

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 37/91

Dated the 16th day of August 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

GEORGE NGAEI

of Invercargill

Broadcaster

RADIO NEW ZEALAND LIMITED

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

DECISION

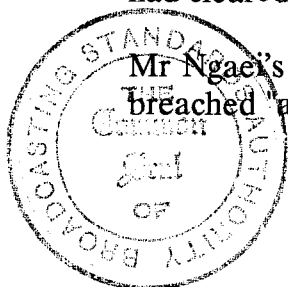
Introduction

Radio New Zealand's national and community network news on the morning of 30 May 1990 carried an item on a number of occasions which reported an allegation by an unnamed "Invercargill sickness beneficiary" claiming that a surgeon promised to put him to the top of the patient waiting list if he cut and stacked a load of firewood for the surgeon. The item was broadcast without comment either from the surgeon involved or from his employer.

On the morning of 31 May, network news bulletins identified the surgeon as Mr Ngaei of Invercargill, stating that he had requested that his name be published, that he denied the allegations and that his employer, the Southland Area Health Board, intended to hold a full investigation.

On the evening of 22 June, network news bulletins reported that the Southland Area Health Board, despite the difficulties of investigating a complaint about events which had occurred more than two years previously and after hearing from the patient, Mr Webster, had cleared Mr Ngaei of misconduct. The item was repeated on the morning of 23 June.

Mr Ngaei's solicitors complained to RNZ on 19 July 1990 that the 30 May broadcasts breached "acceptable journalistic standards" and that the reports of the Health Board's



findings were inadequate to redress the damage done by the original reports.

Following further correspondence between the complainant's solicitors and RNZ (the details of which are summarised in the Appendix), RNZ declined to uphold the complaint which alleged breaches of a number of standards in the Radio Code of Broadcasting Practice.

On 27 March 1991, Mr Ngaei's solicitors referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989 for investigation and review. In their final letter to the Authority dated 3 July 1991, they questioned the adequacy of RNZ's investigations before the 30 May broadcasts, the omission of comment from Mr Ngaei and his employer in those broadcasts, and the coverage of the 22-23 June broadcasts compared with the 30-31 May broadcasts.

### Decision

In investigating and reviewing this complaint, members of the Authority read the transcripts of the relevant news bulletins supplied by the complainant and RNZ. The members have carefully considered the arguments advanced by Mr Ngaei in support of his complaint and by RNZ in response.

Mr Ngaei listed 15 standards in the Radio Code of Broadcasting Practice which he claimed were breached by the broadcasts. The Authority agreed with RNZ that a number of those standards were either not relevant or subsumed into more relevant ones. Accordingly, the Authority considered the complaint against the following standards. They require broadcasters:

1.1(a) To be truthful and accurate on points of fact in news and current affairs programmes:

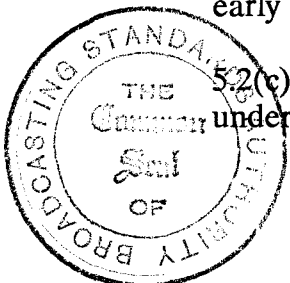
1.1(e) To deal justly and fairly with any person taking part or referred to in any programme:

1.1(i) To show balance, impartiality and fairness in dealing with political matters, current affairs, and all questions of a controversial nature, making reasonable efforts to present significant points of view in the same programme or in other programmes within the period of current interest:

1.1(l) To correct factual errors speedily with similar prominence to the offending broadcast or broadcasts:

1.1(m) To act responsibly and speedily in the event of a complaint and when an accusation of unfairness is found to be correct, to provide appropriate redress as early as possible after the original broadcast.

5.2(c) [That] the standards of integrity and reliability of news sources be kept under constant review.



Dealing first with the complaints concerning factual inaccuracy, the Authority accepted RNZ's explanation that the items reported that a complaint had been made to an Area Health Board. The bulletins' broadcast, RNZ added, did not accept the validity of the allegations contained in the complaint. This point was stressed repeatedly in the comments received from RNZ. The Authority, having concluded that the broadcasts did not breach standard 1.1(a), and the concomitant standard 1.1(l), did not regard it as an issue meriting further comment. The same conclusion applies to the broadcasts on 22 and 23 June: RNZ reported correctly the Southland Area Health Board's finding.

The Authority agreed with the complainant's final comment that the alleged breaches of the other nominated standards were of greater relevance.

The two issues examined were:

- (a) the extent of RNZ's investigations before the broadcast of the fact that a complaint had been made about Mr Ngaei to the Southland Area Health Board; and
- (b) the extent of the broadcasts reporting the Health Board's finding.

With regard to the news items about the complaint, RNZ acknowledged that it was a controversial matter and that, on the day before the first publication, it had obtained a sworn statement from Mr Webster (Mr Ngaei's patient) and his wife. The "sworn" statement supplied to the Authority attested to the truth of their allegation although it was "sworn" only before an RNZ staff member. It did not, bearing in mind the possible consequences of the allegation for Mr Ngaei, offer any independent confirmation of their story.

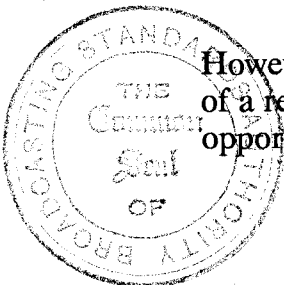
RNZ acknowledged that it was a single source story but pointed out that the item only reported the allegation - not the factual accuracy of the allegation. Contrary to the complainant's assertion, the Authority agrees with RNZ that it was not necessary to obtain the Websters' debt history: it was not a major piece of investigative journalism. However, in the Authority's opinion, broadcasting the story at that stage of the investigation represented an inadequate standard of journalism.

One of RNZ's comments, in a report prepared for its Complaints Committee, acknowledged this point indirectly. RNZ wrote:

Nevertheless, in terms of the Act, s 4 (1) (d) (not cited by the complainant), the matter is clearly controversial, and Radio New Zealand should have acted to obtain balancing comment. In the event, comment was forthcoming and published at the appropriate time. However, 1.1(i) and 1.1(e) and s4(1)(d) of the Act may have been endangered by procedure, but not by what was published.

...

However, the lapse in procedure was recognised, and accordingly was the subject of a reminder to all other news staff about the need to seek, and give reasonable opportunities for, balancing comment or statement on all such occasions. The



complainant was duly informed of this action. (RNZ's emphasis)

Despite this recognition by RNZ that the procedure leading up to the presentation of the initial news items on 30 May indeed endangered standards 1.1(i) and 1.1(e) (both cited by the complainant), RNZ's Complaints Committee did not uphold a breach of these provisions.

It is clear to the Authority that this comment by RNZ to its Complaints Committee indicated that it was aware that the initial broadcasts fell below acceptable standards. In these circumstances, rather than castigate RNZ further for falling below its usual high standards or questioning the reasoning of its Complaints Committee, the Authority merely records that it has concluded that the broadcast of the news items on 30 May, before any balancing comment was sought, did lack balance and did not deal justly and fairly with persons referred to. The broadcasts thus breached standards 1.1(e) and 1.1(i).

The adequacy of the coverage of the Health Board's finding was the second issue explored by the Authority. The broadcast of the allegation was repeated on a number of occasions on Monday 30 and Tuesday 31 May. At Mr Ngaei's request, his name was disclosed in the broadcasts on 31 May.

RNZ stated that the inquiry's result was broadcast on several occasions on the evening of Friday 22 June and, in an expanded version, on the 7.00 am news the following morning. It added that this final broadcast was at a peak audience time.

Although the Authority in passing wondered whether RNZ's bulletins at those times did in fact provide adequate summaries of the Board's finding, it was principally concerned with the question whether these broadcasts complied with the balance requirement in standard 1.1(i). RNZ, pointing to the size and differing compositions of the audiences which could have heard the news items that Mr Ngaei had been cleared, considered the publication to be adequate.

The Authority, taking into account the number and days on which the report of the allegation was broadcast compared with the broadcasts of the inquiry's finding, disagreed. As the issue was a controversial one and had occurred within the period of current interest, the Authority concluded that standard 1.1(i) had not been complied with.

The complainant also alleged breaches of standards 1.1(m) and 5.2(c). The former requires broadcasters to respond responsibly and speedily when a complaint is received. RNZ so acted when it first received the complaint from Mr Ngaei's solicitors. It responded on the basis that the complaint was an informal one. It later acknowledged that the complaint could have been read as a formal one and, indeed, after being advised that this was the case, it acted in accordance with standard 1.1(m). Further, Mr Ngaei's solicitors have been tardy on occasions in replying to the Authority's correspondence and, in all the circumstances, the Authority concluded that RNZ had not breached the standard.

Standard 5.2(c) requires broadcasters to review constantly the reliability of news sources. The Authority is of the view that this standard, when examining its wording and




especially its reference to constant review, is meant to apply primarily to major news sources. It is arguable whether it applies to local sources. Moreover, taking into account that RNZ acknowledged that its internal procedures fell below acceptable standards, the Authority concluded that this standard had not been breached.

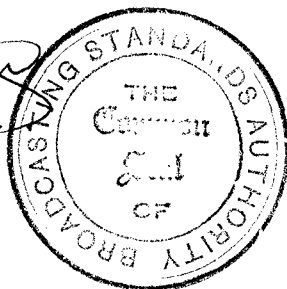
**For the reasons given above, the Authority upholds the complaint, first, that the broadcasts of the sickness beneficiary's allegations on 30 May breached standards 1.1(e) and 1.1(i) of the Radio Code of Broadcasting Practice, and secondly, that the broadcasts of the inquiry's results on 22 and 23 June breached standards 1.1(i) of the Code.**

**The Authority declines to uphold the complaint which alleged breaches of a number of other standards in the Code.**

The Authority observes that Mr Ngaei's complaint is the first it has received concerning RNZ's news service. In the Authority's opinion this fact illustrates the high standard usually achieved by this service.

Signed for and on behalf of the Authority

  
Iain Gallaway  
Chairperson



16 August 1991

## Appendix

### Mr Ngaei's Complaint to Radio New Zealand Limited

In a letter dated 19 July 1990, Mr Ngaei's solicitors complained to Radio New Zealand Ltd that the researching and the reporting of the item on 30 May breached "acceptable journalistic standards". It pointed out that neither Mr Ngaei nor his employer had been asked to comment on the allegations before the item was first broadcast and that Mr Ngaei was not asked for comment after the broadcast. It appeared that the patient's allegations had been reported with minimal checking and as a result, great distress had been caused to Mr Ngaei.

Further, there was little reporting of the Health Board's findings which had cleared Mr Ngaei and thus the damage done by the original reports was not redressed.

### Radio New Zealand's Response to the Complaint

RNZ responded to the complaint in a letter dated 24 August 1990. It stated that the information on which the story of 30 May was based was checked with the patient, his spouse and with medical staff and others.

The Southland Area Health Board, the complainant's employer, "quite properly" was asked for comment on a number of occasions and its remarks were broadcast within a short time of the initial story. The complainant was named after his request for this to happen was passed to RNZ through his employer.

RNZ stated that the records disclosed that the Health Board's findings were adequately reported both nationally and locally. The letter concluded:

After a thorough review of the issues involved and the published coverage, I must find that there has been no breach of the statutory, ethical or Code of Practice obligations.

In a letter to RNZ dated 28 August 1990, the complainant's solicitors requested transcripts of the broadcasts along with particulars of the checks undertaken prior to the broadcast of the initial item and details of the requests for information to, and the responses from, the Southland Area Health Board.

RNZ advised the complainant in a letter dated 21 September that it was under no obligation to provide these further details and that it did not intend to do so. It repeated its conclusion about the complaint and stated that there were 11 separate transcripts for which the fee was \$50 per item.



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

As Mr Ngaei was dissatisfied with RNZ's response to the complaint and, before he received its reply to his request for details, his solicitors referred the complaint to the Broadcasting Standards Authority on 4 September 1990 under s.8(a) of the Broadcasting Act 1989.

As the referral noted neither the provisions of the Act nor of the Radio Code of Broadcasting Practice which the broadcast had breached, the Authority requested this information before seeking comment from RNZ.

In a letter dated 22 January 1991, the complainant's solicitors forwarded the transcripts received from RNZ and advised the Authority that no attempt appeared to have been made to check the validity of the story with Mr Ngaei or his employer prior to its broadcast. Credit checks on the patient and his wife were also forwarded and it was observed that if RNZ had undertaken these "elementary checks", it would have been clear that a "more detailed scrutiny of the truth of Mr Webster's claim was required".

The letter expressed the opinion that the broadcast of the inquiry's findings in three short items did not amount to adequate coverage taking into account the coverage given to the allegations and the harm caused thereby. Further, the complainant was not given the opportunity to comment on the findings.

The broadcast, it was said, had breached standards 1.1(a), (b), (d), (e), (f), (g), (i), (j), (k), (l), (m), 5.1, and 5.2 (b), (c), and (g) of the Radio Code of Broadcasting Practice.

### Radio New Zealand's Response to the Authority

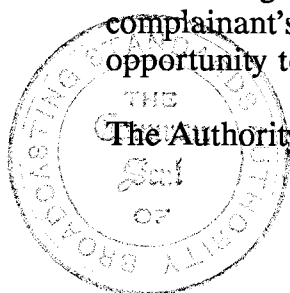
In a letter dated 25 January 1991, RNZ was invited to comment on the referral of the complaint to the Authority.

RNZ, in its reply dated 13 February 1991, expressed surprise at the Authority's request as it was unaware that Mr Ngaei's initial complaint was a formal one. RNZ, it added, had acted on and responded to the letters from Mr Ngaei's solicitors as if they were preliminary enquiries preceding court action.

This procedure had been followed as the Broadcasting Act requires broadcasters to take an informal approach to all complaints and the complainant had not clearly indicated that the matter was a formal complaint. Further, an informal approach often settled matters where a complainant wished to alleviate the harm which he or she believed had been caused by the broadcast of an item.

Acknowledging that in view of the referral of the complaint it was possible to read the complainant's letter of 19 July as a formal complaint, RNZ requested that it be given the opportunity to deal with it in that way.

The Authority agreed to adopt RNZ's proposal and advised the complainant accordingly.



### Radio New Zealand's Response to the Formal Complaint

RNZ advised the complainant of its Complaints Committee's decisions in a letter dated 11 March 1991.

It recorded that the first news story was a report of an allegation, not a fact; that the allegation had been made to a general practitioner and was known to the Southland Area Health Board; and that the story did not identify any of the parties involved. RNZ concluded that the story did not contain any factual errors. On the following day when the parties were identified, the recapitulation of the story continued to refer to an allegation; that the Board now intended to hold an inquiry; and that Mr Ngaei denied that there was any truth in the matter. It continued:

The Committee once more determined that there were no factual inaccuracies, and also noted that in at least one peak listening time rewrite Mr Ngaei's denial had been given prominence at the head of the story.

When the inquiry results were available some three weeks later, RNZ wrote, the item was reported twice in the evening and again the following morning. The morning report in peak audience time (at 7.00am) was given generous "space" in radio terms. As the items were accurate in reporting that Mr Ngaei had been completely cleared and that no further action was to be taken, there had been no breach of the standards.

RNZ did not believe that the item justified obtaining Mr and Mrs Webster's debt history. Further, the Websters had made their allegation in a written statement signed and sworn before the Station Manager and had been subject to extensive questioning from the Chief Reporter.

It was acknowledged that the Area Health Board had contacted RNZ to give the Board's response as later broadcast but this did not, RNZ maintained, detract from a fair and balanced coverage of the story. Further, as Mr Ngaei was a party to the forthcoming inquiry, Board comment was considered appropriate.

With regard to balance, RNZ's Complaints Committee accepted that this had been achieved in the items as had an adequate and accurate publication of the inquiry's outcome.

The Committee decided that some of the standards noted by the complainant, 1.1(b), 1.1(d), 1.1(f), 1.1(g), 1.1(j) and 1.1(k), were not in issue as they were either irrelevant or subsumed in more relevant provisions. The same consideration applied to 5.2(b) and 5.2(g). The complaint was accordingly assessed against the following standards:

1.1(a) factual truth and accuracy

1.1(e) dealing justly and fairly with people taking part or referred to

1.1(i) showing balance, impartiality and fairness and presenting all significant views





1.1(l) correcting factual errors speedily

1.1(m) acting responsibly and speedily in the event of a complaint

5.2(c) keeping the integrity and the reliability of news sources under review.

RNZ concluded by noting that the Complaints Committee did not uphold the complaint and added that the Committee had decided:

... that it request that the complainant be informed, however, that the Committee would have preferred that Radio New Zealand should itself have approached either Mr Ngaei or the Area Health Board, noting nevertheless that, while this aspect has been drawn to the attention of editorial staff, the overall balance of the coverage of the matter was not in this case adversely affected.

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

As Mr Ngaei was dissatisfied with the decision of RNZ's Complaints Committee, his solicitors referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989 for investigation and review in a letter dated 27 March 1991.

They stated that their letter of 19 July 1990 to RNZ clearly explained that it was formal complaint. Summarising that letter, the solicitors wrote:

It is the areas of failure to investigate and check on the story, failure to seek comment prior to publication, and failure of adequate coverage of the results of the inquiry which are, we believe, the main areas of failure on the part of Radio New Zealand or their employees.

They also pointed out that RNZ had not mentioned that the news items about the inquiry's conclusions were broadcast on Friday evening and Saturday morning. Further, RNZ had not supplied any evidence of its claim about peak time audiences for weekend broadcasts.

The letter continued:

No mention has been made in Radio New Zealand's findings regarding the medical evidence that they claimed in earlier correspondence they had obtained. This medical evidence which they claim supports the allegations was not put to our client nor have we been appraised of the substance of it.

### Radio New Zealand's Response to the Authority

RNZ replied to the Authority on the referral of the complaint in a letter dated 18 April 1991. It noted that audio tapes were not available in view of the time which had lapsed



since the broadcast.

It enclosed copies of the National Radio bulletin items about the allegations (to complement the Authority's Community Networks News transcripts) and the information put before its Complaints Committee. This included the point that the story was first broadcast after Mr Webster had complained officially to the Area Health Board. The accompanying papers contained a letter dated 13 June 1990 from an Invercargill general practitioner to the Manager of Treatment Services at Southland Hospital in which he reported that Mr Webster had made the allegation to him about Mr Ngaei in July 1988. The general practitioner added:

I considered what he [Mr Webster] said and I expressed my view that no good would be achieved by his making any formal complainant. I may have expressed concern that the result of the making of a complaint may be a loss of a surgeon from Invercargill. Whether Mr Webster made any complaint was a matter entirely for him and I merely expressed my view when I was invited to do so.

RNZ wrote:

In conclusion (and possibly at the risk of labouring the point), I would draw attention to the confusion which we perceive on the question of factual accuracy. To report a public allegation, the existence of which is a substantiated fact, is not to report as a fact the events alleged. There is a world of difference, and a dispute over the validity of an allegation cannot change the fact that the allegation exists.

#### Mr Ngaei's Final Comment to the Authority

RNZ's letter was referred to Mr Ngaei's solicitors on 19 April 1991 and their response was contained in a letter dated 3 July 1991. They apologised for the delay due to the writer's absence on leave.

The letter began:

We do not accept that the very limited steps claimed to be carried out by Radio NZ prior to the story being aired were in any way an adequate check given the extremely serious nature of the allegations made.

They pointed out that evidence at the Health Board inquiry had disclosed that Mr Ngaei was operating on the date and at the time the alleged bribery took place. They questioned whether a letter written by an Invercargill general practitioner dated subsequent to the broadcast of the allegations could have been used to check the accuracy of the patient's claims prior to the broadcast.

The letter continued:

RNZ failed to seek any response from Mr Ngaei prior to or following broadcast



of the allegations and in the context of the seriousness of the allegations this is a serious breach of the requirements of fairness, balance and justice.

Without proof from RNZ of the audience size during the three broadcasts of the item that Mr Ngaei had been cleared, compared with the size of the audience for the original broadcasts, the letter rejected RNZ's conclusion that the reporting of the later event was adequate.

Providing information about the patient's (Mr Webster) dealings with the Social Welfare Department in Invercargill, the latter maintained that investigations about Mr Webster's financial history were a proper and necessary part of the journalist's inquiries.

The letter regarded as contradictory the comment in RNZ's letter of 24 August 1990 that relevant points of view were obtained prior to the broadcast and the comment in RNZ's letter of 18 April 1991 that the failure to seek Mr Ngaei's point of view was a shortcoming.

We question the validity of RNZ's investigation of our complaint if the General Manager is left with the view that certain actions were carried out when in fact it is acknowledged they were not.

It concluded:

We look forward to the Authority's determination of whether RNZ's standards of checking of their "story", the lack of balance of the first broadcast and follow up coverage comply with the standards expected by the Authority.

#### RNZ's Final Comment to the Authority

In a letter to the Authority dated 17 July 1991, RNZ repeated that it had reported the fact that an allegation had been made and that this did not amount to an editorial endorsement of the truth or otherwise of the allegation. It also reiterated the point that a "reasonable and cautious approach" had been taken in the preparation of the item.

RNZ stated that, unlike newspapers, it was unable to provide "proof" of its audience figures. However, it had provided the average figures from audience surveys on which it based its own planning. These surveys, it added, were undertaken by an independent and specialist organisation.

