate allegations. The first was that the programme gave the inaccurate impression that the policies of the NZBR are extremist and bad for New Zealand. The second was that the programme inaccurately described as "economic cranks" certain men who were Treasury officials in 1984, including Mr Roger Kerr (now the Executive Director of the NZBR).

TVNZ's Complaints Committee decided that the programme's description of NZBR policies as "an extreme ideology" and a "New Right economic experiment" were justified in an historical sense, that is:

in the light of previous and existing policies and personalities, both in New Zealand and overseas, and where they were in the overall spectrum.

In the letter of 8 June which explained the Committee's decision, support for the programme's description of the NZBR policies was supplied in the form of quotations from newspaper journalists and others who are on record making statements in identical or similar terms to those used in the programme. In its letters to the Authority, the NZBR took issue with those descriptions, stating that they were based on the false



assumption that the economic policy promoted in New Zealand prior to the Labour Government taking office in 1984 was a "norm" by which to judge other policies and ignored the fact that the NZBR's policies are largely consistent with those of successful present-day economies overseas.

With regard to the statement that Mr Kerr and other Treasury officials were "dismissed as economic cranks during the Muldoon era", TVNZ explained that the dictionary definition of "crank" is "eccentric" and cited newspaper and magazine articles which described Mr Kerr's views and which reported statements made by Sir Robert Muldoon between 1985 and 1987 about the Treasury. It stated that the Complaints Committee had been -

advised that during the Muldoon era those with such views [as Mr Kerr] of the economy and deregulation were regarded as having ideas beyond what was expected of Treasury in terms of research/analysis/reporting and in terms of following the then Government policies. ... In the former traditional era, the Muldoon era, they were "eccentrics" by virtue of their very different approach to Treasury activities and Government policies.

While these two matters continued to be debated by TVNZ and the NZBR in subsequent correspondence to the Authority, and while it has sympathy for the NZBR's concerns at the statements made on "For the Public Good" about its policies and its Executive Director, the Authority has concluded that these matters are not amenable to assessment in terms of the truth and accuracy requirements of standard 1 of the Television Programme Standards. The statements about the NZBR's policies cannot meaningfully be judged to be true or otherwise: even if the Authority "read in" an historical context for those statements, opinions as to their truth would still differ because, inevitably, they are based upon a particular economic vision which will not be shared by all.

Similarly with the statement about Mr Kerr: although a vague context for that statement was supplied ("the Muldoon era"), it is impossible for the Authority to assess its truth or otherwise.

Accordingly, the Authority declines to uphold either aspect of the third allegation that TVNZ, in broadcasting "For the Public Good", breached the truth and accuracy requirement of standard 1 of the Television Programme Standards.

It must be added, however, that the Authority is of the view that the essence of the NZBR's concern over the programme's descriptions of its policies and Executive Director is captured in another complaint which it made to TVNZ and which will be dealt with later, namely, that the programme did not give the NZBR a fair opportunity to comment upon the allegations made against it.

Allegation (iv)

The final allegation of inaccuracy in the programme was that the false impression was



given that the NZBR had engaged in covert action to subvert democratic government and obtain results which are not publicly defensible. TVNZ's Complaints Committee merged its decision on this allegation with its decision on allegation (i), (above), - perhaps because the NZBR's letter of formal complaint did not provide separate argument upon it. The Committee declined to uphold the fourth allegation for the reason that it was based on an unsustainable interpretation of the programme.

Having considered the similarities between the NZBR's first and fourth allegations of inaccuracy in "For the Public Good", the Authority is of the view that the fourth allegation is of far broader scope than the first - which was focused upon the specific topic of asset sales and the adverse impressions given of the role of NZBR members therein. The present allegation embraces the first but goes further. As well, because it challenges implications in the programme that the NZBR has abused the democratic process, it is a particularly serious allegation.

In its letter to the Authority of 7 August, the NZBR elaborated its perception that the programme implied it had engaged in covert action to subvert the democratic process. It stated that the alleged impression had been conveyed in various parts of the programme by the use of unidentified, politically-aligned commentators and by the scripting for the reporter. The following examples of scripted statements were cited:

Away from the public gaze there is a dark side to New Zealand politics.

Over the past six years, almost unquestioned, a group of highly placed businessmen, politicians and public officials has dominated the processes of democracy in this country. ...

What hasn't been revealed is what lies beneath the surface - a web of undisclosed connections that have served the ends of a few.

Behind the facade of open government business donations to election campaigns have been made on the understanding particular policies would continue

Labour's big bickies came almost exclusively from a small, fervent and highly motivated core of wealthy businessmen ...

This coterie of the powerful - politicians, business leaders, heads of SOEs and government departments and ex-Treasury officials - together make up the network of control of our society ...

Most [of the business personalities "targeted" by the Labour Party for donations of "\$100,000 or more" to fund the 1987 election campaign] were members of the Business Roundtable, a select club which by 1987 was growing in corporate might and political influence. ...

But by far the most covert operation, financed through the pocket of big business, was Labour's polling. ...



But the most disturbing legacy of the past six years could well be the extent to which the New Right ideology has captured both political parties.

The NZBR's letter then stated:

The general tenor of these and other comments is that the Business Roundtable and its members are part of a secret business plot to subvert democratic government and secure the adoption of policies that are against the public interest. The title of the programme and its concluding words underlined that theme.

The concluding words of the programme were taken from an interview with Sir Wallace Rowling (a former Labour Prime Minister) who first stated that the Labour Party had shifted ground "pretty substantially in terms of their philosophy" and that it saddened "those of us who are a bit longer in the tooth", before continuing:

The only people who have anything to gain there in the shorter and in the longer term are the business interests themselves.

Reporter: We're told it's for the good of the country though.

Sir Wallace: Yes, we're told that.

Reporter: Do you believe that?

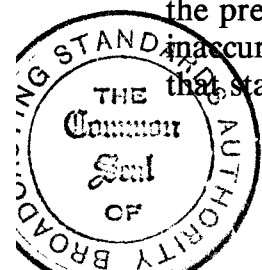
Sir Wallace: No.

TVNZ's letter to the Authority of 28 September asserted that the NZBR's allegation was based on unjustified assumptions about the programme producer's preferred economic policy. It strenuously denied that the programme had been inspired by motives "contrary to the basic principles and practice of responsible journalism", and stated that the NZBR had totally misread the programme's thrust. It continued:

Certainly there was covert funding by business to the Labour campaign, but to construe this as actions designed to subvert democratic government is taking matters beyond the bounds of credibility. Donations were made on the understanding that particular policies would continue - not on the understanding that business would take on the role of a puppeteer.

Although the company would agree that in places there was overwriting it does not believe this expanded segment of the original complaint breaches either codes 1 or 6.

The Authority considers that its decisions upholding the NZBR's first and second allegations of inaccuracy in "For the Public Good" provide ample support for upholding the present, more serious, allegation. As has already been determined, the programme inaccurately implied that NZBR members bought specific policies from politicians and that state assets were acquired at less than market value in return for donations to the



1987 Labour election campaign. More than that, it is the Authority's view that the programme made plain that these things had been done without public knowledge, ie secretly or, more precisely, covertly - which term has connotations of improper deeds being done secretly, connotations which were amply conveyed by the programme, especially by the reporter's voice-over statements (examples of which have been quoted earlier).

Of some relevance too is the Authority's view - contrary to TVNZ's - that donations to political parties' campaigns are not rendered "covert" merely because the public is unaware of them. Certainly, the Royal Commission's recommendation that donations over a certain sum be publicly disclosed has not been implemented, but to conclude therefrom that donations made under the present system are made "covertly" is, in the Authority's view, to confuse lawful non-disclosure with unlawful or improper non-disclosure.

Accordingly, the Authority upholds the complaint that TVNZ, in broadcasting "For the Public Good", which programme gave the impression that the NZBR has engaged in covert action to subvert democratic government, breached the truth and accuracy requirement of standard 1 of the Television Programme Standards.

Standard 6 - Broadcasters to show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

The NZBR alleged that "For the Public Good" breached standard 6 in three distinct ways, which will be dealt with in turn:

- (i) it completely failed to recognise the fact that the post-1984 government policies greatly reduced, if not eliminated, the ability of firms to use personal relationships with politicians to gain specific advantage for their companies;
- (ii) it did not give the Chairman and Executive Director of the NZBR an opportunity to comment on the specific allegations;
- (iii) the scripting used emotional language, demonstrated an inherent anti-business bias, and used visual images with script to generate a hostile audience response to the major business sector and the Business Roundtable in particular.

(i) In declining to uphold the NZBR's first alleged breach of standard 6, TVNZ's Complaints Committee:

considered that the programme did not intend to suggest that firms had used their personal relationships with politicians to gain specific advantages. But it did discuss the expectations of business donors in 1987 that Rogernomics policies would continue. The Alan Hawkins interview made this perfectly clear.



The appointment of Roger Kerr, one of the architects of Rogernomics to the Business Roundtable as full-time Executive Director (January 1986) seemed to bear out what was being said. Commentators have seen Mr Kerr's appointment as an "in" to Treasury thinking and political lobbying ...

The Authority has already made critical mention of the programme's implications about personal relationships between politicians and NZBR members. In its view, while the programme may not have intended to suggest that those relationships had been used to gain specific advantages for business interests, the suggestion came through regardless. To argue otherwise is to argue that the statements about personal relationships between politicians and NZBR members could be divorced from those which implied that NZBR members profited from their donations to the Labour Government's re-election as well as from the general tenor of the programme, an argument which the Authority finds implausible.

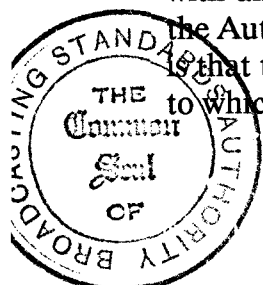
However, the Authority recognises the merit of another argument made by TVNZ. In its letter of 28 September, TVNZ asserted that the NZBR's first allegation of a breach of standard 6 was based "on what was not broadcast". It continued:

Such considerations will be potential grounds for challenge no matter what is broadcast over the entire spectrum of news and current affairs programming, and surely must not be seen as a realistic basis, except in obvious glaring circumstances, for claiming a breach of a standards code.

The Authority agrees with the general thrust of TVNZ's appraisal of the ambit of standard 6: plainly, the standard cannot require broadcasters to present all information about a topic. Therefore, standard 6's requirement of balanced, fair and impartial dealings must allow a degree of selective reporting although, as TVNZ put it, "obvious glaring circumstances" of selective reporting would fall foul of the standard. While acknowledging the uncertainty of the weighing operation which it performed, the Authority was unable to conclude that the omission from "For the Public Good" of the information which the NZBR asserted should have been included, amounted to a breach of the terms of standard 6.

Further, the Authority had some misgivings about the essence of the NZBR's assertion, ie that it is a matter of undisputed fact that opportunities for business advantage to be gained through personal relationships with politicians have been substantially reduced, if not eliminated, since 1984. It seemed to the Authority that while that conclusion may very well be true, there is also room for difference of opinion on the matter.

In giving attention to the above matters, the Authority concluded that the essence of the NZBR's present complaint was - like its complaints about the programme's description of NZBR policies and its Executive Director - better captured in the assertion (which the NZBR also made) that the programme was imbalanced for failing to provide the NZBR with an opportunity to comment on specific matters raised in the programme. In brief, the Authority considers that the essence of the abovementioned complaints by the NZBR is that the programme was imbalanced for presenting only one side of debateable issues to which the NZBR was, by reason of its connection to those issues, entitled to respond.



The Authority's view of the merits of that argument is explained next.

Accordingly, the Authority declines to uphold the complaint that TVNZ, in broadcasting "For the Public Good", which programme omitted information about the reduced ability of firms, post 1984, to use personal relationships with politicians to gain specific advantage for their companies, breached standard 6 of the Television Programme Standards.

(ii) Of direct relevance to the NZBR's second alleged breach of standard 6 (concerning the lack of opportunity to comment provided to its Chairman and Executive Director), is TVNZ's Complaints Committee's sole decision in favour of the NZBR. As was explained in TVNZ's letter of 8 June to the Chairman of the NZBR, the decision was based upon the Complaints Committee's concern that the Chairman and the NZBR were denied -

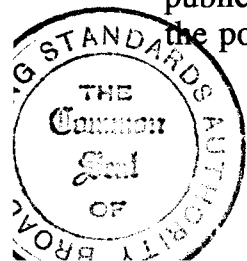
the opportunity to comment on matters, particularly the role of your members regarding contributions to campaign funds of political parties, and in particular that of the Labour Party in 1987. As already indicated in our interim reply the Committee considered code [standard] 6, relating to fairness, had not been properly observed. Accordingly, that part of your complaint was upheld.

In its letter of formal complaint to TVNZ, the NZBR had alleged that standard 6 was breached because its Chairman and Executive Director were not given the opportunity to comment upon the programme's "specific allegations". The letter maintained that the NZBR's Chairman had been approached by the programme's reporter, through a public relations consultant, on the basis that "Frontline" was doing a programme on business in the 1990s and the environment the business world was looking for - a basis which was described in the letter as dishonest. The Chairman had been interviewed "at length" but nothing from that interview was used in the programme.

It was further asserted that the NZBR's Executive Director had only been asked in a casual way at a media conference whether he would like to be interviewed for the programme, an invitation he had declined because he was aware that the Chairman was to be interviewed and that the Vice-Chairman had already been interviewed.

TVNZ's letter of 8 June expressed some uncertainty as to the meaning of the NZBR's present complaint but stated, in essence, that if the NZBR was alleging it should have had the opportunity to comment upon the issues raised in the programme, then, with the exception of the matter upheld by the Committee, the Chairman and Executive Director had been given fair opportunities to express their views. In support of that conclusion, the letter noted the following matters which had been brought to the Complaints Committee's attention:

- the programme interviewed the Chairman of the NZBR after advising him, through his public relations consultant, that the area of the interview was the NZBR's attitudes to the policies of both parties and the present state of the economy;



- the consultant was aware at that time that Frontline had already interviewed the Vice-Chairman of the NZBR and was "undoubtedly aware of the areas the programme was interested in";
- the subject of political donations had been raised in the interview with the Vice-Chairman;
- the Chairman did not say he was unhappy with the questions asked during his own interview, at the time or subsequently;
- the researcher and reporter had approached the NZBR's Executive Director for an interview, inviting him to comment on 1987 and earlier influences on the Labour government. He had declined their "repeated invitations", even though the Frontline team made it clear they wanted to discuss the role of former Treasury officials.

TVNZ's letter further explained that excerpts from the Chairman's interview had been considered for inclusion in the programme as its structure emerged but an editorial decision had been made not to use them, on the basis of relevance and balance. In the Complaints Committee's view, the editorial decision had denied the Chairman and the NZBR the opportunity to comment upon NZBR members' donations to political parties, leading to its decision that standard 6 had been "imperfectly observed".

The NZBR's letter to the Authority of 7 August claimed that its Chairman should have been presented directly, for comment, with the underlying theme of the programme - which it summarised in these terms:

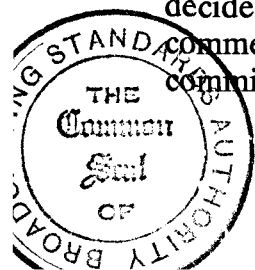
Major New Zealand companies were effectively accused of corrupting the political process and of buying specific policies from the Labour Party.

The NZBR reiterated that the approaches made to its Chairman and Executive Director contained no indication of the programme's theme and that nothing from the Chairman's approximately half hour interview was used in the programme. Moreover, it observed that if the programme's central theme was put to any of the NZBR members who were interviewed, their response was not shown on the programme.

In its letter of 28 September, TVNZ commented that the NZBR seemed to discount the fact that the Complaints Committee -

found fault with the fact that the complainant was not presented with the opportunity to deal with specific matters in the programme, and the Committee's upholding of the complaint in this regard.

However, it is the Authority's view that TVNZ's statement (above) is in fact an overstatement of the ambit of the Complaints Committee's decision. TVNZ's letter to the NZBR of 8 June contains a similar exaggeration when it states that the Committee decided that the Chairman of the NZBR should have been given the opportunity to comment upon certain "matters" (plural) and that, as a result, a breach of standard 6 was committed. The Authority considers that it is plain from TVNZ's letter of 1 June,



offering the NZBR the opportunity to make a statement on the "Frontline" apology programme, and from the presenter's words preceding that statement in the programme itself, that the decision was in fact related only to the failure to seek the comment of one person - the NZBR Chairman - upon one matter - that of NZBR members' roles in making political donations.

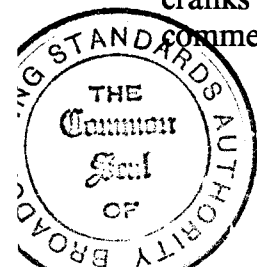
Therefore, it is the Authority's task to review the Complaints Committee's decision not to uphold the remaining aspects of the NZBR's present complaint that standard 6 was breached. It considers that those aspects are captured in the following questions:

- Should the NZBR, through its Chairman, have been given the opportunity to comment upon the programme's statements about the ideological stance of the NZBR?
- Should the NZBR, through its Chairman, have been given the opportunity to comment upon the programme's implications about NZBR members' preferential treatment, won through donations to Labour's 1987 election campaign and personal relationships with politicians, in the purchase of state assets?
- Should the Executive Director of the NZBR have been given the opportunity to comment upon the programme's statements about him, specifically that he and other Treasury officials of the time were "dismissed as economic cranks during the Muldoon era"?

The Authority has already stated its view that standard 6 cannot require broadcasters to include all information about "political matters, current affairs and all questions of a controversial nature": it must allow selective reporting to some degree. Further to that, the Authority has had no difficulty in concluding that the degree of selective reporting allowed by standard 6 does not include reporting which makes controversial statements or implications about identified persons or organisations but does not provide a fair opportunity to those identified to comment upon the statements or implications.

There is some dispute between the NZBR and TVNZ as to the nature of the opportunity provided both to the NZBR Chairman and its Executive Director to comment, respectively, upon the programme's statements and implications about the organisation and the programme's statements about Mr Kerr. However, the Authority believes that it can be deduced from the selection of extracts of interviews with the NZBR Vice-Chairman which were included in the programme and from the failure to include any of the Chairman's interview that the programme's statements and messages about the NZBR were not put directly to either man, thus denying the most obvious spokespersons for the NZBR an opportunity to comment upon its ideological stance and the suggestion that NZBR members received preferential treatment in state asset sales.

Further, the Authority is of the view, in the absence of any convincing evidence to the contrary, that the Executive Director of the NZBR was never informed, when asked for an interview, that he and others were to be referred to as being "dismissed as economic cranks during the Muldoon era". As a result, Mr Kerr was denied the opportunity to comment upon that emotive statement.



Finally, while the Authority understands TVNZ's point that, often, in the construction of a current affairs programme, its main themes may not emerge until much of the research work and interviewing has been completed, it is firmly of the view that that does not excuse the programme makers' failure to seek relevant comments, later, from persons critically connected with a programme's eventual, controversial theme when they were not given an opportunity earlier to comment upon that connection. Therefore, while the Authority accepts that the shape of "For the Public Good" may not have been known at the time the Executive Director of the NZBR was approached for an interview and at the time the Chairman was interviewed, nevertheless, it is of the view that once the programme's shape was known, those men should have been approached afresh and presented with the programme's statements about them. Naturally, the final step in the process of ensuring compliance with standard 6 in such circumstances, is that the essence of any comments then made by the men on the matters affecting them should have been broadcast.

Accordingly, the Authority upholds the complaint that TVNZ, in broadcasting "For the Public Good", which programme did not provide the Chairman and Executive Director of the NZBR, respectively, with the opportunity to comment upon the statements and messages about the NZBR's ideological stance and the process by which members purchased state assets, and the statements about Mr Kerr, breached standard 6 of the Television Programme Standards.

(iii) The NZBR's final allegation was, in essence, that standard 6 was breached because the programme demonstrated an inherent anti-business and, particularly, anti-NZBR bias. In its letter of formal complaint, the NZBR identified specific passages in the programme's script as examples in support of its allegation and made the following statement:

The subject matter was a legitimate area for inquiry but required a most rigorous approach to sort out myth from fact. The producers totally failed in this respect. We conclude that a more rigorous approach was not followed because it could have greatly diminished the impact of the story line being developed. The story was driven by a pre-determined bias and shaped to fit a theme which had no substance.

It has been noted earlier that TVNZ vigorously denied that the programme was constructed with a pre-determined bias. It also denied that the script revealed any such bias. In its letter of 8 June, TVNZ responded to the arguments raised by the NZBR in its letter of formal complaint in these terms:

The script, together with the supporting interviews, used everyday language. In fact the expression "viewer friendly" is a term which has been used to describe such scripting. The Committee had difficulty in acknowledging the use of innuendoes or that there was a "stretching of facts" to relay the story to viewers. It did not believe the programme left questions hanging nor did it use "the rhetorical question or question and answer technique". Rather it was a narration to advance the storyline in a proper sequential methodology.



The NZBR summarised this aspect of its complaint in its 7 August letter to the Authority by criticising the emotive language used in, and the general tone of, "For the Public Good". It then made the statement already quoted in this Decision, ie:

The overall theme, the selection of commentators who included unidentified New Labour Party activists, the reliance on left-wing and trade union economists as supposedly objective sources, and the deception used in seeking interviews, all point to a programme carefully assembled over an extended time, aimed at discrediting recent economic policy and inferring the existence of a corrupt relationship between the government and the business sector.

TVNZ's response, in its 28 September letter, included the following:

Very serious motives are imputed in this segment of the complaint which, among other things, not only impugns the integrity of some of those who participated in the programme but also their objectivity. This discounts entirely a participant's entitlement, in a free and democratic society, to present a viewpoint. And it possibly suggests that such commentators should be excluded. This would appear to seriously challenge the freedom of speech. The company would reject these allegations.

The Authority is well aware of the seriousness of the present allegation of the NZBR against "For the Public Good". In its view, it is impossible for it to determine that the programme was "driven by a pre-determined bias". However, it does have evidence, in the form of the programme itself, upon which to determine whether the bias alleged by the NZBR was displayed in "For the Public Good".

As will be evident from the decisions it has reached to this point in determining the NZBR's complaint, the Authority is highly critical of aspects of the programme's content and the manner in which it was conveyed. Indeed, the cumulative effect of its prior decisions supports the conclusion that "For the Public Good" did demonstrate a bias against sectors of business in New Zealand and the NZBR in particular.

The Authority would add, however, that while it can understand the NZBR's view that the programme's choice of commentators may have seemed "one-sided", especially when taken in conjunction with the fact that nothing from the interview with the Chairman of the NZBR was included, in fact the reported statements of those commentators who were alleged by the NZBR to be biased against it did not suggest any such bias, even when assessed in the context of the content of the programme as a whole. As a result, the Authority has not placed weight on this aspect of the NZBR's argument in reaching its decision.

Accordingly, the Authority upholds the complaint that TVNZ, in broadcasting "For the Public Good", which programme displayed a bias against sectors of New Zealand business and the NZBR in particular, breached standard 6 of the Television Programme Standards.



The Action Taken by TVNZ

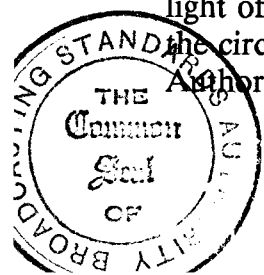
In addition to referring its complaints against "For the Public Good" to the Authority, the NZBR referred, for investigation and review, the action taken by TVNZ in response to its complaints. As was recorded earlier, the NZBR was dissatisfied with five aspects of TVNZ's treatment of its complaints, namely - in the words of the NZBR:

- the decision making process was too slow;
- the internal review procedure was deficient in that no information or comment was sought from the NZBR;
- the general approach taken by the Complaints Committee was not objective;
- the opportunity provided to the NZBR, on the "Frontline" programme of 10 June, to comment about the shortcomings of "For the Public Good" was too restrictive; and
- the scheduling of that item - at the conclusion of "Frontline " - was poor in that the viewing audience was at its lowest point at that stage of the programme.

The Authority does not agree with the NZBR that TVNZ's decision-making process was too slow. In the circumstances, ie of high media attention to the programme immediately after its broadcast, and to the announcements by potential complainants that they would be making formal complaints, the Authority endorses TVNZ's decision to determine all the "Frontline" complaints together. That approach necessitated it waiting until the expiry of the statutory limitation period for the making of a formal complaint (twenty working days from the broadcast). Immediately after the expiry of that period, TVNZ's Complaints Committee considered all the "Frontline" complaints, a process which occupied three days, and within a matter of days thereafter released a summary of its decisions to complainants and to the media. Granted the number and complexity of the complaints, the Authority is of the view that TVNZ's Complaints Committee could not have acted more promptly in determining them.

The NZBR's second and third allegations, ie of deficiency in TVNZ's complaints procedure and the Complaints Committee's lack of objectivity, are related. Of vital importance in this regard is the fact that the Broadcasting Act 1989 not only requires broadcasters to establish procedures for determining formal complaints but also requires complainants in all but one situation (ie privacy complaints) to use those procedures in the first instance. Thus, in the great majority of instances, it is only when a complainant is dissatisfied with a broadcaster's treatment of a formal complaint that the powers of this Authority may be invoked. In light of that statutory scheme, it is apparent that the bodies established by broadcasters to determine formal complaints must strive for objectivity: their existence would be pointless otherwise - merely presenting a time-consuming obstacle in the path of complainants.

The Authority considers that a broadcaster's complaints body, in striving for objectivity, will sometimes be required to do more than merely consider a formal complaint in the light of the programme itself and any relevant information which it has gathered about the circumstances which inspired the complaint. The most glaring situation which, in the Authority's view, requires a broadcaster's complaints body to tread especially carefully



in case it loses the quest for objectivity is that in which the complainant's version of matters essential to the complaint is at odds with information supplied to the complaints body from within the broadcaster's organisation. In that situation, the Authority believes a complaints body seriously jeopardises any claim it may make to be following proper procedures if it resolves to determine the complaint without giving the complainant an opportunity to comment on significant discrepancies between the information supplied in the complaint and that supplied from within the broadcaster' organisation.

The Authority draws support for its view from s.5(g) of the Broadcasting Act, which is in these terms:

Most complaints that are capable of being resolved by an independent complaints procedure should not be required to be resolved by that procedure but should be capable of being resolved by proper consideration and proper response on the part of the broadcaster.

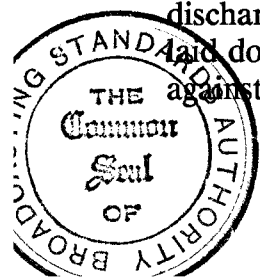
The Authority readily acknowledges that, compared to the majority of complaints received by broadcasters, the NZBR's complaint to TVNZ about "For the Public Good" was complex and far-reaching. Thus, it may well be within the limited class of complaints envisaged by s.5(g) as requiring resolution by this Authority. However, the Authority has difficulty accepting that TVNZ's complaints procedures could not have deflected some of the force of that complaint. Further, since it is of the view that the Complaints Committee's treatment of the NZBR complaint actually aggravated the NZBR's justly-based grievances with "For the Public Good", it cannot escape the conclusion that TVNZ's complaints procedures were deficient in some respects. As a result of this, justice was not seen to be done.

The Authority is also in agreement with the fourth and fifth allegations of the NZBR - about the limitations of TVNZ's "Frontline" apology programme. In its view, the opportunity provided to the NZBR for comment was insufficient in the circumstances with the result that the "apology" was ineffective.

ORDER

The Authority has upheld a substantial portion of the NZBR's complaints and is in agreement with it that aspects of TVNZ's treatment of its complaint and the action taken as a result were deficient. In determining whether it would make an order against TVNZ in the circumstances and, if so, what order, the Authority placed greatest weight on the fact that its decisions upon the substantive part of the NZBR's complaint reveal that the broadcast of "For the Public Good" breached very basic obligations of broadcasters and, in consequence, seriously impugned the integrity of the NZBR.

It is pertinent to note at this point that the fact that TVNZ disciplined staff directly responsible for the production of "For the Public Good" did not reduce, let alone discharge, its responsibility - as broadcaster - to comply with the broadcasting standards laid down in the Broadcasting Act and Codes of Broadcasting Practice. TVNZ's action against its employees may or may not help prevent future breaches of broadcasting



standards from occurring but it does not alter the fact that the breaches which did occur, by the broadcast of "For the Public Good", are its responsibility and its alone. Thus, the Broadcasting Act provides penalties which may be imposed on broadcasters by the Authority.

To date, in the exercise of its discretion in imposing penalties on broadcasters for breaches of broadcasting standards, the Authority has trodden gently. By that approach it has acknowledged the novelty of the 1989 Broadcasting Act's provision for a range of penalties to be imposed for breaches of standards, the desirability of encouraging broadcasters to comply with their lawful obligations and the comparatively minor and unrepentive nature of the breaches which it has found established in previous complaints. In considering the order or orders which it might make in the present complaint, however, the Authority could not justify leniency: the gravity of the breaches of broadcasting standards which it has found established compel it to make orders of commensurate weight.

The Authority wishes to add that it believes that high-quality, well-researched and well-presented investigative journalism can be achieved within the standards prescribed by the Broadcasting Act and Codes of Broadcasting Practice. It recognises that, because of its high profile, television is a powerful medium; that current affairs programmes are at the "cutting edge" of any television channel; and that they pose a particular challenge for TVNZ, which is accountable to the public through Parliament.

In the result, the Authority has decided that it is appropriate for it to order TVNZ to broadcast an apology statement, which summarises the Authority's Decision on the NZBR complaint, as well as to refrain from broadcasting advertising programmes for a specified period, during which period the reason for the cessation of advertising shall be explained.

Ordinarily, the Authority would have preferred TVNZ to broadcast the apology statement at the outset of a "Frontline" programme. However, it is aware that the 1990 series of that programme has recently concluded and that a new series will not commence for several months. In the circumstances, the Authority considers that the statement should be broadcast at the conclusion of both of TV1's evening news programmes on a week day soon after the release of this Decision.

Although the Authority would also have preferred that TVNZ be required to refrain from broadcasting advertising programmes during "Frontline", (at least), it does not wish to postpone the effect of its order in this regard until that programme recommences. However, it is mindful that if its order to refrain from broadcasting advertising programmes were specified to take effect in the very short term, contracts which TVNZ will have made with advertisers would be seriously disrupted and cause undue harm to those innocent third parties. In the result, the Authority has decided to fix as Sunday 3 February the date on which TVNZ is to refrain from broadcasting advertising programmes for a specified time.

Accordingly, pursuant to s.13(1)(a) of the Broadcasting Act 1989, the Authority orders



Television New Zealand Limited to broadcast:

- at the earliest opportunity and no later than 21 December 1990; and
 - immediately following TV1's 6pm One Network News (ie at approximately 6.30pm) and immediately following TV1's 10pm One Network News on the same day;
- a statement approved by the Authority.

That statement shall:

- be read out by a presenter and appear in writing on the screen; and
- be headed "Correction and Apology by TVNZ Ltd"; and
- explain that TVNZ has been ordered by the Broadcasting Standards Authority to make the statement as a result of the Authority's Decision on the complaint of the New Zealand Business Roundtable concerning the "Frontline" programme "For the Public Good"; and
- summarise the Authority's decisions on the NZBR's complaints; and
- explain that, in addition to making the approved statement, TVNZ has, as a result of the Decision of the Broadcasting Standards Authority on the NZBR complaint, been ordered to refrain from broadcasting advertising programmes from 6pm until closedown on Sunday 3 February 1991; and
- contain an apology from TVNZ to the NZBR for the broadcast of "For the Public Good" in breach of basic television broadcasting standards.

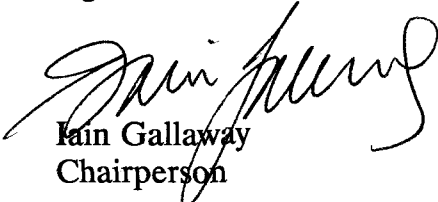
Further, pursuant to s.13(1)(b)(ii) of the Broadcasting Act 1989, the Authority orders Television New Zealand Limited to refrain from broadcasting advertising programmes on TV1 on Sunday 3 February 1991 from 6pm until closedown.

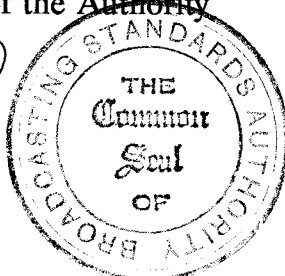
Further, pursuant to s.13(1)(a) of the Broadcasting Act 1989, the Authority orders Television New Zealand Limited to broadcast at the commencement and during the period in which there will be no advertising, a statement approved by the Authority which explains that TVNZ has been ordered to refrain from broadcasting advertising programmes in consequence of the serious breaches of broadcasting standards which the Authority found established in the NZBR complaint against "For the Public Good".

Co-opted Members

Sir David Beattie and Mr G.F. Whitehead were co-opted as persons whose qualifications and experience were likely to be of assistance to the Authority. They took part in the deliberations of the Authority but the Decision is that of the permanent Members.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



18 December 1990

**DECISION NO: 27/90
THE TREASURY'S COMPLAINT**

Summary of Complaint and TVNZ's Complaints Committee's Decision

By letter dated 15 May 1990, the Treasury made its formal complaint to TVNZ about "innuendoes and inaccuracies" in "For the Public Good". Before itemising its specific complaints, the Treasury cited three passages from the programme's script which caused it "the most concern" and explained, in general terms, its reasons for complaining - which may be summarised as follows:

- the programme implicated the Treasury in allegations of following improper procedures in the asset sales, namely awarding consultancy contracts to favourites;
- the programme implicated the Treasury in allegations that government policy regarding the asset sales was violated;
- as a result of either or both of the above, the programme implied that the Treasury had lied about its role in the asset sales.

The Treasury then alleged seven specific breaches of standards 1, 4, 6, 7 and 12 of the Television Programme Standards, which provide:

General

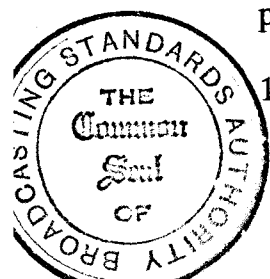
In the preparation and presentation of programmes, broadcasters are required:

1. To be truthful and accurate on points of fact.
...
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.
7. To avoid the use of any deceptive programme practice which takes advantage of the confidence viewers have in the integrity of broadcasting.
...

News and Current Affairs

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

12. News must be presented accurately, objectively and impartially.



The specific breaches alleged by the Treasury in its letter of formal complaint will be outlined in turn below, together with the reasons for TVNZ's Complaints Committee's decisions upon them. Those reasons were supplied to the Treasury in a letter dated 21 June but it had earlier been informed, by letter dated 1 June, that the Complaints Committee had not upheld any of its complaints.

Standard 1 - Truth and accuracy

(a) The first alleged breach of standard 1 focused on the programme's statement that the asset sales programme -

provided a once in a lifetime opportunity for business to dip into the public treasure chest.

The Treasury argued that the statement had connotations of theft or, at least, of fair value not being paid for state assets and that these were compounded by the statements that business interests "got" and "picked up" state assets. It continued:

Frontline could have balanced or ameliorated these connotations by noting that each of the sales it mentioned was made after a competitive tendering process to establish the market value of the assets. But the programme failed to do so. An additional safeguard was that Ministers had in their possession estimates of what the assets were worth to the Crown if public ownership was maintained, and that value could be compared with what potential buyers were offering, but Frontline also failed to mention this.

As a result, the Treasury alleged the "dip into the public treasure chest" statement was not truthful in that it was a half-truth or innuendo to which counterbalancing facts, which should have been known to "Frontline", were not presented.

In explaining the Complaints Committee's decision upon this complaint, TVNZ's letter of 21 June stated that the "dip into the public treasure chest" phrase -

was not seen as being capable of implying that state assets were sold off cheaply. The enterprises which were the new SOEs were likened to valuable assets held in a chest owned by the public. This "container" of assets was opened and those who wanted to select one or other of the now available assets were invited to bid for them. The sentence was considered to be in the category of fair metaphoric comment.

The letter noted that the Committee was critical of the fact that the competitive state asset sale procedures "were not adequately described in the programme" so that there could be no doubt as to their workings. It then stated:

On the basis that the Treasury was not singled out or alluded to in the passage you quoted from the programme, the Committee had difficulty in determining that the omission of such backgrounding had any negative bearing on the



Treasury or its role. Accordingly it was unable to determine that there had been a code breach with regard to this aspect of your complaint.

The essence of that statement was repeated later in the letter when TVNZ made the brief comment about Treasury's two allegations of breaches of standard 1:

The Committee did not consider the code in question, as it related to your department, was breached.

(b) The Treasury's second alleged breach of standard 1 focused upon the programme's statement that:

... as consultants in the sales process, firms like Fay Richwhite and Jarden's, firms with ex-Treasury officials on their staff, earned millions of dollars in fees from the public purse.

The Treasury argued that the statement was so one-sided as to give a false impression overall. It pointed out that the two named firms won their advisory contracts as the result of a competitive tendering process and attached an Annex to its letter to demonstrate that -

plenty of firms without ex-Treasury staff have also won such contracts.

Further, it stated that it was the Treasury's experience that the presence of ex-Treasury staff in a consulting firm usually conferred no competitive advantage in the tendering process because consultants were hired to provide expertise not available within the Treasury. Therefore:

almost by definition the ex-Treasury staff in such firms do not have that expertise and do not help their firms win advisory contracts. Accordingly, it is very rare for ex-Treasury staff to provide services under such contracts.

The Treasury argued that because none of these facts was stated on the programme, the quoted passage about consultancy firms which employ ex-Treasury staff left a clear impression that, in awarding consultancy contracts, the Treasury favours firms who employ ex-Treasury staff. It stated that the implication came through in two ways in the programme, namely:

The statement [was] made in the context of Frontline purporting to reveal questionable practices; and

There would be no reason to make the statement except to suggest favouritism. If Frontline was not suggesting favourable treatment, what was the editorial purpose behind the statement?

TVNZ's Complaints Committee believed that the Treasury had misinterpreted the programme's statement about consultancy firms with ex-Treasury officials on their staff.



After analysing the grammar of the statement and concluding that it meant that there were more than the two named firms (Fay Richwhite and Jardens) in the business of providing consultancy services with respect to the asset sales but that it was the two named firms who were being referred to as having ex-Treasury officials on their staff, TVNZ's letter of 21 June states:

The Committee noted that the statement was made to indicate that some, two named at least, big businesses had ex-Treasury officials on their staff to give their expertise at dealing with the firm's endeavours. Nothing sinister was seen in stating this. If anything it was seen as implying kudos in the sense that firms with ex-Treasury staff would be seen to be employing people with expertise and knowledge of the workings of government.

The Committee concluded that it would have been difficult, if not impossible, for the average viewer to imagine the thrust of Treasury's argument in this respect, namely that there is a clear impression here that as regards asset sales, Treasury favours firms who employ ex-Treasury staff.

Standard 4 - Just and fair dealing with any person taking part or referred to in a programme

(a) The Treasury's first alleged breach of standard 4 related to the programme's failure to contact it for information or comment with regard to the asset sales procedures. It stated:

By not asking for information or comment, Frontline denied the Treasury the opportunity to correct the errors in the programme's research, to explain the processes behind asset sales and the appointment of consultants, to respond to any suggestions that the Treasury had failed to implement faithfully the Government's asset sales policy, and to respond to any suggestion that the Treasury had misled the public about its role. Frontline's failure to approach us constitutes a failure to deal justly and fairly with the Treasury, which was referred to in the programme.

TVNZ's letter explained that the Complaints Committee was critical of the fact that the asset sales process was not backgrounded in the programme despite the fact that there had been much in all branches of the media about it with the result that:

the appointment of consultants, and their tasks in the asset sales, was well known to the public.

Two reasons were then given for the Committee's decision not to uphold the Treasury's allegation, namely:

The Committee considered there could be no suggestion taken from the programme that Treasury failed to do the government's bidding. The Treasury, or some current and former officials of Treasury, were known to be wedded to



implementing the policies because they were in favour of them. They had been put to National's Minister of Finance only to be rejected. An enthusiastic Labour Minister of Finance, with a declared policy which included some of the same planks National decried, was a willing, supportive conduit for these same policies to be developed, analysed and put in place.

The Committee observed that all references in the programme referred to ex-Treasury staff and the thoughts or actions of these same people who once worked for Treasury, now engaged in the private sector. The references were not to Treasury, as an entity, either in the past or at present. As a consequence it was considered that any suggestion that the programme had denigrated the "office" of Treasury as a "department" would be erroneous and therefore any suggestion that the "department" had acted, or was acting, contrary to government policies of the day could not be sustained.

It is appropriate to refer here to the Treasury's comment on TVNZ's perception of the role of the Treasury, more particularly its relationship to the Government. In its letter to the Authority of 19 July, the Treasury took strong exception to the first of the paragraphs quoted above saying that it:

so deeply misrepresents the Treasury's constitutional role in public policy that, had those words appeared in the Frontline programme, they would have constituted further grounds for complaint.

The Treasury explained that it is its duty -

to advise the Government freely and frankly; equally, it is our duty to implement the Government's decisions whether or not they accord with our advice. There is no place in this department for anyone "wedded to implementing" any policy different from that of the Government of the day. In that sense the Treasury is a conduit for the Minister, not the other way around. That relationship is identical whoever is the Minister, and whether or not the Minister generally agrees with Treasury advice.

The Treasury's final words on this matter were:

The paragraph ... is evidence that the complaints committee failed to understand the proprieties of the Treasury's role in implementing Government policy. This may explain why the committee did not pay proper regard to Frontline's insinuations in that regard.

(b) The second alleged breach of standard 4 was based on the same statement as the second alleged breach of standard 1, ie:

... as consultants in the sales process, firms like Fay Richwhite and Jardens, firms with ex-Treasury officials on their staff, earned millions of dollars in fees from the public purse.



The Treasury alleged that the innuendo in, and the one-sided nature of, that statement represented a failure to deal with it justly and fairly.

In explanation of the Complaints Committee's decision not to uphold this complaint, TVNZ's letter referred to its reasoning upon the earlier complaint involving the same statement. As has been noted, the Committee believed the Treasury had misinterpreted the statement, which contained nothing sinister and, if anything, implied that firms with ex-Treasury staff had kudos.

Standard 6 - Balance, impartiality and fairness

The Treasury alleged that all the prior points it had made in its formal complaint, ie about the programme's inaccuracy and innuendo and the failure to approach the Treasury for comment, established that standard 6 was breached.

TVNZ's Complaints Committee -

did not agree there had been inaccuracy. The non-approach to Treasury for information was based on the belief that the asset sales procedures were considered to be well known to the public. ... [The Committee] considered that a recall of the process would have been appropriate. However the fact that Treasury was not approached in this regard was not considered to have constituted, in itself, a breach of the code.

Standard 7 - Avoid the use of any deceptive programme practice

Standard 12 - News to be presented accurately, objectively and impartially

The Treasury alleged that the half-truths and innuendoes, the subject of its earlier complaints, established a breach of standard 7 and that those same half-truths and innuendoes, together with the programme's failure to approach the Treasury for information, established a breach of standard 12.

TVNZ's letter again referred to its earlier reasoning by way of explanation of the Complaints Committee's decisions that neither standard was breached.

Referral of the Complaint to the Authority and Later Correspondence

Dissatisfied with both the decisions and the action taken by TVNZ, the Treasury referred its complaint to the Authority by letter dated 2 July, elaborating its reasons for referral in a letter dated 19 July. Upon their receipt, TVNZ was sent copies of the Treasury's correspondence and asked to supply any further comments it might wish to make. After some prompting by the Authority, TVNZ made its comments in a letter dated 11 October to which the Treasury was given the opportunity to respond. The Treasury's final comments were made by letter dated 25 October. Relevant passages from these letters



will be referred to subsequently.

DECISION

Preliminary Points Regarding Relevant Standards

It will be plain from the preceding outline of the Treasury's complaints that the same three aspects of "For the Public Good" are the subject of seven allegations of breaches of five Television Programme Standards. Because the Treasury specifically identified the five standards and very clearly alleged seven separate breaches of them, TVNZ's Complaints Committee was bound to consider each allegation, and it did so. When the Authority undertook the task of investigating and reviewing the Committee's decisions, however, it found the substance of some of the Treasury's complaints to be repetitious.

For reasons which are explained in the NZBR Decision (No: 26/90), the Authority considers that the two complaints made by the Treasury in reliance upon standard 4 of the Television Programme Standards do not add anything to the substance of the complaint which it made in reliance upon standard 6. In brief, this is because the Treasury's complaints under both standards are identical and the broader words of standard 6 subsume the more specific words of standard 4 when the programme complained about is a political or current affairs programme or otherwise deals with controversial questions.

Further, the Authority detected an obstacle to the Treasury's reliance upon standard 4 as the basis for complaints about the programme's treatment of it in connection with the asset sale programme: the fact that the Treasury was not specifically referred to in connection with that topic. Certainly, the Treasury was referred to in "For the Public Good". TVNZ argued that every reference was to ex-Treasury staff but that is not the case: the Treasury as a present day entity was referred to by both David Steele and David Lange in interview extracts - but not in connection with the asset sale programme.

The point the Authority would make is that standard 4's requirement of just and fair dealing with any person referred to in a programme does not seem an appropriate basis for a complaint by a person (which the Authority interprets to include an entity such as the Treasury) who was referred to, but whose claim of unjust or unfair treatment relates to a topic in connection with which he, she or it was not mentioned. The Authority accepts that some viewers may well have drawn adverse inferences about the Treasury from the programme's implications of impropriety in the conduct of the asset sales, ie those viewers familiar with the publicised sale procedures and who believed the programme's implications. Quite apart from the repetitious nature of the Treasury's standard 4 complaints then, in light of the fact that it was not "referred to" in connection with the asset sales, it is the Authority's view that the Treasury's allegation of a breach of standard 4 is best merged in its complaint of a breach of standard 6's more general requirement of "balance, impartiality and fairness".

Accordingly, the Authority declines to determine the Treasury's complaints alleging breaches of standard 4 of the Television Programme Standards.



The Authority's view of the ambit of standard 12 of the Television Programme Standards, which was also invoked by the Treasury, was also noted in its Decision upon the NZBR complaint against "For the Public Good". It is that the Programme Standards' separate usage of the terms "news" and "current affairs" reveals that "For the Public Good" is a current affairs programme for the purposes of the standards' application. Accordingly, the Authority has decided that the complaint made by the Treasury in reliance upon standard 12, which applies only to "news", is not properly based.

Accordingly, the Authority declines to uphold the complaint that "For the Public Good" breached standard 12 of the Television Programme Standards.

The Authority now turns to consider the Treasury's substantive complaints based on standards 1, 6 and 7 of the Television Programme Standards.

Standard 1 - Broadcasters to be truthful and accurate on points of fact

As a preliminary point, the Authority refers back to its explanation in the NZBR Decision of the reasons for its view that it is necessary to assess complaints about "For the Public Good" against the background of the tenor of the programme as a whole. In addition, the Authority notes that the Treasury made it plain, in alleging breaches of standard 1 of the Television Programme Standards, that it was relying on the context in which the specific statements about which it complained were made. In particular, the Treasury referred to the presenter's promise, at the outset of the programme, that a breach of the public's trust would be revealed and to the reporter's statement that business was buying policies in return for donations.

TVNZ's Complaints Committee disputed the relevance to the Treasury's complaints of the presenter's promise, pointing out that, at that stage, the presenter was talking specifically about politicians disclosing their private interests. Accordingly, its view was that the promised revelation of a breach of trust related only to that matter.

The Authority accepts TVNZ's point that the presenter's promise to reveal a breach of public trust was made in relation to the topic of politicians' disclosure of their private interests. However, as has been made plain in its Decision upon the NZBR complaint, it does not accept that the programme gave no indication that breaches of public trust had also occurred with regard to other topics. Its view is that the programme's treatment of each topic and subtopic was interwoven with suggestions of wrongdoing. As a result, while the Authority does not agree with the specific basis of the Treasury's argument that the programme promised to reveal a breach of public trust concerning the asset sales, it agrees with its general thrust.

(a) The Treasury's first complaint was directed against the "half-truths or innuendo" in the programme's statement that the asset sale programme -

provided a once in a lifetime opportunity for business to dip into the public treasure chest.



Part of TVNZ's Complaints Committee's reasoning in declining to uphold this complaint was that it was relevant that the statement did not single out or allude to the Treasury. However, the Authority observes that an alleged breach of the Television Programme Standards' requirements, including standard 1's requirement of truth and accuracy, may be the subject of complaint by any person, not just one who is directly affected by the alleged breaches. Accordingly, that part of the Complaints Committee's reasoning which asserts otherwise with respect to standard 1 is flawed.

The other reason for the Complaints Committee's decision was its view that the "treasure chest" statement had no untrue connotations. It would appear that the Committee reached this view after considering the statement in its context - for TVNZ's letter of 21 June refers in this regard to the programme's omission of any description of the asset sale procedures. The following passages from TVNZ's letter of 11 October elaborate this aspect of the Committee's reasoning:

Much reliance is placed [by the Treasury] on allegations of innuendo imagined to be seeping from the programme. That such elusive or ill-defined innuendo should be dressed-up, and assume the form of truth and fact to a degree which constitutes a breach of code [standard] 1, is little short of fanciful. ...

That the complainant finds the company's reasoning absurd, concerning no allegation of wrongdoing arising from the expression concerning the opportunity for business to dip into the treasure chest, seems to presuppose that the chest was locked and bolted at the time. The viewer-friendly or colloquial language used can only translate into a meaning signifying a rare opportunity for all to select and pluck out what a particular business preferred, bearing in mind that not all businesses had the resources to buy the lot in one go. ...

If the sinister overtones description is to be automatically and disparagingly linked with colourful television-type language, the company would observe that it will be a sad day for television. The days of dreary, ponderous, stilted language which turn people off current affairs programmes are long past world-wide.

The Authority's view of the connotations of the "treasure chest" statement - which is contrary to that of TVNZ's Complaints Committee - has been recorded in the NZBR Decision. There, after an examination of the statement in the context of other statements made about the asset sales and the tenor of the programme as a whole, the Authority concluded that the untruthful impression was given that state assets were sold to preferred purchasers at less than market value. The Authority confirms that conclusion here and observes that this does not mean that television current affairs programmes in this country will be forced hereafter to use "dreary, ponderous, stilted language". Such programmes are, as before, merely required to be truthful and accurate. Therefore, it is only so-called "colourful television-type" language which does not conform to that basic requirement which must not be used.

Accordingly, the Authority upholds the complaint that TVNZ, in broadcasting "For the Public Good", which programme gave the impression that state assets were sold at less



than market value, breached the truth and accuracy requirement of standard 1 of the Television Programme Standards.

(b) The Treasury's second complaint was that the programme was inaccurate in stating:

... as consultants in the sales process, firms like Fay Richwhite and Jardens, firms with ex-Treasury officials on their staff, earned millions of dollars in fees from the public purse.

TVNZ's Complaints Committee summed up the Treasury's argument here as being:

... that there is a clear impression here that as regards asset sales, Treasury favours firms who employ ex-Treasury staff

an argument which it described as -

being difficult, if not impossible, for the average viewer to imagine.

The Authority would first point out that it is not material to the Treasury's allegation of untruth or inaccuracy in the quoted statement that the impression was given that the Treasury favoured firms who employ ex-Treasury staff. What is at issue is whether the statement gave the inaccurate impression that whoever awarded the asset sale consultancy contracts favoured firms with ex-Treasury staff.

In determining that matter, the editorial purpose for including the reference to firms with ex-Treasury staff becomes critical. If the statement is assessed in isolation, it is difficult to see any reason at all for including it - although TVNZ's letter of 21 June proffered such a reason, stating that "if anything", the reference to firms with ex-Treasury staff lent kudos to them. TVNZ's qualifying words, "if anything", indicate that, in fact, it is inclined to agree with the Authority that the reference to firms with ex-Treasury staff does not mean anything at all when assessed in isolation. Despite that, the Authority records its view that the reference does not connote, in any natural way, kudos for firms with ex-Treasury staff.

Therefore, it is only when the statement referring to ex-Treasury staff is assessed in its context that an editorial purpose for it can be deduced and, as a result, its implications assessed for their truth or otherwise. Taking the statement in context, it is the Authority's firm view that it is even less credible to argue that kudos was intended to be implied by the mention of ex-Treasury staff. The programme was two thirds complete when the statement was made and, to that point, allusions to improper conduct by politicians and businessmen had abounded. Those allusions had been made with regard to business donations to the Labour Party in 1987 and with regard to the asset sale programme. Indeed, the programme connected those two topics so that the business donations were represented to be the cause of the implied improprieties in the asset sales.

In that context, and granted that the award of consultancy contracts was a part of the



asset sale process and was clearly identified as such in the programme, the Authority can see no other inference to be taken from the reference to firms with ex-Treasury staff than that such firms were favoured in the award of those contracts. Whether or not that impression was intended to be conveyed, it is untrue - a matter which TVNZ does not deny. As a result, the Authority has no hesitation in upholding the Treasury's complaint that standard 1 was breached.

Accordingly, the Authority upholds the complaint that TVNZ, in broadcasting "For the Public Good", which programme implied that firms with ex-Treasury staff were favoured in the award of consultancy contracts in connection with state asset sales, breached the truth and accuracy requirement of standard 1 of the Television Programme Standards.

Standard 6 - Broadcasters to show balance, impartiality and fairness when dealing with political matters, current affairs and controversial questions.

The Treasury alleged that standard 6's requirement of balance, impartiality and fairness was breached by the failure of the programme to contact it for comment and information as well as by the "half-truths and innuendo" which were the subject of its earlier complaints. TVNZ explained in its letter of 21 June that the Complaints Committee did not consider the failure to contact the Treasury to constitute, in itself, a breach of standard 6. Since it had not found any inaccuracies in the programme, it declined to uphold the complaint.

The Authority is of the view that, in light of the programme's implications of impropriety in the conduct of the asset sales, it was imbalanced for not including any description of the sales' procedures. However, lack of balance in the programme is not the essence of the Treasury's complaint. Rather, its complaint focuses on the unfairness of the failure to give the Treasury the opportunity to explain the sales processes when the programme's implications about those processes were inaccurate.

While TVNZ's Complaints Committee reasoned in connection with other complaints made by the Treasury that no negative reflection was cast upon the Treasury by the programme because it was not mentioned in connection with the asset sales, in explaining the Committee's view that the Treasury had not been treated unfairly by the programme, the 21 June letter stated:

It had been considered [by the programme's producers] that there had been much in all branches of the media at the time each of the sales were announced; the Government's detailing of the process of valuation to the State; the method of competitive tendering, and the method of determining the purchaser(s). ... The appointment of consultants was well known to the public and it was thought that their roles did not need spelling out in the programme. Notwithstanding this, as already mentioned, the Committee was critical of the fact that the sales process was not backgrounded in the programme.

Later, in explaining the Committee's decision not to uphold the Treasury's allegation of a breach of standard 6, it was stated:



The non-approach to Treasury for information was based on the belief that the asset sales procedures were considered to be well known to the public. They had been the subject of newspaper, radio and television items constantly over the years when the asset sales continued and these matters were not believed essential to the programme's thrust. Although the Committee acknowledged that this was probably so, it considered that a recall of the process would have been appropriate.

In its letter of referral to the Authority, the Treasury pointed out the apparent contradiction in the Complaints Committee's reasoning, as follows:

... the Treasury is responsible for implementing the Government's asset sale policy and, in the absence of any statement to the contrary, any suggestion of wrongdoing in the sale process is implicitly an allegation of wrongdoing against the Treasury.

Referring to the two statements from TVNZ's 21 June letter, quoted above, the Treasury's letter continued:

They demonstrate why the Treasury need not have been mentioned for Frontline to have implied wrongdoing by the Treasury. By TVNZ's admission the public understood what were the proper procedures to be followed, and what was the role of the Treasury in those procedures. If any viewer inferred there was something corrupt in the asset sale process, that viewer could have reasonably presumed that there was something corrupt in the way the process was conducted by this department.

... further weight is added to the Treasury's argument by the fact that the committee was "critical of the fact that such procedures were not adequately described in the programme so there could be no doubt as to the working of the sales process" ... That criticism is an admission that the programme's portrayal of asset sales could have led to some viewers misunderstanding the conduct of asset sales. Any such misunderstanding is very likely to be a misunderstanding of the role and actions of the Treasury.

TVNZ's response, in its 11 October letter, was to deny that the programme gave any impression of wrongdoing by the Treasury in the conduct of the asset sales and to assert that the Committee's criticism of the omission of an explanation of the sales process was a criticism of the omission of content which might have aided viewer understanding, not a criticism of an omission which could have caused misunderstanding by viewers. Accordingly, TVNZ denied that the Committee's criticism assisted the Treasury's argument.

That same point about the effect of the omission of a description of the asset sales process had been explained earlier in TVNZ's 11 October letter, in the following terms:

Far from distorting the department's [Treasury's] role and action in asset sales by omission, it [the programme] left viewers with a blank mind. It is difficult to know



what feat of mental gymnastics could turn a nothing into a distortion. This aspect of missing backgrounding was the subject of some criticism by the Complaints Committee. It felt there should have been a brief recall of the asset sales processes to enable viewers to better cotton on to the point being made. Rather than being misled, as the complainant suggests, viewers were left in the dark.

The Treasury's response was made in its 25 October letter as follows:

Viewers' prior knowledge of the correct asset sales procedures is not "a nothing", and viewers were thereby not in the dark. The distortion arises through planting in the minds of knowledgeable viewers the possibility of corruption, in a process for which the Treasury is responsible.

The Authority agrees with the Treasury's analysis and observes that TVNZ's Complaints Committee's reasoning as to the effect of the programme's omission of information about the asset sale procedures is inconsistent with the reasoning which supported its decisions on earlier complaints made by the Treasury. In the Authority's view, granted that some viewers of "For the Public Good" (probably most viewers, if the programme makers' reason for not including a description of the asset sale procedure was valid) would have gained from it an inaccurate impression of the Treasury's role in the asset sales, it was unfair that the Treasury was not provided with an opportunity to explain the procedures governing the sales.

Accordingly, the Authority upholds the complaint that TVNZ, in broadcasting "For the Public Good", which programme did not provide the Treasury with the opportunity to comment on the asset sale procedures, breached the fairness requirement of standard 6 of the Television Programme Standards.

Standard 7 - Broadcasters to avoid the use of any deceptive programme practice which takes advantage of the confidence viewers have in the integrity of broadcasting

The Treasury's complaint was that a breach of standard 7 was established by the half-truths and innuendoes contained in the two statements which the Authority has earlier held did give untruthful impressions. Thus, the Treasury's argument was that the untruthful impressions of the statements about the asset sales revealed TVNZ's use of a deceptive programme practice which took advantage of the confidence viewers have in the integrity of broadcasting. Since TVNZ's Complaints Committee did not find any untruthfulness in the statements identified by the Treasury, it declined to uphold the standard 7 complaint.

In the Authority's view, the critical word in standard 7 is "deceptive". By the use of that word, the standard is aimed at securing the avoidance of practices by which broadcasters deliberately aim to mislead their audiences. Accordingly, an allegation of a breach of standard 7 is a very serious matter. Indeed, the Authority would expect more detailed argument to accompany such an allegation than was presented to it by the Treasury.



Although the Authority is aware that its views on the programme's use of advocacy journalism in a mainstream, ie uncommitted, programme such as "Frontline" support a conclusion that TVNZ did take advantage of the confidence which viewers have in the integrity of broadcasting, it is not convinced that the present allegation of a breach of standard 7 is established. In its view, a finding of a breach of standard 7 must be based on clear evidence that the techniques used in a programme were adopted for the purpose of misleading its audience. In default of that evidence, the Authority could only assess the programme itself in an attempt to divine the purpose for which the techniques used in it were adopted. Having undertaken that assessment, the Authority was left uncertain as to those motives.

Accordingly, the Authority declines to uphold the complaint that TVNZ, in broadcasting "For the Public Good", breached standard 7 of the Television Programme Standards.

The Action Taken by TVNZ

In making its formal complaint, and anticipating a favourable decision from the Complaints Committee, the Treasury had asked TVNZ to broadcast on "Frontline", as soon as possible, a brief statement prepared by the Treasury. That statement was worded in such a way that, by its broadcast, TVNZ would have acknowledged that while "For the Public Good" may have implied that the Treasury was involved in improper practices in connection with the asset sales, the research for the programme had found no evidence of any such impropriety and TVNZ did not believe that the Treasury had been involved in any improper practices.

In light of the fact that TVNZ's Complaints Committee did not uphold any of the Treasury's complaints and, instead of broadcasting the Treasury's prepared statement, released to the media the interim letter to the Treasury which stated that its complaints had not been upheld, it is not surprising that the Treasury referred to the Authority, for investigation and review, the action taken by TVNZ.

At the conclusion of the letter referring the Treasury's complaint to the Authority - and, again, in anticipation of a favourable decision from this body - it was stated:

If anything the need for a correction is now more compelling because TVNZ has compounded its original errors by releasing publicly the fact that the complaints committee had ruled against the Treasury without clarifying that TVNZ had no evidence of Treasury wrongdoing.

... Our original proposed remedy, although it would now be broadcast months after the original wrong was committed, is still the appropriate one.

ORDER

Having upheld the Treasury's complaints that standards 1 and 6 of the Television Programme Standards were breached by "For the Public Good", the Authority is of the



opinion that an order against TVNZ, by which it is required to publicly acknowledge the matters which the Treasury originally sought for it to acknowledge, is appropriate. Indeed, in all the circumstances, the Authority considers it appropriate that TVNZ be ordered to make a statement stronger in its effect than that originally suggested to it by the Treasury: the need for TVNZ to acknowledge the merits of the Treasury's complaint and the breaches of broadcasting standards which adversely affected it is all the more compelling now, in light of TVNZ's treatment of the complaint and the time which has elapsed since.

Accordingly, pursuant to s.13(1)(a) of the Broadcasting Act 1989, the Authority orders Television New Zealand Limited to broadcast, on the two occasions identified below, a correction and apology statement approved by the Authority and pertaining to the Treasury's complaint about "For the Public Good".

That statement shall be broadcast immediately following the statement pertaining to the NZBR complaint (which has, in Decision No: 26/90, been ordered to be broadcast immediately following the 6pm One Network News on a week day on or before 21 December 1990 and immediately following the 10pm One Network News on the same day).


Further, that statement shall:

- be read out by a presenter and appear in writing on the screen; and
- be headed "Correction and Apology by TVNZ Ltd"; and
- explain that TVNZ has been ordered by the Broadcasting Standards Authority to make the statement as a result of the Authority's Decision on the complaint of the Treasury concerning the "Frontline" programme "For the Public Good"; and
- summarise the Authority's decisions on the Treasury's complaints; and
- contain an acknowledgment that TVNZ has no reason to believe that the Treasury was involved in any improper practices in connection with state asset sales; and
- contain an apology from TVNZ to the Treasury for the broadcast of "For the Public Good" in breach of basic television broadcasting standards.

Co-opted Members

Sir David Beattie and Mr G.F. Whitehead were co-opted as persons whose qualifications and experience were likely to be of assistance to the Authority. They took part in the deliberations of the Authority but the Decision is that of the permanent Members.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



12 December 1990