

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 33/91

Dated the 23rd day of July 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

J.G. RUTHERFORD

of Christchurch

Broadcaster

TELEVISION NEW ZEALAND  
LIMITED

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

DECISION

Introduction

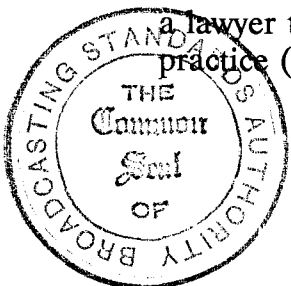
An item on *Fair Go* on 6 March 1990, broadcast on TV1, dealt with the Wainui Development near Akaroa on land owned by Rural Management Ltd. It also discussed the Kensington Development in Linwood, Christchurch, on land owned by New Zealand Land Development Co. Ltd.

Mr Rutherford's Complaint to Television New Zealand Limited

Mr Rutherford wrote a lengthy letter to TVNZ on 8 March 1990 to lay a formal complaint under the Broadcasting Act 1989. He referred to s.4 of the Act and stated that his complaint concerned factual omissions, misrepresentations and distortions.

He wrote:

The main area of concern is that in the programme there was reference to John Rutherford personally selling real estate to people who purchased it trusting him as a lawyer to deliver the sections to them. The implication was that he was not fit to practice (sic) his profession as a lawyer.



A firm called Jones for Homes, he continued, had been responsible for marketing the Kensington subdivision. He refuted the implication that he, John Rutherford, had personally sold the sections and had been getting rich by not delivering them. The long term agreement for sale and purchase of the sections, he added, had been used for many years and had been approved by solicitors in many towns.

The programme referred to a section in the Kensington subdivision which the purchaser (who wished not to be named on the programme) subsequently found had been turned into a caravan park. Mr Rutherford said that as *Fair Go* had deliberately withheld the names of the people who had complained to it in the interests of sensationalism, he had been given no opportunity to explain the problem with sewerage on certain of the Kensington properties. Most of the other purchasers, upon being advised of the problem, had agreed to take new sections and subsequently received title. Referring to some further difficulties with this particular agreement, which had subsequently been resolved, he wrote:

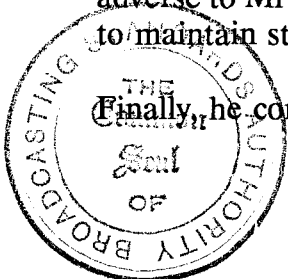
No opportunity was given to present the other side of this very damaging picture, contrary to the requirement of Section 4(d) (sic) of the Act.

With regard to the Wainui subdivision, he stated that one of the dissatisfied purchasers (Mr Harwood) had bought the section from the previous owner of the development (Mr McKenzie). That fact, he said, refuted the implication that the purchaser had acquired the section from Rural Management Ltd, the subsequent owner - with which Mr Rutherford was involved - and had relied, for delivery of title, on Mr Rutherford's involvement as a "trustworthy solicitor". Indeed, the one purchaser featured since the land had been acquired by Rural Management, Mr Rutherford observed, had acknowledged that the difficulties encountered had been beyond the control of the vendor company. Furthermore, *Fair Go* had been advised of these difficulties before the programme was broadcast. He continued:

*Fair Go* referred to the letters sent by this office in explanation as if they contained a number of unfounded excuses and in respect to anything that I had said it appeared that these were simply "claims" in respect to providing thousands of purchasers with sections and homes on this time payment basis and generally anything that came through from my side was implied to be unsatisfactory and that anything that was told to the *Fair Go* reporters by the defaulting purchasers was reliable and that they had therefore been badly treated.

Having anticipated that a Mr Harwood and a Mr Mackey would be two of the dissatisfied section purchasers featured, he said that, before the item was broadcast, he had given *Fair Go* some facts about Mr Harwood's claim and the outcome of a caveat lodged by him. By not presenting this material he complained, *Fair Go* was produced "in a totally biased way" which could affect subdividers and section purchasers financially nationwide. Moreover, he related the absence of any reference to a Court decision adverse to Mr Harwood to s.4(1)(b) of the Broadcasting Act which requires broadcasters to maintain standards consistent with the maintenance of law and order.

Finally, he complained, the programme invaded his privacy when it stated that he lived



in a half million dollar home which was not registered in his name:

The implication being that I had personally taken money off the luckless section purchasers but they would never get it out of me because I had salted the home I had bought with their funds, away in someone else's name.

In a letter to Mr Rutherford dated 4 April 1990, TVNZ advised that its Complaints Committee had deferred its decision as more clarifying information was required.

Mr Rutherford's letter to TVNZ in response, dated 10 April, noted that he reserved the right to complain directly to the Broadcasting Standards Authority if TVNZ proposed to procrastinate. He listed five points on which he expected an apology.

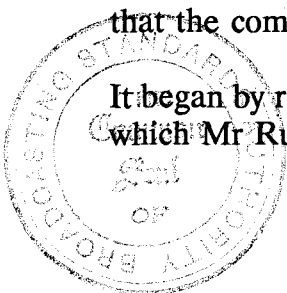
They were:

- 1) That he sold the sections personally and that the programme's implication was that the purchasers had bought sections because of his legal status.
- 2) That the programme did not give the company's point of view about Mr Harwood's complaint, despite the company having been awarded costs against Mr Harwood in Court when he attempted to delay the subdivision's progress by the use of a caveat.
- 3) That the Mr McKenzie named in the programme was not a director of Rural Management Ltd but the previous owner of the Wainui subdivision. Since acquiring title, Rural Management had carried out major work at a rate consistent with obtaining the necessary bureaucratic approvals and in light of the contracting difficulties experienced.
- 4) That no opportunity had been given to present the company's account of the difficulties experienced at the Kensington subdivision by the section purchaser who had lived in Australia for a while.
- 5) That the New Zealand Land Development Company, the developer of the Kensington subdivision, was a non-profit consortium of builders. References to Mr Rutherford's personal property or a share of the company's profits were therefore incorrect.

#### **TVNZ's Response to the Formal Complaint**

In a letter dated 26 June, TVNZ advised Mr Rutherford of its Complaints Committee decision. TVNZ apologised for the length of time the response had taken, explaining that, first, exceptional circumstances required a re-ordering of priorities, and secondly, that the complexities of the issues necessitated a detailed response.

It began by restating, in summary, the development method used by the companies with which Mr Rutherford was associated:



- \* The payments the purchasers made for their sections over five to seven years were used to develop the subdivision.
- \* As the developer did not borrow capital, purchasers obtained sections, in effect, at a wholesale price.
- \* When the development was completed, the purchaser was issued with the title for the land, and became responsible for the payment of rates.
- \* The purchaser also acquired the capital gain in the value of the land.
- \* Defaulting purchasers were entitled to a refund of their payments but only when the entire project was completed.
- \* With regard to the Wainui and Kensington subdivisions, a number of factors had delayed the completion of the projects and as a result there had been a delay in purchasers obtaining title to their sections.

Dealing with the specific issues raised by Mr Rutherford, TVNZ accepted that the script had indicated that Mr Rutherford was personally selling real estate. The programme had made clear that he was acting on behalf of companies, but for the ease of expression and following usual journalistic practice, this legal distinction between Mr Rutherford and the companies was not presented in full on all occasions.

Regarding the implication that Mr Rutherford's legal status was designed to inspire trust and that this was misplaced, TVNZ pointed out that the programme neither used the word "trusting" nor "trust". Thus, the implication had no basis. Furthermore, TVNZ denied making the implication, inferred by Mr Rutherford, that he was accumulating wealth at the expense of the purchasers.

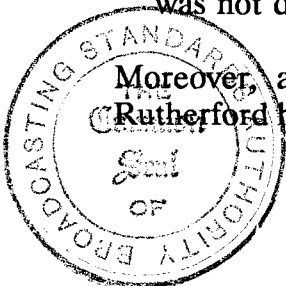
TVNZ acknowledged that the programme did not explain that the investor whose land later became a caravan park had been repaid her investment plus interest. However, this was considered a small detail and the programme had explained that the investor had paid \$5,500 and, 12 years later, had received \$14,000 as compensation.

Prior to the broadcast, steps had been taken to obtain Mr Rutherford's views and TVNZ believed that, "on the basis of the information then available", the programme complied with all the standards in s.4(1)(d) of the Broadcasting Act 1989.

Emphasising that the programme's theme was that of the delay in making titles available, TVNZ expressed concern about Mr Rutherford's allegation that the Kensington section purchaser's name was deliberately withheld.

The fact of the matter, as seen by the [Complaints] Committee, was that the section was not delivered, and your suggestion was not accepted.

Moreover, any innuendo in the programme about cheating this purchaser, as Mr Rutherford had alleged, was denied. TVNZ said that the programme had not presented



Mr Rutherford's explanation, which was covered in his letter of complaint, as, first, the purchaser had not been given what she bought, and secondly, Mr Rutherford had been offered the opportunity to present his case on the programme in a letter dated 1 March 1990 from the *Fair Go* reporter.

With regard to the Wainui subdivision and Mr Harwood's caveat, TVNZ accepted that Mr McKenzie might well have been the vendor of a section to Mr Harwood. The letter proceeded to explain the transaction, including the fact that Mr Harwood had signed the agreement in Mr Rutherford's office, and it said the details justified the script used in the programme.

TVNZ argued that the programme had presented fairly Mr Rutherford's lengthy letters about the delays experienced in completing the Wainui development.

The Complaints Committee had found the complaint that Mr Harwood's caveat had substantially hindered the development to be incorrect. Giving the dates involved, the Committee concluded that the caveat had delayed progress for one and a half months out of 76 months.

The complaint about the invasion of privacy was rejected as the few personal details presented were obtained from the public records, were germane to the item and fell within accepted journalism practices. There were, TVNZ argued, no claims in the programme that purchasers' funds had been misapplied.

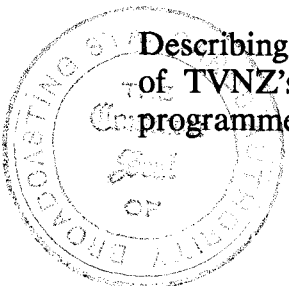
TVNZ concluded:

In summary, the Committee was unable to determine that the programme breached any of the Act provisions you cited. The law and order element was seen to have no application. Privacy of the individual was not a real issue and was not seen as being proven. As for balance it was considered that key points in your pre-programme letters were incorporated into the programme. If there were some aspects not covered which you would have liked to have seen covered, then the initiative had been in your hands. You declined to accept the opportunity to explain matters in your own way, even though your appearance would have been at no personal cost. It appeared the programme gave you every reasonable opportunity to present what you might consider significant points of view. Given these circumstances the Committee was unable to uphold your complaint.

#### Mr Rutherford's Complaint to the Broadcasting Standards Authority

As Mr Rutherford was dissatisfied with TVNZ's decision, he referred the complaint to the Broadcasting Standards Authority on 13 July 1990 under section 8(a) of the Broadcasting Act 1989.

Describing TVNZ's assessment of his complaint as inadequate, he challenged the validity of TVNZ's comments about the reference to his home in the programme. The programme had inaccurately described the house's location and value and, he continued,



the name of the owner was well known in Christchurch as his accountant and a trustee for a family trust.

He wrote:

I refer to the innuendo in my complaint that I was endeavouring to try and hide some ill-gotten gains from the sale of sections under the cloak of someone else's name and while the answer to the complaint denies this inference there is no escaping the fact that there is hardly a word in the sentence referred to above that is accurate and the requested examination of the programme has done nothing to clear up such inaccuracies but rather simply confirms them.

He agreed with TVNZ that the caveat placed on the title of the Wainui development by Mr Harwood was there only for a short time. However, there had also been a caveat put on the title by a co-complainant, Mr Mackey, which had been put there much earlier. And the fact remained that removal of these caveats caused delay to the subdivision.

Recalling the history of the subdivision, Mr McKenzie's earlier ownership and the confirmation supplied to *Fair Go*, he said that TVNZ, despite requests to correct inaccuracies had, instead, repeated them.

He objected to the graphic caricatures used on the programme and said *Fair Go* had "deliberately withheld" details of the Kensington subdivision purchaser's identity "to provide a sensational and inaccurate storyline with accompanying caricatures". He noted further that the programme's reference to Civic Enterprises Limited, another company in which he was involved, was an example of bias, if not malice, as that company planned to provide services in competition with Television New Zealand.

He concluded:

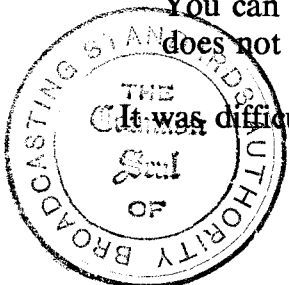
It seems that in a desire to sensationalise, the reporters for this programme have scant regard for facts and management is little better in its cursory and dilatory examination of the complaint.

### TVNZ's Response to the Authority

TVNZ responded in a letter dated 5 March 1991 - 25 weeks later. The letter began by regretting the delay. It also noted that, as Mr Rutherford had pointed out, TVNZ had not responded to his complaint of 8 March 1990 within the 60 working day statutory time limit. Referring to the exceptional circumstances which occurred at that time (the complaints engendered by the *Frontline* programme "For the Public Good"), TVNZ wrote:

You can be assured that we will endeavour to ensure that such a lapse on our part does not re-occur.

It was difficult, TVNZ observed, to respond to the complaint in a logical way first, in



view of the complex history of the two subdivisions and secondly, the "scatter-gun approach" of Mr Rutherford's complaint about the invasion of privacy and what he described as the incorrect statements about his personal affairs. TVNZ maintained that the comment in the programme about the location of the house in which Mr Rutherford lived was substantially correct and to raise the valuation of \$430,000 to a round figure of \$500,000 was an accepted reporting convention. Thus the statement was not sufficiently inaccurate to breach the Code. Further, the limited disclosure of personal information was an acceptable practice of television journalism. In addition, TVNZ maintained, Mr Rutherford's initial complaint about this matter had concerned invasion of privacy. As his referral to the Authority raised a new allegation of inaccuracy, the Authority should decline to determine it.

The point about new material was also relevant to the impact of Mr Harwood's caveat on the progress of the Wainui subdivision. Mr Rutherford now acknowledged, TVNZ pointed out, that Mr Harwood's caveat was in place only for a short time but he now added that the caveat from Mr Mackey (a co-complainant) had contributed to the delay.

TVNZ stated:

This is the first time in his voluminous correspondence that the complainant has mentioned a caveat by Mr Mackey causing a delay of any kind.

In any case, TVNZ observed, removing a caveat should not have been a significant obstacle.

TVNZ acknowledged that *Fair Go*, in October 1987, had presented a programme in which featured the Wainui subdivision but it had been unable to relate the alleged inaccuracies raised at that time to the issues now raised by Mr Rutherford. TVNZ added that Mr Rutherford had not complained about the 1987 programme.

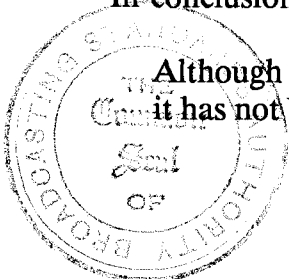
TVNZ implicitly acknowledged that it had deliberately withheld the names of complainants from Mr Rutherford, despite his request for this information. It justified this action on the basis that a current affairs item required a balance in that it should deal with issues, not lengthy and elaborate arguments about specifics.

Again pointing out that the referral to Pacific Enterprise Limited (sic) in Mr Rutherford's letter of 13 July was new material, TVNZ nevertheless denied that mention of this company was an example of bias or malice on its part.

TVNZ argued that, although it appeared that Mr Rutherford was now seeking an examination of the whole programme, the Authority should confine itself to an examination, within section 4(1)(b) (c) and (d) of the Broadcasting Act 1989, to the factual points raised by Mr Rutherford in his letter of complaint of 8 March 1990.

In conclusion, TVNZ recorded:

Although the Company may have been dilatory in its examination you can be assured it has not been cursory. Each aspect of the complaint as originally made was carefully



examined and nothing in the complainant's letter of 13 July 1990 would appear to warrant a reconsideration of any of the points made in the original complaint. If the Authority disagrees with this view the Committee will be only too willing to reconsider any particular point.

### Mr Rutherford's Final Comment to the Broadcasting Standards Authority

At the Authority's invitation, Mr Rutherford commented on TVNZ's response in a letter dated 21 March 1991.

He began:

Generally the arrogance and inaccuracy of the TVNZ approach to the luckless subjects of *Fair Go* continues to be manifested in the latest letter.

He discussed at length the history of his home which he rented from the family trust. He maintained that the phrase used in the programme that the house was "not in his name" contained an innuendo about his use of profits from property deals. The main theme of the programme was not the delay in obtaining title as TVNZ maintained, but "the inability of people to get their deposits back". Furthermore, he still regarded the comments about his home as a breach of privacy.

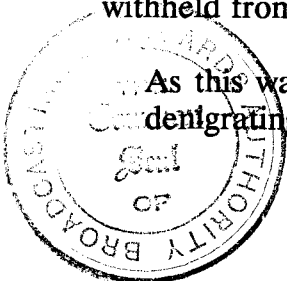
As with other significant parts of the script, TVNZ didn't want to spoil the story by reporting the dull but truthful aspects. TVNZ never indicated the plan was to resort to argumentum ad hominum or asked me to explain my personal circumstances, and it could either have asked me direct or at least taken the time to get it right. In a programme devoted to investigative journalism and supported by legal staff, the public are entitled to more honesty and accuracy.

With regard to the complaint about the caveat placed on the title of the Wainui subdivision, he acknowledged that his letter of complaint should have referred to both Mr Harwood's and Mr Mackey's caveats. He agreed with the procedure advanced by TVNZ for removing caveats and said that he had used it. However, Mr Harwood had taken the case to the High Court where the caveat lapsed and costs were awarded against him. Mr Rutherford noted that he had pointed out this fact to TVNZ but it had not been referred to in the programme. "This has to be an unfair presentation of important facts ...".

Mr Rutherford claimed that TVNZ, and *Fair Go* in particular, criticised local manufacturers and entrepreneurs and was supported by unemployed failures who concurred with TVNZ's approach to criticise business enterprise whenever possible.

Regarding the purchaser of the section in the Kensington subdivision, whose name was withheld from him prior to the broadcast, he wrote:

As this was such a hair-raising part of the story and so important to the theme of denigrating me, TVNZ should have asked for some form of explanation of the





proposed cartoon depiction and script. An untrue representation of this matter was clearly deliberately concocted, showing me in cartoon form talking to [the unnamed purchaser] when I have never met the lady.

Explaining the background of this complaint, he questioned whether TVNZ left out that information to improve its programme. He repeated his account of his small shareholding in a non-profit company and by not presenting this information, asserted that TVNZ was "perpetuating a deliberate misrepresentation".

He described TVNZ's misnaming of Civic Enterprises Limited as Pacific Enterprise Limited as another example of its "casual disregard for facts", and explained that company's proposed involvement in television services in competition with Sky Network in which TVNZ had a substantial interest. However, the only reference ever made to Civic on television, in contrast to other media, was "the innuendo in this programme that its promoter is a bad character".

TVNZ's suggestion to limit the scope of the Authority's inquiry, Mr Rutherford said, was

... tantamount to an admission that the standards of journalism on the programme are cumulatively below reasonable standards but that viewed as isolated incidents they might scrape through unscathed.

He concluded that TVNZ, with its resources, should be able to do a better job.

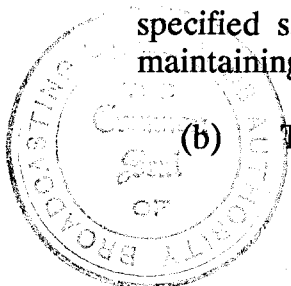
### Decision

The Authority has expressed its displeasure in some recent decisions about the time TVNZ has taken to respond to some referrals. While not unaware of the pressures on TVNZ's Complaints Committee in 1990 as a result of the furore raised by the *Frontline* programme "For the Public Good", the Authority takes cognisance of the phrase that justice delayed is justice denied. It appreciates that in recent months TVNZ has responded with reasonable alacrity to the Authority's referrals, but records that TVNZ took six months to respond with comments on the referral of Mr Rutherford's complaint.

The Authority has studied the voluminous (and sometimes misdirected) correspondence relating to this complaint and carefully considered the arguments put forward by Mr Rutherford in support of his complaint and by TVNZ in response. All the members have viewed the relevant *Fair Go* item. At the Authority's request, TVNZ made available the October 1987 *Fair Go* item on the Wainui development and the members have also viewed that programme.

In his initial letter of complaint to TVNZ, Mr Rutherford referred to s.4 of the Broadcasting Act 1989 as the basis of his complaint. Subsequent correspondence has specified s.4(1)(b), (c) and (d). These state that broadcasters are responsible for maintaining standards which are consistent with:

(b) The maintenance of law and order; and



- (c) The privacy of the individual; and
- (d) The principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the current period of interest.

The Authority accepts TVNZ's submission that the complaint based on s.4(1)(b) is not relevant. Although the item did not discuss the High Court's action in ordering costs against Mr Harwood when dealing with his caveat, the Authority regarded this omission as an issue to be considered under the rubric of balance in s.4(1)(d).

Much of the correspondence subsequent to the initial complaint focused on the question of privacy. The item made the following statement:

John Rutherford lives in this cliff-top home overlooking Sumner. The property has a government valuation of half a million. But it is not in his name.

The script was accompanied by a visual of the house. Putting to one side Mr Rutherford's point that this implied that he was trying to hide "some ill-gotten gains" as a point to be considered under s.4(1)(d), the Authority examined this aspect of the item to see whether it intruded on the complainant's privacy in contravention of s.4(1)(c).

Privacy was discussed fully by the Authority in Decision No: 5/90 and the conclusions were affirmed in Decision No: 18/91. The Authority has emphasised that its task involves striking a balance between an individual's privacy and the public's right to know. In this case, the facts disclosed were information available to the public. As the disclosure of this information was unlikely to be offensive or objectionable to a person of ordinary sensibilities, the Authority concluded that there had not been a breach of s.4(1)(c). The description of the house's exact location and the rounding-up of the valuation from \$430,000 to half a million dollars are matters more appropriately challenged under standard 1 of the Television Code of Broadcasting Practice which requires broadcasters to be truthful and accurate on points of fact. As Mr Rutherford did not refer to standard 1 in his complaint, the Authority is unable to rule on this aspect of these matters.

The Authority accepts that the rounding of various figures is common journalistic practice. However, in members' experience, it is customary to round to the nearest round figure. In the Authority's view, there is no justification for rounding \$430,000 to "\$500,000", an increase of \$70,000, rather than "\$400,000", a decrease of \$30,000. In addition, the use of qualifying words such as "almost", "nearly" or "approximately" should be used.

In the Authority's opinion, the core of the complaint focused on s.4(1)(d) and the issues to be assessed against this standard were:

- i) the opportunity given to Mr Rutherford to present his point of view on the general issues raised by *Fair Go* in its fax to him dated 1 March 1990;



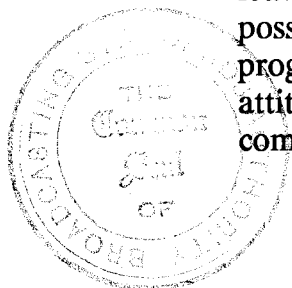
- ii) the opportunity given to Mr Rutherford to respond in particular to the unnamed purchaser's difficulties following the purchase of a section in the Kensington subdivision;
- iii) the item's theme;
- iv) the coverage given to the Court findings about the caveats lodged against the land at the Wainui subdivision;
- v) the coverage given to Mr Rutherford's explanations for the delays in completing the Wainui subdivision; and
- vi) the innuendo about Mr Rutherford's financial circumstances.

The Authority noted that the item appeared on the *Fair Go* programme. It cannot agree with Mr Rutherford that this programme is designed to castigate local entrepreneurs. It applauds the popular programme both as a source of consumer information and as an avenue for consumers who may be unable to obtain redress in another way. However, it also notes that the businesses and business people investigated are frequently placed under the spotlight in a television environment where they may well feel victimised. They may be subject to censure of a devastating kind as much because of their lack of familiarity with the surroundings and the processes, as for the events which have brought them to the notice of the programme makers.

In some contexts the Authority accepts that the requirements of s.4(1)(d) may be interpreted with some flexibility, for example on talkback radio. However, because of the philosophy and indeed the title of the *Fair Go* programme, the Authority considers that the programme must adhere conscientiously to the standards prescribed in the Broadcasting Act. In other words, *Fair Go* must give all the people who appear on the programme, both consumer and business people, a fair go. In most instances, the Authority considers, this occurs.

Bearing these preliminary conclusions in mind, the Authority examined the six issues identified as alleged breaches of s.4(1)(d).

- (i) TVNZ maintained that Mr Rutherford was given notice of the issues to be discussed and an adequate opportunity to respond. In a fax to Mr Rutherford dated 1 March 1990, TVNZ offered to fly him to Wellington at its expense to appear on the programme and, during a 4 minute interview, to deal with the issues. The three areas to be discussed were also noted in the fax. If Mr Rutherford was reluctant to accept that offer, the possibility of a pre-recorded interview was raised although *Fair Go* reserved the right to edit that interview. Mr Rutherford advised the Authority that because of the cost involved in leaving his office, he declined the trip to Wellington. He rejected the possibility of an "edited" interview because of the emphasis which the programme makers might give the interview during the editing process. His attitude was influenced by the 1987 item on the Wainui subdivision where his comments by letter had been "largely disregarded".



TVNZ said that Mr Rutherford had focused on an "edited" interview and given minimal consideration to a live interview.

The Authority, noting that s.4(1)(d) requires broadcasters to give "reasonable opportunities" for the presentation of significant points of view, concluded that TVNZ had met that standard. The viewing of the October 1987 item on *Fair Go* acted as confirmation in that, although Mr Rutherford did not appear on that programme, there seemed to be little in it to justify his jaundiced attitude to the programme.

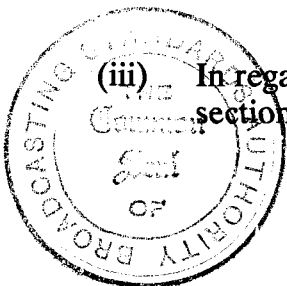
Nevertheless, the Authority suggests to TVNZ that consideration be given to conducting live line fed *Fair Go* interviews using studios or facilities in different cities, as TVNZ does for other programmes, so that the interviewees are not required to travel to the Avalon studio in person for an interview lasting only a few minutes.

- (ii) The item featured an unnamed purchaser of a section at the Kensington subdivision who, upon her return from Australia, found her site occupied by a caravan park. The item included a graphic of this woman apparently personally buying her section from Mr Rutherford. Although the purchaser later obtained a refund plus interest, the item stated that this process was delayed as the records of the purchase had been destroyed in a fire. Mr Rutherford advised the Authority that the possibility of the destruction of the records was raised because of his inability to locate them. However, they were later located after he had been notified of the purchaser's name change.

The original fax to Mr Rutherford advising him of the issues to be dealt with mentioned the delay in the delivery of the Kensington titles. It did not refer to this particular case either in general terms or specifically. Had Mr Rutherford agreed to be interviewed either on the programme or in a pre-recorded interview, the case presumably would have been put to him and his reaction recorded but unless he had been advised of the purchaser's change of name, previously examined his records and retained all the details in his mind, he might well have been unable to provide an adequate response in front of the cameras.

Although the Authority did not regard the use of graphics which incorrectly implied that Mr Rutherford had had personal contact with the purchaser as, in itself, justifying a finding that the programme had breached s.4(1)(d), the fact that the problems involved with the sale of this section appeared to reflect on Mr Rutherford's competence and credibility and the fact that he had not been informed in advance of this case, is in the Authority's opinion a clear breach of the requirement in s.4(1)(d) that Mr Rutherford be given a reasonable opportunity to present his point of view.

- (iii) In regard to the item's theme, TVNZ maintained that the non-delivery of the section titles was the focus. Mr Rutherford argued at different times that the



theme was his incompetence as a legal practitioner or the failure of the purchasers to obtain a return of their deposit. In the Authority's opinion, both parties have adopted an unreasonably restricted interpretation of the item's theme. For example, if delivery of the title was the sole theme, as TVNZ maintained, the Authority would question TVNZ about why it did not stick to that. But the Authority also agreed with both parties in that the points they raised were relevant to the item's theme. The Authority concluded that the item dealt with both the non-delivery of title and with the difficulty in obtaining refunds, the non-delivery appearing as particularly reprehensible in view of Mr Rutherford's legal status. An example of this last point was the item's reference to Mr Rutherford's success as a law student.

Although this conclusion about the item's theme did not in itself involve a decision about the programme's adherence to s.4(1)(d), it is relevant to the Authority's conclusions on points (iv) to (vi) below.

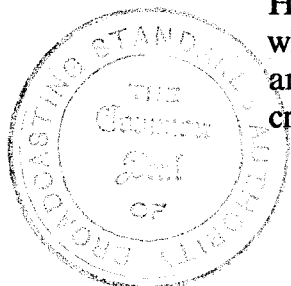
- (iv) Although *Fair Go*, in their advice on 1 March 1990 to Mr Rutherford about the issues to be addressed in the item, did not mention Mr Harwood's and Mr Mackey's actions, in his letters to *Fair Go* Mr Rutherford dealt with their activities at length. His complaint to TVNZ stressed his concern that the item did not record that the High Court had ordered Mr Harwood to pay costs when uplifting the caveat put on the land then owned by Mr McKenzie.

The Authority noted that both Mr Harwood and Mr Mackey admitted on the programme that they had breached their contracts for the purchase of sections at Wainui. The Authority also noted that while the presence of the caveats exacerbated the delays in developing the subdivision, they were not the primary impediments to the completion of the development. The caveats, the Authority concluded, were incidental to the item's thrust and though it was unwise for the item not to mention the Court's order of costs against Mr Harwood, this omission was not crucial to the overall balance of the item.

- (v) Mr Rutherford, by letter, gave *Fair Go* the numerous reasons for the delays in completing the Wainui subdivision. This letter was covered on the programme reasonably rapidly in a format regularly used on the programme whereby issues are summarised by a number of presenters. Mr Rutherford regarded the presentation of these points as contributing to his claim of imbalance.

The Authority is aware that the manner of presentation may have a considerable impact on the credibility which the viewer may accord to any explanation. For example, the tone may be sneering or the body movements may suggest disbelief.

However, although the entire tone of the *Fair Go* programme is usually one where the consumer whose cause is being advanced is assumed to be credible and the person or body complained about is assumed to be of questionable credence, the Authority considered that the presenters' summary of the letter



was provided so as not to question Mr Rutherford's reasons except in this general way.

The Authority noted that the reasons given by Mr Rutherford for the delays disclosed circumstances which were largely beyond his control. Although it could be argued that this aspect was not featured adequately, it is not an issue relevant to the disagreements between the companies in which Mr Rutherford was involved and the section purchasers. Furthermore, the item did point out that the actions undertaken by Mr Rutherford to complete the development included working on the subdivision himself.

The Authority concluded that while the item stressed Mr Rutherford's responsibilities for the delays and minimised the responsibilities of the other parties, it did not do so in a way which breached s.4(1)(d).

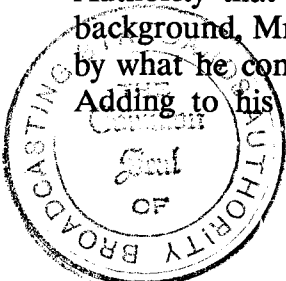
- (vi) The final issue requiring a finding involved what Mr Rutherford described as the programme's innuendo about his "ill-gotten gains". As with a number of the points above, the Authority had reservations about the manner in which this segment of the item was presented.

It concluded that this segment, like some others, was presented in such a way to suggest that the complainants' credibility was to be contrasted positively with that of Mr Rutherford. In other words, the facts presented "gilded the lily" in portraying the positive aspects of the purchasers' complaints compared with the negative aspects presented of the vendors' circumstances. However, this aspect of the item was not so exaggerated as to amount to a breach of s.4(1)(d).

Finally, the Authority considered the overall thrust of the programme. The item noted that some companies in which Mr Rutherford was involved were responsible for the non-delivery of title to some sections, for delays in completion of some subdivisions and for delays in reimbursing some purchasers who were entitled to be reimbursed. Nevertheless, the item discussed the companies's subdivision method which itself was susceptible to delays and the reasons for the delays in the case of the Wainui and Kensington subdivisions. Further, the item suggested that the problems were a matter for which Mr Rutherford was personally responsible and, because of his legal qualifications, that the delays suggested negligence, at least, on his part.

On the other hand, the item recorded that the actions of two of the section purchasers had contributed to the delays and that Mr Rutherford was personally trying to ameliorate the situation.

In other words, all the parties involved had to accept some responsibility for the events portrayed. However, taking into account the programme's style, it seemed to the Authority that the evidence on either side was not entirely balanced. Against this background, Mr Rutherford's indignation was clearly understandable and was enhanced by what he considered the programme's snide reference to Civic Enterprises Limited. Adding to his obvious mistrust of TVNZ's procedures was its inability to give this



company its correct name in a letter to the Authority, so it is easy to see why Mr Rutherford argued that the inclusion of more details favourable to his case would have resulted in a much more balanced programme. The Authority agreed with the point but it did not find that the exclusion of these details contributed to a lack of balance to the extent that the requirements in the Broadcasting Act 1989 were breached.

Mr Rutherford, having been advised that the item would focus on the Wainui and Kensington subdivisions, explained in detail the reasons for the delays and the item summarised his detailed written explanation. Mr Rutherford also correctly anticipated that Mr Harwood and Mr Mackey would be some of the featured dissatisfied section buyers. As a result he provided *Fair Go* with a detailed history of the Wainui subdivision, including an account of the placing and the removal of the caveat put on the title by Mr Harwood. This aspect was dealt with on the programme, too cursorily in Mr Rutherford's view, but sufficiently in the Authority's opinion.

However, Mr Rutherford was given no cause to anticipate the reference to the unnamed purchaser who was featured in the item's discussion of the Kensington subdivision. In the view of the Authority, by withholding this information, TVNZ failed to satisfy the requirements of the Broadcasting Act.


The Authority upholds the part of the complaint that the programme's broadcast breached the requirement in s.4(1)(d) of the Broadcasting Act 1989 that reasonable opportunities be given to present significant points of view, for the reason that Mr Rutherford was not informed of the programme's focus on the unnamed purchaser of a section at the Kensington subdivision.

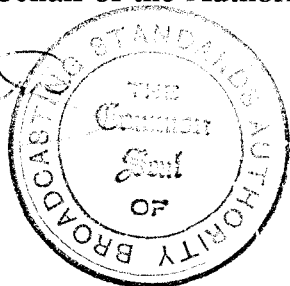
However, the Authority declines to uphold the complaint that the programme's broadcast breached s.4(1)(b) or s.4(1)(c) of the Broadcasting Act 1989 or that, beyond the finding noted in the preceding paragraph, it breached s.4(1)(d) of the Act.

### Order

The Authority orders TVNZ to broadcast during one of the current series of *Fair Go*, within 30 days of the date of this Decision, a brief summary, approved by the Authority, of this Decision.

Signed for and on behalf of the Authority

  
I.W. Gallaway  
Chairperson



23 July 1991