

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 12/92
Dated the 30th day of March 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

THE TREASURY

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson
J.R. Morris
R.A. Barraclough
L.M. Dawson

DECISION

Introduction

"State - the Obvious?" was the title of TV1's *Frontline* programme broadcast by Television New Zealand Ltd at 6.30 pm on Sunday 16 June 1991. The item examined government plans to change the existing system of state rental housing to one involving a cash subsidy or a voucher scheme.

The Treasury complained to TVNZ that the item unfairly treated Abt Associates Inc., a consultant hired by the Treasury. TVNZ, it continued, had been unfair by misrepresenting and ridiculing what it had been told and it had been untruthful and inaccurate in failing to investigate properly the consultant's qualifications. Consequently, the programme had breached the standards which require, first, truth and accuracy, and secondly, that persons referred to be dealt with justly and fairly.

TVNZ declined to uphold the complaint as it was unable to find any evidence of inaccuracies and it did not believe the programme had been unfair or unjust to any of the parties referred to. As the Treasury was dissatisfied with TVNZ's decision, it referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.



Decision

The members of the Authority have viewed the item complained about and have read the correspondence (summarised in the Appendix). The programme described a voucher system for housing assistance which, it observed, was a free-market innovation. Further, it implied that the main beneficiaries of vouchers in the United States were landlords, and perhaps some selected "reputable" beneficiaries and the situation would be similar in New Zealand. It contrasted vouchers with New Zealand's indigenous state housing programme which, it implied, provided a reasonable standard of housing to a wide range of beneficiaries and, as it was in place, should not be cast aside in the interests of economic theory.

The Treasury complained that the *Frontline* programme about state housing assistance broadcast on TV1 on 16 June 1991 did not deal fairly with Abt Associates Inc., an American firm of consultants it had hired. Because TVNZ had ridiculed the company, had been untruthful and had not investigated Abt's qualifications, the Treasury continued, the programme had breached standards 1 and 4 of the Television Code of Broadcasting Practice. They require broadcasters:

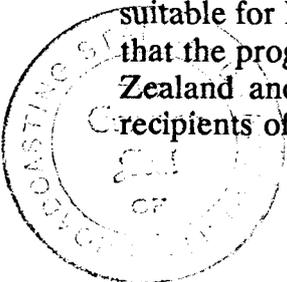
1. To be truthful and accurate on points of fact.
4. To deal justly and fairly with any person taking part or referred to in a programme.

As will become apparent in the following comments, the Treasury's concern focused on standard 4.

When it referred its complaint to the Authority, the Treasury identified four areas where, it said, the programme had displayed shortcomings and, in combination, they provided the evidence that Abt Associates had been treated unfairly.

The first failing, it said, was TVNZ's description of the housing assistance scheme in Culpeper, Virginia, as "a model for the nation". Culpeper, it added, had been suggested by Abt, through the Treasury as a town which TVNZ, with its limited travel budget, could visit to examine the voucher system in the United States. TVNZ, recounting the process by which Culpeper had been suggested and noting Abt's broadcast apology when the town's deficiencies for comparative purposes were pointed out, said Culpeper had been described as "a" model, not "the" model, which it believed was appropriate.

The Authority considered that the argument about "a" model as opposed to "the" model was of less importance than another point made by the Treasury. The Treasury pointed out that TVNZ had been told before travelling to the United States that it was not intended to adopt an overseas model but to use overseas experience in designing a model suitable for New Zealand. TVNZ responded to that aspect of the complaint by arguing that the programme's examination of the Culpeper scheme provided a warning for New Zealand and added that its programme balanced that criticism by showing satisfied recipients of vouchers in another location.



The Authority considered that the programme made some justifiable criticisms about Abt's nomination of the Culpeper scheme but, nevertheless, gave insufficient emphasis to the point that the Treasury was seeking to learn about alternative schemes rather than finding one to adopt.

The second failing on TVNZ's part, the Treasury alleged, was *Frontline's* ridicule of the Culpeper scheme without investigating its virtues or faults. In response, TVNZ argued that Culpeper's scheme's obvious lack of applicability to New Zealand was the justification for not examining the scheme in detail. TVNZ also raised the possibility that the Treasury was complaining because TVNZ did not adopt its approach to the issue. On that specific point, the Treasury maintained that its complaint was about the way TVNZ had examined the topic - not the selection of the topic. On this point, the Authority agrees that the Treasury was not attempting to dictate TVNZ's approach.

After considering whether TVNZ's examination of the Culpeper scheme was adequate, the Authority believed there was substance to the Treasury's complaint. After commenting about the differences between the climate in Culpeper and New Zealand, the reporter said that there were only 41 vouchers available in Culpeper and that they were for the elderly and disabled. This was followed by a brief interview with Culpeper's residential manager and TVNZ dismissed the scheme as having little relevance to New Zealand. The Authority decided that though TVNZ's derisory dismissal of the Culpeper scheme might well have been justified in all the circumstances, it nevertheless left the viewer uninformed about those circumstances. For example, information about the size of Culpeper's population, and perhaps some details of its socio-economic composition, would have helped the viewer decide whether TVNZ's dismissal of the scheme was apposite and not based simply on climate and the number of vouchers.

TVNZ did not deny that it ridiculed the suggestion that the Culpeper scheme could provide lessons for New Zealand.

That concern was the basis of what the Treasury described as the programme's third failing. Noting that this point was central to its complaint, the Treasury complained that *Frontline* used its ridicule of the Culpeper scheme as a means to ridicule Abt Associates. TVNZ disputed the link, adding that Abt was criticised by a housing lobbyist based in Boston. In response to that point, the Treasury said that TVNZ, by presenting the lobbyist's views without rejoinder, left the impression that Abt was unqualified.

The aspect of the complaint about the presentation of Abt's qualifications will be dealt with under the Treasury's fourth alleged failing. On the issue of whether TVNZ used the deficiencies uncovered in Culpeper as a means to undermine Abt, the Authority concurred with the Treasury - not only did TVNZ use Culpeper to criticise Abt, it did so in such a way to suggest that Abt lacked the qualifications to carry out the task expected of it.

The programme's fourth and final failing, the Treasury alleged, was its failure to cover Abt Associates' qualifications for its task. Instead, TVNZ had broadcast the opinion of a "self-confessedly ignorant" lobbyist, balanced only, and insufficiently, by the views of the Minister of Housing who endorsed Abt. TVNZ said that the two comments referred



to balanced each other and, it added, Abt's qualifications were not in doubt.

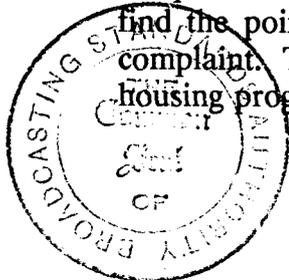
The Authority agreed with TVNZ that broadcasting standards matters did not require an account of how Abt had been selected by the Treasury. However, it felt that a brief summary of Abt's qualifications should have been broadcast. It believed that the lobbyist's comments about Abt's lack of public involvement in housing issues in its home state of Massachusetts raised the issue of Abt's competency which should have been put to either Dr Stellwagen (chief executive of Abt) or some other person familiar with Abt's work. The lobbyist was presented as an expert on housing in Massachusetts and the Minister of Housing's endorsement of Abt in reply was insufficient in presenting a balanced view about Abt's qualifications.

At one point in the correspondence, TVNZ questioned why the Treasury, and not Abt Associates, was the complainant. After the Authority had obtained the views of the Treasury and TVNZ, it received a letter from Dr Stellwagen of Abt, who having read the transcript, associated himself with the Treasury's complaint. He denied, first, that Abt had proposed Culpeper as a model for a voucher programme, and secondly, that Abt had been hired to design a programme for New Zealand. He also referred to a matter which was not raised in the Treasury's complaint, and consequently not dealt with by the Authority, when he denied that the political influences of the company's founder (Clarke Abt) influenced its work.

The Authority has so far focused on standard 4 issues. The two truth and accuracy questions (standard 1) which permeate the correspondence concern, first, whether the programme suggested that Abt had been hired to prepare a voucher programme for New Zealand and, secondly, its competency. The first issue was also noted as Dr Stellwagen's second point above. The Authority believed the programme did not clearly outline why the Treasury hired Abt. The programme did not state, as Dr Stellwagen said he had advised TVNZ's reporter, that Abt would report on public housing programmes in the United States and deal with subsidies and tax breaks and the success or failure of the various schemes in meeting housing needs defined, for example, in terms of segregation, housing quality, rent burdens and equity.

The programme did state that public housing schemes and their respective clientele were different in the United States from New Zealand, as were the countries' respective economies. Although, it could be argued that this was broadcast to add further to the doubt cast on Abt's qualifications to assist in New Zealand, it could also be interpreted to show that *Frontline* was not implying that Abt had been hired to devise a programme for New Zealand. Because this latter conclusion is one which complies with the material presented, the Authority decided that the truth and accuracy requirement of standard 1 was not breached with regard to the issue of Abt's role.

Reverting to the question of accuracy which focused on TVNZ's presentation of Abt's qualifications, the Treasury complained that the programme had suggested that Abt had not previously worked for any government or politicians. The Authority was unable to find the point in the programme or its transcript on which the Treasury based that complaint. The housing lobbyist claimed that Abt was not involved in its home state's housing programmes but there was no comment broadcast to suggest that Abt had not



been employed by the federal government. Accordingly, although the failure to mention Abt's qualifications raised matters relevant to standard 4 of the Television Code, the Authority did not uphold the aspect of the complaint under standard 1 that TVNZ failed to maintain truth and accuracy.

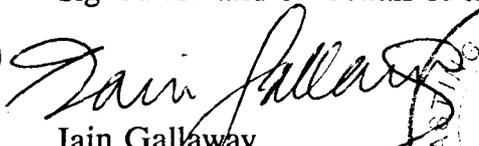
On the issue of standard 4 and its requirement that people be referred to justly and fairly, the Authority has decided that there was some foundation to each of the four facets of the complaint noted by the Treasury. In particular, the Authority agreed with the Treasury's point that TVNZ presented the Boston lobbyist as a housing expert and his peremptory dismissal of Abt Associates should have been balanced by someone who was able to describe the suitability of Abt's qualifications for the job for which it had been hired. Accordingly, the Authority concluded that the programme did not treat Abt Associates fairly and justly.

For the reasons set forth above, the Authority upholds the complaint that the broadcast of the *Frontline* programme by Television New Zealand on 16 June 1991 failed to comply with standard 4 of the Television Code of Broadcasting Practice.

The Authority declines to uphold the complaint that the broadcast of the same programme breached standard 1 of the same Code.

Having upheld some aspects of the complaint, the Authority considered whether or not it should make an order under s.13(1)(a) of the Broadcasting Act 1989 directing the broadcaster broadcast a statement relating to the complaint. First, as the company ridiculed was not New Zealand based, secondly, as the broadcast would have little effect on the company, thirdly, as Abt's work was not the item's major focus, and fourthly, as the Minister of Housing's remark went some way to balance TVNZ's criticism of Abt, the Authority decided that a s.13(1)(a) order was not appropriate.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson
30 March 1992



AppendixThe Treasury's Complaint to Television New Zealand Limited

The Treasury, in a letter dated 11 July 1991, complained to Television New Zealand Ltd about the *Frontline* programme "State - the Obvious?" broadcast by TV1 on 16 June.

The programme, the Treasury stated, presented an incomplete and biased account of Abt Associates, a consultant hired by the Treasury. Specifically, the Treasury wrote, *Frontline* misled viewers by:

- * misrepresenting what it had been told about a housing assistance scheme in Culpeper, Virginia;
- * ridiculing that scheme while failing to investigate its merits or flaws;
- * using that ridicule as the context for discussing the professional qualifications of Abt Associates;
- * failing to investigate Abt's qualifications, yet presenting the opinions of a self-confessedly ignorant lobby group as the only set of facts on the matter.

The Treasury explained that Abt Associates had been hired after a competitive selection process. It also noted that TVNZ had consulted the Treasury about the programme and, in view of TVNZ's self-imposed limitations on travel, the Treasury had suggested that Culpeper, although not totally appropriate, be used for comparative purposes. In these circumstances, it was utterly false for *Frontline* to tell viewers that "Culpeper was chosen as a model for New Zealand" or that it represented a model for the nation. The Treasury also expressed disquiet about the *Frontline's* reporting of the housing supplement system in Culpeper.

The Treasury complained that the broadcast opinion about Abt Associates was derogatory whereas, if asked, both the Treasury and Abt would have been able to provide full details of its relevant experiences including the details of its extensive work for the US Department of Housing and Urban Development. The Treasury stated:

Frontline's publishing the view of a person who admitted ignorance on the matter, and publishing no informed view, is at the least sloppy journalism and at worst gross negligence. It is self-evident that if a soccer goalie told Frontline "Buck Shelford never kicked a goal past me", Frontline would have to do a little more research before concluding that Shelford was not an accomplished sportsman.



Further, this one-sided account of Abt Associates qualifications was published in a context of ridicule based on poor research, and of misrepresentation of what Abt Associates had told *Frontline*.

The Treasury said that the programme breached standards 1 and 4 of the Television Code of Broadcasting Practice which require broadcasters:

- 1 To be truthful and accurate on points of fact
- 4 To deal justly and fairly with any person taking part or referred to in a programme.

It requested the broadcast of an apology and a correction.

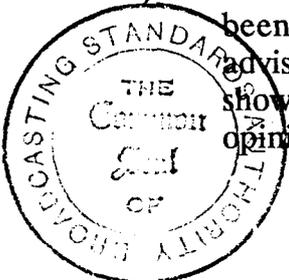
TVNZ's Response to the Formal Complaint

TVNZ advised the Treasury of its Complaints Committee's decision in a letter dated 29 August 1991. It dealt with the Treasury's specific complaints (noted above with asterisks).

- a) TVNZ denied that its reporter had been advised that Culpeper was in any way distinguished from other relevant rental housing projects and, further, neither the Treasury nor Abt Associates had expressed any concern when advised of its intended use for comparative purposes. In addition, Dr Stellwagen of Abt described the housing situation in Culpeper as similar to the situation in New Zealand. In these circumstances, TVNZ maintained, the use of the phrase that Culpeper was a "model for a nation" was not inappropriate.

TVNZ argued that Culpeper's unsuitability became apparent during the preparation of the programme. TVNZ had then approached the US Department of Housing and Urban Development and was directed to Montgomery County, Maryland, where the voucher system worked well. A participant's (a beneficiary) praise of that scheme, TVNZ continued, was unstinting and served to balance and offset what *Frontline* found in and reported about Culpeper.

- b) TVNZ maintained that the relevant advantages and disadvantages of the voucher scheme for New Zealand were explained.
- c) Abt Associates, TVNZ said, were not ridiculed in the programme. The firm had been criticised only by a Boston housing lobby group spokesperson.
- d) TVNZ denied that *Frontline* was guilty of poor research. The reporter had been extensively briefed in New Zealand by the Minister of Housing and advisors and, in the United States, by Dr Stellwagen of Abt. The programme showed the Minister endorsing Abt and reported a Treasury officer's similar opinion. TVNZ added that the lengthy interview with Dr Stellwagen provided



little material for television as he was given to expansive circumlocution. TVNZ could find no evidence of breaches of the standards and concluded:

If there could be criticism of the programme it was seen in the fact that an implication appeared to come through, resulting from reporter comment, that the American voucher system was virtually a foregone conclusion, when in fact it was at best only in the advanced investigation stage.

In summary the Committee considered that it was right and proper that the programme should ask searching questions about an organisation that seemingly might have a considerable influence on an aspect of New Zealand life in which the public had a genuine interest.

The Treasury's Complaint to the Broadcasting Standards Authority

As the Treasury was dissatisfied with TVNZ's decision, in a letter dated 27 September 1991 it referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Expressing the opinion that TVNZ had misinterpreted the complaint, the Treasury said that a combination of the programme's four identified failings had resulted in Abt Associates being treated unfairly by *Frontline*. It then dealt with the specific issues.

- a) The Treasury pointed out, quoting TVNZ's letter, that the use of the phrase describing Culpeper as "a model for a nation" was unfair. The Budget decisions, announced after the broadcast of the programme, did not provide for "American-style voucher programmes". It continued:

The programme's representation of American-style housing vouchers providing "a model for a nation" contributed significantly to creating the false impression criticised in the TVNZ decision.

Further, the Treasury added, *Frontline* decided to use a model from the north-eastern United States before seeking assistance. The Treasury also remarked that *Frontline*'s reporter was told by the Minister and officials that it was not intended to adopt an overseas model but to use overseas experience in devising a model suitable for New Zealand. It added:

We suggested Culpeper as a way of assisting *Frontline* within the parameters they had already devised; we did not endorse those parameters, including the technique of comparing any particular American scheme with the New Zealand situation.

The Treasury concluded on this point:



The Treasury's complaint was not about its representation of Culpeper as such; it was about the way Abt Associates' suggestion (through us) that Frontline might visit Culpeper was used as a pretext for Frontline's negative portrayal of Abt. Anything the programme said about any other voucher programme is irrelevant.

What Frontline reported about the Maryland voucher scheme did in some respects offset its otherwise negative reporting on vouchers in general; but it did nothing to ameliorate the damage to Abt that is at the centre of our complaint.

- b) TVNZ, the Treasury maintained, missed the substance of the complaint. Dr Stellwagen of Abt apologised for the original misunderstanding over the purpose of the visit, it wrote, but that did not excuse *Frontline* for representing Culpeper as a "model for a nation" nor for ridiculing it without investigating its virtues or faults.
- c) Again, the Treasury complained, *Frontline* had ridiculed Abt by associating it with the Culpeper scheme and had missed the point of the complaint. The complaint had not alleged that Abt had been ridiculed directly - which was the point that TVNZ had addressed in its response. The Treasury explained that the complaint alleged that the Culpeper voucher scheme had been ridiculed and that ridicule had been used to question Abt's qualifications.
- d) The Treasury accepted TVNZ's assertion that Abt's qualifications had been investigated but questioned TVNZ's professional skill in not broadcasting the findings. The Treasury also accepted the validity of reporting the views of the housing lobbyist but again questioned why TVNZ did not report its research which apparently addressed the lobbyist's professed lack of knowledge. The sporting analogy was used, the Treasury added, to explain that if TVNZ intended to investigate a person's qualifications, it had an obligation to ask people who were in a position to know the answers.

Mr Luxton, Minister of Housing, had praised Abt's work although TVNZ was incorrect in stating that a Treasury official had endorsed Abt. However, TVNZ, by not broadcasting informed comment, had not responded to the core of the complaint. The complaint, it noted, was not about searching questions but about balance when only the negative views of an ill-informed person were broadcast.

In conclusion the Treasury stated:

The core of the Treasury's complaint is that by "presenting the opinions of a self-confessedly ignorant lobby group as the only set of facts" on Abt's qualifications and experience, the programme breached the Programme Standards relating to truth and accuracy, and to fairness to persons appearing in a programme.



The impact of that breach is compounded by the other three elements of the complaint. Specifically, *Frontline's* misrepresentation of what it had been told about Culpeper, its ridicule of the scheme, and using that ridicule to set the scene for questioning Abt's qualifications, all created an unfair and negative context for discussing Abt.

TVNZ's decisions fails to address meaningfully the substance of any element of that complaint.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's comments on the complaint. The request is dated 30 September 1991 and TVNZ's reply 4 December.

The letter began with the points that the *Frontline* team, following helpful briefings in New Zealand, investigated and reported on a voucher scheme and that the programme was broadcast before the budget decisions were announced. Contrary to what the Treasury alleged, TVNZ said, the scheme announced in the Budget was "very similar" to that described by *Frontline* as operating in the United States.

- a) TVNZ insisted that the programme did not suggest that the Culpeper scheme was *the* "model for a nation". Rather, several models were presented. By focusing on Culpeper, TVNZ said that the programme provided a warning about the voucher system. That did not amount to a breach of the broadcasting standards as alleged by the complainant.

TVNZ also argued that a close examination of the script indicated "that the so-called negative portrayal of Abt is a mirror image of its performance". TVNZ also commented that there was no evidence that Abt shared the Treasury's views and contrasted this point with the British legislation where complaints about unfair treatment will only be considered if made by the person affected.

- b) TVNZ raised the possibility that the Treasury complained as *Frontline* had not followed Treasury's approach. It maintained that the Culpeper scheme's inappropriateness to New Zealand justified the decision not to study it in depth.
- c) TVNZ disputed the complainant's allegation that the programme's ridicule directed at the voucher scheme in Culpeper amounted to ridicule of Abt's qualifications.
- d) Abt's qualifications were not in doubt, TVNZ wrote, and it was unnecessary to present them. Any negative comment from the Boston lobbyist was balanced by Mr Luxton's positive endorsement. TVNZ regarded the sporting analogy as not particularly apt. The general tenor of the complaint, TVNZ noted, had the potential to stifle public debate about important public issues and that, it argued, was not the intention of the broadcasting standards.

TVNZ concluded by noting that the programme focused on important issues and that balance had to be assessed over the entire programme rather than studying isolated incidents. In these terms, the programme about housing supplement schemes had given an "essentially correct and fair, outline of the pros and cons of a 'voucher' system".

The Treasury's Final Comment to the Authority

When asked to comment on TVNZ's reply, in a fax received on 16 January 1992 the Treasury stated that TVNZ continued to miss the point of the original complaint. It said again that it was not complaining about *Frontline's* choice of issue but some specific aspects of the broadcast. It also dismissed as irrelevant TVNZ's analysis of the Budget's housing announcements as the broadcast occurred before the Budget was presented.

With regard to TVNZ's point about Abt's attitude to the complaint, the Treasury stated:

We are not sure why this is relevant to the facts of the case. However we understand that Dr Stellwagen intends to write directly to the Authority on this matter.

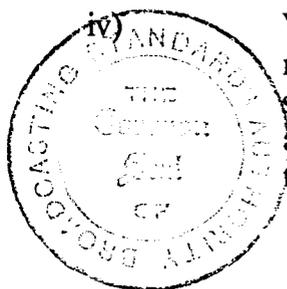
The Treasury said that TVNZ's reply also distorted the complaint in the following respects:

- i) The Treasury was not making an issue about a suggested "editorial line".
- ii) TVNZ stated, the Treasury said, that "Abt had not been ... hired for its advice by politicians in the United States, whereas in New Zealand it had been". Describing the statement as factually incorrect, the Treasury said that Abt had been hired by government departments in both New Zealand and the United States -

yet both the *Frontline* programme and the latest letter from TVNZ imply that Abt had been hired to do something in New Zealand that it was not considered good at in its own country. That is the heart of our complaint.

- iii) While not arguing for the presentation of Abt's qualifications in full, by broadcasting only the lobbyist's admittedly uninformed views the Treasury said TVNZ had left an unfair and inaccurate impression that Abt was unqualified.

While we do not want to belabour our sporting analogy, TVNZ's misunderstanding of it is symptomatic of its inability to deal with the substance of our complaint. In case there is any doubt, the point is that a soccer player may not be in a position to comment on the sporting talent of a rugby player, just as Mr Callahan of the housing lobby group



may not be in a position to know much about Abt.

The Treasury concluded:

Finally we concur with TVNZ that this case should be decided on "balance and completeness when assessed over the entire programme". We submit that any viewer watching the programme in its entirety would be uninformed about Abt's ability and experience, would be likely to conclude that its ability and experience were questionable, and that viewers were lead to that conclusion through unfair means.

Dr Walter Stellwagen, president and CEO of Abt Associates Inc. of Massachusetts, faxed a letter to the Authority dated 15 January 1992 in which he said that he had read a transcript of the programme and was aware of the complaint. He continued:

I wish to associate myself with Treasury's complaint. I believe the program unfairly presented Abt Associates in several respects.

He denied, first, that Abt had proposed Culpeper as a model for a voucher system, secondly, that Abt had designed a programme for New Zealand, and thirdly, that Clark Abt's political affiliations influenced the work of the company.

