

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 159/93

Dated the 25th day of November 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

GREENPEACE NEW ZEALAND INC.

Broadcaster

TELEVISION NEW ZEALAND  
LIMITED

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

DECISION

Summary

Some of the activities of Greenpeace were examined in an item called "Greenbuster" broadcast on Channel Two's *60 Minutes* between 7.30 - 8.30pm on Sunday 11 April. The broadcast included a discussion with Icelander Magnus Gudmundsson who was visiting New Zealand to address the Fishing Industry Association, and a debate between Mr Gudmundsson and two Greenpeace representatives.

Greenpeace complained to Television New Zealand Ltd that the item contained a number of factual inaccuracies, that it was unbalanced and that the tone was unfair to Greenpeace. It listed two requirements in the Broadcasting Act and a number of standards in the Television Code of Broadcasting Practice which, it alleged, had been breached by the broadcast.

TVNZ upheld the aspects of the complaint that the references to Greenpeace films and excerpts which showed harm to animals and which suggested that the incidents might have been staged were inaccurate. It broadcast a correction and apology on *60 Minutes* on 25 April. However, it declined to uphold any other aspect of the complaint. Dissatisfied with the numerous aspects of the complaint not upheld, and the action taken on the aspect upheld, Greenpeace referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.



*For the reasons given below, a majority of the Authority declined to uphold the complaint.*

### **Decision**

The members of the Authority have viewed the item complained about and have read the lengthy correspondence (summarised in the Appendix). Greenpeace suggested that a formal hearing might be advisable to clarify the issues raised by the complaint but, in view of the comprehensive material supplied by both Greenpeace and TVNZ, the Authority decided to follow its usual practice and determine the complaint without a formal hearing.

A *60 Minutes* item called "Greenbuster" broadcast on 11 April 1993 focussed on the activities of Greenpeace. It included criticism about Greenpeace from visiting Icelander Magnus Gudmundsson and a debate between Mr Gudmundsson and two Greenpeace representatives who were joined briefly by a scientist who provided information about whale numbers.

Greenpeace complained to TVNZ about the item. It alleged seven factual inaccuracies and argued that the item was unbalanced. Under that latter aspect of the complaint, Greenpeace referred to a number of points which, in summary, it said had put Greenpeace on trial without it having a full and fair opportunity to reply.

In response, TVNZ argued that Greenpeace, its methods of operation and its use of donations were legitimate matters of public interest. The broadcasting standard requiring balance, it continued, referred to the need for balance "within the period of current interest" which meant that the broadcaster, when assessing the balance complaint about the item broadcast on 11 April, had to take into account the numerous news and current affairs items favourable to Greenpeace, in its view, broadcast in recent years.

### **Procedural Points**

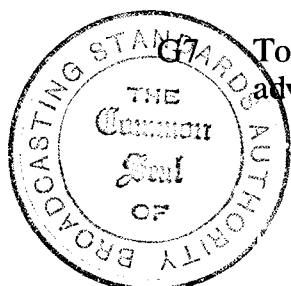
TVNZ considered the complaint under standards G1 and G6 of the Television Code of Broadcasting Practice. They require broadcasters:

- G1 To be truthful and accurate on points of fact.
- G6 To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

Greenpeace also raised s.4(1)(c) of the Act and standards G4, G7, G14, G19, G20 and G21 of the Code. The former requires broadcasters to maintain standards consistent with the privacy of the individual and the next two require broadcasters:

- G4 To deal justly and fairly with any person taking part or referred to in any programme.

G7 To avoid the use of any deceptive programme practice which takes advantage of the confidence viewers have in the integrity of broadcasting.



The other standards read:

- G14 News must be presented accurately, objectively and impartially.
- G19 Care must be taken in the editing of programme material to ensure that the extracts used are a true reflection and not a distortion of the original event or the overall views expressed.
- G20 No set formula can be advanced for the allocation of time to interested parties on controversial public issues. Broadcasters should aim to present all significant sides in as fair a way as possible, and this can be done only by judging every case on its merits.
- G21 Significant errors of fact should be corrected at the earliest opportunity.

Standard G4 requires that people in a programme be dealt with "fairly" while one aspect of standard G6 requires broadcasters to show "fairness" when dealing with controversial issues. Greenpeace cited standard G4 rather than G6. Because the specific requirement in standard G4 is encompassed by standard G6 in this complaint, the Authority has subsumed the narrow requirement of the former in the broader obligation incorporated in the latter.

Standard G14 is also inapplicable as it applies to "news" whereas *60 Minutes* broadcasts current affairs items. In addition, the Authority was unable to agree with Greenpeace that any aspect of the item either invaded an individual's privacy (contrary to s.4(1)(c)) or involved a deceptive programme practice (in breach of standard G7).

The Authority did not specifically apply the criteria contained in standards G4, G7, G14, G19, G20 and G21 to the broadcast complained about. Instead, it took into account s.4(1)(d) of the Broadcasting Act 1989 which is complementary to standard G6. It requires broadcasters to maintain standards consistent with:

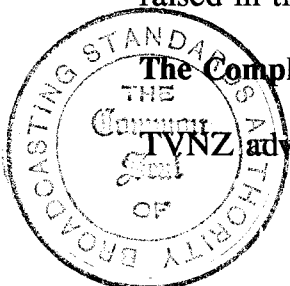
- (d) The principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given to present significant points of view either in the same programme or in other programmes within the period of current interest.

The Authority was firmly of the opinion that all the issues raised by Greenpeace were encompassed either in standard G1 or under the wide-ranging combination of s.4(1)(d) of the Act and standard G6 of the Code.

Greenpeace complained about the content of the newspaper advertisements for the item. They were not evaluated as they do not come within the Authority's jurisdiction and Greenpeace's later complaint about the television promos was not assessed as it was not raised in the original complaint to TVNZ.

#### The Complaint and TVNZ's Response

TVNZ advised Greenpeace that it divided the complaint into the following five areas:



1. The references to the film showing the skinning of the seal pup.
2. The references to the film of the kangaroo killing.
3. The allegation that Greenpeace is "in it for the money".
4. The statements regarding Greenpeace's attitude to Mr Gudmundsson.
5. A general feeling on Greenpeace's behalf that the "tone" lacked balance.

TVNZ reported that it had accepted the complaint about the inaccuracies raised under points 1 and 2 and they had been subject to the correction and apology broadcast on *60 Minutes* on 25 April. The statement of correction, it added, was broadcast with Greenpeace's concurrence.

Although it was not entirely clear from some of Greenpeace's comments whether or not it was satisfied with TVNZ's actions on these two aspects of the complaint upheld, the Authority decided that Greenpeace's comments in total amounted to dissatisfaction with the action taken by TVNZ having upheld aspects of the complaint. To enable an assessment of that aspect of the complaint, the Authority requested from TVNZ a copy of the correction and apology broadcast on 25 April.

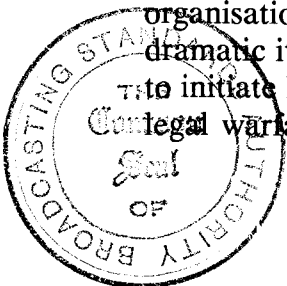
Having viewed the 25 April broadcast, the Authority has some sympathy for Greenpeace in that the apology and correction was not totally clear about the particular aspects of the 11 April broadcast that the correction was referring to. Nevertheless, there was sufficient general reference to the films about seal skinning and kangaroo killing for a viewer at least to understand the thrust of the correction. Consequently, the Authority declined to uphold the complaint about the action taken by TVNZ having upheld aspects of the complaint from Greenpeace.

#### **The allegation that Greenpeace "is in it for the money"**

That allegation was made explicitly by Magnus Gudmundsson. It was a statement that the Authority did not consider had been made as a fact but as an opinion which, in the interests of balance, had to be put to Greenpeace for response which, indeed, it was. As the statement was clearly a comment and not a fact, it did not contravene the standard requiring accuracy and as Greenpeace was given an opportunity to respond, and did in fact respond, the Authority decided that TVNZ had also complied with the broadcasting standards requiring balance and declined to uphold that aspect of the complaint.

#### **Greenpeace's attitude to Mr Gudmundsson**

The two issues which arose under this heading were the item's allegation that Greenpeace held "secret" files on Mr Gudmundsson and that it had launched a "legal war to muzzle Magnus". A majority of the Authority decided that as most files held by any organisation are not available as reading material for the public, although perhaps overly dramatic it is probably not inaccurate or sinister to describe them as "secret". Further, to initiate legal action against a person or organisation can be described dramatically as "legal warfare" and again it is not inaccurate. However, as it is a term which can be



thought to have melodramatic overtones, the Authority considered that it was an aspect of the complaint which should be considered under the point below as to whether or not the item's tone breached the requirement for impartiality and balance.

The minority agreed that it was overly dramatic to describe the files as "secret". It also believed that the reporter's use of the term "muzzle" was an exaggerated description of the legal proceedings initiated by Greenpeace. Taking these points together, the minority decided that the item's approach towards Greenpeace breached the standard G1 requirement for truth and accuracy.

### **The number of blue whales**

The item's reference to the number of blue whales was initially raised as a matter of balance but later was included by Greenpeace among the programme's alleged factual inaccuracies. During the programme, Magnus Gudmundsson quoted and derided a Greenpeace Australia brochure which said that there were as few as 500 blue whales remaining. Greenpeace maintained that the figure only referred to the Southern Hemisphere but that qualification had been omitted from the broadcast. TVNZ provided the Authority with a copy of the brochure and it does not contain the caution that the comment about the remaining 500 adult blues refers only to the Southern Hemisphere population. As a result, the Authority did not accept that the Greenpeace brochure had been quoted from inaccurately or in an unbalanced way.

### **The item's tone lacked balance**

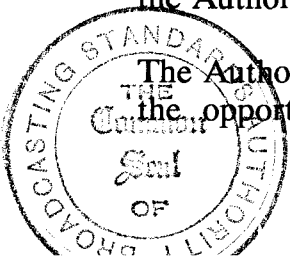
Greenpeace argued that the tone, balance and structure of the programme served to prove "the protagonists allegations". It was unclear from the lack of an apostrophe in Greenpeace's letter whether Magnus Gudmundsson was the sole protagonist or whether it also intended to include the *60 Minutes* reporter. The Authority proceeded on the basis that Mr Gudmundsson was the principal protagonist of a position adverse to Greenpeace but that the reporter, in view of her approach, could also have been considered at times to have adopted such a position.

Greenpeace referred to a number of aspects of the item which, it said, was evidence of an unbalanced tone.

The first was the allegation that Greenpeace "staged" the films of seal pup and kangaroo killings. TVNZ's extensive correction and apology broadcast on 25 April acknowledged the error in ascribing the allegations of staging to Greenpeace. That apology, the Authority considered, destroyed (as much as it is possible to do) any credibility that the sequences might have had for viewers of both programmes. Because of the importance of this matter, it is referred to again below.

Greenpeace also referred to the alleged inaccurate reporting of the number of blue whales world-wide as a contribution to the item's anti-Greenpeace tone. As noted above, the Authority decided the Greenpeace material had not been quoted inaccurately.

The Authority agreed with Greenpeace when it complained that it had not been given the opportunity to respond to the Fishing Industry's spokesperson's remark that



Greenpeace sometimes "uses less than honest approaches". That matter is also considered further below.

In order to deal with the complaint that the broadcast misrepresented aspects of the decision from the Norwegian Court when ruling on an action brought by Greenpeace against Mr Gudmundsson, the Authority obtained a copy of the decision from Greenpeace. Inevitably, the Authority acknowledged, when paraphrasing a lengthy document some material may be emphasised while other material may be omitted. It is necessary to take an overall approach and, on that basis, the Authority did not accept that the judgment had been summarised in an unbalanced manner.

Another matter was the "secret" files held by Greenpeace about Magnus Gudmundsson. As noted above, a majority of the Authority did not accept that the comment was inaccurate and, in view of that conclusion, it was not regarded as having a major input to the item's alleged lack of balance.

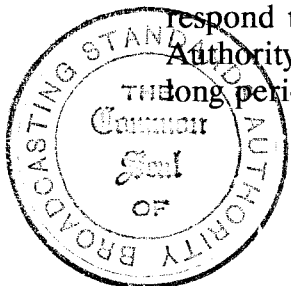
Although none of the above matters was of sufficient import in the Authority's opinion to justify a decision that the item was unbalanced, there were two further concerns which, it believed, provided the core of the complaint about the item's allegedly unbalanced tone.

The first issue was summed up in Mr Gudmundsson's phrase that Greenpeace was "in it for the money" and the second was the attitude of the *60 Minutes*' reporter.

The reporter adopted an assertive approach. Although some of her forceful comments were directed at Magnus Gudmundsson, the majority were aimed at Greenpeace. As well, a number of the questions which the reporter put to Greenpeace in an assertive, if not aggressive, manner were comments made by Mr Gudmundsson about Greenpeace's pursuit of money rather than a concern for the environment.

These allegations could well have resulted in an unbalanced programme if Greenpeace had not been given a reasonable opportunity to respond. The style adopted by any reporter is not usually a matter of broadcasting standards unless it employs inaccuracies or untruths or results in a programme which is unfair, partial or unbalanced. When reaching a decision on these matters, the Authority must take into account the context of any broadcast, including the status and professionalism of the parties involved. In this instance, the Authority noted that Mr Gudmundsson was an experienced media performer who responded completely and competently to critical comment. In addition, Greenpeace has a high public profile and can be expected to be represented by people with attributes similar to those displayed by Mr Gudmundsson. In this situation, the Authority considered that the opportunity to respond, rather than the quality of the response, was the central concern.

The Authority, as noted when dealing with the "in it for the money" allegation above, decided that the Greenpeace representatives were given a reasonable opportunity to respond to the reporter's questions and, in particular, to that allegation. Indeed, the Authority was impressed with the spokesperson who pointed out that he would not spend long periods on a ship in the Antarctic if money was his prime concern.



The Authority acknowledges that Greenpeace relies on public support and the broadcast provided information which people could take into account when deciding whether or not to contribute. Arguments critical of Greenpeace were made by Magnus Gudmundsson and the Greenpeace spokespersons' replies cast some doubt on his objectivity. Although the reporter's approach was overbearing at times and questions about her impartiality were not surprising in view of the approach she adopted, a majority of the Authority concluded that the discussion on the beach between the parties was not unbalanced because each side had a reasonable opportunity to respond.

The minority disagreed. Recalling that among the papers produced by the reporter were some files described as "secret" and apparently not previously sighted by the Greenpeace representatives, the minority noted that they were thrust at them at the same time as questions about the papers were asked. The minority did not accept that these actions complied with the requirement in the standard for a reasonable opportunity to respond.

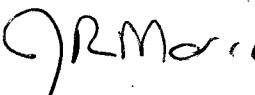
The Authority referred above to the allegations that Greenpeace had staged scenes in the films from which extracts were taken. That aspect of the complaint was upheld by TVNZ as inaccurate, to which the Authority would add that it was also unbalanced because Greenpeace was not given a chance to respond to the material screened. However, the Authority also believed that any unjustified criticism of Greenpeace which could be regarded as contributing unfairly to the item's tone, along with the comments from the fishing industry's spokesperson, would have been negated as much as possible by the extensive correction and apology broadcast on *60 Minutes* two weeks after the original item on 25 April.

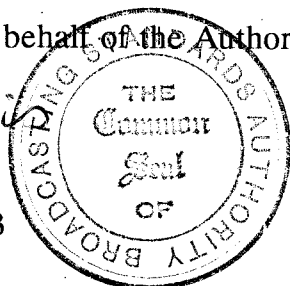
Standard G6, referring back to s.4(1)(d) of the Act, provides that balance, fairness and impartiality can be achieved when the party criticised has a reasonable opportunity to respond within the current period of interest. As Greenpeace has been the subject of a large amount of media comment over recent years, much of it uncritical, and as it was given a reasonable opportunity to respond to the criticisms, a majority of the Authority decided that standard G6 had not been contravened.

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

In reaching that conclusion, the Authority also took into account that TVNZ offered an apology for the factual errors. However, it was difficult to undo the damage caused by the inaccurate use of the excerpts from the films. When individuals or organisations are exposed to this kind of critical scrutiny, it is particularly important that extreme care is taken to ensure that the facts are correct. If TVNZ had not apologised so promptly for the item's factual errors, the Authority would have been inclined to the view that the programme breached the standards requiring fairness and balance.

Signed for and on behalf of the Authority

  
J.R. Morris  
25 November 1993



## Appendix

### Greenpeace New Zealand Inc's Complaint to Television New Zealand Limited

In a letter dated 7 May 1993, Greenpeace New Zealand Inc complained to Television New Zealand Ltd about an item broadcast on Channel Two's *60 Minutes* from 7.30 - 8.30pm on Sunday 11 April. The item called "Greenbuster" included an interview with visiting Icelander Magnus Gudmundsson and a debate between him and two Greenpeace representatives.

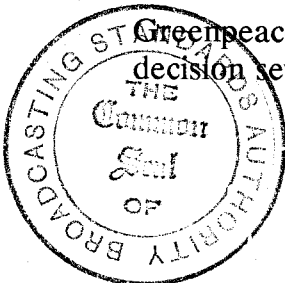
Listing two requirements in the Broadcasting Act 1989 and seven standards in the Television Code of Broadcasting Practice allegedly breached by the broadcast, Greenpeace divided its complaint into (1) factual inaccuracies and (2) balance and tone. The following inaccuracies were alleged:

- (a) Newspaper advertisements for the item which claimed that Greenpeace was intentionally misleading New Zealanders by issuing false information in the interests of making money were incorrect.
- (b) The comment from Magnus Gudmundsson that Greenpeace was "in it strictly for the money" was also incorrect.
- (c) Arguing that a Norwegian Court had ruled in favour of Greenpeace when it had challenged Mr Gudmundsson's claim that the film used by Greenpeace showing seals being killed was staged, Greenpeace said it had not been represented accurately or fairly on the item. It quoted an extract from the item's transcript which dealt with the court's decision, referred to difficulties with translations and concluded:

Because the narrator did not explain why the court let the clip stand, the impression given is that it did so because it found there was substance to the claim. Instead the point turned on the translation alone. The Norwegian television station was not party to the proceedings. Therefore the innuendo is that there is substance to the 'staging' allegation and that the court implicitly endorsed or at least left alone that allegation for substantive reasons.

The innuendo of the 60 Minutes use of the clip was to lend credence to the 'staging' allegation which the court explicitly found against. As the ruling was on a technical point of translation this is misleading and wrong.

Greenpeace added that it had supplied TVNZ with a translation of the decision several days before the item was filmed.





- (d) Greenpeace also contested the reference in the *60 Minutes* item that the film which alleged seals were skinned alive was falsified. It quoted from the Court decision which, on the basis that "alive" meant "conscious", had found the film's allegation to be false. Arguing that "alive" could also mean "unconscious", Greenpeace disputed the Court's reasoning and thus maintained that this part of the broadcast was also inaccurate.
- (e) The item, while showing a seal being skinned, stated that a Greenpeace guide had later confessed to being paid "to torture and flay the seal alive in front of the camera". Greenpeace complained that the item was misleading, first, in that the scene portrayed was meant, incorrectly, to suggest that the hunter was skinning the seal alive, and secondly, although implied it did not show the guide who later confessed. Greenpeace continued by explaining that the confession related to an incident in 1964 (before Greenpeace was formed and of which it knew nothing) - not to the film Greenpeace used which was made in 1978. This allegation was thus untrue and unfair to Greenpeace.

The incident was made worse, it continued, by the script which followed in the broadcast which suggested that TVNZ agreed with the guide's allegations.

- (f) Greenpeace's next concern focussed on the item's allegation that Greenpeace was involved in the falsification of some filming about kangaroos when the reporter had said:

Then what about the kangaroos? More proof Gudmundsson says that Greenpeace uses staged scenes of animal torture to promote their cause.

Greenpeace admitted to the judge that the footage was staged. The judge said Greenpeace consciously uses falsification in their propaganda.

Greenpeace wrote:

During this narration the programme is showing scenes from the Greenpeace film *Kangaroos Under Fire*.

The phrase 'more proof' carries the innuendo that the foregoing is 'proof' that Greenpeace uses staged scenes of animal torture to promote their cause.

The statement that 'Greenpeace admitted to the judge that the footage was staged' carries the innuendo that Greenpeace (1) the film in question was a Greenpeace film and (2) in the Oslo proceedings there was an 'admission' by Greenpeace that it was somehow involved in staged footage.



Greenpeace explained at length that there were two films about Kangaroo hunts - one of which "Kangaroos Under Fire" was made by Greenpeace. The other "Goodbye Joey", which possibly contained some staged scenes, was neither made by Greenpeace nor used by it for propaganda purposes. Accordingly, it disputed each of the above comments made by the presenter in the broadcast.

- (g) As the last factual complaint, Greenpeace referred to a lengthy section of the script where the presenter said that Greenpeace had been keeping "secret files" on Magnus Gudmundsson and had been using "war-like" tactics to discredit him.

It pointed out the "secret file" seemed to refer to internal records but as it had not been given the opportunity to read this "file", it could not be sure. Further as Mr Gudmundsson had given some of the papers to *60 Minutes*, he could not now claim to be shocked by the revelation of their existence. In summary, Greenpeace denied that there were any secret files and that the comment had breached the standard requiring accuracy. In addition, *60 Minutes* had been invited to search Greenpeace's office but had been unable to find anything incriminating. This last point, Greenpeace added, was not mentioned during the broadcast.

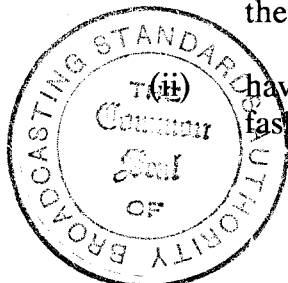
Under the complaint about the item's tone and balance, Greenpeace began:

The claim has been made that the programme about Greenpeace while adversarial, simply provided the framework for a lively debate about Greenpeace. This is incorrect both structurally and in terms of the tone which the programme adopted.

Promotional material for the programme implied that Greenpeace and its activities were under suspicion and undergoing legitimate and objective investigation which answered questions posed in the promotional material.

This promotion of the programme itself refutes an argument that the programme was merely a forum for a debate. The programme in fact purported to put Greenpeace on trial. Once this is clear, one needs to establish:

- (a) whether the "trial" was fairly and objectively conducted and whether Greenpeace had a full and fair opportunity of
- (i) being informed of the accusations against it in advance of the programme and



having its replies broadcast fairly and in a balanced fashion and

(b) whether there was in fact an active investigation.

None of these criteria were followed. In fact *60 Minutes* did not contact Greenpeace to verify the charges at any time prior to contacting Greenpeace to arrange the debate. Apart from an informal interview which resulted from a Greenpeace invitation to visit the office, there was no fact checking with Greenpeace. Greenpeace gave *60 Minutes* the English translation of the Oslo decision - *60 Minutes* did not request it.

In fact questions about Greenpeace which were raised in the advertising were never adequately addressed in the programme itself.

When Greenpeace was finally given the opportunity to have its say, the complaint continued, a "free-for-all" took place in which the presenter was not impartial but took a hectoring stance towards Greenpeace while not confronting Mr Gudmundsson in the same way. Furthermore, Greenpeace was not advised of the issues to be covered and the programme suggested that Greenpeace:

... was not all that it seemed, that it had a hidden agenda, that it had been dishonest, that it had maltreated animals, doctored and sensationalised publicity to milk public sympathy and attract funds, that it was a shadowy international organisation that wanted to suppress criticism, that it was concerned primarily with profit and that it was not scientifically credible.

Mr Gudmundsson, Greenpeace continued, although portrayed as the "little guy" was in New Zealand as the guest of the Fishing Industry Association and was managed by the Association's public relations consultant.

The tone was set by the item's introduction:

Tonight Genevieve Westcott with the story of one of the world's most popular and powerful Green organisation which has marshalled its forces to muzzle one man.

It was unbalanced, moreover, to describe Mr Gudmundsson as the "enemy", a comment to which Greenpeace was not given the right of reply.

Other examples of the lack of balance which Greenpeace noted were Mr Gudmundsson's unchallenged statements that he was not working for the fishing industry, that he had not received payment from the Icelandic Government and that Greenpeace was "in it strictly for the money". Greenpeace also challenged the item for linking its acknowledgement for an occasional mistake with the incorrect allegations about the payment for seal skinning and the staged kangaroo footage. That link, it argued, implied that Greenpeace had mistakenly carried out those activities.

Greenpeace referred to several occasions when the presenter's questions to Mr



Gudmundsson seemed to accept his claims as facts which, it said, showed that the programme was biased and unbalanced. Further, it argued that *60 Minutes* seemed to accept Mr Gudmundsson's specific claim there were "perhaps millions" of whales just because he lived in Iceland. In contrast, the scientific evidence produced to attack Greenpeace's estimates was quoted incorrectly and the item had been edited to remove the qualifications advanced by the scientist who was shown criticising the Greenpeace position.

The comment that Greenpeace "slapped a defamation writ on Gudmundsson" was also biased as the legal claim in fact only sought a retraction and it was not served until after the item was filmed "explicitly to avoid charges of this type."

In conclusion, Greenpeace wrote:

Greenpeace believes that as a whole, the programme was highly biased, unbalanced, unfair and inaccurate. The statement read out two weeks later went some way towards addressing two specific instances of inaccuracy relating to the two extracts. They did not cover any of the many other points listed above, and did not even adequately cover the treatment of those two extracts. The statements gave the impression that the problems with those two extracts arose wholly from Magnus Gudmundsson's own film, whereas *60 Minute's* editing of the film extracts and narration are responsible for the inaccuracies, misleading impression and bias to a considerable degree. Further, TVNZ has specifically limited the ambit of its statement in a letter to Greenpeace following the reading of the statement.

Likewise, *60 Minutes*, in introducing and reading letters out one week following the original programme recognised the shortcomings of the programme in a general way but went nowhere towards addressing the serious shortcomings enumerated in this complaint.

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

TVNZ advised Greenpeace of its Complaints Committee's decision in a letter dated 22 June 1993 when it reported that the complaint had been assessed under the standards nominated.

TVNZ described the item in the following way:

Before addressing the individual matters raised in your complaint, the Committee viewed the programme and noted that it dealt with the visit to this country of an Icelander, Magnus Gudmundsson. The item indicated his longstanding concerns about the style and methods used by Greenpeace both to raise funds and in campaigning on issues relating to environmental protection. During the programme Magnus Gudmundsson, together with the reporter, spoke face-to-face with representatives of Greenpeace on an



Auckland beach.

The Committee agreed that Greenpeace is a major lobby group around the world and in New Zealand. For that reason the Committee considered that the organisation of Greenpeace, its methods and its use of funds are matters of legitimate public interest and are therefore worthy topics for journalistic investigation.

The visit of a prominent critic of Greenpeace provided an opportunity to explain his concerns to New Zealand viewers and to acquire appropriate responses from Greenpeace. It was an important means of widening public debate on what is a very influential, high profile, group.

Section 4(1)(d) of the Broadcasting Act requires balance "within the period of current interest" and, in view of the numerous news and current affairs items which had dealt with Greenpeace positively over the years, TVNZ argued that the item had to be seen within the overall debate. It also referred to the extensive research that had been undertaken prior to the broadcast and to the statements which had run on a subsequent *60 Minutes* programme to correct two inaccuracies.

The complaint, TVNZ believed, covered the five following broad areas:

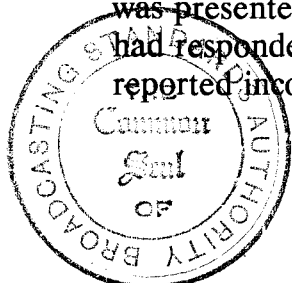
1. The allegation that Greenpeace is "in it for the money".
2. The references to the film showing the skinning of the seal pup.
3. The references to the film of the kangaroo killing.
4. The statements regarding Greenpeace's attitude to Mr Gudmundsson.
5. A general feeling on your behalf that the "tone" lacked balance.

It continued:

The Committee noted that points two and three above were the matters of inaccuracy which were dealt with in the correction broadcast on "60 Minutes" a week after the original programme. The correction was broadcast with the concurrence of Greenpeace.

TVNZ then proceeded to deal with the specific points raised by Greenpeace in its complaint, beginning by noting that newspaper advertisements were not subject to broadcasting standards.

As for the allegation that Greenpeace was "in it for the money", TVNZ noted that it was presented as Mr Gudmundsson's view and that two Greenpeace representatives had responded. As for the complaint that the Norwegian Court judgment had been reported incorrectly, TVNZ maintained that the reporting was factual and without



innuendo and did not contain the inaccuracies alleged. It acknowledged that the parties had a different opinion about brain death and clinical death but that the item had correctly reported the judge's ruling.

Noting that the complaint about the guide's alleged comment had been upheld under standard G1 (truth and accuracy) but none other, TVNZ said despite the considerable confusion about the kangaroo films, Greenpeace's version was accepted and the matter was dealt with in the subsequent correction. However, with respect to the quote from the judge concerning Greenpeace's use of falsification, TVNZ added that it was an accurate report of the Oslo Court judgment.

Arguing that reporters should not reveal their sources, TVNZ accepted that the reporter had been advised by an independent source that Greenpeace kept files on Mr Gudmundsson. As the public and some employees did not know of the files, the description "secret" was justified. Consequently, these aspects of the complaint were not upheld.

Turning to the allegation about the item's tone and its lack of balance, TVNZ said it was apparent that Greenpeace knew of Mr Gudmundsson's claims in advance of the meeting between them and did not uphold any of the alleged breaches. The parties were interviewed separately and then brought together. Although that discussion involved some shouting, TVNZ denied that the reporter "hectoring" Greenpeace. In view of Greenpeace's annual income internationally (US\$150 million), the term megabucks was acceptable.

Pointing out that Greenpeace regularly supplied film to TVNZ and so it was surely acceptable to use some during the item and not a breach of copyright, and that the item quoted allegations that Mr Gudmundsson was "a paid lackey of the whalers", TVNZ described as subjective that Greenpeace's opinion that the parties were portrayed in an unbalanced way.

Dealing with the complaint about unfairly reporting the legal actions taken against Mr Gudmundsson, TVNZ said that Greenpeace "has consistently tried to restrict" his influence as was apparent from the "stream of legal letters". Moreover, the Greenpeace spokesperson acknowledged during the item that the organisation kept "a watching brief" on him. When Greenpeace was asked for proof of its allegations about Mr Gudmundsson, TVNZ stated, nothing was forthcoming. In dealing with the complaint that the item had not sufficiently aligned Mr Gudmundsson with the fishing industry, TVNZ acknowledged a letter in which he had been associated with the New Zealand Fishing Industry Association but added that it was prepared, mistakenly, by 1ZB before an interview with Mr Gudmundsson and Greenpeace.

TVNZ said that Greenpeace acknowledged that it had been given, and had taken, the opportunity to rebut Mr Gudmundsson's views. Quoting the script, it argued that the comment about occasional mistakes had not been associated with falsification of its films. It maintained that the questions asked of Greenpeace, based on research, were fair and accurate. TVNZ referred to the research which indicated that Greenpeace's



estimate of the number of whales was low. The Greenpeace pamphlet was misleading, it added, as it implied that it recorded the population for the entire world - not just the northern hemisphere.

Continuing to deny that any of the matters raised by Greenpeace breached any of the nominated standards, TVNZ observed that the possibility of legal action by Greenpeace during the visit was regarded by journalists as high. Because of that possibility, 1ZB had taken precautions as had some print journalists who had considered following up TVNZ's item. TVNZ also pointed out that Greenpeace representatives had been interviewed on two occasions and that the Department of Conservation scientist, who had been interviewed on the item, had specifically requested in advance not to be part of the Greenpeace - Gudmundsson debate.

TVNZ concluded:

In summary, the Committee noted that the programme addressed an important aspect of Greenpeace's activities and was therefore in the public interest. Greenpeace has substantial public involvement and its activities are thus a legitimate subject for news media scrutiny.

The programme was triggered by the visit to New Zealand by Mr Gudmundsson, and the claims he made concerning Greenpeace.

Those claims were put to Greenpeace representatives.

The programme was never intended to canvass the full range of Greenpeace's activities. It is specifically concentrated on the claims by Mr Gudmundsson.

The Committee accepted that on two points the programme was incorrect. It noted that the matter had been corrected in full and in consultation with lawyers representing Greenpeace.

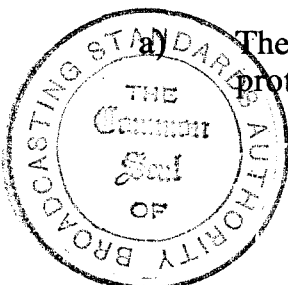
Taking everything into account the Committee concluded that the two points mentioned above constituted a breach of Code G1, but declined to uphold your complaint on the basis of any of the other codes quoted by you.

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

Dissatisfied with TVNZ's response to the complaint, in a letter dated 5 July 1993 Greenpeace referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

The key areas of the referral were listed as follows:

a) The tone, balance and structure of the programme served to prove the protagonists (sic) allegations.



- b) The Norwegian court decision was misrepresented in respect of the allegations about staging of a seal pup killing film and kangaroo film. This was compounded by Eric Barrett's [of the Fishing Industry Association] comment that Greenpeace sometimes, "uses less than honest approaches". Greenpeace were not allowed an opportunity to respond to this.
- c) Allegations about secret files relied solely on Gudmundsson's claims - Greenpeace was assumed to be guilty.
- d) Allegations about "megabucks" contained in the pre-broadcast teasers and programme, were never backed up. Furthermore, Gudmundsson's allegation that Greenpeace is "in it for the money" and that we don't do environmental work, were never challenged.

The organisation added:

This created serious doubt in the mind of viewers and has had a direct effect on our membership and donations.

Cindy Kiro, the Executive Director, said she or the organisation's lawyer would be happy to meet with the Authority or to provide any further evidence requested. The general dissatisfaction with TVNZ was contained in the Authority's Complaint Referral Form when Greenpeace wrote:

1. Their response compounds the original complaint by adding to the factual inaccuracies and displaying bias in their deliberations
2. The conclusions are incorrect
3. Their version of Greenpeace's input into the programme and dealings with "60 Minutes" staff is incorrect
4. The Broadcaster took it upon itself to deal with the matter, without an agreement with Greenpeace as to the contentious issues. Consequently, its apology failed to address the range of issues of concern to Greenpeace.
5. Greenpeace believes it has been the victim of shoddy, unprofessional journalism, and has not been given adequate right of reply or redress. Furthermore, the broadcaster has not acted in good faith to resolve this.

The specific dissatisfactions were contained in a list of 32 points. Briefly summarising these points, Greenpeace agreed that it was the media's right to investigate the organisation. Maintaining it was not contacted by TVNZ until well after the decision to make the programme, Greenpeace disputed TVNZ's claim that the research was extensive. It quoted one example and then maintained that the broadcast promos,





which it had criticised, must raise broadcasting standards issues. It noted that the correction was broadcast two weeks after the original item, not one as TVNZ had stated.

Disputing TVNZ's claim that Greenpeace New Zealand must have been aware of Mr Gudmundsson's views before coming to New Zealand (he was active mainly in Scandinavia), it said another error was the organisation's annual income broadcast on the programme. Although Greenpeace donated free film to TVNZ, it was covered by copyright as were the items shown on the item. It accepted that the "paid lackey" statement was put to Mr Gudmundsson but said it was followed by the comment, "a claim he denies, a claim Greenpeace have never proved". The latter comment was an example of the item's lack of objectivity.

Greenpeace said the "stream" of legal letters amounted to two and the organisation did not keep "a watching brief" on Mr Gudmundsson. Indeed, the organisation was unaware of his visit to New Zealand until contacted by the media. Expressing concern that it had been unable to supply all the information requested because of short notice, Greenpeace also questioned the impartiality of TVNZ's Complaints Committee when it talked about being bemused and describing one aspect of the complaint as "nonsense".

As for the reference to 500 blue whales, Greenpeace said that this was a deliberate misquote by Mr Gudmundsson and as it did not have a copy of the pamphlet, it had been unable to correct it at the time the item was filmed. However, the correct figure was obtained before the broadcast, supplied to TVNZ who ignored it and allowed the deliberate misquote to be broadcast. The figure, it continued, was plainly stated to be that for the Southern oceans, observing:

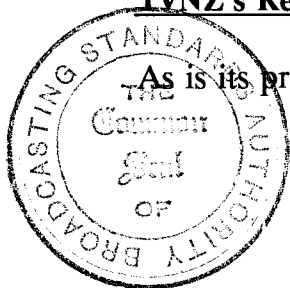
This issue is a prime example of how a meeting with Greenpeace could have clarified these simple issues of fact. However the Committee was not concerned with establishing truth, merely with affirming the views of its staff.

Noting that Mr Donoghue (the Department of Conservation scientist who had appeared on the programme) had complained about the way he had been treated on the item because of his wish to be seen as independent, Greenpeace finished:

Greenpeace did not concur with the retraction and apology given by "60 Minutes" as stated by the Committee in 1.1(p.3), and again they state this was "in consultation with lawyers representing Greenpeace". This is false, our lawyers clearly told TVNZ, via their lawyer Mr Charles Blackie of Brookfields, that this statement was not agreed to by us. This was known and understood by TVNZ.

#### TVNZ's Response to the Authority

As is its practice, in a letter dated 7 July 1993 the Authority sought the broadcaster's



response to the complaints. After asking for a few more days beyond the agreed 20 working days because of the research required to respond completely to the voluminous complaint, TVNZ then suggested that the Authority defer action pending the outcome of possible legal action by Greenpeace against it. After considering the matter and as the threats did not follow with legal action, the Authority decided to proceed and in a letter dated 8 September 1993, TVNZ reported to the Authority on the substance of the complaint.

TVNZ began by explaining that Greenpeace seemed to have misread the Complaints Committee's decision. Contrary to some of what Greenpeace had written, TVNZ stated that two aspects of the complaint were upheld as breaches of the accuracy requirement in standard G1. The first incorrect matter was the guide's comment that he had been asked by Greenpeace to stage the skinning of live seals and the second, the confusion over the origin of the pictures of the kangaroos. In both cases, the action taken was the broadcast of a correction on *60 Minutes* two weeks after the broadcast of the item complained about. However in clarification, TVNZ continued, the broadcast on 11 April had not breached any other of the standards cited.

TVNZ also rejected Greenpeace's criticism that its Complaints Committee had not met with the organisation, insisting that it complied with the legislative requirement for minimal formality by dealing with complaints - as did the Authority - on the papers. TVNZ observed:

In this case we do not believe (as the Greenpeace letter seems to imply) that the Committee misconstrued aspects of the Greenpeace complaint. A proper and thorough investigation was carried out with all involved in the production of the broadcast item being required to respond in detail to each of the aspects raised by Greenpeace.

By way of introduction to the complaint, TVNZ stated that the item was clearly in the public interest. It continued:

The activities of Greenpeace - an international giant in the conservation area which attracts donations from millions of well-wishers - deserves to come under constant scrutiny from the media if only because of the huge amounts of public money that it receives and spends. When the performance and methods of Greenpeace are challenged by a prominent anti-Greenpeace campaigner on a visit to this country, those allegations should not be ignored or swept under the carpet.

The visitor on this occasion was Magnus Gudmundsson, a figure well-known world-wide for his outspoken criticism of Greenpeace - but not one who until now had been available for questioning by the New Zealand media.

In proceeding to deal with the four areas of complaint identified by Greenpeace:



The tone, balance and structure of the programme served to prove the

protagonist's allegation".

In reply, TVNZ maintained that the item had dealt with Greenpeace fairly and impartially. Moreover, Mr Gudmundsson had been questioned closely by the reporter and by Greenpeace and an example was cited.

- "b) The Norwegian court decision was misrepresented in respect of the allegations about staging a seal pup killing film and kangaroo film. This was compounded by Eric Barrett's comment that Greenpeace sometimes "uses less than honest approaches". Greenpeace were (sic) not allowed an opportunity to respond to this".

TVNZ wrote in response:

"60 Minutes" did not misrepresent the court decision. It was reported accurately.

Lengthy extracts were quoted from the court's decision in which it was held that the film's comment that seal pups were skinned alive was incorrect as the evidence did not show that the pups were conscious when skinned. That finding resulted in the court accepting the following comment in Mr Gudmundsson's film:

"Greenpeace's intentional use of falsifications in their propaganda demands serious reconsideration of the organisation's aim. It is neither comfortable nor nice to see the truth when something one has had hope and trust in shows itself unworthy of that trust"

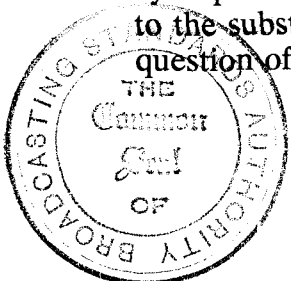
- "c) Allegations about secret files relied solely on Gudmundsson's claims - Greenpeace was assumed to be guilty".

TVNZ's reply was brief:

This was not the case. The information was, as is the practice, verified from other sources. Greenpeace was given the chance to respond and Ms Carrington agreed during the beach debate that it "was okay to keep files on people like Gudmundsson". Greenpeace did not deny the existence of the files. In fact, it admitted they existed.

- "d) Allegations about being (sic) megabucks contained in the pre-broadcast teasers and programme were never backed up. Furthermore, Gudmundsson's allegation that Greenpeace is "in it for the money" and that we don't do environmental work, were never challenged.

Pointing out that Mr Gudmundsson referred to "megabucks" and that it was followed by a question to him whether Greenpeace might be in it for money, TVNZ referred to the substantial income of Greenpeace International. It also noted that the question of being "in it for the money" was put to Greenpeace and a reasonably



lengthy reply denying the accusation was included in the broadcast.

TVNZ then proceeded to respond to the 32 points listed by Greenpeace when referring the complaint to the Authority.

Although pointing out that the matters relating to the extent of the contact between the parties did not raise broadcasting standards issues, TVNZ replied in some detail because the matters involved an attack on TVNZ's integrity. It then recorded that it had only become interested in the story after Mr Gudmundsson's arrival in New Zealand. Extensive research, it emphasised, was carried out and it disputed Greenpeace's implication that that organisation was the only reliable source of information. As the original complaint specifically referred to "newspaper" advertisements for the item - not the trailers - that aspect had not referred to a broadcast and was not assessed by TVNZ's Complaints Committee.

TVNZ acknowledged that it had misspelt the name of a Greenpeace representative and that the retraction and apology was broadcast two weeks - not one week - after the original item.

TVNZ maintained that its source about Mr Gudmundsson's secret files was correct and denied that it had been looking for "mud" when visiting Greenpeace's office. The film crew had visited after filming the exchange on the beach and recorded some general footage.

Quoting a comment from a Greenpeace spokesperson in the item, TVNZ maintained that Greenpeace New Zealand was aware of Mr Gudmundsson and his interests prior to his arrival in the country. Further, a letter from Greenpeace's lawyers to the Fishing Industry Association ( which it attached) referred to him before his arrival. TVNZ also maintained that "megabucks" was an appropriate term and then pointed out that the copyright issue was not a matter of broadcasting standards.

The next series of comments focussed on the allegation that the Complaints Committee was biased against Greenpeace and while acknowledging that the use of the phrase "stream of legal letters" might not have been "the best description", TVNZ argued that the Committee had acted objectively. It commented:

The item was not rushed to air. There was nothing sinister or malicious in the decision to run the item on 11 April. By that time Mr Gudmundsson had already left the country, and to leave the programme for another week or more would have resulted in a current affairs programme that was somewhat less than "current".

And in response to a number of other specific allegations of bias, TVNZ argued that the Committee's straightforward report was a reasonable response.

Turning to the complaint that TVNZ had deliberately misquoted a Greenpeace Australia brochure, TVNZ advised the Authority:



There was no misquote. A photocopy of the brochure is attached as Appendix 2 (we apologise for the poor quality but it is a photo-copy of a facsimile!)

Observing that the brochure had been passed to the Greenpeace representatives and that the information supplied later had been considered, TVNZ commented:

We invite the Authority to decide for itself if the brochure would lead a member of the public to conclude that it was referring only to 500 blue whales in the Southern Oceans.

As for the allegation that the Complaints Committee was partial, TVNZ reported that it was not the Committee's practice to hold formal hearings and, in view of the procedure followed, described Greenpeace's remark as an "unjustified slur".

TVNZ acknowledged that Mr Donoghue, the scientist, had complained and the Complaints Committee, while not upholding the complaint, had apologised for any embarrassment his brief appearance might have caused him. It added that Mr Donoghue's views were not a matter for the Authority as he had not referred his complaint under the Broadcasting Act.

Maintaining that its description of the legal writ served by Greenpeace on Mr Gudmundsson was accurate, TVNZ said that its interpretation was shared by other journalists.

TVNZ repeated that two aspects of the complaint had been upheld and that the correction and apology which was broadcast had been prepared in consultation with lawyers representing Greenpeace. It also stated:

... we dispute Greenpeace's assertion that Television New Zealand did not act in good faith to resolve the matter. The correction and the apology were the appropriate action for the broadcaster to take, and the Complaints Committee thoroughly investigated the other matters raised.

It concluded:

On the matter of tone, we observe simply that it was a matter of public interest that a prominent critic of Greenpeace (who happened to be on a visit to New Zealand) be seen to voice his comments about an organisation to which many New Zealanders commit money. Greenpeace was seen to respond to those criticisms. There was no underlying malice towards Greenpeace.

As far as the matter of balance is concerned, the Committee simply noted that the Act allows for balanced coverage over the period of current interest and so information on Greenpeace coverage in the past was included to give some added perspective. Because this was not the only time in recent history that Greenpeace and its activities had been mentioned by Television New Zealand it was possible for this particular programme to have a narrow focus. But



having a narrow focus does not imply a lack of balance.

### **Greenpeace's Final Comment to the Authority**

When asked to comment on TVNZ's response, in a letter dated 23 September 1993 Greenpeace listed the three points it wanted the Authority to consider. It wrote:

The major points we wish the Authority to consider are:

- \* the tone balance and structure of the programme served to prove the protagonists (sic) allegations
- \* the programme contained significant factual inaccuracies
- \* Television promos for this programme served to create a climate of hostility towards Greenpeace by highlighting only the views of the chief protagonist

### **Further Correspondence**

Before determining the complaint, on 22 September 1993 the Authority requested further information from each party. In a letter dated 1 October, TVNZ provided the Authority with a copy of the apology and correction broadcast on 25 April to enable the Authority to determine the complaint from Greenpeace that it was dissatisfied with the action taken on the aspect of the complaint which was upheld by TVNZ.

TVNZ argued that as Greenpeace had first raised its concern with the television promos, as opposed to the newspaper advertisements, in its most recent letter, the Authority was precluded from determining that aspect of the complaint. TVNZ again argued, in response to Greenpeace, that the Authority should determine the complaint without a formal hearing.

In response to the Authority's request, Greenpeace supplied the Authority with a report from Greenpeace Australia dated 9 April about the number of blue whales in the Southern Hemisphere and a translated copy of the Norwegian Court's judgment on the case brought by Greenpeace against Magnus Gudmundsson.

