

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: ID 1/90

Dated the 10th day of December 1990

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

John Yeabsley, General Manager  
NEW ZEALAND IMMIGRATION  
SERVICE

Broadcaster  
TELEVISION NEW ZEALAND  
LIMITED

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

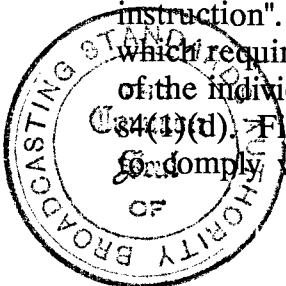
INTERLOCUTORY DECISION

Introduction

In view of the interlocutory nature of this Decision, the following discussion deals with the procedural issues raised. It does not discuss in detail the programme complained about.

The *Holmes Show* on Television One on 9 August 1990 contained an item investigating the plight of a British migrant who had secured a well paid job yet had twice been refused a residency permit.

In a letter dated 31 August, the General Manager (Mr John Yeabsley) of the New Zealand Immigration Service (NZIS) complained to TVNZ Limited that filming NZIS staff at work in the Hamilton office invaded their privacy and was "even more reprehensible when it is done in clear contravention of an unequivocal and lawful instruction". It amounted, he wrote, to a breach of s4(1)(c) of the Broadcasting Act 1989 which requires broadcasters to maintain standards which are consistent with the privacy of the individual. He also complained that the item was unbalanced and thus breached s4(1)(d). Finally, it was claimed that the programme breached s4(1)(e) in that it failed to comply with the Codes of Broadcasting Practice for Television. The standards



breached, it was said, were standards 4, 5, and 6 requiring in the preparation and presentation of programmes, just and fair dealing with the people taking part, respect for the principles of law, and balance, impartiality and fairness when dealing with current affairs and questions of a controversial nature.

In a response to the NZIS dated 19 October, TVNZ recorded the decision of its Complaints Committee which had investigated the complaint.

It was written:

In considering your complaint, the Committee had before it the list of "facts" you provided in your letter - and a matching list from the reporter who worked on the story.

The two lists differ in some important respects, which I hope will become clear as I outline the Committee's findings on each of the specific points of complaint you raise.

The Complaints Committee, accepting TVNZ's reporter's account of the preparation of the item, concluded:

Taking everything into consideration the Complaints Committee was unable to uphold your complaint.

As he was dissatisfied with TVNZ's decision, Mr Yeabsley of the NZIS referred the complaint to the Broadcasting Standards Authority pursuant to s8(a) of the Broadcasting Act in a letter dated 15 November 1990.

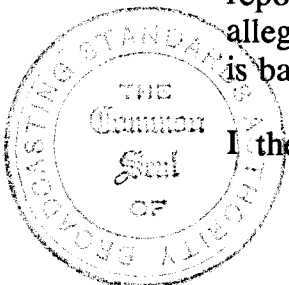
By way of introduction, he wrote:

A major factor in my dissatisfaction with TVNZ's decision on my complaint is the procedure adopted by TVNZ and its Complaints Committee in dealing with my complaint. In short, my complaint was not dealt with in a fair manner.

In particular, he considered that it was unfair of TVNZ to place total reliance on its reporter's version of the events. He added, that by making no efforts to verify the reporter's account, TVNZ has used an "inherently unfair procedure" which had led to a flawed decision. He suggested that the Authority, taking into account ss10(2) and 6(1)(c), might give consideration to using its power in s13(1)(c) and he wrote:

In this particular case I say that TVNZ was not able to make a proper determination of my complaint until such time as it had sought to reconcile the conflicting versions of fact. By not allowing me a right of comment on the reporter's version it proceeded unfairly with the result that it relied on what I allege are incorrect facts. Any decision is only as good as the facts on which it is based.

I therefore ask the Authority to consider in the first instance referring my



complaint back to TVNZ for a proper consideration, giving the Authority's direction about an appropriate procedure to adopt.

The balance of his letter dealt with the substantive complaints. Other than withdrawing his complaint about trespass on the film crew's part, he persisted with the claims made in his letter to TVNZ dated 31 August.

### Decision

Section 13(1)(c) of the Broadcasting Act 1989 reads:

(1) If, in the case of a complaint referred to the Authority under section 8 of this Act, the Authority decides that the complaint is justified, in whole or in part, the Authority may make any one or more of the following orders:

...

(c) An order referring the complaint back to the broadcaster for consideration and determination by the broadcaster in accordance with such directions or guidelines as the Authority thinks fit:

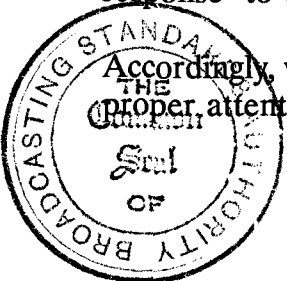
At its Meeting on 10 December 1990, the Authority carefully considered the correspondence. It concluded that s13(1) entitled the Authority to review the procedures adopted by TVNZ in considering a complaint. Factual disputes about the presentation of programmes, it was observed, are unusual. However, in this case the different versions of the "facts" were advanced by the complainant and the broadcaster. In that situation, the Authority considers that the broadcaster rather than accepting either version uncritically, has a responsibility to attempt to reconcile the differing accounts. The Authority formed that opinion after examining ss5, 6 and 7 of the Act and s5 in particular, where the principles listed require minimal formality but impartiality.

The Authority decided therefore at this stage that the complaint was justified insofar as it alleged that TVNZ accepted, without question, investigation, or consultation with the complainant, its reporter's account of the facts.

Having decided that the complaint was justified in part, the Authority considered which action pursuant to s.13(1)(c) was appropriate. In reaching a decision about an appropriate order, the Authority was guided by s5 which lists the principles for dealing with complaints.

Section 5(a) refers to the responsibility of broadcasters to establish a "proper procedure" to deal with complaints: paragraph (d) refers to the "proper consideration" of complaints: paragraph (g) again refers to a "proper consideration" and, in addition, to a "proper response" to complaints by broadcasters.

Accordingly, with regard to the current complaint, the Authority requires TVNZ to give proper attention to reconciling the conflicting version of the facts.



Order

The Authority orders, pursuant to section 13(1)(c) of the Broadcasting Act 1989, that the complaint by the New Zealand Immigration Service dated 15 November 1990 against Television New Zealand Limited with regard to a programme broadcast on 9 August 1990 be referred back to the Broadcaster for proper consideration and determination by the Broadcaster in accordance with the principles listed in s5 for dealing with complaints.

Signed for and on behalf of the Authority



Iain Galloway  
Chairperson



10 December 1990