

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 112/93

Dated the 8th day of September 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

LAWYERS AGAINST TORTURE  
AND OPPRESSION ANYWHERE INC  
(LATOA)  
of Auckland

Broadcaster  
TELEVISION NEW ZEALAND  
LIMITED

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

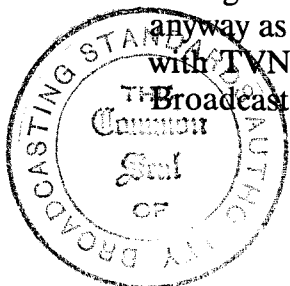
DECISION

Introduction

An anti-French protest focussing on the possible resumption of nuclear testing on Mururoa Atoll took place on Auckland harbour on 13 May 1993 during the visit of the French naval ship, the "Jacques Cartier".

The Executive Director of Lawyers against Torture and Oppression Anywhere Inc. (LATOA), Mr Colin Amery, complained to Television New Zealand Ltd that its non-coverage of the protest breached the broadcasting standard which requires that reasonable opportunities be given to present significant points of view when controversial issues of public importance are discussed.

Pointing out that the decision not to cover the protest was a matter of editorial discretion and that such decisions were outside the legislative complaints process, TVNZ declined to uphold the complaint. Furthermore, the coverage given to the anti-French message during the past six years or so indicated that TVNZ had complied with the standard anyway as balance had been achieved over time as allowed by the standard. Dissatisfied with TVNZ's response, Mr Amery on LATOA's behalf referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.



## Decision

The members of the Authority have read the correspondence (summarised in the Appendix). Because of the extensive way the issue was dealt with by the parties in the correspondence, the Authority declined the request from Mr Amery of LATOA for a formal hearing and, as is its usual practice, determined the complaint without a hearing.

In May 1993, the first French naval ship to visit New Zealand since the sinking of the Rainbow Warrior in 1985 arrived in Auckland. Both its arrival and departure were covered in items on TVNZ's *One Network News*. While the ship was in Auckland, LATOA Inc. (Lawyers Against Torture and Oppression Anywhere) organised a protest in the form of an attempt to deliver by yacht a wreath and a letter to the vessel.

The yacht carried a TVNZ crew who filmed the attempted delivery and although a report of the protest was carried by TVNZ's *Te Karere*, by TV3 and by the *NZ Herald*, it was not covered in *One Network News*.

As the coverage given to the protest by other media indicated the newsworthiness of the venture, LATOA complained that the absence of an item on TVNZ's main news bulletin indicated that its news was not balanced. The complaint referred to s.4(1)(d) of the Broadcasting Act 1989 which requires broadcasters to maintain standards consistent with:

- (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 period of current interest;

In response, TVNZ said the complaints procedure had been established to deal with complaints about matters which had been broadcast and, citing an earlier Broadcasting Standards Authority decision on the point (No: 18/90), noted that only on rare occasions would the non-broadcast of an item breach the broadcasting standards. The non-coverage of the protest was a matter of editorial discretion when deciding which news to broadcast to ensure a rounded view of events on any particular day. Furthermore, TVNZ added, news broadcasts over a number of years dealing with the anti-French message had ensured that the requirements of s.4(1)(d) had been met.

LATOA argued that there were important constitutional issues involved in balanced news coverage when it referred TVNZ's decision to the Authority. In addition, as part of its complaint to TVNZ, LATOA said that the news item which was broadcast when the ship departed "talked about the success of the visit".

In view of this reported comment, the Authority sought more information from TVNZ as to exactly what was contained in the report when the ship left Auckland. TVNZ said that the item showed the ship leaving in the fog and had reported:

French naval transport ship Jacques Cartier leaving Auckland today the first French vessel to visit New Zealand since the 1985 bombing of the Rainbow Warrior.



The Authority examined the requirements of s.4(1)(d) in assessing the complaint. It accepted that the visit was a "controversial issue of public importance" and that LATOA actively embodied the anti-French sentiment which was a significant point of view as part of the broad issue of New Zealand - French relationships. The section in the Act also refers to the period of current interest and the Authority accepted that New Zealand's relationship with France was an on-going story highlighted in recent years by the protests about nuclear weapon testing at Mururoa and the bombing of the Rainbow Warrior in Auckland in 1985. The visit of the naval ship, although important as part of the continuing relationship over a longer period, was not a high profile event in itself.

The Authority accepts that, usually, the non-broadcast of an event is not a matter to which the complaints process in the Broadcasting Act is applicable. Furthermore, it accepts that in most cases it is a matter of editorial discretion whether an item is considered to be worthy of broadcast as a news item by the broadcaster. Section 4(1)(d) provides the principal exception to this approach as it requires that reasonable efforts are made or reasonable opportunities are given to present significant points of view on controversial matters within the period of current interest. This statutory provision would appear to reflect LATOA's contention that news balance is "an important constitutional issue". The Authority would agree insofar as it believes that the balance principle encapsulated in s.4(1)(d) is of fundamental importance to ensure the functioning of a well-informed democracy. With reference to the current complaint, the Authority's task was to decide whether TVNZ, in not broadcasting an account of the protest, had complied with s.4(1)(d).

In view of LATOA's comment that TVNZ had reported the "success" of the naval vessel's visit then the protest organised by LATOA would seem to suggest a significant point of view to the contrary. On that basis, the Authority sought the further information referred to above. However, on being advised that the report on the ship's departure had been factual and had not included an observation about the success or otherwise of the visit, the Authority agreed with TVNZ that the visit had not given rise to any particular event or incident on which a significant opposing point of view had to be presented.

As the decision about whether to report the protest only involved, in the circumstances, a news judgment as to its relevance to the on-going relationship between France and New Zealand, the Authority concluded that s.4(1)(d) had not been contravened. Because it was required to decide whether s.4(1)(d) was applicable, the Authority accepted that the complaint was justified and, although agreeing with TVNZ that it was finally a matter of editorial discretion in this instance, it decided that it was not an appropriate occasion in which it should decline to determine the complaint.

**For the reasons set forth above, the Authority declines to uphold the complaint.**

Signed for and on behalf of the Authority

*Iain Gallaway*  
Iain Gallaway  
Chairperson

8 September 1993



## Appendix

### LATOA's Complaint to Television New Zealand Limited

In a letter dated 17 May 1993, the Executive Director of Lawyers against Torture and Oppression (LATOA), Mr Colin Amery, complained to Television New Zealand Ltd about its non-coverage of LATOA's anti-French protest in Auckland on 13 May 1993.

The complaint was made under s.4(1)(d) of the Broadcasting Act which requires that, when controversial issues of public importance are discussed, reasonable opportunities are given to present significant points of view in the same programme or within the period of current interest.

Mr Amery recorded that the protest took the form of an attempt to deliver a wreath and a letter to the French naval ship, the "Jacques Cartier", anchored in the naval dockyard at Devonport but the delivery of the material was prevented by four police boats. He added that a TVNZ film crew had been aboard the yacht which had tried to deliver the material and had filmed extensively but its report was not broadcast.

The protest, Mr Amery continued, was covered on TV3, TVNZ's *Te Karere* and in the *New Zealand Herald* which indicated its newsworthiness. He questioned whether the item was not broadcast as a way of avoiding criticism from the government that TVNZ was anti-government.

Mr Amery noted that TVNZ's news editor had told LATOA that the decision not to broadcast the item had been his alone. He described the editor's decision as a "serious error of judgement" and pointed to s.14 of the New Zealand Bill of Rights Act which guaranteed freedom of expression and:

... by analogy, the right to have a balanced exchange of ideas on controversial issues of the moment.

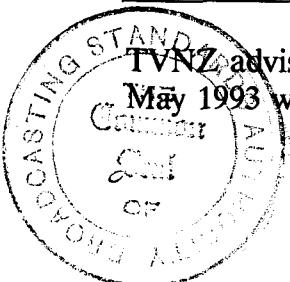
In a further letter dated 24 May, Mr Amery objected to TVNZ's coverage of the departure of the "Jacques Cartier" as it had referred to the success of the visit. That report, he added:

... appears to reinforce our view that State TV is becoming an agency for Government "good news" propaganda.

He also sought permission to be allowed to give the organisation's view to TVNZ's Complaints Committee orally when it considered the complaint.

### TVNZ's Response to the Formal Complaint

TVNZ advised LATOA of its Complaints Committee's decision in a letter dated 28 May 1993 when it reported that the complaint had been considered under s.4(1)(d) of



the Broadcasting Act.

It began by explaining that the Complaints Committee was set up under the Act to hear complaints about matters which were broadcast. It quoted Broadcasting Standards Authority Decision No: 18/90 which stated that only on rare occasions would the non-broadcast of an item breach the broadcasting standards.

The decision not to cover the anti-French protest, TVNZ continued, was an editorial one which fell outside the ambit of the legislative complaints process. It was the editor's decision to use discretion to ensure that a rounded view of events was broadcast on any particular day.

Nevertheless, TVNZ added, the anti-French message had been included in the news broadcast for a number of years - the period of current interest - and thus s.4(1)(d) had been complied with. TVNZ concluded:

Because it believed your complaint fell outside its area of responsibility, the Complaints Committee declined to uphold the complaint.

#### LATOA's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's decision, in a letter dated 1 June 1993 Mr Amery on LATOA's behalf referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Mr Amery stated that TVNZ had reported the arrival and departure of the "Jacques Cartier" but had not covered LATOA's protest although it was reported on *Te Karere* and on TV3. The protest had been filmed by TVNZ and

... was in fact taken off the computer for that broadcast at the last minute and an item substituted about a rare bird species that might become extinct.

That decision he added, showed bias in favouring the Government's point of view.

He also disagreed that TVNZ had dealt with the anti-French view during the "period of current interest" over a number of years. The anti-French sentiment was still tangible and should have been included in the item about the protest on 13 May.

Arguing that the issue raised by the complaint - whether TVNZ was covering controversial issues in a balanced way - was of some constitutional importance and pointing to the Government's actions at expressing its concerns towards Radio New Zealand Ltd, Mr Amery maintained that LATOA requested a formal hearing at which to present its point of view.

In a further letter dated 23 June, Mr Amery said he might have to revise his submission about the Government's actions towards RNZ in the light of new information. However, he said that he refrained from this until he had received some



information he had requested under the Official Information Act.

### TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 3 June and TVNZ's reply, 30 June.

TVNZ began by reminding the Authority of its ruling in Decision No: 18/90 that the non-broadcast of a programme item would rarely give rise to a breach of standards. Pointing out that the decision on this occasion amounted to the exercise of editorial discretion, TVNZ maintained that it did not amount to a "rare" exception and stated:

There was nothing sinister about the decision not to run the item - nor, we most emphatically aver, was there any ministerial or governmental intervention in the decision.

The fact is that it is very common for a programme editor to have more material that he or she has room to accommodate and in those circumstances he or she will exercise editorial judgement to decide what is to be left out.

Furthermore, TVNZ argued that the "ebb and flow" of French-New Zealand relations had been widely reported in the media over the years. The arrival of a French ship was a new stage and thus merited coverage while the small protest was not a new development. TVNZ added:

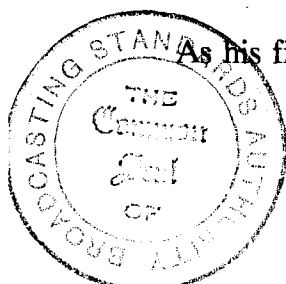
The company would observe that news media outlets must treat the activities of various pressure groups with the greatest care. Certainly those groups are entitled to have their views heard from time to time but it is important that the viewpoints are always kept in perspective so that they do not take on a significance in the public mind which they do not deserve.

As for Mr Amery's request for a formal hearing, TVNZ argued that the complaint was of insufficient substance for the Authority to depart from its usual procedure to determine a complaint without such a hearing.

### LATOA's Final Comment to the Authority

On LATOA's behalf, in a letter dated 7 July 1993 Mr Amery replied to TVNZ. He began by arguing that the Authority should examine TVNZ's coverage of the visit in its entirety to see if balance was achieved. He again maintained that an item about birds becoming extinct was hardly a current newsworthy item when placed alongside LATOA's activities. He acknowledged that the group was small but argued that its membership consisted of influential people.

As his final point, Mr Amery wrote:



Our main complaint is not so much the non-appearance of this event, as the fact that there was a lack of balance when taking into account the two other items which appeared both before and after this particular protest situation. We do not think this is outside the ambit of your authority and jurisdiction because there was clearly, in our submission, a statutory breach on the question of balance.

He urged the Authority to obtain TVNZ's broadcasts of items which dealt with the visit of the French naval ship. He concluded by acknowledging that LATOA accepted that the matter would be determined without a hearing.

### Further Correspondence

In view of the complainant's belief that TVNZ, when reporting the ship's departure, had referred to the success of the visit, the Authority considered that that might be an issue of balance involved as the demonstration had not been reported. In a letter dated 16 July 1993, it sought from TVNZ more information on the reported comment.

TVNZ advised the Authority, in a letter dated 4 August, that the item about the ship leaving Auckland did not refer to the success of the visit. The transcript stated, as the ship was shown departing in the fog:

French naval transport ship Jacques Cartier leaving Auckland today the first French vessel to visit New Zealand since the 1985 bombing of the Rainbow Warrior.

Insisting that the issue was not of balance, TVNZ said that a report of the "protest" could have resulted in an alleged breach of the truth and accuracy requirement in standard G1 as LATOA could argue about whether or not a "protest" was the appropriate term taking into account the current state of the relationship between New Zealand and France.

LATOA, in its comment on TVNZ's letter dated 9 August, maintained that its main complaint focussed on the "non-report" of a "protest" by some eminent people about the visit of a French naval ship.

