

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 24/91

Dated the 17th day of June 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

NEW ZEALAND AIDS
FOUNDATION

Broadcaster

RADIO NEW ZEALAND

J.B. Fish Acting Chairperson
J.L. Hardie
J.R. Morris

DECISION

Introduction

AIDS and the role of the New Zealand Aids Foundation were among the topics discussed on a talkback programme on NewsTalk 1ZB between 8 pm and midnight on 12 September 1990. The talkback programme was hosted by Mr Chris Carter and the discussion on AIDS lasted for about 20 minutes.

New Zealand Aids Foundation's Complaint to Radio New Zealand Limited

The New Zealand Aids Foundation wrote to the programme director of Station 1ZB on 10 October 1990 to lay a formal complaint under the Broadcasting Act 1989. Without specifying any particular standard, the Foundation stated that Mr Carter's comments fell below the standards set by the Code of Broadcasting Practice for Radio.

The Foundation, attaching a 12 page transcript of the programme, drew attention to ten remarks which it said were factually incorrect, eight remarks it considered could be defamatory and nine personal opinions or incorrectly interpreted statistics which in its view could be dangerous to the public's health. The letter concluded:

By way of reparation, NZAF seeks a public apology from Mr Carter to the Foundation and its staff, an invitation to speak on Mr Carter's show at the earliest



opportunity to correct his errors, and an undertaking from Mr Carter to consult NZAF when issues relating to AIDS arise on his show in future.

1ZB's Response to the Complaint

The manager of NewsTalk 1ZB replied to the Foundation in a letter dated 1 November 1990. He explained that the nature of talkback programmes involved vigorous debate in which a host might comment on the issue under discussion.

With reference to the topic of AIDS, which he described as controversial, he stated that people held strong and sometimes divergent views. Medical opinion, he continued, varied and the numerous publications on this issue expressed different opinions.

Regarding the complaint, the allegations of factual inaccuracy were denied and, with regard to possible defamation, the manager recorded:

I do not accept that the remarks of Mr Carter to which you have drawn attention in your letter are defamatory of anybody. Further, these remarks are expressions of opinion honestly held by Mr Carter on a matter of public interest.

The letter concluded with the suggestion that the Foundation and the Station hold a meeting to discuss the issues.

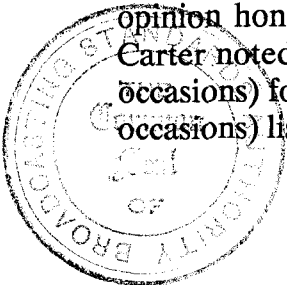
In a letter to 1ZB dated 7 November 1990, the Foundation sought clarification about the purpose of the proposed meeting. A hiatus in the correspondence followed but after some letters in late December 1990 and early January 1991, the Foundation repeated its request that its letter of 10 October be treated as a formal complaint.

RNZ's Response to the Formal Complaint

Radio New Zealand responded in a letter dated 25 January 1991. It began by explaining that talkback programmes were designed to be spontaneous and robust and that listeners were encouraged to express unfettered views. Talkback hosts, it continued, while allowed some latitude, were:

... expected to exercise professionalism, consistent with the terms of the Broadcasting Act and the Codes of Broadcasting Practice, tempered by the recognition of the impromptu nature of talkback.

In assessing the matters raised in the complaint, RNZ's Complaints Committee decided first, that the matters of "probable defamation" were not within its jurisdiction. Moving to the expressions of opinion by Mr Carter, which were described as expressions of opinion honestly held on a matter of public interest, it was pointed out, first, that Mr Carter noted on four occasions his lack of expertise, secondly, that he appealed (on two occasions) for listeners to provide information, and thirdly, that he encouraged (on three occasions) listeners to seek professional advice. It concluded that the transcript recorded



that Mr Carter in his role of a talkback host was explicit that the views he expressed were personal opinions.

Regarding the facts and statistics discussed, it was again pointed out that Mr Carter did not claim to be an expert and that airtime on the programme was available to all bona fide callers. Further, although Mr Carter was forthright in volunteering information, bearing in mind the limitations he expressed, RNZ did not regard the comments made as dangerous or as exaggerations.

RNZ then discussed its findings against section 4(1)(a) and (d) of the Broadcasting Act 1989 and standards 1.1(e), (l) and (m) of the Radio Code of Broadcasting Practice.

Section 4(1)(a) requires the observance of good taste and decency and the Committee did not accept that, in a robust programme, Mr Carter had exceeded acceptable bounds.

Section 4(1)(d) requires that programmes, when dealing with controversial issues, offer reasonable opportunities for the presentation of significant points of view. This standard had not been breached, RNZ stated, pointing to a number of matters including the fact that Mr Carter had twice appealed for substantive information.

Standard 1.1(e) of the Radio Code of Broadcasting Practice requires that people taking part or referred to in a programme be dealt with justly and fairly. In the Committee's opinion this standard was not breached, taking into account the entire programme and that the opinions expressed by the callers and the host were clearly personal.

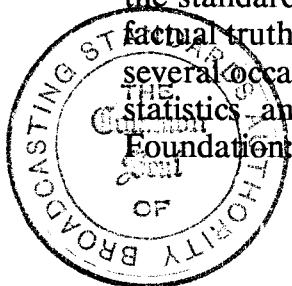
Standard 1.1(l) requires the speedy correction of factual errors. Again pointing to the nature of a talkback programme, which was unlike current affairs on a number of key criteria, it was considered that this standard had not been breached.

Regarding standard 1.1(m) which requires broadcasters to act speedily in the event of a complaint, RNZ acknowledged that there were delays both on its part and by the Foundation in pursuing the complaint. It expressed regret that the Foundation's letter of 7 November was not responded to until 19 December (and then after a reminder from the Foundation) but RNZ did not acknowledge that standard 1.1(m) had been breached.

New Zealand Aids Foundation's Complaint to the Broadcasting Standards Authority

As the Foundation was dissatisfied with RNZ's decision, it referred the complaint to the Authority in a letter dated 11 February 1991 under s8(a) of the Broadcasting Act 1989.

The letter stated that Mr Carter made a number of factual errors and it listed seven specific points. It argued that a host of a talkback programme should be governed by the standard which applies to news and current affairs programmes and which requires factual truth and accuracy. It acknowledged that Mr Carter had disclaimed expertise on several occasions but, nevertheless, it observed that he had claimed to have read books, statistics and medical magazines on the subject of AIDS. In the words of the



While not claiming expertise explicitly, he does claim knowledge, which, coupled with the natural authority inherent in his voice and position, amounts to the same thing.

The Foundation added that RNZ claimed that the issues in dispute were matters of opinion and not matters of fact and, while agreeing that there were major areas of disagreement among experts in relation to HIV/AIDS, this did not apply to Mr Carter's factual errors.

Referring to standard 1.1(1) which requires broadcasters to make reasonable efforts to present all significant views, the Foundation pointed out, first, that it operated a 24 hour AIDS Hotline and secondly, that it was unreasonable to expect an AIDS spokesperson to monitor talkback programmes in case AIDS was discussed.

In regard to the possibly defamatory comments, the Foundation acknowledged that this legal issue was not within the Authority's jurisdiction but standard 1.1(e) of the Radio Codes requires programmes:

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

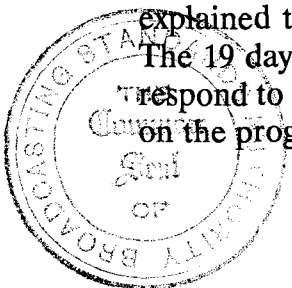
The Foundation listed eight comments which it alleged breached this standard. In addition, it asserted that Mr Carter made an accusation of professional misconduct when he:

Referred to NZAF as a "bunch of woolly woofers" and accused NZAF of designing its education campaigns without having due regard for all relevant considerations (viz their effect on small children)

This, the Foundation said, breached standard 8.1 which prohibits the broadcast of material which encourages denigration of, or discrimination against, sections of the community.

In addition to the factual errors, the Foundation listed some specific points of personal opinion or misrepresentation of the statistics which it claimed were misleading and which could have been dangerous. Four of the points, the Foundation stated, were not factually accurate (1.1(a)), two displayed insufficient efforts to present all significant points of view (1.1(i)), and one encouraged denigration and/or discrimination (8.1).

Regarding standard 1.1(l) which requires speedy correction of factual errors, the Foundation recorded that Radio 1ZB was aware of the Foundation's interest in the programme a few days after the broadcast but had made no attempt to correct the errors. The Foundation objected strenuously to RNZ's view that the 19 days it took to lodge the complaint indicated a lack of seriousness on the Foundation's part. It explained that time had been needed to obtain, to transcribe and to analyse the tape. The 19 days were contrasted with the 60 working days taken by Radio New Zealand to respond to the formal complaint. It again sought a public apology, an invitation to speak on the programme and an undertaking from Mr Carter to consult the Foundation when



AIDS issues arose on his show. It added a request for costs in pursuing the complaint.

RNZ's Response to the Authority

In response to an invitation from the Authority for comments on the Foundation's letter, RNZ's reply dated 19 March 1991 amplified some matters raised in its letter to the Foundation dated 25 January.

While not asserting that a talkback programme was not a current affairs programme, RNZ distinguished at some length between a formal current affairs programme (which is bound by the truth and accuracy standard in 1.1(a)) and an unstructured and informal talkback show. The host's responsibility for the latter,

... is to ensure that talkback does not stray beyond the bounds of good taste and decency or become defamatory, and that callers are given a fair chance to express honestly-held opinions

Moreover, RNZ wrote, although talkback hosts were subject to the broadcasting standards, the application of the rules must be measured against the nature of the programme. Although a talkback programme must be impartial in presenting the differing views offered by listeners, it was inherently impractical to seek all significant views.

What a talkback programme must do is ensure that the proponents or opponents of a certain point of view are given free access to take part in the programme, or a subsequent broadcast, and given every reasonable opportunity to have their say. (RNZ's emphasis)

This position, RNZ maintained, applied to the Aids Foundation.

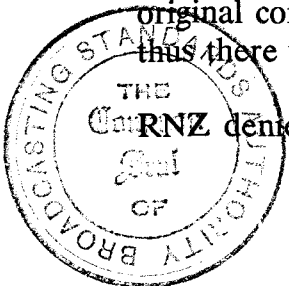
RNZ declined to comment on defamation issues as defamation was not discussed in either the Broadcasting Act or the Radio Codes.

Turning to the expression of personal opinion, RNZ pointed to the commonly expected role of a talkback host, and specifically to Mr Carter's denials of expertise, his appeals for substantive information, his encouragement for listeners to seek professional advice, and wrote:

Radio New Zealand believes that in the context of a talkback programme - complete with inherent flaws and well-understood nature - the programme complained of did not breach the Act or the Code. (RNZ's emphasis)

Accepting responsibility for the unnecessary delay in dealing with the Foundation's original complaint, RNZ added that, nevertheless, it met the statutory time limits and ~~thus there~~ was no breach of the Act or the Code.

RNZ denied that an apology from Mr Carter was necessary and declined to give an



undertaking to consult the Foundation if the HIV/AIDS issue arose again. It pointed out that Mr Carter was aware of the Foundation's complaint and that the Foundation was (and continued to be) free to call the programme to discuss HIV/AIDS.

New Zealand Aids Foundation's Final Comment to the Authority

At the Authority's invitation, the Foundation commented on RNZ's response in a reply dated 5 April 1991. It repeated its complaint that the programme contained factual errors, made misleading interpretations and insulted the Foundation and its employees.

It summarised RNZ's stance:

Radio New Zealand argues that neither the Act nor the Code of Practice imposes any standard on talkback programmes in respect of these matters except to provide balance within the viewpoints that people call with. In other words, that in talkback programmes, broadcasters may mislead, say inaccurate things, insult and denigrate, subject only to the provisions of the criminal law.

The Foundation expressed its disagreement with this position, adding that factual inaccuracy about AIDS was extremely important as:

Wrong ideas and wrong information about AIDS kill people.

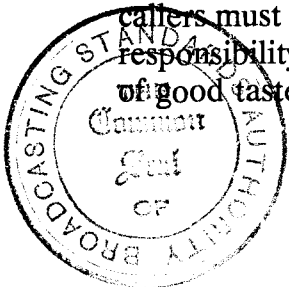
Decision

In investigating and reviewing this complaint, members of the Authority both read the transcript and listened to a tape of the programme. It carefully considered the arguments advanced by the Aids Foundation in support of its complaint and by RNZ in response. Both the complainant and RNZ have raised the issue of the extent to which the Radio Code of Broadcasting Practice applies to a talkback programme.

RNZ distinguished between a formal current affairs programme and a talkback programme. With the former, listeners expected, and were entitled to expect, an accurate, impartial and balanced programme. With the latter, listeners expected, and welcomed, a freewheeling and controversial broadcast.

The Aids Foundation, maintained that if this attitude meant that the sole requirement upon talkback programmes was a balance of viewpoints from callers, then only the criminal law could control inaccuracies, insults or denigration.

The Authority considered that the Foundation's conclusion inaccurately interpreted RNZ's position. RNZ, in its letter to the Authority of 19 March, argued that while callers must be given a fair chance to express their views, the programme's host bore the responsibility to ensure that each talkback programme did not stray beyond the bounds of good taste and decency or become defamatory.



The Authority agreed with RNZ's comments about good taste and decency as s4(1)(a) of the Broadcasting Act 1989 requires broadcasters to maintain in all their programmes, standards which are consistent with the observance of good taste and decency. Further, and again referring to all programmes, s4(1) requires broadcasters to maintain standards which are consistent with the maintenance of law and order and the privacy of the individual, and to make reasonable efforts or give reasonable opportunities to present significant points of view. In addition, s4(1)(e) requires broadcasters to comply with any approved code of broadcasting practice which applies to the type of programme which is broadcast.

Some of the correspondence focused on standard 1.1(a) of the approved Code of Broadcasting Practice for Radio which requires broadcasters:

To be truthful and accurate on points of fact in news and current affairs programmes.

The first issue facing the Authority was whether a talkback programme, in dealing with current events, was a current affairs programme. The Authority considered that a blanket answer to this question was not appropriate. Each talkback programme must be assessed individually. In the present case, while the topic of AIDS is one of continuing interest, apparently it was not discussed on 24 September at the host's initiative nor with reference to a specific current topic in the media, but in response to a question raised by a caller. As a result, in this case, the Authority accepted that, although the programme dealt with topical events, it was not a current affairs programme within the meaning of standard 1.1(a). Thus, the truth and accuracy requirement of that standard did not apply.

For the reasons given above, the Authority declines to determine the complaint which alleged a breach of standard 1.1(a) of the Code of Broadcasting Practice for Radio.

Standard 1.1(e) is the standard against which the Authority examined the programme in some detail. It requires broadcasters:

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

The Aids Foundation was referred to in the programme on a number of occasions. Mr Carter's comments included:

The Aids Foundation in my view should be rolled up and the people running it ... um, you know ... sent on to other tasks because in my view they have fed New Zealanders a load of nonsense.

What I am saying is that the Aids Foundation's advertisement is largely based on tripe, ...

Well I mean it [the advertisement on radio comparing AIDS to a sore throat] was wall to wall rubbish, is what it was. And these are the sort of ads that regrettably



are being put on. Now the parts in which I personally find it offensive in a family situation with small kids can be sitting there on a Saturday night watching television having various wallies coming on telling my kids, as little fellows, that they'd better use french letters if they are going to have it off with girls. I find that bloody offensive.

... from the AIDS Foundation, from advertising agencies which in my wall, in my view have largely been staffed by wall to wall weirdos anyway, uh, trespassing in my home via my television set, via a largely government controlled television system with messages that I find offensive.

He also said with regard to the transmission of the disease:

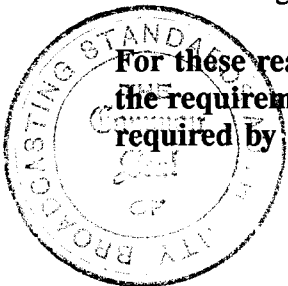
If you'd been reading your papers or even better reading medical magazines which fortunately I get sent, you will find, were you as a male to sleep with an AIDS infected woman it would take you the best part of two years with ... uh ... fairly regular ... sexual contact to run the risk of catching the disease.

He later repeated this comment and suggested that the Aids Foundation's publicity was focused on the portrayal of AIDS as a community disease so "then the finger won't be pointed at drug abusers and the homosexual community".

The Foundation explained that the statement that it would take two years for an HIV infected woman to pass the virus on to her regular sexual partner misrepresented the statistics. An HIV infection, it noted, was not cumulative. While the probability of infection on any one occasion was small, sexual contact on one occasion was sufficient for a transmission. The Foundation described Mr Carter's statement as both factually incorrect and dangerous and said it implied that the Foundation deliberately misled the public.

In light of Mr Carter's comments above and standard 1.1(e) of the Radio Code, the Authority concluded that while it might be possible to excuse each single comment noted above as a passing expression of an honestly held opinion, taken cumulatively they indicated a considerable degree of disgust with and disbelief in the value of the Foundation's work. Some credence was also given to the Foundation's argument that Mr Carter, as a talkback host, held a position with some authority, and that his views are expected to have a reasonable degree of credibility and to be based on a sound knowledge of the facts. Yet, Mr Carter seemed to be unaware that the advertisements about which he complained were prepared by the Health Department and that it had arranged for their broadcast. Further, Mr Carter, as RNZ pointed out, disclaimed expertise but, nevertheless, several times claimed knowledge about AIDS from his reading of the literature. In the circumstances Mr Carter's criticism of the motives of the Foundation's staff and the castigation of their work moved beyond merely being freewheeling, controversial or provocative.

For these reasons, the Authority upholds the complaint that the programme breached the requirement that broadcasters deal fairly and justly with any person referred to as required by standard 1.1(e) of the Radio Code of Broadcasting Practice.



The Authority then considered whether an order under s13(1) of the Act was appropriate and, if so, what order. RNZ had considered and dismissed a possible breach of standard 1.1(l) which requires broadcasters:

To correct factual errors speedily and with similar prominence to the offending broadcast or broadcasts.

As the Authority's Decision relates to a breach of standard 1.1(e) (dealing with people fairly and justly) and not standard 1.1(a) (factual truth and accuracy), standard 1.1(l) is not directly relevant. Nevertheless, the Authority considers that any order it makes should require a broadcast of similar prominence to the programme complained about.

Accordingly, the Authority orders RNZ to broadcast on 1ZB NewsTalk between 8.00 pm and 10.00 pm within seven days of the date of the decision a brief summary, approved by the Authority, of this decision.

A number of other legislative and standards requirements were raised by the complainant.

Broadcasting Act 1989, s4(1)(a)

Although some of the language used was colloquial and some of the opinions which Mr Carter expressed were put forcefully, the Authority did not believe the language used or the opinions expressed breached the good taste and decency requirements of s4(1)(a) of the Broadcasting Act 1989.

Broadcasting Act 1989, s4(1)(d)

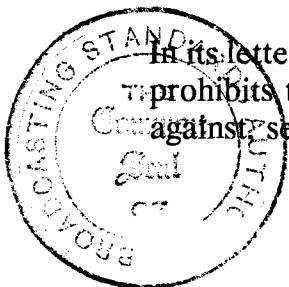
An essential feature of talkback is open telephone lines. Any caller may telephone and express an opinion, subject to the host ensuring that the good taste and decency requirement and other relevant standards are not breached. In the current instance, Mr Carter explicitly sought informed callers. Accordingly, the Authority considered that the programme complied with s4(1)(d) of the Broadcasting Act 1989 which requires broadcasters to give a reasonable opportunity for the presentation of significant points of view when controversial issues are discussed.

Radio Code Standard 1.1(m)

In their letters, RNZ acknowledged that its response to the formal complaint had been unreasonably delayed. The Authority trusts this indicates that RNZ has examined its procedures to ensure that a similar delay does not occur again. As RNZ complied with the statutory time limits, the Authority accepted that standard 1.1(m) was not breached.

Radio Code Standard 8.1

In its letter to the Authority dated 5 April 1991, the Foundation cited standard 8.1 which prohibits the broadcast of material which encourages denigration of, or discrimination against, sections of the community on a number of grounds. As this standard was not




raised by the Foundation in its letter of formal complaint to RNZ, nor nominated by RNZ as one of the standards against which the complaint was assessed, the Authority declined to consider the referral of the complaint under this standard. It would add, however, that the Foundation's concerns in raising this standard, appeared to overlap with some of the concerns raised under standard 1.1(e) considered above.

For the reasons given above, the Authority declines to uphold the complaint which alleged breaches of section 4(1)(a) and 4(1)(d) of the Broadcasting Act 1989 and standard 1.1(m) of the Radio Code of Broadcasting Practice, and declines to consider the complaint which alleged a breach of standard 8.1 of the Code.

It is not the Authority's practice to order costs unless there are exceptional circumstances. As such circumstances did not apply to this complaint, the Aids Foundation's request for costs is declined. Further, regarding the Foundation's request that it be consulted whenever the topic of AIDS is aired on 1ZB NewsTalk, the Authority accepts that it is neither realistic for the radio station to do so nor for the Foundation to monitor all talkback programmes. Nevertheless, the Authority suggests that both parties, who by now may have a better understanding of and respect for each other's functions, make use of the services each other provides. Indeed, the Authority proposes to Radio New Zealand that it consider inviting a representative of the Aids Foundation to appear as a guest on 1ZB Newstalk immediately after the broadcast ordered above for, perhaps, half an hour, and to answer questions from Mr Carter and from callers.

Signed for and on behalf of the Authority


Jocelyn Fish



17 June 1991