

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 19/91

Dated the 10th day of May 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

GARETH SEYMOUR

of Hamilton

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson
J.B. Fish
J.L. Hardie
J.R. Morris
H. Tauroa Co-opted Member

DECISION

Introduction

A Telecom advertisement featuring the song "I've Been Everywhere" appeared on TV1 in March and April 1990.

Mr Seymour's Complaint to Television New Zealand Limited

After some correspondence with TVNZ Ltd and the Broadcasting Standards Authority, Mr Seymour made a formal complaint to TVNZ about the advertisement in a letter dated 10 April 1990. He considered that the advertisement breached standard 26 of the Television Code of Broadcasting Practice. Standard 26 reads:

People Considerations

26. Except as the legitimate expression in context of satire, dramatic themes and current affairs reporting might legitimately dictate, the portrayal of persons in programmes in a manner that encourages denigration of, or discrimination against, sections of the community on account of sex, race, age, disability, or occupational status or as a consequence of legitimate expression of religious, cultural or political beliefs, may not be encouraged.



Describing the Maori language as central to Maori culture and emphasising the significance of place names to Maori, Mr Seymour listed 43 Maori place names used in the advertisement and said that their mispronunciation encouraged denigration of Maori.

The advertisement, he added, also encouraged discrimination against Maori. Citing the Kohanga Reo movement and the Waitangi Tribunal report on the Maori language as evidence of the current stance by Maori in support of the correct use of the Maori language, he wrote that the mispronunciations in the advertisement trivialised and discredited the focus by Maori on language.

TVNZ's Response to the Formal Complaint

Following consideration of the complaint by its Complaints Committee, TVNZ in a letter to Mr Seymour dated 27 June 1990 wrote:

The subject of your complaint related to the audio track of a Telecom commercial featuring the John Hore sound track of the song "I've Been Everywhere". The video track was a montage of quick edits cut to fit the music. The shots featured people and places throughout New Zealand.

It added:

Your complaint related specifically to the sound track which you said contained 43 mispronounced Maori place names and 16 correctly pronounced pakeha place names.

The letter explained:

The Committee was informed that when your complaint was referred to the advertising agency which compiled the commercial, the following reply was received:

"In the case of 'I've Been Everywhere' by John Hore, we have gone to a great deal of trouble to ensure it sounds exactly like the original hit of the 1960's. This has included using the original singer, recording equipment and techniques used in that era, and even 'scratched' the track to age it.

There were words in the original like I'm a Guy and That's a Hui that were absolutely out of context with our commercial and made no sense in the track, but again out of respect for the original recording, we insisted that they must stay unchanged."

The Complaints Committee had assessed the advertisement against standard 26 and, in dismissing the complaint, TVNZ acknowledged that while the pronunciation on the soundtrack could certainly have been better, "there had been no deliberate attempt to offend anyone in any way whatsoever."



The letter concluded by pointing out that TVNZ was taking "strong and positive measures to ensure correct Maori pronunciation in its programmes". These included the appointment of a Maori adviser to the staff of the Chief Executive.

Mr Seymour's Complaint to the Broadcasting Standards Authority

As Mr Seymour was dissatisfied with TVNZ's decision, he referred the complaint to the Broadcasting Standards Authority on 19 July 1990 pursuant to section 8(a) of the Broadcasting Act 1989. As the basis for his complaint, he cited the broadcast of the Telecom advertisement at about 6.10 pm on TV1 on 10 April 1990.

He highlighted the importance of the Maori language to Maori and said that it was integral to the development of the Maori identity. Furthermore, he added, Maori was now an official language.

Citing standard 26, he maintained that the mispronunciations in the advertisement both denigrated and discriminated against Maori. With regard to denigration, he noted the Waitangi Tribunal's emphasis on the preservation of taonga (of which the language was one) to ensure the maintenance of Maori values and culture. Maori cultural values, he observed, were constantly portrayed negatively in the media and to "the Maori watching this advertisement, a feeling of personal denigration is reinforced". Maori people in the advertisement, he remarked, were portrayed in "irrefutably negative stereotypical roles" as jovial, promiscuous and good at physical work only. In contrast, the Pakeha in the advertisement were pictured in "leading roles", such as a policeman, a mayor and a supervisor.

Regarding discrimination, he said that the advertisement treated Maori, both the people and the language, unfairly and that this unfair treatment was based on prejudice. The basis of this accusation, he explained, was that despite TVNZ's efforts to ensure correct pronunciation, it had acquiesced to the broadcast of an advertisement with acknowledged mispronunciations. This had occurred notwithstanding the assertion in TVNZ's letter, that (and he quoted TVNZ's letter) "there had been no deliberate attempt to offend anyone". With reference to three specific points made by TVNZ he commented:

- i) the attempted creation of an advertisement with the authenticity of the 1960s failed to acknowledge the change in attitudes since then;
- ii) the infliction of offence unintentionally was no defence to a breach of standard 26; and
- iii) it was irrelevant that the number of complaints was few as criticisms, although expressing a minority opinion, were valid nevertheless.

In a further letter dated 1 August 1990, he expressed his dismay, and disapproval, that the advertisement should reappear on television on the first day of Maori Language



The Authority's procedure pursuant to s.10 of the Broadcasting Act 1989 is to determine complaints referred to it without oral submissions unless the complaint falls into one of three categories. The Authority decided to receive oral submissions in Mr Seymour's case in view of his request to give them and taking into account the Authority's willingness to hear oral submissions if it is deemed likely that the written presentation of the complaint may be inadequate.

As the Authority was meeting in Hamilton on 16 November 1990 to conduct other business, it allowed Mr Seymour the opportunity to present his oral submissions briefly. On that occasion, Mr Seymour again emphasised the importance of the Maori language to Maori culture, noted the importance of place names in Maori history and placed his specific concerns about the Telecom advertisement in a social and political context.

The correspondence from Mr Seymour and an audio tape of his oral submission were referred to TVNZ for a response.

TVNZ's Response to the Authority

TVNZ responded in a letter dated 10 December 1990 in which it emphasised the company's commitment to correct pronunciation of the Maori language.

TVNZ pointed out that the staff representative on the Complaints Committee was a fluent Maori speaker. He had found the Telecom advertisement offensive, although a similar advertisement in the English language would not have been because of the different attitudes to language among Maori and Europeans. Acknowledging that he was generalising, the staff representative described the Maori perception of language as spiritual and emotional (with oratory regarded highly) while the European view of English emphasised the utilitarian aspects of communication with the beauty of English often being confined to literature.

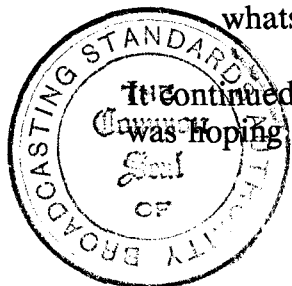
In advancing the staff representative's case for a differing Maori and European approach to language, TVNZ quoted from the representative's submission to the Complaints Committee:

This can be succinctly seen in two proverbs. English - "Sticks and Stones may break my bones, but words will not worry me." Maori - "You can parry a wooden spear, but not a verbal one."

Nevertheless, the issue was an alleged breach of standard 26 and a breach of this standard, TVNZ maintained, required proof that the broadcaster intended to encourage denigration or discrimination. TVNZ wrote:

The company would strongly deny that in its broadcast it had any intention whatsoever of setting about encouraging denigration or discrimination.

The continued by stating that to expect correct pronunciation in all languages at all times was Hoping for the impossible. This applied to the Telecom advertisement and:



Although the place names may not have been redolent with the accent acceptable to the complainant, it could be said that there was a beautiful euphony and lilt which enhances and gives cause for admiration not denigration.

Acknowledging the complainant's "masterly presentation of his case", TVNZ concluded that standard 26 had not been breached as:

It was the Committee's collective view that there was no encouragement in the manner of presentation with regard to denigration or discrimination.

Decision

The Authority has studied the correspondence and carefully considered the arguments put forward by Mr Seymour, both in writing and orally, in support of his complaint and by TVNZ in response. All members have viewed the advertisement which gave rise to the complaint. The Authority's own research discloses that approximately two thirds of the 43 Maori place names in the advertisement were in fact mispronounced.

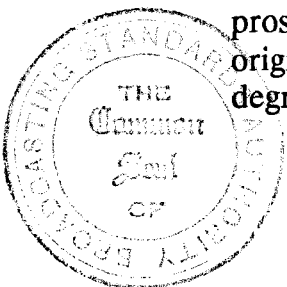
Standard 26 is unusually worded in that it does not expressly prohibit "the portrayal of persons in programmes in a manner that encourages denigration of, or discrimination against, sections of the community on account of ... race ...". Rather, it provides that such portrayals "may not be encouraged". Another notable feature of the standard is that it does not specify whether it may be breached only by intentional conduct on the part of a broadcaster or whether, in addition, a breach may be proven when a broadcaster unintentionally portrays people in a manner which encourages denigration or discrimination.

These matters will be returned to. First, the meaning of the concepts of denigration and discrimination will be examined.

Denigration

The High Court has examined the concept of the denigration - in particular, the denigration of women - in the course of exercising its appellate and review jurisdiction over decisions of the Indecent Publications Tribunal and Film Censors. In 1987, in Comptroller of Customs v. Gordon & Gotch (NZ) Ltd [1987] 2 NZLR 80 at 94, Jeffries J, in the Full Court of the High Court, stated:

I have the most serious doubts, and must express them, that any representational view of women within the broad realms of indecent publications could denigrate all women. It is a logical fallacy. ... Surely actual female prostitution is symbolically worse than any form of pictorial or verbal representational view of women, but it could hardly be said in any logical or practical sense that prostitution denigrates women as a class. ... Moreover, the verb 'denigrate' by origin and meaning is to blacken, especially a reputation. It is not a synonym for degrade, debase, deprave or words of that genre.



McGechan J, in The Society for the Promotion of Community Standards v. Everard CP No. 616/86, 23 October 1987 at p 53, expressed similar sentiments, as follows:

There is no dispute - and nor could there be - that at least in theory women are a class of the public and are capable of being denigrated as such. Traditional reference to women drivers might be an example. The Full Court (majority) had considerable reservations whether a representational view of women (whatever that may be) in a publication, not putting those women forward as symbolic of all women, could be taken as denigration of all women. I am respectfully inclined to agree. The male mind by no means necessarily associates the woman he sees in pornographic situations with all women, any more than it associates all prostitutes with all women.

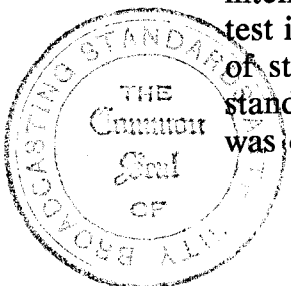
The Authority quotes these comments not because they are directly applicable to the situation before it but to highlight the difficulties which the High Court has experienced with the concept of denigration of a class of people. In particular, the comments suggest that the Court would not find that a class of people had been denigrated unless an explicit condemnation of the class as a whole had occurred. Further, they suggest that the standard by which denigration of a class of people is to be assessed is not necessarily the view of the class itself: the view of the "male mind" was taken to be conclusive of the absence of denigration of women in the SPCS case.

Further assistance on the matter of the standard by which to judge the occurrence of denigration may be found in the law of defamation, which concept - like denigration - also requires injury to reputation. As well, defamation law provides insights into the gravity of the harm to reputation which the courts require in that context.

Professor J.G. Fleming, in the *Law of Torts* (7th edition, pp 501 - 3), summarises pertinent aspects of the law of defamation as follows:

A defamatory statement may be defined as one which tends to lower a person in the estimation of his fellow men by making them think the less of him. Frequently, it takes the form of an imputation calculated to bring the plaintiff "into hatred, contempt or ridicule", whether by direct statement, irony, caricature or any other means; but it is not necessary that words have the tendency to excite feelings of disapprobation, provided they cause him to be shunned and avoided by his fellows. ... A person's standing in the community, taking people as they are with their prejudices and conventional standards, is just as likely to be impaired by an attribution of misfortune as of contemptible conduct. ...

The question of what standard to apply in determining whether a statement is defamatory has not been answered uniformly. The criterion commanding the widest verbal support seems to be the reaction aroused in citizens of "fair average intelligence" or "ordinary, decent folk in the community, taken in general". This test is not identical with "reasonable", let alone "ideal". The increasing diversity of standards in modern (Australian) society precludes an appeal to a single standard of "right-thinking" people and suggests as insufficient that the allegation was calculated to stir up adverse feelings among a substantial and respectable



group of the community without them being shared in other quarters. [Footnote references omitted.]

From the above statements about the legal concept of defamation, the Authority draws attention to two points which may apply equally to the concept of denigration. First, the injury to reputation must be of a very serious nature: causing others to shun or avoid its victim. Secondly, the standard by which an alleged injury to reputation is judged is not the view that would be taken of it by a "reasonable" person, let alone one with "ideal views": it is the view which "ordinary decent folk in the community, taken in general" would have.

Discrimination

With regard to the concept of discrimination, the Authority accepts the following definition from the handbook entitled "Australia and New Zealand Equal Opportunity Law and Practice", published by the Commerce Clearing House:

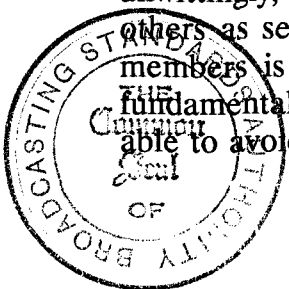
In general terms, discrimination is any practice that makes distinctions between individuals or groups so as to disadvantage some and advantage others. To find out whether one person has discriminated against another person involves a comparison between how the other person is treated and how a real or hypothetical person of a different status (such as sex or race) is treated.

This definition assumes that the comparison to be drawn between the treatment of one person (or one section of the community) and another can and will be performed from a neutral standpoint. However, the Authority considers that a neutral standpoint is difficult to attain: any person called upon to make an assessment of whether discrimination has or has not occurred, necessarily brings to the task his or her own experiences of, and beliefs about, the society of which he or she is a member.

Encouragement of denigration or discrimination: is intention required?

Standard 26 of the Television Programme Standards is tortuously worded to discourage "the portrayal of persons in programmes in a manner that encourages denigration of, or discrimination against, sections of the community ...". As was noted earlier, the standard does not specify whether intention on the part of the broadcaster is vital to the success of a complaint alleging a breach of its terms.

It was because TVNZ's Complaints Committee interpreted standard 26 to require the broadcaster's intentional encouragement of denigration or discrimination that it concluded that the broadcast of the Telecom advertisement did not breach the standard. That interpretation found a degree of favour with a minority of the Authority members. The majority, however, rejected it on the basis that encouragement can be given unwittingly, as happens, for instance, when the behaviour of one person is construed by others as setting an example to be followed. The view of the majority of Authority members is that the human rights which are protected by standard 26 are of such fundamental importance that no broadcaster, especially a public broadcaster, should be able to avoid a ruling that it breached the standard by relying on its own ignorance or



carelessness about racial, sexual, or the other listed bases for denigration and discrimination.

Further support for the view that standard 26 is not limited to the intentional encouragement of denigration and discrimination is found in the Authority's Decision No: 3/90, where it is stated, at page 10:

In the Authority's view, the intention of an advertisement as stated by its creators cannot override its effect. Thus, if the professed intention of an advertisement does not clearly coincide with the effect which it may reasonably have upon viewers, its effect must be assessed against the rules contained in the Codes of Broadcasting Practice. With regard to advertisements portraying people, the Authority notes that if advertisers and broadcasters pay close attention to the egalitarian spirit of the general principles of the Code for the Portrayal of People in Advertising, the risk of there being any ambiguity between an advertisement's intention and effect will be avoided.

Authority members were unanimous in their view that the intention of the advertising agency which compiled the Telecom advertisement, i.e. to create a "period piece" by the use of scratches in the audio track etc, was not adequately conveyed in the finished product. Instead, the Authority considered that any technical deficiencies in the quality of the soundtrack were not discernible to the average person and that the visuals accompanying the soundtrack, which were not "dated" in any visible way, put paid to any claim that the advertisement was presented as a "period piece".

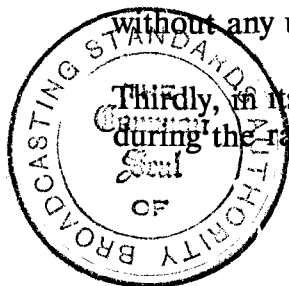
Matters relevant to Decisions

Since the view of the Authority is that standard 26 may be breached by a broadcaster's unintentional encouragement of denigration of, or discrimination against, a section of the community, its next task was to consider whether any such breach occurred with the broadcast of the Telecom advertisement. Three preliminary points relevant to the Authority's decision require explanation.

First, the Authority recognises that to Maori, language is a taonga. Place names are special and have a spiritual significance which is an integral part of the culture. A place name is an historical account of that area. It enhances teachings from ancestors which have been transmitted orally from generation to generation.

Secondly, the question of humour is another matter which the Authority considers to be relevant in view of the light-hearted aspect of the advertisement. The Authority does not consider that present New Zealand society readily accepts humour which involves negative racial stereotyping except in the case of satire. The degree of sensitivity may be reducing as understanding increases, but there is room for considerably more tolerance before humour based on racial themes becomes socially acceptable as humour without any undertones of denigration or discrimination.

Thirdly, in its deliberations, the Authority accepts that the mispronunciations occurred during the rapid enunciation of the lyrics. This, it is considered, may have had less of



an adverse effect than would have been the case with mispronunciations occurring during some other, more staid, form of communication.

With regard to the role of the Maori language in our society, the Authority notes:

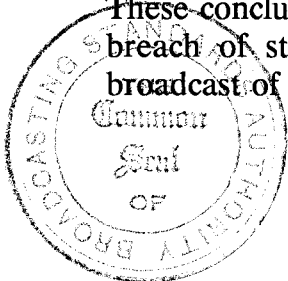
- * that Maori history and culture is intrinsically bound to the oral use of the Maori language;
- * that the Waitangi Tribunal has found that the language of the Maori is a taonga under Article II of the Treaty of Waitangi and the Treaty obliges the Crown to protect the Maori language;
- * that the Maori Language Act 1987 established the Maori language as an official New Zealand language; and
- * that dynamic changes in the New Zealand culture (both Maori and non-Maori) have occurred in the past 30 years.

The following additional points are important when considering the advertisement complained about:

- * that it contained 43 rapidly uttered Maori place names of which approximately two thirds were mispronounced;
- * that as an advertisement (and this point is confirmed by the agency which compiled it), its preparation and presentation were carefully planned; but its historical theme as a period piece was inadequately portrayed; and
- * that as an advertisement, it was presented in a way which was designed to attract the viewers' attention. In many cases, such presentations involve portraying an ideal social situation which viewers may wish to emulate.

After taking into account the three preliminary points, the general points above relating to the Maori language and the specific points relating to the advertisement, together with the effect of the advertisement as distinct from the presenter's intention, the Authority concluded that the advertisement displayed a high degree of insensitivity which many fluent speakers of Maori would find insensitive. Indeed, in the Authority's view, the advertisement showed disrespect for Maori culture.

These conclusions, however, are not in themselves sufficient to reveal whether or not a breach of standard 26 of the Television Programme Standards occurred with the broadcast of the Telecom advertisement.



Interpretation of Standard 26

The Authority had to decide upon an interpretation of the tortuous wording of standard 26 insofar as it states that "the portrayal of persons in programmes in a manner that encourages" denigration and discrimination (upon the listed grounds) "may not be encouraged". Taken literally, that form of words does not create a clear standard of behaviour at all: it does not set clear limits of conduct which must not be exceeded by television broadcasters in particular programmes. Instead, the wording appears to leave room for a television broadcaster to encourage some modicum of denigration and discrimination as long as the broadcaster does not, as a general programme practice, encourage those things.

The Authority considers that if standard 26 were to be given its literal meaning, its own statutory duty - to determine whether the broadcast of individual programmes breaches broadcasters' programme standard responsibilities - would be impossible to perform with regard to the standard. Seeking assistance as to the proper course for it to adopt in the circumstances, the Authority turned to s.5 of the Broadcasting Act 1989 which sets out nine general principles upon which the statutory broadcasting complaints process is based. One of those principles, specified by s.5(b) is that:

A body other than the broadcaster must be available to complainants to ensure that broadcasters discharge their responsibilities in relation to programme standards.

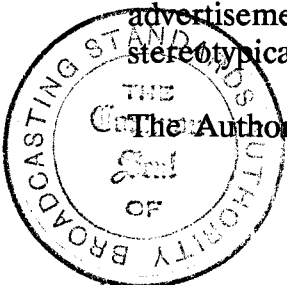
This statement of general principle, in the Authority's view, indicates that it should, when faced with an ambiguous or otherwise deficient programme standard, give it an interpretation in accord with the meaning which the standard was most likely intended to bear. As a result, the Authority concluded that it should interpret standard 26 to prohibit the portrayal of persons in any programme in a manner which encourages the denigration of, or discrimination against, the sections of the community there specified.

It may be noted that TVNZ's Complaints Committee's own approach to the present complaint provides incidental support for the Authority's interpretation of standard 26. At no time did the Committee seek to defend the broadcast of the Telecom advertisement by raising an argument based on the literal meaning of the standard. Instead, it treated the complaint on its merits and on the assumption that standard 26 provides a meaningful criterion against which to assess the effect of a particular programme. The Authority believes that the interpretation given by the Committee to standard 26 accords in spirit with its own.

The denigration complaint

Taking all relevant matters into account, the Authority unanimously found no basis for the aspect of the complaint which alleged that the broadcast of the Telecom advertisement encouraged denigration of Maori by portraying Maori in negative stereotypical roles, as jovial, promiscuous and good at physical work only.

The Authority observed that most people depicted in the advertisement were smiling.



Further, in its view, the portrayal of a Maori woman stretching up her arms in bed as the 'phone rang beside her carried no implication that she was promiscuous. And while Maori men were portrayed as labourers in two or three of the rapid montage of shots of various people and Pakeha men were portrayed in other employment roles, the Authority concluded, in light of the meaning of denigration discussed above and the standard by which it seems it is to be judged, that this could not, of itself, amount to a portrayal encouraging denigration of Maori.

The second aspect of the denigration complaint focused on the advertisement's numerous mispronunciations of Maori place names, alleging that these encouraged denigration of Maori. In the result, although for differing reasons, Authority members were also unanimous that this aspect of the complaint could not be upheld.

The examination of the concept of denigration (above) reveals that denigration of a section of the community, in this case Maori, involves serious injury to the reputation of Maori. Further, by analogy to the concept of defamation, it appears that the standard by which any such claimed injury should be assessed is the view of "ordinary, decent folk in the community, taken in general" - and not the view of a particular segment of the community, which may be more "reasonable" or "ideal". While the Authority does not necessarily endorse this standard for judging denigration, for the reason that it may operate to perpetuate inequitable views about those sections of the community most prone to inequitable treatment, it unanimously concluded that the view of "ordinary, decent folk" in New Zealand, "taken in general", would not support the complainant's allegation that the broadcast of the Telecom advertisement encouraged denigration of Maori by its numerous mispronunciations of Maori place names.

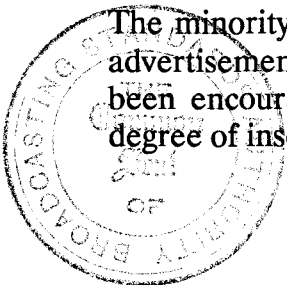
As will be elaborated below, a minority of members also rejected the second aspect of the denigration complaint for the reason that the mispronunciations of Maori place names could not be said to be a "portrayal of persons" within the meaning of standard 26.

For the above reasons, the Authority declines to uphold the complaint alleging that the Telecom advertisement encouraged denigration of Maori in breach of standard 26 of the Television Programme Standards.

The discrimination complaint

Having reached this result on the two aspects of the denigration complaint (the portrayal of people and the mispronunciation of place names), Authority members debated at considerable length the complaint alleging that the broadcast of the Telecom advertisement had encouraged discrimination against Maori by its numerous mispronunciations of Maori place names. Here, the differing approaches of members meant that the Authority's decision was not unanimous.

The minority view considered that there was no "portrayal of persons" in the Telecom advertisement upon which to base the allegation that discrimination against Maori had been encouraged by its broadcast. Thus, while accepting unhesitatingly that a high degree of insensitivity was displayed by the advertisement's numerous mispronunciations



of Maori place names, the minority view was that those mispronunciations could not be said to comprise a "portrayal of persons" within the meaning of standard 26. For those reasons, the minority concluded that the discrimination complaint could not be upheld.

The majority of Authority members, however, considered that the numerous mispronunciations of Maori place names which occurred in the Telecom advertisement could properly be understood to comprise a "portrayal of [Maori] persons". This conclusion was based on the combined weight of four facts: the very high regard in which the Maori language is held by Maori; the special significance within Maori culture and language of Maori place names; the official recognition in New Zealand of the Maori language; and the large number of Maori place names used in the advertisement. In essence, the majority of the Authority members considered that to deny that the Telecom advertisement portrayed Maori persons would be to undervalue the importance of the Maori language both to Maori and generally in New Zealand.

Because of the numerous mispronunciations of Maori place names in the advertisement, the majority of Authority members had no doubt that it portrayed Maori in a negative light. That alone is not sufficient, however, to establish a breach of standard 26's anti-discrimination provision. In terms of the definition of discrimination earlier cited, a comparative exercise must be performed before a finding of discrimination can be reached. Further, it must not be forgotten that standard 26 does not apply directly to discriminatory portrayals: it applies to portrayals which "encourage" discrimination.

Turning to the comparative exercise, the majority of Authority members considered that it would be wholly inadequate to seek to compare the broadcast of the Telecom advertisement with an imaginary broadcast which mispronounced a large number of English place names. To choose such a comparator would be to deny the fact of the special cultural significance of the Maori language to its people. The difference between Maori and Pakeha cultures in this regard made difficult the task of imagining a comparator situation. However, Authority members considered that the negative portrayal of Maori language could well be compared to an hypothetical broadcast that gave a negative portrayal of an established religious practice followed by many Pakeha in New Zealand. It was considered that such a comparator captured the essential features which gave rise to the complainant's concern about the broadcast of the Telecom advertisement, namely, its misuse of a subject having spiritual significance in the lives of its adherents.

The question was then asked whether a broadcaster in New Zealand would be likely to broadcast a programme which misused the hypothetical religious practice followed by many Pakeha. In response, the majority of the Authority members concluded that a broadcaster would be very unlikely to do this, for the reason that its awareness of the significance of the religious practice to many Pakeha would cause it to take great care in dealing with the subject. Because of that caution, the broadcaster would be unlikely to misuse the hypothetical religious practice to any significant extent.

Therefore, the conclusion from that analysis, reached by a majority of Authority members, was that the portrayal of Maori persons achieved by the broadcast of the Telecom advertisement, with its numerous mispronunciations of Maori place names, was



discriminatory to Maori.

The last matter to consider was whether the broadcast of that discriminatory portrayal of Maori persons "encouraged" discrimination against Maori. Having already concluded that such encouragement need not be made intentionally but may be made unwittingly by a broadcaster, the majority of the Authority members were able to conclude that the broadcast of the Telecom advertisement did encourage discrimination against Maori. Their view was that the public has a reasonable expectation of broadcasters, especially public broadcasters, that they will not broadcast material which is discriminatory - at least towards the sections of the community listed in standard 26. Therefore, when discriminatory material is broadcast, it might fairly be assumed by the public - or, at least, by those who are unfamiliar with the section of the community discriminated against - that the material is non-discriminatory. As a result, the broadcast would encourage the perpetuation or adoption of the discriminatory attitude by members of the public.

For the above reasons, the Authority, by majority, upholds the complaint that the broadcast of the Telecom advertisement breached standard 26 of the Television Programme Standards by encouraging discrimination against Maori.

The Authority urges broadcasters to display sensitivity in the future in order to ensure that the use of outdated stereotypes (racial, sexual, occupational etc) which might encourage discrimination or denigration are excluded from all programmes unless used in such a way to conform with the exceptions endorsed by standard 26. The Authority's attention has been drawn to the booklet "Kawe Korero - A Guide to Reporting Maori Activities" by Michael King, published by the New Zealand Journalists Training Board in 1985. It is, the Authority believes, to borrow a phrase from the foreword of the booklet, "a worthy resource".

In this respect the Authority is encouraged to read that, in spite of the lapse resulting in this complaint, TVNZ has voiced its strong commitment to ensure correct Maori pronunciation in its programmes.

The Authority acknowledges that some months have elapsed since TVNZ's final comment was received in December 1990 and the date of this decision. However, the Authority is aware of the importance of this determination and the accompanying decision on the complaint from Nga Kaiwhakapumau I Te Reo (Decision No: 20/91). That complaint was, in part, concerned with the same Telecom advertisement, although it alleged a breach of the good taste and decency requirement of s.4(1)(a) of the Broadcasting Act 1989 rather than standard 26 of the Television Code of Broadcasting Practice. In view of the importance of these decisions for broadcasters and for the Authority as precedents for future complaints of this nature, the Authority considers it appropriate that its decisions examine in detail the issues involved.

Co-opted Member

Mr. Hiwi Tauroa was co-opted as a person whose experience was likely to be of assistance to the Authority. He was consulted by the Authority but the decision is that



of the permanent members.

Signed for and on behalf of the Authority

Jocelyn Fish

Jocelyn Fish

10 May 1991

