

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 1/91

Dated the 27th day of February 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

GRAEME COOK

of Auckland

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

DECISION

Introduction

The *Fair Go* programme broadcast on TV1 on 15 May 1990 included an item about increasing the personal liability of company directors whose businesses have gone into liquidation and highlighted the difficulties faced by a young married couple, in building a new home, as a result of the liquidation of Barr Cook Enterprises Ltd. A segment of the script referred to a principal in the firm, Mr Graeme Cook, and it mentioned that he lived in a house in Remuera which had cost him \$360,000 and that he drove a 1986 Saab Turbo. A brief shot of the house accompanied this text.

The following week's *Fair Go* programme included a brief follow-up to the item which focussed on the many offers of assistance received by the couple to complete the interior of their new home.

Mr Cook's Complaint to the Broadcasting Standards Authority

Mr Cook formally complained to the Authority on 21 June alleging that the broadcast of both items invaded his privacy first, in mentioning the year and model of his car and the price paid for his house and secondly, in screening a shot of the house and its street



Mr Cook's complaint was referred to TVNZ Ltd for a response.

TVNZ's Response to the Authority

Following protracted correspondence between TVNZ and Mr Cook seeking to clarify Mr Cook's intentions with regard to another, related complaint arising out of the same items, TVNZ responded on 14 September to Mr Cook's allegation of invasion of privacy.

The company denied that the references to Mr Cook's assets amounted, in the context of the item broadcast on 15 May, to a breach of section 4(1)(c) of the Broadcasting Act which obliges broadcasters to maintain standards consistent with the privacy of the individual.

TVNZ explained that the item described a situation where people in a business affected by liquidation may continue in that trade or business under another name, and not be required to meet liabilities incurred prior to their going into liquidation. TVNZ, in the introduction to the item, encapsulated the thrust of the item as follows:

There's been a lot of talk recently about increasing the personal liability of company directors whose failed businesses leave ordinary folk stranded. But it's just talk. The commercial reality is that limited liability remains very limited indeed.

And until the laws change, companies can shut their doors when they get into debt, their owners can continue in the same line of business under another company name leaving the victims of their actions to join the queue at the liquidator's office.

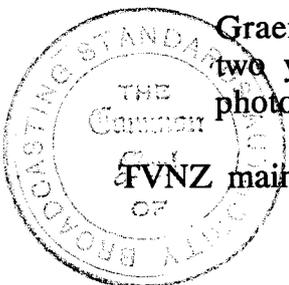
TVNZ stated further that the item related to the difficulties faced by a young married couple as a result of Barr Cook Enterprises, of which the complainant was a principal, going into liquidation. The script then referred to Mr Cook in the following terms:

It'd be wrong to suggest that Graeme Cook hasn't been affected by the voluntary liquidation of his firm Barr Cook Enterprises, but as they say, everything is relative. He is now a director and a major shareholder of Cobarco, a building firm with glossy premises in Auckland. His business and financial interests extend to a wide range of other companies in Auckland.

This statement was followed by a one-shot, seven-second glimpse of Mr Cook's home, and its street number, as seen from a public footpath. The accompanying script was as follows:

Graeme Cook lives in a large house in Remuera which he bought for \$360,000 two years ago. He drives an '86 Saab Turbo. Though he agreed to be photographed, he declined a filmed interview.

TVNZ maintained that it would have been clear to viewers that this brief segment



helped to reinforce the point that the complainant, although the victim of an economic downturn, had not suffered as much in a personal sense as those whom his company's liquidation had landed in a degree of hardship.

The identification of some of the complainant's assets " ... was necessary for the credibility of the main thrust of the item". TVNZ also maintained that it helped to provide a setting for the concluding question in the item which was:

We make no comment except to repeat what we said at the start. Is it naive in this day and age to demand more personal liability from our company directors?

In answer to the allegation that the mentioning and depicting of certain assets invaded Mr Cook's privacy, TVNZ argued that Mr Cook had offered no supporting justification for his allegations and that, ostensibly, the company did not have a case to answer.

That said, however, the company went on to argue that, on the basis of principles outlined in the Authority's Decision No: 5/90, the depiction of what was in view from the public footpath in a city suburb did not amount to arbitrary or unlawful interferences with the privacy of the complainant. Furthermore, TVNZ maintained that:

... the company would submit that in the context of the item the public's entitlement or "right to know" is paramount. Also there is no question of interference with the right of the complainant "to be let alone". He was not physically disturbed by the filming nor was he in sight. There was no unreasonable intrusion nor could the depiction of the complainant's home be regarded as offensive or objectionable to the reasonable person. It could hardly be said that the material constituted "sensitive private facts."

With regard to the brief follow-up item on the *Fair Go* programme broadcast on 22 May, TVNZ considered that as there were no references to the complainant's house, car or other valuables, there could be no further breach of s.4(1)(c) of the Act.

TVNZ's response was forwarded to Mr Cook for a brief, final comment.

Mr Cook's Final Comments to the Authority

On 3 December Mr Cook advised the Authority that:

The main thrust of the programme is not my complaint, as I agree that the viewing public have a right to an opinion on a matter such as this, but I view the involvement of my personal assets and property. We have had abusive phone calls and people knocking on our door demanding to know who owned various vehicles that were parked in our yard ...

The TVNZ comments about a view of a property from the footpath, the street number ~~was~~ clearly visible and with a name like "Cook" it was not difficult for people to look up the phone number and address in the telephone book ... In their own



words the facts I believe were sensitive and private ...

Decision

As with previous complaints made to the Authority under section 4(1)(c) of the Broadcasting Act 1989 (see, for example, Decision No: 5/90), the present complaint requires that the Authority strike a balance between the competing interests in individual privacy and the public's "right to know" about events of interest to it.

There is no dispute between the complainant and the broadcaster that the offending item on the *Fair Go* programme of 15 May 1990 concerned a matter of "public interest", i.e. a matter of legitimate concern to viewers. Since the world-wide sharemarket crash in 1987, much publicity has been given, not only on television, to instances where the personal financial positions of directors of failed companies have survived largely intact while, as the *Fair Go* introduction put it, "ordinary folk" have been left out of pocket. This publicity has invariably been accompanied by calls to increase the personal liability of directors of limited liability companies.

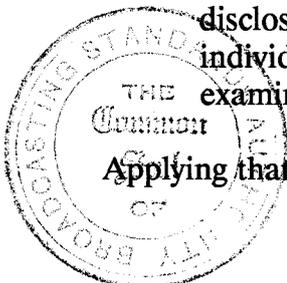
The *Fair Go* item on 15 May was in the same vein. It set out to highlight the need to increase the personal liability of such directors first, in focussing on the plight faced by a couple when the firm building their house went into liquidation and secondly, in mentioning some of the personal assets of Mr Cook, one of the directors of that company.

The information disclosed about Mr Cook falls clearly and unambiguously into the category of "public facts", in as much as the make, model and year of his vehicle, and the price, street number and location of his house are all matters of public record. In addition, the shots of his house and its number were filmed from a public place.

In the Authority's view, if the public disclosure of public facts such as these is to constitute a breach of s.4(1)(c) of the Act, the disclosure must be highly offensive and objectionable to a reasonable person of ordinary sensibilities. As stated in Decision No: 5/90 (at p.11):

In the Authority's view, the protection afforded to an individual's privacy by s4(1)(c) of the Broadcasting Act 1989 includes protection against disclosure of private or public facts where, to adopt the phraseology of the American tort, the matter disclosed would be highly offensive and objectionable to the reasonable person of ordinary sensibilities. Whether a disclosure meets that criterion of offensiveness etc will depend on the circumstances of each case: the protection of privacy cannot be absolute. Therefore, in an inquiry into a complaint that s4(1)(c) has been infringed, any competing claim of "public interest" in the facts disclosed, as well as any other relevant matter of defence (eg consent of the individual whose privacy is alleged to have been infringed) will need to be examined.

Applying that text to the present complaint, in so far as it relates to the *Fair Go* item on



15 May, the Authority has no difficulty in finding that the public disclosure of these public facts, in the context of an item on a topic of public interest, could not have been highly offensive and objectionable to a reasonable person of ordinary sensibilities. As a result, s4(1)(c) of the Broadcasting Act 1989 affords the complainant no protection.

As to that part of the complaint which relates to the follow-up item in *Fair Go* on 22 May, the Authority would only comment that a viewing of the item discloses that it gave rise to no grounds upon which to base a complaint of invasion of privacy.

For the foregoing reasons, the Authority declines to uphold the complaint.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson

27 February 1991

